

Hibakusha and the Japanese Supreme Court: Judgement Long Overdue

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by

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## Abstract

On August 6 and 9 1945 the United States dropped the first atomic bombs on the cities of Hiroshima and Nagasaki. Survivors of the attacks, who were exposed to atomic radiation, have come to be known by the Japanese term for an atomic bomb survivor, *hibakusha*. The fight against the violations of *hibakusha* rights due to discrimination as well as misconceptions and misinterpretations of the acts and laws for survivor welfare and support have been one long and brutal legal battle after another. The appeal cases relating to the *hibakusha* living outside of Japan have begun to be investigated and addressed by the Supreme Court of Japan. The Court has investigated survivor rights violation appeal cases between *hibakusha* and the Japanese Ministry of Health and Welfare, and has issued rulings denying Ministry appeals that have violated the rights provided by the laws relating to the medical care and financial aid assistance for survivors mandated by Japanese law since the first Act in 1958. The court has also issued reinterpretations of key portions of the laws to prevent further violations of rights and put the care for *hibakusha* back on track. The aim of this study is to determine and illuminate influences on the appeals cases and how the Court is taking steps to aid in prevention of future rights violations.

On December 8, 1941, United States President Franklin Roosevelt made a speech stating the attack on Pearl Harbor would forever live in American memory as “a day of infamy.”<sup>1</sup> This speech galvanized the U.S. as a nation in the war efforts against Japan. Americans were fearful and angry over what they believed was a sneak attack on U.S. territory, an act they believed unforgivable and demanded retribution. In contrast, the Atomic Bomb attacks on Hiroshima and Nagasaki did not arouse similar feelings in Japan. There are multiple reasons for this lack of response. One view is that a majority of the Japanese people simply wanted nothing more than an end to the war so that they could rebuild and recover from the effects of the war and the powerful militaristic Japanese government that had caused it.

Japan’s recovery took many years. Japan became, in many ways, a much stronger nation by the end of the Allied Occupation years than it was at the height of the war. There is a community within Japan, however, that was marginalized by the new government yet never quite disappeared. They have struggled for decades to recover civil and war victim rights that were lost in the reconstruction of the democratic government. They are the survivors of the atomic bombings of the cities of Hiroshima and Nagasaki. The Japanese government has labeled them the *hibakusha*, or atomic bomb survivors, and their fight for survival and an equal quality life after the harrowing experiences of the bombings has put them in one battle after another. The fight against the violations of hibakusha rights due to discrimination, as well as misconceptions and misinterpretations of the acts and laws for survivor welfare and support have finally started to be addressed by the Supreme Court of Japan (SCOJ). The court has investigated survivor rights violation cases and the laws relating to them. Appeals by hibakusha and the State have been reviewed by the SCOJ and the court has issued rulings to overturn lower court decisions

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<sup>1</sup> Franklin D. Roosevelt, “Day of Infamy Speech.” *Day of Infamy Speech*, <http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=21212256&site=ehost-live>.

that violated the laws relating to the medical care and financial aid assistance for survivors that is mandated by Japanese law. The court has also reinterpreted key portions of the laws to prevent further violations of rights and put the care for hibakusha back on track.

## **Historiography**

The volume of study and research completed by historians about the Pacific Theater of World War II (WWII) and specifically on the bombings of Hiroshima and Nagasaki is immense. Scholarly work examines almost every possible angle of the war and its effects on human society. However, few historians have written on the legal struggles of the *hibakusha* in the years after the war. The intense legal battles of *hibakusha* after the war have been often mentioned only in passing or even neglected in many histories of the survivors. The civil and war victim rights of the *hibakusha* have become the center of legal battles, political protests and community group work that have risen out of post-war government policies, treaties, legal decisions and uninformed public fear of the effects of radiation. *Hibakusha* have faced discrimination based upon these influences that has even effected their ability to expect to experience a democratic legal process that will be conducted in good faith to support their rights to appropriate care and treatment for the numerous health issues they must live with.

The health issues radiation exposed survivors have experienced for decades since the war have caused intense pain and fear for *hibakusha*. These issues also affect *hibakusha* in social and cultural settings in the public area, work settings and even at the family level. Groups such as the Japan Confederation of A- and H-Bomb Sufferers Organizations, or *Nihon Hidankyo*, were created by *hibakusha* in the years after the war to support the struggles of over 300,000

*hibakusha* seeking medical care and support.<sup>2</sup> These groups have provided both support groups for *hibakusha* struggling to live with common serious medical conditions and legal support when *hibakusha* are reduced to lawsuits to procure benefits allotted by Japanese laws.

Historians who have studied and written on the atomic bombings often leave out the important work of groups like the *Nihon Hidankyo* and focus instead on more popular areas of discussion. Most work on the bombings can be placed into three broad categories: memorials and stories of survivors, the debate over the use of atomic and nuclear power in warfare, and finally the responsibilities of governments for the attacks. There are sub-divisions within these categories that share points of view with each other, however, most works written on the atomic bombings fit within these categories.

The most common category of writings falls into the governmental train of study. Specifically, the majority of historians who have written about Hiroshima and Nagasaki have chosen to focus on the moral responsibility for the attacks and the question of if they were really needed. Author Gi-Wook Shin argues a variance of this theme in his essay “Historical Disputes and Reconciliation in Northeast Asia: The US Role.” Shin brings the discussion of the moral responsibilities of the U.S. for the attacks forward to the modern day. Shin argues that reconciliation in Asia since WWII has failed so far because there is no single country to facilitate this discussion. He calls for the U.S. to be a leading example for the reconciliation of Asian nations affected by the war. According to Shin, the inability to “agree on a shared view of their past from joint history writing” and Japan’s refusal to take responsibility for its actions in the war have also played a major role.<sup>3</sup> Shin supports his argument that “all nations, shar[e] a reluctance

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<sup>2</sup> Nihon Hidankyo Japan Confederation of A- and H-Bomb Sufferers Organizations, Nihon Hidankyo, n.d., <http://www.ne.jp/asahi/hidankyo/nihon/english/about/about1-01.html>

<sup>3</sup> Gi-Wook Shin, “Historical Disputes and Reconciliation in Northeast Asia: The US Role,” *Pacific Affairs* 83, no. 4 (2010): 663-4,

to fully confront the complexity of [the] past” by examining writings from Asia historians. These works include Arnold Brackman’s “The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials” and Jennifer Lind’s “Sorry States: Apologies in International Politics.” Shin’s discussion of Asian reconciliation brings to light aspects that have been glossed over in other works such as the importance of the 1951 San Francisco Treaty.<sup>4</sup> Shin’s view that the U.S. still has an important role to play in the reconciliation of World War II is in the minority especially when the results and priorities of the Allied Occupation are taken into account.

In the essay “Occupation Politics,” authors Adam Sheingate and Takakazu Yamagishi argue that democratic occupation forces working in another country to enact reforms “do not operate in a political vacuum but must engage in the push and pull of domestic interest group politics.”<sup>5</sup> They claim that occupation policies and reforms were influenced by American special interest groups from the Federal Security Agency and the Department of Health, Education and Welfare and by local Japanese groups such as the Ministry of Health and Welfare.<sup>6</sup> Sheingate and Yamagishi discuss just a few of the hardships faced by Occupation leaders as they attempted to navigate the morass of public and private interests that each had a stake in the political reform of Japan.

Government programs implemented during the occupation years involve a wide range of topics. One system that has received ample discourse is nursing reforms. Reiko S. Ryder investigates some of the changes and influences in her article “Nursing Reorganization in Occupied Japan, 1945-1951.” According to Ryder, effective and consistent training for nurses in

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<http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=hia&AN=57718495&site=ehost-live>.

<sup>4</sup> Ibid., 665.

<sup>5</sup> Adam D. Sheingate and Takakazu Yamagishi, “Occupation Politics,” *Social Science History* 20 no.1 (2006): 138,

<http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=hia&AN=20305024&site=ehost-live>.

<sup>6</sup> Ibid., 146-9.

Japan was not developed until the Allied Occupation. She also argues that implementation of the changes was not fully completed during the occupation which promoted two major issues within the system. First, nursing was not made part of post-secondary education but remained a vocational training. Second, there was a significant hindrance to problem-solving in the system due to overly rigid management systems.<sup>7</sup> Similarly, the article “Promoting Health in American-Occupied Japan: Resistance to Allied Public Health Measures 1945-1952,” by Dr. Sey Nishimura argues that American led reforms, especially in the area of health, were not as supported and implemented as other publications make it appear. Nishimura investigated information drawn from personal accounts, government documents and Japanese laws. These sources demonstrate that the American Public Health and Welfare Section (PHW) “again failed to take into account firmly entrenched Japanese tradition.”<sup>8</sup> Nishimura succinctly brings to light the challenges faced in forcing changes to instill democracy in post-war Japan.

Modern governmental actions have made memorials at special sites a common practice. These sites, and their purpose, can range in importance from the legacy of a kingdom, or special political or social events. In “The Myth of the Vanquished: The Hiroshima Peace Memorial Museum” author Benedict Giomo contends that the Hiroshima Peace Memorial Museum and Park creates a sense of victimization of the Japanese yet fails to fully encapsulate the events of the war. Giomo argues that through admitted responsibility for the war and by avoiding exhibits that demonstrate the crimes against humanity on all sides the Japanese are portrayed as the victims of WWII. Giomo utilizes text from exhibits, park monuments and statements from

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<sup>7</sup> Reiko S. Ryder, “Nursing Reorganization in Occupied Japan, 1945-1951,” *Nursing History Review* 8 (2000): 71-2, <http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=hia&AN=46164261&site=ehost-live>.

<sup>8</sup> Sey Nishimura, PhD, “Promoting Health in American-Occupied Japan: Resistance to Allied Public Health Measures, 1945-1952,” *American Journal of Public Health* Vol. 99, no. 8 (2009): 1364-1372, DOI: [10.2105/AJPH.2008.150532](https://doi.org/10.2105/AJPH.2008.150532).

*hibakusha* to demonstrate this misrepresentation of the totality of the war.<sup>9</sup> This article brings the discussion of the merits of the Hiroshima Peace Memorial Museum and Park and its ability to fulfill the role of accurately educating future generations to the attention of the public and scholars alike.

An alternate look at the value of the Peace Memorial in Hiroshima is found in the article “Narratives of Peace and Progress: Atomic Museums in Japan and New Mexico” by Alison Fields. Fields takes that stance that these two museums are invaluable to future generations because “New Mexico and Japan have served as potent sites of nuclear memories.”<sup>10</sup> Fields has gathered evidence about the social importance of both museums, in terms of nuclear power and effects on people, from varied sources such as a *New York Times* interview with Hiroshima Mayor Takashi Hiraoka which discusses how it is possibly time to adjust how we view the atomic bombing memorials.<sup>11</sup> Comparing the purposes of the museums that commemorate, teach about the use of atomic weapons, and their effects on people, is an important discussion for current and future generations. The future benefit of the Hiroshima Museum may even have a more important role than ever, as we reach the 70<sup>th</sup> anniversary of the bombings in 2015, there are fewer and fewer *hibakusha* alive as living symbols of the horrors of nuclear warfare.

As the number of surviving *hibakusha* shrinks it becomes ever more important for their stories to be recorded and the lessons on atomic and nuclear warfare kept fresh in the minds of future generations. “Imaging Nuclear Weapons: Hiroshima, Armageddon, and the Annihilation of the Students of Ichijo School” by James Foard does just this. Foard records and assesses the experiences of a select group of Japanese students from the Ichijo School who survived the

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<sup>9</sup> Benedict Giomo, “The Myth of the Vanquished: The Hiroshima Peace Memorial Museum,” *American Quarterly* 55, no. 4 (2003): 705-8, <http://www.jstor.org/stable/30042004>.

<sup>10</sup> Alison Fields, “Narratives of Peace and Progress: Atomic Museums in Japan and New Mexico,” *American Studies* 54, no. 1 (2015): 54-8, DOI: 10.1353/ams.2015.0037.

<sup>11</sup> *Ibid.*

attack on Hiroshima. He utilizes their stories to compare and contrast their experiences with the Christian understanding of Armageddon. Foard also addresses the effects of the Japanese State Shinto religion on the acceptance of survivors.<sup>12</sup> The religious influence on *hibakusha* experiences has had minimal coverage in modern historical study.

Complementing this area of study is Maya Todeschini's "Illegitimate Sufferers: A-Bomb Victims, Medical Science, and the Government." Todeschini extends research into the experiences of *hibakusha* and the influence of government and religion has had on them. She contends that *hibakusha* personify the subconscious dread of the unclean and impure that has haunted humanity for eternity to "become the wastebins of our collective imagination...the specter of wholesale devastation."<sup>13</sup> Todeschini utilizes the works of Emiko Namihira and Fuyuko Kamisaka who have written how *hibakusha* were forced into a specific societal role by government policies and latent religious beliefs supported by the fear of atomic radiation. She also analyzes data from the Radiation Effects Research Foundation (RERF). The scientific study data from RERF illustrates what scientific and medical research has been completed to assist *hibakusha* and understand the effects of nuclear weapons on humans. Todeschini's work articulates common dismissive attitudes that *hibakusha* have struggled against for decades.<sup>14</sup> Yet Todeschini only barely touches on the surface of what lengths some will go to in attempts to ignore or minimize the whole *hibakusha* debate.

Unfortunately, attempts to make the *hibakusha* discussion disappear are exactly what have happened over and over since the war. In the essay "The Straights of Dead Souls: One

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<sup>12</sup> James H. Foard, "Imagining Nuclear Weapons: Hiroshima, Armageddon, and the Annihilation of the Students of Ichijo School," *Journal of the American Academy of Religion* 65, no. 1 (1997): 12, <http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=hia&AN=10918636&site=ehost-live>.

<sup>13</sup> Maya Todeschini, "Illegitimate Sufferers: A-bomb Victims, Medial Science, and the Government," *Deadalus* 128, no. 2 (1999): 96, <http://www.jstor.org/stable/20027555>.

<sup>14</sup> *Ibid.*, 68.

man's Investigation into the Disappearance of Mitsubishi Hiroshima's Korean Forced Labourers," David Palmer takes Todeschini's investigation to the next level. Palmer bases his work primarily on the examination of Japanese author Munetoshi Fukagawa's book "Umi Ni Kieta Hibaku Chosenjin Choyoko – Chinkon No Kaikyō."<sup>15</sup> Palmer utilizes this very specific record of non-Japanese *hibakusha* experiences to explore Japanese fascism during WWII. Palmer's argument concentrates on the fascist style of forced labor utilized by the Japanese military and zaibatsu corporations during the war.<sup>16</sup> Palmer's biggest contribution to the *hibakusha* debate centers on the lengths the Japanese government and corporations have gone to not only ignore their responsibilities to those forced into harm's way but to actually attempt to hide the existence of the victims of the war.

The history of the war teaches multiple lessons that should be passed on to future generations. Many scholars have researched and debated on why the bombs were dropped, whether it was appropriate to drop the bombs, whom was responsible for the bombs and the war. There is another aspect of the instruction that the story of the *hibakusha* can teach that is currently not receiving sufficient attention. This is how continuously evolving modern legal culture is affecting the struggles of the victims of the bombs. There are only a handful of times since the end of the war that the issues surrounding the *hibakusha* have reached the Supreme Court of Japan (SCOJ). The fact that so few *hibakusha* cases have risen to the highest Japanese court is telling in multiple ways. It speaks of the quagmire of laws, amendments and legal precedents that have emerged over the years. The cases that have reached the SCOJ also tell us of *hibakusha* who were not willing to accept a ruling at a lesser court that denied them the

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<sup>15</sup> David Palmer, "The Straits of Dead Souls: One Man's Investigation into the Disappearance of Mitsubishi Hiroshima's Korean Forced Labourers," *Japanese Studies* 26, no. 3 (2006): 335, DOI: 10.1080/10371390600986702.

<sup>16</sup> *Ibid.*, 337.

benefits awarded to them by the Act on Special Measures of Atomic Bomb Survivors, the Act on Relief for Atomic Bomb Survivors and the Atomic Bomb Survivors' Assistance Act. While it is often impossible to tell how a panel of justices will assess and issue a judgement on any given case, there is still a need to understand how past cases have influenced the struggles of the *hibakusha*.

The decrees of the SCOJ are important to ensuring that *hibakusha* are treated fairly and with an expectation of good faith. They also provide important avenues of research and discussion into the legal treatment of the *hibakusha* as the views of the war and the treatment of war victims has evolved in the seven decades since the end of the war. When a case reaches the level of the SCOJ, the sitting justices review not only the pertinent resources used by the lower courts to make a decision but also assess if those resources are appropriate and legal. Refocused research into these cases and how they have affected the *hibakusha* discussion can illuminate the path that future generations can utilize to avoid the extended suffering experienced by the *hibakusha*. Through looking at the SCOJ cases we can also see how community groups, politicians and *hibakusha* have worked tirelessly to assuage this painful and intense suffering. Expanding the discussion surrounding the legal discriminations suffered by *hibakusha* can lead to reduced discrimination and prevent future denial of benefits due to misunderstandings. This analysis is sorely needed to help understand the discrimination that the *hibakusha* have suffered not only socially but legally as well. It is also important to aid the *hibakusha* to be seen by society as people who have suffered greatly and are not less than human.

Before the legal proceedings, as well as the social and cultural effects of the bombings on the survivors, can be analyzed it is important to know the context, beginning with details of the bombings. On August 6 1945 at 8:15 A.M. the first atomic bomb was dropped on the city of Hiroshima. The bomb exploded approximately 580 meters above the Shima Hospital causing mass destruction and loss of life across the city.<sup>17</sup> Aerial photos taken by American pilots the following day illustrated in stark detail the immense devastation caused a single atomic bomb. The damage shown by these photographs depict “that about 60 percent of the city had been destroyed.”<sup>18</sup> (Fig. 1) One report from the nearby Kure Naval station estimated the damage to be closer to 80 percent and close to 100,000 dead.<sup>19</sup> A survey conducted by the Hiroshima City Survey Section in 1946 and 1947, that had been lost for twenty years, recorded that there 118,661 deaths, 3,677 missing and 79,130 injured (military personnel not included) from the attack.<sup>20</sup> The destruction in the city had severed the communications network in and out of the city thus regulating all communications to Japanese military and political headquarters in Tokyo to be done through neighboring cities.

When the Japanese Government still refused to accept the unconditional surrender of the Potsdam Declaration the U.S. Government moved forward with plans for a second atomic bomb. Initially the second bomb was planned to be dropped on the city of Kokura; however, heavy cloud cover prevented the crew from being able to deploy the bomb and they diverted to the secondary target of Nagasaki. The second atomic bomb was dropped three days later into the

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<sup>17</sup> The Committee for the Compilation of Materials on Damage Caused by the Atomic Bombs in Hiroshima and Nagasaki, ed., Eisei Kishikawa and David L Swain, trans., *Hiroshima and Nagasaki: The Physical, Medical and Social Effects of the Atomic Bombings* (New York: Basic Books, 1981), 21-23.

<sup>18</sup> New York Times Company, *Hiroshima Plus 20* (New York: Delacorte Press, 1965), 42.

<sup>19</sup> Sadao Asada, “The Shock of the Atomic Bomb and Japan’s Decision to Surrender – A Reconsideration,” *Pacific Historical Review* 67, no. 4 (1998): 477, <http://offcampus.lib.washington.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=hia&AN=1413849&site=ehost-live>.

<sup>20</sup> Committee on Hiroshima and Nagasaki, *Hiroshima and Nagasaki*, 113.

Matsuyama district of Nagasaki at 11:02 A.M. local time exploding approximately 500 meters above ground.<sup>21</sup> The bomb did not burst on the intended target so while the bomb was more powerful than the one dropped over Hiroshima the location of the impact lessened the overall devastation. A similar survey to the one in Hiroshima by the Nagasaki City Commission for Preservation of A-bomb Material recorded 73,884 deaths and 74,909 injured.<sup>22</sup>

On August 14 1945, six days after the bombing of Hiroshima, the Japanese announced the unconditional acceptance of the Allied surrender conditions. The surrender was signed on August 15th and commenced the U.S. led Allied Occupation of Japan. While the number of deaths, at over 180,000, from just two bombs is horrifying in itself, it is the story of those who survived that has become an extended tragedy stretching over 70 years. The victims were exposed to not only the dangers of extreme heat, flying debris, and radiation but also to psychological and social strain. The bombs released three types of radiation during the explosion: alpha, beta and gamma, which impact the body in different manners and at varying degrees. At the time of the attack the full health impacts of radiation exposure were still unknown physicians and to the common person.

After the attacks, both Japan and the U.S. sent specialists to the area to collect data and study the effects of the bombs on the survivors. One early medical report organized injuries related to the bombs into four stages. The “Early or Initial Stage” was designated as from the time the bombs exploded up to the end of the second week after the explosions and contains the majority of the deaths caused by the bombs. “Intermittent Stage” covers from week three to eight and included the remaining initial deaths from radiation. The third and fourth months compose the “Late State” where the victims were showing improvement with only a few deaths due to

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<sup>21</sup> Ibid., 27-29.

<sup>22</sup> Ibid., 113-114.

complications. The final stage or “Delayed Effects” covered from the fifth month on where injuries influenced by thermal and radiation exposure, such as cancers, keloids, anemia or sterility, became evident.<sup>23</sup>

During the next seven years the Allies initiated many changes to the Japanese government, political systems as well as public welfare changes that affected all walks of life in Japan. The Supreme Commander for the Allied Powers (SCAP) created “14 sections, each designed to be parallel to, and to supervise the functions of, an existing Japanese ministry,” to implement and regulate the changes being made.<sup>24</sup> The section with the deepest impact on the *hibakusha* was the Public Health and Welfare Section (PHW) which had representatives in each of the six military districts established as well as those dealing with the Japanese Ministry of Health and Welfare (MOHW) and was responsible for “disease prevention, medical care, welfare and social security.”<sup>25</sup>

The PHW initiated and implemented many changes to the Japanese public health system that affected the *hibakusha* and over all caused a positive reaction; however, not all policies were assimilated by the Japanese. In 1952, the Treaty of Peace with Japan, also known as the San Francisco Peace Treaty, ended the Allied Occupation of Japan and returned full control of the country back to the Japanese. The full details of this treaty are outside of the scope of this paper; however, there are a few key areas that do relate. Chapter Five relates to the handling of “Claims and Property” and article 14 section V part b specifies that unless noted in the treaty the Allied Powers waive all claims by the Allied Powers or their citizens for reparations of actions taken by Japan during the war in effect making Japan not responsible for effects of the war if not

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<sup>23</sup> Ibid., 114.

<sup>24</sup> Sey Nishimura, “Promoting Health in American-Occupied Japan: Resistance to Allied Public Health Measures, 1945-1952.” *American Journal of Public Health* Vol. 99, No. 8 (August 2009), 1364.

<sup>25</sup> Ibid.

previously listed and agreed upon.<sup>26</sup> Article 19 of the same chapter specifies that Japan in turn waives the claims of it and Japanese citizens for actions by the Allies during the war.<sup>27</sup> This in effect prevents the *hibakusha* from seeking reparations from America for damages and illnesses caused by the bombing of Hiroshima and Nagasaki. Chapter Six Article 22 relates to “Settlement of Disputes” and states that the parties listed in the treaty will refer any disputes over the interpretation or execution of the treaty to the International Court of Justice. A search of the International Court of Justice website (<http://www.icj-cij.org/homepage/index.php?lang=en>) indicates that there have been no cases related to *hibakusha* that have reached this court which indicates that the countries party to the treaty have been agreeable to these terms or have settle them in other treaties or agreements.

When the Occupation ended in 1952 some of the Allied reforms that were not fully accepted by Japan were repealed. One such policy was the publication ban governing the release of information about the effects of the bombs. In October 1945 the Joint Commission for the Investigation of the Effects of the Atomic Bomb in Japan (JCIEAB) was created to collect data about the bombs for primarily U.S. benefit. Initially the head of the JCIEAB, Mr. Ashley W. Oughterson, placed a ban on Japanese reports to allow the U.S. report to take precedence. This ban, which lasted until December 1946, also affected medical reports that could have aided doctors treating victims of the bombs. It is believed that the fear of communism during this time also had an effect on this policy as what was intended to be a temporary ban to allow the U.S. report to be published first turned into a permanent ban. By the time the ban was lifted many of

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<sup>26</sup> United Nations Treaty Collection, Treaty of Peace with Japan (with two declarations) (New York, United Nations Treaty Section, 1952), 11. <https://treaties.un.org/doc/Publication/UNTS/Volume%20136/volume-136-I-1832-English.pdf>

<sup>27</sup> *Ibid.*, 14.

the acute effects had either led to death of the victim or subsided into long term health issues.<sup>28</sup> The PHW and the JCIEAB were not the only groups that had influence over the fate of the *hibakusha*, another group the Atomic Bomb Casualty Commission (ABCC) was created in 1946 to research the effects of the bombs and also had a policy, during the Occupation, for not releasing information to doctors who were treating victims. The ABCC conducted extensive research into the effects of atomic radiation with *hibakusha* but did not provide any treatment to the victims or publish medical care information until after the end of the Occupation.<sup>29</sup>

After the end of the Allied Occupation Japan slowly started to reconnect with its neighbors in Asia and attempt to move on now that Japan's ultranationalist phase was over and democracy was the new path. One of the early reconnections came in 1965 with the Agreement between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Co-Operation. This agreement concluded multiple issues between Japan and South Korea not the least of which was the settlement of claims by Korean citizens against Japan from the war. Article II section 1 of this agreement specifically states, "that the problems concerning property, rights, and interests of the two High Contracting Parties and their peoples...including those stipulated in Article IV(a) of the Peace Treaty with Japan...have been settled completely and finally."<sup>30</sup> This agreement has a direct effect on Koreans who were victims of war crimes and prevents them from being eligible to directly sue the government of Japan for reparations.

At the time of this agreement there was only one aid program for survivors of the bombings living in Japan but none for *hibakusha* not living in Japan. This was especially true for

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<sup>28</sup> Nishimura, "Promoting Health," 1368-1370.

<sup>29</sup> Todeschini, "Illegitimate Sufferers", 75-77.

<sup>30</sup> "Agreement Between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Co-Operation," International Legal Materials 5, no. 1. (Washington, DC: The American Society of International Law, 1966), 112. <http://www.jstor.org/stable/20690013>

non-Japanese *hibakusha* in other countries who were not aware of a program had been created in Japan, as the needs of victims were still not widely known. This issue was identified by Takeshi Ito in his speech to the International Symposium on the Damage and After-Effects of the Atomic Bombing of Hiroshima and Nagasaki in 1977 when he stated, “those *hibakusha* who live overseas suffer seriously from lack of medical treatment and livelihood because there is so little understanding about the A-bomb victims among governments and societies.”<sup>31</sup> Support groups for *hibakusha* in Japan such as the Japan A and H Bomb Sufferers’ Association (*Nihon Hidankyo*) and the Japan Council Against Atomic and Hydrogen Bombs (*Gensuikyo*) were created by *hibakusha* and supporters to spread the word of treatment of survivors and aid in legal battles. Both the *Nihon Hidankyo*, which was founded in 1956, and the *Gensuikyo*, founded in 1955, state two of their primary goals to be “state compensation for the A-bomb damages. The state responsibility of having launched the war, which led to the damage by the atomic bombing, should be acknowledged, and the state compensation provided” and “improvement of the current policies and measures on the protection and assistance for the Hibakusha.”<sup>32</sup> <sup>33</sup> These groups have worked towards their aims by organizing protests, sit-ins, storytelling by *hibakusha* and submitting petitions to the Japanese government to improve *hibakusha* support and aid.

In particular, both groups have attempted to prompt the Japanese government to create a “Hibakusha Aid Law” that collects the current medical care, support and aid programs into a single law that covers all of the needs and requirements in one place.<sup>34</sup> The government has resisted this proposal multiple times stating that the current laws are sufficient aid. The laws

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<sup>31</sup> Takeshi Ito, “Importance of Dignity as Human Beings,” in *A Call From Hibakusha of Hiroshima and Nagasaki*, ed. Shoichiro Kawasaki (Tokyo: Asahi Evening News, 1978), 30.

<sup>32</sup> “Nihon Hidankyo Japan Confederation of A- and H-Bomb Sufferers Organization,” Nihon Hidankyo, n.d., <http://www.ne.jp/asahi/hidankyo/nihon/english/about/about1-01.html>

<sup>33</sup> “The Japan Council Against Atomic and Hydrogen Bombs,” Gensuikyo, last modified 2012, <http://www.antiatom.org/english/profile/>

<sup>34</sup> “No More Hibakusha,” Nihon Hidankyo, n.d., [http://www.ne.jp/asahi/hidankyo/nihon/rn\\_page/english/demand.html](http://www.ne.jp/asahi/hidankyo/nihon/rn_page/english/demand.html)

currently in place are the Atomic Bomb Survivors' Assistance Act, Act on Special Measures for Atomic Bomb Survivors, Act on Relief for Atomic Bomb Survivors and the Act on Medical Care for Atomic Bomb Survivors. These four laws cover most of the needs of survivors albeit in slightly different ways. They also establish the base criteria for qualifications as an atomic bomb survivor and delineate what compensation is due from the State and how that compensation shall be provided.

The *Act on Medical Care for Atomic Bomb Survivors* was enacted in 1957 with the purpose “in in light of the particular health conditions that survivors of the atomic bombings in Hiroshima City and Nagasaki City are still experiencing, to have the State provide health checkups and medical care for such atomic bomb survivors, with the aim of maintaining and promoting their health.”<sup>35</sup> This Act set forth the basic definition for an atomic bomb survivor and the initial benefits available for survivors. Each of the subsequent Acts uses the same definition for an atomic bomb survivor to establish qualifications for the benefits. Under this Act, an atomic bomb survivor is as a person who meets any of the following four criteria and has been awarded a survivor's certificate by the prefecture governor (or Mayor of Hiroshima or Nagasaki Cities) of the prefecture they reside in.<sup>36</sup>

First, the victim was in the areas of Hiroshima City, Nagasaki City or the adjacent areas as designated by a Cabinet Order. This in effect covers the cities and the surrounding townships that were affected directly by the bombs and by the fallout from the mushroom cloud and weather that spread radiation tainted materials. Primarily this covers the original survivors who

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<sup>35</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Nov. 01, 2007, 2005 (Ju) no. 1977, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web] [http://www.courts.go.jp/app/hanrei\\_en/detail?id=916](http://www.courts.go.jp/app/hanrei_en/detail?id=916)

<sup>36</sup> Ibid.

were physically present at the time of the bombings and not those who came hours, days, weeks or months later to aid survivors.<sup>37</sup>

Second, a victim must have been in the areas mentioned in item one but during the time immediately after the bombings as set forth by Cabinet Order. This allows the people who came to the affected areas after the bombing to look for family, aid survivors or assist in clean up and rebuilding of the cities who later became sick due insufficient protective equipment used. This definition includes not only Japanese citizens who came to the areas of the bombings but also foreigners such as Japanese-Americans and American citizens who were in Japan at the time due to school or family and U.S. troops that aided in the clean-up efforts. Ironically, many soldiers, sailors and Marines who this applied to did not start to show effects of radiation sickness until well after they had returned from duty in Japan and were not aware that they qualified for aid if they had stayed in or returned to Japan.<sup>38</sup>

Criteria one and two delineate the areas and time frames as qualifications for victims of the atomic bombings. They set forth that the victims were in specific locations either at the exact time of the bombings or were in the affected areas during a limited time frame after the attacks. Neither of the first two criteria make any mention of nationality of origin or residency. The laws are written only to indicate where and when a person was in an affected area. They do not state that the victim must suffer any health concerns based upon being in the areas affected by the bombs.

The third criteria is “a person who was, at the time of the atomic bombing or thereafter, under circumstances in which the person’s body was influenced by radiation from the atomic

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<sup>37</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Jun. 13, 2006, 2003 (Gyo-Hi) no. 130, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web]. [http://www.courts.go.jp/app/hanrei\\_en/detail?id=843](http://www.courts.go.jp/app/hanrei_en/detail?id=843)

<sup>38</sup> Robert J. Lifton and Greg Mitchell, *Hiroshima in America: Fifty Years of Denial* (New York: G.P. Putman’s Sons, 1995), 256-257.

bomb.”<sup>39</sup> This is quite vague by itself as it takes in people who might not also qualify under items one and two without defining specific examples. It appears to be a catch all that could include those who were affected by debris or other materials that were removed from the bombing sites. Another possible understanding of this clause is that it is intended to indicate those who are included in items one or two AND have suffered health problems due to the radiation released into the areas.

The fourth condition relates specifically to “an unborn child of any of the persons listed in the preceding three items.”<sup>40</sup> This last item takes into account the high vulnerability of a fetus that was still in a developmental stage at the time of the bombings. In the studies completed by the ABCC and other groups there were examples of radiation affecting the unborn children of women who were pregnant at the time of the bombings. In contrast the same research groups found that there was no conclusive evidence of radiation causing health concerns in children of survivors who were conceived years later.<sup>41</sup>

The final requirement for a survivor to receive benefits is the atomic bomb survivor’s certificate which has its own requirements set forth in Article 3 of the Act on Medical Care for Atomic Bomb Survivors. It states that “a person who wishes to receive an atomic bomb survivor’s certificate shall apply to the governor of the prefecture in which the person has a registered place of residence” and “the prefectural governor shall, when he finds the applicant falls under any of the items of the preceding article...issue an atomic bomb survivor’s certificate.”<sup>42</sup> This certificate only indicates that the receiver meets one or more of the criteria to

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<sup>39</sup> Saikō Saibansho, Gyo-Hi 130.

<sup>40</sup> Ibid.

<sup>41</sup> Committee on Hiroshima and Nagasaki, Hiroshima and Nagasaki, 115.

<sup>42</sup> Saikō Saibansho, Gyo-Hi 130.

qualify as an atomic bomb survivor or *hibakusha* and does not on its own grant any other benefits.

A couple points of note about researching SCOJ cases need to be made. The SCOJ provides information about the court and cases that have been processed on its website online. Most of the cases on the site are only available in Japanese with a limited number of cases translated into English. When using the English version of the SCOJ provided search feature it appears that there have been only four cases related to *hibakusha* that have been appealed to SCOJ and translated into English. Also, it was necessary to check each individual year log of cases one by one as there was no other key word that would find the cases related to atomic bomb survivors. In actuality there are more *hibakusha* cases that have been addressed by the SCOJ but have not been translated into English and made available on the website. The cases available from this site contain important details for each case such as the law references used by the justices and details of the rulings; however, the translations of the laws and acts that are referred to do not provide the original Japanese title of the law or act which causes issues when researching the details of the laws. This also impacts the proper name usages for each law or act in English. For this paper the translated title of the law or act as used in the SCOJ record has been used. Due to these concerns this focus of this paper will be based upon the four most recent SCOJ cases that have been translated into English in the SCOJ system: 2003 (Gyo-Hi) 130, 2005 (Ju) No 1977, 2006 (Gyo-Hi) 136 and 2014 (Gyo-Hi) 406.

In case 2014 (Gyo-Hi) 406 the details refer to a much earlier case relating to *hibakusha*, 1975 (Gyo-Tsu) 98, which cannot be found using the English SCOJ site search using the case number nor by the ruling date. A general web search for this case also fails to return a match and details of the case were not able to be located for use in this paper. With assistance, the case was

located in Japanese only, and with much difficulty and an informal translation completed by Mrs. Takami Duefrane, which will be discussed shortly. Another instance of difficulty with the SCOJ website comes in regards to the Nagasaki A-Bomb Matsuya Lawsuit found through the Japan *Gensuikyo* website. This case was the appeal by the MOHW to the Supreme Court in reference to a Fukuoka High Court ruling forcing the MOHW to recognize Mrs. Hideko Matsuya as an Atomic Bomb survivor and provide benefits as such. The article “Hibakusha Wins in Nagasaki A-Bomb Matsuya Lawsuit: Claims of Thousands of Nuclear Victims of the World Justified” by Reiko Asato provides details of the case; however, the case cannot be found on the English SCOJ website for an official record.<sup>43</sup>

These two cases are important to the overall discussion of *hibakusha* treatment, though to a lesser degree than the four cases that were translated. In case 1975 (Gyo-Tsu) 98, the court reviewed an appeal in reference to a lower court decision over whether or not a person who was illegally in Japan still qualifies for benefits as a *hibakusha*. In this instance the court upheld that a *hibakusha* qualifies for benefits if they meet the criteria for an atomic bomb survivor regardless if they are in Japan legally or not. The case does not discuss how or why the appellee is considered to be in the country illegally. Did they avoid customs and immigrations or did they stay in the country in excess of the time allotted by their visa (if they had one issued)? These details are unknown without further research. A dissenting opinion was entered by the presiding justice with the opinion that eligibility as an atomic bomb survivor and a person being in the country legally or not are separate issues. The justice also stated it was his opinion that a person who entered Japan, or stayed in country, illegally should not receive benefits the justice still agreed that the issues of eligibility as a survivor and legal status in country should stay separate

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<sup>43</sup> Rieko Asato, “Hibakusha Wins in Nagasaki A-Bomb Matsuya Lawsuit: Claims of Thousands of Nuclear Victims of the World Justified,” *Japan Gensuikyo*, October 15, 2000, <http://www.ratical.org/radiation/Matsu-All2.html>.

issues. This case is important for later *hibakusha* cases as it set a precedent for future cases where a person's permanent citizenship does not need to be Japanese nor do they need to have a permanent Japanese residency to be eligible for benefits.<sup>44</sup>

The importance of case 1993 (Gyo-Ko) 17, concerning appeal by the Minister of the MOHW against Mrs. Hideko Matsuya, is almost greater than in the 1975 (Gyo-Tsu) 98 case. In this case the SCOJ reviewed the processes and criteria used by the MOHW to deny a request for benefits. The court ruled that the use of the Dosimetry System of 1986 (DS86) as the sole source to determine if a *hibakusha*'s injury was caused by atomic bomb radiation was insufficient. Explicitly the use of DS86 as the determining factor is insufficient because it does not measure all types of radiation that was produced by the bombs nor is it able to accurately account for all possible levels of radiation influence at all ranges from the hypocenter of the explosions. Testimony from Professor Ikuro Anzai, a radiation protection specialist, and testimony by multiple *hibakusha* who received exposure to similar levels of radiation, based upon DS86, provided additional proof that the system utilized by the MOHW was inaccurate and a disservice to the victims of the bombings that the MOHW serves. The SCOJ unanimously upheld the ruling that the MOHW should withdraw its attempt to decline Mrs. Matsuya benefits based upon its claim that atomic bomb radiation was not a causing factor of her disability.<sup>45</sup>

These two cases are very important to the care of *hibakusha* discussion as they establish that a partial definition of the influences of atomic radiation to determine eligibility and a survivor's legal status in the county are not valid reasons to deny a survivor benefits. The SCOJ has upheld the intent of the Acts created to support the physical and mental health of the survivors as they have struggled to maintain a quality of live on par with the average citizen.

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<sup>44</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Mar. 3, 1978, Sho 53 (Gyo-Tsu) no. 98, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web] [http://www.courts.go.jp/app/files/hanrei\\_jp/260/053260\\_hanrei.pdf](http://www.courts.go.jp/app/files/hanrei_jp/260/053260_hanrei.pdf).

<sup>45</sup> Asato. "Hibakusha Wins."

Unfortunately, this has been a constant uphill battle for *hibakusha* and over the decades since the bombings there has been one legal battle after another. One struggle for *hibakusha* that has been the focus of more than one legal case is the issue over the location of a survivor who is receiving benefits. As mentioned previously one of the requirements for benefit eligibility is to obtain an atomic bomb survivor's certificate from the governor of the prefecture where the survivor resides; however, the Act does not state that the survivor is required to maintain this residence location only that if they move to a new prefecture (or into the cities of Hiroshima or Nagasaki) that they need to register with the local governor (or mayor for Hiroshima and Nagasaki).<sup>46</sup>

For a Japanese citizen, this is not a big issue even in the case where the survivor may move between prefectures due to work or family needs. *Hibakusha* living in Japan and moving between prefectures is required to apply with the governor of the new prefecture and report the move to the governor of the original prefecture. A problem arises when the *hibakusha* is not a Japanese citizen and returns to their country of origin, either by choice or due to visa expiration, or immigrates to another country during the period they are receiving benefits. When this kind of incident happens there has been a history of confusion if the *hibakusha* is still eligible for benefits as they are no longer in the prefecture where they were originally granted benefits. Since there is a clear policy of how this is to be handled when moving between prefectures in Japan but the Acts are not written with the expectation that a survivor would be moving their residence out of country.<sup>47</sup>

All four of the SCOJ cases that have been translated into English share this theme of dealing with the issue of overseas *hibakusha* in one manner or another, mostly in the case of non-Japanese *hibakusha* who returned to their country of origin, as well as the issue of which entity is

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<sup>46</sup> Saikō Saibansho, Gyo-Hi 130.

<sup>47</sup> Ibid.

responsible for paying benefits in the case of overseas *hibakusha*. Similar to the earlier case, 1975 (Gyo-Tsu) 98, it is not known from the details of the case at the supreme court level if the parties who were not Japanese citizens left the country of their own free will or if they left because the visa issued for their stay in Japan expired and they were required to leave. This information is very important to aid in understanding why the issue of overseas *hibakusha* occurs over and over again.

The most important of the four cases is 2005 (Ju) 1977, unofficially titled the Overseas Hibakusha Case. This case was appealed to the SCOJ in 2005 and was deliberated until the decision was issued on November 1, 2007. A unanimous decision was issued by the four justices in support of the appellee upholding that the denial of benefits based upon directives issued by the MOHW was illegal and not in-line with the intent of the “Three Acts for Atomic Bomb Survivors.” While the decision was issued unanimously Justice Tatsuo Kainaka also submitted a dissenting opinion discussing differences in opinion on how the directives issued by the MOHW could be understood and basis for their issue.<sup>48</sup> This case has been considered one of only a few major landmark cases that has been decided by the SCOJ due to the far reaching nature of the case and that it finally clarifies the discussion of benefit eligibility of *hibakusha* regardless if their primary residence is within Japan or not. The case also finally identifies and eliminates a number of directives issued by the MOHW since the creation of the Three Acts that attempted to clarify concerns with eligibility but in fact caused as much confusion as they solved.

The Overseas Hibakusha Case investigates the claims of multiple Republic of Korea citizens who petitioned for benefit status as atomic bomb survivors. The first claim addressed by this case started in 1970 and the others have been spread out over the years since until the overall

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<sup>48</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Sep. 08, 2015, 2014 (Gyo-Hi) no. 406, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web] [http://www.courts.go.jp/app/hanrei\\_en/detail?id=1412](http://www.courts.go.jp/app/hanrei_en/detail?id=1412).

case was brought before the Supreme Court in 2005. In each instance the petitioners were denied benefits at one point in their claim due to the fact that they left the country. The most cited reason for denial of benefits in each claim was Directive Ei-Hatsu No. 402 “Implementation of the Act for Partial Revision to the Act on Special Measures for Atomic Bomb Survivors” which was issued by the Director-General of the Public Health Bureau of the MOHW on July 22, 1974 in response to the appeal to the first case (Directive 402).<sup>49</sup> This directive attempted to clarify the Act by stating that a survivor who moves their residence outside of Japan forfeits their benefit rights.

Directive 402 was only one in a string of four directives issued up to the Act on Relief for Atomic Bomb Survivors was placed into effect in 1995. Only a few days after Directive 402 was enacted, on July 25<sup>th</sup>, Directive 416 was issued which stated if a survivor was legally in Japan for more than one month they could be considered to have a Japanese residence for the purposes of benefit eligibility. While this made applying for benefits easier for foreign *hibakusha* it still did not mean that they would still receive the benefits if they left the country prior to the end of their benefit award period. One year later, in September 1975, Directive 500 was issued with almost the same exact wording as Directive 416 in response to the Fukuoka High Court’s judgement against the governor’s attempt to deny benefits to a survivor. Once again the directives clarified the time period necessary to be legally in Japan to qualify as having a residence but did not address the loss of benefits if they left the country for any reason. A further instance of this directive being reworded slightly and reissued was seen in 1978 with Directive 288. This directive was issued in response to the SCOJ 1975 (Gyo-Tsu) 98 case that determined the Acts

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<sup>49</sup> Ibid.

for survivors applied to all *hibakusha* regardless of whether they were in Japan legally or not for any length of time.<sup>50</sup>

On July 1, 1995 a full Act revision that incorporated changes to the previous two Acts was enacted in the Act on Relief for Atomic Bomb Survivors. Unfortunately, even though this law should have eliminated the need for Directive 402 and made the misunderstanding possible by this directive obsolete, another notice issued by the Vice Minister of Health and Welfare interfered. Notice Hatsu-Ken-I No. 158 was issued in the same year to the prefecture governors and the mayors of Hiroshima and Nagasaki that continued the precedence set forth by Directive 402. It was not until March of 2003 that the Director-General of the Health Service Bureau finally issued a notice that very explicitly abolished the guidance of Directive 402. Notice Ken-Hatsu No. 0301002, “Implementation of the Cabinet Order, etc. for Partial Revision to the Order for Enforcement of the Act on Relief for Atomic Bomb Survivors,” finally spelled out in writing that *hibakusha* who have been approved for benefits and subsequently leave the country are still eligible to receive benefits and that necessary payments shall be paid.<sup>51</sup>

With this Notice in place, new applications for benefits could now be processed appropriately according to the law for overseas *hibakusha*. This was a major forward step for *hibakusha* who previously had been denied benefit payment according to Directive 402. According to the Overseas Hibakusha Case 40 individual plaintiff cases have been address by this new understanding provided and appeals for benefits processed. The SCOJ also determined that the MOHW was responsible for damages caused to the plaintiffs by the issuance of Directive 402 which caused and promoted “unfair discrimination.”<sup>52</sup>

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

The Overseas Hibakusha Case can also be seen as the culmination and summarization of the SCOJ 2003 (Gyo-Hi) 130 and 2006 (Gyo-Hi) 136 cases which also addressed the benefits available to *hibakusha* who left the country after being approved for aid. In the instance of Gyo-Hi 136, which was in the appeal process at the SCOJ at the same time as Ju 1977 and also addresses the illegality of Directive 402, it is interesting to note that this case was handled differently. Gyo-Hi 136 is the appeal concerning a Japanese native who immigrated to Brazil and returned to Japan in 1991. The appellees applied for and were approved for benefits by the Governor of Hiroshima Prefecture. A few months after receiving approval they once again returned to Brazil. Upon learning of this the governor terminated benefit payments. The appellees started the suit for benefits in 2002 and when Directive 402 was finally eliminated in 2003 the appellants were awarded partial benefit payment for the time period from 2003 forward. Gyo-Hi 136 also includes the subsequent appeals that led to the case being referred to the SCOJ and the declaration, separate from Ju 1977, that Directive 402 was illegal and the appellant was responsible for payment of benefits denied while Directive 402 was enforced.<sup>53</sup>

Another ruling in the favor of overseas *hibakusha* was gained in the related, yet quite different, approach of 2003 (Gyo-Hi) 130. This case was important not only for *hibakusha* but for the State as well. In this particular case the instance of benefit payment termination due to the beneficiary leaving the county was address similarly to the other cases; however, the major difference for this case was who the appellee was requesting benefit payment from. In this instance the appellee was requesting that the State and not the Mayor of Nagasaki City, whom the beneficiary status was received from, be responsible for payments. The SCOJ upheld the ruling of the Third Petty Bench in regards to the appellee claim for benefits that were denied.

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<sup>53</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Feb. 06, 2007, 2006 (Gyo-Hi) no. 136, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web] [http://www.courts.go.jp/app/hanrei\\_en/detail?id=873](http://www.courts.go.jp/app/hanrei_en/detail?id=873).

The court did not uphold the ruling that required the Government of Japan to be directly responsible for benefit payments. Citing the Act on Special Measures for Atomic Bomb Survivors, the Act on Relief for Atomic Bomb Survivors and the Local Autonomy Act the SCOJ ruled that the laws in place set clear standard for the party responsible for benefit payments required by said Acts. The claim for the Government of Japan to pay the benefits was declined and the original party, the Mayor of Nagasaki, was issued an order to process the required payments.<sup>54</sup>

With the completion of 2005 (Ju) 1977 it could conceivably be thought that the worries of overseas *hibakusha* would finally diminish and the relationship between the government and *hibakusha* mend. Unfortunately, another aspect of overseas *hibakusha* benefits had not been addressed yet. One aspect of care for *hibakusha* overseas was the question relating to care received outside of Japan. The Acts were not clear if medical care received by an approved *hibakusha* outside of Japan was eligible for benefits payments. In 2014 three Republic of Korea citizens, who had been granted *hibakusha* status in Japan file suit for denial of medical care payments based upon the treatment being provided at a medical center in Korea. In particular, the appellees cited Article 18 of the Atomic Bomb Survivors' Assistance Act which grants that medical care provided at a care facility not designated for atomic bomb survivors when due to an emergency or compelling reason when an atomic bomb survivor facility is not available is eligible for payment. The Governor of Osaka Prefecture, who granted the *hibakusha* status, made the claim that overseas medical facilities did not qualify for payment reimbursement because

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<sup>54</sup> Saikō Saibansho, Gyo-Hi 130.

facilities outside of Japan are not responsible to the Minister of Health, Labour and Welfare who maintains the level of safe care.<sup>55</sup>

The SCOJ clarified two points of Article 18 to address the appeal of the Governor of Osaka Prefecture. First, they addressed the attitude inherent in the claim by the governor's office. The SCOJ stated an understanding of the intent of the Atomic Bomb Survivors' Assistance Act to provide "assistance to atomic bomb survivors for the purpose of giving relief to them, while taking into account the extraordinary and serious nature of health damage caused by radiation from an atomic bomb."<sup>56</sup> This understanding places the claim of the Governor of Osaka Prefecture in the exact opposite view of the spirit of the Act and unbecoming of a public servant entrusted with acting for the benefit of the atomic bomb victims. It is not the intended purpose of requiring the appointed official to deny victim claims based upon whether the medical facility that has provided care was within Japan or answerable to the Japanese Ministry of Health, Labour and Welfare.<sup>57</sup>

The second point clarification issued by the SCOJ related directly to Article 18. The article specifically states that as long as care received by a *hibakusha* at a facility other than an approved atomic bomb care facility was for a health issue that would have been eligible for treatment under the Act then payment for up to the amount paid by the beneficiary. In essence if the health concern falls under those identified as being related to damage suffered from atomic radiation the location the treatment was received is irrelevant and reimbursement to the survivor

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<sup>55</sup> Saikō Saibansho 最高裁判所 [Sup. Ct.] Sep. 08, 2015, 2014 (Gyo-Hi) no. 406, Saibansho Saibanrei Jōhō 裁判所裁判例情報 [Saibansho Web] [http://www.courts.go.jp/app/hanrei\\_en/detail?id=1412](http://www.courts.go.jp/app/hanrei_en/detail?id=1412).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

should be paid by the representative of the State. As such the appeal of the Governor of Osaka prefecture was decline and an order to provide benefits issued.<sup>58</sup>

The cases that have been brought to the SCOJ between 1975 and 2014 have covered an aspect of the care for the victims of the atomic bombs that was sorely in need of attention. It is unfortunate that misconceptions and misinterpretations of the intent of the Acts for care of atomic bomb survivors had to be escalated to the level of the Supreme Court to ensure their appropriate application. The physical and mental health maladies suffered by *hibakusha*, which these Acts were enacted to relieve in the aftermath of the bombings, were only made worse due to the actions of not only the Japanese government but also the Allied Occupation in the first years after the bombings. The desire to be seen as the foremost authority on the effects of the atomic bombs, avoid responsibility for causing undue harm, and the fear of communism played a significant influential role in the silence enforced by the U.S. led Allied Occupation. This silence is even more telling when looking at the volume of medical care knowledge for radiation-influenced injuries that was withheld when it was most needed and could have saved more lives.

When the Allied Occupation was over, information was finally released and *hibakusha* were finally able to create support groups and organize protests and demand care from the government for their suffering. Starting in 1957 a series of three Acts were created to provide medial and financial aid to support *hibakusha*. Unfortunately, a series of directives accompanied the Acts which distorted their application and many *hibakusha* were denied benefits that they were lawfully entitled to until the abolishment of these directives in 2003. The countless number of District Court cases related to the *hibakusha* debate have been appealed to all levels in Japan finally reaching the Supreme Court. At the Supreme Court, the issues on overseas *hibakusha*

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<sup>58</sup> Ibid.

have hopefully been finally settled and the *hibakusha* who were either denied benefits or afraid that their claims would be denied from the beginning will come forward and receive their due.

The Supreme Court has hopefully finally put the concerns over which government entities are responsible for providing benefits to rest also. The current Acts for atomic bomb survivor benefits are clear that the duties relating to *hibakusha* claims are to be handled either by the prefecture governor of the prefecture, or city mayor in the case of Hiroshima and Nagasaki cities, the applicant resides in as the duly appointed representatives of the State. The Court has also finally clarified that in the case of *hibakusha* who are granted benefit status in Japan there is no loss of benefits if the beneficiary leaves the country for any reason. Per the Court the status of *hibakusha* once granted is never forfeited.

It has been 70 years now since the end of WWII in the Pacific with the attacks on Hiroshima and Nagasaki. The physical and mental shock and damage caused by the bombs has slowly fallen into deep memory for the majority of the world. Yet for the *hibakusha*, the impacts of the bombs are never far from thought and they have impacted every aspect of their lives since the attacks. Rebuilding in the aftermath of war is never easy and in cases like the *hibakusha* rebuilding is never complete. All we can hope is that by enacting the laws for support of the *hibakusha*, and the clarification of said laws by the SCOJ, some aspect of their lives can be improved and a quality of life approaching that of a normal person can be achieved. We can never allow ourselves to forget the *hibakusha* and their struggles over the last 70 years unless we fall into the trap of repeating the past and creating a new generation of *hibakusha* of untold numbers.

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