WIDE ANGLE

THE PROTECTION OF CIVILIAN VICTIMS OF WAR IN ITALY

L'OSSERVATORIO
Associazione Nazionale Vittime Civili di Guerra ONLUS
RESEARCH CENTRE ON CIVILIAN VICTIMS OF CONFLICTS

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The continuing crisis faced by civilians involved in wars; the challenges of contemporary international humanitarian law – the need to provide adequate systems of protection through objective and shared analysis; aims of this contribution.

After the atrocities of the Second World War, the international community promised that humanity would never relive the horrors of the past; however, despite the strengthening of dialogue between peoples, safeguarding of human rights and growing public awareness of International Humanitarian Law (IHL), *"there is still much work do be done in order that the seeds planted about seventy years ago bear fruit, in other words, give rise to a life of dignity and peace for all"*[1]; currently it is estimated that nearly 60 countries are engaged in armed conflicts and it is difficult to find an official estimate of civilian casualties. Most ongoing conflicts are little known; they are mainly internal conflicts for which any effective intervention to protect the affected populations would be a complex matter. What makes this situation even more worrying is the finding that the wars of the last few decades seem to show an ever-increasing negative impact on defenceless populations, often as a result of precise and premeditated strategic choices. Despite the progress made in IHL civilians continue to be the prime casualties of armed conflicts, just as most "collateral" damage is done to the infrastructures and basic resources of entire populations. This latter trend was, sadly, inaugurated with the Second World War and, since then, it would appear that it has never been reversed.

This is highlighted by the alarming data revealed in the first report on armed conflicts recently published by the International Institute for Strategic Studies (IISS). The report denounces how armed conflicts in 2014 were more lethal compared to previous years, even though there were fewer conflicts (there are 42 armed conflicts, including civil wars, insurrections and other kinds of instability and violence, that is to say 21 fewer than the 63 recorded in 2008; however, whereas in 2008 conflicts caused 56,000 deaths, in 2014 this figure rose to 180,000).

The negative trend confirmed by the IISS study has been recognized for a number of years: in the report of 28 November 2005 on the protection of civilians in armed conflicts (S/2005/740), the United Nations Secretary-General stated: *"In the new warfare that has emerged, the impact of armed conflict on civilians goes far beyond the notion of collateral damage. Targeted attacks, forced displacement, sexual violence, forced conscription, indiscriminate killings, mutilation, hunger, disease and loss of livelihoods collectively paint an extremely grim picture of the human costs of armed conflict. Although the number of armed conflicts decreased from 50 in 1992 to 30 in 2004, today's armed conflicts are more often low-intensity conflicts fought with small arms and light weapons in both urban and rural areas. Conventional warfare undertaken by large, formed, well-disciplined units with clear command and control structures is less common. The changing nature of con-*

flict has a profound impact on respect for civilian status and the safety and well-being of civilian populations.[II] *Civilians are increasingly at risk of being caught in crossfires, targeted for reprisals, forcibly recruited, sexually enslaved or raped. Armed groups involved in these conflicts tend to be smaller and less well trained and equipped than national military forces. They consequently tend to avoid major military engagement and instead target and spread fear among civilians,*[III] *using them as human shields or extorting food and money for their own subsistence and support. Increasingly, today's conflicts rely upon child soldiers,*[IV] *who are commonly recruited and used against their will, through abduction, kidnapping, enslavement and coercion or intimidation of their parents or guardians. It is estimated that children are serving in almost 75 per cent of contemporary armed conflicts".*[V]

Over time, the indirect impact of conflicts has increased, leading to a higher number of refugees and displaced people, so much so that in 2013 the UN High Commissioner for Refugees observed that for the first time since the Second World War, the number of people forced to abandon their homes was over 50 million globally.

Without making any claim to completeness or finality, it can certainly be affirmed that the majority of victims of armed conflicts today are civilians who are not directly involved in hostilities. In the dramatic context sketched here, it seems ever more clear that it is absolutely imperative to devote a high level of attention to the problem of civilian populations affected by wars and to provide ever more effective measures of protection.

The creation of effective monitoring systems of this phenomenon through the analysis of causes and through the strengthening of systems of protection of civilians in areas affected by war are key priorities of which the international community is well aware.

To this end, it is necessary to acquire objective and historically verified data that can be used to define both regulatory criteria and unequivocal qualifications of the categories of victims needing protection.

Equally important is the preparation, at the international level, of shared parameters and criteria that allow for the verification of the effectiveness of existing instruments of both regulatory and operational protection. This would increasingly allow for a more rational distribution of resources allocated to the relief of populations affected by war and a for a more coherent development of humanitarian law.

Having set out these general objectives, it becomes crucial to carefully analyse the evolution of the relevant Italian legislation in order to verify its practical impact, especially because this body of regulations has developed and been applied for over 70 years. An examination of the areas of major concern and strength of these regulations represents an excellent basis for comparison and discussion; it offers concrete considerations for the elaboration of verification parameters and criteria which can also be shared at the international level.

As well as providing empirical data useful for comparison purposes, it is instructive to learn in detail about personal experiences regarding how social groupings in Italy, especially following the Second World War, were able to respond to crises facing the population, sometimes working in tandem with public institutions and sometimes replacing them altogether.

In this regard, the National Association of Civilian Victims of War (Associazione Nazionale Vittime Civili di Guerra – ANVCG), the body responsible for the defence and protection of civilian victims in Italy since 1943, makes a valuable contribution. The Association was founded in response to the crises faced by Second World War victims, providing for the most urgent needs of civilians badly affected by war in Italy. The Association is undoubtedly a key actor and has played a part in the development of safeguards and regulatory arrangements for the protection of civilian victims in Italy.

The history of the ANVCG, particularly the personal experiences of its members, offers a formidable contribution to the objectives previously summarised. Not only does the Association constitute a highly valuable historical testimony, it is also a social grouping in constant transformation. Today, it is a vital laboratory of ideas and resources for the implementation of systems of protection for civilian victims affected by war.

The aim of this article is to give the reader a succinct overview of the measures of protection for victims of war provided by the Italian legal system and to show how the legal system has changed over time. As we shall see in Chapter I, these measures have often been the result of uneven interventions super-imposed onto pre-existing laws that had not been designed to respond to the needs of civilian victims of war. At the same time, this article aims to highlight the interpretation of the Italian Courts in rendering legislation current and applicable when the legislation is often confusing and the result of a badly coordinated stratification of laws originally adopted to respond to contingent and emergent needs. This article will then trace the development of the ANVCG as the representative body for the rights and interests of Italian civilian victims of war through the years. The broad mandate of the Association, together with its increasing commitment to cultivating memory as well as to disseminating the values of international law and solidarity between peoples at both the domestic and international levels, which established the ANVCG as a key actor in civil society from the 1940s onward will then be outlined.

Both the above-mentioned considerations are essential in creating and spreading an education for peace as the best way for preventing war. In the words of Giuseppe Castronovo, President of the Association, war is the very "nullification of reason".

Chapter I – The protection of civilian victims of war in Italy

Summary: 1.1 General outline and historical development of the law; 1.2 Economic and social security measures; 1.3 Employment Policies; 1.4 Other forms of protection; rights of war invalids; 1.5 Recognition of the right to compensation for damages.

1.1 – General outline and historical development of the law

Protection granted to civilians in conflict situations by international law – Origins, development and general principles of Italian legislation – National Foundation for War Invalids – Provisions for the relief of Italian civilian victims of war; deferral.

Before starting this in-depth analysis of the provisions of Italian law for the protection of civilian victims of war, it seems appropriate to provide the reader with a very

brief examination of the development of the discipline at the international level. In this regard, attention should be drawn to international humanitarian law, that is to say the branch of international law that aims to "humanise" conflict situations as far as possible. Briefly stated, such legislation aims to protect weaker parties in armed conflicts, which is to say non-combatants whether civilians or those who cannot fight any longer due to illness, injury, shipwreck or because they are prisoners of war.

The foundation of international humanitarian law can be defined as the need to ensure, even in situations of armed conflict, respect for and maintenance of those fundamental personal rights which are at the very basis of the legal conscience of the international community. At the core of this legislation lies the First Geneva Convention of 22 August 1864 (widely considered the date of birth of IHL)[1] and the four Geneva Conventions of 1949[2, 3, 4, 5], as well as the subsequent two additional Protocols of 1977[6, 7] and, more recently, the Ottawa Convention of 1997 on the elimination of anti-personnel mines[8].

In short, these make up the substance of international humanitarian law, to which numerous treaties and conventions have been added over the years (put forward principally by the United Nations) mainly aimed for the protection of specific categories of vulnerable persons (for example, children and minors). There are also provisions of a contingent nature made in response to humanitarian rights crises in specific regions and conflict situations (in this regard, numerous Resolutions have been adopted by the UN Security Council especially since the mid-1980s).

Above and beyond these considerations, it should be recalled that, where international regulations aim to protect civilians in conflict situations, they are by definition addressed at States, and therefore comprise general principles that States must respect and turn into domestic provisions.

By way of this broad introduction, it should be mentioned that the regulations aimed at offering protection and relief to civilian victims of war started in Italy in the context of World War I. However, and concurrently with the events that took place at an international level, it was following WWII that this legislation gained wider currency given the radical change in military strategy that was sadly inaugurated by the Second World War when attacks on civilian populations were made directly and deliberately in contrast with previous practice.

In Italy, initial provisions for protecting civilian victims of war were made in 1919[13]. In its original form, these provisions were drawn on the basis of parallel legislation meant for ex-servicemen who were victims of war or rather, the provisions were added onto the existing law. This peculiarity produced long-term effects inasmuch as adapting legislation created for a homogeneous category (viz. adult male servicemen) to a completely different and heterogeneous category (including minors, women and the elderly) would obviously give rise to challenges in interpretation and application.

For the same reason, this legislation had to be supplemented and corrected on numerous occasions from the very start, hence giving rise to an accumulation of fragmentary and disorganised norms, so much so that already in 1923, legislators recognised the need to condense the material into a Consolidated Act.

Initially, the adoption of measures for the relief of civilian victims of war arose from the need to provide means that in some way compensated for the reduced capacity for work stemming from war disability. This imposed a very limited approach to the protection offered, which consequently only covered economic measures, the scale of which was calculated according to the productivity of an ideal average worker.

Over the years and as a result of extensive case law, the principles and reasoning behind the legal protection afforded to civilian victims of war have changed radically so that increasing emphasis was placed on the compensatory component as the basis of the relevant legislation.

In setting out this general picture of Italian legislation and its historical development, mention must be made of the body to which the assistance and protection of civilian victims of war was first assigned, namely the National Foundation for the protection and assistance of war invalids (Opera Nazionale per la protezione ed assistenza degli Invalidi di Guerra – ONIG), established by Law 481 of 25 March 1917 (subsequently subject to further amendments[11, 21, 31]). On the basis of the 1949 law, the Foundation, a legal public body subject to the guardianship and supervision of the Presidency of the Council of Ministers, provided: *"orthopaedic and prosthetic healthcare, inasmuch as this has not been carried out by the military administration and is rendered necessary by the subsequent needs of invalids; moral assistance and rehabilitation support; social support for invalids including general and professional instruction with the aim of re-educating them preferably to return to their former agricultural or manual occupation, or to retrain them to perform a new one matching their attitudes, their social and economic conditions, and the conditions and resources available for work in their place of residence; material assistance when necessitated by the particular conditions of the individual, including placing them in hospitals; work placements; legal assistance when personal circumstances inhibit the invalid from exercising his full faculties or when the invalid requires treatment or protection. In the case of disabled minors or underage children of disabled veterans, or those minors who are absolutely incapable of remunerative work, the National Foundation is granted all the powers established for the protection and assistance of orphans of war". In general terms, the Foundation was to implement "all such legal measures of protection, supervision and control that relate to the application of the present decree and every other provision concerning war invalids".*

The constitution of the National Foundation was characterised by a centralised administration typical of Italian public entities of the time.

According to the 1949 law, the Foundation and its associated institutions (the ANVCG, the Association for War Amputees and Invalids, the Union for Maimed Servicemen, and so forth) were not subject to the law and regulations that governed public welfare institutions. Nevertheless, all the provisions existing for public institutions were extended to the Foundation itself.

Following Presidential Decree 616 of 1977 and the provisions[45,46, 47] subsequently implemented, the Foundation was abolished and wound up. From 31 March 1979, the functions of protection, representation and protection exercised by the ONIG in favour

of war amputees and invalids, civilian victims of war, orphans of war and their equivalents, maimed and disabled servicemen, and relatives of those killed in action were variously given to the National Association of those Maimed or Disabled by War, the ANVCG, the National Association of Families of the Fallen and Missing in War and the National Union of Disabled Servicemen, according to their respective competencies.

Turning back to the main argument, it should be said that the Italian system of law has over the years recognized various forms of protection, assistance and support for civilian victims of war. For a better understanding of the subject, these measures will be considered under three major categories:

1) Economic and social security measures;

2) Employment policies;

3) Other forms of protection pertaining to war disabilities.

This three-part approach is intended to streamline this article and forms the basis for analysing the legislation for the protection of civilian victims of war in Italy which follows.

Compensatory measures for material damages suffered by the Italian civilian population as a consequence of war in the last century will be discussed separately and, in conclusion, a brief overview of more recent legal developments on the subject of recognition of rights to compensation for biological damage suffered by some groups of victims as a consequence of grave human rights violations occurring in wartime, particularly during WWII, will be provided.

Corso Vittorio Emanuele, bombings on Palermo, March 1943, Photo Archive of the Firefighters of Palermo.
Credit: W. Rothier-S. Romeo, "Bombings on Palermo, A tale through images, Istituto Poligrafico Europeo, 2017.

1.2 – Economic and social security measures

Definition of the regulations; beginnings; the Consolidated Act of 1923; Law 648 of 1950; development of the legislation in the 1960s; reorganization of the subject further to PD 915 of 23 December 1978; reforms of the 1980s and 1990s; current legislation.

According to the definition given by the Ministry of Economics and Finance[VI], war pension disbursements "*are economic benefits that the State dispenses, as an act of compensation, directly to servicemen and civilians who have suffered impairment to their psycho-physical integrity due to war or, where deceased for such cause, indirectly to their families (widows, orphans, parents). Direct war pension disbursements are payable to family members on the death of the beneficiary. These benefits can therefore be granted: directly to those who have suffered damage, persecution or internment* (direct treatment)*; indirectly to family members if the damaged party never availed himself of any benefits during his lifetime* (indirect treatment)*; by way of pension to the family upon the death of a damaged party who benefited from some form of pension during his lifetime* (pensionable treatment)".

This definition clarifies the boundaries of the matter in hand from a subjective point of view: reaching it has been a long and complex process.

Initially, the first pension payments tied to war were designed exclusively for military officers and their spouses. It was not until Law 667 of 23 June 1912, a consequence of the Italian-Turkish conflict, that war pensions came to be treated as separate disbursements, was first recognized in Law 667 of 23 June 1912 emanating from the Italian-Turkish conflict[10].

In the aftermath of WWI, legislation was felt to be inadequate. As a result, the necessity of providing some organised structure led to the adoption of the Consolidated Act covering the provisions relating to war reparations[13].

This marked, for the first time, the recognition of the right to pensions for civilians disabled by war and their family members in case of death.

In truth, the way the law worked merely involved referral to the relevant provisions for disabled servicemen or those killed in action so that *"the privileged war pension is granted according to the same standards that regulate pensions for disabled servicemen and the families of those killed in action where these are not entitled to other forms of indemnity or pension: a) to the widow and surviving relatives dependent on the Italian taxpayer, including damaged parties from regions to be annexed as well as colonial subjects whose death was due to any fact of war, and was its violent, direct and immediate consequence; b) to the Italian citizen, including damaged parties from regions to be annexed as well as colonial subjects whose disability is due to any fact of war and was its violent, direct and immediate consequence".*

Under the Consolidated Act, a fact of war was *"a fact, produced by national armed forces, whether allied or enemy, coordinated for the preparation and operation of*

war including where such facts have not been coordinated for the preparation and operation of war, but have nevertheless been occasioned by such". Any event that issued from any of the belligerent parties was thereby included, provided it was connected to pre-arranged war operations.

Indeed, the intention behind this first comprehensive regulatory framework was primarily to provide financial and material compensation for damages caused by the war in order to favour rapid economic recovery. (As stated in Article 2 of the Decree: *"In order to restore national wealth and the full productive efficiency of the regions directly damaged by the war, the right to reparations for war damage is recognised within the limits and in the manner established by the present Consolidated Law"*[VII])

In the immediate aftermath, the pressing need for a new Consolidated Law became clear due to the often tumultuous accumulation of fragmentary rules required to address particular Even though, once again, the law discipline was essentially designed for ex-servicemen with very little margin left al room for civilian victims, many of the criteria and principles used therein have survived to the present day and have been adopted in the current legislation on the subject circumstances. Such a law was in fact passed in 1923[17].

Firstly, the new legislation laid down a substantially different approach in the treatment of ordinary pensions insofar as these represented a real indemnity for service rendered to the nation or else for reduced working capacity due to war.

In this way, therefore, the Report on the Royal Decree states that *"it is (...) a real indemnity that the State pays to whoever has, with his own self-sacrifice, served the nation in war and defended it with armed force in the face of the foreigner. That war is not only a fatal but also a necessary fact in the historical performance of duty to the State, does not prevent the sacrifice of the soldier called to fight for his Homeland from giving rise to the obligation to pay an indemnity on the part of the State (...) But, if this is the fundamental basis for the ethical and legal right to a war pension, it is clear that qualification for entitlement to a pension can only be physical impairment resulting in a reduced capacity for work and, for the families, death as a result of service in war. Thus the causal factor of service in war is always an indispensable element in triggering the right to a pension. This principle is therefore affirmed as the general and binding rule governing the first clause in article 2 of the decree".*

However, it was emphasised that, *"although the pension is an indemnity, it is not an indemnity for non-material damage suffered following disability or death, and still less can the principle of compensation for non-material damage be admitted under this head. Rather, it is compensation for material and economic damage due to the event of service".*

The same principle governs the recognition of indirect pensions due to relatives, primarily spouse and children and, in a much reduced manner, to parents of the deceased *"since normally the husband and the father support the wife and children".*

The Royal Decree offered an organic discipline for the regulations by providing for direct pensions (in the form of pensions for life, renewable vouchers and one-off

lump sums) and indirect pensions, laying down in detail the procedures for accessing each of them.

The various types of infirmity were provided for, graduated according to the severity and permanence of the disability caused and divided into eight categories; alongside these criteria, a subdivision based on military rank was provided for determining the pension due according to the rank's earning power. This had a dual purpose: on the one hand, war pensions derived from service rendered and, on the other, differentiation by rank allowed for an estimation of presumptive earning power and consequently of the damage suffered due to war.

Overall, this legislation, which was clearly tailored to the needs of the military apparatus, left little room to applications from civilian victims, who could only refer to Article 69 of the Consolidated Act. The article merely stated that this provision of the Consolidated Act on war pensions applied to the category of civilian victims where possible and excepting contrary provision in law.

The legislation consisted in the formulation of two fundamental categories: that of combatants to which the so-called "privileged war pension" was awarded, and that of non-combatant recipients of war pensions (albeit in reduced measure).

Under this second category, alongside servicemen indirectly affected by war, civilian victims were equated to ordinary soldiers. This also held true for the quantification of their pensions.

Within this framework, civilian victims were evidently placed at a considerable disadvantage. Treatment on a par with ordinary non-combatant soldiers meant that civilian victims could only benefit from the lowest pensions irrespective of the severity of injury borne and the resulting level of disability.

Moreover, a series of practical drawbacks came to be added, deriving from the application of legislation which had been devised primarily for military victims: thus the disability classifications were formulated for adult males, while civilian victims of war were and are mainly women and children. Furthermore, whereas the armed forces already had their own hospital system which facilitated the paperwork prescribed by the legislators in 1923, it was much harder for civilians to obtain proof and medical certificates due to the destruction of many archives, the confusion of disaster relief services and the emergency quality of civil hospitals during the war.

Despite these evident flaws and shortcomings, the basic system of war pension legislation prescribed by the Royal Decree of 1923 remained unchanged for many years.

However, new demands emerging after WWII dictated a new and comprehensive reform of the legislation; this led to Law no. 648 of 10 August 1950[33]. Once again, the overall structure of the legislation was, above all, aimed at regulating the war pensions of ex-servicemen; the indemnity nature of pension measures was also confirmed, these being understood as reparation for reduced working capacity due to impairments suffered in the context of war.

Alongside this last component of indemnity (which mainly persisted in measures in respect of relatives of victims of war and, as aforementioned, linked with the idea of economic hardship caused by the death or injuries suffered by the spouse), the notion of "compensation for war damages" began to find legal recognition. Such compensation related to the provisions in respect of civilian victims in particular. Furthermore, in the case of measures in respect of the especially economically disadvantaged, the legislation acknowledged a significant food component (in this case, pension disbursements were more like "food vouchers").

As will be seen later, the welfare provisions in respect of victims of war were further developed in these same years. This is clear in the rules providing for new benefits in addition to the regular provisions in force, where the victim's need for assistance could objectively be related to the degree of infirmity, the age of the victim and the difficulty in maintaining ordinary social relations inherently associated with war disablement.

In any case, Article 10 of the 1950 Law, acknowledged the right to *"war pensions, vouchers or indemnities, of Italian citizens rendered disabled and families of Italian citizens who have died as a result of any fact of war, where the cause of disability or death was violent, direct and immediate".*

The law considered as facts of war such *"facts, wherever they might occur, produced by national or overseas, allied or enemy armed forces, and coordinated for the preparation and operation of war or which, while not being coordinated for the preparation of warlike operations, are brought about by the same. Death or disability caused by injury or harm sustained in war in the attempt to avoid enemy attack are considered as resulting from facts of war. Where disability or death is caused by the explosion of a device set off by a minor, or by the detonation of devices by third parties, these are also held to flow from facts of war, excepting the State's right to compensation from those responsible. War pensions, vouchers or indemnities are also awarded in cases of death or disability caused by deprivation, torture or mistreatment during internment in an overseas country or in any case inflicted by enemy forces".*

Some significant developments are noteworthy in this regard: firstly disabilities and death brought about by explosions of weapons of war are considered dependent on facts of war, and for this reason to this day, given the existence of residual unexploded devices which is accidentally found and leads to explosions nationwide, there are new civilian victims of war are recorded every year (mostly amongst the very young).

Furthermore, in light of the effects of WWII, those who had endured *deprivation, torture or mistreatment during internment in an overseas country or in any case inflicted by enemy forces* were in all respects considered civilian victims of war for pension purposes all those who have endured *deprivation, torture or mistreatment, during internment in an overseas country or endured at the hands enemy forces* (explicit reference is therefore made to the reprisals placed by the troops of the Third Reich particularly from mid-1943 onward).

In reality, this last provision was already included in Article 17 of the Royal Decree Law No. 928 of 1926[18] as subsequently amended in 1940, but whose application was

limited to where internment occurred in an "enemy country". The rule was applied in an especially extensive manner in the jurisprudence of those years to include national territory occupied by German armed forces in the definition of "enemy country". In response to this direction, the law of 1950 widened the margins of the provision and eliminated the concept of "enemy country".

Furthermore, whilst the law defined the concept of fact of war with clear boundaries, interpretative difficulties remained in building the causal link between event (disability or death) and fact, in other words, in defining the boundaries of *"violent, direct and immediate cause of disability or death".* Here, too, the interpretation given by case law was rather elastic; with respect to particular conditions (for example the youth of the injured party), the Court of Auditors held that the causal link between fact of war and damaging consequences should not be interrupted even when the damaging event was generated by the injured party himself or by the imprudent behaviour of a third party[VIII].

As to the requirement for immediacy between act of war and damage, the law has, since its early application, frequently affirmed the concept of immediacy should be given a logical rather than a chronological sense so that immediacy can apply even when, from a strict point of view, the detrimental event manifested itself at a date later than the facts of war[IX].

The regulatory framework established by the 1950 legislation remained almost unchanged for the next twenty years. Nevertheless, over this period there were significant acts of regulatory intervention that provided for the economic adjustment of pensions and the rationalisation of the treatment afforded by the regulatory micro interventions of those years.

More specifically, in the context of some adjustments in the legislation, mostly regarding the categories concerned and the related economic brackets, law 318 of 18 March 1967[40] removed the distinction between ex-combatants and non-combatants.

This latest innovation was confirmed a year later within the new Consolidated Act on the legal provisions of war pensions.

Other than rationalizing the regulatory interventions of mainly economic relevance which intervened in previous years, Law 313 of 18 March 1968[41], widened the category of civilian victims, envisaging the disbursement of "pensions, vouchers or war pensions to the authorized personnel involved in mine action operations or sweeping for explosive devices, done on behalf of state authorities, that, due to the explosion of such devices, gave rise to injuries or damage, and in the case of death, to their relatives, except where there was malice or gross negligence (Article 9, *ibid*). Such a provision was clearly prescribed by the need to protect the persons involved in various capacities in minefield clean-up operations which were then widespread due to the huge number of unexploded devices left by Allied troops, or rather German troops throughout the nation (and indeed, still tragically present in different parts of the country).

Thus we get to the Consolidated Act of 1978[48], still current today despite the numerous modifications and integrations; it, which revolutionised the very concept of war

pensions, defining this in Article 1 as a *"reparatory act, of proper recognition and solidarity on the part of the State towards those who, because of war, suffer impairment to their physical integrity or the loss of a relative".*

The altered approach is devoid of practical effects. Firstly, it clearly differentiates between war pensions and other forms of indemnity; the former is of a compensatory nature while the latter is remunerative (briefly, the latter being based on work and services rendered). Indeed, the Constitutional Court stated that *"the war pension, which presupposes disability or death due to war of servicemen and citizens who are strangers to the defence apparatus, is commensurate only to the extent of the damage incurred, is of a compensatory nature, and not of an income-generating nature".* From this was derived the reasonableness and legitimacy *"of a fiscal treatment that exempts the war pension as an indemnity provision for compensation for damages as a reduction in taxable income for individuals".*

In addition, given the ethical and moral principles of war pensions recognised in the 1978 legislation, and its strict link to the principle of solidarity expressed in Article 3 of the Constitutional Charter[X], there is no longer a reason for the distinction between ex-servicemen and civilians being made in the pensions regime.

Consequently, the new Consolidated Act connects the attribution of war pensions exclusively to the disabling or fatal consequences of war events; the sum of measures

20 October 1944 - F. Crispi School of Gorla (Milan); the bombing known as the Slaughter of Gorla took the lives of 164 children between the ages of 6 and 12.
Credit: "The Slaughter of innocents", Edizioni ERRE, Milan, 1944 – http://www.piccolimartiri.it/index2.htm.

so conceded has as its sole parameter objective elements (extent of psycho-physical damage) independent of whether the recipients are civilian or ex-servicemen (classification linked to military ranks also disappears).

In the 1980's numerous modifications were made to the original Consolidated Act of 1978; in particular, mechanisms of automatic equalisation of war pensions were refined, first with the Presidential Decree of 30 December 1981 no. 834[53] and then, as concerns the ancillary allowances for victims of war, with Law 342 of 10 October 1989[54].

In the same years, it was once again the jurisprudence of legitimacy which anticipated legislators by adopting decisions that applied the principles recognised by the Constitutional Charter and international law in a dynamic way as inviolable personal rights of the person. In this sense, with sentence 561 of 10 December 1987, the Constitutional Court decreed the illegitimacy of the norms relating to the war pension regime where these did not include among their beneficiaries the same compensatory and welfare measures for victims of sexual violence connected with war events.

The argument put forth by the Court is interesting: *"sexual violence in the criminal justice system in fact constitutes the gravest violation of the basic right of sexual liberty. Given that sexuality is a basic form of human expression, the right of freely exercising it is undoubtedly an absolute individual right, which falls under individual positions directly protected by the Constitution and framed amongst the inviolable rights of the person that Article 2 of the Constitution imposes on guaranteeing (...) harm to the legal concept of health as a personal value guaranteed by the constitution (Art.32) grants a claim -including where it does not follow from a crime but from an illicit civilian act (art. 2043 of the Constitutional Court)- to compensation for harm deriving from psycho-physical damage that occurs (for example physical damage) without requiring any proof (...). Within the scope of protection of sexual liberty in civil law, there is absent any protection in the area of war pension law, in which compensation (or rather, indemnity) for a fact of war is strictly circumscribed -on the basis of the laws contested only to damage to property following disability, and in which, therefore, sexual violence is considered only for purely causal effects (infirmity or injury), and not also for those typical offences (violation of sexual liberty and related moral damages) amongst those acts of war contemplated by such law, sexual violence by foreign servicemen presents altogether specific aspects. It is, in fact, on the one hand a matter of an aggression on liberty which, unlike others, is not susceptible to compression by the effect of war; on the other, it goes beyond war, retaining the nature of a crime in this context also. Nevertheless, it remains concretely non-prosecutable, so that the noted lack of compensatory protection in the pensions law with regard to a lack of penal and (consequently) compensatory protection in war (...). Therefore the constitutional illegitimacy of the contested provisions, is declared, in that area in which war pensions do not foresee indemnification which also includes non-property damage suffered by victims of sexual violence carried out during war".*

Such jurisprudence, that also revealed itself to be particularly anticipating as it did the principles adopted some years later by the *ad hoc* Tribunals for ex-Yugoslavia

and Rwanda and, more recently, by the Statute of the International Penal Court (which Article 7 explicitly describes rape as a crime against humanity), has not to date been adequately turned into legal provisions at the national level. This constitutes one of the major lacunæ in Italian legislation on the protection of victims of war.

Returning to examine the legislation on war pensions in Italy, it should be mentioned that during the last decade of the twentieth century, some procedural reforms were introduced (for example, the institution of a second degree of sentencing as far as contentions on pensionary matters was concerned under Law 639 of 20 December 1996[56]).

As previously mentioned, the fundamental basis for the legislation is that designed by the Consolidated Act of 1978. This lays down a system that envisages economic disbursement towards victims (that is, those who physically suffered the damage from war), an indirect disbursement to the relatives of the victim, if the latter had never availed of any benefit, and lastly, a survivor's pension to relatives upon the death of the victim, who had during his life availed of a pension.

The direct disbursement is commensurate with the level of severity of the damage sustained (provided for in three different schedules A-B-E) and is due to the serviceman or civilian that bore, due to war, psycho-physical damage; thus life pensions can be granted, as well as temporary allowances and one-off indemnities. Further ancillary measures are provided for such as unemployability allowance (due to a victim who is unable to work due to disability arising from war and which, on reaching the age of 65, becomes a compensatory allowance for the same amount), a special annual indemnity (due to a victim who does not work and who falls with the economic conditions foreseen by the law), a severe invalidity allowance (if it falls under the list of most severe infirmities, see Schedule E) and an assistance and accompaniment allowance (due to the disabled who avail themselves of a severe invalidity allowance).

The indirect disbursement (in the provisions set out in schedules G, M and S attached to the Law) is due to the surviving spouse (provided that he/she is not legally separated through his/her own fault, while a surviving spouse who remarries does not lose the right to his/her war pension) and to orphans (under-21s, university students up to 26 years of age, unfit over-18s in unfavourable economic conditions). In different measure, the indirect pension is due to the father of the victim as well, as long as he is over 58 years of age, unable to work and in unfavourable economic conditions, to the widowed mother who is in unfavourable economic conditions, and other persons equated or assimilated by law to the parents (adopted parents, affiliated children and those who provided maintenance and education to the deceased victim of war). In such cases also, some ancillary measures are foreseen, for example, a special annuity if the spouse, orphan or parent of the deceased victim finds him or herself in particularly unfavourable economic conditions.

Lastly, the disbursement is only due to the the surviving spouse and orphans (see schedule N) of the victim of war (in this case also minors under 21, university students up to 26 years of age, unfit over-18s in unfavourable economic conditions).

1.3 – Labour Policies

Introductory notes, origins of the legislation in the matter; the Legislation of 1921, the extension of the benefits to civilian victims of war in 1950, Reforms of the 1960s, Law 68 of 1999 and the Regulations for the right to work for disabled people .

Just like the legislation examined above, which aimed at offering protection to civilian victims of war under the form of economic measures in some way "compensatory" for the damages incurred, the legislation aiming at facilitating their job placement is shaped around the same compensatory principles.

Labour policies in this sector are essential. If, generally speaking, it can be said, that, for disabled people, integration into working life is fundamental to guaranteeing that they enjoy normal relations and an effective integration and participation in social life, even more so when disabilities are connected to particularly traumatic events such as facts of war which entails, besides physical damage, significant psychological trauma.

In effect, in Italy the birth of legislation in support of labour integration for persons with disabilities had its origin a reparatory vision of law itself, connected to war disability. In fact, the first provision in this regard, Law 1312[15] of 21 August 1921, came about due to the needs of disfigured and disabled servicemen.

Legal protection was therefore guaranteed by reason of the disabling cause (war) and not of the disability. Subsequently, when such protection was extended to civilian victims of war, it was still based on the same principle.

Along with the laws resulting from a "reparatory" vision for the protection due to victims of war, right after WWI, measures aimed at the readjustment and reintegration in the labour market for victims of war were timidly introduced (initially for ex-servicemen), the application of which was delegated to the National Foundation for the protection of War Disabled whose concern it was to see to *"the placement of disabled in the former or a new profession".*

At the same time, the law established certain measures to facilitate the repossession of work places already occupied or to facilitate the placement of ex-servicemen in the public sector[12, 14].

This law (which referred to a future Regulation for a concrete definition of work categories, adopted on 20 February 1920) excluded from its sphere of application the role of *"concepts and accountancy"*. Moreover, it was directed exclusively at the public sector, limiting itself, as far as the private sector was concerned, to proclaiming the "moral duty" of re-employing those disabled by war.

The 1917 law was evidently destined to have scant effect; a natural consequence of such a situation was the strongly felt discontent among the victims of WWI. In fact, between 1920 and 1921, numerous protest initiatives were recorded across Italy by potential beneficiaries of the law, exasperated by the lack of effective protective laws. The state of general tension culminated in the occupation of the railway offices in all the regions of Italy.

The need to rethink labour policies in the sector of war disabilities was therefore the driver as a consequence of international commitments made by Italy within the Inter-Allied Conference for the Study of Questions of Interest to Soldiers and Sailors Disabled by the War, held in Brussels in 1920, where the need for laws of the participating countries to accept the principle of obligatory placement of victims of war was forcefully expressed. Thanks also to the effective action undertaken by professional and trade associations the "Labriola Law" came into existence, named after the member of Parliament who proposed it[15].

This law, along with the next executive regulation[16], introduced the institution of obligatory placement in favour of those disabled by war in both the public and the private sectors.

Even in this case, the benefits were provided exclusively for ex-military victims, however it is worth analysing the general principles introduced by legislators in 1921, as the defining character of the whole legal sector and which were subsequently extended to include civilian victims of war.

In fact, the 1921 Law, became a model of reference for subsequent provisions on the matter of mandatory placement: it introduced the fundamental principle, later borrowed by successive laws,of the exclusion from the benefits of mandatory placement, on the one hand of the "most disabled" or those who had lost all ability to work, or who by virtue and degree of their disability could compromise the health and safety of co-workers (Law 375/1950[32] and add to the risk to damage machinery), on the other of the "least disabled" or those who had suffered specific personal injury or infirmity of a degree not justifying special treatment.In any case, an employer who, out of their own free will, hired disabled persons not having the right to statutory benefits due to loss of ability to work, could, at their discretion count them in the compulsory disability quota ofthe company.

The procedure began with the registration in provincial roles of disabled candidates for placement held at the provincial offices of the National Foundation for the War Disabled and at job centres[XI].

The papers that the disabled person had to present for registration had to certify that the degree of disability fell within the limits (upper and lower) determined by law. For registration purposes, work references were also required for the job applied for. The decisions fell to the provincial offices of the National Foundation.

The mandatory placement system provided for employers to reserve job quotas to protected categories; such obligation could also be fulfilled independently by direct hire from the lists.

Once the employment relationship was established, it was possible to verify that the insertion of the disabled person in the company did not bear any prejudice to the workplace: the disabled worker or the employer (for the latter even before the contract was established) could at any time request a visit by a specific provincial Medical College.

The employer, furthermore, had to apply normal hiring practices to the war disabled, as well as normal working practices once the relationship was established(Article 16).

This principle on the economic and legal homogeneity will be further confirmed by laws on mandatory placement emerging subsequently to the one in question so as to maintain the provision under discussion as the guiding principle to be acknowledged implicitly even when the law is silent on the matter.

Other than the remuneration due to personnel performing the same function, the placed disabled person continued to enjoy the pension from which s/he would have in due course benefitted, whatever level of consequent re-education or occupation for which he was hired.

As previously mentioned, the Law of 1921 provided safeguards only in favour of ex-servicemen. However following WWII such a disparity in compensation seemed extremely unfair and unjustified for the historical and social reasons we have already outlined above. Furthermore, the new law on the subject implemented in 1948[28, 35] provided for the extension *"to disfigured and disabled civilians and to the relatives of the fallen due to facts of war of the benefits due to the disfigured and disabled in war and the relatives of those fallen in war."*

The subject, however, said nothing regarding mandatory placement of civilian victims, hence giving rise to a lively debate on the limits of applicability of the law under discussion within the Commission on the reform of the Law of 1921 established at the Ministry of Labour.

The urgency of a legislative provision and the sense of solidarity that the tragedy of WWII had generated in the nation ensured that any doubts were removed so that, in the following legal reform in the field, civilian war disabled were also considered as recipients of the protection, though with separate workplace quotas.

In fact, Article 2 of Law 375 of 3 June 1950, stated the the laws therein were applicable to *"all those – even non-military- that became unable to carry out profitable work or were injured in their capacity to work following injury or infirmity due to facts of war."*

The same Law emphasized the actual professional qualification of the disabled person more than the preceding one.

As with the Regulation for the application of Law 1312 of 1921, even the Regulation for the execution of Article 3 of the 1950 Law [1950] established that any disabled person that wished to make use of the provisions in his/her favour by forwarding his/her application for registration in the placements would have had to be unemployed. The Council of State asserted that the condition of unemployment was intended as relative and subjective and not abstract and objective, referred to as an occupation to which the disabled person aspired and obviously it could also be, as is the case in ordinary placement, an occupation different from that previously practised.

Law 375/50 contained, in Article 28 of the Regulation of execution[34], the first example of a "sliding scale" of different beneficiaries: whenever an employer did not

satisfy the compulsory quota due to exoneration or lack of disabled persons to place, s/he was obliged to reach such quotas in any case, by hiring as many orphans of war as war disabled who had not been taken on.

With Article 8 of the same Regulation, provision was made for the necessary coordination between provincial branches of the National Foundation for War Disabled and its corresponding placement offices. On the basis of Article 9 of the Law of placement[30] of the war injured and disabled, and of those incapable of work due to disability and infirmity, as well as those workers discharged from health centres after being declared healed of tuberculosis,acquired the right to register for the placement list held at the Labour Office.

In order to be included on the lists, professional and vocational qualifications had to be met. This was entrusted to specific commissions provided for by e special laws which, in this case, were provincial representatives of the Foundation.

An important innovation was introduced with Article 20 of the executing Regulation, which conveniently regulated the question of computation or otherwise, to fulfill the legal requirements of disabled workers who recuperated in the course of working. Such a law, while not establishing a subjective right in favour of the person not anymore disabled (and so remaining within the limits of a mere discretion accorded to the employer), meant the likelihood of remaining in service was increased, by keeping the interest of the employer in avoiding staff turnover, especially in the case of replacing a professionally trained and physically able worker with another one lacking such requisites.

Such regulatory laws introduced a principle which had itself been made by the succeeding general law: they attributed to the disabled person the possibility of appeal to the Medical College in order to evaluate the compatibility of the general tasks assigned by the employer to his/her physical conditions. In case of judgement in favour of the disabled person, the employer was obliged to assign him/her a job compatible with his/her physical condition.

With Law 367 of 5 March 1963[38], legislators made profound and substantial changes to the preceding laws. The most relevant concerned the modes of obligatory placement; in fact, whereas the preceding laws gave the employer the choice between drawing upon the lists at the provincial branches of the Foundation and hiring directly, the 1963 Law rendered mandatory the recourse to the placement lists and registration became inescapable to qualify for privileged treatment.

The employer could only proceed to recruiting the prescribed workers by applying for the total number of people s/he intended to take on to the provincial branches of the Foundation.

In any case, the 1963 Law (as well as the later Law of 1968) conceded that the employer could request recruits by name in cases where the mandatory recruitment had to assign certain types of specifically indicated tasks. However, in the case of a request by name, the employer was to abide by the directories held at the Foundation's provincial offices.

However, in a few years, with Law 482 of 2 April 1968[42], the whole regulatory structure on the subject was changed radically.

In effect, the law of 1968 created a single subject and *"general mandatory recruitment in public administration and private companies",* the legal text in actual fact refers to many categories of disabled persons, regardless of the origin of the disability: war disabled (military and civilian), disabled in service, disabled at work, civilian disabled, blind, deaf-mute, and formerly tuberculotic patients.

The dispositions refer furthermore to orphans and widows of those fallen in war or service or work as well as refugees (Art.1).

Such rationalization and harmonization of the sector became necessary due to the stratification over the years of various legal dispositions addressed at single categories of disabled persons; clearly the concomitant presence of multiple legal regimes on the mandatory placement created significant problems of coordination on the practical and operational level and increased the likelihood of creating situations of unwarranted disparities between the different categories concerned.

In particular, according to the cited law, those considered disabled civilians of war were, *"those who – being non-military – became incapacitated from carrying out profitable work or who find themselves injured in their capacity to work following injury or infirmity encountered due to fact of war"* (essentially replicating the definition of civilian victim of war previously adopted in 1950).

Where the subjective boundaries of the law were radically altered, the establishment of work referrals based on the placement lists remained, in essence, unchanged from the previous law.

The placement service was delegated to the provincial labour and full employment offices, as far as victims of war were concerned: authority remained with the provincial directorates of the National Foundation for War Disabled for a period of 5 years from entry into force of the law. At the end of the period the commencement of work for the war disabled, referrals would pass through the provincial labour and full employment offices.

The law on mandatory placement passed in 1968 remained essentially unchanged until the end of the 1990s.

In effect, only with Law 68 of 12 March 1999[58] were the new *"Regulations for the right to work for disabled"* defined.

Once again, the intention of legislators was to create an organic discipline addressed at offering protection to an increased number of categories of disabled persons, further widening the beneficiaries of the concerned law that today takes in victims of terrorism and organised crime as well. In this context, however, the qualification for work placement of those disabled by war alters from the preceding law.

Whereas the previous law directly imposed the requirements necessary for identification, the 1999 Law pinpointed the concerned category by referring to the Consolidated Act on the matter of pensions of war.

Therefore, Article 1 clause d) Law 68/69 identified, as recipients of successive provisions, persons *"disabled by war, civilians disabled by war and by service with handicaps belonging to the first to eighth category in the annexed schedules in the Consolidated Act on the subject of war pensions, approved by Presidential Decree 915 on 23 December 1978 and subsequent modifications".*

As for the distinctive features of the subject in 1999, the most significant aspect of continuity with respect to the preceding law was that the right to work of disabled persons continued to be protected by the obligation, for employers, to guarantee this category of citizens access to a work quota, commensurate with the scale of its own workforce.

Beyond this fundamental aspect, the new law marked an important innovation especially with regards to the methodology of launching work for disabled persons: it was effectively based upon achieving the required number of workers that characterises the old law and the achievement of diverse instruments of the operating labour policies. This law aims at the dual objective of responding to the need for work of the disabled population without it becoming, for the companies and bound public bodies, a mere obligation but a fruitful placement of productive persons.

This law pays more attention to the concepts of reintegration and rehabilitation, its underlying philosophy being that the work placement should be achieved by the matching of a disabled person's characteristics with those of a task in which the person can effectively be employed, hence responding to the requirements of both parties involved (unemployed disabled persons and employers) and widening the likelihood of success and duration of the working relationship. In this the integration in work of the disabled person, more than for the rest of the population, has real value that goes well beyond obtaining economic independence and concerns aspects of the integration and acquisition of fundamental dignity.

The new law indicates therefore in "targeted placement" the pivotal instrument to achieve this type of integration. Targeted placement refers to all those technical instruments that *"allow an adequate evaluation of disabled persons for their working abilities and enter them in a suitable job, through analysis of jobs, support mechanisms, positive action and problem-solving connected to the environment, instruments and inter-personal relationships at the everyday place of work"* (Article 2) or rather concrete measures aimed at promoting entry and integration into work of persons with disabilities (such as, for example, support services and positive actions to resolve problems related to work and interpersonal relationships).

Coming to the practical aspect of the law introduced in 1999 (which still today, in a related Executive Law[59], constitutes the principal legal text), the Law assigns provision of professional entry of the aforementioned categories (with the exception of victims of terrorism that follow a different procedure) to the Provincial Services, identified by the single Regions. Such Services therefore provide a numerical entry through the publication of vacancy announcements reserved for those registered

at the targeted placement of the province and the related (graded) list from which the administration draws workers upon verification of the professional suitability of the individual profile.

The documents necessary to access the measures under discussion vary according to the categories referred to: as regards civilian victims of war a certificate is required attesting to a handicap ascribed from the first to the eighth category in the tables annexed to the Consolidated Law on war pensions[48].

The hiring process for protected categories takes place via a numerical order of those registered in specific placement lists through the provincial offices in charge.

Furthermore, in order to favour entry into work of disabled persons, the Offices in charge identified by the Regions, can stipulate with the employer agreements on a targeted programme of work of the occupational targets determined by law.

1.4 – Other forms of protection; rights due to war disabled

Historical note – A synthesis of current rights due to war disabled

In addition to the measures directed at guaranteeing economic assistance and facilitating the entry of war disabled persons into the workforce,the Italian law recognizes a series of measures aimed at guaranteeing, inasmuch as possible, a higher quality of life to those who incurred injuries and disabling maiming as a result of war.

Such measures, present in a very specific law until the second half of the last century to respond to the needs and emergency of the country following WWII, are today unified in the subject aimed at protecting civilian victims in general.

From a historical point of view, among the specific measures of assistance aimed at supporting civilian victims of war, is the independent National Institute of social housing for civilian victims of war, instituted at ANVCG's initiative.

The Institute, in conformità with the then legislation on social and low-income housing in force and under the surveillance of the Ministry of Public Works, had as its objective, among others, *"of building and purchasing social and low-income housing to sell and rent, with an agreement to sell in future, to the civilian injured and disabled, the spouses of those fallen in war and their relatives".*

The autonomous National Institute of social housing for civilian victims of war ceased to exist in 1972, the year in which, within the complex reorganization in public residential construction, the functions were concentrated at the Autonomous Institutes for Social Housing[44]. As anticipated, today many of the services recognized by the State in favour of civilian victims of war are functional to the state of disability (in this case following war) and therefore correspond to the duty of solidarity and the principle of equality recognized by our Constitutional Charter.

Consequently, such measures disregard the cause that led to disability and are connected in function of the degree of disability, as well as, in some cases, the the economic condition of the applicant.

The state of disability is recognized, in the case of written application, by the authorized Local Health Authority.

From such recognition, the disabled can draw on:

A. The right to social services[60]; social services mean all activities related to the availability and provision of services, gratis or for payment, of economic services aimed at removing or overcoming the conditions of disability. The vast majority of such measures and services depend on and are today managed by local Bodies, they are further normally provided in relation to the economic condition of the disabled person;

B. The right to free movement, that in essence is the right to the removal of structural barriers[43, 55], in measures favouring circulation and parking of vehicles of the applicants, as well as the provision by the local bodies to adequate measures to allow for individual or collective transport for the disabled;

C. The right to tax relief, particularly against medical or assistance expenses, in other words expenses related to prosthetic implantation, technical and computing aids or works to demolish structural barriers. Certain relief measures are further provided for the purchase of vehicles suitably fitted for driving or transport of the disabled (equally there is exemption from vehicle taxation and registration tax);

D. The right to parental permissions, in other words measures that allow the disabled person's family to provide for his or her support.

1.5 – The indemnifiability of material (and other) damage incurred by victims of war

Introductory notes – the subject matter in relation to the indemnity of material damage caused by war – Italian jurisprudence that acknowledges the right to compensation for the damages incurred by victims of grave violations of human rights.

If the aim of the previous paragraphs was to sketch the highlights of Italian law aiming at offering protection to civilian victims of war, that i sto those who physically incurred the most inauspicious effects of war, for explanatory completeness and connection of the arguments it seems opportune, in conclusion, to offer the reader a brief overview of the law aimed at guaranteeing a restoration of material and economic damages incurred by the civilian population as a result, especially, of WWII.

Finally, in the present paragraph, the most recent jurisprudence on the matter of compensation of damages incurred by the victims of grave human rights violations, will be succinctly revisited, as advanced and progressive reading of the International principles of Humanitarian Law.

As for the former, in can be said that, following WWII, an attempt was made to create a unified law that aimed at guaranteeing compensatory and indemnifying measures to whoever, as a result of war, suffered physical damages, as well as purely material and economic ones; such an itinerary, however, revealed itself unattainable from the start, owing to obvious diverse requirements corresponding to the two respective categories of persons. Nonetheless, in spite of increasing critical evidence and ur-

gency of measures aimed at alleviating the suffering of those who were physically affected by war with physical injury and maiming of various extent, it cannot be neglected as even the compensatory measures in the face of material and economic damages incurred by the civilian population involved in armed conflict, played an important role in the reconstruction of our country from the economic as well as the social and moral point of view.

With respect to the second aspect that will later be considered, instead, the argument seems to be of primary interest for this study inasmuch as the possibilities for the victims of war have incurred grave human rights violations to act directly in a court of law to have their own right to compensation acknowledged corresponds to historical legal requirements and moral vindication for the same damaged persons (these latter concepts, on which international organizations concerned with human rights increasing dwell on).

So, the first Italian law conceding compensation for damages incurred as a result of WWII[19], provided for concession for contribution for *"the loss, destruction or the worsening in the realm of moveable and immoveable property, insofar as they are a consequence of any act of the current war".* The applications had to be made to the Revenue Office which in turn forwarded them to the Commission specifically set up within the Ministry of Finance. The provisions of the Law were also extended to the Italian colonies[20] delegating the related authority/jurisdiction to the Italian Ministry of Africa; on the damages incurred abroad, the authority lay with the Ministry of Foreign Affairs, which gathered reports and carried out the investigative phase through the diplomatic missions and prefectures abroad.

Subsequently[25, 36] the General Directorate for compensation of war damages was set up within the Treasury, intended to unify within it the responsibilities regarding war damages, which had been to varying degrees, exercised by the Ministry of Finance, Ministry of Italian Territories in Africa, Ministry of Foreign Affairs and (in a much lower measure) Ministry of Defence. The law, reorganizing the previous law, established the rights and modalities for the concession of compensation, that had been conceded *"to the Italian citizens and Italian bodies and companies [...] for damages verified in the Italian State and in the Free Territory of Trieste, in the border areas no longer part of the State territory, in African territories under Italian sovereignty, in the Dodecanese Islands and in Albania".*

The reparations for war damages were due to Italian citizens victims of bombardments, damages, searches, requisitions and other damage to property and persons (also included within the law were sexual violence in which the victims, however as anticipated, are still not recognized today for social security purposes). Other than physical persons, legal entities also had the right to reparations as a result of damages incurred during WWII.

The vast majority of the reparations procedures was evaded in the immediate aftermath of the war, however there are many cases whose discussion went on till the

early 1980s. Furthermore, a further settlement of residual cases of war damages was enacted with Law 593 of 20th October 1981[52], which provided for an examination of the cases which remained out standing only for those who had made a new application within a certain time-frame, showing a great interest in completing the process. Subsequently, in 1984, the authority over the remaining cases at the General Directorate of Special Services and the litigation/contention of the same to the Department of Finance and the General Directorate of War Damages was thereby abolished. In 1993, the *"jurisdiction over the remaining cases of war damages and the settlement and severance package of war contracts"* went to the General Treasury Department.

More recently, new work has begun on recognition and reorganization of the archives on these aforementioned cases for the war reparations at the charge of the Economic and Finance Ministry. Remaining on the theme of reparations of damages incurred as a result of WWII, as mentioned earlier, it is opportune to briefly mention the specific development of the Italian law in recent years insofar as the specific theme under discussion, largely in advance of domestic law as well as International law.

We refer to/It is referred to, in summary, the long and complex judicial/legal incident which can be traced back to the actions against the Federal Republic of Germany by several Italian citizens, victims of the Third Reich, and their heirs to obtain reparations for damages incurred during the occupation following the Italian surrender of 8th September 1943.

Without claiming to be exhaustive, it can be remembered that, on 3rd February 2012, the International Court of Justice, which had turned to the Federal Republic of Germany following the many sentences against them by different Italian Courts, affirmed that the international principle of common law of State immunity (for which no sovereign state, in the exercise of its state/sovereign powers, can be subjected to the jurisdiction of another State) does not allow exceptions even in cases of grave human rights violations.

Consequently, the Italian Courts have generally adapted to a wide interpretation of the principle of immunity mentioned above, declaring its own lack of jurisdiction. On the other hand, in order to comply with, according to Article 94 of the UN Charter, what has been decided by the International Criminal Court (ICC), our Legislator has promulgated Law 5 of 14th January 2013[61].

Nonetheless, in the Italian case law scenario there remained and continue to remain strong elements of resistance with respect to the need to adapt to the decision of the ICC, despite the undisputed existence of duty, on Italy's part, of respecting duties and obligations internationally taken on. Such resistance were later translated in the three twin ordinances/decrees/injunctions of 21st January 2014, with which the Florence Tribunal raised the judgement of constitutionality in order to ascertain the compatibilità of the principle of State immunity with Articles 2 and 24 of the Constitution that guarantee, in our Country, a full and equal right of access to the law. The Constitutional Court has declared the illegitimacy, in contrast with Articles 2 and 24

of the Constitution, of the dispositions aimed at recognizing in our system, the immunity of foreign States from the civil jurisdiction undertaken to obtain reparations of damages incurred as a configurable Act such as war crimes and crimes against humanity. The Council has therefore affirmed the impermeability of the Italian ordinance with respect to International law that arise in contrast to the supreme principles of the Constitution and translate themselves in an effective and not otherwise justified compression of inviolable rights of the human person.

The consequences, at the practical level, of such a discussion are evident: it in fact concretely re-opens the possibility for Italian victims of war crimes to turn to a tribunal in order to have recognized their rights to reparations to damages incurred as a result of unlawful acts as materialized in grave human rights violations (deportations, slavery, physical and psychological violence).

The significance of the position taken by the Council is read in the actual International scenario, which with increasing attention turns to the fundamental role of the legal/judicial authorities in the post-war reconstruction of countries involved in conflict situations. It has been in fact recognized with authority (as numerous declarations by the UN Secretary General show) the crucial role carried out by the judicial authorities, that is by the c.d , "commissions for the verification of truth", as fundamental to return dignity to victims of war and contribute to the moral reconstruction of the societies distressed by war, by responding, among other, of both ethical and legal, historical justice.

PARTITO NAZIONALE FASCISTA
ROMA - SEDE LITTORIA (Foro Mussolini) - ROMA
ANNO XXI 1943 26 MARZO N. 179
FOGLIO DI DISPOSIZIONI

ASSOCIAZIONE NAZIONALE FAMIGLIE CADUTI, MUTILATI E INVALIDI CIVILI PER I BOMBARDAMENTI NEMICI

È approvato il seguente statuto dell'« Associazione nazionale famiglie Caduti, mutilati e invalidi civili per i bombardamenti nemici ».

STATUTO

DENOMINAZIONE - SEDE - SCOPI

Art. 1.

Per ordine del DUCE è costituita l'ASSOCIAZIONE NAZIONALE FAMIGLIE CADUTI, MUTILATI E INVALIDI CIVILI PER I BOMBARDAMENTI NEMICI.

Art. 2.

L'Associazione ha sede in Roma e si propone i seguenti fini:

a) tenere vivo negli italiani il sentimento della riconoscenza nazionale verso coloro che, nelle trincee del fronte interno, soffrono le conseguenze delle barbare aggressioni contro la vita ed i beni delle popolazioni civili, perpetuando in esse, nel tempo, l'odio e il disprezzo verso l'inumano nemico;

b) promuovere, favorire ed attuare, con tutti i mezzi possibili, le iniziative e le provvidenze intese ad elevare le condizioni morali e materiali degli associati;

c) assistere moralmente anche coloro che, non iscritti all'Associazione, abbiano comunque subito danni patrimoniali.

Art. 3.

L'Associazione è alle dirette dipendenze del Partito Nazionale Fascista.

DEGLI ISCRITTI

Art. 4.

L'Associazione si compone di soci effettivi, aggregati e benemeriti. Sono esclusi gli ebrei

26 March 1943 - Statue of the National Association of Families of the fallen, disabled and injured civilians in the Enemy Bombings.
Credit: not available.

The decisive positioning of the Constitutional Court could, among other, contribute to the achievement of a custom/tradition that recognizes/acknowledges the principle of immunity of States facing grave violations of human rights. It is equally underscored that, currently, given the wide and authoritative recognition accomplished on the subject by the International Court of Justice, it does not seem to be widely practiced at the international level.

Chapter II – The National Association of Civilian Victims of War as the Representative Entity of the Rights of Italian Victims of War

Summary: 2.1 The birth of the Association and its early years – 2.2 The recognition of the entity's public law and the period of "normalization" of the Association's activities – 2.3 The Association since the late 1970s till today.

2.1 – The birth of the Association and its early years

The role of associations in the protection of victims of war, the founding of ANVCG, the new regulations of the Association in 1947.

The examination of systems of protection in existence in Italy in favour of civilian victims of war, cannot overlook the contextual discussion of the reality of associations that, over the years, accompanied and sometimes anticipated, support measures to persons affected by war.

Moreover as is already illustrated in the first part of this discussion, the phenomenon of associations in the sector has played a fundamental role; often subsidiary with respect to the state apparatus. The associations which reunited and reunite the various categories of victims of war, arose, above all, during WWII, (as the unprecedented effects on the population are well known) and moreover of their own accord.

They were social groups that, on the basis of the principle of solidarity of mutual assistance, responded to the emergencies and needs of the respective categories referred to, offering an immediate response to the cancellation of the public apparatus and of private structures resulting from war.

At the end of the conflict, such groups actively participated in the social, economic and political reconstruction of the country firmly and organically establishing themselves with the function of intermediation, in the interest of the respective categories represented, among civil society and state apparatus.

Among the most important associations founded in this context, the ANVCG dates back to 1943 (annus horribilis for Italy: the worst chapter of the conflict as far as the effects of the battles on the unarmed civilian populations with the National Fascist Party by then delegitimized and the whole country torn between allied and enemy fire).

On 26h March 1943, the first Statue of the then "National Association of Injured and Disabled Civilian Victims of Enemy Bombardments" was approved. Since the first

constitutional act some of the early characteristics of the Association that it carried for years to come were sketched. On the one had, since its founding, the body enjoys a rather wide mandate *"Promoting, favouring and implementing, with all possible means, initiatives and social security intended to raise moral and material conditions of the members" as well as "Morally assisting those who, not being members of the Association have in any case suffered property damage"* (Article 2 of the Statute); on the other hand, the body, made up of the relatives of the fallen, injured and disabled civilians as members to all effects, it quickly distinguishes itself as a well-established and structured peripheral organization that ensures its presence across the nation.

In the months immediately after, in light of declining war (on the 10th JUly, allied troops landed in Sicily and, the following 8th September, General Badoglio publicly announced a truce), the National Fascist Party was abolished/suppressed[22]. All the supporting activities carried out by the fascist party were deferred to the supporting council body and, among other, the National Association of Families of the Fallen, Injured and Disabled Civilians for enemy bombardments passed to the authority of the Interior Ministry (Article 5).

At the end of the war, a post-war assistance Ministry was established[23, 24] whose purpose was to provide, promote, direct and coordinate moral and material support to partisans, war veterans, prisoners of war, sectioned soldiers and their families, refugees and other civilian victims of war, and returnees from abroad. The Ministry provided for assistance directly, through its central and peripheral offices, as well as availing other State offices, public bodies, as well as associations, foundations and committees aimed at supporting, in which the National Association of Families of the Fallen, Injured and Disabled Civilians due to war (the reference to "enemy bombardments" that characterized the Association at its founding was soon abandoned as to the civilian victims of bombardments those victims of shootings, deportations, retaliations and landmine blasts were added).

In the same year, the Headquarters of the Association – then under the guidance of the Extraordinary Commissioner Registrar Enrico Predeval, nominated by the Allied Military Government of the North – moved to Milan and, even in the predictable challenges given the lack of economic resources and solid institutional base in a country emerging, not only materially, destroyed by war, was launching the reorganization of the association. The centrality of the role of the Association in the reconstruction of the country and its increasing commitment in supporting the civilian population devastated by war was once more officially recognized in 1946, when the Ministry for Post-war assistance with the Decree of 12th March *"Considered the need, following the return of the northern territories of Italy, already subject to the Allied Military Administration, to arrange for the nomination of a commissioner and assistant commissioners for the organization and temporary management of the National Association of Civilian Victims of War (....) until such time as the new statute is emitted and the establishment of the normal functions of the Association itself"* nominated next to the Commissioner, already appointed, two additional assistant commissioners.

An important step in the history of the ANVCG is marked in 1947 when it ceases "emergency" management of the Association itself through commissioners nominated by external bodies and the first effective statute of the body is approved which establish-

es its responsibilities and structure, drawing its legal-moral characteristics similar to those of the corresponding combattants' associations and ex-servicemen. In the same year, the Association also is elected to moral authority. It is useful to pause, in particular, on the defining principles of the Statute and on its functional and structural implications which the same act attributes to the Association since exactly these elements will mark the path of the ANVCG till today.

Firstly, the apolitical nature of the Association is affirmed, and the exclusivity of the same is ratified in *"representation to all legal intents and purposes of the moral and material interests of the civilian injured and disabled and the families of the civilian fallen to in war"* with this concentrating the interests and values of the civilian victims of war in a single body (this latter characteristic being fundamental to the credibilità and incisiveness of the action of a body, such as the one under discussion, bearer of uniform interests).

Just as interesting is the mandate of the Association as described in Article 2 of the same Statute, where in a nutshell the "three souls" of the associational activities which have since then characterized the work of the ANVCG, in other words the cultivation of the historical memory, the care of the members' interests through every initiative useful to improving its moral and material conditions and, lastly, the opening of the Association to collaboration with other private and public bodies.

Civilian injured and disabled members who received a welfare cheque or war pension are identified.

To qualify as a civilian victim of war the formal recognition of the civilian victim was reminded under the aegis of the welfare law in the previous chapter. Next to the civilian

Campobasso, 1958 - Women's Committee of the local chapter of the Association for the Preparation of food packets for members.
Credit: ANVCG Archive

injured and disabled of war, the families of the civilians fallen in war were also included in the same category, according to Article 3 of the Statute.

Further, a permanent structure is designed for the Association with the identification of internal departments and procedures. The predetermination of the internal structure of the organization and the achievement of mechanisms of vastly democratic internal representation has a strong practical significance that will prove to be a determining factor for both the external credibility of the Association as well as the incisiveness of its interventions at the Institutions aimed at protecting the interests of its members.

No less interesting is the financial autonomy of which the Association benefits, guaranteed by, other than the heritage of the same Association and its relative income, *"membership fees, any oblations, the proceeds from initiatives established by the Association itself and public and private donations".* Lastly, the capillary presence of the Association in the whole country is strengthened thanks for the preparation of provincial sections (provided with Council, Assembly and coordinated by a President), as well as sub-sections with operating branches in localities other than provincial capitals.

As a highly representative institution, the Association was able to explain its own contribution to achieving important goals, such as the equal treatment of civilian and ex-military victims, the adjustment of pensions and the simplification of the relative concessionary procedures, the forecasting of quotas for civilian disabled in the obligatory job placement (already in 1946 the category of civilian victims was revoked in the recruitment at the Ministry of Public Works, and, on the other hand, the same Association was able to nominate two of its own representatives inside the Committee for the settlement of war pensions).

In 1947 the ANVCG, equipped by now with a central and permanent offices in Rome, is elected as moral authority (Article 12 of the civil code – now revoked – envisaged that private institutions such as associations and foundations became legal entities only after a formal concessionary measure) and the Statute composed of 38 articles with provisional Administrative Decree of the State 472 of 19 January 1947[2] was approved.

The Association's surveillance still remained with the Ministry of Post-War Assistance and, following the abolition of the latter[27], it passed initially to the Presidency of the Council of Ministers, while since 1990 it passed to the Ministry of Interior.

The Association, by now equipped with a permanent and organic structure, could therefore provide an internal, democratically-elected administration, as foreseen by the Statute, in order to substitute the previous government-appointed commission. To this end, on 30th September 1948, the first National Congress took place in Rimini. Within this congress, with deliberation of 1st October 1948, some modifications were produced, in which the possibility of convening the National Congress itself in ordinary session, every three years, and in extraordinary session on approval of the National Congress, in other words, by written request by at least one third of its members[29].

2.2 – The recognition of the public law entity and the period of "normalization" of the activity of the Association

Law 1239 of 1956 – the extension of the mandate of the Association in the 1960s and the 1970s.

The years immediately following the end of WWII were difficult years: to contrast the mountain of requests of help are bureaucratic uncertainties and limited economic resources given to the significant disparities in the treatment reserved for the ANVCG with respect to sister organizations of war (Injured and Disabled of War and Injured and Disabled for Service).

Such disparity ends thanks to Law 1239 of 23rd October 1956[37] which conferred the Association as a legal public entità.

As can be inferred from reading the preparatory work of Law 1239, the reason for adopting the aforementioned provision rests entirely in the "exceptionality" of WWII, as a conflict which spilled over excessively onto the civilian population as well as opposing armed forces.

In light of this fact the traditional concept of offering post-war state and welfare assistance only to servicemen and their families as sole victims of the conflict was overcome. After the events of WWII the distinction between associations representing the interests of ex-combatants and the Association of Civilian Victims was no longer justified.

Law 1239 of 1956 was approved *"in consideration of the laudable activity carried out by the ANVCG in assisting, in the immediate aftermath of the war, approximately*

Rome, 1963, meeting between the President of the Republic A. Segni and the President of the National Association Lelio Capuano on occasion of the inauguration of the national headquarters.
Credit: ANVCG Archive.

120,000 civilian victims in our country, even in absence of the required and steady public contributions". The Law further finds its foundation in the widespread presence of the same entity in every Italian province and in the areas most starkly hit by the war as well as in the transparent work and democratic nature of the structures of which the Association itself had since its beginning.

Such law formally recognized the exclusivity, to the head of the same Association, of representation of moral and material interests of the civilian injured and disabled and of the families of the fallen civilians with local government, public bodies and Institutions *"that have the goal of assisting the re-education and work of civilian handicapped and of the spouses of the civilian fallen due to war"* (Article 2). The Association therefore, even formally, became a privileged spokesperson among all the Institutions in charge of the matter, entering the collaborative and consultative system of the public administration in a permanent and organic way for the study *"of problems and provisions about handicapped civilians and spouses of those fallen in war"* (Article 2) and was inserted among the institutions connected with the National Opera of War Disabled.

This workforce allocation in the public institutions, while maintaining the necessary autonomy in order to guarantee an efficient defence of its members' interests, would be decisive in defining the Association's role in the years to come, conferring it with the undisputed role as the primary actor in the institutional and moral reconstruction of our country following WWII.

Equally significant is the recognition of a permanent system of public financing in favour of the Association that made possible a long-term and organic programme of work.

The resulting structural and economic stability permitted therefore the development of initiatives in the various sectors within its expertise, in line with the high aims as ever connected to the work of the Association, broadening its activities from solely those of providing emergency assistance.

In this way, a regular service of assistance was established to follow the pension procedures of its members both at the competent offices and at the medical commissions, and eventually, in front of the National Court of Accounts authorized in litigation. Further, a legislative office within the Association with the task of consulting as well as a propellant for the law in this sector.

Not least, the normalization of associational life in the peripheral sections favour the proliferation of cultural activities aimed at maintaining alive a vivid historical memory of the war. In the same period, the possibility of regularly publishing an internal newsletter contributed not only to the rapid dissemination of information useful to its members, but also to the creation of a shared memory within the association, through sharing of individual experiences.

The 1960s and 1970s, thanks also to the constant work of awareness-raising put in place by the ANVCG and other initiatives implemented, were years of great legal turmoil in the welfare and assistance sector in general.

The changed and broader horizons that opened up within these years of activities of the Association are clear from the Statute adopted in 1964[39] whose text was approved in the 5th Extraordinary National Congress of the Association (Rome, 11-13 December 1961). Among the scope of the Association, emphasis is placed on, other than on the traditional assistance tasks, on the promotion of worship of the nation and on remembering the fallen *"whose sacrifice should serve as a working admonishment for the elimination of war, as wishes for the establishment of relations among nations of superior principles of justice and human solidarity".*

The new Statute, further, widens the definition of civilian victims of war, for the purpose of membership of the association, including the *"injured and disabled in war who had suffered an injury or disability in war and received a pension or war allowance or had at any time opted for another pension when proof of cause of war", besides the spouses of the fallen.*

As mentioned above, a significant part of the work of the Association is aimed at cultivating the historical memory, intended as a key mission that the body offers to civil society allowing, through the perpetuation of the remembrance of the victims and and devastation of was, the continuing training of minds, especially of the young, to peace and respect of human dignity. In this context, since 1965, the ANVCG promotes and organizes the National Day of Civilian Victims of War. A day dedicated to reflection and remembrance of the Italian civilian victims of war during WWII, not only as a commemorative function, but also and above all as a stimulus to the strengthening of a culture of peace and mutual respect between peoples, in harmony with Article 11 of our Constitution. It is notable how parallel celebrations at the International level were formally instituted only a few years later; only in 2004 the UN General Assembly had in fact instituted the "Period of commemoration and reconciliation for those who had lost their lives during WWII" which is observed on 8th and 9th May every year[9].

2.3 – The Association from the mid 1970s to present-day

Sector reforms in 1978 and the parallel loss of the nature of public law: The Association becomes Moral Entity – New horizons of associational activities and recognitions in the 1980s – Recent history of the Association and the increasing attention to International dynamics.

Returning to the history of the Association, the 1970s were fundamental years for the association; in 1974 a new Statute was approved, while in 1978, as mentioned, after cutting awareness campaigns, civilian victims of war were finally formally equated to injured ex-servicemen[48].

In parallel, within the wider framework of restructuring of public bodies begun in the 1970s, a massive transfer of functions from public bodies to local government was in process and, simultaneously, many organizations of national importance were dissolved[45].

In particular the ANVCG[45, 49] and all historical war Associations were transformed into moral entities with private law with the successive Presidential Decree.

Therefore, with loss of the public law character of the ANVCG, it has since then continued to exist as a organized moral entity in accordance with private law, however, the same law applied to the head of the Association general tasks and aims identified by the Statute, recognizing its general function of *"representation and protection of the injured and disabled civilians fallen in war".* Notable in this regard is that the law under discussion recognizes the function of representation and protection of the Association identifying the beneficiaries as a homogeneous and general category, legitimizing the same to operate in every working office of the defence and promotion of the interests of civilian victims of war.

In any case, the above sketch, did not have solely legal consequences but had not a few consequences in the associational life of the ANVCG that, together with other war Associations, gave rise to, on the 24th of May 1979, the Italian Confederation of War and Partisan Associations.

Another interesting and resulting fact of the minor clauses of a journalistic nature, but also due to the overcoming of the emergency situation in the immediate post-war period, is the implementation of the Association's activities that can open up to new and dynamic scenarios.

In the 1980s and 1990s themselves, the activities of the Association addresses the continuing mediation between public bodies and the categories represented in order to render them more informed and aware of their rights in an extremely changeable and fragmentary legal scenario. Added to this field, is the increasing activity of collection, rationalizing and publication and dissemination of information of a practical nature for its members through a newsletter.

Still under the aspect of mediation in defence of the interests of its members, the Association has intensified the requests to Parliament and public bodies to obtain legislative improvements, or rather the correct application of the current law. In this latter sense since the 1980s the Association has attended, through its representatives, the work of the control and medico-legal bodies working in the area of pensions, intervening, where necessary in both the Ministry of Health, and in the relevant local health authorities charged with specific cases, in order to, guarantee, in cases of ambiguous interpretation, the protection of the rights of the civilian victims of war.

In parallel, during the last decades of the last century, the cultural promotion is intensified more and more, perpetuating the historical memory and awareness-raising of the values of peace and solidarity. In this regard, numerous initiatives thrive, undertaken by local branches of the Association, in order to commemorate the most dramatic events of WWII, conveying its memory to younger generations through live and concrete testimonies of those who have lived the war directly. Experiences and testimonies of undisputed historical value collected, over the years, in a copious documentary, photographic and audio-visual production, promoted at various levels of the ANVCG as a bequest to future generations. Such initiatives, have always involved the youth especially, including through schools, in the conviction that the best pre-

vention of future wars is educating the minds of future generations to the values of solidarity, peace and justice.

In recognition of this activity, the ANVCG has been honoured by the President of the Republic with the Gold Medal to "sustaining contributor to School, Culture and the Arts"[51].

On the other hand, the recognition of the importance of the role carried out by the Association for the entire civil society is the basis of its inclusion within entities covered by the Act 190 of 1981[50].

The experience acquired and the changing International scenarios of recent years ensure that the work of the Association opens up to wider horizons contributing in first person to numerous campaigns on the promotion of international humanitarian law (from promotion of an "Aid Fund for Former Yugoslavia" strongly desired in 1997 by the then President of the Association Prof. G. Arcaroli, to participation in the International Campaign against Landmines).

In further recognition of the contribution by the ANVCG in the promotion of the values of peace and solidarity and for the protection of moral and material interests of victims of all the wars beyond national boundaries, the President of the Republic has conferred the Association with the Gold Medal of Civil Merit, the most prestigious award by the Organization of the Italian Repubblic[57].

Still today, despite of the end of WWII over 70 years ago, the Association continues to implement its mandate providing protection and assistance to civilian victims and their families. In this matter, it can be recalled that, in spite of the long period of time, some of the civilian victims of war are very young since in our country, due to

Al-Zahira School, refugee camp of Nairab, Aleppo, Syria, 2017 - UNRWA Program of Psycho-Social Support for Palestinian refugees in Syria carried out with the support of ANVCG.
Credit: UNRWA - Photo credit: Ahmad Abo Zaid.

accidental discoveries of unexploded arms, a number of serious injuries are recorded caused by explosion of this dangerous legacy of past conflicts.

The mandate of the Association is achieved therefore in the form of "practical" assistance, as well as disseminating among its members every useful piece of information on the rights due to civilian victims of war even in light of the continuing legal changes, in providing a competent support to its members (both at the bureaucratic level as well as, sometimes, the legal and litigatious one) in the fulfillment of the procedures aimed at acquiring pension, social security and medical measures provided in Italy for this category; in implementing a continued role of mediation with relevant public organizations.

Alongside this fundamental function, and in witness to the extreme liveliness of the Association, it carries out an important role as a civil and cultural institution launching initiatives aimed at perpetuating the historical memory and, in parallel, of values of peace and solidarity, as well as the promotion and dissemination of humanitarian law above all among the younger generations.

The transfer, especially among the youth, of the precious cultural and historical legacy of the civilian victims of war today, also in light of the current scenarios at the International level, felt as a fundamental mission of the Association itself. In this regard, the Association recently has among other, promoted in one of the prestigious institutions, the founding of the School of Continuing Education "Giuseppe Arcaroli" within which the course on "Peacekeeping, International conflicts and war crimes" is held, aimed at recent graduates.

Remaining on the path of the same ideals, to further confirm the vitality and dynamism of an Institution, which, even though from the outside and with a superficial examination may look limited to an historical moment and an old reality, the Association has in the last twenty years intensified its activities going beyond national borders, promoting itself as a key actor in International initiatives. The attention, here, is addressed to populations which today face the wrath of war directly, naturally seen as spiritually attuned to the Association itself, which therefore continue to promote and disseminate its ideals through awareness-raising activities and campaigns on the problems of civilian victims but also through concrete projects arisen thanks to collaboration with important International institutions (from the anti-landmine campaign in schools in Gaza carried out in cooperation with UNRWA, the UN agency for Palestinian Refugees and UNMAS, the UN agency for demining, to the project in favour of former child soldiers in Sierra Leone in collaboration with the NGO Dokita).

Timeline of the cited legislation

A - International

1. First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864

2. Fourth Geneva Convention for the Protection of Civilian Persons in Time of War, 12 August 1949

3. Second Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949

4. Third Geneva Convention on the Treatment of Prisoners of War. Geneva, 12 August 1949

5. Fourth Geneva Convention for the Protection of Civilian Persons in Time of War, 12 August 1949

6. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

7. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

8. Convention of the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mine and on their Destruction, signed in Ottawa on 3 December 1997

9. United Nations. Resolution adopted by the General Assembly on 22 November 2004, A/RES/59/26 of 3 May 2005

B – National

Law 23 June 1912, n. 667 that institutes war privileged pensions for officials and troop of R Army and R Navy. Official Journal 5 July 1912, n. 158

Law 25 March 1917, n. 481 Institutes the National Opera for the protection and assistance to war disabled. Official Journal

Lieutenant Decree Law 14 June 1917 n. 1032 recalling "laws for the maintenance or the re-hiring in military service of injured and disabled in war". Official Journal

Lieutenant Decree 27 March 1919, n. 426, which approves the T.U. of the dispositions bearing provisions for the reimbursement of war damages. Official Journal

Lieutenant Decree Law 27 March 1919 n. 573 "Modification of the law 25 March 1917, n. 481, on the protection and assistance to war disabled". Official Journal 8 May 1919, n. 110

Law 21 August 1921, n. 1312 regarding the obligatory recruitment to work of the war disabled. Official Journal 3 October 1921, n. 232

Royal Decree 29 January 1922, n. 92, Official Journal 18 February 1922, n. 41 Royal Decree 12 July 1923, n. 1491. Technical-legal reform of the current legislation on war pensions.Official Journal 19 July 1923, n. 169

Royal Decree law 27 May 1926, n. 928 “Modification and additions to the current legislation on war pensions”. Official Journal 8 June 1926, n. 131

Law 26 October 1940, n. 1543 on the reimbursement of war damages. Official Journal 19 novembre 1940 - XIX, n. 270 Royal Decree 14 June 1941 - XIX, n. 964 on the reimbursement of war damages in Italian Africa. Official Journal

Royal Decree Law 18 August 1942, n. 1175. Reform of L. 25 March 1917, number 481 instituting the National Opera for the protection and assistance of war disabled. Official Journal 22 October 1942, n. 250

Royal Decree-Law 2 August 1943, n. 704 “Abolition of the National Fascist Party” Official Journal 5 August 1943, n. 180

Lieutenant Legislative Decree 21 June 1945, n. 380 “Instituting of Ministry of Post-war assistance” Official Journal 17 July 1945, n. 85

Lieutenant Legislative Decree 31 July 1945, n. 425 “Duties and organization of the Ministry of Post-war assistance” Official Journal 7 August 1945, n. 94

Lieutenant Decree Legislative 31 August 1945, n. 532 “Transitional instituting at the Treasury of the Directorate General for the reimbursement of war damages” Official Journal 15 September 1945, n. 111

Decree of the Provisional Head of State 9 January 1947 “....” Official Journal 4 February 1947, n. 28

Legislative Decree of the Provisional Head of State 14 February 1947, n. 27 “Abolition of the Ministry of Post-war assistance and the devolution of its duties to other administrative offices” Official Journal 22 February 1947, n. 44

Legislative Decree 2 March 1948, n. 135 on the applicability to the civilian injured and disabled in war and the families of the civilian fallen, of the benefits due to the injured and disabled in war and the families of the fallen. Official Journal 17 March 1948, n. 65

Decree of the President of the Repubblic 24 December 1948, n. 606 “.....”. Official Journal 21 February 1949, n. 42

Law 29 April 1949, n. 264 “Provisions on the start of work and assistance to involuntary unemployed workers”. Official Journal 1 June 1949, n. 125, Ord. Suppl.

Law 5 May 1949, n. 178 conversion into law of the Royal Decree Law 18 August 1942, n. 1175. Official Journal 7 May 1949, n. 105

Law 3 June 1950 n. 375 “Reform of the law 21 August 1921, n. 1312, on the obligatory recruitment of the war disabled” Official Journal 28 June 1950, n. 146

Law 10 August 1950, n. 648 “Reorganization of the war pension dispostions”. Official Journal 1 September 1950, Suppl. Ord. n. 200

Presidential Decree 18 June 1952 n. 1176 “Regulations for obligatory recruitment for war disabled persons”. Official Journal 12 September 1952, n. 212

Law 3 novembre 1952, n. 1790 "Ratification of the legislative decree 2 March 1948, n. 135, on the the applicability to the civilian injured and disabled in war and the families of the civilian fallen, of the benefits due to the injured and disabled in war and the families of the fallen." Official Journal 4 December 1952, n. 281

Law 27 December 1953, n. 968 "Concession of compensation and contribution for war damages" Official Journal 31 December 1953, n. 299, Ord. Suppl. n. 2991

Law 23 ottobre 1956, n. 1239 "Provisions in favour of the Association on the civilian victims of war" Official Journal 9 novembre 1956, n. 284

Law 5 March 1963, n. 367 "Modifications to the law foreseen by law 3 June 1950, n. 375, on the obligatory recruitment of the war disabled" Official Journal 2 April 1963, n. 89

Presidential Decree 16 April 1964, n. 337 "Approval of the new statute of the National Association of Civilian Victims of War" Official Journal 1 June 1964, n. 133

Law 18 March 1967, n. 318 "Modifications to the law on war pensions". Official Journal 29 May 1967, n.133

Law 18 March 1968 n. 313 "Reorganization to the war pension legislation" Official Journal 6 April 1968, n. 90 Ord. Suppl. n. 900

Law 2 April 1968, n. 482 "General law on obligatory recruitment at public administration offices and private companies" Official Journal 30 April 1968, n. 109

Law 30 March 1971, n. 118 "Conversion in law of the Decree-law 30 January 1971, n. 5, and new laws in favour of the injured and war disabled". Official Journal 2 April 1971, n. 82

Presidential Decree 30 December 1972, n. 1036 "Laws for the reorganization of local administration and bodies operating the social housing sector". Official Journal 3 March 1973, n. 58

Presidential Decree 24 July 1977, n. 616 "Implementation of the delegation of which article 1 of the law 22 July 1975, n. 382". Official Journal 29 August 1977, n. 234, Ord. Suppl.

Decree Law 18 August 1978, n. 481 "Scheduling to 1 January 1979 of the deadline for Article 113, tenth comma, of the Presidential Decree 24 July 1977, n. 616, for the cessation of every contribution, financing or subsidy in favour of entities as in Table B of the same Decree, as well as the law on the safeguarding of property of the same entities, public assistance and charity institutions and the dissolution of the Administration for Italian and International welfare activities Official Journal 25 August 1978, n. 237

Law 21 ottobre 1978, n. 641 "Conversion into law, con modificazioni, of Decree-law 18 August 1978, n. 481, on the scheduling at 1st January 1979 of the end of Articolo 113, tenth comma, of the Presidential Decree del Presidente della Repubblica 24 July 1977, n. 616, for the cessation of every contribution, financing or subsidy in favour of entities as in Table B of the same Decree, as well as the law on the safeguarding of property of the same entities, public assistance and charity institutions and

the dissolution of the Administration for Italian and International welfare activities Official Journal 25 August 1978, n. 298

Presidential Decree 23 December 1978 n. 915 "Consolidated Law of the law on war pensions" Official Journal 29 January 1979, n. 287 Ord. Suppl.

Presidential Decree 23 December 1978 "Loss of the legal nature of public law of the National Association of Civilian Injured and Disabled, that continues to exist as private law entity" Official Journal 3 March 1979, n. 62

Law 27 April 1981, n. 190 "Contributions borne by the State in favour of associations supporting social promotion" Official Journal 12 May 1981, n. 128

Presidential Decree 2 June 1981 "...." Official Journal

Law 20 October 1981, n. 593 "Streamlining of the settlement procedures for war damages, requisitions and allied damages, debts contracted by partisan troops and abolition of the commissioner for the settlement of war contracts" Official Journal 26 ottobre 1981, n. 294

Presidential Decree 30 December 1981 n. 834 "Permanent Organization of the war pensions, as implemented according to Art. 1 of law 23 September 1981, n. 533". Official Journal 18 January 1982, n. 16, Ord. Suppl.

Law 10 ottobre 1989, n. 342 "Automatic adjustment of the supplementary allowances due to the war disabled and the big disabled for service" Official Journal 18 ottobre 1989, n. 244

Law 5 February 1992, n. 104 "Law-framework for the assistance, social integration and rights of handicapped persons" Official Journal 17 February 1992, n. 39, Ord. Suppl. n. 30

Law 20 December 1996, n. 639 "Conversion into law,with modifications of the Decree-law 23 October 1996, n. 543 annulling urgent dispositions on the matter of organization of the National Audit Office" Official Journal 21 December 1996, n. 299

Presidential Decree December 1998 " Official Journal

Law 12 March 1999, n. 68 "Laws for the right to work of the disabled". Official Journal 23 March 1999, n. 68, Ord. Suppl. n. 57

Presidential Decree 10 ottobre 2000, n. 333 "Regulation for the implementation of law 12 March 1999, n. 68 annulling the law for the right to work of the disabled". Official Journal 18 novembre 2000, n. 270

Law 8 novembre 2000, n. 328 "Law framework for the implementation of an integrated system of interventions and social services". Official Journal 13 novembre 2000, n. 265, Ord. Suppl. n. 186

Law 14 January 2013, n. 5 "Adherence of the Italian Repubblic to the UN Convention on the juridical immunity of States and their property, adopted in New York on 2 December 2004, as well as laws of adjustment of internal organization" Official Journal 29 January 2013, n. 24

Endnotes

[I] United Nations Secretary-General Ban Ki-moon on the occasion of the Ceremony for the Planting of the Tree of Peace and Unity to commemorate the end of the Second World War and the establishment of the United Nations, 5 May 2015, http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2596#.Vcpc4Pntmko26June2015

[II] The Uppsala Conflict Data Programme defines an armed conflict as an armed confrontation between two parties, at least one of which is the Government of a State, resulting in at least 25 battle-related deaths per year. Lotta Harbom and Peter Wallensteen, "Armed Conflict and its International Dimensions, 1946-2004", in Journal of Peace Research, vol. 42, No. 5 (pp. 624 and 634). The trend remains downward, irrespective of the definition of armed conflict applied.

[III] Human Security Report 2005, p. 34

[IV] Ibid.

[V] Ibid., pp 35 and 111 cites a recent survey which estimates that 40 per cent of child soldiers are girls.

[VI] Ministry of Economics and Finance: department of general administration, personnel and services http://www.dag.mef.gov.it/pensioni/guerra/, 07.09.2015

[VII] The entire text of this law is available on the internet site of the Istituto di Studi Giuridici Internazionali: Prassi Italiana di Diritto Internazionale on http://www.prassi.cnr.it/prassi/index.html, 07.09.2015.

[VIII] See for example the case of the accidental detonation of an explosive device – Court of Auditors decision 16/26 of February 1948 on appeal by Costanzi.

[IX] Court of Auditors, Joint Session, Decision of 5 May/6 June 1950 on appeal by Maneri.

[X] In this matter, the Constitutional Court speaks of the "special jurisprudential foundation of the cause of war" – in Ruling no. 97 of 1980.

[XI] The Law of 3 December 1925, no. 2151 ended the pre-existing job centres and the obligatory taking on of those disabled by war came under the exclusive jurisdiction of the provincial offices of the the National Foundation for the War Disabled.

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