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GLAWCAL COMMENT

METHANE-HYDRATE EXTRACTION IN CHINA: COMPENSATION REMEDIES

Based on:

Yan Dong, Paolo Davide Farah, Ivana Gaskova, and Carlo Vittorio Giabardo. “Evaluating China’s Environmental Management and Risks Avoidance Policies and Regulations on Off-shore Methane Hydrate Extraction.” *Sustainability* 12, no. 13 (January 2020): 5331.



Ex ante solutions are better suited when dealing with consequences so ruinous as to be global than ex post remedies.

This is the case for Methane-Hydrate extraction, an offshore activity pioneered by. An accident in a MH offshore plant could cause severe environmental damage and reverberate at global level. Potential consequences of an accident include tsunamis, global warming, and an irreversible impact on marine life. Therefore, we may be tempted to concentrate on ex ante remedies. This perspective, however, is wrong for many reasons. First of all, we should keep in mind that civil compensations act as a sanction toward entities and, therefore, serve as a deterrent. Secondly, even if an accident has a ruinous potential, there is always the possibility that the potential damage does not happen to its full extent. So, for "minor" accidents, it is pivotal to address the issue of compensation and to push extraction companies to do not overlook minor issues only because their ruinous impact is highly unlikely to happen.

The authors discuss how the burden to seek redress rests with the damaged party after an injury has occurred. This fact poses a series of problems when dealing with a new type of offshore plant. First, there is a severe information asymmetry between the damaging party and the affected one. Since we are talking of an innovative way of extracting a new source of energy, it is difficult for the same authorities involved to find the expertise to evaluate the damage. This is even more so for the aggrieved parties.

The information asymmetry problem is magnified by the many ways in which the extraction activity is carried out on inhabited offshore platforms. It is therefore difficult to identify victims and culprits. The authors then recall Steven Shavell's list of three main elements that could underpin a lawsuit in these cases: the existence of multiple plaintiffs, a lack of evidence, and missing parties. Many legal systems try to compensate by legally presuming the fault of the damaging party, through strict liability, and/or by granting additional compensation to the victim through punitive damages, in jurisdictions like the U.S.

The Chinese legal systems provide a legal presumption of guilt for the damaging party, but does not grant additional monetary compensation to the victim. Moreover, the Chinese legal system is often criticized for the small measure of compensation granted to the victims.

Lastly, it is important to address the problem of the potential insolvency of the damaging party. They could also be driven to insolvency from the severity of the event. This problem could be solved by establishing a mandatory insurance system and by monitoring its fulfilment.

The authors suggest also to expand the toolbox of Tort Law in order to address these issues by switching to strict liability and involving public bodies in the matter to limit the information asymmetry. Additionally, China should intervene on compensation, granting the victims an amount proportional to the damage suffered. This would help compensate for difficulties of bringing forth the legal action and further on the difficult proof of imputability (e.g. in the case of long injuries).



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