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**The Law of the Support of the A-bomb  
Survivor**

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## **Introduction**

There is no international criteria of deciding the contingency for the social security. In Japan, the public assistance, social insurance and social welfare services are included in the area of social security, although the natural disasters, war victim and criminal casualty are excluded from the contingency of the social security. The Big Earthquake at Kobe in 1995 proves that the legal systems for supporting the victims of the natural disaster do not function well. HIV lawsuits clarify that the compensation legislation's for the harmful effect of the medicine, neither.

How about the compensation for A-bomb survivors? During the Second World War, the United States of America uses the A-bomb against Japanese Imperialism twice in a year in Japan, on 6 August at Hiroshima and on 9 August at Nagasaki, in 1945. At Hiroshima, more than 200,000 people died instantly or acutely and at Nagasaki more than 70,000 people. The War Victim Relief Law of 1942, a temporary legislation until 4 October 1945, was the only measure to treat the survivors at Hiroshima and Nagasaki. After 4 October, all hospitals and institutions based on the War Victim Relief Law were closed and the survivors had to pay themselves for any treatment. No laws would take care of the survivors.

Even now more than 300,000 people suffer from the A-bomb related diseases. It is incredible that Japanese social security research has not paid enough attention to the economic and health condition of the A-bomb survivors.

In 1994 the Law pertaining to the Support of A-bomb (Hibakusha Engohou) is established in Japan. This article reviews the Support Law and it's issues.

### **1. Laws concerning Compensation for the damages by the war in Japan post war era**

During the Occupation period (1945–1951), there were no legislations of support and aid to the victims at front, not only the soldier and army civilian employee but also the ordinary people and A-bomb survivors.

Under the Occupation resume, 1945–1951, General Headquarter of the Occupation Force, GHQ., hates that Japanese Government would advantage to the soldier and quasi soldier in every phases and in 1945 with an Order No.68, it terminates and stops the effect of a part of the military loyal pension in the concerned laws. During this period, the needy or injured serviceman was covered with the public assistance with the means test, in the same way of the ordinary people. However, immediately after the San Francisco Peace Treaty 1952 which confirmed the independence of Japan, Government advantaged to the serviceman, i.e. the establishment of a law of aids to injured serviceman of 1952 and the restoration of the military loyal pension in 1953.

About a support law for A-bomb survivors, the Lucky Dragon V (Dai-go Fukuryuumaru) Incident that a US thermonuclear test in the Pacific Bikini atoll on 1 March 1954 inflicts radiation injuries on 23 Japanese fishermen, triggered the national movement to establish the legislation of the radiation injuries. In 1957, as a result of the nation wide

movement, the Law of Medical Care for A-bombs Survivors (Medical Care Law) was established.

On 7 December in 1963, in the Shimoda Case, Tokyo District Court described that the use of the A-bomb at Hiroshima and Nagasaki was illegal in respect of the international law and the Medical Care Law is not enough for the support and aids to A-bomb survivors. The Shimoda Case and the national movement resulted in other law, the Law on Special Measures for the A-bomb Survivors (Special Measure Law) in 1967.

In Japan there are no general laws for the compensation or protection for the victims of the war. Few laws are established only for the serviceman, the army civilian employees and their bereaved.

*1/1. Law for Relief of War Victims and Survivors 1952 (Senshyobyousha senbostusha Izokutou Engohou)*

This law aims to aid the serviceman, the army civilian employees and the bereaved in respect to the injury, wound, invalidity and death caused by public services. The aids in the law are considered based on "the spirits of the compensation by the State". The law provides some benefits; the invalidity pension and allowance, the survivors' pension and benefits, the condolence money. The invalidity pension and allowance, and the condolence money are not to given to the person who has offended the crime of the imprisonment. The right of the invalidity pension and allowance is inheritable.

*1/2. Law for Special Aid to the Wounded and Sick Retired Soldiers 1963 (Senshyobyosha Tokubetu Engohou)*

The aim of the law is to provide the medical care, etc., to the serviceman and the army civilian employees injured or wounded by public services concerning the war. The aim is based on "the spirits of the compensation by the State". Benefits and cares provided by the law are; medical care, allowance for the medical cares, funeral allowance, rehabilitation care, the supply of the equipment for the handicapped, the accommodation for the national sanatorium, and free ticket for railways.

*1/3. Military Loyal Pension (Onkyuh)*

Public Employees Loyal Pension Law 1932 was a law of pensions for public employees, soldier and quasi-soldier. After the San Francisco Peace Treaty 1952 it was restored although the General Headquarters of the Occupation Force had terminated the effect of the law.

The soldier and military civilian employee who has retired without any reasons for the qualification is given the normal loyal pension and their survivor could get the annual assistance. These benefits are the one of income-tested.

## 2. Compensation for A-bombs. (A-bombs) Victims and Survivors

### 2/1. Law of Medical Care for A-bombs Survivors (Medical Care Law) 1957

The aim of the law is to protect and promote the health of A-bombs survivor with the health and medical examination and medical care in consideration of the current special situation of the health of victims of Hiroshima and Nagasaki. The A-bombs survivor is given the "Health Management Note" by a prefectural governor after the recognition. Prefectural government must give a health examination for the Hibakusha who has the Note, once a year.

State shall give medical care for A-bombs survivor, under article 7 of the law. Art.7 says "the Minister for Health and Welfare provides, the necessary medical care to the Hibakusha who is under condition of necessary of medical care with disease or sick caused by A-bomb. In case of that the disease or sickness would not be caused by the radioactivity from the explosion of A-bomb, the State could give medical care only to the person whose ability of healing would be affected by the radioactivity came from the A-bomb."

The content of "medical care" is similar to other medical treatment in the social insurance schemes. An A-bomb survivor must gain the recognition from the Minister for Health and Welfare, that should prove his or her disease or sickness would be caused by A-bomb before he or she receives the medical care. In deciding the recognition, the Minister must consult with Medical Consulting Board of A-bombs.

### 2/2. Law on Special Measures for A-bomb Survivor 1967 (Special Measures Law) (Hibakusha Tokubestu Sochihou)

Law aims to achieve the welfare of the Hibakusha, who is damaged by the injury effect of A-bomb and is under special, condition even now, with providing of Special Allowances of Medical Cares, etc. The law provides some allowances; Special Allowance for Medical Care, Special Allowance, Microcerhaly Allowance, Health Management Allowance, Medical Allowance, Health Allowance, Care Attendance Allowance, Funeral Benefits. The Hibakusha, who would like to obtain these allowances, must get a recognition provided in article 7 of the Law of Medical Care for Atomic Bomb Survivor. Moreover, these allowances are the income-tested benefit except Health Management Allowance.

## 3. Case law

There are a few lawsuit concerning the A-bomb damage in Japan because of Japanese "conflict hate" society. Moreover some survivor withhold the self-assertion because of the existing discrimination and prejudice to the survivor of A-bomb.

### 3/1. Kuwahara Case

Mr. Kuwahara, an A-bomb victim at Hiroshima, files an application for the recognition that his sickness would be caused by the injury effect of A-bomb. He had to get the recognition provided in article 7 of the Medical Law as to get the Special Allowance provided article 3 of the Special Measure Law. However, the Minister for Health and

Welfare decides that his sickness did not come from the effect of A-bomb. Mr. Kuwahara makes a suit against the Minister because of Minister's "illegal" decision. On 19 April 1973, Hiroshima District Court delivered the decision against the plaintiff saying that Mr. Kuwahara's sickness is not caused by the injury effect of A-bomb, in the view point of normal and general medical opinion. The court says that the strict medical proof is not necessary about the causation between the injury effect of A-bomb and the existing sickness. It is enough to prove an appreciate probability that, by consulting the current medical development, the injury effect of A-bomb would cause an existing sickness in taking the situation of being bombed, the subsequent clinical history, health condition into consideration. On 16 May 1976, Hiroshima High Court delivered the same decision.

### *3/2. Ishida Case*

Mr. Ishida, an A-bomb victim at Hiroshima, files an application for the recognition of article 8 of the Medical Care Law that he is under the condition in which the medical treatment is necessary. The Minister for Health and Welfare rejects his application because at this stage, no medical cares could function healing and the cataract betterment. Mr. Ishida makes a law suit about the Minister's deny. On 27 July 1976, in Hiroshima District Court, the case was decided in favour of the plaintiff, Mr. Ishida.

Article 7 of the Medical Care Law provided that as to recognise the sickness that could be covered within the atomic laws, the sickness must be caused by the effect of A-bomb, i.e. "cause", and the person having such sickness is under condition of the necessity of medical treatment, i.e. "need to medical care". About "cause", the court says that it is enough to recognise that there is a doctor's examination proving that the sickness is came from the effect of A-bomb and the opinion is not unreasonable in the point of medical science. About "need to medical care", the court says that there would be the "need when no one could deny the possibility of the effect of cure.

The State abandoned the appeal of the case. Mr. Ishida's win was established.

### *3/3. Son Shin To Case*

Mr. Son Shin To, a Korean survivor of A-bomb at Hiroshima, came to Japan illegally as to undergo the medical care for A-bomb sickness. He was caught and sentenced to 10 months imprisonment as an illegal entrant. During the term of a sentence, his tuberculosis became worse and he makes an application for the Health Management Note which is required for medical care of A-bomb to a prefectural governor. The governor deny his application, because Mr. To could not have "residential relationship" that is necessary for the person to be covered under the Medical Care Law.

On 30 March 1974, Fukuoka District Court delivered that the law would not exclude the foreigner and the foreign survivor of A-bomb could obtain the Health Management Note. This decision was held also in Fukuoka High Court on 17 July 1975 and at the Supreme Court on 30 March 1978.

There has been a few discussion on what kind of the character the two Atomic Bomb laws have. In the Son Shin To Case, two opinions on this issue is asserted by Mr. To and the State. Mr. To insists that the Medical law is a law of the State's compensation for the war damages, in which the beneficiary needs not any residential condition in Japan. On the other hand, the State maintains that the law is one legislation of the social security, which bases on

the solidarity and mutual aid and in which the beneficiary must have the residential relation in Japan. The Supreme Court decides in the case that the Medical law is a complex of the law of compensation and social security. And it says that: "According to the compound character of the Medical Law, although it is general rule that the foreign beneficiary of a social security law must have a residential relationship in Japan, it is not always reasonable that this rule would apply to the beneficiary of the Medical Law."

#### *3/4. Mastutani Case*

Miss Mastutani, an A-bomb survivor at Nagasaki, is partially paralysed because of being attacked by flying roof tiles with a blast of A-bomb. She applied to the Minister for Health and Welfare for the recognition that her condition was caused by the injury effect of A-bomb. However he denies. She makes a suit.

On 2 May 1993, the Nagasaki District Court held that Miss Mastutani's condition was caused by the injury effect of A-bomb. The court says that no one could deny „cause” when there would be the possibility that the condition was came from the injury effect of the radioactivity from the A-bomb.

#### **4. The birth of the Law pertaining to the Support of A-bomb Survivors (the Support Law)**

Mr. Tomi'ich Murayama, the Prime Minister, in the era of the coalition government, the leader of Japan Social Democratic Party, has pointed out the establishment of the Support Law as one engrossment for assignment of 50 years of the post-war era.

Ever since the first proposal of the support bill for the A-bomb victims at the Diet in 1974, the agenda for the law had resulted in the discarded plan and the dropped bill again and again. In 1989 and 1992, too, the Support Law Bill which is based on the principle of the State compensation was passed at the House of Councillors with the joint proposal of six opposition parties including the Social Democratic Party. However, the Bill could not pass at the House of Representatives where the Liberal Democratic Party was the majority.

For many years, for the Social Democratic Party, and the organisation of the A-bomb survivors also, it is an earnest wish to establish the Support Law for the A-bomb Survivor based on the principle of the State Compensation and including an apology and repentant of the State, A-bomb victims' and their bereaved pension, an oath of renunciation of the war, etc. Prime Minister Murayama and the Social Democratic Party aimed at this goal but the real Support Law is a fruit of a compromise, to keep the coalition government, the liberal Democratic Party, the Social Democratic Party and New Party Sakigake.

The Liberal Democratic Party opposes to introduce the word of "State compensation" in the Bill. Because with such word the state must admit the State's responsibility for the war. For the Liberal Democratic Party, the war is a "Crusade". Moreover LDP. precautions itself against that Support Law would become the first step for the compensation for general victims at front, including these in outside Japan. About inside, LDP. accepts a discrimination between the victim concerning the military and the ordinary one. The former whose association makes a great political donation to LDP. is warmly received with loyal pension system.

New Party Sakigake approves the insertion of "State compensation" into the Law but asserts that the compensation in the Law should not extend to the compensation for general war victims.

SDP. insists that the law should declare "State compensation" and provide special condolences benefits which should be given to the bereaved of the instantaneous dead at the explosion of the A-bombs at Hiroshima and Nagasaki in 1945.

The Murayama Government was born on 23 June 1994. On 8 July, the project team for the support law for A-bomb victim composed by the SDP. and the former coalition parties had confirmed that the "State compensation" should be declared in the law. But on 21 July, the word of "State compensation" was changed to one of "State compensatory consideration". After all, on 28 August, "State compensation" was shelved. Prime Minister Murayama said that the point of "anti-nuclear" must be also imagined in respect of the support law for A-bomb victims.

Even in a series of the conference of the coalition parties, LDP. would like to settle with the existing laws. The Bill was agreed by the coalition parties in November 1994 is a result of compromise. Although the personal area of the benefits is extended to the instant dead person, the person who should be supplied must be the survivor and be oneself a victim of A-bomb at Hiroshima or Nagasaki. In this point an assertion of LDP. is achieved. "State compensation" is replaced by the word of "State responsibility".

After all the Bill is used for a political tactics as to keep the coalition government. The Law is established in 1994 without any hearing from the victims and survivors of A-bombs at Hiroshima and Nagasaki.

## **5. The Law pertaining the Support of A-bombs Survivors (Support Law)**

The Support Law unifies the Medical Law and the Special! Measure Law. Therefore all articles in these two laws are transferred to the new law except articles for the income test for the benefits which are abandoned in the new law.

Moreover a preamble, the special condolence benefits, the social services for the survivors of Atomic- Bombs, a peace project and the support for the research of the effect of the radioactivity of A-bombs on human are newly introduced.

### *5/1. Preamble*

In the preamble, the purpose of the law is defined. With word of "State responsibility", it is clarified that the shoulder of the social policy for the survivors of the A-bombs is the State. Moreover, the preamble says that these should be special treatment for a victim of the A-bomb, because the health damages from the radioactivity of the A-bomb is far different from other war damages. This part of the preamble avoids the extension of the principle of the compensation to general war victims.

### *5/2. Special Condolences Benefits*

The State should console the survivor of the A-bomb who meets a lot of hardship during the vacuum period of public and social policy for the A-bombs victims. A victim of the A-bomb at Hiroshima or Nagasaki, whose relative was died from the A-bomb before



1957 when the Special Measure Law was established, could acquire the Special Condolences Benefits on one's claim until 30 June 1997. The Benefit amounts to 100,000 Yen (about US\$. 833) with a government bonds payable within 2 years, in a lump sum. This system aims the benefits for the instant dead at Hiroshima and Nagasaki.

### *5/3. Social Services for the A-bombs Survivors.*

Consulting services, residential social welfare services, i.e., home help services, short stay services and the reception and accomodation for the nursing home for the A-bombs survivors are described in the law. Previously, these are done with the government's budget plan, not the law.

### *5/4. Care and Allowances without the income test.*

Under the old laws, most of the allowances involve the income test. Under the new unified law, the income test is abolished. However, the system for supply is not changed. The survivor who would like to obtain the Medical care under article 10, or the Special Medical Care Allowance under article 24, or the Special Allowance under article 25 of the law, must apply the recognition under article 11, which would be made by the Minister for Health and Welfare after the consultation with the Medical Board. The Board composes of less than 20 persons of the learning and experienced whom the Minister appoints with 2 year term, under article 4. The Special Medical Care Allowance is given to the recognised survivor under article 11; 135,400 Yen (about US\$. 1,128) per month. The Special Allowance is to the recognised survivor under article 11; 50,000 Yen (about US\$. 416) per month. The Microcephaly Allowance is for the patient of the microcephaly effected with the radioactivity of the A-bomb; 46,600 Yen (about US\$. 388) per month. The Health Management Allowance is for the survivor of the sickness with invalidity like haematogenous dyscreasia, the liver disorder; 33,300 Yen (about US\$. 277) per month.

The Health Allowance is for the survivor living within 2 km. from the centre of a blast of the A-bomb and her child in utero; 16,700 Yen (about US\$.139) per month. The Care Attendance Allowance is for the survivor with registered physical or mental handicap under the condition of necessity for care except those who is cared without any charge.

The important part of the table of contents of the Support Law is as follow:

	Preamble
Art.1 /	definition of the A-bomb Survivor (hibakusha) ( previously art.2 of Medical Law )
Art.2/	A-bomb Survivor's Health Management Note (pre. art. 3 Medical law) with prefectural government's recognition Chapter 2. Medical Board for the A-bomb survivors
Art.3/	Establishment and Power (pre. art.15 Medical Law)
Art.4/	Member (pre. art.16 Medical Law) - less than 20 persons of the learning and experienced, - Minister's appointment, - 2 year term.
	Chapter 3, Supports
Art.6/	General rule
Art.7/	Health examination (pre. art.4 Medical Law)
Art.10/	Medical care provided by the Minister for Health and Welfare (pre. art. 7 Medical Law)
Art.11 /	recognition (pre.art.8 Medical Law) - the Minister must consult with the Medical Board at the recognition.
Art.12/	designation of hospitals, etc. - the Minister appoints certain medical facilities for the medical care provided with article 10.
Art.24/	the Special Medical Care Allowance (pre.art.2, Special Measure Law)
Art.25/	Special Allowance (pre.art.2, Special Measure Law)
Art.26/	Microcephaly Allowance (pre. art.4-2, Special Measure Law)
Art.27/	Health Management Allowance (pre.art.5, Special Measure Law)
Art.28/	Health Allowance (pre.art.5-2, Special Measure Law)
Art.29/	Indexation (pre. art. 6-2, Special measure Law)
Art.31/	Care Attendance Allowance (pre. art.8, Special Measure Law)
Art.32/	Funeral benefits (pre. art.9-2, Special Measure Law)
Art.33/	Special Condolences Benefits
Art.37/	Consulting Services
Art.38/	Residential Social Welfare Services
Art.39/	Nursing Program
Art.40/	Research
Art.41/	Peace Project
Arts.42-43/	Finance

## **Final Remarks**

In the Support Law there are several problems which are already criticised under the old legislations. In this respect the new law makes no progress although the abolition of the income test and the establishment of the Special Condolences Benefits is regarded as improvement.

### *1. State's compensation*

It is important for confirming the State's responsibility for war to insert "State compensation" in the Law.

In the point of view of the income security which is an important part of the social security, it is necessary to establish certain benefits for the survivors of the A-bombs as "right" to regard it as a result based on "State's compensation". The difference between the social security and the compensation of war should be examined. Social security is a system for security or stabilisation of the ordinary life of the ordinary people. The compensation of the war has two functions; the security of the survivor's life and the apology for the survivor. Therefore, for example, it is unreasonable to set the condition for the Special Condolences Allowance that the beneficiary also must be the survivor of the A-bomb. Does the State need not apologise the orphan who had evacuated from Hiroshima or Nagasaki and lived apart from the parents? Does the State do not have any responsibility to his or her hardships during growing up?

Some survivors will not apply to the Special Condolences benefits for protesting against a political compromise and replacement of "State compensation" with "State responsibility" and against an administrative separation of the survivors.

Foreign survivor must file an application for the Special Condolences Benefits in Japan, not in the country where they now live, although they could petition it. Why they have to come to Japan with much more money than they could get? If the relieve and apology was "State responsibility", the State should come to the country where the survivor live.

### *2. Victim's and Survivor's Pension*

From point of the income security, the lack of the victim's and the survivor's pension is decisive. Most of the A-bomb survivors cannot earn enough money and cannot attain the base of the contributory pension because of their handicap for the work which results in the lack of the entitlement to the pension based on the employment. Therefore, there needs the A-bomb victim's and survivor's pension for the pure income security, not like existing Special Medical Care Allowance which is connected to the medical treatment.

### *3. Recognition under article 11 of the law*

The recognition under article 11 of the law is extremely important, because for the medical care and some allowances it is necessary condition to receive. In fact the lawsuits under old two laws have concerned on this system.

However, the success rate is remarkably low; for example in 1993, 0.3%. Moreover, the proceedings and minutes of the Board with which the Minister must consult at the

recognition is not open. Therefore the reason why a recognition is rejected is not clarified. A document of the result says just "the possibility that the applicant's sickness would be caused by the radioactivity of the A-bomb is denial".

#### 4. Care Attendance Allowance

Article 31 of the law describes that the person who is cared without any charge cannot receive the Care Attendance Allowance. What does it mean „care without any charge"? It means the care provided by the relatives. If so, the survivor who is cared by the most understandable person cannot obtain the Allowance. The Allowance should be provided to- the cared person in need regardless the kind of the carer.

Under article 43, section 2, a prefectural government must burden the two of ten cost for the Care Attendance Allowance although the support for the survivor is responsible to the State. The State should not thrust the cost upon the local government.

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