# The Special Treatment of Employment Injury in Social Security

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"IF A WORKMAN loses his leg in an accident, his needs are the same whether the accident occurred in a factory or in the street; if he is killed, the needs of his widow and other dependants are the same, however the death occurred." [2] If this principle, stated by Lord (then Sir William) Beveridge is applied in practice, the level of social security protection should depend only on the economic consequences of the accident, not on its occupational or non-occupational origin. In fact, however, the legislation of many countries, including Lord Beveridge's own, affords more favourable treatment to the victims of industrial accidents and occupational diseases (which will both be treated in this paper under the general heading of employment injury) than to those whose accidents or diseases do not have an occupational origin.

Legislation in the employment injury field has often been regarded as the pace-setter for other branches of social security. During the past half century of social security development the difference in treatment has generally been taken for granted, though there have been some students of the subject who have asked, among other questions: what grounds there are for the special treatment of employment injury; whether these grounds are still valid; how social security is likely to develop in this respect; how certain national legislations have dealt with this particular basic human problem in the elaboration of their social security systems. The present paper attempts to indicate some of the points that may be relevant in seeking answers to these questions.[3]

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[1] International Labour Office.

[2] *Social insurance and allied services*, Report by Sir William Beveridge, Cmnd. 6404 (London, HM Stationery Office, 1942), p. 38, para. 80.

[3] It should be mentioned that problems concerning the organisation of social security do not come within the scope of this study, which deals mainly with problems of principle. Thus no attempt is made to evaluate the effectiveness or the shortcomings of different approaches adopted by different countries to meet the contingencies normally covered by social security.

There are two groups of factors to consider in endeavouring to explain the differences of treatment. One group derives from the historical evolution of legal concepts; the other, which is purely practical, is concerned with the real or fancied advantages of differences in treatment or simply with the capacity of social security at a given stage in its development.

This paper will attempt to analyse these two groups and then to examine the validity of the arguments used to justify the special treatment of employment injury. Recent developments in the field of social security and a number of basic problems will be taken into consideration.

## The case for special treatment

### Evolution of the legal concepts underlying employment injury compensation

An examination of historical changes in the conceptual basis underlying contemporary legislation on employment injury benefits will reveal not only the main differences between these and other social security benefits but also certain factors weighing in favour of the maintenance of preferential treatment for the victims of employment injury. Here it will suffice to make a very brief summary, for numerous studies have already been carried out and published on this subject.[1]

The original basis of the right to compensation in many countries on the European Continent influenced by Roman law was the principle of responsibility, which was valid only if some blame attached to the employer; the victim could obtain full compensation to cover the loss suffered if he could prove that the employer was at fault. Under the Anglo-Saxon common-law system each individual had himself to bear the consequences of accidents of which he was the victim, unless such accidents were due to the fault of a second party, who in the case of employment injury was the employer.

It was of course very difficult or even impossible for injured workers or the dependants of deceased workers to prove that the employer was at fault, and they were often left unprotected and plunged into extreme poverty. The system was unsatisfactory for the employer as well, for he was liable to pay an unpredictable amount, which might be very large in the case of a serious accident. Distressing situations of this sort became commoner with the advance of industrialisation and increasingly claimed the attention of the public and the policy-makers, who felt the need for a

[1] See, for example, ILO: *Compensation for industrial accidents*, Studies and Reports, Series M, No. 2 (Geneva, 1925), pp. 1-6; idem: *Social security*, A Workers' Education Manual (Geneva, 1970), pp. 4-7.

new approach if effective protection were to be provided against employment injury. It was not, however, until the establishment of a legal liability based on the principle of occupational risk [1] that effective protection was made available through legislative provisions. Before this liability could be properly established national legislation and jurisprudence had to pass through several important evolutionary stages. For example, in France the principles of contractual liability *(responsabilité contractuelle)* and statutory liability *(responsabilité légale* or *responsabilité du fait des choses)* were successively applied before the introduction of the Industrial Accidents Act of 1898, which established the principle of occupational risk, and in Great Britain it was not until the adoption of the Workmen's Compensation Act of 1897 that an end was put to the application by the courts of the principles of " common employment ", " *volenti non fit injuria* " and " contributory negligence ".[2]

Under legislation based on the principle of occupational risk an employer who creates an organisation by initiating certain activities and surrounding himself with workers and machines is regarded as the ultimate cause of employment injury and is liable for the payment of compensation at prescribed rates for the contingencies covered, whether their occurrence is attributable to his negligence or the worker's and even where there has been no fault at all. Almost every country in the world has adopted legislation establishing the individual liability of the employer, and this remarkable achievement has been a great step towards satisfying the aspirations of the workers for greater security. The protection it affords them has become an unquestioned right that has stimulated the introduction of social security legislation covering other risks.

Before the principle of occupational risk was established, the employer could successfully resist a claim for the payment of compensation if it could not be proved that he was at fault, whereas the worker could, at least in theory, be awarded full damages if he could prove that the employer was in fact at fault. Under legislation based on the principle of occupational risk the employer abandons the defence open to him under the common-law system and accepts objective liability for the payment of compensation for employment injury; in return the worker renounces a portion of the full damages to which he would otherwise have been entitled, though he is often given the right to sue an employer who has been negligent.

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[1] The term " occupational risk " used in this paper refers to the conceptual basis of the employer's liability without fault in the case of accidents at work or diseases of occupational origin. For a general and succinct explanation of the term see ILO: *The International Labour Organisation and social insurance*, Studies and Reports, Series M, No. 12 (Geneva, 1936), pp. 26-28. The term does not mean the risk of employment injury to which workers are exposed.

[2] See Paul Pic: *Traité élémentaire de législation industrielle* (Paris, Arthur Rousseau, 1922), pp. 723-725, paras. 1050-1052; and Sir Arnold Wilson and Hermann Levy: *Workmen's compensation* (London, Oxford University Press, 1939), Vol. I, pp. 25-27.

This leads to a compromise expressed in a prescribed scale of compensation that disregards the actual amount of injury suffered in each individual case. It is clear that the nature of employment injury benefits differs from that of other social security benefits in that " both the contingencies in which the latter are payable and their rates are settled, not so much by any juridical principle, as by what the contributing parties consider is socially the most advantageous way of distributing the available financial resources ".[1] In other words, an element of reparation still remains in the benefit payable under legislation based on the principle of occupational risk, and this element appears to have contributed towards the realisation of different levels of social security benefits according to the origin of the accident or disease. Thus Spielmeyer considers that the privileged position of employment injury victims can be justified only by their initially having been entitled to claim damages proportional to the consequences of the accident from the employer, and that so long as the basic distinction between employment injury benefits, which are intended " to compensate the workers for losses they have actually suffered ", and other social security benefits, which are intended " to meet certain vital needs of persons with small incomes ", is acknowledged, it is reasonable for employment injury benefits to be somewhat larger.[2] In this connection it may also be mentioned that under the workmen's compensation legislation of some countries permanent partial disability benefits are payable to an employment injury victim irrespective of his actual earning capacity and it is possible for him to draw the benefit while again following his old occupation.

Under the principle of occupational risk the employer benefiting by industrial production is responsible for the payment of compensation in the event of employment injury, irrespective of any question of fault, since his employees are exposed to the risks inherent in production. The entire cost of employment injury benefits forms one of his normal liabilities along with other costs such as the repair and depreciation of equipment, the upkeep of premises or wages and salaries. Thus where national legislation concerning employment injury benefit is based on the principle of the individual employer's liability, the whole cost of benefits is borne by the employer or his insurance company.

Even where employers are relieved of direct responsibility for the provision of benefits because they are covered by social insurance against employment injury, the legislation usually places the whole burden of the cost of such benefits on them by making them alone liable to pay contributions to the social insurance fund. It can therefore be argued that

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[1] ILO: *Social security : principles, and problems arising out of the war*, Part 1: *Principles*, Report IV (1), International Labour Conference, 26th Session, Philadelphia, 1944 (Montreal, 1944), p. 13.

[2] Günter Spielmeyer: " General report ", in *Ascertaining entitlement to compensation for an industrial injury* (Brussels, International Institute of Administrative Sciences, 1965), p. 41.

the financing of the whole cost of benefits by the employer is a characteristic of the employment injury branch of social security [1] and that the survival of the idea of the employer's responsibility justifies the autonomy of the branch and the according of special treatment to the victims of employment injury.[2]

It should also be mentioned that the principle of occupational risk lends support to the view that a clear distinction is possible between insurance schemes covering employment injury and unemployment on the one hand and schemes covering contingencies of non-occupational origin on the other. The essential criterion here is the presence or absence of an employment relationship.[3]

Some policy-makers supported the special treatment of employment injury on the grounds that its victims should be generously compensated for a misfortune resulting from their service to the community. It was sometimes argued that a worker injured in a hazardous industry should be compensated as a disabled soldier. Accordingly preferential treatment for the victims of employment injury was introduced in 1944 in the employees' pension insurance scheme of Japan where, before the amendment, all victims had been treated equally irrespective of the origin of their accident or disease.[4] In the countries of Eastern Europe industrial accident insurance has been abolished as a separate branch of social security and incorporated with the remaining branches of national schemes, but victims of employment injury claiming general cash sickness benefits or pensions for invalidity (and their dependants in the case of survivors' pensions) enjoy preferential treatment as regards qualifying conditions and benefit rates, since employment injury is considered to have been incurred in the course of activities beneficial to society.[5] This preferential treatment, however, is not limited to employment injury in the narrow sense but applies also to accidents occurring in the course of prescribed activities that do not fall within a strict definition of employment.

**Practical reasons for special treatment**

Other arguments in favour of the special treatment of employment injury are not based on the principles underlying national legislation that

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[1] Paul Durand: *La politique contemporaine de sécurité sociale* (Paris, Dalloz, 1953), p. 205.

[2] Jean-Jacques Dupeyroux: *Sécurité sociale* (Paris, Dalloz, 1967), p. 326.

[3] Kiyosada Tanaka: "Rodo-Hoken no Shomondai" [Various problems of labour insurance], in *Juristo* (Tokyo), No. 393, 15 Mar. 1968, pp. 107-113.

[4] Insurance Bureau, Ministry of Health and Welfare, Japan: *Kosei Nenkin Hoken Jugonenshi* [Fifteen years' history of welfare pension insurance] (Tokyo, 1958), pp. 55-56.

[5] "Coverage of employment injuries under general social security schemes in Eastern European countries", in *International Labour Review*, Vol. LXXXV, No. 5, May 1962, pp. 478-499.

have just been discussed. Some of them are connected with the possible practical advantages of special treatment and others with the fact that a social security system may not at a certain stage in its development be in a position to treat all contingencies with equal generosity.

Although he stated the principle quoted at the beginning of this paper, Beveridge went on to submit the following three arguments in favour of a distinction between employment injury and other contingencies: *(a)* it is essential that men should enter the many industries that are vital to the community but dangerous, and it is desirable, therefore, that they should be able to do so with the assurance of special social provision against their risks; *(b)* a man disabled during the course of his employment has been working under orders; and *(c)* only if special provision is made for employment injury does it seem possible to limit the employer's liability at law to the results of actions for which he is responsible morally and in fact, not simply by virtue of some principle of legal liability.[1] To Beveridge the first argument, which seems to have stemmed from the wish to provide preferential treatment for victims of employment injury as a reward, was the strongest reason for the proposed demarcation, and in fact this view has been supported on the grounds that workers have little choice between safe and dangerous occupations and that the wage level in hazardous industries does not take into account the greater risk of injury.[2]

Under social insurance schemes dealing with contingencies of non-occupational origin it is usual for entitlement to benefits to be subject to certain conditions; for example, it may depend on direct financial participation by the persons protected or their employers, or on a qualifying period of occupational activity. The case for separate and more favourable treatment of employment injury was therefore strengthened by the belief that public opinion would not indefinitely have accepted that workers injured while employed on dangerous work should be deprived of protection because of some failure to comply with qualifying conditions.[2]

One practical justification for the autonomy of the employment injury branch follows from the system already referred to under which the entire cost of the benefits is borne by the employers. The system was expected to encourage employers to reduce the incidence of employment injury. It may be recalled in this connection that, when the Workmen's Compensation Act was first put into effect, the British trade union movement went so far as to oppose insurance by employers to cover their liability, because, in the view of many workers, only direct, personal liability could ensure efficient preventive and safety measures in the work-

[1] Beveridge, op. cit., p. 39, para. 81.

[2] *Social security: principles, and problems arising out of the war*, Part 1: *Principles*, op. cit., p. 12.

place; insurance would make employers more negligent in their efforts to prevent employment injury.[1]

In some of the countries where employment injury is covered by social insurance, rates of contribution payable by the employer vary with his accident record or the presumed risk of the industry, or a combination of these two factors. The practice, derived from private insurance, of ensuring a balance between the risk covered and the premium paid is said to afford an incentive to employers to develop efficient techniques and procedures for the prevention of employment injury. The fact that varying rates of contribution can be applied has thus provided an additional argument in favour of the special treatment of employment injury under social security.

### Validity of the arguments in favour of special treatment

The various considerations briefly dealt with above have provided a number of arguments in favour of the special treatment of employment injury, and it is a fact that those suffering such injury (and where appropriate their dependants) are generally entitled to special medical, sickness, invalidity and survivors' benefits more generous than those payable where the accident or disease is not of occupational origin.

In considering whether this special treatment is still justified it will be helpful to review the evolution of national and international social security legislation, with particular reference to the contingencies covered, the persons protected and the benefits provided, and to examine some of the arguments that may be advanced against special treatment.

### Evolution of social security legislation

Social security may be regarded as the security furnished by a society to its members in certain prescribed circumstances through a series of measures designed: (1) to protect them from the economic distress that would otherwise be caused by a suspension or substantial reduction of income; (2) to provide them with the medical care they need; and (3) to grant them allowances when they have young children to bring up. The methods adopted vary from one country to another, and even within a single country social security legislation is subject to constant adjustment to changes in the social, economic and political fields. The following brief analysis of the evolution of national and international legislation will reveal the dynamism of social security in this respect.

Traditionally the contingencies giving rise to the payment of employment injury benefits have been limited by the two elements of time and

[1] Wilson and Levy, op. cit., pp. 53 and 77.

place, as can be seen from the well-known legal term " arising out of and in the course of employment ". One of the most important breaches in tradition is the extension of the notion of employment injury to cover accidents occurring between the workplace and the home of the worker on the grounds that travel between these two places is necessitated by employment.[1] It has been extended so far in some countries that the time and place of the occurrence have lost almost all their importance and employment injury benefits are provided in the case of accidents sustained during union activities, participation in fire brigades, supplementary police duties (as special constable) and civil defence work.[2]

The broadened concept of employment injury in national law and practice has been reflected in the international instruments adopted by the International Labour Conference. The Income Security Recommendation, 1944 (No. 67), provides in its Annex, Paragraph 16 (1), that " injuries resulting from employment should be deemed to include accidents occurring on the way to or from the place of employment ". More recently, member States ratifying the Employment Injury Benefits Convention, 1964 (No. 121), are required under Article 7 to prescribe a definition of " industrial accident ", including the conditions under which a commuting accident is considered to be an industrial accident. It is not, however, necessary to make provision for commuting accidents in defining " industrial accident " if they are covered by other social security schemes providing, in respect of such accidents, benefits that, taken together, are at least equivalent to those required under the Convention. The Employment Injury Benefits Recommendation, 1964 (No. 121), adopted to supplement the above-mentioned Convention, contains the following provisions in its Paragraph 5:

> Each Member should, under prescribed conditions, treat the following as industrial accidents:
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> *(a)* 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;
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> *(b)* accidents sustained within reasonable periods before and after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools or clothes;
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> *(c)* accidents sustained while on the direct way between the place of work and—
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> (i) the employee's principal or secondary residence; or
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> (ii) the place where the employee usually takes his meals; or
>
> (iii) the place where he usually receives his remuneration.

[1] The number of countries in which commuting accidents are covered by the employment injury benefits legislation increased between 1925 and 1962 from seven to fifty. See ILO: *Benefits in the case of industrial accidents and occupational diseases*, Report VII (1), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, 1962), p. 39.

[2] For examples of relevant national legislation see ibid., pp. 40-41.

National legislation concerning employment injury has evolved in some countries to a stage where it now protects not only wage earners and salaried employees but also persons who cannot be regarded as being under a contract of employment, including self-employed persons, family workers, homeworkers, students, trainees, and those serving medical or legal internships. Thus Paragraph 3 of Recommendation No. 121 recommends the provision of employment injury or analogous benefits for the following persons, if necessary by stages and with or without voluntary insurance: members of co-operatives; certain self-employed persons, in particular those with small-scale businesses or farms; and certain persons working without pay, such as trainees (including pupils and students), members of volunteer bodies who combat natural disasters, save lives and property or maintain law and order, persons volunteering their services for public office, social service or hospitals, and prisoners and other detained persons doing work required or approved by the competent authorities.

It has been argued that the idea of the employer's responsibility or the wish of society to reward the victim can still justify preferential treatment for the victims of employment injury. Such treatment may consist in the payment of benefit at a higher rate or the absence of qualifying conditions. It is interesting to note, however, that there are countries that provide benefit for short-term incapacity for work involving suspension of earnings at the same rate whether the incapacity is of occupational origin or not.[1] In some of these countries employment injury victims receive the benefit for a specified part of the initial period of incapacity for work from the sickness benefit fund; this is true, for example, of the Federal Republic of Germany and Sweden. Under the Greek system, which does not treat employment injury insurance as an independent branch, a feature regarded as original when the 1934 Act was promulgated [2], the same rate of benefit has been paid since the promulgation of the 1951 Act not only for initial incapacity for work but also for permanent disability and death, irrespective of the cause. Victims of employment injury, however, are not required to satisfy qualifying conditions. The accident schemes in Guatemala and Switzerland provide the same benefits for accidents of occupational and non-occupational origin and require no qualifying period for entitlement to benefit in either case.

The following table shows various rates of periodical payment provided as international minimum standards in the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Injury Benefits Convention, 1964 (No. 121), the Invalidity, Old-Age and Survi-

[1] For example Bolivia, Brazil, Costa Rica, the Dominican Republic, Ecuador, El Salvador, the Federal Republic of Germany, Honduras, Hungary, India, Nicaragua, Norway, Peru, Poland, Rumania, Sweden, Turkey and Venezuela.

[2] I. Zarras: " The organisation of social insurance in Greece ", in *International Labour Review*, Vol. XXXIX, No. 5, May 1939, p. 587.

vors' Benefits Convention, 1967 (No. 128), and the Medical Care and Sickness Benefits Convention, 1969 (No. 130). From the table it may be observed that between Conventions Nos. 102 and 130 there is a sharp increase in the rate of sickness benefit, which becomes higher under the latter than the rate of temporary incapacity benefit for employment injury under the former and the same as that for temporary incapacity benefit for employment injury under Convention No. 121. Furthermore,

RATES OF CASH BENEFITS UNDER ILO CONVENTIONS

| Contingency | Standard beneficiary | % of standard wages under ILO Conventions Nos. | | | |
|---|---|---|---|---|---|
| | | 102 | 121 | 128 | 130 |
| *Non-occupational in origin:* | | | | | |
| Sickness (temporary incapacity). | Man with wife and two children . . . . . | 45 | — | — | 60 |
| Invalidity . . . . . | Man with wife and two children . . . . . | 40 | — | 50 | — |
| Survivorship . . . . . | Widow with two children | 40 | — | 45 | — |
| *Occupational in origin:* | | | | | |
| Temporary incapacity . | Man with wife and two children . . . . . | 50 | 60 | — | — |
| Invalidity . . . . . | Man with wife and two children . . . . . | 50 | 60 | — | — |
| Survivorship . . . . . | Widow with two children | 40 | 50 | — | — |

Note: For the methods of calculating benefit rates see ILO: *Minimum standards of social security*, Report V *(a)* (2), International Labour Conference, 35th Session, Geneva, 1952 (Geneva, 1952), pp. 220-228.

the rate for survivorship under Convention No. 128—dealing with contingencies of non-occupational origin—is 5 per cent higher than in the case of death due to employment injury under Convention No. 102, while the rate for invalidity under the former Convention is equal to the employment injury rate under the latter.

With a few exceptions [1], national schemes covering employment injury, whether through the employer's direct liability or through compulsory insurance, provide medical care for injured persons by various methods reflecting the general practice of each country. There is a marked trend towards the disappearance of special treatment in this respect for the victims of employment injury, who in some countries now receive exactly the same protection as regards the provision, nature and

[1] Workmen's compensation laws in Burma, Ceylon, India, Iraq and Pakistan do not guarantee medical care for injured workers.

scope of medical care as others in need of it. This is true in particular where medical care is provided for the whole population through comprehensive national health services, as in the countries of Eastern Europe and the United Kingdom. The new trend was taken into account in 1964 by the International Labour Conference when it adopted Convention No. 121. This Convention contains a special provision allowing any country providing medical care by means of a general health scheme or a medical care scheme for employed persons to specify in its legislation that such care shall be made available to employment injury victims on the same terms as to other persons entitled thereto, on condition that the rules on the subject are so designed as to avoid hardship (Article 11, paragraph 1). Furthermore, Convention No. 130, adopted by the Conference in 1969, provides that benefits prescribed by it shall be made available to persons protected in the case of any morbid condition, whatever its cause (Article 1, subparagraph *(j)* and other relevant provisions). In the course of the discussion at the Conference supporters of the provision cited referred to the current trend towards covering all morbid conditions, irrespective of their origin, through a single medical care scheme.[1]

Generally speaking, the purpose of a qualifying period under social security may be to establish a certain correspondence between benefits and contributions or to ensure that benefits are provided for persons who belong normally to the groups of persons protected. Recently the latter purpose appears to have predominated, as may be observed in the provisions of Convention No. 130 (Articles 15 and 25). In many countries benefits for temporary incapacity for work due to sickness or injury of non-occupational origin are granted without a qualifying period.[2] There are also national schemes under which no qualifying conditions are laid down in respect of permanent disability and death due to non-occupational accidents. Examples are provided by Congo (Brazzaville and Kinshasa), Mauritania, Morocco, Niger, Togo and Venezuela. This may be regarded as logical if the purpose of a qualifying period is to prevent persons from becoming members of the scheme solely in order to receive the benefit. An accident, unlike the slow worsening of a disease, cannot be foreseen by the victim and there is accordingly no need for a qualifying period to ensure that he belongs normally to the group of persons protected.

A striking example of the trend towards the abolition of the differences between protection against employment injury and protection

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[1] ILO: *Record of proceedings*, International Labour Conference, 53rd Session, Geneva, 1969 (Geneva, 1970), Appendix VII, p. 643, para. 18. See also idem: *Revision of Conventions Nos. 24 and 25 concerning sickness insurance*, Report V (1), International Labour Conference, 53rd Session, Geneva, 1969 (Geneva, 1968), p. 11.

[2] For example Cuba, Czechoslovakia, the Federal Republic of Germany, Hungary, Italy, Japan, Luxembourg, the Netherlands, Sweden, the USSR and Venezuela.

against other contingencies can be seen in the recent Netherlands Incapacity Insurance Act, which was introduced in 1966 to protect all employees in the private sector. Under this Act, which repeals the old legislation on pensions for invalidity and employment injury, pensions are payable for permanent disability, whether of occupational origin or not; benefits for short-term incapacity lasting less than fifty-two weeks, whatever its origin, are payable under the sickness insurance scheme; in the case of death of the breadwinner, whatever its cause, the widow and children are protected by the general insurance scheme covering the entire population.[1] The basic policy underlying the new scheme in the Netherlands appears to be that there should be no discrimination among wage earners in cases of sickness, disablement or handicap and that no distinction in benefit rates or rehabilitation measures should therefore be based on the origin of the contingency.[2]

**Towards a new attitude**

While it is true that the legal principles of occupational risk are based on efforts to attain social justice through social security that go back half a century, it may be pertinent to recall that as long ago as 1925 it was being argued that workers were menaced by one risk only, the risk of incapacity for work, that they should be protected against the economic consequences of this risk, and that the principle of occupational risk should be abandoned since there was no way of measuring the responsibilities of the individual, the occupation and the community for sickness, injury, invalidity or death and it was therefore impossible to build a solid edifice of social insurance on so insecure a basis.[3]

It may be said that the living and working conditions of workers in an industrialising society have changed substantially and that they are exposed to an increasing number of risks, not only during the eight hours of work but also during the remaining sixteen hours of the day. Thus in New Zealand a Royal Commission of Inquiry proposed in December 1967 the introduction of a new scheme to provide " twenty-four-hour insurance for every member of the workforce, and for the housewives who sustain them ", under which benefits would be payable whether the accident occurred in the factory, on the highway or in the home.[4]

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[1] For an outline of the 1966 legislation see *International Labour Review*, Vol. 94, No. 1, July 1966, pp. 76-77.

[2] International Social Security Association: *Social Security Abstracts*, 1/013/42, No. 83 (Geneva, 1966), which summarises " De maatschappelijke betekenis van de arbeidsongeschiktheidsverzekering " by Dr. G. M. J. Veldkamp in *Sociale Verzekering*, No. 11, 25 May 1966, pp. 117-119.

[3] ILO: *General problems of social insurance*, Studies and Reports, Series M, No. 1 (Geneva, 1925), pp. 126-127.

[4] *Compensation for personal injury in New Zealand*, Report of the Royal Commission of Inquiry (Wellington, Government Printer, 1967), p. 26.

In the Federal Republic of Germany the majority of members of the committee set up in 1964 to study the future of social security considered, with particular reference to commuting accidents—for which employers are responsible in that country, as they are for accidents in the workplace—that victims should be given the same right to compensation, calculated on the same basis, however the accident occurred.[1] In the report quoted earlier Spielmeyer points out that an employment injury benefit scheme can be justified only if it is limited to the recognised risk of industrial accidents and occupational diseases since, if it went beyond those limits, it would become increasingly difficult to find serious grounds for the preferential treatment of employment injury victims.[2] It may also be recalled that at the meeting of the Committee of Social Security Experts convened by the ILO in 1962, two experts expressed the view that if commuting accidents were to be regarded as employment injuries, it would be logical to extend the principle to all accidents, especially those occurring during paid holidays.[3]

If it is accepted that the worker does not change his status and responsibility with time and place and that his needs and those of his dependants are the same whatever the cause of the contingency, it follows that the social security benefit accorded to meet the needs in question should also be the same. It is true, as already mentioned [4], that a report published in 1944 raised strong arguments against abolishing the special treatment of employment injury, but since then important developments in industrial safety, wages and social security have brought about a situation in which these arguments can very easily be challenged. The Governments of the Netherlands and Sweden, for example, have put forward the view that in countries where general social security schemes have reached a high degree of development it may be asked whether there is any point in maintaining a special employment injury scheme.[5]

The national employment injury benefit legislation in many countries defines, in very general terms, the groups of persons protected by the scheme and the contingencies giving right to benefits. Legal definitions are necessary as a basis for deciding whether or not an injured person is a person protected by the scheme and whether or not an accident or disease is of occupational origin. There is such an enormous accumulation of case law and corresponding studies in this field that there is no need here to demonstrate the difficulties or anomalies arising in the interpretation of

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[1] *Soziale Sicherung in der Bundesrepublik Deutschland*, Bericht der Sozialenquête-Kommission (submitted to the Chancellor on 22 July 1966) (Stuttgart, W. Kohlhammer Verlag GmbH, 1966), p. 186, para. 529.

[2] Spielmeyer, op. cit., p. 41.

[3] ILO: *Report of the Committee of Experts on Social Security*, mimeographed document CSSE/D.14.1962 (Rev.), Annex I, p. 8, para. 11.

[4] See above, p. 114.

[5] ILO: *Benefits in the case of industrial accidents and occupational diseases*, Report VII(2), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, 1963), pp. 5-6.

the legal definitions or to discuss them in detail. It is enough to say that such difficulties are inevitable so long as it is thought appropriate to treat injured workers in accordance with the cause rather than the extent of their injuries.[1]

Problems regarding the effectiveness and the shortcomings of various types of employment injury schemes are outside the scope of the present paper.[2] It may, however, be said that schemes based on the principle of the individual employer's liability, whether or not they make it a statutory obligation for the employer concerned to insure or to accumulate a reserve to cover his liabilities, almost inevitably lead to disputes and even litigation and so to mutual hostility between him or his insurers and the victim, thus dashing the hopes that such schemes would replace action in the courts and provide a friendly and informal way of resolving disputes. In fact, they often involve lengthy lawsuits that may be very costly to the victim, particularly in cases of severe disablement. Legal delays and the consequent uncertainty often plunge the injured worker and his family into a state of helpless misery, both mental and financial. They may even impede social and vocational rehabilitation, for it is not hard to imagine that while a case is pending the injured worker may fear that rehabilitation might deprive him of the maximum compensation where awards are related to the degree of disability. Thus it has been maintained that " the abolition of litigation would result in a dramatic reduction in the incidence of accident neuroses and would be of corresponding assistance in pushing forward the physical rehabilitation of those who were injured ".[3]

The fact that almost all national employment injury benefit schemes are financed solely by employers may be regarded as a product of the historical process in which the idea of the employer's responsibility has evolved, and it is difficult, in theory at least, to regard it as a real justification for the separation of an employment injury benefit scheme from the general framework of social protection. The tripartite contributions from the employers, the insured workers and the State were no obstacle to Beveridge's advocacy of special treatment for employment injury. It is also interesting to note the method adopted by Switzerland for financing its compulsory accident insurance scheme: there is no difference in the level of benefits between accidents of occupational and non-occupational origin, but the employers bear the entire cost of compensating occupational accidents, through contributions based on their accident record, whereas the benefits for other accidents are financed through contributions from the persons protected and subsidies from the authorities.

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[1] *Compensation for personal injury in New Zealand*, op. cit., p. 83.

[2] For the shortcomings of individual employer's liability schemes see, for example, ILO: *Social security in Asia : trends and problems*, Report II, Sixth Asian Regional Conference, Tokyo, 1968 (Geneva, 1968), pp. 37-38.

[3] *Compensation for personal injury in New Zealand*, op. cit., p. 74.

It is contended that basing the rates of contribution payable by employers on their accident record helps to prevent industrial accidents, and the argument is often used to justify the special treatment of employment injury benefits. The effectiveness of incentive rates of contribution in the prevention of accidents has been disputed and defended with equal vigour, and the present paper will not attempt to discuss this particular problem.[1] Two points will be mentioned, however, for consideration. Firstly, it often happens that, where the method is applied, the smaller establishments that most need encouragement for the promotion of industrial safety and occupational health are excluded, probably for administrative and technical reasons. Secondly, an undeniable tendency exists to substitute uniform rates of contribution for rates varying with the degree of risk involved, or at least to limit very strictly the number of different rates, the underlying concept being that of solidarity between the more dangerous and the less dangerous industries or undertakings.

Nevertheless, even if contribution rates based on merit or accident record were the most effective means known of reducing employment injuries, it would not really be logical to argue that this justified the special treatment of the victim. It has already been mentioned that the Swiss accident insurance scheme, which adopts the accident-rate method of assessing the employer's contributions, pays the same benefit whatever the cause of the accident. On the other hand, Beveridge's proposal to apply the accident-rate method was rejected when the United Kingdom Government accepted the principle of special treatment of employment injury victims.[2]

## Conclusions

Despite all the good will with which the schemes have been run, the special treatment of employment injury under social security has resulted in the anomaly that, among persons whose needs are the same, some are generously treated by society whereas others receive only a subsistence protection that in not a few cases plunges them and their families into poverty. If social security, inspired by principles of equity and universality, is to realise the aspiration of all people for effective protection against the contingencies inherent in the societies they live in, discrimination between occupational and non-occupational accidents will have to disappear, for otherwise the term " social security " itself may come to sound ironical and meaningless.[3]

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[1] Reference may be made to ILO: *Report*, Meeting of the Actuarial Sub-Committee of the Committee of Social Security Experts, mimeographed document CSSE/ACT.14. 1964 (Rev.), Annex I, pp. 9-12, paras. 4-9.

[2] For the grounds on which the proposal was rejected see *Social insurance*, Part II: *Workmen's compensation*, Cmnd. 6551 (London, HM Stationery Office, 1944), pp. 17-18.

[3] See, for example, Jan Elson: " A national disability income ", in *New Society* (London), No. 252, 27 July 1967, pp. 121-122.

Social security is a dynamic concept that has evolved not only with changes in the social, economic and political needs of a given society, but also with advances in the ideas underlying that society. As has already been mentioned, trends have emerged towards eliminating the special treatment of employment injury and providing a social security system based strictly on the needs of those it exists to protect. In some countries the development of social security has, mainly through improvements in the benefits provided for non-occupational accidents and diseases and the liberalisation of the qualifying conditions, reached a stage in which there are no reasons for maintaining a distinction that has ceased to be of practical importance.

Workers do not change their social and economic status in the evening or in summer, when they leave the place where they contribute through their labour to the development and progress of society; at home or on holiday, they are at least preparing themselves for their work in one way or another. " If the well-being of the workforce is neglected, the economy must suffer injury. For this reason the nation has not merely a clear duty but also a vested interest in urging forward the physical and economic rehabilitation of every adult citizen whose activities bear upon the general welfare. This is the plain answer to any who might query the responsibility of the community in the matter. Of course, the injured worker himself has a moral claim, and further a more material claim based upon his earlier contribution, or his readiness to contribute to the national product. But the whole community has a very real stake in the matter." [1] If this view is accepted, the principle of occupational risk and any other that permits differences in treatment under social security to be based on the origin of the contingency will have to be replaced by a new principle of community responsibility inspired by the idea of social solidarity.

Today, when endless technical innovations lead to an ever-increasing complexity in the structure of human living, it becomes more and more difficult to draw a line between risks of occupational and non-occupational origin. The difficulty has always existed, for example, with slowly developing diseases, and now the number of new risks being created by a rapidly industrialising society may hasten the establishment of the principle of community responsibility. The new risks include, among many other things, traffic accidents and the pollution of the atmosphere and the rivers, the lakes and even the sea, and it becomes increasingly difficult to find an acceptable criterion for distributing responsibility for risks such as these among the individual, the occupation, the industry and the community as a whole.

It is still true that recourse against the consequences of a road accident can often be had only through an action for damages, and the

[1] *Compensation for personal injury in New Zealand,* op. cit., p. 20.

court usually takes no account of the financial resources of the person held responsible for the accident. Furthermore, civil-liability (or third-party) insurance, even where it is compulsory, is not necessarily adequate to compensate the victim in full, and where road accidents are frequent, insurance companies naturally refuse bad risks or increase premiums. Victims of air or water pollution due to industrial development may also be placed in an unfortunate position regarding not only their physical recovery but also their claims for damages. Where disputes are taken to law, the ordinary courts often have difficulty in establishing the cause and consequently in assigning the responsibility. If, however, the community accepts responsibility for an effective system of social security that protects its members adequately against all contingencies irrespective of cause, where there is no serious fault or tort, a great deal of agony and misery will disappear.

The ending of the special treatment of employment injury, which Young considers to be based, without any convincing justification, merely on the strength of tradition [1], will have to be brought about through the improvement of the protection provided for persons suffering from contingencies of non-occupational origin, for workers will naturally fear a reduction in the advantages they have obtained in their protection against employment injury. It should be remembered, then, that protection against disability or death of non-occupational origin has often been introduced after protection against employment injury, as a later stage in the development of social security, and that if the benefits provided have been less generous than those granted for employment injury this may have been due less to strictly logical considerations than to the attitudes of a given period that have now lost any validity they ever had.

This being so, it is pertinent to ask whether developing countries introducing social security schemes should adopt a system involving the special treatment of employment injury whose origin seems to be rooted in the past of countries that started industrialisation over a hundred years ago. When new schemes are being planned it may well be wondered whether it is really necessary to introduce discriminations that are difficult to justify once it is recognised that the basic aim, after all, is to cover loss of income and to prevent and cure sickness and injury.

The subject of special treatment relates to conceptual or philosophical problems rather than to technical or administrative ones. It is a subject which—because of its important implications for the future development of social security, and especially the new roles social security is required to play in industrialising societies—deserves further discussion and study. In conclusion, it may be appropriate to recall what the Webbs felt in 1896 when they discussed the trade union controversy over the employer's

[1] A. F. Young: *Industrial injuries insurance. An examination of British policy* (London, Routledge and Kegan Paul, 1964), p. 92.

liability in industrial accidents. They argued that the " practical conclusion is to prescribe, by definite technical regulations, the precautions against accident and disease which experience and science prove to be necessary; . . . and to provide from public funds for the injured workman and his family, however the accident happened, according to the extent of their needs ".[1]

[1] Sidney and Beatrice Webb: *Industrial democracy* (London, Longmans, Green and Co., 1920), p. 387.