Compendium on Workmen's Compensation

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Chapter 6

Comparative Approaches to Work Injury Compensation in International Perspective*

INTRODUCTION

The programs of work injury compensation of several nations represent approaches that differ in important ways from ours and from each other. (As used in ch. 6, "work injury" includes occupational diseases as well as work-related injuries.) The comments below cover various aspects of the systems currently in operation in the United Kingdom, the German Federal Republic, the Union of Soviet Socialist Republics, the Netherlands, Japan, India, and Israel.

Two last sections contain selective reference to new legislation proposed but, at time of writing not yet enacted, in New Zealand and to the most recent international standard-setting instruments on the subject, International Labor Convention No. 121 concerning benefits in the case of industrial accidents and occupational diseases, adopted in 1964, and the corresponding international labor recommendation of the same number, title, and date.

This study does not purport to give a balanced or well-rounded description of any of these programs. It attempts rather to select and dwell on certain aspects which are distinctive of, or characteristic for, a given approach. Program philosophies and broad concepts are emphasized in preference to detail and technical minutiae, except as details are deemed interesting in their own right.

Background

At the outset, it is well to recall the differing patterns of the two groundbreaking historic enactments, the German law of 1884 (followed in short order by France, Austria and other continental countries) and the British law of 1897, subsequently emulated around the world. With various modifications, both survive to the present.

Bismarck's commitment to social insurance, i.e., the harnessing of the insurance method to social policy purposes, already evident in the German health insurance program of 1883, was equally apparent from the workers' accident insurance scheme enacted the following year. This was conceived for all practical purposes as an exclusive remedy in full replacement of the employer's civil liability. Only upon proof in criminal proceedings of employer intent or grave neglect could the injured worker or his surviving dependent obtain further compensation. Its amount would be limited to the difference whereby the damage sustained was adjudged to exceed the statutory benefit.[1]

Under the original British legislation, in contrast to Bismarck's approach, the civil liability of

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the employer continued. Resort to court action remained one possible method by which the worker could seek compensation for the damage sustained on grounds of his employer's or the employer's agent's "personal negligence or wilful act." [2] The worker had to choose between the two remedies. In choosing one, he forfeited resort to the other; albeit that if it turned out in the court proceedings that such action could not be sustained, the judge, in his sole discretion, at the plaintiff's request, could assess compensation under the terms of the Workman's Compensation Act. However, any benefit amount thus determined was subject to reduction by all the costs that had accrued due to the action instituted by the injured worker or by his surviving dependent(s). The Workmen's Compensation Act itself merely cast into statutory form the principle of strict employer liability regardless of fault.[3] This was brought out quite forcefully by the Government spokesman who, in introducing the Workmen's Compensation Bill in Parliament, declared it to rest on the very principle that characterized the abortive Employers' Liability Bill of 1893; i.e., that, "when a person, on his own responsibility and for his own profit, sets in motion agencies which create risks for others, he ought to be civilly responsible for the consequences of what he does." Accordingly, the purport of the Workmen's Compensation Bill, pursuant to its opening clause, was that "If in any employment to which this act applied personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this act."

Provisions for insurance could be built into this pattern to help employers with the risk-bearing and lend greater assurance to the protection of workers and their dependents. This was done in many but not all programs modeled after this act.

Variants and combinations of both patterns have evolved. The advent of comprehensive social security systems has had an important influence. To identify in broad terms prevailing modes and discernible trends may serve to clarify the structures that prevail.

Prevailing Patterns of Work Injury Compensation

The historical difference in approaches to the indemnification of the victims of work accidents continues to be recognizable in today's employment injury compensation programs.

Typologies and classifications of manmade institutions usually allow some discretion. As a result, different orderings are possible in classifying work-injury compensation schemes.[4] The schematization below uses the premise that both historical solutions referred to above, as well as nearly all current national programs of work-injury compensation, are based on the principle of "occupational risk," rather than the earlier "fault" or tort principle which it displaced, at least for most cases. Thus, the employer's (or, for that matter, the worker's) fault or negligence are relevant only in unusual circumstances (notably in cases of criminal conduct) and hence of secondary importance.[5] The distinguishing characteristics of different programs, therefore, turn on the mode of execution; i.e., the way the occupational-risk principle is applied.

In this respect, the abiding difference between the latter day versions of the British and the German archetypes remains the focus of liability. Who bears responsibility for furnishing the benefits that the law provides? Under the original British (i.e., the 1897, not the present) scheme, it was the employer, whereas, under the German archetype, the legal responsibility had become collectivized. Under the collectivized approach, liability is transferred to government, which may meet it directly or through some supervised chartered administrative authority.

The employer-liability model continues to be used in a variety of long-established forms of workmen's compensation ranging from self-insurance or posting of collateral to elective insurance with a private or public insurer.

Compulsory insurance with a private or public insurer, except for the self-insurance and security-deposit options which frequently accompany it, may be considered tantamount to the collectivization of the work-injury risk. More typically, however, the collective liability model is that of social insurance operated or directed by government. In addition, other organizational forms have come into use, such as general health service programs.

Of the seven national work-injury compensation systems included in this study, only India maintains a workmen's compensation program based on the original British model and only in those regions where its social insurance legislation has not yet been applied. Japan's system is for all practical purposes a social insurance program operating through compulsory insurance with the Government, but with subsidiary employer liability features (pursuant to its labor standards law) to plug any gaps in protection under its workers' accident compensation insurance program. Collectivization of the employment injury risk through social insurance, with or without use of other modes of protection, marks all the other national programs.

Emerging Trends

In recent decades, changing social conditions have wrought changes in social thought. On the one hand, personal injury and death due to work-connected causes no longer loom as prominently as they did, owing partly to the decline of their incidence and partly to the rise in the accident rates from other causes, notably motor traffic.[6] On the other hand, the spread of a comprehensive social security umbrella has come to provide a measure of protection in most if not all common contingencies.

As a result, questions have been raised about two important premises that formed part of both the original employer liability-workmen's compensation school of thought and the Bismarckian social insurance approach. One was the conviction that persons employed (and hence working under orders) and their dependents were deserving of preferential treatment for work-related injuries, compared with those not under orders (the self-employed) or even employees who found themselves in similar predicaments from nonwork connected causes.[7] The other was the belief that work connection, if properly defined, could be established beyond reasonable doubt. A rigorous and narrow definition, such as the phrase "personal injury by accident arising out of and in the course of the employment" was thought to single out work injuries from all others.[8] (During an earlier phase of the parliamentary debates, Mr. Chamberlain had referred much more generally to "all injuries sustained in the ordinary course of * * * employment.")

Today, it seems neither compelling or self-evident that work injuries can be or should be deserving of special treatment. Increasingly the public as well as students and makers of social policy are focusing on the effects, rather than the causes, of accidents, illnesses, or the premature death of the family provider. Viewed in this perspective, the need for compensation or protection for all injuries, regardless of origin, has come to command at least as high a priority, certainly insofar as one can judge from recent social legislation in advanced countries, as the extension of the separate and preferential coverage of the work-connected risks.[9]

Moreover, the task of distinguishing between work-connected and non-work-connected cases has proved frustrating, especially with regard to occupational diseases. This problem has led to a policy dilemma, much in the nature of Hobson's choice. A restrictive definition of work-injury coverage and of work-connection can facilitate the distinction but fails to answer to present social needs. Inclusive coverage and scope, on the other hand, make differentiation difficult and often uncertain and inequitable. Among the reasons are the complexities encountered in disentangling the etiology of injuries sustained, the frequency of delayed morbidity syndromes, possible work-connected aggravations of non-work-connected conditions, and vice versa.

Several countries have responded to this challenge in one or more of the following ways:

(1) by extending work-injury coverage to categories of persons other than employees (e.g., German Federal Republic, Israel, U.S.S.R.);

(2) through broad definition of work-connection, most importantly by including road accidents on the way to and from work (the same three and the Netherlands, as well as many others not included in this study);

(3) not principally aimed at the work-injury compensation program but frequently affecting the mode of its benefit delivery, the extension of general health, disability and survivors' benefit programs to include all employees or all members

of the labor force or even the entire population. (The best known programs have extended general and virtually unconditional entitlement to free or prepaid medical care, either through comprehensive health insurance or through a national health service. These programs readily suggested delivery of medical care, hospitalization, and also of short-term cash benefits for employment-related injury. Precedent for this dovetailing practice goes back to the original Bismarckian scheme under which cash compensation for the work-disabling condition started with the 14th week, while the Health Insurance program took care of the first 13 weeks. Thus, in the United Kingdom and the U.S.S.R., victims of work accidents and occupational diseases receive virtually all their medical and hospital care through the National Health Service.)

(4) utilization of other parts of a comprehensive social security system, such as the long-term disability and survivorship benefit components, to deliver employment injury benefits. (Pursuing this course, but carrying the process of integration one step further, two countries included in this study, Netherlands and U.S.S.R., have done away with a separate employment injury branch altogether. In the U.S.S.R., the distinction between work-connected and other cases continues to be observed. First, because a determination of work-connection remains necessary for the waiver of eligibility conditions in work-connected cases wherever such conditions continue to exist in other cases, as they do mainly with regard to long-term benefits. Second, because work injuries and certain others deemed their equivalent command higher cash benefits.)

(5) In the Netherlands, by way of contrasts, all distinctions between benefits due in work-connection and in non-work connected cases have been terminated. Here the occupational risk principle has given way to what has been termed the principle of social risk. In some other countries, a merely partial absorption of work injury cases under a general program has taken place, i.e., of accidents only. An ambitious consolidation of this partial type with sundry innovative features is currently under consideration in New Zealand.

While the more or less self-contained workmen's compensation programs based on the employer liability concept have been losing ground to collectivized compensation schemes more or less integrated into comprehensive national social security systems, direct employer liability to pay or supply certain benefits has been newly revived in several countries for selected purposes. These comprise statutory benefit supplementation, as in the German Federal Republic, and sanctions against management in case of work accidents due to neglect of safety measures, as in the Soviet Union. Also new and different obligations have been imposed on employers, especially in these two countries and in Great Britain, in connection with a renewed strong emphasis on accident prevention and on the rehabilitation and reemployement of injured workers.

THE UNITED KINGDOM SYSTEM OF INDUSTRIAL INJURIES INSURANCE

Work Injury Compensation Within the National Social Security System

William Beveridge, the architect of Britain's postwar social security scheme, agonized over the place of work injury benefits within that scheme. He believed that what was needed was "not a special arrangement of the industrially disabled, but rather a comprehensive scheme covering all casualties, however caused." [10]

On balance, three arguments to the contrary caused him to recommend special provisions and in fact a separate branch of social insurance to apply to work injury cases. The first was an extension of the principle of "danger money" in the form of higher wages payable in especially hazardous employments. If such a bonus was justified with reference to the wage structure in general, it seemed to Beveridge to be warranted with regard to compensation in the common contingencies as well. Since he envisioned and proposed a

general social insurance program for these common contingencies that was to provide flat benefits geared to meeting presumptive needs at mere subsistence levels, he judged that work-connected cases deserved better. His second consideration, referred to earlier, was that "a man disabled during the course of his employment had been disabled while working unde: orders" which was "not true generally of other accidents or of sickness." [11] Third, Beveridge sought consistency in the application of the original common law principle of tort liability. He perceived an injustice in making an individual employer liable for results other than those of actions for which he is truly responsible "morally and in fact, not simply by virtue of some principle of legal liability." [12] Such strict adherence to individual employer liability for fault seemed to him practical but only if, at the same time, "special provision is made for the results of accident and disease irrespective of negligence." [13]

In light of these considerations, Beveridge recommended "provision for industrial accident and disease in a unified plan for social security . . . combined with discriminating provision for the results of industrial accident and disease where these lead to death or prolonged disability." [14]

In line with Beveridge's recommendations, a separate National Insurance (Industrial Injuries) Act in 1946 superseded the several Workmen's Compensation Acts and Amendments dating variously from 1897 to 1945. However, is was conceived of as an integral part of the newly created comprehensive national insurance legislation. This, in turn, constituted the main line of defense against want in the multiphasic social security fabric then being initiated pursuant to the recommendations of the Beveridge report of 1942, as modified by a white paper of 1944. A National Health Service, a family allowance scheme, and a program of national assistance constituted the other components.

Within this broader framework, industrial injuries insurance became "a branch of the general system [to be] applied as a public or social service rather than regarded [as workmen's compensation had been] as an obligation of the employee's immediate employer." [15] Although the new law put a definite end to that formely in effect, with certain necessary transitional and carryover provisions, it was not intended to replace other available protection, notably that of common law. Rather, it was "intended to function alongside and be complementary to the remedies available at common law and for this purpose it is provided that in ascertaining damages payable for loss of earnings as a result of personal injuries in actions at law, account shall be taken of a portion of the benefits payable under the act." [16]

Administrative and Quasi-Judicial Implementation

Within the framework of the industrial injuries insurance program proper, i.e., short of resort to action under common law, procedures including appeals are from start to finish administrative or quasi-judicial in character in the hands of the statutory authorities. In first instance this means the insurance officers who are regular administrative personnel of the Ministry of Health and Social Security wearing a second hat, frequently on a part-time basis, in their capacity as claims adjudicators. In this capacity, they enjoy immunity from supervisory controls to which they are otherwise subject; the Minister likewise needs not answer to Parliament for the insurance officers' or higher statutory authorities' decisions. While several regional officers and one chief extend guidance to local insurance officers, appeals from the latter's initial decisions lie to tripartite local appeal tribunals, likewise government-appointed. In medical and disability matters, adjudication on both levels is performed by panels staffed with physicians. The last and, for all practical purposes, final appeal authority is the Commissioner, except in medical matters and special questions decided by the Minister which become final in second instance unless they involve points of law.

Only on points of law and application for certiorari may the high court review the Commissioner's decision and then only to quash it, not to substitute its own. Coupled with the fact that Commissioner's decisions are binding upon statutory officers at all levels and in effect constitute case law, his office shares some of the attributes of a judge in a court of law. Nevertheless, the fact remains that the interpretaion and application of the industrial injuries insurance statute is entirely divorced from the courts of law and rests exclusively within the jurisdiction of civil servants and other appointed officials.[17]

Comprehensive Coverage of Employed Persons

Under the industrial injuries scheme, all employment in Great Britain under a contract of service or apprenticeship is insurable. The fact of such employment rather than receipt of a wage or payment of contributions establishes a person's coverage. Certain service outside of Great Britain, e.g., in Northern Ireland or seamen on British ships, is covered as are certain de facto employees not technically under a contract of service, such as taxi drivers and certain pilots operating automobiles or ships—other than their own—under bailment contracts and share-fishermen. This is the farthest that coverage has been extended in the direction of the self-employed. On the other hand, categories of employment excluded from coverage comprise casual work not in line with employer's business, most family employment, and certain public employment otherwise covered, e.g., Armed Forces.

To have a valid claim for benefit, the victim must have suffered "personal injury by accident arising out of and in the course of employment". However, in the absence of proof to the contrary, an accident that occurred in "the course of" is deemed to have arisen also "out of" the employment. Commuting accidents, from and to work, are not work accidents unless the vehicle used was not part of public transportation and was provided by or on behalf of the employer and with his consent.

In the event of occupational disease, a claim for benefit, to be valid, must meet several conditions. The first is that the disabling syndrome derive from a prescribed disease, i.e., one contained in a schedule appended to the law. Additions to this list of prescribed diseases can be, and are, made from time to time. Unless the sickness developed as a result of an accident, any condition not so listed will give rise, if work-disabling, only to a sickness benefit under the general national insurance scheme. Secondly, the diseased person must have been in insurable employment and must have engaged in the type of occupation in which such a disease is known to arise. Such occupations, likewise, are listed in the schedule appended to the act. A third condition is that the disease must be due to work done in insurable employment after 1948, when the act took effect.

Work-connection of occupational diseases is thus established on a presumptive and, at any given time, exhaustive basis by scheduling the disease and listing certain types of work that are known to give rise to it.

However, the list is an open one, i.e., extensions are possible by administrative action "if the minister is satisfied that

(1) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and

(2) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty." (Part IV of the National Industrial Injuries Act of 1946).

Employment of a person diagnosed as suffering from the prescribed disease in jobs of these types within certain critical periods normally completes the proof of work-connection. Separate but comparable rules apply to silicosis, asbestosis, and similar conditions, "farmer's lung" disease, and, most recently, brucellosis.

Conceptual and Substantive Program Characteristics

Perhaps the single most distinctive feature of the British approach to the employment injury problem is the way in which the damage or impairment due to a work accident or occupational disease is conceptualized and the structure of benefits rationalized by the various objectives, primary and ancillary, that each is to serve.

Impairment of integrity of body and mind, not of earning power, as measure of disablement.—Central to the whole scheme is the concept of "disablement" as "loss of physical or mental faculty," meaning any impairment, assessed at 1 percent or more, of the power to enjoy the life of a normal healthy person of the accident victim's age and sex. This determination is not at all tied to the injured person's earning power before or after the accident. A disablement can be found to exist even if preaccident employment and earnings remain unaffected or, after an interruption, are resumed. It may consist merely in serious disfigure-

ment even though this causes no bodily handicap. The disablement benefit resulting from this determination by a single physician or a medical board, likewise is and remains payable without regard to employment and earnings. Assessment of the degree of disablment may be a provisional one if the medical outlook is uncertain or may be "final" for a stated period or for the accident victim's life. Regardless of this distinction, reassessment is possible in the case of unforeseen aggravation of the victim's physical or mental condition provided it was rated as more than 10 percent disabling.

The disability rating procedure for accidental injuries is simplified by a schedule that lists certain disability assessments in the event of specified physical losses. This does not preclude equal findings on the basis of nonscheduled conditions. The disablement benefit takes the form of a weekly pension at a uniform flat rate. Minors draw less until they come of age. The pension amount is reduced proportionately for disablements that are rated less than 100 percent but no less than 20 percent. For disabilities from 1 to 19 percent of total, the pension is converted to a one-time lump-sum benefit except for pneumoconiosis or byssinosis.

Compensation for loss of work income and supplementary cash benefits in respect of other needs and conditions.—The injured workers' capacity for gainful employment and certain other aspects of his condition deemed relevant in determining his total entitlement to monetary benefits are considered apart from the disability determination proper.

First and usually long before determination of the degree of long-term or permanent disability, workers disabled by job-related events, are paid a fixed weekly sum, designated as "injury benefit," payable for up to 26 weeks, unless incapacity for work ends sooner, either from day of accident or from the fourth day on if disability is less than 12 days. This represents the principal cash payment pending adjudication of disability. It varies only between adults and minors.

Two supplementary benefits may augment it: (1) flat-rate weekly allowances for each dependent varying in amount as between adults and children and between first or only, second and third (and subsequent) children; (2) an earnings-related supplement payable, as with sickness benefits, under the general scheme.

The claim for injury benefit needs to be supported by submittal of a medical certificate attesting to worker's incapacity for work and application for declaration (based on accident report) that the injury was occupational. If accident or disease giving rise to incapacity is ruled not to be occupational, the worker's claim is treated and processed as a claim for sickness benefit under the general scheme.

If disablement remains at expiration of injury benefit, and sometimes before then, the aforementioned disablement benefit takes its place. It may be augmented, subject to a combined maximum, by one or more supplementary benefits.

(1) *Special hardship allowance.*—Payable if as a result of the employment inquiry the worker is unable to follow his regular occupation or do work of an equivalent standard, i.e., an approximately comparable rate of pay but taking account of advancement prospects.

(2) *Unemployability supplement.*—If the disabled person's condition is likely to be permanent and precludes work of any kind, he is eligible for this supplement even if he had earnings up to a stated maximum amount per year. (This allowance is noncompatible, however, with the foregoing allowance and with certain general social security and military service pension benefits. Also it offsets in part any training allowance received by the worker from the department of employment and productivity.)

(3) *Constant attendance allowance.*—Payable for help to attend a 100-percent disabled worker with his personal needs every day and over a prolonged period at rates varying with degree of (near) helplessness.

(4) *Exceptionally severe disablement allowance.*—Payable to an exceptionally disabled person entitled to constant attendance allowance (or who would be so entitled except for the fact that he is currently hospitalized.) It is compatible with all other industrial injury benefits.

(5) *Hospital treatment allowance.*—Payable to hospitalized disabled persons drawing disablement benefits at less than maximum rate and bringing benefit up to full disablement-pension rate.

(6) *Age increase.*—Pensioners aged 80 or over receive a boost in their benefit of 25 percent.

(7) *Dependents' allowances.*—These are payable jointly with disablement pension only when

injured worker is hospitalized for treatment or is in receipt of unemployability supplement.

As stated above, neither the initial injury benefit nor the subsequent disablement benefit, pension, or gratuity is earnings-related. Both are paid at flat rates, albeit higher rates than apply to benefits payable in nonwork connected cases. However, earnings-related benefits that have been superimposed in the past 10 years upon the original flat-rate benefits under the Beveridge plan are now paid cumulatively to those fulfilling the qualifying conditions along with the flat-rate benefits due under either the general national insurance or the industrial injuries insurance scheme.

Since it is not related to earning capacity, the disablement benefit continues whether or not the injured person is capable of work and is actually working. In event of continuing incapacity for work, sickness benefit under the general scheme also may be paid. The same provisions apply to the general invalidity and retirement pensions.

Restoration of health and working capacity.—With regard to medical and related care, integration of the work-connected cases with all the others under its widely inclusive provisions makes the National Health Service the principal resort for physical rehabilitation. Under waiver, in work-connected cases, it covers all fees for prescriptions, eye glasses, hearing aids, prostheses, and other benefits-in-kind that are otherwise payable by the insured seeking these benefits. Vocational rehabilitation, preparation for reemployment, and actual placement likewise take place under ongoing general programs of the several departments concerned.

New channels and opportunities for retraining of employment-injury victims may be opening up under the Industrial Training Act of 1964, aimed primarily at providing job skills for workers of all types, from common labor to managerial. It is administered through Government-appointed industrywide Industrial Training Boards composed of employer and worker representatives, with representatives of education and Government.

The Boards impose a levy on all employers in the industry to finance training and retraining, to pay grants to employers undertaking to provide training and to refund costs to employers who have training programs. In the initial years, however, the practice of the Boards appears to have been to concentrate on younger workers and some needed older retrainees but to leave the care for disabled, displaced older workers and other special groups to established government agencies and programs: Government Training Centers, Industrial Rehabilitation Units, and the Industrial Training Service under the Department for Employment and Productivity, the former Ministry of Labor.[18] Recipients of industrial injury benefits may be required to take vocational training and industrial rehabilitation courses under these and other national programs.

With regard to reemployment of disabled work-injury victims as well of other disabled persons, especially war veterans, the United Kingdom, like several continental European countries uses the quota and reserved-employment techniques. Private employers of 20 or more persons are required, under the Disabled Persons [Employment] Act of 1944, to draw 3 percent of their workers from a disabled persons register. Registration on the part of the disabled workers is voluntary. Moreover, certain types of jobs, elevator operators and open parking lot attendants, have been earmarked for disabled persons.[19]

The pattern of death benefits.—The pattern of benefits payable upon work-related death exhibits few special traits. Among these, though not uncommon, is a uniform transitional widow's benefit for an initial period after the worker's death at a higher rate than thereafter. A permanent pension is paid in flat amounts with increments to a widow aged 50 or over, or with children of the deceased in her care or living with her, or expecting a child by the deceased, or permanently unable to support herself. The widow is eligible under certain circumstances to a supplementary allowance, at times an earnings-related supplement, and, when in need, a supplementary pension. The two last benefits are under general programs.

Also eligible for benefits are children of the deceased if under school-leaving age, or if above while attending school or college, or if apprenticed or disabled for work.

Widowers, parents, and other categories of relatives are eligible for pension benefit if they had been wholly or mainly dependent on the deceased for support; otherwise they may receive lump sums only.

Financial Aspects

Industrial injuries benefits are financed from flat-rate contributions by employers and employees, as are the general benefit programs, and subsidized by the Government. Industrial injuries benefits to living work-accident and occupational-disease victims are tax-free; those payable to their survivors may be subject to taxation.

WORK-ACCIDENT INSURANCE IN THE GERMAN FEDERAL REPUBLIC

From Workers' to Work-Accident Insurance

Based on nearly 80 years of experience with the Bismarckian workers' accident insurance law, as amended, a general overhaul and reform of the German Federal Republic's program was undertaken following extensive reforms in the general social security programs. The new law took effect in 1963.[20]

This legislation brought relatively little in the way of structural reform but expressed a pronounced shift in priorities. These are reflected in the design and techniques built into the amended scheme, such as the emphasis on rehabilitation and the adoption of a dynamic-stability concept regarding benefit revaluation, in emulation of the general pension reform of 1957.[21]

Aside from these new emphases, perhaps the most impressive single aspect, to which German experts advert frequently, and with gratification, is the tranformation of what started out as a fairly limited workers' protective scheme into a comprehensive program of protection of people at work.

German writers refer to this as the evolution of their scheme from a workers' accident insurance to a work-accident insurance program.

Coverage and Scope: New Frontiers

Compulsory coverage of work-injury insurance has been extended to all persons working under a contract of work, service, or instruction, regardless of the level of remuneration, and also to homeworkers, various intermediaries (e.g. crew leaders), spouses, and any other persons active in the enterprise, artists and other performers under any contractual relationship, as well as unemployed persons duly registered with employment exchanges and available for employment. Also with compulsory coverage are all farm operators, those operating small craft and commercial businesses, those in coastal navigation and fishing, as well as, in all these cases, the spouse if actively engaged in the business.

The scheme further covers on a compulsory basis any persons active in the public interest, as in the domains of health and veterinary matters, welfare work, first-aid and air-defense crews, lifesavers, and persons lending assistance to a public official in the performance of an act of duty such as the hot pursuit and arrest of a criminal suspect, as well as those coming to the rescue of persons who are victims of criminal assault, blood and tissue donors, and any workers required to undergo medical examinations or treatment under labor-protective or accident-preventive laws and regulations.

Compulsorily covered, too, are persons rendering public service as honorary functionaries of governmental or public entities, teachers, and witnesses cited before a court or a public prosecutor, persons taking vocational training, those who in self-help projects help clear the ground for communal endeavors, such as publicly subsidized residential housing, and finally prisoners. In addition, the several carriers through their bylaws may extend compulsory coverage to self-employed persons and to their spouse in lines not covered by law.

If, all these broad coverage provisions notwithstanding, a work injury victim turns out not to fall under any of the above categories he will be treated, nevertheless, as having been in insured employment if he performed work such as is performed by persons in any of the covered types of employment or self-employment.

Specifically exempt from coverage are public officials, who have comparable protection under civil service rules, and certain other persons who enjoy protection under other Federal legislation; members of religious orders whose life-long economic security needs are provided for; self-employed physicians, dentists, and pharmacists; and relatives and in-laws of a head of household who do unpaid work in his household, unless this be an agricultural household in which case these persons are covered. However, persons self-employed in a capacity other than head of household and not compulsorily covered may obtain

coverage voluntarily for themselves and for their spouse if the latter is active in the business.

The scope of protection for those covered comprises the usual benefits in kind and cash in the event of work-related impairment. To be regarded as work-connected, an injury must be a sudden bodily trauma from external causes connected with an insured activity.

Injuries en route to or from work are deemed to be work related. This extended definition of the risk is now the rule rather than the exception in continental Europe. Usually it covers accidents suffered on the normal commuting route from and to the worker's home, on the direct round trip to the luncheon place, visits to the doctor or clinic for required check-ups or treatment, and, in the case of West Germany, also a visit to the bank each payday.

Occupational diseases, enumerated in a statutory list, are those that are brought on in the course of activities listed in conjunction therewith. However, diseases not so listed may be treated as occupational provided current medical opinion considers that they meet the prerequisites for listing.

Actions by the injured worker in contravention of establishment work rules or negligence on his part do not jeopardize his entitlement to benefit. Only if the worker intentionally caused the accident does he forfeit his rights to compensation.

Subsidiary liability of employers and fellow-workers.—If the accident was caused by, and with the intent of, either the employer or a fellow-worker, the victim may sue for damages in excess of the benefits due him under the work-accident insurance law. In such cases, the employer or fellow worker is liable vis-a-vis the insurance carrier for the cost of all benefits due because of an accident or disease caused by him intentionally or by his gross negligence.

The Benefits

Second only to prevention, restoration of working and earning capacity takes precedence over monetary compensation.

Services and other benefits in kind.—Conscious emphasis has been placed on safety measures and controls to promote prevention and reduce accident rates. A major portion of the law is devoted to these. Among them is the mandatory placement of safety officers with emergency powers to be used in cases of acute danger of industrial accidents in all major enterprises; stepped up research into the causes of accidents and public reporting; fines for establishments guilty of intentional or grossly negligent safety violations; and experience rating of employer contributions (see below). In the recasting and reenactment of the third book of the former Reich's insurance code, next to prevention, prime attention was given first aid, speedy and comprehensive medical care, and rehabilitation.

Medical and all forms of ancillary care are provided for the declared purposes of seeking: (*a*) To eliminate by all proper means any impairment of health, bodily functioning, or earning capacity and (*b*) to prevent any deterioration of the injured worker's condition. The aims are to be accomplished directly and completely with a view to the victim's reintegration into the economy. All necessary care is available from the day of the accident and for as long as: (1) An improvement in the victim's condition is to be expected, or (2) an increase in earning capacity appears attainable, or (3) special measures are necessary: (*a*) To prevent deterioration in the patient's condition, or (*b*) to relieve bodily distress.

In spite of the program's emphasis on vocational rehabilitation and economic reintegration of the victim, medical and allied care and related services are available even if there has not ensued any reduction in earning capacity.

The various services and other benefits-in-kind comprise, in addition to medical, hospital, and outpatient treatment, the furnishing of drugs and other medication, prostheses, artificial body parts, orthopedic appliances, seeing-eye dogs, wheelchairs, physiotherapy, the provision of nurses or attendants where needed or a nursing allowance in lieu of service, and various types of institutions. Vocational and other training for gainful employment either in the victim's former line of work or in a new equivalent occupation is buttressed by maintenance benefits to the worker and his family (see below).

Monetary benefits to the living.— Pending the foregoing efforts, the worker is entitled to injury money during any period in which he loses his normal work income because of the accident. The amount of this benefit is determined in the first instance by the rules governing sick pay under

health insurance but may exceed it when regular earnings, during the last year before the accident, approach the higher earnings cutoff that applies to work-injury compensation. To avoid hardship, nursing allowances and maintenance benefits for worker and family are added as and where indicated, e.g., during extended medical rehabilitation, or during vocational retraining with or without institutionalization, and may continue along with payment of a pension (see below).

If restoration of work capacity and reintegration into gainful employment has not been achieved or is only partial, the worker is eligible for a pension, provided the earnings impairment remaining is 20 percent or more.

The guiding principle with reference to disability pensions or equivalent monetary benefits is flexibility. This applies, first of all, to the timing of the pension onset. Injured workers who never become entirely disabled are eligible for a pension from the day following the accident. Otherwise eligiblity starts with the termination of work disablement but never later than the 79th week after the accident.

The principle carries over into adjudication of pension amounts. A full-basic disability pension, payable for total loss of earning capacity, amounts to two-thirds of the victim's earnings during the year prior to the accident, subject to statutory minimum and maximum limits. Carriers may raise the maximum limit above that stipulated in the law. Pensions for lesser degrees of disablement are proportionately reduced.

Recipients of a basic pension amounting to half or more of the full-pension rate are eligible to receive increments: (*a*) In respect of dependent children up to age 18 or 25 if in school, or beyond 25 if schooling or training delayed by military service and for work-disabled children; and (*b*) if the pensioner is in fact disabled for any kind of work and is ineligible for a pension under the general pension insurance scheme.

Also the pension for less than full disability may be increased temporarily by injury benefits that become payable anew whenever delayed consequences of the accident cause a recurrence of incapacity for work.

Considerable flexibility permits tailoring cash benefits to special situations: e.g., partial disability pensioners, notably those afflicted with an occupational disease, for whom the continuation of a particular type of work is medically contraindicated are paid a one-time transitional benefit equivalent to half-a-year's full pension or a recurrent transitional pension that is payable cumulatively with the disability pension if, and as long as, the worker agrees to give up the, for him, dangerous occupation and, as a result, experiences a reduction in earnings or other material disadvantage: e.g., commuting expenses, increased maintenance costs.

Similarly, there is appreciable leeway for partial, total, temporary, or permanent conversion of pension benefits into lump sums when the worker's interest, especially his earnings prospects, are deemed to warrant that from of compensation.

Generally, recurrent payments for limited periods and lifelong pensions for disabilities if stabilized below 30 percent can be converted to a one-time lump-sum payment. Conversion of other pensions for a 5-year period is possible when the pensioner permanently leaves for or normally lives abroad, or if such conversion will foreseeably establish or fortify a source of income: e.g., an independent business for the pensioner. After 5 years, the pension resumes. A 10-year conversion of one-half of the basic pension, but none of the child increments, is possible in all other cases for the purpose of establishing or extending home-ownership and for other selected purposes.

A last but not least important feature of pension flexibility is the incorporation into the employment injury scheme of what in Germany is frequently referred to as pension dynamics, i.e., the quasi-automatic revaluation of pensions currently payable to significant changes in the general level of wages and salaries, a fairly common feature of continental European social security programs.[22]

Survivors' benefits.—Aside from lump-sum removal and burial benefits, pension benefits are payable to survivors in the usual categories at varying rates (30–40 percent of the deceased worker's earnings to the widow, 20–30 percent for each child) up to a maximum of 80 percent of the deceased person's annual earnings. These are convertible in entirety for up to 10 years' duration. In the event of remarriage, the widow is paid a one-time benefit in lieu of further pensions amounting to the fivefold annual pension amount. Survivors' pensions, too, are subject to quasi-automatic revaluation.

Organization, Procedures, Financing

The 1963 reforms did not alter the long established structure of employment injury insurance in Germany, composed of a number of autonomous and fairly independent insurers which implement in respect of their own membership the law as modified by their own bylaws with regard to coverage extension, additional benefits, etc. The insurers are responsible also for the financing of their part of the total cost. They conform to diverse organizational principles, based on nearly 100 industrial, trade or business, industrial-geographic, separate agricultural-geographic, regional, community, occupational, regional, and Federal Government (monopoly enterprise) employer associations, all endowed with corporate status under law and all administered by elected representatives of employers and employees. All operate under government supervision.

These several insurers belong to a national federation, instructed by the 1963 reform to explore and submit to the Ministry proposals for the consolidation or ultimate unification of its member associations. Pending reorganization, insurers have been encouraged to pool their financial liabilities. At least one such action was brought by government intervention to spread the unduly heavy financial burden upon mining enterprises among a wider circle of industrial insurers.

Considerable authority rests with governmental and autonomous bodies in starting and directing procedures for claim development, rehabilitation, etc. Though an employer is obligated to report promptly, neither the injured nor his survivors need to start compensation proceedings. The authorities do this upon receipt of the accident report. Injured workers under the health insurance program address their claims for medical care and injury benefits in first instance to the health insurance authorities, who notify the work-injury insurer and advise necessary treatment.

The work-injury insurers may maintain their own treatment facilities. If they do, the injured worker has no claim to health insurance. A financial interchange between health insurance and work-injury carriers is maintained in respect of their common liabilities and services rendered. The worker in care of an insurer's health service must see a particular physician who will decide if his office can provide the needed care. If not, the injured worker may be asked to enter a special facility at the expense of the health insurance program. Especially for eye, ear, nose, and throat injuries or diseases, the worker may be sent directly to a specialist. For rehabilitation and reemployment, the worker may be directed to and asked to collaborate with the labor exchanges and other agencies.

Work-injury insurance is financed entirely from employer contributions, payable at graduated rates reflecting both the industry specific risk and the individual employer's safety record. This method of financing is integral to the program's policy of preventing injury.

Formal decisions on pensions are voted by the insurer's committee of managers or one of its pension boards. Both are composed of employer and employee representatives. Administrative recourse against a decision can be exercised within the insurer's structure. Appeals, mostly on medical decisions and on points of law, are taken free of charge to social courts, established in 1953. In these social courts, procedures are less formal and more expeditious than in general courts of law. Also their judges possess considerable technical knowledge of the issues.[23]

WORK-INJURY BENEFITS IN THE UNION OF SOVIET SOCIALIST REPUBLICS

The Absorption of Work Injury Insurance

No work-injury insurance operates as a separate branch or program in the Soviet Union: Instead, the social security system takes account of work-related injuries by applying favorable standards of eligibility for and amounts of benefits. Similarly, other meritorious factors, such as injury or death sustained during or as a result of military service, enjoy preference or privilege under the social security system.

Rationale of Social Security Benefits

The social security program of the U.S.S.R., along with those of other communist countries, rests on the premise that the performance of socially useful work is deserving of recognition. Moreover, special recognition is accorded to certain individual activities or particular instances of dutiful performance. Those suffering losses in

the execution of such pursuits are to receive "the fullest possible measure of material relief." [24]

Despite the much vaunted socialist ideology underlying this concept, there would appear to be some affinity to practices and notions familiar in Western countries. For example, "he who shall have borne the brunt of battle" has long been considered worthy of his nation's gratitude, expressed inter alia in fairly generous pensions and other benefits for veterans and their survivors. By way of analogy, the preference widely shown to injured workers as the "wounded soldiers of industry" is attested to by the fact that employment injury benefit schemes usually were the first among the nations' provisions for some form of cash and service benefits. In some countries they continue to be the only type of protective legislation of this kind.

Degrees of social usefulness.—In its broad application, the principle of social utility is evident in the coverage of social security: It extends common protection in old age, invalidity, and loss of the breadwinner to employed persons, armed forces personnel, students and trainees, and all other citizens in the event of their becoming invalids in connection with the performance of governmental or community duties.[25] In its most specific or ad hominem version, the same idea takes the form of a special authorization which the law assigns to the Council of Ministers to provide pensions to citizens and their families "who have given outstanding services to the state." [26] In between, as it were, are those instances—generic in nature, in that a common risk materializes, yet special in that its occurrence is work-or-service-connected—which are deemed ipso facto to be especially meritorious and thus entitled to preferred consideration and above ordinary benefits. The work-or-service connection alone may be important enough to yield protection even in the absence of real employment, e.g., voluntary labor or rescue brigades.

Thus, the principle is to gear social security cash benefits, especially pensions, to social performance. Benefits are said to "reflect the merits of the insured person, i.e., his personal achievements and contribution to the social product".[27] This policy is in line with the basic rule of income distribution that is professed for the present "socialist phase" of development in all communist lands, to wit: ". . . . to each [shall be given] according to his work." [28]

To some extent, however, the preferred treatment of employed injuries may be seen also as serving the declared so-called broader objectives of social security programs in the Soviet Union, to wit: "Strengthening labor discipline, encouraging socialist competition, and increasing productivity." [29] The higher pension increments that are paid in the event of work injury sustained by persons in certain exacting or undesirable types of work, e.g., active flight personnel, employment below the ground, at high temperatures, in occupations unavoidably harmful to health, and in other hazardous or arduous work, compared with awards granted in other types of employment, may constitute incentives toward one or another of these social objectives.

Focus on work capacity and its restoration.—Given the strong orientation toward productive work, cash benefits are conceived strictly as compensation for earnings lost or losses in earning capacity. Moreover, compensation is not the first concern. The prime objective is to help the injured to return to work, as expressed by the slogan "not a pension but a paycheck," based on Pavlov's statement that "work gives great satisfaction, and it is essential to open the way to this joy for the sick person, leading him step by step into work activity." [30] Accordingly, pensions for less that total disablement are conceived, within certain limitations, as supplements to rather than replacement of post-injury work and earnings. The degree of work ability is the sole criterion for the simplified three-tier disability concept used for rating purposes (See below). Although an injury victim may be rated totally or severely disabled, for whatever cause, his post-injury earnings, if any, do not alter his pension, which is paid in full.

Within this pattern of orientation toward work, work capacity, and wage-related benefits, presumptive need appears to be a substantial concern. This may be inferred from the graduated statutory minimum benefit amounts and the fact that invalidity pensions, even in nonwork-connected cases, are higher than old-age pensions, presumably in recognition of the greater cash requirements of relatively young families. Also the high wage-loss compensation ratios, given the relatively

low level of earnings, attest to this concern with need.

Distinctive Concepts and Techniques

Employment and employment-connection defined.—"Employed persons" are all employees in all sectors of the economy except only those engaging in casual work outside of their main line of work. Also covered as if they were employees are certain nonemployed and self-employed persons, such as students, lawyers, artists, writers and as noted, volunteers in the course of rescue operations, firefighting, or similar emergency aid or law enforcement activities.

An injury is considered employment connected if it occurs in the course of carrying out management orders, contractual activities, or any other pursuits which are in the interest of the employing establishment, including the makeready and care for work tools. Injuries on the work premises, regardless of work breaks and rest periods, and en route to or from work, if the commuting was direct and unbroken, are classed as employment injuries.

To these more or less traditional definitions are added injuries suffered by persons who are not employees but whose status is deemed equivalent to that of an employee while they engage in specified activities. Such activities need not even be a part of their normal duties, provided they are in the public interest. Examples include the performances of public functions, communist party or trade union business, acting to protect national property, or simply performing in organized sports.[31]

Occupational disease groupings.—Diseases which are or may be of occupational origin are named on a composite list or schedule. The list includes, first of all, diseases known to have a higher prevalence among workers than among the population at large. The diseases are divided into (1) those found only in connection with certain occupations or exposures and (2) those encountered generally, but found to prevail significantly in occupational pursuits. Juxtaposed to the enumeration of the scheduled diseases is a list specifying the type or length of exposure or attendant conditions which presume an occupational risk. Another factor in establishing work connection of a disease is a list of occupations known to expose incumbents frequently to the specific hazard.[32]

The directions and specific instructions for the commissions of medical and labor experts charged with the adjudication of occupational disease questions suggest that, for the most part, the schedule is closed, but with some open-ended features. To begin with, these commissions have to use the lists referred to as the sole source for their evaluation to the exclusion of any other criteria. On the other hand, the list of jobs in which the disease may show itself is not regarded as exhaustive. Also, the medical expert on the commission may, if he believes the disease to be occupational in a given case, petition the Ministry to recognize work connection in that particular case, even though the lists do not allow for it. Moreover, even pre-existing, nonoccupational diseases may be classified as work-connected when severe occupational trauma substantially reduces the victim's capacity for work, despite gradual development, especially if "bridge symptoms", i.e., connected pathological symptoms, establish a tie.[33]

Simplified disability ratings.—The classification system used in the U.S.S.R. prescribes only three grades of disablement:

Class 1, the severest degree, designates total incapacity for any work and usually a need for constant care and attendance.

Class 2 comprises permanent and long-term incapacity to do any work on a regular basis, except possibly under special, perhaps sheltered, conditions. Class 2 includes also those for whom work is medically contra-indicated.

Class 3 includes workers with a permanent impairment who have lost their ability to work in their regular occupation with normal job requirements but who could utilize their residual capacities for work (*a*) in another job requiring substantially lower qualifications or (*b*) possibly in their usual work but only with limitations resulting in lower output and hence at lesser levels of eligibility. It also comprises (*c*) hard-to-place invalids with little or no earlier work experience. Class 3 covers those with work- or war-service connected severe partial disabilities, regardless of occupational activity and earnings.[34]

Since stress is laid on the remaining capacity for work, given injuries may lead to the classification of the victim in any one of the three classes. To

emphasize that the medical findings alone are not decisive, the evaluation commissions consist not only of medical personnel but include a rehabilitation specialist and a trade union representative. The commission's verdict includes, wherever possible, a recommendation as to the type of work the disabled worker might be able to do as well as the kinds of work that must be avoided. Rehabilitation and placement officers in social security installations and managers of enterprises also are expected to be governed by these recommendations in assigning or prescribing training and employment opportunities. For Class 3 victims of work injuries, the Government has an obligation to find suitable employment.

Sheltered workshops for training and work with boarding facilities, where free training is given in courses lasting from one-half to 3 years are operated by the several Republic ministries of social welfare, by state enterprises for the benefit of their own employment injury victims, and by nationwide cooperatives of disabled persons.[35]

With regard to vocational rehabilitation and job placement for those injured who are capable of some work, the active role incumbent upon managers and trade union and Government authorities toward reintegration of the worker are no different in work-connected cases than in others.

Cash Benefits

Temporary disability (cash sickness) benefits are available to employment injury victims from the first day of sickness, the same as to others, except that no minimum period of covered employment is required and the amount paid is equal to 100 percent of daily wages (instead of a range of from 50 percent upward, depending on length of employment, in other cases) within certain minimum and maximum cutoffs. In both work-connected cases and others, eligibility for this benefit continues either until recovery or until a ruling is made about the long term or permanent character of the affliction, usually after no more than 4 months from its onset.

Termination of cash sickness benefits and award of a pension requires the intervention of the Medical-Labor Commission and a finding of one of the three classes of disablement referred to above. Although pension amounts are related to past earnings, both minimum and maximum cutoff vary, with the highest ceilings for the most undesirable or hazardous employments, and low ceilings for Class 3 disabilities. The basic pension rate likewise differs, ranging from 65 percent for Class 3 up to 100 percent for Class 1 disabilities. Finally increments for work-connected injuries are paid to Class 1 invalids who are in need of constant care and attendance and to Class 1 and 2 invalids with dependents, provided the latter are themselves incapable of working.

Pensions to survivors of employment-injury victims are payable only if they are incapable of working, unless they have young children in their care. Subsequent earnings, however, do not cause a reduction in pension amounts. Pension rates range from 65 to 100 percent of the deceased workers' earnings with higher earnings ceiling if the deceased had held undesirable or dangerous jobs. However, no distinction is made in the pension amount by reason of employment connection.

Administrative and Financing Highlights

In the U.S.S.R., as in other communist countries, the administration of social security is divided between trade unions and ministries, both operating at all levels from local to national.

Generally speaking, the trade unions are most prominently concerned with the administration of short-term benefits, notably cash benefits for illness. The practical importance of the union role is that nonmembers are paid benefits at half the rates generally applicable except, apparently, in work-connected cases. With regard to long-term benefits, the trade union's administrative role consists for the most part in the collection and transmittal of contributions from the employing establishments at rates varying by industry. They cover all insured risks. These funds are augmented by approximately equal allocations of general revenues. There are no employee contributions.

Employees with work-injuries are paid temporary disability benefits by their employing establishment through the local trade union. The necessary funds are deducted from the contributions due to be forwarded to the ministerial authorities. Pension determinations for employment injury victims and their survivors, as for other long-term disabilities, are voted by the local pension committees composed of the social security district office manager, a representative of the

ministry of finance, and a trade union representative. Decisions of the medical-labor commissions are binding on them. Pensions are paid by the state.

Residual employer liability.—Employer liability may come into play in connection with employment injuries on one of two grounds: Either because, pursuant to the strict criteria for even a Class 3 disability, a work-injury victim may be left without a pension despite a significant permanent injury because it does not impair his working and earning capacity to the stipulated degree, or because avoidable fault or negligence on the part of the management gave rise to the injury.

In the former case, the injured worker may sue the establishment for compensation under civil law. In the latter event either the worker or the social security authorities may bring suit: the worker for additional compensation over and above his pension; the authorities for a refund from the establishment's operating funds of all social security payments ensuing from the avoidable negligence of its management. The management can avoid payment by showing that it was powerless to avoid the damage or authorized to inflict it, or that the accident victim was guilty of willful misconduct or gross negligence. In Czechoslovakia and Poland redress can be taken by the establishment, in turn, against the manufacturer of a machine that caused the accident due to malfunctioning.

THE SUBMERSION OF WORK-INJURY PROTECTION UNDER GENERAL RISK COVERAGE IN THE NETHERLANDS

Demise of the Work-Injury Concept

The Netherlands social security system in its present form has gone beyond all those above in erasing any distinction for compensating work-related injuries or deaths. Work-connected causes have become submerged under common rules governing all risks. Not only is there no special program or branch dealing with work-injuries as a compensable risk category, such as exist in the United Kingdom and the German Federal Republic, but preferential treatment of employment injury victims as practiced in the Soviet Union has been erased. Work-connected risks and the needs for services and cash benefits arising therefrom are treated no differently from other contingencies. This development has been referred to as the eclipse of the principle of occupational risk and its replacement by the principle of social risk.[36]

The Social-Risk Principle in Application

Broken down into its component parts, the protection most commonly afforded to work-injury victims and their survivors can be said to consist essentially of the following: medical and related care, including physical rehabilitation; compensation for loss of normal income from work pending maximum restoration of work capacity; vocational rehabilitation and training; and income maintenance benefits to the injury victim's dependents surviving him at his death.

Under legislation currently in force in the Netherlands, these several needs are met to the same extent and on the same conditions for those eligible irrespective of their risks at work. To this end, the general provisions described below come into play.[37]

Provisions for medical and allied care.—Insurance with Government-authorized funds provides for all kinds of medical, surgical, hospital and related care, drugs, and prostheses. Such care is available without qualifying or waiting periods and without time limit except for hospitalization, which is restricted to 1 year per illness.[38] This coverage is compulsory up to age 65 for all wage earners and for some self-employed, e.g., contractors or persons working on a commission. It includes protection for a wife and children. Persons in any of the covered categories who become disabled or unemployed continue to be insured compulsorily. Survivor pensioners, too, are covered compulsorily. All other persons below a certain earnings level may obtain coverage on a voluntary basis. This voluntary coverage includes persons aged 65 and over. They have a right to be admitted at contributions related to their incomes. Seventy percent of the population is reported to be insured. The rest, presumably, rely on their own resources, including insurance.

Coverage is effectuated on a social insurance basis with premiums paid by the insured and employers but not by the unemployed, disabled, or dependents. Central funding provides a measure of cost equalization among insurers. General rev-

enue financing covers the shares of noncontributors and meets deficits.

All service benefits are supplied free of charge as and when needed except for some cost-sharing by the insured in respect of nursing care, accommodation in a sanatorium, some special therapies and treatments, some appliances or artificial limbs, and ambulance service.

This basic medical and allied care coverage is supplementesd in two ways: (1) certain excluded items are supplied through voluntary supplementary contributory schemes and (2) long-term institutional treatment, notably hospitalization in excess of 1 year, is provided for under a separate national program. This extended care is effectuated through social insurance covering all residents and contributory for all except for persons aged 65 or older and survivor pensioners. Beneficiaries routinely receive accommodation in hospital wards but better accommodations are available for those who subscribe additional contributions. This program is being expanded to cover noninstitutional care, such as home nursing.

Income Compensation and Restoration To Work

Initial period of work disablement.—All income compensation for the initial period up to 52 weeks of disability is paid out under programs providing temporary benefits. Originally established as a replacement of wage loss owing to disability work-related illness, a general program of health insurance now performs this task in all instances of disability. Special programs provide comparable protection for railroad workers and for other Government employees. The rules governing compulsory and voluntary coverage, respectively, are those indicated above with regard to medical care protection except that there is no age limit for compulsory coverage.

Compensation is paid after a 2-day waiting period from the onset of disability unless the insurer's bylaws waive one or both of these waiting days. There is no minimum qualifying period of insured employment or self-employment. The rate of compensation equals 80 percent of all earnings up to a flat maximum. Individual insurers may provide for higher loss-compensation ratios in their bylaws.

The insurers are industrial associations, i.e., employer-employee managed entities established in the several branches of the economy. They operate fairly autonomously under Government supervision.

There is no minimum qualifying period for eligibility for benefits. On the other hand, persons not insured under this general or comparable special program are not entitled to benefit.

With exceptions noted above, those formerly insured on a compulsory basis retain their insurance rights for only 1 month unless they obtain further coverage voluntarily. Again, as in respect of health care, those with incomes above the insurable limit are left to obtain protection at their own initiative through private insurance.

Long-term incapacity for work.—Work-disabling conditions lasting longer than a year may be entitled to coverage under incapacity-for-work-insurance law effective 1967. Coverage of this legislation is the same as under health insurance, except that insurability is not limited by a ceiling on earnings. However, after age 65, coverage comes under an old-age pension program (see below).

As under health insurance, entitlement to benefits is not tied to any minimum period of insurance but depends on the claimant's being insured at onset of disability. In respect of this requirement, however, some exceptions are made (at least for the present, possibly on a transitional basis) for certain occupational diseases. These exceptions may be the only remnant of the former separation between occupationally and nonoccupationally caused incapacity for work and the only circumstance in which establishment of work-connection continues to be relevant.

"Incapacity for work" is defined as disablement for gainful work, not necessarily customary work but work that could be expected reasonably in light of training and experience. To be compensable, the loss in earning capacity must equal or exceed 15 percent of normal earnings of physically and mentally healthy persons with comparable training in the same occupation in the same or comparable employment.

Cash benefits for a work-disabling condition range usually from 10 to 80 percent of the wage the injured person would have earned in the year following disablement, subject to a maximum. De-

grees of disablement are grouped into seven classes. The top group, disabilities of 80 percent and over may receive a benefit equal to 100 percent of the wage if the injured person needs constant care and attendance. Cash benefits are subject to revision if the degree of incapacity changes. Disabilities rated at onset below 45 percent are reexamined after 1 year to redetermine the benefit; those rated 45 percent or more at the start are subject to review after 4 week. Benefits are automatically adjusted to variations in the general wage level.

Vocational rehabilitation.—Entitlement to vocational rehabilitation services starts with the onset of incapacity. For disablities lasting 13 weeks or more, the Joint Medical Service provides medical, vocational, and employment experts directed by a committee representing employers, workers, and insurers. Final decisions and follow-through on the JMS advice is a duty of the insurers, mentioned above.

Supplementary protection.—*Family allowances.*—All residents are compulsorily insured under a general program providing cash subsidies in respect of a third and each subsequent child born or adopted into a family. Employees, self-employed persons of limited means, and social insurance beneficiaries are eligible, in addition, for subsidies for the first and second child under related legislation. Although normally confined to children below age 16, these family allowances are payable up to age 27 for children who are disabled or engaged in full-time study.

Old-age security.—All residents are compulsorily covered under a contributory social insurance program paying old-age pensions to men who have attained age 65, whether retired or not, their wives, regardless of age, and to unmarried women 65 and over. Benefits are flat amounts index-linked for automatic adjustment to changes in the general wage level. Work-disabled persons, upon attaining age 65, cease to receive their working-incapacity pension but, like all their age mates, become eligible for the old-age pension.

Supplementary industrial pensions may provide additional protection for entire industries. This happens as a result of government action taken upon joint employer-employee initiative whereby privately negotiated pension agreements are endowed with compulsory industrywide coverage. Protection sometimes includes employers as well as workers.

Benefits for surviving dependents.—Also under general compulsory legislation, widows pregnant or with dependent children or above a certain age or invalid, and orphans up to age 16 or 27 (see above) are entitled to surviors pensions. Widows who do not meet eligibility requirements are eligible for a temporary allowance. Survivors' benefits, too, are index-linked to the general wage level.

Also, survivors are paid the full wage of the deceased worker for the balance of the month of his death and for 2 succeeding months under the health insurance law. Moreover, unlike many industrial pension plans in the United States, industrial pension plans in the Netherlands commonly contain provisions for supplementary benefits to survivors.

Administrative and Financing Characteristics

In general terms, the present Dutch system is characterized by far-reaching decentralization and autonomy in administration. A host of insurers execute for the most part national and, except for low-income persons, contributory social insurance programs with government subsidization.

Standardizing and equalizing tendencies emanate from general supervision by the national government; from the partly appointive partly representative Social Insurance Council which, though advisory to government, wields rulemaking power; from the Social Insurance Bank with its central operation role; from the working incapacity fund which pools contributions under the working incapacity insurance program and levels costs among carriers; from the Joint Medical Service which assures consistent disability evaluation; and, last, from a unified appeals process topped by a central board of appeals.

Trade-Offs Against the Occupational-Risk Principle

Transition from the occupational to the social risk principle in recent social security reforms in the Netherlands has relegated the employment-injury threat to workers and their dependents to its several components: ill-health and incapacity for gainful employment; the ensuing loss of work

income; and sometimes premature death of the family provider. All these risks are now insured on a comprehensive basis. Since this protection is available regardless of the origin of the contingency, there is no longer any need or cause for ascertaining work connection, except that residual employer liability exists where such work connection is established in a court of law. In such cases, the court may award damages taking account of benefits due the injury victim under social security, notably the working incapacity insurance program. The carrier may seek reimbursement of this portion from the employer if it is further established that he caused the accident intentionally or through "culpable negligence."

If benefits available to work-injury victims and their dependents were assured and adequate in all instances, or at least as good as under employment-injury benefit systems, the waiver of this sometimes onerous proof would constitute an unquestionable net gain. In the present Dutch system, such assured and full coverage of the work-injury hazard is not yet achieved for the following reasons

(1) Universal compulsory coverage does not at present apply to all contingencies; hence, short of voluntary action, certain workers are not fully protected in the event of a work injury nor is voluntary coverage open to all persons exempt from compulsory coverage.

(2) Not all benefits are available unconditionally; therefore some work-injury victims even though covered, or their survivors may fail to qualify for benefits.

(3) Some of the benefits available stipulate financial participation by the insured. In this and in some other respects, they cannot be said to match in every contingency those customarily offered in the form of work-injury benefits in other advanced systems which do honor the occupational-risk principle, combined with better-than-general benefits for work-injury victims and their survivors.

As and when future developments contemplated with regard to the general programs reduce or eliminate these limitations, the case for the social-risk principle is bound to gain strength. For the present, the evaluation of the trade-offs is inconclusive.

JAPAN'S WORKERS' ACCIDENT COMPENSATION INSURANCE

Historical Background

The beginning of work-injury protective legislation in Japan dates back to the latter part of the 19th century. As early as 1871, compensation for service-connected invalidity was provided for military and, in 1875, for selected industrial groups of civilian government workers. Similar protective legislation for workers in private industry followed in 1905 and 1911 with passage of the Mining and Factory Acts respectively. Both acts imposed upon employers the responsibility to grant relief to workers who had been wounded and fallen ill, or to survivors of those who died in the course of duty. Specific benefits to be provided by the covered enterprises were prescribed, however, in the enforcement ordinances of 1916.[39]

With the advent of social insurance, health insurance enacted in 1922 and implemented from 1927, followed by programs for long-term risk coverage in the last prewar years, a two-track approach was adopted. On the one hand, the risks insured under the several social insurance programs comprised those work-connected and others. On the other hand, those facets of the employer's liability deriving from the earlier enactments which were not yet implemented by social insurance were put on an insurance basis in their own right. The Workers' Accident Relief and the Workers' Accident Liability Insurance Acts of 1931, effective 1932, not only extended the existing employer's liability provisions to additional branches of mining and industry but made government the insurer for the subject employers with the duty of collecting contributions and paying the statutory benefits.

The war years witnessed further implementation but no new statutory development. The Allied occupation brought a new departure. In the main, it separated programs dealing with work-connected risks from the others.[40] That restructuring has remained the basis of subsequent developments.

Up to the Present: A Double-Barreled Approach

Japan's present system of work-injury compensation derives from two basic enactments, the La-

bor Standards Law (LSL) and the Workers' Accident Compensation Insurance Law (WACIL), as amended.[41] Both were enacted April 5, 1947.

As its name implies, the LSL treats of many subject areas, such as wages, hours, and working conditions. Chapter VIII is devoted to injury compensation. It stakes out the coverage of the employer-liability standards, and sets forth their content including, by reference to tabular attachments to the law, specifics on compensation. It contains a minimum of procedural requirements as most of these appear in an implementing ordinance.

Mandates in the Labor Standards Law.—LSL covers any employment except family members living in and domestics employed in the household.

The employer is required to furnish necessary medical treatment or bear the expense for those covered who sustain an impairment related to work. Such care must include surgical, hospital and other necessary treatment, nursing, and transport.

Pending medical treatment, a disabled worker bereft of regular pay receives temporary disability compensation equal to 60 percent of his average wage. The employer may pay an injured worker who remains disabled after three years an "expiry compensation" equivalent to 1,200 days' average wages in lieu of further compensation.

Total or partial incapacity remaining at the conclusion of medical treatment entitles the victim, except in case of his own serious fault, to a lump sum benefit ranging from 50 to 1,340 days' wages according to the degree of disablement, defined as one of 14 classes of severity.

Family members or other survivors dependent upon a worker who dies as a result of an employment injury are entitled to a lump-sum permanent-disability benefit equal to 1,000 days' average wages. In addition, a funeral benefit is payable to the person handling the arrangements.

Both the permanent disability benefit and the survivors' benefit can be converted, with the agreement of the beneficiary, into six annual payments according to a schedule appended to the act.

Penalties and fines are specified in the event of non-observance.

The LSL also provides that (1) compensation, received under the Workers' Accident Compensation Insurance Law or under corresponding special laws for government workers and seafarers, relieves the employer of his liability up to the amount of benefit received and (2) payment of compensation under the law frees the employer from liability for damages under the Civil Code up to the amount of the benefit received.

How WACIL gives effect to work-injury compensation.—The object of the WACIL is described at the outset to be the provision of prompt and equitable protection of workers in respect of "injury, disease, invalidity, and death due to * * * occupational accidents or diseases and to make the necessary arrangements for their welfare."

In line with this objective, the WACIL provides for compulsory and automatic insurance by the government of the covered employers' liability as well as of noncovered employers' whose application for voluntary coverage is approved.

Since the WACIL was conceived originally as as companion to the LSL as a means of assuring its effect, the benefits spelled out in the WACIL were, at the beginning, identical with those specified in the LSL and implementing ordinance. The law's compulsory insurance provisions, however, were limited. At the start, complusory coverage extended only to establishments employing five or more in some lines of work and to establishments employing one or more workers steadily or "more than 300 men in total number within a year" in other lines of work. Establishments not so specified could petition for voluntary coverage. Such coverage becomes compulsory when requested by a majority of the establishment's employees.

Unlike the LSL, which has remained substantially unchanged in respect of its employer liability provisions, having been amended only once, the WACIL has undergone repeated changes extending coverage or benefits.

The most recent amendments, adopted in December 1969, were beginning in 1972 to compel coverage in all enterprises employing one or more workers, with the distinction between compulsory and voluntary coverage abolished. When this process is complete, the differences in coverage between the LSL and WACIL will be gone, except the LSL may retain possible significance for certain occupational diseases and is extending protection to employees of public corporations not covered by any accident compensation scheme. Conceivably,

the LSL may be instrumental also in procuring compensation in some commuting accidents not now covered under compensation schemes. Meanwhile, as in the past 25 years, the provisions of the labor standards law continue to supplement those of the workers' accident compensation insurance law.

The steps taken and the techniques developed are gradually reducing and at last closing the gap in social insurance protection of employees in respect of the work-injury risk and, incidentally, extending coverage to other categories of persons.

Postwar Social Insurance

The postwar legislation clearly established and defined the employer's liability in work-injury cases and the entitlement to benefits for nearly all employees: a considerable advance over the selective coverage and assistance concepts of the prewar legislation. At the same time, it failed to measure up to earlier laws on two counts: The postwar laws required claimants to establish work connection of injury in order to qualify for benefits and imposed severe limitations on benefits, especially by authorizing lump-sum compensation for long-term disability.

The last-named shortcoming was remedied by the expansion of coverage and by successive improvements in the benefits offered under the WACIL. The other has not been overcome to date but its possible adverse consequences have been reduced somewhat by the fact that protection in the event of invalidity and with regard to survivorship has become universal, partly by virtue of the establishment of new general social security programs.

Expansion of coverage.—Expansion of WACIL coverage prior to the 1969 law, effective 1972, was achieved by vigorous administrative application of imaginative amendatory legislation.[42] Specifically, large numbers of workers in small establishments as well as many self-employed operators of such establishments became covered by a 1965 amendment. This amendment authorized various forms of association of small employers to qualify for coverage, subject to ministerial approval. Their officers perform the functions otherwise incumbent upon covered employers. Categories of persons not previously covered, including some self-employed, such as persons undergoing vocational training, farm operators, homeworkers using machinery, self-employed drivers, and craftsmen may obtain coverage provided they enable their employees, if any, to obtain coverage, too, through formation of an employment-injury association which is approved by the Minister. Financial incentives have been used to promote such coverage.

Improvements in benefits.—Successive liberalizations of the benefits available under the WACIL, originally identical to those provided for in the LSL, substantially extended duration of medical and allied care as well as disability cash benefits. The "expiry compensation" was abolished as care and income maintenance benefits were extended.

Facilities for medical and allied care, including special treatments and facilities for vocational rehabilitation, have gained in number, quality, and distribution through establishment and acquisition of numerous proprietary employment injury hospitals (including specialized institutions; e.g., for silicosis victims) and other designated facilities, including rest homes and sheltered workshops for the exclusive use of those injured at work. When facilities are not within reach, the injured worker may be served elsewhere at the expense of the WACI program. A floor has been put under the temporary disability cash benefits in the form of a minimum wage used for computation purposes and the waiting period is reduced from 7 to 3 days. However, since the LSL does not provide for any waiting period, payment of cash benefit during the 3-day period remains the employer's direct liability.

For long-term disability, lump-sum benefits provided under the LSL have been replaced by lifelong pensions, at first only for the most severe disabilities, later also for some others. Pensions also replaced lump sums for dependent survivors of deceased workers. Wage-loss compensation ratios were increased and increments have been added for dependent children.

The impact of social security programs.—Nothing has undone the postwar exclusion of work-injury cases from entitlement to general health insurance benefits, except for seamen whose special social security program has remained an integrated one with applicability to work-connected as to other contingencies. Eligibility is not denied,

however, for long-term benefits under the general welfare pensions program for employees of firms with five or more workers and under the national pensions program for all others. A combination of pensions is possible therefore for those work-injury pensioners who meet the regular eligibility requirements under either program. Such cumulation is subject to a reduction in the general pension amount by a ratio equivalent to the employer and government contribution, respectively.

Compensation in Context of the Social Security System

The evolution of work-injury insurance in Japan in the past 25 years, impressive though it has been, has not kept pace with developments elsewhere in social security. New enactments in the late 1950's in both health and pension fields established universal coverage by means of two new nationwide contributory social insurance programs for virtually all those not already covered. Also, there was established, as an underpinning, a nationwide social assistance program in the long-term contingencies for those not covered, mostly those aged when the national pensions program began.

By comparison, expansion of the WACI program, though innovative in some respects, has been limited. Thus, WACI is operated as an entirely separate and self-contained program out of a different ministry (labor) than most of the other social security programs (welfare) with which it is virtually uncoordinated. The program's purview is confined to accidents arising out of and in the course of employment and financed from experience-rated employer contributions based on payrolls.

It is the only Japanese social insurance program that is noncontributory for employees and does not receive substantial Government subsidies.

Upon the urging of Parliament, officials are studying the possibility of covering accidents en route from and to work. Some program and administrative coordination with unemployment insurance, the only other social-insurance program under the jurisdiction of the Ministry of Labor, after prolonged discussion, has been effectuated as of April 1972 in the form of consolidated tax collection and the merger of association of smaller employers under the two programs.

On the other hand, WACI has some imaginative innovations. Aside from the "employment injury insurance associations" to facilitate extension of coverage, the law provides certain loans, grants, and subsidies which the program offers for living readjustments of work-injury victims, for the education of their children, and for occupational health, safety, and accident prevention work.

Amended only once since its enactment in 1947, the Labor Standards Law continues to reflect minimum standards that were realistic and appropriate for a vanquished and impoverished country. As and when the amended WACIL will have overtaken it on all counts, the LSL will be rendered de facto inoperative in work-injury compensation.

INDIA'S EVOLVING SOCIAL SECURITY SYSTEM

Up From Colonialism

India carried forward from its colonial period a workmen's compensation act, dating from 1923 and operative since 1924, based wholly on the employer's liability. After independence, India founded in 1948 a modern social insurance system, including work-injury compensation, with the employees' state insurance act, which became effective in 1952.[43]

The two programs have dovetailed as follows: (1) The 1923 workmen's compensation act (WCA) continues in force in those areas in which the employees' state insurance scheme (ESIS) is not yet being implemented, i.e., in the so-called nonimplemented areas. As and when the ESIS is gradually extended to new areas, it replaces workmen's compensation. (2) Even then, however, the insured contingency, i.e., "employment injury" is defined under the ESIS by reference to the workmen's compensation law. Thus, eligibility for work-connected benefits under ESIS rests on the condition that the injury must be such as would entitle the employee to compensation under the Workmen's Compensation Act of 1923, if he were a workman within the meaning of that Act.

Phasing Out Workmen's Compensation

The 1923 act today covers workers with earnings below a certain limit employed in manufacturing, mining, shipping, railroading, construction and

some other lines of work. Coverage has been extended since original enactment.

Work injuries are entitled to compensation if caused by accidents arising out of and in the course of employment. Prescribed occupational diseases are treated as accidents.

Compensation includes reimbursement for the cost of medical treatment arranged by the worker. Compensation for temporary disability is earnings-related and is payable after a 3-day waiting period (waived for disability of more than 28 days). Except in fatal accidents, drunkenness at the time of the accident, willful disobedience, or willful non-use of safety equipment invalidates the right to compensation.

For permanent disability or death, benefits are paid in lump sums.

Liability for payment of benefits rests with the employer. He is not required to insure this liability. It is for the employer to entertain and to decide claims. There is no public administrative machinery for the receipt or processing of claims, except that lump-sum benefits and those payable to survivors or persons under a legal disability must be paid through a commissioner of workmen's compensation. Also, alleged non-compliance can be brought to the commissioner's attention for his investigation. This presupposes that the claimant takes the initiative. If the commissioner is satisfied of the employer's default, he may order prosecution. A magistrate trying the case in criminal court may then pronounce a fine upon the employer and direct that it be paid to the claimant in lieu of benefit.

Protection Under Expanding State Insurance

The ESIS covers industrial (power-using) establishments employing 20 or more workers in non-seasonal employment. Mining, commerce, and agriculture are excluded. Workers protected include blue-collar, clerical, and supervisory staff earning less than a stated wage or salary, and casual employees engaged by or through contractors. The act provides for gradual extension to other classes of establishments and branches of the economy. However, even within the covered sector of the economy, the program has been implemented so far only in the industrial centers with large insurable populations. It has extended its protection to dependents of covered workers only in some of these and only in part.

The scheme provides medical and hospital care for all covered workers, also cash benefits for illness and maternity. Disablement and survivor (so-called dependents) benefits are payable up to the present only in work-connected injuries and deaths, defined as arising out of and in the course of the worker's insurable employment and, with regard to accidents and occupational diseases, cross-referenced to the WCA, as pointed out above.

Medical and hospital care are available on equal terms in work connected as in other cases. Such care is delivered differently in different regions: In most through ESIS-owned or leased facilities, in others by panel doctors. Care is available while a worker is in insurable employment or is eligible for cash sickness or temporary disability benefits, and from 6 to 9 months thereafter, depending on the contribution record, plus an additional year for certain long-term conditions for persons who have been for years in continuous employment.

Cash sickness benefits are payable during work-disabling illness after a 2-days' waiting period for up to 56 out of every 365 days.

With the exception of employment-injury cases, eligibility for these benefits is premised on certain minimum contributions.

Disablement benefit, in event of total incapacity for work because of employment injury, entails a temporary benefit, provided disability lasts a minimum of 3 days, to be followed by a pension for disability adjudged to be permanent. Both pensions are at a rate of about two-thirds of past earnings by wage classes if disability is total; the rate for permanent partial disabilities is less. By regulation, conversion of pensions to lump sums is possible and is common when disability has been assessed by a medical board at merely 20 or even 25 percent of total.

Artificial limbs, eyeglasses, and hearing aids are provided within limits and maintained free of charge to employment-injury victims and to others at cost.

Survivors' benefits are payable to widows, orphans, or other dependent survivors at varying fractions of the total disability-pension rate and are limited in the aggregate to that rate.

ESIS Financing, Administration, and Development

The ESIS is financed in areas where it is currently operative from employer and somewhat smaller employee contributions based on payrolls and earnings, respectively, according to wage classes at flat percentage rates, except that the lowest paid are exempt. One contribution covers all benefits, including those payable only to work-injury victims. In areas where the ESIS has not yet become operative, employers pay contributions only at a much lesser rate, justified as avoiding competitive advantages in inter-regional trade. The State governments, being responsible for the provision of medical care, share in the costs of medical care facilities. In addition, the national government in the past has subsidized administrative costs.

The ESIS is administered by a public corporation, the ESI Corporation, under the general supervision of the national government. Its board includes representatives of employers, employees, the medical profession, parliament and national and state governments, with the national ministers of labor and health acting as chairman and vice chairman respectively. It has a director-general as operating head, and a medical benefit advisory council

Plans for the gradual expansion of the ESI program's protection comprise projects in tandem with the Government's successive 5-year plans, the extension of compulsory coverage to smaller areas and to types of factories not now included in industries already covered and in others, and further protection for families of the insured. Also the establishment of further ESIC-owned facilities is contemplated, as well as allocation of additional resources to sickness prevention.[44] Except indirectly, improvement of employment injury protection does not appear to be among the top priorities.

Related Developments and Plans

Building on earlier precedents but unrelated to the budding ESI scheme, an employees provident fund scheme was introduced in 1952 to cover large establishments in selected industries. The scheme consists of joint employer-employee compulsory savings to provide for payment of deferred earnings in selected contingencies, chiefly long term. No pooling of resources and no leveling of risks is planned. After two decades of successful experience and considerable growth of this limited savings program, the benefits have been recast into "family pensions" (survivors' benefits) and lump-sum death grants, presumably as a step toward a gradual transition to a social insurance program for the general long-term risks.[45] Such a development leading to the ultimate consolidation of the newly created programs was recommended by a study group as early as 1958.[46]

As yet, there is no indication that such a consolidation will be forthcoming soon.[47] In any event, the Workmen's Compensation Act of 1923 is likely to continue for a long time in its residual role and to be the sole protection in the event of work-injury for some, especially workers in small establishments.

ISRAEL'S EMPLOYMENT INJURIES INSURANCE

Break With the Colonial Heritage

When the new State of Israel was born in 1948, its legal structure included a medley of disparate sources, some dating back to the pre-World War I period under Ottoman rule and others stemming from British administration when Israel was a League of Nations mandate. Modern compensation for work injuries was regulated by a Workmen's Compensation Ordinance (WCO) in 1927, patterned after the first British workmen's compensation enactment. Similar to the Indian Workmen's Compensation Act of 1923, it imposed on employers a legal liability to compensate workers injured in work accidents. The injured worker had a choice, however, between this and an alternative remedy, filing a suit against the employer under the civil wrongs ordinance.

Unlike India, the new State of Israel chose to make a clean break with British tradition with the enactment in 1953 of a comprehensive social insurance scheme.[48] The WCO had been amended several times, last in 1947. At the time of independence, it covered all manual workers. Even so, the protection was scant and unreliable as the scope of coverage and of benefits both were deemed unduly narrow. In Israel's social structure, some segments of the self-employed, notably self-employed crafts-

men and the owner-operators of small farms, were economically no more or even less secure than workers in wage and salaried employment, as the great majority of workers held union membership with important fringe benefits. The new state felt a need for measures of economic security for all citizens no less than for wageworkers. With regard to the scope of protection, objectives were equally broad, with the understanding that achievement of the full objectives would not be immediate or even early.

The policy guiding the interministerial planning committee established in 1949 provided for "plans for all branches of social insurance." Pursuant to this mandate, the committee's report, in 1950, proposed a work accident insurance branch as one part of a comprehensive social insurance program. Work accident insurance was to go through three successive stages; to apply at first to employed persons only.[49]

Work-Injury Insurance Under the National Insurance Act

The National Insurance (NI) Act of 1953, effective April 1954, has been amended several times. Now it compulsorily covers most of the population through one or more of the component programs: old age and survivors' insurance, sundry family benefits (maternity, large families, and employees children's allowances), and employment injury insurance.

Near universal coverage.—All employed as well as self-employed persons (except members of the Armed Forces and certain law enforcement personnel who have comparable protection) are under the compulsory coverage of the NI scheme with regard to work-injury protection. The "employee" concept comprises family members working in the enterprise even in the absence of a formal employment relationship. The term is intended also to include members of cooperatives, with the society regarded as employer. "Self-employed persons" are deemed to be all those working as such at least an average of 12 hours a week and earning a stated minimum income. Temporary workers or part-time employees are covered if they work at least 4 hours per week; so are casual workers employed otherwise than for the purposes of the employer's business or occupation, if registered with the NI Institute.

In addition, the scheme covers persons undergoing vocational training or rehabilitation, apprentices and job applicants taking qualifying examinations and tests, trainees in the labor service, prisoners and juvenile offenders engaged in outside work, and members of the legislature.

Broad scope of protection.—"Employment injury" is defined as "an accident which * * * arose out of and in the course of his [i.e., the insured person's] employment * * * or, in the case of a self-employed person, out of and in the course of the pursuit of his vocation * * * and a disease defined by regulations * * * as an occupational disease and contracted, while so defined, in consequence of his employment with or on behalf of his employer or, * * * the pursuit of his vocation."[50] Short of proof to the contrary, an accident suffered "in the course of" is deemed to have arisen "out of such employment". Also, commuting accidents from home or place of overnight stay or a place where a meal is consumed to work, and vice versa, without detours other than to place or call for children in a day care facility, are deemed employment injuries. Similarly, accidents sustained en route to or from the place where the worker receives his pay or sustained in the course of exercising the duties of an employee or smallholders-cooperative's representative are regarded as work accidents.

Conversely, impairments suffered at work but attributable to culpable negligence on the part of the insured or to actions contrary to instructions are not deemed work-related unless they result in death, invalidity, or incapacity for work lasting 4 weeks or longer.

The definition of "occupational disease" is left to ministerial regulations whereby the Minister of Labor in consultation with the Minister of Health designates and lists as such certain diseases which, in view of their character and causes, can be regarded as occupational hazards either in respect of all or at least a particular class of persons covered. Moreover, ministerial regulations lay down the conditions under which a presumption of work-connection applies to given disease cases, short of proof to the contrary.

Benefits

Benefits in kind.—Medical and allied care, physical and vocational rehabilitation are avail-

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able to work injury victims. They cover the full range of necessary services, use of facilities, and provision and maintenance of appliances.

Israel does not have a national health service nor a compulsory national health insurance program, nor does the national insurance system or its employment injuries branch maintain separate health services. Therefore, even though the law authorizes that medical and related benefits may be furnished directly by the institute or in the form of government-provided health services, medical and allied care actually is obtained through ministry approved voluntary insurance programs and through independent physicians in private practice. Employed persons obtain their medical care both in work-connected and other cases from the sickness fund to which they belong, usually in connection with their employment, most of them from the health insurance program of the General Labor Federation, the Kupat Holim of the Histadrut.

In connection with the extension of the program's coverage to self-employed persons through Amendment No. 2 adopted in 1957, special efforts were made to ensure the availability of private physicians at the NI program's expense. However, most self-employed chose to take out membership in a health insurance fund to obtain medical and related care.[51] In work-related cases, such care is chargeable to the NI Institute. The care afforded includes the use of convalescence facilities and physical rehabilitation, including therapeutic and orthopedic appliances, etc.

Vocational rehabilitation, likewise, according to the law may be provided by the Institute proper or in the form of general government services or by contract from other institutions. Actually, it is available for the most part through contract with appropriate institutions pursuant to arrangements by the Ministry of Labor.

Cash benefits.—Injury benefits are paid to an insured person other than a prisoner or detainee who, as a result of an employment injury, is "incapacitated for his work and for other suitable work and is in need of medical treatment, rehabilitation or convalescence facilities."[52] Payment starts from the third day after injury. Wages for the day of the accident are payable by the employer. The 2 waiting days are reimbursed retroactively if incapacity for work lasts 12 days or more. Maximum duration is 26 weeks. The amount of benefits is equal to three-quarters of the worker's total regular earnings during the last pre-injury quarter, subject to a flat maximum. The benefit amounts are adjusted to a cost-of-living index, as is the maximum allowable amount.

The injured person's gainful employment, which is declared merely therapeutic during the 26-week period, does not reduce the amount of the benefit. For a self-employed work-injury victim whose hours of work have been reduced by 4 or more hours per day by partial incapacity, a reduced injury benefit is payable. These and other benefits are spelled out in several schedules appended to the act.

If the patient is not fully recovered at the end of the 26 weeks, a physician or medical board rules on whether and to what extent an injury victim is an invalid. "Invalid" is defined as "a person whose working capacity has been impaired and who, as a result, is incapable of doing work which a person of his age and sex is normally capable of doing." Disfiguring effects are taken into account in this determination. Impairments rated in excess of 5 percent of total but below 25 percent give rise to a work-injury lump-sum benefit: workers with impairments rated at 25 percent or more are eligible for a pension.

The lump-sum grant is increased for persons age 21. The pension amount for 100 percent invalidity is equal to the injury benefit. Lower ratings of incapacity draw proportionately less. Permanent disability cases of 75 percent or above are entitled to special pensions for personal maintenance or rehabilitation needs and to a one-time grant for special arrangements necessitated by the nature of this disability.

Pensions are index-linked. Moreover, in awards to young persons, the pension amount is increased upon attainment of the 18th and again on their 21st birthday.

In event of a work-connected death, pensions are awarded the surviving widow or widower, if disabled or aged 50 or over or if caring for dependent children; to orphan children under 18 or disabled; and to dependent parents. If survivors do not qualify for pensions, lump-sum grants are paid in sums aggregating no more than the total invalidity pension.

Attendant stipulations.—The NI system provides for sanctions and incentives designed to promote full recovery and gainful employment.

Among the former are provisions whereby benefits may be deferred, reduced, or denied if beneficiaries without good cause disregard doctor's orders or in other ways prevent or delay recovery or restoration of working capacity or vocational rehabilitation.

Among the incentives are loans, one-time grants, and other help to work-injury victims desiring to establish a business of their own; capitalization of pensions when in the beneficiary's interest; and additional support for vocational training of widows and for the completion of secondary education or vocational training of orphans. Probably most important of the incentives is the policy of the NI Institute not to review severe disability ratings of work injury pensioners or the entitlement of widows' pensioners who manage to enter or return to gainful employment, that is, to allow them to receive earnings and a pension concurrently. This information is based on a personal communication from Dr. Giora Lotan, former Director-General of the NI Institute.

Judging from studies carried out by the NI Institute, these provisions and policies appear to have been effective in that six out of every seven injured workers rated severely disabled are back at work within 2 years after the accident, according to the personal communication above.

Administration, Financing, and Residual Employer Liability

The NI scheme is administered by an autonomous public corporation, the National Insurance Institute (NII), under the general supervision of the Ministry of Labor, whose head is accountable to the Knesset for its activities. The NII's governing body is a council representative of employers, insured persons, and the public, with some members nominated by the Government. The council is a policymaking organ in its own right as well as an advisory organ for the minister in matters of national policy affecting social insurance. It appoints committees for each program branch.

Day-to-day management of the NI programs is in the hands of a board headed by a director general. Other members are NII's treasurer and the heads of its several program branches. There is a tie to several Knesset committees whose approval is required for some executive decisions, for example, changes in contribution rates and in some cash benefits.

The Institute finances the whole program independently from the general finances of the government. Its budget is separate from the government budget; the NII is not compelled to invest its resources in government funds. Although other branches collect from both employers and employees and some are government subsidized, the employment injury branch and program is financed by sums collected from employers whose contributions vary from industry to industry according to risk, and by uniform flat-rate contributions by the self-employed. There is no Government subsidy for this employment-injury insurance.

From its own revenues, the NII helps finance a separate institute for safety and hygiene with which it has an interlocking directorate. The function of this institute is primarily to promote occupational health and safety. Committees in every establishment employing 50 or more workers and labor inspectors administer a body of safety regulations. Israel claims to have, next to New Zealand, the lowest incidence of fatal work accidents.[53] Safety competitions as well as merit and demerit rates relative to the industry standard for individual employers are said to have had limited success.[54]

A review and appeals process is operative within the framework of NII.[55]

In event of proven fault established in court proceedings, a residual liability rests upon an employer to pay the injured worker assessed damages above his NI benefits. The NII cannot seek reimbursement from the employer.

CONCLUSION

All seven national approaches to work-injury compensation included in this paper are products of postwar planning and legislation but with much earlier origins. Years of experience presumably have helped to mold the newest programs.

An attempt to distill common trends in this evolutionary process, is bound to note, first of all, the ubiquitous tendency to collectivize the risk-bearing and to leave but a marginal, subsidiary or supplementary role to employer liability for providing the commonly acknowledged need for ef-

fective protection of work-injury victims and their dependents. One effect of this trend is the growing reliance on social insurance. Another, less common, is the partial resort to newer forms of generalized social security protection, including public service schemes (national health services) and, occasionally, demogrant programs such as children's allowance and pension schemes, at least as supplementary sources of protection.

A second tendency is to extend coverage for work-related injuries to other than employed persons by stretching the definition of employment, by explicitly covering self-employed persons, and by conceding that an employment relationship need not be the sole basis for coverage, i.e., to declare certain activities *per se* as giving rise to work-connection without regard to status either as employed or self-employed.

A third marked trend is the broadening of the concept of work connection. In legal definitions, "arising out of employment" may replace "in the course of" employment. The scheduled number of diseases presumed to be work-connected under stated conditions, short of proof to the contrary, is growing. Road accidents become defined as work-connected in specified circumstances that transcend the traditional narrow limits by a wide margin.

A fourth characteristic, especially pronounced, is the strong emphasis on restoration of the injured and their reintegration into the labor force. In this respect, as in some others, policies extend public concern to the welfare of others than wage workers.

Fifth is the attempt to expedite the adjudication and review on appeals either through administrative action or through special courts that dispense with some of the procedural rigidities and put the decision up to persons with first-hand knowledge of the sometimes intricate and rather technical constellations of events surrounding impairment and of remedial courses available to minimize losses.

Given the fact that these and yet other common features are discernible in a comparison of the national approaches taken in countries of such vastly different types—in size, climate, resources, history, populations, political systems, social structure, economic development, customs, and cultural tradition—the similarities have implications for all nations.

HIGHLIGHTS OF INJURIES INSURANCE PROPOSED IN NEW ZEALAND

In September 1966, a Royal Commission "to Inquire into and Report upon Workers' Compensation" was established in New Zealand. The three-man commission, chaired by the Honorable Arthur Owen Woodhouse, D.S.C., a judge of New Zealand's Supreme Court, was charged with a wide-ranging examination of the country's employment injury legislation with a view to its improvement in light of the country's own experience, the solutions tried in other nations, and the precepts of the latest international standard-setting instruments on the subject, International Labor Convention (No. 121) and International Labor Recommendation (No. 121) Concerning Benefits in the Case of Employment Injury. Upon extension of the original reporting period, the commission, after comprehensive study at home and abroad, including, among visits to other countries, extensive travel and study in the United States by the chairman and one other commission member, rendered its report in December 1967.[56]

Present Shortcomings and a Proposed Departure

The report views accidental injuries in New Zealand as a growing social problem. It finds that existing sources of help to the victims of accidents, especially those who have sustained serious injuries, are commensurate with the nature and impact of the hazard in only a single way: the universally available prepaid health service. As to financial relief, the report finds that the remedies available are uncertain and inadequate. The negligence (common law) action it deems to be "a form of lottery." Workers' compensation comes into play only in work-connected cases, a minority of the total, and is "meagre." Social security, which in New Zealand takes the form primarily of social assistance, i.e., cash benefits as a right but tied to a standard means test, is viewed as meeting merely "pressing needs," and only for those who pass the means test. "All others are left to fend for themselves." [57]

In contrast to the present situation, the report holds that any satisfactory injury insurance system would have to be based on "community responsibility" and "comprehensive entitlement."

"Since we all persist in following community activities, which year by year exact a predictable and inevitable price in bodily injury, so should we all share in sustaining those who become the random but statistically necessary victims.[58]

All exposed to the risk must be able to count on equal treatment for equal losses. A categorized system no longer makes sense because it metes out unequal compensation for equal losses. In the new scheme, complete rehabilitation must command top priority. Although cash compensation is second in line, it must be "real," i.e., related to income, cognizant of permanent bodily impairment as a loss in itself, and available throughout the period of incapacity. Increasing affluence has brought with it additional social hazards for every citizen; but fortunately, at the same time, it has left society better able to afford their real cost." [59] Merely meeting need is no longer enough. Last, the new scheme must be run efficiently and economically.

Thus five "guiding principles" emerge:

Community responsibility
Comprehensive entitlement
Complete rehabilitation
Real compensation
Administrative efficiency [60]

Elaborating on this summary formulation, the report specifies that not only employed and self-employed persons but also housewives "who make it possible for the productive work to be done" must share in the comprehensive entitlement in the event of accident of any type.

As to adequacy, it explains that, for minor disabilities, present levels of cash benefits payable under the Workers' Compensation Act would be appropriate; for serious injuries, benefits should approach the level of damages awarded under common law but should be immediate and without proof of fault. Total incapacity should draw an "automatic award" of 80 percent of previous income after taxes, subject to a relatively high ceiling. A worker's physical deterioration should be subject to review; but not his improvement, lest review dampen his incentive to return to work. Cost-of-living adjustments should be biennial.[61]

In two drastic breaks with the past, the Commission recommends action (a) to abolish the common-law court action based on fault in respect of all cases of personal injury, regardless of cause, because time has come for it "to yield to a more coherent and more consistent remedy"; and (b) to exclude private insurance companies from administration of the new scheme because of the incongruity of private enterprise in a scheme of community responsibility and the need to avoid "dispute and contention" and to achieve substantial savings through administration of the new scheme by "an independent authority within the general responsibility of the Minister of Social Security." [62]

Thus all accidents, whether they occurred at work, on the highway, or in the home, would command not only all the necessary medical and related help but would entail, in short order and without proof of fault, compensation both for permanent physical disability and also for income losses on an income-related basis in amounts that would "safeguard the interests of persons on every normal level of income." These would be paid for life, if necessary, or in certain circumstances be commuted wholly or in part to lump sums. The commission characterized this scheme by its foremost single purpose as "24-hour insurance for every member of the work force, and for the housewives who sustain them." [63]

Pursuant to these specifications, people would be covered for cash compensation from minimum age with no upper age limit. Moreover medical and hospital services would be available to young persons as to others.[64]

Furthermore, the Commission reasoned that, since the new benefits to injury victims were to be closely related to their prior earnings, dependents' benefits (supplements) would have no place except in survivor cases. For these, varying fractions of the total disability benefit payable were proposed for the different categories now entitled under the Workmen's Compensation Act and some newly eligible categories.[65]

Obstacles To and Limitations on the Consolidation of Social Risks

In view of the anticipated question as to whether the proposed scheme would form an integral part of the country's social security system, and in response to proposals to that effect originating from the Social Security Department, the report explains the reasons why this was not the commission's favored solution under currently prevailing

conditions. Given the essentially flat-rate benefit structure of the New Zealand social security programs, such integration most probably would entail the payment of identical flat-rate compensation in all cases. This, the commission felt, would not have popular support nor would it be in line with the commission's views: "The only way in which a comprehensive system of compensation could operate equitably is by linking benefits to earning capacity and by taking into account permanent physical disability." [66]

Therefore, even though the commission favored a unified system, even considered it "essential", it could not accept unification across the board based on a technique that "equates unequal losses and does this at an unacceptably low level." Also, the commission observed, such a solution would "give preference to all with lesser losses at the expense of those whose losses are great.[67]

Nevertheless, the commission itself viewed "integration of any comprehensive scheme of compensation within the social security structure * * * an important objective." [68] Hopefully integration might be realized within the framework of a restructured social security system based on earnings-related social insurance.[69] In that event, social security benefits would be merged, wherever relevant, with those payable under the new compensation scheme.[70]

One segment not proposed for coverage under the "unified and comprehensive (social insurance) scheme of accident prevention, rehabilitation, and compensation" is that of "incapacities arising from sickness or disease." [71] Granting that the distinction between impairment by injury and impairment by disease was elusive, since it was "a mixed question of law and medicine", the commission referred to the International Classification of Diseases (ICD) as a novel and presumably clear-cut source for the differentiation. Covered would be those categories listed in the ICD which comprise injury conditions of external causation.[72] Essentially, the reason given for the exclusion of all others is the dearth of statistical information on disease. The lack of data precludes safe estimates of the costs of compensation of diseases as insurable risks.

However, since it would be impractical to discontinue entitlement to compensation in the case of "industrial diseases * * * included within the scope of the present Workers' Compensation Act", the commission proposed continuation of such coverage under the new scheme "but for work-connected injuries only, and upon the conditions at present laid down by the Workers' Compensation Act." [73]

The proposed scheme as a whole, would constitute a case of complete consolidation of the accident risk only, irrespective of causation and without regard to individual responsibility. Within its self-imposed limits, the proposal would constitute not only the complete abandonment of even the common law remnant of the employer liability principle but also the eclipse of the occupational risk notion by what has here been called the social risk principle and what the report proper refers to as community responsibility.

Somewhat unexpectedly, the pattern proposed for financing the new scheme follows largely that currently in effect under the Workers' Compensation Act, with additional contributions from self-employed persons and drivers, as distinguished from owners, of motor vehicles, but not from employees or from general revenues. This proposal is in marked contrast to the financing of the New Zealand social security system, with the sole exception of the present work-injury coverage, which relies exclusively on personal and corporate income taxes supplemented by subsidies from general revenues.

Government and Parliamentary Action

In early 1972, a modified version of the commission's recommendations was pending in the New Zealand Parliament and is reported to be nearing adoption. Despite the availability of voluminous additional statements emanating from government and parliamentary sources, partly in concurrence with, and partly in modification of the commission report, the exact nature of the legislation could not be predicted. The prospective variations from the Commission proposals appeared to veer in the direction of traditional solutions.

Some general observations on alterations proposed, as seen by a well-informed observer, may suffice to indicate their bent:

Since the original report was issued, the whole matter has been looked at quite carefully on two occasions. The Government prepared a White Paper to indicate in a general fashion not only what

has been proposed in the report but also some of the alternatives that appeared to be available. Following its appearance, hearings were held by a Select Committee of Parliament and eventually a third document appeared, prepared at the direction of that Committee. It contained proposals which modified to some extent those contained in the original report after taking into account further representations by those persons considered to have some direct interest in the matter. The Government immediately announced that it accepted in principle the proposals of the select committee.

In the broadest sense the committee has—

(1) agreed that the negligence action should disappear;

(2) recommended 24-hour insurance for all members of the work force, including the self-employed;

(3) recommended that similar cover be given without proof of fault to all persons injured in highway accidents who might not be members of the work force. (Members of the work force injured on the highway are covered under paragraph 2.);

(4) thus left out only the unemployed, the elderly and the housewife, when injured in domestic accidents;

(5) recommended that the funds be administered by independent State organizations while the private insurers be given an opportunity of acting as agents at a set rate of commission.

A bill will be presented which the government hopes to have passed in 1972. No doubt there will be changes along the way.

This personal communication was received in late 1971. The Accident Compensation Bill (No. 146–1) was presented to Parliament shortly thereafter.

INTERNATIONAL STANDARDS FOR WORK INJURY BENEFITS

Even since its inception, in connection with the conclusion of the peace treaties ending World War I, the International Labor Office (ILO) has played a leading role in establishing standards for national legislation in labor-protective and related matters.[74] These have been arrived at by a systematic stock-taking of existing "laws and practices" and, based thereon, a tri-partite (employer-worker-government) process whereby minimum and advanced standards or conventions have been established and amended over the past 53 years. In the area of workmen's compensation, now categorized as "Employment Injuries", the first minimum standards date from the year 1921.[75]

ILO conventions since 1945 differ from the earlier ones by their comprehensiveness and by their newly added quantitative stipulations. Convention 102 concerning Minimum Standards of Social Security, dating from 1952—the master convention, so to speak—covers employment injury compensation as one of nine branches of social security protection. Among the minimum standards which it has established in respect of these, some aim at assuring that significant proportions of those exposed to these risks are actually protected. Others are designed to assure that the cash benefits provided measure up to minimum requirements of presumptive need, gauged by reference to standard incomes, variously defined. Naturally, requisites as to the types of benefits to be provided, in cash, in kind, or both, in each of the contingencies have continued to form the core of this and of other, later, conventions as they did in earlier instruments.

In this regard, some of the earlier conventions contained fairly specific detailed stipulations: e.g., Convention 42 concerning occupational diseases.

In respect of risk areas other than employment injuries, limits on the respective conditions of eligibility deemed permissible have played an important role.

In the years following the adoption of Convention 102, support increased for new and separate instruments pertaining to each of the broad areas of social security. One objective was to ease ratification. The Minimum Standards Convention (102) required, as a condition of ratification, compliance with at least three of its risk branches. This requirement appeared to retard unduly the wide acceptance of minimum standards in at least one risk branch; e.g., employment injuries. On the other hand, older conventions that did refer to merely one contingency or branch or even to only a part of one branch, such as Convention 42, had become out of date because of advances in knowledge and experience and because of the new programs and methods in social security.[76]

Consequently, work was begun by the ILO on the drafting of such new instruments first for employment injuries, with a report on prevailing national laws and practices.[77] After two rounds of full discussion in committee and plenary sessions spaced over 2 years, the ILO adopted in 1964 Convention 121 concerning benefits in the case of employment injury and an accompanying recommendation of the same title and number.

Minimum Standards Concerning Benefits [78]

The following are required components of a national program that ordinarily enable a country to subscribe to Convention 121. For developing countries, these standards are subject to temporary reduction or suspension.

Coverage.—All employees, including apprentices, in the public and private sectors, including cooperatives, would be covered. Exceptions are permitted in respect of casual workers outside of the employer's trade or business, outworkers, family members living in, and other workers not defined but numbering no more than 10 percent of all employees. Special coverage is permitted for seafarers, seafishermen, and public servants.[79]

Scope.—Protection must cover sickness, disablement, loss of earning capacity above a prescribed degree, if likely to be permanent, or corresponding loss of faculty, and loss of breadwinner.[80]

Definition of employment injury.—"Industrial accident" must be defined so as to include commuting acidents under prescribed conditions, except where commuting accidents are compensable under a general program of social security and provided these general benefits are equivalent to those stipulated in this Convention.[81]

"Occupational disease", when prescribed in a list of diseases, must comprise those included in Schedule 1 of Convention 121 with stated conditions under which they are regarded as occupational. Alternatively, the general definition of occupational diseases must be broad enough to cover at least the diseases listed in said schedule. Occupational diseases may be identified through a list of diseases in conformity with the one shown, complemented by a general definition or by other provisions whereby diseases not so listed or manifesting themselves under other than the listed conditions can be proved to be of occupational origin.[82] (See schedule on following page.)

Entitlement to benefits.—Medical and allied care as well as cash benefits respectively must be available throughout the contingency without eligibility conditions except for minimal length of exposure to occupational diseases. A 3-day waiting period is permissible where the country had such a one at the time the convention came into force and deems its continuation necessary.[83]

Medical and allied benefits.—Medical care and allied benefits must include the following services:

> general practitioner and specialist inpatient and outpatient care, including domiciliary visiting;
>
> dental care;
>
> nursing care at home or in hospital or other medical institutions; maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
>
> dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses;
>
> the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner; and
>
> the following treatment at the place of work, wherever possible:
>
> emergency treatment of persons sustaining a serious accident;
>
> followup treatment of those whose injury is slight and does not entail discontinuance of work.

These service benefits must be provided "using all suitable means, with a view to maintaining, restoring or, where this is not possible, improving the health of the injured person and his ability to work and to attend to his personal needs." [84]

However, consistent with this last-named objective, and with due attention to the avoidance of hardship, it is permissible to levy certain charges and to impose certain maximum limits on benefits. Charges may be imposed where a national health service is used to provide medical and allied care in work-connected as in other cases; maximums are permitted to establish "reasonable limits" in systems using the cost-reimbursement method.[85]

LIST OF OCCUPATIONAL DISEASES

Occupational diseases	*Work involving exposure to risk*
1. Pneumoconioses caused by selerogenetic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2. Diseases caused by beryllium or its toxic compounds.	do
3. Diseases caused by phosphorous or its toxic compounds.	do
4. Diseases caused by chrome or its toxic compounds.	do
5. Diseases caused by manganese or its toxic compounds.	do
6. Diseases caused by arsenic or its toxic compounds.	do
7. Diseases caused by mercury or its toxic compounds.	do
8. Diseases caused by lead or its toxic compounds.	do
9. Diseases caused by carbon bisulphide.	do
10. Diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series.	do
11. Diseases caused by benzene or its toxic homologues.	do
12. Diseases caused by nitro- and amido-toxic derivatives of benzene or its homologues.	do
13. Diseases caused by ionising radiations.	All work involving exposure to the action of ionising radiations.
14. Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risks concerned.
15. Anthrax infection.	Work in connection with animals infected with anthrax. Handling of animal carcasses or parts of such carcasses including hides, hoofs and horns. Loading and unloading or transport of merchandise which may have been contaminated by animals or animal carcasses infected with anthrax.

Types of cash benefits.—In injury cases (a) cash benefits must be provided for "temporary or initial incapacity for work" and for any "loss of earning capacity likely to be permanent or corresponding loss of faculty * * * in excess of a prescribed degree (which) remains at the expiration of the (above) period." [86] (b) The payments for permanent disability must be pension benefits except, when the loss of earning capacity or of faculty is of a lesser degree, they may be a lump sum. In exceptional cases, when "particularly advantageous" for the disabled, and with his consent, conversion of a pension to a lump sum is permitted.[87]

On the other hand, for persons in need of constant care or attendance, pension increments or "other supplementary or special benefits" must be provided.

Reassessment of losses and ensuing modification, suspension or cancellation of pension is permissible under prescribed conditions.[88]

While the actual degrees and definitions are left to be determined by each county, they must be so designed as to conform with certain quantitative standards referred to below and to avoid hardship.[89]

In death cases (a) Survivors' pensions are to be paid to certain widows, a disabled and dependent widower, and dependent children, provided that the requirement of widower's benefits is waived under general social security programs, other than employment injury insurance, offering comparable benefits in excess of minimum standards. (b) In addition, funeral benefits "not less than the cost of a normal funeral" are required to be paid, except that this requirement is waived where suvivors' benefits provided under national programs are substantially in excess of the minimum survivors' benefits required in this convention.[90]

Minimum pension standards.—Starting from the presumption that pension amounts may vary in accordance with the family status and re-

sponsibilities of the beneficiary, and taking account of the different reference bases relative to which such pension amounts may be measured, the convention stipulates a "standard beneficiary" and two possible reference bases.

The "standard beneficiary" in life cases is assumed to be a man with wife and two children; in death cases, a widow with two children. The base of reference is taken to be either the injured worker's past earnings, including, where payable, a family allowance, or else some current wage level, plus family allowance where payable, taken to be representative of the bulk of earnings of covered workers.

In either case, the percentage of the total benefit, including family allowances, if payable, must equal at least 60 percent of his own, or current average wages respectively for a totally disabled standard beneficiary in injury cases. The percentage is proportionately less for partially disabled ones. In death cases, the ratio is a minimum of 50 percent.

Maximum limits on pension amounts are permissible, but only at levels where under the past-earnings method, such limits would not reduce the pension amount below the above-stated percentages for the typical "skilled manual male employee,[91] or, with reference to prevailing wages generally, the above-stated percentages would hold true for the "ordinary adult male laborer." [92]

Both gauges are supposed to take account of cost of living allowances, where provided. Moreover, both incapacity and death benefits are supposed to be adjusted "following substantial changes in the general level of earnings where these result from substantial changes in the cost of living." [93] Finally, no pension benefit is to be allowed to fall below a prescribed minimum amount.[94]

Suspension of benefits.—It is permissible to suspend benefit payments to an injured person in the following instances: [95]

as long as the person concerned lives abroad;

as long as the person concerned is maintained at public expense or at the expense of a social security institution or service;

where the person concerned has made a fraudulent claim;

where the employment injury has been caused by a criminal offence committed by the person concerned;

where the employment injury has been caused by voluntary intoxication or by the serious and willful misconduct of the person concerned;

where the person concerned, without good cause, neglects to make use of the medical care and allied benefits or the rehabilitation services placed at his disposal, or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries; and

as long as the surviving spouse is living with another person as spouse.

However, in the cases and within the limits prescribed, part of the cash benefit otherwise due shall be paid to the dependents of the person concerned.

Appeals.—Every claimant must have a right to appeal the refusal of a benefit or its quality or quantity, but none beyond settlement by a special tribunal constituted especially for employment injury or social security generally, provided the persons protected have representation on these bodies.

In governmentally administered medical care, where a government department is responsible to a legislature, the right of appeal may be replaced by a right to have a complaint concerning refusal or quality of care investigated by the appropriate authority.

Administration.—Unless the scheme is administered by a government department responsible to a legislature or by an institution subject to public regulation, protected persons must be represented in the management of the program or, at least, in a consultative capacity.

Prevention, rehabilitation, and placement.—Governments must design measures for the prevention of work accidents and occupational diseases and must provide for individualized rehabilitation and placement efforts.

Equality of treatment.—In matters of employment injury benefits, nonnationals must be assured of treatment equal with nationals.

Advanced Standards Proposed by the ILO Recommendation [96]

Unlike a convention, which must be ratified by national governments that wish to take upon themselves the obligation of complying with its provisions and which thereby subject themselves to certain reporting duties and other tests of enforcement, a recommendation is not open for ratification but merely constitutes an agreed-on formulation of desirable targets in specified areas that go beyond minimum standards. Conventions take effect only upon ratification by a certain minimum number of governments, pursuant to their own constitutional processes. With regard to recommendations, the governments of ILO-affiliated States merely assume the obligation to bring them to the attention of their national legislature and other constituted public authorities.

There is no implication of utopianism in recommended standards. On the contrary, these standards, though beyond minimum attainments, are judged to be within practical reach of all the developed lands. Elements of the recommended measures are, in fact, currently applied in several countries.

Broadened coverage.—Coverage is recommended for virtually all those not already covered, or to be covered, pursuant to convention 121. Specifically, coverage is urged for members of cooperatives, self-employed persons, notably the owner-operators of small businesses and farms, and the following "categories of persons working without pay":

> persons in training, undergoing an occupational or trade test or otherwise preparing for their future employment, including pupils and students;
>
> members of volunteer bodies charged with combating natural disasters, with saving lives and property or with maintaining law and order;
>
> other categories of persons not otherwise covered who are active in the public interest or engaged in civic or benevolent pursuits, such as persons volunteering their services for public office, social service or hospitals;
>
> prisoners and other detained persons doing work which has been required or approved by the competent authorities.

The transition might come, if necessary, in stages and by use of voluntary insurance, but the additional coverage may not be financed by the compulsory contributions collected to finance protection of employees against work-injury.[97]

Definition of employment injury.—"Industrial accidents" should include, under prescribed conditions, the following: accidents, regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment; accidents sustained within reasonable periods before and after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools and clothes; and accidents sustained while on the direct way between the place of work and—

> the employee's principal or secondary residence; or
>
> the place where the employee usually takes his meals; or
>
> the place where he usually receives his remuneration.[98]

"Occupational diseases" should include, under prescribed conditions, those "known to arise out of the exposure to substances or dangerous conditions in processes, trades or occupations." Therefore in the absence of proof to the contrary, "there should be a presumption of the occupational origin of such diseases where the employee (a) was exposed for at least a specified period; and (b) has developed symptoms of the disease within a specified period following termination of the last employment involving exposure." [99]

Such presumptions notwithstanding, "proof should be permitted of the occupational origin of diseases not so listed and of diseases listed when they manifest themselves under conditions different from those establishing a presumption of their occupational origin." [100]

Higher earnings-loss compensation.—"Cash benefits in respect of incapacity for work should be paid from the first day in each case of suspension of earnings."

"The rates of cash benefits in respect of temporary or initial incapacity for work, or in respect of total loss of earning capacity likely to be permanent, or corresponding loss of faculty, should be (a) not less than two-thirds of the injured person's earnings: Provided that a maximum limit may be prescribed for the rate of benefit or for

the earnings taken into account for the calculation of the benefit; or (b) where such benefits are provided at flat rates, not less than two-thirds of the average earnings of persons employed in the major group of economic activities with the largest number of economically active male persons." [101]

"Where a maximum limit upon the total benefits payable to all the survivors is prescribed, such maximum should be not less than the rate of benefits payable in respect of total loss of earning capacity likely to be permanent, or corresponding loss of faculty." [102]

Additional compensation.—Several recommendations bear on extra compensation to be provided in recognition of special needs, special handicaps, and additional categories of dependents. To these ends, it is recommended that the "reasonable cost of constant help or attendance" be met in one form or another; [103] that supplementary benefits be paid in cases of unemployability or disfigurement "not taken fully into account in the evaluation of the loss sustained;" [104] and that dependent parents, siblings, and grandchildren benefit from additional survivors' benefits where widows' and orphans' pensions fail to reach the allowable maximum.[105]

Dynamic stability of pensions.—Last, the recommendation urges the periodic adjustment of pension rates not only to take account of changes in the cost of living but also with reference to changes in the general level of earnings.[106]

References for Chapter 6

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24. "Coverage of Employment Injuries Under General Social Security Schemes in Eastern European Countries," International Labor Review, vol. LXXXV, No. 5, May 1962, pp. 478–499, p. 481.
25. "National Pensions Act," Article 1, Legislative Series, 1956—U.S.S.R. 4, International Labor Office, November–December 1956, p. 1. Collective Farmers whose economic status is most nearly that of self-employed persons are covered under a separate, more recent law. Cf. ibid., 1964—U.S.S.R. 1.
26. National Pensions Act, Article 60, loc. cit., p. 17.
27. "Coverage of Employment Injuries, etc.," loc. cit., p. 489.
28. Article 118, U.S.S.R. Constitution: "Citizens of the U.S.S.R. have the right to work—the right to receive guaranteed work with payment for their work in accordance with its quantity and quality."
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30. Ibid., pp. 180 and 186.
31. "Coverage of Employment Injuries, etc.," loc. cit., pp. 484–485. These have been referred to as "activities assimilated to employment", cf. International Labor Conference, 47th session."Benefits in the Case of Industrial Accidents and Occupational Diseases," Report VII (I), International Labor Office, Geneva, 1962, p. 30.
32. U.S. Department of Health, Education, and Welfare, Social Security Administration, "A Report on Social Security Programs in the Soviet Union," P.O., Washington, D.C., September 1960, pp. 59–60.
33. Ibid., p. 60.
34. Ibid., p. 61.
35. Madison, op.cit., p. 182.
36. Annette E. Bosscher, "New Netherlands Law on Incapacity for Work," International Social Security Review, vol. XX, No. 4, 1967, pp. 407–413.
37. The most important programs and their legislative sources are (*a*) The sickness (or Health Insurance) Act of 1913, as consolidated and amended, [International Labor Office, Legislative Series 1952—Netherlands 3; the Sickness Funds Act of 1964, ibid., 1964. Netherlands 2]. (*b*) The Working Incapacity Insurance Act of February 18, 1966 [ibid., 1966. Netherlands 2]. (It is this legislation which replaced the earlier work-accident insurance legislation of 1919–22 and established the new principle of unified treatment of work-disabling conditions regardless of cause.) (*c*) The General Widows and Orphans Act of 1959, ibid., 1959. Netherlands 3.

In addition, the General Old-Age Pensions Act of 1956, the General and the Wage Earners' Family Allowance Acts of 1962, and the Universal Catastrophic Illness Expense Insurance Act (literally: General Special Illness Cost Insurance Act) of 1967 are relied upon to meet some of the needs of work-injury victims, i.e., if and when they have dependent children, require long-term hospitalization, or attain old age.

For a brief summary of programs in effect, see Netherlands Ministry of Foreign Affairs, "The Kingdom of the Netherlands: Facts and Figures," volume 8 (Social Insurance), Government Printing Office, The Hague, 1970–71.

38. Cf. provisions for extended protection referred to below.
39. A summary of program developments and operational data can be found in "Japanese Social Insurance Systems" by G. F. Rohrlich and M. T. Mettert, GHQ, SCAP, Tokyo, Japan, April 1951.
40. For some early observation on the results of this reorganizaton cf. George F. Rohrlich, "Social Insurance Coordination: Some Observations Based on Japanese Experience with Health Insurance", Proceedings of the Third Annual Meeting of the Industrial Relations Research Assoc., 1951.
41. For a brief summary of these enactments and other social security legislation see "Outline of Social Insurance in Japan," published by the Japanese Government, Social Insurance Agency. Latest available edition is of 1970. Full texts can be found in the ILO Legislative Series, 1947 Japan 3 and 1947 Japan 6. Both earlier and subsequent legislation, too, has been published in this series. Progress and problems are discussed in two articles by Tomio Higuchi: "Japanese Social Security Policy," International Labor Review, volume LXXXIV, No. 4, October 1961 (unsigned) and "The Employment Injury Insurance Scheme in Japan: Its Evolution and Problems," forthcoming in Revista degli infortuni e delle malattie professionale, INAIL, Rome, Italy.
42. This section draws heavily on information contained in the as yet unpublished article by T. Higuchi referred to above.
43. The texts of both the 1923 and the 1948 legislation can be found in the ILO's Legislative Series. A summary account by V. N. Rajan. Director General of the Employees' State Insurance Corporation, is given in an article "Social Insurance Scheme for Employees in India." Bulletin of the International Social Security Association, vol. XVIII, Nos. 5–6, May–June 1965. A more detailed account is given in Government of India, Ministry of Labor, Employment and Rehabilitation, "Social Security Report of the ESIS Review Committee,"

1966. Cf. also International Labor Organization, Sixth Asian Regional Conference, Tokyo, September 1968, "Social Security in Asia: Trends and Problems," ILO, Geneva, 1968. More recent developments are reported in "India: Family Pension Schemes," International Labor Review, vol. 104, No. 6, December 1971, p. 558.

44. Rajan, loc. cit., p. 183 and "Report of the ESIS Review Committee," pp. 37–38.
45. The Labor Provident Fund Laws (amendment) Ordinance, No. 3 of 13 February 1971, effective 1 March 1971; cf. International Labor Review, vol. 104, No. 6, December 1971, pp. 558–559.
46. Cf. "Report of the ESIS Review Committee," p. 181.
47. Ibid., p. 185 ff.
48. A fairly detailed account of the transition, as well as of the evolution of the new scheme is given by Dr. Giora Lotan, formerly Director General of the (Israel) National Insurance Institute, in "National Insurance in Israel," National Insurance Institute, Jerusalem, 1969. The law and subsequent amendments thereof can be found in the I.L.O.'s Legislative Series. A consolidated edition, "National Insurance Law," up-dated to July 1968, has been published by the N.I.I., Jerusalem. A concise summary of the program and selective analysis of its features—albeit somewhat out of date, by now—can be found in two codifications by the International Social Security Association: "Organization and Financing of Insurance Against Employment Accidents," report IV, 14th General Meeting, ISSA, Geneva, 1963, and "Employment Accident Insurance (annex to report IV)—National Monographs," Geneva 1962.
49. Cf. Lotan, op. cit., pp. 10–12.
50. N.I. Law, pt. 2, ch. 1.
51. Cf. Lotan, op. cit., pp. 25–26.
52. N.I. Law, Art. 2, ch. 3.
53. Lotan, op. cit., p. 156.
54. Ibid., p. 159–160.
55. Cf., for details, Israel's national monograph in the "Proceedings of the Sixth International Congress for Labor Law and Social Legislation," Almquist & Wiksell, Stockholm, 1968.
56. "Compensation for Personal Injury in New Zealand," Report of the Royal Commission of Inquiry, Government Printer, Wellington, New Zealand, 1967.
57. Op. cit., p. 19.
58. *Ibid.*, p. 40.
59. *Ibid.*, p. 41.
60. *Ibid.*, p. 20.
61. *Ibid.*, p. 23.
62. *Ibid.*, p. 25.
63. *Ibid.*, p. 26.
64. *Ibid.*, pp. 109–110.
65. *Ibid.*, pp. 110–111.
66. *Ibid.*, p. 100.
67. *Ibid.*, p. 101. Both points refer to the means-tested flat social-assistance benefits payable under all New Zealand cash benefit schemes except the superannuation and family allowance programs.
68. *Ibid.*, p. 104.
69. Another Commission is currently exploring a possible overhaul of the general social security system of the country.
70. "*Report of the Royal Commission*," p. 108.
71. *Ibid.*, pp. 107 and 113. Another proposed exception is that of deliberately self-inflicted injuries.
72. *Ibid.*, p. 113.
73. *Ibid.*, p. 114.
74. For a brief description, cf. "International Labor Standards" a brochure published by the ILO. Latest available edition 1966. For a complete chronological compilation see its "Conventions and Recommendations," latest edition 1966. A topical consolidation of all pertinent sources is available under the title, "International Labor Code," Vol. I. Supporting documents comprising selected policy resolutions and accounts of various regional agreements are contained in Vol. II, Appendices, ILO, Geneva, 1951.
75. Workmen's Compensation (Agriculture) Convention (No. 12). The main subsequent agreements on minimum standards in this area have been incorporated in the following international agreements: Workmen's Compensation (Accidents) Convention, (No. 17); Workmen's Compensation (Occupational Diseases) Convention, (No. 18); Equality of Treatment (Accident Compensation) Convention, (No. 19); Protection Against Accidents (Dockers) Convention, (No. 28); Protection Against Accidents (Dockers) Convention (Revised), (No. 32); Workmen's Compensation (Occupational Diseases) Convention (Revised), (No. 42); Shipowners' Liability (Sick and Injured Seamen) Convention, (No. 55); Social Security (Seafarers) Convention, (No. 70); Social Security (Minimum Standards) Convention, (No. 102); Equality of Treatment (Social Security) Convention, (No. 118); Benefits in the Case of Employment Injury Convention, (No. 121).
76. For a detailed listing of reasons advanced in support of new risk-specific international instruments, cf. the summary of recommendations by an international Committee of Social Security Experts, in *Benefits in the Case of Industrial Accidents and Occupational Diseases*, Report VII (1), I.L.O., Geneva, 1962, p. 4.
77. *Op. cit.*, passim.
78. Convention 121 adopted July 8, 1964, effective in 1966.
79. Articles 3 and 4.
80. Article 6. Wherever the term "prescribed" is used, it indicates that the matter under reference is left to the discretion of the national authorities.
81. Article 7.
82. Article 8.
83. Article 9.
84. Article 10.
85. Article 11.
86. Article 13.
87. Articles 14, 15.
88. Articles 16, 17.

89. Articles 13, 14–5.
90. Article 18.
91. Article 19.
92. Article 20.
93. Article 21.
94. Articles 19–10 and 20–8.
95. Article 22.
96. Rec. 121, July 8, 1964.
97. § 3.
98. § 5.
99. § 6.
100. § 7.
101. § 8–9.
102. § 14.
103. § 11.
104. § 12.
105. § 13.
106. § 15.