

Running from Responsibility

How the nuclear industry evades responsibility

February 2014

1. Executive Summary

Decades ago, when the civil nuclear programme was first conceived, “believers” thought producing power from nuclear reactors was the way of the future for electricity generation. Yet even back then, both governments and the nuclear industry recognised that the full cost of a major nuclear accident could be enormous.¹ They worried about the financial risks, even though they thought at the time that the possibility of such an accident was small.

To ease the worries about financial risks, many governments created domestic liability systems, really nuclear industry protection systems, to shield nuclear suppliers from all responsibility, and to protect nuclear operators by severely limiting the amount they would have to pay in the event of a nuclear disaster. As a result of these protection systems, the nuclear industry pays little to none of the full costs required to help victims recover from a nuclear disaster. The costs include the victims’ pain and suffering, such as the stress of the dislocation and the trauma of rebuilding a life that comes when people are forced to abandon homes, farms, businesses, and much more.

The main vehicle the nuclear industry is now pushing is the Convention on Supplementary Compensation for Nuclear Damage (CSC). This Convention, if it comes into force, bolstered by laws in various countries that also protect the industry, will absolve the nuclear operators from paying for most of the costs of its disasters, shield nuclear suppliers and vendors from liability in almost all situations, and will fill in the industry’s perceived “gaps” in their protection from the risks they create. The nuclear industry, backed by allied governments, is currently seeking to bring the CSC into force.

Nuclear disasters such as Chernobyl, Three Mile Island and Fukushima Daiichi have shown why the industry wants the protection of the CSC and other liability schemes. Although back in the 1950s and 1960s the first believers thought that there was little risk of a major nuclear accident, they were wrong. Nuclear technology is now outdated and has been proven to be risky, with a major accident occurring as frequently as once a decade.² The nuclear disasters at Chernobyl in 1986 and at Fukushima Daiichi in 2011 are the clearest examples of the enormous risks.

History has also exposed the fact that these liability schemes, pushed by the nuclear industry and governments, serve only to protect the profits of big companies while forcing the victims of these human-made nuclear disasters to pay the costs.

General Electric (GE), the designer of flawed reactors at the Fukushima Daiichi nuclear site, has played and continues to play a prominent role in lobbying efforts. Through access to information laws and other investigations, Greenpeace has found information that shows how nuclear suppliers, particularly GE and the US government, have exerted concerted pressure on foreign governments to ratify the CSC liability regime. They want this convention in force in order to solidify the international protection system for nuclear suppliers, safeguarding them from liability.

In Japan, the US diplomatic service offered to help with the “clean-up” and decommissioning of the Fukushima site with one hand, and pushed the Japanese government for the ratification of CSC with the other. At the same time, a Japanese policy think-tank backed by the pro-nuclear business federation, Keidanren, has advocated for passage of the CSC within Japan as a way to protect its own domestic nuclear suppliers from liability.

The protections that the nuclear industry has enjoyed and is pushing to expand are **unparalleled and unfair privileges**. Particularly in the case of nuclear suppliers, these protections contrast sharply with the treatment of many other industries that involve significant risk, such as offshore drilling – even though this also does not provide adequate protection to the public.³

Unlike other industries, nuclear operators, suppliers, and their investors are not required to fully compensate victims. Nuclear suppliers, in almost all circumstances, never have to make payouts. The nuclear industry is frequently exempt from liability, even when its disasters cover large areas, cross national boundaries, and are long lasting. Ironically, a manufacturer of turbines for coal plants faces more potential economic liability than the supplier of nuclear reactors.⁴ In essence, nuclear liability means people liability: people are forced to pick up the bill for the nuclear industry's disasters.

The Fukushima Daiichi nuclear disaster clearly and tragically demonstrates the inequity of nuclear liability laws. The operator of the nuclear power plant, Tokyo Electric Power Company (TEPCO), has made 24 requests up to January 2014 to receive financial support from the state-backed Nuclear Damage Liability Facilitation Fund (NDF). Yet, it has paid only a fraction of the costs of the actual damages to victims.⁵ The companies that designed, manufactured, and constructed the flawed reactors at the site have paid nothing.

The public will only see its risks from nuclear power reduced when the liability system is fundamentally reformed. It is essential that the entire nuclear industry is held fully accountable for its actions and failures, both by ensuring nuclear suppliers are liable in the event of accidents and by lifting the protection of low caps on liability that nuclear operators enjoy in many countries.⁶

This new Greenpeace briefing demonstrates how nuclear suppliers – aided by their allies in governments – systematically continue to evade responsibility for their failures through concerted lobbying efforts on a national and international level to remain exempt from liability or to expand their protection.

2. Introduction: Running from responsibility

Since its inception 60 years ago, the nuclear industry has been allowed to ignore a simple lesson most of us learned as children: if you break it, you pay for it. Meaning, if you destroy or damage something, you pay the cost for what you have destroyed. Suppliers of nuclear reactors and other parts sought special liability protection when civil nuclear power programmes were first launched in the 1950s, and they continue to seek protection today.⁷ The current international nuclear liability conventions and domestic laws unfairly prop up the industry and are contrary to the basic notions of legal responsibility.⁸ The Convention on Supplementary Compensation for Nuclear Damage (CSC), if it comes into force, will provide the nearly airtight international indemnification from liability that reactor suppliers want – even if they are negligent.⁹

The US government has historically been a major driving force behind the passage of national liability laws in foreign countries that shield nuclear suppliers from financial responsibility. The US government has been at the forefront of encouraging governments to ratify the international protection system, the CSC, and to pass special domestic laws to protect US-based companies.¹⁰ General Electric (GE), one of those US-based corporations, has enjoyed the privilege of protection and a powerful government's advocacy on its behalf from the beginning of its involvement in the nuclear industry.¹¹ GE first started marketing its designs for civil reactors to companies in countries, such as Japan, in the 1950s and 1960s.

The Fukushima disaster exposed two unacceptable consequences of shielding reactor suppliers, such as GE, from liability. First, shielding may have contributed to the disaster by not placing any consequences on GE for ignoring flaws in the reactor design it provided to TEPCO. Without any potential legal liability, there was no incentive for GE to take corrective action before it was too late. It is known that in 1975 GE's own engineers warned the company of flaws in the design and construction of the Fukushima-type reactor that could worsen radioactive releases.¹²

Second, shielding unfairly shifted the enormous financial burden of the Fukushima disaster to the victims and taxpayers, while allowing GE and other companies responsible for the disaster to continue to make profits.

In the wake of Fukushima, nuclear suppliers have ramped up the pressure on countries, pushing them to pass a global liability regime that would shield them from all liability claims.

2.1 Nuclear Liability Conventions – The case of the CSC

In 1997, the International Atomic Energy Agency (IAEA), an agency set up to promote nuclear power, created the Convention on Supplementary Compensation for Nuclear Damage (CSC) in an attempt to fill gaps in the protections enjoyed by the nuclear industry.¹³

The CSC was the nuclear industry's answer to the catastrophic Chernobyl nuclear disaster, which caused the biggest release of radiation in history.¹⁴ The radiation spread over a huge area and had significant effects on people in other countries – referred to as transboundary impacts. Although the industry was protected in many countries by national and international liability regimes, they recognised that transboundary radioactive fallout after

a major nuclear accident could still expose companies to lawsuits in other countries. As a result, the nuclear industry viewed the holes in the patchwork of nuclear liability conventions that existed then as a serious business risk.

The fix was the IAEA's CSC, a proposed worldwide liability regime that would fortify the protection of states and operators by limiting the amounts for which these entities could be held liable, and by creating liability pools to minimise the amount individual responsible parties or states would pay, as well as ensure that nuclear suppliers could not be held liable in almost all cases in the event of a disaster.¹⁵ However, the CSC is not yet in force due to the fact that only four countries have signed and ratified it.¹⁶

Nuclear states and nuclear suppliers have undertaken a cynical push since the Fukushima catastrophe to get the CSC ratified in order to increase their protection from liability and shield themselves from the costs of a major accident.

The IAEA, companies like GE, and allied governments, have brushed aside the concerns of victims of a disaster in their concerted lobbying to convince countries to ratify the CSC. By signing the Convention, a country signs away its right, and the rights of victims, to claim damages from a company, even if the company's negligence or wilful misconduct contributed to a nuclear disaster in that country's territory. These efforts to ensure the CSC is ratified and brought into force are not about people or community protection; they are about protecting "business as usual" and fostering an environment for the expansion of the nuclear industry.¹⁷

The appropriate response to the Fukushima disaster would be the opposite of the objectives set out in the CSC. It would be to ensure that all nuclear companies, operators and suppliers, are held accountable and made responsible for the risks and damage they create.

2.2. History of lobbying efforts

Japan

Japan was one of the first countries¹⁸ to buy US-designed reactors, with construction of the first Fukushima reactor, a GE design, starting in 1967. As this section will document, Japan was also one of the first to come under pressure from the companies that supply reactors and other parts for nuclear reactors for exemption from any responsibility for a disaster, such as Fukushima.

Documents¹⁹ Greenpeace Japan received through access to information requests show the early efforts by companies to gain protection. These documents, which are from the late 1950s and early 1960s, detail the discussions of the Japanese government commission that was charged with developing a draft of nuclear power and supplier regulations. They expose the close relationship between the key Japanese government officials and the nuclear industry, and reveal that at the very outset of developing Japanese nuclear liability law, supplier companies were included in regulation proposals as potentially liable parties.

[Excerpt of December 12, 1959 report from the Nuclear Damage Compensation Expert Group]²⁰

In case of the occurrence of a nuclear damage caused by wilful misconduct or gross negligence of entities directly or indirectly contracted or subcontracted to a nuclear business operator, in respect to fuel supply or facilities, or of an unrelated third party, the nuclear business operator can claim for compensation for damage against them. (Liability for nuclear damage 5)

Nuclear suppliers lobbied the commission for indemnification, or protection, from liability during stakeholder meetings. The commission caved in to their interests, and suppliers were exempted from all responsibility for a nuclear accident, except in the case of a wilful act. This is an excerpt from the obtained minutes²¹:

5. The decision on the consideration and the reported matters

2) About the draft Act on Compensation for Nuclear Damage Reports have been made in respect to matters that appeared problematic in the course of negotiations with each Ministry, and the countermeasures have been proposed by the Atomic Energy Commission. Upon having the aforementioned issues considered, there the following conclusions were reached:

a) The right to claim for reimbursement against a supplier shall be allowed only in the case of wilful misconduct.

6. The procedure of the consideration

2) About the draft Act on Compensation for Nuclear Damage

(Inoue) Please consider the points of issue about the draft Act on Compensation for Nuclear Damage which I've summarised. I listed the problems focusing on the State reparation, liability insurance, the body to settle the claims for compensation for damage, the right to reimbursement.

(...)

Finally, regarding to the right to claim for reimbursement against a supplier it was written that the supplier could be subject to a reimbursement claim in case of wilful misconduct and gross negligence. However, we decided to delete "gross negligence" to not make suppliers feel uneasy.

(...)

(Ishikawa) I think it is better to delete the term "gross negligence" from the reimbursement right statement in D.

(Inoue) This point is related to the State reparation. Depending on the character of this regulation, an entrepreneur and a provider can be burdened with more responsibility... But on Saturday we had a discussion with the chairman and other specialists, who said it would not matter to delete this term.

(Sasaki) Manufacturers want to be exempted in all cases except for wilful misconduct. It is better to solve the problems among operator, insurer and government.

(...)

(Kaneshige) A provider constructs a reactor, trusting a manufacturer's technique... Nevertheless, the manufacturer will be exempted from responsibility.

Unfortunately for the people of Japan, since the policy recommendation was turned in favour of suppliers, the commission ultimately drafted regulations exempting supplier companies and making the operators of nuclear plants and the government solely responsible for the costs of a disaster.²² This was done to calm the anxieties of supplier companies about the financial consequences they would otherwise be liable for in case of a nuclear disaster. The government accepted the recommendations.

The exemptions nuclear suppliers obtained under Japanese regulations in the 1960s weren't good enough for some. Even before the Fukushima disaster began, US diplomats and GE officials were collaborating to convince Japan to join the CSC, according to cables released by Wikileaks.²³ The Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) did not see any urgency to act on the CSC issue, due to the minimal interest of Japanese firms such as Toshiba and Hitachi²⁴ and because it was believed that a major nuclear accident could not happen in Japan.²⁵ According to the MEXT official, Taro Hokugo, those companies "are not receiving any pressure from their American counterparts regarding the CSC". However, the industry comments in the cable state something different:

In contrast to MEXT comments about the need for U.S. companies to put pressure on their Japanese counterparts, the GE officials said their company had in fact urged Japanese companies at the staff level to support ratification of the CSC. After discussions, GE reps agreed that perhaps higher-level advocacy was called for and noted they have been deliberating whether to deliver comments at the senior level.²⁶

What this "higher-level advocacy" could entail became apparent after the Fukushima Daiichi nuclear disaster and is detailed in section 3.2 below. Tokyo-based representatives of GE told US officials in 2009 that the "Japanese [nuclear] industry does not share GE's awareness of the vulnerabilities caused by liability".²⁷

Apart from some compensation paid from a state-backed Nuclear Damage Liability Facilitation Fund (NDF) from which the now-nationalised Fukushima operator TEPCO receives financial support, the nuclear industry has not paid a single cent of the multibillions in damages of Fukushima – even though the designers and suppliers were warned by their own engineers of some significant flaws in the design of some Fukushima reactors when they were being constructed.²⁸ Companies such as GE, Hitachi and Toshiba made millions in building, supplying, and

servicing the Fukushima Daiichi nuclear power plant, and yet in the wake of the disaster have been allowed to walk away without paying any compensation to the more than 100,000 nuclear victims.

Canada

GE has been key player in Canada's nuclear fuel chain since the 1950s,²⁹ and has consistently sought to shield itself from liability.

GE Canada built Canada's first nuclear power reactor – the Nuclear Power Demonstration (NPD) Reactor – based on a design provided by the then state-owned Atomic Energy of Canada Limited (AECL).³⁰ GE acquired a special indemnification for accident liability from the federal cabinet to build the NPD, which began operation in 1962.³¹

In the 1970s, the Canadian government passed the Nuclear Liability Act, which protects nuclear suppliers.³² However, the protection of this domestic legislation left GE concerned that it could be held responsible for compensating American victims in the event that fallout from an accident at a Canadian reactor caused transboundary damage in the US, something the company echoed again in 2009.³³ Many of Canada's reactors are on the north shore of Lake Ontario, across from New York State.

In 2009, GE told a Parliamentary committee that it only does business in Canada because it acquires special indemnification agreements from the operators of the reactors its services and insulates its Canadian subsidiary from the American parent company.³⁴ It encouraged the government to ratify the CSC so it could expand its business in Canada.³⁵

India

The Indian government passed nuclear liability legislation that included a provision that nuclear suppliers could be liable for accident damage if they were negligent³⁶ because of its experience with the Bhopal disaster, which saw an American-based chemical company evade liability after a leak that killed thousands of Indians.³⁷ This lack of protection for suppliers in this law has been met by significant opposition by American reactor vendors, such as GE and Westinghouse, and by American diplomats.³⁸

However, an Indo-US nuclear deal was negotiated in 2008, with Indian Foreign Secretary Shiv Shankar Menon giving a written guarantee for two things:

- One, India would earmark two sites which could “at least generate” 10,000 MWe each for “American Nuclear Energy Firms.”
- Second, India would establish an “adequate” nuclear liability regime, which would “adhere” to the “Convention on Supplementary Compensation for Nuclear Damage.”³⁹

The Civil Liability for Nuclear Damage Act 2010 created a compensation regime where the legal and financial liability was channelled, or directed, to the nuclear operators, and allows for legal options against suppliers.⁴⁰ No other nuclear country has legislation that provides operators the right of recourse against suppliers of defective equipment. Various US government officials, as well as nuclear industry representatives, have been voicing concerns against the “supplier liability clause” of the Act.⁴¹

Although India did sign the CSC in October of 2010, the country has yet to ratify it. Four years on, the Civil Liability for Nuclear Damage Act of 2010 – with its supplier liability – remains the law of the country.

3. Nuclear industry's response to Fukushima

The International Atomic Energy Agency (IAEA) responded in 2011 to the Fukushima disaster with the Action Plan on Nuclear Safety that calls for a “global nuclear liability regime.”⁴² True to its mandate to promote nuclear power, the IAEA's action plan arguably aims to protect nuclear suppliers from financial risk before the protection of victims of future disasters is considered. Indeed, the IAEA's push to shield the industry ignores a key lesson of Fukushima: shielding suppliers from liability increases the possibility of safety risks being ignored and thereby increasing accident risks.

Evidence has existed since the 1970s showing that GE's own experts warned the company of flaws in its Mark I reactor design;⁴³ flaws that contributed to the significant radioactive releases from the Fukushima Daiichi catastrophe, which seriously harmed Japanese communities and the environment.⁴⁴ GE, Hitachi and Toshiba built five Mark I reactors at Fukushima Daiichi, three of which failed catastrophically in containment building explosions and reactor core meltdowns, which released huge quantities of radioactive material.

Absolved of all responsibility for its flawed reactor design under liability regimes where it sold its reactors – including under the Japanese Nuclear Liability law (see above chapter 2.2) – there is no evidence available that GE took action to correct design and safety flaws. Similarly, there is no information available that GE addressed critical issues with the containment building structure and did not move back-up power generators from the basement of the reactor buildings, where they were at risk in a tsunami zone, in order to minimise the risks to the thousands of people living in the shadow of their reactors. Instead, GE brushed aside these critical concerns⁴⁵ – in the interest of minimising time and money and increasing market competitiveness.⁴⁶ One of the most important lessons the IAEA should learn from this nuclear disaster is that shielding GE and other nuclear suppliers from liability only increases the likelihood that safety issues may be ignored, and accident risks increased.

The design flaws in GE's Mark I boiling water reactor, which it provided for Fukushima, were known in the early years of the company's nuclear reactor programme.⁴⁷ Furthermore, even though the Japanese anti-seismic design standards for the reactor were stricter than for the original design, GE did not incorporate them into their product design package. GE's piecemeal modifications inside the Unit 1 containment vessel were particularly problematic.⁴⁸ "The major problem here was whether the Japanese design specifications for anti-seismic design at the time were incorporated appropriately in the product design package from GE," says the Investigation Committee on the Accident at the Fukushima Nuclear Power Stations of Tokyo Electric Power Company (or the Diet Commission Report). The report cited a former TEPCO vice-president, Ryo Ikegame, who worked at the Fukushima Daiichi plant during installation:⁴⁹ "According to Ikegame, they were not, and he indicated that ad hoc reinforcements were made during the construction."⁵⁰

The Diet Commission report concluded that: "The pressure inside the containment vessels exceeded their design capacity up to almost twice in the case of Unit 1."⁵¹ This was something Dale G Bridenbaugh, the GE engineer who headed the improvement project for the Mark I, raised publicly in the concerns he revealed in the 1970s about the inability of the GE Mark I reactor to stand up to a loss-of-coolant accident.⁵²

If nuclear liability laws were similar to those of other industries, the victims of Fukushima and/or TEPCO would be able to take GE to court, and by demonstrating the company was negligent, could get compensation for their losses. Under Japan's nuclear liability laws, victims are prevented from pursuing any compensation from supplier companies, even if they're negligent.

However, this legal provision that protects nuclear suppliers has recently been challenged – and there is a possibility that GE, Hitachi and Toshiba won't escape all liability for the Fukushima disaster. In January, a group of more than 1,400 plaintiffs filed a lawsuit in the Tokyo District Court requesting that the suppliers be held financially liable for the damage caused by the reactor meltdowns.⁵³ This lawsuit against the Fukushima reactor suppliers seeks to challenge the "justifiability of the [Japan Act of Compensation for Nuclear Damages], which exempts reactor suppliers from assuming legal responsibilities accorded with a [Nuclear Power Plant] accident."⁵⁴

The Fukushima disaster was caused by the human failures that produced flawed designs, and by the human failures of a regulatory system that did not ensure proper designs and reactor sites. It exposes the deep and systemic failure of the institutions supposed to control nuclear power and protect people from its accidents.⁵⁵ Yet the victims of this disaster who have lost businesses, farms, homes, communities, essentially everything, to a preventable, human-caused disaster cannot seek any compensation from GE or from Hitachi and Toshiba, the other reactor suppliers to Fukushima.

Many victims continue to struggle years after the disaster to simply get fair compensation, even for ongoing daily expenses. They can't rebuild the lives ripped away from them, and move forward to establishing a life somewhere else.

GE and other nuclear suppliers know they got "lucky" in the case of Fukushima. Japan's domestic liability law protected them, along with the geography of the region and weather patterns at the time of year that this catastrophic accident occurred. Japan is an island, surrounded by a vast ocean. Due to the seasonal weather patterns and prevailing winds,⁵⁶ much of the radioactive fallout was carried eastward to the Pacific, rather than westward toward the Korean peninsula and East Asia – so the transnational impacts of the triple meltdown were significantly mitigated.

Companies also know that the protection afforded by Japan's geography and seasonal weather won't help if the next nuclear accident occurs in an area more prone to transnational damage from massive releases of radiation. For example, if the next nuclear accident is in an area as densely populated as Europe – which has dozens of reactors, many of which border neighbouring countries – victims in these neighbouring states would have the legal right to pursue nuclear suppliers in court for damages.⁵⁷ Their rights are similar to those that allow people to sue other hazardous industries.

Nuclear suppliers realise the threat of transboundary radiation is a significant business risk given that major nuclear accidents are occurring approximately once a decade somewhere in the world.⁵⁸

3.1 Post-Fukushima lobbying – the US

The US diplomatic service was lobbying since before the Fukushima disaster to encourage countries to sign the CSC because of the enormous financial consequences of a nuclear accident.⁵⁹ The US wants improved protection for US-based companies supplying nuclear reactors and components, such as GE and Westinghouse. The heightened awareness of financial risks highlighted by Fukushima Daiichi is the major driver behind the renewed push by the IAEA and supplier companies to convince governments to sign the CSC.

The need for lobbying to improve financial protection for nuclear suppliers is high on the concerns of the US lobbying organisations. For example, the US Civil Nuclear Trade Advisory Committee – an advisory board to the US Chamber of Commerce – stated in a September, 2012 letter, that:

*...bringing the Convention on Supplementary Compensation (CSC) must be the highest diplomatic priority, because it is a vital risk management tool that encourages U.S. companies to enter markets where nuclear liability protection might otherwise be absent.*⁶⁰

The nuclear industry has repeatedly tried to pretend that the CSC helps to broaden and simplify the protection for victims of a nuclear catastrophe. The letter clearly reveals the CSC for what it is – a **risk management tool** for the protection of nuclear suppliers, not for the protection of people and communities.

If the CSC is ratified by a large number of countries and comes into force, GE's already unethical protection from paying any compensation to future nuclear victims will be greatly enhanced. The evidence is clear in a letter from the US Department of Energy Ethics Official to Ernest Moniz, the Secretary of the US Department of Energy, in May 2013, which states:

*GE is also one of two primary US designers and suppliers of nuclear reactors and reactor components. The Department and the Secretary are key advocates for advancing US constructed nuclear power plants abroad. **The Secretary is expected to encourage other nations to join the Convention on Supplementary Compensation for Nuclear Damage ("CSC"), which would strengthen the ability of US nuclear suppliers – including GE – to compete for the sale of commercial power plants overseas.***

. . . Historically, GE has frequently applied for Part 810 export applications [for the export of nuclear technologies to foreign countries], and it is anticipated that GE will continue to do so.

***GE Nuclear designed and constructed the Fukushima Daiichi Nuclear Power Plant reactors . . . The Department and its national laboratories continue to be involved in the aftermath of the Fukushima disaster. Secretary Chu has been actively involved in discussions with the government of Japan since the tsunami, and it is expected that you would be the Department's representative and technical expert to the Japanese government on this matter** [emphasis added].⁶¹*

If governments give in to the lobbying of the US and nuclear suppliers and ratify the CSC, they will be abandoning the need for greater protection of the public. Instead of a system that ensures those responsible for nuclear accidents will be held accountable for the damages caused by their technologies, there will be a broad-based system to protect the powerful and to ensure the economic benefits of the nuclear industry come first.

3.2 Post-Fukushima lobbying – Japan

In February 2012, Japan announced it would join the CSC. The backdrop for this announcement was the strong desire of the government to restart the dozens of the country's nuclear reactors idled by the safety investigations undertaken after Fukushima, and also the desire to export nuclear technology to other countries.⁶²

The involvement of the US in lobbying Japan to ratify the CSC was revealed six months later. The revelation came in the 2012 report on the Obama Administration's National Export Initiative, an initiative that aims to double US exports between 2010 and 2014. The report proudly notes among the accomplishments of the Civil Nuclear Trade

Initiative: “Engaged Japan to ratify a global nuclear liability convention.” It also clearly states that a priority objective going forward is to “[a]dvance global nuclear liability regime, the Convention on Supplemental Compensation”.⁶³

Not surprisingly, the announcement in November 2013 that the US Department of Energy would further “help” in the clean-up and decommissioning of Fukushima – although presented by DOE Secretary Moniz as benevolent international aid – came with an agreement to advance the passage of the CSC by the government of Japan, which would reinforce the protection from liability for nuclear suppliers in the country.⁶⁴

Moniz stated after reaching agreement with Japanese government officials that they would push forward on ratifying the CSC: “As one gets into the real work [of decommissioning Fukushima], then these liability conventions become quite important. Certainly Prime Minister Abe and Minister Motegi both emphasize that the importance of moving on [the CSC] in 2014 is to a large extent driven by their openness and their desire to get as much international help as they can.”⁶⁵

It is equally important to note that while the US was pushing for the CSC in Japan, in the wake of Fukushima, the Japanese industry and government began seriously considering joining the Convention as a way to protect Japan’s own domestic nuclear suppliers from financial risk for reactors sold to other countries.⁶⁶

For example, the Japanese-based 21st Century Public Policy Institute (21PPI) – a policy think-tank funded by the pro-nuclear Japanese business federation, Keidanren – released a policy brief recommending the Japanese government limit nuclear operator liability and join the CSC. 21PPI developed its recommendations based upon the discussions and “ideas provided by concerned parties”,⁶⁷ though there is no indication that Fukushima nuclear victims were consulted.

The 21PPI briefing is very clear about the historical role the US has played on behalf of US-based nuclear suppliers, including GE, in shaping global liability regimes to protect nuclear suppliers. It states: “Given the historical context that each country formulated its nuclear compensation scheme in acceptance of the US demand of its export partners that the American nuclear power facility manufactures, such as General Electric (GE), would not be liable for any nuclear accidents, the basic institutional principles, including the purpose of relevant laws, are nearly globally common.”⁶⁸

It goes on to dismiss any suggestion that suppliers be made liable, saying that: “It is not realistic to hold manufactures (suppliers) liable for damages.”⁶⁹ No explanation is given for why it is “not realistic” to hold suppliers liable for damages that their risky nuclear facilities and equipment could be wholly or in-part responsible for creating.

In advocating for the CSC, the business federation brief states: “When a domestic manufacturer exports a nuclear power plant, liabilities for damages in any nuclear accident that occurs in the said country would be concentrated upon the nuclear power operator of the said country, provided that the export partner country is also a party to CSC. Therefore, **Japan would be able to avoid business risks** [emphasis added].”⁷⁰

Again, the purpose of passing the CSC is to protect businesses, i.e. Japanese nuclear suppliers, from financial risk – not to protect people living in communities affected by a nuclear accident.

The 21PPI brief states that among the CSC’s purported benefits for Japan is that: “Jurisdiction over actions concerning the nuclear damage of a nuclear accident that occurred in Japan will lie only with Japanese courts, **even in the case of transboundary damages in other countries** [emphasis added].”⁷¹ Although the brief acknowledges that signing onto the CSC would mean Japanese citizens would also be giving up their right to seek compensation in the Japanese courts for transboundary contamination for an accident in another country, the business think-tank believes that the benefits for business far outweigh the negatives for citizens.

3.3 Post-Fukushima lobbying – Canada

In December 2013, the Canadian federal government announced it would ratify the Convention on Supplementary Compensation.⁷² This followed lobbying by various actors.

After Fukushima, the Canadian Federal government consulted with nuclear industry suppliers and operators on the revision of Canada’s nuclear liability legislation. The government did not request input from non-industry stakeholders.

Documents acquired by Greenpeace Canada through access to information requests show nuclear suppliers requested Canada ratify the CSC. General Electric-Hitachi Canadian CEO told the Canadian federal government its business in Canada was “inhibited” if not “jeopardised” by a “Bhopal” type accident scenario.

GE-Hitachi Canada told the government:

“In the event of a nuclear accident involving one of Canada’s reactors – all of which are along the US border – there would likely be a flurry of legal actions against several parties, particularly those with deep pockets like GEH Canada, or even GE Canada. If GE Canada were found liable, and if a US court were to determine that Canada’s liability protection regime was deficient and unable to provide adequate compensation to US victims, legal action might conceivably be taken in US court against GE, all GE’s assets in the US would be vulnerable.”⁷³

3.4 Post-Fukushima lobbying – India

India’s decision to learn from the Bhopal chemical disaster and bring in legislation that includes nuclear suppliers has not sat well with the nuclear industry or with the US government.

The threat the nuclear industry felt from the act became stronger after the Fukushima disaster. Hillary Clinton, the then US secretary of state, campaigned on behalf of US-based companies and called on India to ratify the CSC and engage “...with the International Atomic Energy Agency (IAEA) to ensure that the liability regime that India adopts by law fully conforms to the international requirements under the convention.”⁷⁴

At the time of Clinton’s intervention, US companies such as GE and Westinghouse would not agree to build reactors in India unless India changed its nuclear liability law to fully protect suppliers.

Geoffrey Pyatt, Principal Deputy Assistant Secretary, Bureau of South and Central Asian Affairs at the US State Department, was even more blatant in protecting American nuclear firms. In 2012, he commented: “India’s nuclear liability law is not in line with the international nuclear liability principles reflected in the Convention on Supplementary Compensation for Nuclear Damage. Current liability law and regulations impose the risk of a heavy financial burden on equipment suppliers seeking to enter the Indian market and expose such companies to the risk of significant financial penalty in the event of a nuclear accident, neither of which is consistent with international standards. Without a law consistent with this Convention in place, companies from the United States as well as other nations will find it difficult to participate in India’s nuclear power expansion plans.”⁷⁵ The US government, on behalf of American firms, has been constantly pressuring the Indian government to make the domestic liability regime compatible with “international requirements”.⁷⁶

Also according to cables released by Wikileaks, India would need to implement the CSC for France’s state-owned AREVA to do business there. France was even concerned that without the CSC in place AREVA’s US-based assets “...could be sued for an incident in India”.⁷⁷

In an interview with Forbes magazine in February 2013, John Flannery, outgoing President and CEO of GE in India, very clearly articulated GE’s position: “If the [civil nuclear] liability law stays the way it is, we won’t pursue the business.”⁷⁸ In October 2013, its new CEO Banmali Agarwal reiterated this position: “We need to see how the whole liability issue is addressed. The way the liability clause currently stands, we are not comfortable...”⁷⁹

4. Conclusion

Nuclear suppliers have exerted major pressure since the beginning of the industry to be exempt from liability. They want this protection because they fear the enormous costs of a nuclear accident and don’t want to pay for the risks their products create.

At present, they don’t have the level of protection they want, so they are now in a desperate scramble since the Fukushima disaster to fill in any gaps in their protections. They want to prevent anything that might allow the nuclear operator or nuclear victims to seek compensation from them in the event of a nuclear disaster.

The companies that supply reactors and other nuclear equipment, such as GE, Hitachi and Toshiba, clearly care for their company assets first, and have little regard for the victims of accidents that could be caused by their products.

These nuclear supplier companies do not believe their reactors are safe, in sharp contrast to their sales pitches, or else they wouldn’t lobby so hard for national liability indemnification and the protections offered by the CSC.

A nuclear accident with transboundary impacts is a realistic scenario to the nuclear industry. They also know that this poses a great financial risk to their companies. Their solution is to promote the CSC – which will place almost all financial burdens firmly on the shoulders of the public – taxpayers, consumers, and wider society.

The alliance between governments and the nuclear industry must be changed. Governments are ignoring what should be the first priority of any nuclear liability convention, protecting people and their rights. Governments need to treat the nuclear industry like any other hazardous industry and hold it accountable for the risks nuclear power creates.

A nuclear disaster creates some losses that cannot be repaid. But that doesn't mean the need for greater protection of the public from the financial risks they now face from a nuclear disaster should continue to be ignored. Fundamental reform is needed to nuclear liability to remove unfair burdens from the public and place them where they belong on the entire nuclear industry. It alone should be accountable for its actions and failures.

Governments should not give in to aggressive lobbying to bring the CSC into force. Further, shielding nuclear suppliers from liability will only increase the risk that design flaws will be ignored or concealed, increasing the risk of a nuclear catastrophe. The public must be protected from this unnecessary and undue risk.

For more information, contact:
pressdesk.int@greenpeace.org

Greenpeace International
Ottho Heldringstraat 5
1066 AZ Amsterdam
The Netherlands
Tel: +31 20 7182000

greenpeace.org

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