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## ► To cite this version:

Guillaume Richard. War Damage and Reparation During World War I in Europe: Between Individual Rights and State Interventionism. Law and War 2021, 2021, 9781925984842. hal-03629430

**HAL Id: hal-03629430**

**<https://hal.science/hal-03629430>**

Submitted on 4 Apr 2022

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# WAR DAMAGE AND REPARATION DURING WORLD WAR I IN EUROPE: BETWEEN INDIVIDUAL RIGHT AND STATE INTERVENTIONISM

Guillaume Richard\*

*The article uses a comparative perspective to study how the reparation of material losses caused by war was managed at the time of the First World War. On the one hand, in several European countries, such as France, Belgium or Italy, an individual right to reparation was granted to victims of war damage. This right reversed the absence of State liability that prevailed before 1914 in matters of war. It guaranteed compensation for the losses suffered, but often remained conditional upon the victim's reemployment of the indemnity, according to the collective reconstruction goal assigned by the State. In the United Kingdom, on the other hand, no right to compensation was recognised, but several mechanisms show that the collective risks arising from the war were compensated by the State. The State control introduced in 1914 over marine insurance was extended to other types of risks, such as aerial bombardments. The article thus shows that the diversity of the legal ways of reparation at the time of the Great War does not obscure the long-term trend that the State be charged with the management of the war risks.*

## (1) INTRODUCTION

The outbreak of World War I ('WWI') in August 1914 caused immediate and violent fighting and the occupation of a large part of Belgium and the North-East of France by the German armies. The front stabilised at the end of the year, but the internationalisation of the conflict and the use of new military means (such as aerial bombardments) brought significant material losses.

Destructions induced different States to provide mechanisms allowing civilians whose property had been affected by the war to rebuild or restore it. Until then, war was not conceived as a case of State liability; the indemnities sometimes granted were an optional assistance, allocated on a case-by-case basis. As of 1914, several States recognised an individual right to reparation for victims of war.<sup>1</sup> The purpose of this article is to study the way in which this right was conceived by jurists and legal scholars in the States affected by the war. It will concentrate specifically on the damage to private property, which epitomised the individualistic vision of law during the liberal 19<sup>th</sup> century.<sup>2</sup>

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The bibliography on the consequences of WWI is considerable, but only recently the reparation of material losses gave rise to some research on the legal aspects.<sup>3</sup> The study will be limited to the domestic legislation of the States, from a comparative perspective: in discussion is the existence of a right to compensation directly granted by the State to nationals. It raises the question of whether the State can impose obligations on the use of a private property as a counterpart of the damages granted to the victims; more broadly, it complicates the understanding of the State interventionism during the war, when the continuation of the free economic life or the reconstruction of private properties is at stake. The debates during the wartime show how the right to reparation, desired as the sign of a new conception of the State more favourable to solidarist ideas,<sup>4</sup> was at the same time challenged as a possible way for the State to extend its control on the population and the properties.

In studying the elaboration of the right to reparation, the article will firstly focus in section II on the legal and political debates in France urging for the official recognition of a right to reparation. World War I represented a tipping point for French jurists. While war was previously considered an activity related to State sovereignty or a situation of necessity implying no State liability, war damage now created an obligation for the State to compensate for any destruction. For the French jurists, the right to reparation was a manifestation of the transition from an authoritarian conception of the State to a conception that would respect the rights of the individuals.<sup>5</sup>

Section III will consider the complexity of this new right, halfway between the remnants of an individualistic and liberal logic and the solidarist conceptions. In several European countries, like France, Italy and Belgium, where a post-war legislation on the right to reparation was enacted, the discussions particularly focused on the counterparts that could be imposed on the compensated victim. The obligation of reemployment (*reemploi*), that is, of reinvesting the indemnity received in the reconstruction of the destroyed property (for real estates) or in the purchase of an equivalent property (for movable property), appeared as the most controversial issue: it raised the question of the powers of the State over the victim.

Finally, some States involved in the conflict did not enact any general legislation on war damage, as explored in section IV. The British government thus refused to recognise a right to compensation – a rejection that was possible because of the reduced damage to civilians' properties, since most fighting happened in continental Europe. But this did not prevent the State from organising compensation mechanisms, through the supervision of an insurance system.

## (2) PUTTING AN END TO STATE IMMUNITY FOR WAR DAMAGE

During WWI, France was the first country to proclaim the right to reparation, opposing the previous doctrine that had considered war as a fact of necessity not involving any State liability. Several jurists as of 1914 made effort to theoretically establish an actual right entailing the obligation for the State to compensate the victims.

The rapid occupation of a part of the French territory led to major destructions at the beginning of the conflict. As early as December 1914, the public authorities announced their intention to compensate for material war damage. A government proclamation stated that it would pay an indemnity for the destruction and damage caused by the war. The Finance law for 1915 of 26 December 1914 (article 12, § 3) provided that '[a] special law [should] determine the conditions under which the right to compensation for material damage resulting from the acts of war shall be exercised'. This law, finally adopted in 1919, proclaimed the 'right to full reparation' for 'certain, material and direct damage to immovable or movable property caused by the facts of the war' (art 2), placing the burden on the French State. Any damage caused either by the enemy or the allies, resulting either from fighting or bombing or any operation related to the war (requisitions, cantonment of troops, etc.) should be compensated. This right was based on the principle of solidarity affirmed in article 1: 'The Republic proclaims the equality and solidarity of all Frenchmen before the burden of war.'<sup>6</sup>

That the State proclaims its liability in matters of war, as a counterpart of the citizen's obligation to make one's life's sacrifice to the nation, was not a completely new thing. During the French Revolution, the decree of 11 August 1792, enacted at the beginning of the war against Austria, forced the State to help those who had lost their property as a result of the war; the decree of 27 February 1793, recognised the right to full reparation.<sup>7</sup> But the actual implementation remained limited, and the Directory regime repealed the principle of the integral compensation by the law of 19 *ventôse* year VI (9 March 1798).

During the 19<sup>th</sup> century, the public authorities and the jurisdictions rejected any State's liability for the 'war facts' [*faits de guerre*], except in special cases (e.g. military requisitions). The *Conseil d'État*, the main French Administrative Court, dismissed the claims for compensation after the war of 1870–1871 and reaffirmed the irresponsibility of the State for the 'war facts', facts directly related to a fighting or a battle; it was only possible to get a compensation when the damage, related to the war (like in preventive defence operations), was not the direct consequence of a *fait de guerre*.<sup>8</sup> Otherwise, the victims had no right which would guarantee the payment of an indemnity and could

only hope for a random assistance depending on the State's financial resources; this 'relief' [*secours*] could exclude several types of damage – for instance those resulting from enemy's troop operations.

In 1914, most jurists, on the contrary, approved the recognition of the right to reparation and only a few opposed this new right. Among them, Clément Colson, member of the *Conseil d'État* and professor of economics, argued that war was a case of 'absolute necessity' [*force majeure*] which, as in private law, exonerated from any legal obligation.<sup>9</sup> But the arguments that inspired the pre-war legal scholars were generally circumvented in favour of the goal of legally establishing the obligation of the state.

Joseph Barthélémy, professor of constitutional law at the Faculty of Law of Paris and the Free School of Political Science, one of the most prominent jurists to take part in the legal discussion, showed the implication of the choice between *droit* [right] and *secours*: admitting the existence of a right to reparation constrained the Parliament to organise a compensation scheme; it prevented the Parliament from setting conditions for compensation; the victims should get a full reparation for every loss and could take an action in court to defend this right. For Barthélémy, the principles of public law dramatically changed with the advent of 'republican democracy' under the Third Republic<sup>10</sup> and the State's submission to the law was now admitted. The State was not the sovereign and distant entity unilaterally ruling the citizens anymore, but a democratic power having to serve its citizens.<sup>11</sup> Barthélémy linked this argument to the evolution of administrative case law on liability, which now more broadly accepted the State responsibility for activities of public authority.<sup>12</sup> The principle of equality in regard to public burdens [*égalité devant les charges publiques*] called into question the State's previous lack of responsibility for the consequences of war. The expression had characterised since the beginning of the twentieth century the situations in which, in the absence of any fault on their part, the public authorities had imposed on a citizen a burden exceeding what could normally be expected of him or her and had to compensate it.<sup>13</sup>

At the filing of the government draft in 1915, Viviani, the French President of Council, spoke of founding a 'social right', derived from the quality of associates of the nationals.<sup>14</sup> Taking up this idea, the rapporteur in the House of Deputies, Georges Desplas, developed the solidarist conceptions inspired by Léon Bourgeois.<sup>15</sup> According to this doctrine, individuals were not isolated but maintained interdependent relations because of their membership in the national society; these links created, in the form of a 'quasi-contract' [*quasi-contrat*], reciprocal rights and obligations between the members, of which the state had to ensure equitable distribution. Since war, as a social fact involving the whole community, was a 'real national defence enterprise' [*véritable entreprise nationale de défense*],<sup>16</sup> the compensation for war damage suffered by some members of this community had to be borne by the whole community – that is by the State. Citizens shared benefits

and losses, and the State should compensate the members who were victims of damage related to the collective activity (here, the war),<sup>17</sup> even though there was no fault on its part. This pervasive discourse sustained the recognition of the right to reparation and of the State's liability, independently of the legal framework for international reparations.<sup>18</sup>

### **(3) THE RIGHT TO REPARATION, A RESTRICTED RIGHT IN THE SOCIAL INTEREST**

The recognition of a right to reparation was considered essential in several European countries directly affected by the war or the military occupation, especially in Belgium and Italy, in addition to France. However, legislation on war damage was not adopted before 1919.

In France, both chambers of the Parliament were opposed on the provisions that should be implemented, lengthening the parliamentary procedure. Italy and Belgium were in another political situation. In Italy, much of the power was transferred to the government during the war and the regulations on war damage were mostly executive decrees. As Belgium was occupied, the Parliament only reopened after November 1918. The coming of the end of the war and the need to facilitate the reconstruction of destroyed property and the resumption of economic activity made it particularly urgent to settle the material consequences of the conflict. In both countries, the adoption of the legislation was very quick after the war finished, and almost without any controversy.

Between March and May 1919, Italy, France and Belgium simultaneously enacted comprehensive regulations governing the reparation of material losses caused by the Great War, through three legislative texts: the *testo unico delle disposizioni legislative portanti provvedimenti per il risarcimento dei danni di guerra* [comprehensive text containing provisions for the reparation of war damage] of 27 March 1919 (TU) in Italy,<sup>19</sup> the law of 17 April 1919 on the reparation of the war damage in France<sup>20</sup> and the law of 10 May 1919 in Belgium.<sup>21</sup> These laws not only recognised the right to reparation, they also created special commissions to deal with cases outside the ordinary courts (*tribunal des dommages de guerre* in Belgium; *commission cantonale et tribunal des dommages de guerre* in France; *commissione per l'accertamento e la liquidazione dei danni di guerra* in Italy). Though lawyers pushed for a more judicial way of functioning, the government's position was to give an administrative character to these commissions, in order to better control the amount of payments granted. Several changes were made to this legislation in the 1920s to further reduce the payments, especially in France, provoking the complaints of legal scholars.<sup>22</sup>

One of the main differences among the very similar texts enacted in these countries concerned the question of reemployment (fr. *emploi* ; ital. *reimpiego*). The term refers to the use of the indemnity to repair or rebuild the property in the same way and at the same place,<sup>23</sup> or at least with

the same destination and in the same area.<sup>24</sup> These texts resulted from national political contexts that help understanding their differences. We will first examine the different positions adopted in France, Italy and Belgium regarding the reemployment. Considering together all the debates held in these countries about reemployment will then show how the balance between individual rights and rights of the State was discussed in the same terms in all countries.

### **(a) Reemployment in France, Italy and Belgium**

In France, where the political controversy on reparation was the strongest, the Government's 1915 draft, modified and then adopted by the Chamber in 1916, laid down the reemployment as a condition of the indemnity: 'The grant of the indemnity shall be subject to conditions of reemployment corresponding to the allocation of destroyed properties' [*L'octroi de l'indemnité sera subordonné à des conditions de emploi répondant à l'affectation des biens détruits*].<sup>25</sup> The final version of the law was adopted only in 1919<sup>26</sup> and established a compromise between the positions of the Chamber of Deputies (in favour of compulsory reemployment) and the Senate (reluctant to impose any obligation). The vigorous opposition of the Senate to the compulsory reemployment manifested the partisan division between the socialist and radical-socialist parliamentarians, who were mainly in favour of the obligation and dominated the Chamber, and the moderate and more liberal parliamentarians. But it was also echoed outside of the Parliament by a great number of lawyers, engineers, architects or economists, notably in the 'National Action Committee for the Integral Reparation of war damage' [*Comité national d'action pour la réparation intégrale des dommages de guerre*], presided by the Dean of the Parisian Law Faculty Ferdinand Larnaude who advocated both the right to reparation and the free use of the indemnity. The debate spread in the whole country and several local lobbies also pushed in a direction or another.<sup>27</sup>

Eventually, reemployment remained optional but encouraged (article 4, law of 17 April 1919). If one did not use his or her indemnity to rebuild his or her own property identically to the way it had been before the war, he or she only perceived the value of the suffered loss, estimated at the construction cost on the eve of the war; the indemnity was then much lower than the cost of reconstruction, given the sharp rise in prices during the war.<sup>28</sup> On the other hand, in case of reconstruction of the building in the devastated area (that is of *emploi*), the victim received, in addition to the value of loss suffered, some 'additional damages' [*frais supplémentaires*], which almost equated the difference between the cost of reconstruction and the pre-war cost of construction.

The Italian regulations gave a clear priority to reemployment: rebuilding was compulsory for immovable property (art 11 TU) unless the special commission for war damage decided otherwise.

The compensation paid for the destruction of a building was always based on the value of the property at the cost of 1914, plus a sum corresponding to the price inflation. Council President Orlando justified at length the chosen system.<sup>29</sup> Was it enough to encourage the victim to reinvest the indemnity as in France or was it necessary to force the victim to do so, under the threat of being otherwise deprived of the indemnity? The debate focused on the intensity of ‘coercion’ [*coazione*] that could be exerted on the victim.<sup>30</sup> According to Orlando, reemployment expressed the goal of reparation. Compensation in kind was the ‘ideal legal form of reparation’ [*forma giuridicamente più squisita del risarcimento*]<sup>31</sup> and the State would have fulfilled its obligation by restoring the victim’s lost property again. Certainly, added Orlando, having the State rebuild the properties for the individuals’ sake would be the best solution, but also a difficult one. Yet, the effect of the adopted legislation was the same: restoring to the victim his or her property in its previous state.<sup>32</sup>

The regulation adopted in Belgium was a combination of the Italian and French texts. Reemployment was possible and encouraged, especially for buildings: this was like the French law. But the *remploi* could also be imposed in certain cases by the court responsible for war damages and then became a condition of indemnity (article 17, law of May 10, 1919), which was never the case in France.

## **(b) The Balance Between Individual Rights and Rights of the State**

Although the regulations in these countries were different, the issue at stake was identical and allows us to treat them together. The issue was whether it was necessary to force the person who received an indemnity to use it to rebuild the exact same property or to leave him or her free to use the money as he or she wishes. The question brings to the forefront the power that the State can exercise over individuals.

The right to reparation was presented either in terms of an individual right, according to the old model of justice (corresponding to the Roman law formula of *suum cuique tribuere*), or a social right considering the individual entitled to reparation as a part of the whole society. On the one hand, some jurists viewed the right to reparation as another subjective right granted to individuals, a necessary extension of their right of private property; the State should have compensated the victims, even without any fault on its part, because it satisfied a requirement of individual justice.

On the other hand, other jurists put forward the collective dimension of this right: compensating for individual losses could appear as a vector for pursuing public policies (rebuilding of destroyed areas, economic restart, rationalisation of urban planning and reconstruction in destroyed cities, etc). The challenge was thus not only to compensate the victims, but to facilitate the return to



a social functioning in conformity with the pre-war period. The active role of the State was explained by the goal, namely, the reconstruction of the war-torn regions. The material losses did not have only an individual dimension, but also a collective one, which had to be repaired. According to a report to the House in France, the ‘compensation will not only repair the injuries suffered by those concerned, but also those that the invasion and war have caused to the invaded regions and to the country’.<sup>33</sup> The Italian TU (art 1) directly spoke of the need ‘to restore the national wealth and the full productive efficiency of the destroyed areas’ [*restaurare la ricchezza nazionale e la piena efficienza produttiva delle regioni danneggiate*]. As an individual but restricted right, the right to compensation should not be at the free disposal of its beneficiary, because it also held a collective effect: allowing a new economic take-off and the reconstruction of the destroyed regions. It was thus necessary to avoid an industrialist taking the indemnity and not relaunching any productive activity, because ‘reparation [...] is not a matter of purely private interest’ [*la réparation... n’est pas d’intérêt purement particulier*], as it was affirmed before the Belgian Chamber of Deputies.<sup>34</sup>

The right to reparation being a ‘public subjective right’,<sup>35</sup> it could be limited or the indemnity subjected to conditions that the victim should justify to the administration having satisfied. Reemployment was linked for its promoters, even moderate ones, to the very nature of the right to reparation: it constituted a *jus novum* or a *singulare jus*<sup>36</sup> that allowed a certain legal creativity outside the ‘civil law empire’ [*empire du droit civil*].<sup>37</sup> According to the classic civil liability, the compensated person is free to use the damages as he or she sees fit. In regard to war damages, on the contrary, the State was not compensating for a fault on its part, but for a situation where public reaction appeared necessary for collective reasons.<sup>38</sup> Reemployment made it possible to associate individual reparation with collective economic recovery.

On the basis of the notion of a ‘social right’ [*droit social*], supporters of compulsory reemployment asserted that the legal norm had no utility if it didn’t improve the well-being of the people and fulfil a social function.<sup>39</sup> It had to be constantly adapted to the social needs. According to them, legislation could constrain individual behaviours to guide them along the social or economic utility. The constraint upon the use of the indemnity was a consequence of national solidarity.<sup>40</sup> For Orlando, in Italy, reparation was a real ‘function of public interest’ accomplished by the victim and determining a set of reciprocal benefits between citizens and State; it should help strengthen solidarity within the nation.<sup>41</sup> The legislation and the administrative mechanisms consisted not only in imposing sanctions on the abuses of individual enterprise, but also in leading it directly.

On the contrary, for its opponents, the compulsory reemployment led to the State’s interventionism in economics and substituted for ‘*l’aiguillon de l’intérêt personnel*’ [the spur of personal interest]<sup>42</sup> the sole interest of the State. According to them, the law should preserve

individuals from any unnecessary measures of the State restricting their freedom and leave space for the natural movement of interests.<sup>43</sup> Legislation could only accompany or support the natural behaviour of individuals in society and the game of their private interests. However, the reparation involved a series of administrative mechanisms, in order to control the actual reemployment of the indemnity. This administrative control created a risk of arbitrariness that was contradictory to the very purpose of the right to reparation and transformed the victim into an 'agent of the State'.<sup>44</sup> The destroyed regions would be forced to suffer twice: the stranglehold of the State would add to the war damage.<sup>45</sup> As a matter of fact, contrary to the fearful expectations, the French administration exercised a rather scattered and loose control on reemployment in the post-war period and on-site visits were rare,<sup>46</sup> raising criticisms against a system that did not properly defend the collective interests.

The right to reparation thus questioned the very transformation of the State and its way of interventionism in the war and post-war period. The legislation on war damage appeared parallel to the enactment of collective policies in urban planning. Reconstruction had to follow the 'new regulations of hygiene or aesthetics'.<sup>47</sup> The obligation of reemployment redefined the role of the public authorities to settle the aftermath of the war at a time when liberalism was put into question and a stronger control over the victims' behaviour was desired. And the criticism of reemployment attacked the increased interventionism of the State and revealed the fear that the State activism of the war period would continue once peace was restored.

#### **(4) INSURANCE OR INDEMNITY SCHEME: THE EXAMPLE OF THE UNITED KINGDOM**

In the United Kingdom ('UK'), debates on war damage appear to have been very different. Material losses were far less heavy than in continental Europe; it mainly concerned commercial ships damaged by the intense submarine warfare carried out by Germany and the aerial bombardments of certain parts of the territory. Although comparisons in this matter are delicate, an idea is given by the total amount of war damage that was reclaimed from Germany after the war respectively by France (about 220 billion French francs) and by the British Empire (about 2.5 billion British pounds, ie around 7.6 billion French francs).<sup>48</sup> Around 580 000 individual houses were repaired or reconstructed in France until 1931.<sup>49</sup>

But that Great Britain was mainly spared by the most dramatic aftermath of war did not reduce the expectations among the population of a public interventionism. The State had not only to assume responsibility for the reconstruction, but also to anticipate the foreseeable destructions in order to

avoid the paralysis of the country. In this respect, the UK offers an ambiguous example. In the subsection that follows, it is demonstrated that the compensation schemes that were implemented were very restricted compared to the legislation in continental Europe and provided no right to reparation. It would be misleading, however, to consider only the mechanisms of direct compensation by the State. The United Kingdom was also part of the fundamental trend that considered State interventionism as a necessary means of anticipating and managing the consequences of the collective risks associated with war. As of the beginning of the Great War, the British State organised reparation schemes based on private insurance but controlled by the State. First designed for marine insurance, it was adapted to aerial bombardments, as outlined in subsections (b) and (c) respectively, below.

### **(a) Compensation Schemes in the United Kingdom**

State liability for war damage was rejected in the UK according to the principle that “the King can do no wrong” (impeding the personal prosecution of the king), a principle transposed to the government (“the Crown can do no wrong”). The Crown immunity from tort liability made it impossible to sue the government (ministerial departments or other governmental bodies), even if it did not prevent the officials acting on behalf of the Crown and some public agencies from being petitioned in case of tortious wrong.<sup>50</sup>

Some compensation mechanisms appeared following the Defence of the Realm Act (‘DORA’) adopted 8 August 1914<sup>51</sup> and amended several times. The Defence of the Realm Losses Commission, created in March 1915, was instructed by the government to assess any compensation due ‘in respect of direct and substantial loss incurred and damage sustained [by the applicants] by reason of interference with their property or business in the UK through the exercise by the Crown of its rights and duties in the defence of the Realm’.<sup>52</sup> But it only concerned a small part of the situations compensated by the legislation in continental countries, namely, the governmental requisitions.<sup>53</sup> The government recognised that no individual should be deprived of his or her own property without fair compensation but refused to make it a petitionable right before a court. After the House of Lords suggested in its *De Keyser Hotel* decision in 1920 that legal remedies could force the State to compensate for the requisitions under the supervisions of the courts<sup>54</sup> the Indemnity Act of 16 August 1920 provided for a complex and fragmented compensation scheme for acts of the British state (and only those) that may have caused a direct loss or damage.<sup>55</sup> The government always balanced respect for the equity that should guarantee a fair compensation to the victims of requisition and preservation of the State’s finances, a concern that was at the root of the 1915 Commission. But it created other indirect mechanisms that would deal with actual or foreseeable damage.

## **(b) Marine insurance reparation schemes**

At the beginning of the war, crucial importance was given by the UK to the upholding of a steady maritime trade as a means of winning the war. A legislation on wartime marine insurance was adopted by other States, such as France.<sup>56</sup> But, although the legal aspect was very similar, the political and economic issue was much more crucial in the UK than in the continental countries, because of the importance of the maritime trade and of Britain's dependence on it; it was the *sine qua non* condition for financing the war and supplying the British Isles.<sup>57</sup> The British government exerted control both on marine insurance and maritime trade, in a strategic manner. The specific marine insurance scheme was put in place to avoid the maritime trade contraction that would result from the fear that war could cause damage to trading ships. Politicians and shipowners identified even before the war a risk of the contraction of the market. This aspect was particularly decisive because of the dependence of Great Britain on maritime trade for the supply of food or raw materials.<sup>58</sup> Politically, the apprehension about economic decline was reinforced by the fear that popular riots could occur at the mere expectation by the population of a decrease in maritime trade and of food shortage.<sup>59</sup> The goal of a State-controlled marine insurance scheme was therefore to 'relieve the anxiety of the mercantile and shipping world, and to ensure the continuity, in spite of every emergency, of the free flow of food and raw material to the population of this country'.<sup>60</sup> Shipowners were especially seeking the intervention of the State, as the risk of war had been generally excluded from insurance policies since the 19<sup>th</sup> century, with the 'free of capture and seizure' clause included in marine insurance contracts.<sup>61</sup> According to the shipowners, war was an exceptional risk that could not be covered only by private insurers or by themselves, but had to involve the State. The burden of war risks was to be put on those benefitting from maritime trade, that is, the 'nation at large': 'the State should assume responsibility for losses to overseas trade resulting from war perils'.<sup>62</sup> Maritime trade was given a collective dimension which implied State intervention.

On 4 August 1914, the Parliament approved a State Insurance Scheme that was implemented in the following days. It incorporated many recommendations of a subcommittee of the Imperial Defence Committee. The government should provide a marine insurance scheme addressing war risks; insurance contracts in compliance with the provisions stated in this scheme were to be reinsured by the State that contracted only with the insurance companies or the shipowner's associations.<sup>63</sup> The State was not a direct insurer but reinsured all war risks underwritten by recognised insurers.<sup>64</sup> On the basis of the scheme, the State could direct the ships on certain maritime routes in respect to the war situation.<sup>65</sup>

The Scheme could be used to insure either the vessel or the cargo. As for the insurance of the vessel, the shipowner had the choice either not to insure the war risks, to find a private insurance for war risks (generally more expensive) or to contract an insurance with one of the State-guaranteed insurers. Three shipowners' organisations were authorised to insure the risks of war against the payment of a premium for war risks;<sup>66</sup> they were reinsured by the government for 80% of the risks and paid back to the government the due share of premiums.<sup>67</sup> The Scheme for the insurance of ships functioned until August 1917. At that time, the aggressive German U-boat campaign caused the UK to lose its military control of the seas, and the government considerably strengthened the conditions on the commercial fleet; all ships were either requisitioned by the government or, when left to shipowners, subjected to the *Liner Requisition Scheme*. As a result, the government took a direct responsibility for the eventual loss of ships.<sup>68</sup>

A similar scheme covered the cargo. It was necessary to get a principal marine insurance contract, underwritten by Lloyd's or approved insurers, in order to subscribe to the insurance for war risks. The insured should add a premium for the war risks guaranty. Since the premium for the war risk coverage was a flat rate set by the government and the scheme remained optional, the consequence was that the government only took over the bad risks and that the private market got the right risks.<sup>69</sup> The difference between the premiums received by the government and the damages paid was particularly high in 1917, while the gains of the private market remained significant.<sup>70</sup> The shipowners, however, opposed any compulsory insurance, contrary to what happened in France in 1917.<sup>71</sup> The government only adopted from 6 March 1918 a revised scheme with flexible rates according to the maritime routes. After the war, the appraisal on the cargo insurance was therefore contrasted. The main goal of the scheme was to avoid a complete collapse of the maritime trade during the war, the actual compensation of the damage being a secondary effect. It contributed to higher prices, since the continuation of trade led to a "business as usual" attitude towards war and did not immediately lead to a drop in domestic consumption. The population thus indirectly assumed most of the cost of this mechanism.<sup>72</sup>

### **(c) Reparations for aerial bombardments**

The specificity of British State interventionism was the use of an insurance model to deal with all types of damage. A similar insurance scheme was implemented for war damage for which a right to reparation was recognised in other countries. Pushed by groups of interest who advocated for a national intervention,<sup>73</sup> a parliamentary report of 9 June 1915 proposed a State-organised insurance scheme for aerial bombardments, following the destruction caused by German planes on the east coast

of England.<sup>74</sup> The scheme was a reaction to the actual war and not a way of organising the war effort as of the beginning, as was the case of the marine insurance scheme. However, the mechanism was very similar.

As for the marine insurance scheme, this was an insurance-scheme; the subscription of an insurance and the payment of a premium were prior requirements for the victim claiming a compensation. Citizens remained free to stay uninsured or to contract with a private company; but in that latter case, the premiums for the war risks coverage rose during the war, out of the fear that the German air force could reach any point of the British territory.<sup>75</sup> The citizens choosing the government-guaranteed scheme benefitted from a reduced rate. To enforce the scheme, the government used the private insurance companies directly in contact with the population as mere middlemen; contrary to the marine insurance scheme, the State didn't act as a reinsurer, but as the insurer itself.<sup>76</sup>

Several members of Parliament wanted a more official recognition of State liability and criticised the system as a form of taxation of areas affected by bombing.<sup>77</sup> They also feared the lack of insurance coverage for those who did not get the information or have the money to pay the premium; this led the government to offer discounted insurance premiums available at the Post Office. On the basis of the profits generated, the premiums were diminished by a half in 1917. According to the figures given by Preston & Sich, the government received a total of £13,610,000 in premiums and only paid £2,970,000 in compensation until November 1918. Private insurers offering equivalent contracts also made comfortable profits with this insurance of aircraft risks.<sup>78</sup> As one can see, these insurances were much more profitable to the State than the marine scheme.

The British debates clearly set out two methods of compensation for damages: indemnity scheme or insurance scheme.<sup>79</sup> The indemnity scheme consisted of granting damages without any prior financial payment, along with the system chosen in continental countries, while the insurance scheme entitled a person to an indemnity only if a premium had been paid. Refusing a right to reparation and choosing an insurance scheme was mainly a matter of finances. It avoided a general compensation and generated a funding through the payment of premiums. The main reasons leaning toward an insurance scheme were thus financial. As stated by Runciman, Chairman of the Board of Trade, 'any State scheme for dealing with damage by bombardment or by aircraft must be an insurance scheme and not one of simple indemnity'.<sup>80</sup> Jurists insisted, as in France or in Italy, on the 'very general impression among the public'<sup>81</sup> caused by these exceptional events and asked the State for compensation, but rejected the notion of a right. However, whatever these choices, the same tendency is shown towards maximising the role of the State in dealing with the war damage suffered by civilians.

## **(5) CONCLUSION: RECONSTRUCTION AND STATE EVOLUTION**

The right to reparation for war-related damage emerged in several countries as an important claim at the time of WWI. That right was based on the idea that justice for the people implied State-guaranteed compensation of the effects of the war on a national level, even if international reparation could be afterwards considered. War, which had been considered in the modern times as the manifestation of the State sovereignty, now appeared to the eyes of the jurists and politicians as a phenomenon involving State liability because it created a social risk for the population.<sup>82</sup> Its aftermath constituted the object of public compensation. The UK, which did not recognise a right to reparation during WWI (unlike at the time of the World War II ('WWII')), nevertheless considered the management of war risk as a governmental task, which made it possible to impose special obligations on insurers. The reparations thus reconfigured the figure of the State: war became a cause of State's liability that should limit its negative effects on economics and social life.

Political debates were equally harsh in determining the extent of the right to reparation. In Italy, for instance, parliamentarians from the South of the country criticised an indemnity scheme in favour of the northern regions (where most of the battles occurred), already industrialised and rich, while the southern regions, though affected by several devastating earthquakes in the 1900s, were still waiting for compensation.<sup>83</sup> More broadly, reemployment made it possible to provide conditions for the payment of compensation and to direct its use or to restrict it for certain types of properties (sumptuary goods in particular). At the time of WWII, the laws of reparation generally provided for more collective forms of reparation.

The right to compensation also raised fears of increasing State interventionism in individual lives and private properties, which motivated fierce opposition to any conditional compensation. The reemployment would allow, it was feared, the administration to control the behaviour of the victims, even after payment of the indemnity. In England, the State reliance on private insurance companies facilitated the State's knowledge of individual situations, creating a paradoxical result of a more generous system of reparation. It thus reveals a tension in the conception of the State. On the one hand, a new doctrinal conception of the State related the compensation for war risks to a general function of solidarity that the public authorities should assume. On the other hand, it created a State interventionism that was not only promoted in the context of the war, but as a general trend which caused a closer control on the population. National variations were also significant, as illustrates the case of UK: the government relied on a private way of functioning (through the insurance scheme)

rather than a direct intervention. It confirms to us the new conception of the State at the time of WWI, but also its ambiguities, melting the limit between private and public.

Like other aspects of war-time legislation, reparation therefore broke off the pre-war liberalism by giving the State the function of directing the behaviour of its population. The compensation mechanisms were not only a posteriori tools used to repair the situation, but also means of strategic anticipation.<sup>84</sup> That dimension was obvious in the case of marine insurance, but it was also present in the French political proclamations where, since 1914, the problem of the economic renewal of the destroyed areas was put forward. Reparation had to promote maritime trade or prevent desertification of the affected areas. To the justice or equity dimension was added a very immediate economic and financial dimension, closely intertwined with political and value considerations. Thus, the right to reparation was conceived as a means of social pacification and economic well-being in the post-war period.

## Notes

<sup>1</sup> Reparation is understood as a broad term for obtaining redress, either restitution (the restoration of the victim in the original situation) or compensation (monetary damages proportionate to the damage done).

<sup>2</sup> See Charles Comte, *Traité de la Propriété* (Chamerot and Ducollet, 1834) vol 2, 290. On the individualistic conception of law see Charles Beudant, *Le Droit Individuel et l'État. Introduction à l'Étude du Droit* (Arthur Rousseau, 1891).

<sup>3</sup> For France, see Annie Deperchin, 'Des Destructions aux Reconstructions' in Stéphane Audoin-Rouzeau and Jean-Jacques Becker (eds), *Encyclopédie de la Grande Guerre* (Perrin, 2012) 779; Eric Bussière, Patrice Marcilloux and Dennis Varaschin (eds), *La Grande Reconstruction. Reconstruire le Pas-de-Calais Après la Grande Guerre* (Arras [France], 2002). Research on material losses particularly considered the urbanistic or landscape point of view, see Hugh Clout, *After the Ruins. Restoring the Countryside of Northern France After the Great War* (University of Exeter Press, 1996). It also dealt with the international dimension of the right to reparation, see Shavana Musa, *Victim Reparation under the Ius Post Bellum. An Historical and Normative Perspective* (Cambridge University Press, 2019); Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge University Press, 1992); Pierre D'Argent, *Les Réparations de Guerre en Droit International Public: la Responsabilité Internationale des États à L'épreuve de la Guerre* (Bruylant, 2002). Other studies have focused on the situation of civilians or soldiers returning from combat and the issue of war invalids, see Bruno Cabanes, *La Victoire Endeillée. La Sortie de Guerre des Soldats Français (1918–1920)* (Seuil, 2004). The Second World War (hereafter 'WW2') or more recent conflicts have been the subject of much research, see RM Buxbaum, 'A Legal History of International Reparations' (2005) 23(2) *Berkeley Journal of International Law* 314, 314; Pablo De Greiff (ed), *The Handbook of Reparations* (Oxford University Press, 2006).

<sup>4</sup> Pierre Rosanvallon, *L'État en France de 1789 à Nos Jours* (Seuil, 1990) 151–83; Michel Borgetto, *La Notion de Fraternité en Droit Public Français. Le Passé, le Présent et l'Avenir de la Solidarité* (Librairie Générale de Droit et de Jurisprudence, 1993) 344–419; Marie-Claude Blais, *La Solidarité: Histoire d'Une Idée* (Gallimard, 2007).

<sup>5</sup> This evolution was, for instance, a main issue for the public law specialist Léon Duguit: see especially Léon Duguit, *Les Transformations du Droit Public* (Armand Colin, 1913).

<sup>6</sup> *Loi du 17 Avril 1919* [Law of 17 April 1919] (France) JORF, 18 April 1919, 4050.

<sup>7</sup> Just Berland, *Les Dommages de Guerre Après Valmy. Département de la Marne* (Chalons-sur-Marne, 1931) 112.

<sup>8</sup> *Conseil d'État*, 6 June 1872, *Bertin*, reported in (1873) 2 *Recueil Sirey* 187; *Tribunal des conflits*, 27 January 1873, *De Pomereu & autres*, reported in (1873) 2 *Recueil Sirey* 186; Édouard Laferrière, *Traité de la Juridiction Administrative et des Recours Contentieux* (Berger-Levrault, 1896) vol 2, 53–66. The State was never liable for damage caused by the enemy.

<sup>9</sup> 'Société d'Économie Politique. Réunion du 5 Février 1915' (1915) 45 *Journal des Économistes* 71.

<sup>10</sup> Joseph Barthélémy, *Le Droit à la Réparation Intégrale des Dommages de Guerre* (Comité national d'action pour la réparation intégrale des dommages causés par la guerre, 1915) 13.



- <sup>11</sup> The beginning of the 20<sup>th</sup> century was the first outbreak of the *service public* doctrine among the legal scholars, see François Burdeau, *Histoire du Droit Administratif* (Presses Universitaires de France, 1995) 341–8; Luca Mannori and Bernardo Sordi, *Storia del Diritto Amministrativo* (Roma-Bari, Laterza, 2006) 400–27.
- <sup>12</sup> *Conseil d'État*, 10 February 1905, *Tommaso Greco*, reported in (1915) Lebon 139 (the administration is financially responsible for its agents' grave fault in a police operation).
- <sup>13</sup> *Conseil d'État*, 21 June 1895, *Cames*, reported in (1905) Lebon 509; *loi du 16 Avril 1914* [law of the 16 April 1914], JORF, 3566.
- <sup>14</sup> *Chambre des Députés* [Chamber of Deputies], *Impressions*, JORF, 11 May 1915, no 904, 103.
- <sup>15</sup> Léon Bourgeois, *Solidarité* (Armand Colin, 1906).
- <sup>16</sup> Louis Rolland, 'La loi du 17 Avril 1919 sur la Réparation des Dommages Causés par les Faits de la Guerre' (1919) *Revue du Droit Public* 367, 386.
- <sup>17</sup> *Chambre des Députés* [France], *Documents*, JORF, 1916, no 2345, 1180.
- <sup>18</sup> Although the proclamation of the right to compensation was accompanied by the conviction that Germany would finance it, the international aspect was not legally relevant: compensation was to be due by the State each time a damage was related to the war. For the international provisions, see art 3 of the *Hague Convention* (IV) of October 1907. After the war, France pushed for the recognition of the German liability for the outbreak of the war, that was declared by the articles 231 and 232 of the 1919 *Treaty of Versailles* establishing peace between Germany and the Allies. As a consequence, Germany was to pay international reparations, that constituted, during the 1920s and 1930s, one of the main issues of international relations, see Bruce Kent, *The Spoils of War. The Politics, Economics, and Diplomacy of Reparations. 1918–1932* (Oxford University Press, 1989).
- <sup>19</sup> *Gazzetta ufficiale del Regno d'Italia* [Italy], 2 April 1919, no 426, 896.
- <sup>20</sup> JORF [France], 18 April 1919, 4050.
- <sup>21</sup> *Moniteur belge* [Belgium], 5 June 1919; see Georges Van Bladel, *La Réparation des Dommages Matériels Résultant des Faits de la Guerre (Législation, Doctrine, Jurisprudence). Commentaire Théorique et Pratique* (Office de Publicité, 1922). Other statutes were also enacted in some Eastern-European countries, like in Romania or in Yugoslavia: see Paul Sterian, *La Roumanie et la Réparation des Dommages de Guerre* (Librairie Générale de droit et de Jurisprudence, 1929); Yovan M Savitch, *Étude Comparée de la Réparation des Dommages de Guerre en France et dans le Royaume des Serbes, Croates et Slovènes* (Sagot, 1924).
- <sup>22</sup> See, eg, law of 2 May 1924 (France) JORF, 3 May 1924, 4002, and the reactions of Ferdinand Larnaude, 'Une Iniquité Législative. La loi du 2 Mai 1924', *Le Temps* (8 May 1926) 1; André Dutilloy, *La Révision des Dommages de Guerre* (Jouve, 1931).
- <sup>23</sup> Édouard Huysmans, *La Réparation des Dommages de Guerre en Belgique* (Librairie Nationale d'art et d'Histoire, 1919) 19. The meaning is less technical than in private law, where the *remploi* indicates the tutor's obligation of reinvesting the money resulting from the selling of a pupil's good into a new good.
- <sup>24</sup> See art 5, § 8 of the French law of 17 April 1919, art 11 of the Italian TU and art 16 of the Belgian law of 10 May 1919.
- <sup>25</sup> *Chambre des Députés* [France], *Impressions*, JORF, 1915, no 904, art 2.
- <sup>26</sup> See Rolland (n 16) 371.
- <sup>27</sup> See Guillaume Richard, 'Les "Guides du Sinistré" (1915-années 1920): le Sinistré, Entre Sujet de l'Administration et Stratège' in Laetitia Guerlain and Nader Hakim (eds), *Littératures Populaires du Droit. Le Droit à la Portée de Tous* (Librairie Générale de Droit et de Jurisprudence, 2019) 147.
- <sup>28</sup> The value also took in due allowance the depreciation of the property.
- <sup>29</sup> *Atti parlamentari* [Italy], *Documenti*, 25 November 1918, no 1029.
- <sup>30</sup> *Ibid* 11.
- <sup>31</sup> *Ibid* 7.
- <sup>32</sup> In Italy, reemployment was not as divisive an issue as in France. Nevertheless, it raised some opposition that contributed to changes in the legislation. The Bertolini report in the Chamber defended the 'free activity of the victims' [*libera attività dei danneggiati*] (*Atti parlamentari* [Italy], *Documenti*, 12 February 1919, no 1029-A, 6) and advocated for the reemployment being considered accomplished as soon as the reconstruction occurred in the same region, and not only in the same town; he also rejected the reemployment for movable property, as was previously decided in the first draft of the text.
- <sup>33</sup> *Chambre des Députés* [France], *Documents*, JORF, 1916, no 2345, 1207.
- <sup>34</sup> *Chambres des Députés* [Belgium], *Annales Parlementaires*, 12 March 1919, 516 (Jaspar); see also *Sénat* [Belgium], *Annales Parlementaires*, 29 April 1919, 229–30.
- <sup>35</sup> Vincenzo Polacco, *Risarcimento dei Danni di Guerra. Conferenza Detta al Circolo Giuridico il 26 Maggio 1918* (Athenaeum, 1918) 13.
- <sup>36</sup> Ferdinand Larnaude, *La Réparation des Dommages Causés par la Guerre. Principes et Applications* (Comité National d'Action Pour la Réparation Intégrale des Dommages Causés Par la Guerre, 1915) 25; Ferdinand Larnaude, 'La Réparation des Dommages Matériels. Comment doit s'Entendre le Droit à la Réparation?' in *La Réparation des Dommages de Guerre. Conférences Faites à l'École des Hautes Études Sociales* (Alcan, 1917) 179, 198.

- <sup>37</sup> Pierre Legendre, *L'Empire de la Vérité. Introduction aux Espaces Dogmatiques Industriels* (Fayard, 1983) 176.
- <sup>38</sup> See also *Chambre des Députés* [Belgium], *Annales Parlementaires*, 19 March 1919, 556.
- <sup>39</sup> See Jean-François Niort, 'La Naissance du Concept de Droit Social en France: une Problématique de la Liberté et de la Solidarité' (1994) 3 *Droit Prospectif* 773; N Wagener, 'Droit Social' in Marie Cornu, Fabienne Orsi and Judith Rochfeld (eds), *Dictionnaire des Biens Communs* (Presses Universitaires de France, 2017) 433.
- <sup>40</sup> Art 53, § 1 of the French law of 1919 provides for the deprivation (decided by the special tribunal of war damage) of the victim who did not respect the condition of reemployment.
- <sup>41</sup> *Atti parlamentari* [Italy], *Documenti*, 25 November 1918, no 1029, 7–8.
- <sup>42</sup> René Jacquelin, *Le Droit Social et la Réparation des Dommages en Régions Envahies* (Sirey, 1917) 91.
- <sup>43</sup> *Ibid* 3–6, 31.
- <sup>44</sup> Paul Gouin, *La Liberté du Remploi dans la Réparation des Dommages de Guerre: Contribution à l'Histoire de l'Élaboration de la loi sur la Réparation des Dommages de Guerre* (Giard, 1917) 115.
- <sup>45</sup> *Ibid* 165.
- <sup>46</sup> See the memo no 1170 on technical control of reemployment [*circulaire no 1170 relative au contrôle technique du remploi*] from the Ministry of freed regions [*Ministère des Régions libérées*], 29 May 1923.
- <sup>47</sup> *Sénat* [Belgium], *Annales Parlementaires*, 6 May 1919, 280.
- <sup>48</sup> See Edmond Michel, *Les Dommages de Guerre de la France et Leur Réparation* (Berger-Levrault, 1932) 104. These figures were declared in the international procedure against Germany, after the *Treaty of Versailles*, and were obviously overestimated. The sole purpose here is to emphasise the discrepancy between figures for France and Great Britain.
- <sup>49</sup> *Ibid* 612.
- <sup>50</sup> Peter Cane, *Controlling Administrative Power. An Historical Comparison* (Cambridge University Press, 2016) 371–4; WS Holdsworth, 'History of Remedies Against the Crown' (Pt 1) [1922] *Law Quarterly Review* 141; WS Holdsworth, 'History of Remedies Against the Crown' (Pt 2) [1922] *Law Quarterly Review* 280.
- <sup>51</sup> 4 & 5 Geo. 5. c. 29.
- <sup>52</sup> 5 & 6 Geo 5, c. 37. The commission strictly interpreted the condition of direct and substantial loss, excluding for instance compensation for pleasure goods or for a business operating at a loss. See Defence of the Realm (Losses) Commission, *First Report*, Cd 8359 (1915); D du B Davidson, 'The Defence of the Realm Losses Commission and the War Compensation Court' (1923) 5 *Journal of Comparative Legislation and International Law* 234.
- <sup>53</sup> The DORA expanded the powers of the government under the royal prerogative and gave it the power to requisition buildings or land necessary to the war effort.
- <sup>54</sup> *Attorney General v De Keyser's Royal Hotel Ltd* (1920) UKHL, [1920] AC 508 (10 May 1920). See Gerry R Rubin, *Private Property, Government Requisition and the Constitution. 1914–1927* (Hambledon Press, 1994) 71–91. The case concerned the De Keyser Hotel which was requisitioned to serve as administrative facilities for the army. Negotiations prior to the requisition had not made it possible to establish the value of the financial compensation. The hotel sought greater financial compensation than that proposed by the Defence of the Realm Losses Commission. The House of Lords held that the legal authority of the Commission was limited to the event of a direct enemy threat and that the hotel was entitled to compensation under the *Defence Act of 1842* (providing for a Court proceeding in case of requisitions).
- <sup>55</sup> 10 & 11 Geo 5, c. 48; United Kingdom, *Hansard*, House of Lords, 9 August 1920, vol 41, col 1049–64. See Rubin (n 54) 153–4. According to the Act, three situations were legally entitled to compensation: the procedure provided for by Regulation 2B of the *Defence of the Realm Act* when the government had taken 'possession of any war material, food, forage and stores', see *Manuals of Emergency Legislation. Defence of the Realm Manual* (Majesty's Stationary Office, 6th ed, 1918) 44; the existence of a former legal right to compensation, which remained petitionable before an ordinary court (this was the *De Keyser Hotel* case in 1920, in which the legal right of the applicant was based on the 1842 Act); and, lastly, measures taken to react to a direct threat from the enemy were submitted to a special commission, the War Compensation Court, which replaced the Defence of the Realm Losses Commission (the procedure was an administrative one).
- <sup>56</sup> *Décret du 13 Août 1914* [Decree of the 13 August 1914], JORF, 14 August 1914, 7419. The *loi du 19 Avril 1917* [law of the 21 April 1917], JORF, 3153, exclusively submits the shipowners to the State-controlled insurance scheme.
- <sup>57</sup> Before the war, 43% of the worldwide marine fleet tonnage was British, whereas only 4.6% was French, see Edmond Michel, *Les Dommages de Guerre de la France et Leur Réparation* (Berger-Levrault, 1932) 43 (quoting *Les Forces Économiques de l'Allemagne* [Dresdener Bank, Berlin, 1913]).
- <sup>58</sup> See Luis Lobo-Guerrero, *Insuring War: Sovereignty, Security and Risk* (Routledge, 2012) 62–3.
- <sup>59</sup> Norman Hill, 'State Insurance against War Risks at Sea' in Norman Hill et al (eds), *War and Insurance* (Oxford University Press, 1927) 11, 14 ('psychological rise due to apprehension and uncertainty') (emphasis in original).
- <sup>60</sup> United Kingdom, *Hansard*, House of Commons, 4 August 1914, vol 65, col 1948 (Lloyd George, chancellor of the Exchequer).
- <sup>61</sup> See 'Marine Risk and War Risk' (1920) 33 *Harvard Law Review* 706, 706.
- <sup>62</sup> Hill (n 59) 12–4.
- <sup>63</sup> See *Manual of Emergency Legislation* (Majesty's Stationary Office, Supplement no 3 1915) 413–56.

<sup>64</sup> On the reinsurance mechanism, see Edmond Thaller and Jean Percerou, *Traité Élémentaire de Droit Commercial* (Rousseau, 7<sup>th</sup> ed, 1925) 998–9. The reinsurance was a decisive aspect, as 65% of the reinsurance market in the UK before WWI was operated by German and Austrian companies, see Sidney Preston and Alexander Ernest Sich, ‘Fire Insurance During the War’, in Hill (n 59) 95–7.

<sup>65</sup> Lobo-Guerrero (n 58) 58.

<sup>66</sup> Hill (n 59) 25–6. The shipowner’s organisations were North of England, London Group, Liverpool and London War Risks Insurance Association.

<sup>67</sup> Forms of the insurance contracts of the national scheme are in *Manual of Emergency Legislation*, Suppl. 3 (Majesty’s Stationary Office, 1915) 413–56.

<sup>68</sup> Hill (n 59) 24–5.

<sup>69</sup> Ibid 34–5; Samuel Justin Hurwitz, *State Intervention in Great Britain. A Study of Economic Control and Social Response, 1914–1919* (Columbia University Press, 1949) 71, note 35.

<sup>70</sup> A total of £60 million of premiums was paid and the cost for the State for the cargo insurance was £65 million. As of August 1916, the government paid more than the premiums it earned, see Hill (n 59) 43–4. The imbalance was even greater with the insurance of the ships: at 41.

<sup>71</sup> Marine insurance for war risks was made compulsory in France by the law of 19 April 1917 [*loi du 19 Avril 1917*], JORF, 21 April 1917, 3133.

<sup>72</sup> Hill (n 59) 47–52.

<sup>73</sup> ‘National Insurance Against Damage by Aircraft’, *Flight Magazine* (16 July 1915) 506.

<sup>74</sup> Preston and Sich (n 64) 67–8. The scheme provided either for the aircraft risks only (eg fall of an aircraft causing damage), or for the aircraft and bombardment risks.

<sup>75</sup> The national scheme was particularly desired by merchants who had to insure their stored products against aerial bombardments for war risks at a very high premium: ‘National Insurance Against Damage by Aircraft’ (n 73) 506.

<sup>76</sup> Most of the time, an individual would contract with the same fire insurance company; but the insurance on war risks was directly contracted with the government. See the forms, *Manual of Emergency Legislation*, Suppl. 4 (Majesty’s Stationary Office, 1915) 266–71.

<sup>77</sup> ‘[T]his insurance is a tax on the East Coast’: United Kingdom, *Hansard*, House of Commons, 16 December 1915, vol 74, col 144–5 (Hogge).

<sup>78</sup> Preston and Sich (n 64) 57, 72–3. In France, the *loi du 31 Mars 1918* [law of 31 March 1918], JORF, 2 April 1918, 2877, provided for the State authorisation on all private insurance contracts against bombardment; it intended to avoid expensive insurance premiums too profitable to private companies.

<sup>79</sup> See Hill (n 59) 12–3.

<sup>80</sup> United Kingdom, *Hansard*, House of Commons, 8 July 1915, vol 73, col 512–3.

<sup>81</sup> Preston and Sich (n 64) 63.

<sup>82</sup> Christopher Hood, Robert Baldwin and Henry Rothstein, *The Government of Risk. Understanding Risk Regulations Regimes* (Oxford University Press, 2000); Pat O’Malley, *Risk, Uncertainty and Government* (The Glass House, 2004).

<sup>83</sup> See Carlotta Latini, ‘L’emergenza e la Disgrazia. Terremoto, Guerra e Poteri Straordinari in Italia Agli Inizi del Novecento’ (2018) 13 *Historia et ius* <[www.historiaetius.eu/uploads/5/9/4/8/5948821/latini\\_13.pdf](http://www.historiaetius.eu/uploads/5/9/4/8/5948821/latini_13.pdf)>.

<sup>84</sup> Lobo-Guerrero (n 58), uses the term “insurantal sovereignty” to refer to the form of State interventionism using the private insurer with a strategic goal.