



“A crime called nuclear power”: The role of criminal law in addressing post-Fukushima damages

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Abstract

This article examines the criminal indictment filed and other activities employed by the Fukushima Nuclear Energy Lawsuit Group, in the aftermath of the earthquake, tsunami and nuclear disaster that occurred in Japan on 11 March 2011 (“311”). The article thereby brings into focus the role played by criminal law in ascribing meaning to people's actions on and after the events of 311 — a subject that up until now has not received any scholarly attention. By examining the Japanese Prosecutors' Office response to the indictment the article furthermore contextualizes criminal law's role in the aftermath of 311 in terms of its more general characteristics as well as the legal reforms carried out in Japan in recent years. In doing so the article brings into focus striking differences in parties' views on and findings of 311 facts, as well as the limited impact of recent legal reforms on Japanese prosecution practices.

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1. Introduction

In the afternoon of 11 March 2011, an undersea earthquake with a magnitude of 9.0 (Moment Magnitude Scale) occurred off the northeastern coast of Japan. The earthquake triggered a powerful tsunami that reached inundation heights of close to 40 m (Tsuiji, 2012) and caused vast destruction and loss of life. 15,884 people died; 2633 are still missing (as of March 2014), and

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6148 people were injured (Cabinet Office, 2013). In addition, close to 400,000 houses were completely or partially destroyed. As a result of the meltdown of three nuclear reactors in the Fukushima Daiichi Nuclear Power Plant complex occurring in the wake of the tsunami, residents in the vicinity of the reactors had to be evacuated, while radiation caused serious harm to both the surrounding and wider environment (Akahane et al., 2012). The triple disaster that hit Japan in addition left around 251,000 people displaced on a longer-term basis: they are still living in emergency or temporary housing or with family, etc. (Government of Japan Reconstruction Agency, 2014).

One might be tempted to think that the earthquake, tsunami and ensuing nuclear disaster, as a range of exceptional and extraordinary events, would not directly imply a role for criminal law to play. Nevertheless, in 2012 the Fukushima Nuclear Energy Lawsuit Group (FNELG) was formed, resulting in 1324 citizens from Fukushima pressing charges against 33 government officials and executives of the Tokyo Electric Power Company (TEPCO) on 11 June 2012. On 15 November of the same year another 13,262 people from all over Japan pressed charges,¹ filing a secondary request for prosecution against the same persons.

On 9 September 2013, however, the Prosecutors' Office announced that it will not be prosecuting the 33 suspects. It would thus seem that the role of criminal law in the aftermath of the triple disasters of 311 was played out before it ever truly began.² Nevertheless, there is more to criminal law's role in the aftermath of 311 than the starting or not starting of a formal criminal procedure.

In order to examine this role, the article will first of all address the legal case presented by the FNELG including the criminal legal aspects that are preventing the FNELG case from being addressed in court, within a formal legal forum. The article will however also bring into focus criminal law's role as a factor facilitating FNELG discourse. As will become clear, the criminal investigation³ and the prospects of a possible criminal trial have provided many of the victims of the 311 disasters an opportunity to write and speak — to raise their voice within a public forum.

By analyzing the role played by criminal law in the aftermath of the disasters of 311 this article will shed light on an issue that up until now has not received any scholarly attention. While there are studies devoted to civil legal issues in connection with the events of and after 311 (see e.g. Osaka, 2012; Nagai and Tsukui, 2012; Matsumoto, 2013) there are as yet no article focused on criminal legal aspects.⁴ This article constitutes a first much needed step to fill this void.

Examining the FNELG case is in addition fruitful in light of the vast reforms that the Japanese legal system has undergone in recent years. Important aims of these reforms were (among others) the bringing about of a legal system close to and trusted by the general public.

¹From a legal point of view a distinction should be made between charges pressed by a direct victim (告訴, Code of Criminal Procedure (CCP) art. 230, and charges pressed by a third, not directly involved party (告発), CCP art. 239. Here charges were initially pressed by 1324 direct victims (告訴), and in second instance by 13, 119 direct victims (告訴) and 143 third persons (告発).

²As indicated below, there is still a possibility that a prosecution review commission will give the prosecutors' office a legally binding recommendation to prosecute, based on art. 41 (7) of the Act Revising Part of the Code of Criminal Procedure (刑事訴訟法の一部を改正する法律).

³In order to explore the feasibility of prosecution, the Prosecutors Office opened an investigation as a part of which many of the suspects have been questioned.

⁴Tomomi Yamaguchi and Ruiko Muto, who is the head of the FNELG, have in a recent (2012) article also addressed the FNELG activities. This article "introduces Muto's activism on nuclear energy, her life before and after the Fukushima Daiichi disaster, and her recent effort to mobilize citizens for the criminal complaint". This article accordingly depicts (and is focused on) FNELG activism as such, rather than providing an analysis of the role played by criminal law in connection with this activism. It in addition constitutes an example of how the FNELG criminal complaint provided Ruiko Muto with an opportunity to speak out within an academic forum (see also Section II).

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