**Annex to the**

**draft Convention to Facilitate the Registration and Financing of Mobile Offshore Renewables Units**

**(the MORU Finance Convention)**

## A. Introduction.

### Preliminary.

In 2023, the CMI established a new International Working Group for mobile offshore renewables units ("MORUs") (combining it with the existing Ship Nomenclature IWG) to explore legal uncertainties and potential gaps in international maritime law impacting a new and expanding class of mobile offshore units being designed, developed, built and used for offshore renewable energy projects in the waters of coastal states around the world. As the name suggests, "MORU", the acronym for "mobile offshore renewable units" is intended to capture in its definition a new class of floating units which may be moved (although anchored or held in place when working), located "offshore" (in the traditional sense of the offshore hydrocarbon energy industry) whether inside territorial waters or without, and having as their purpose the generation, conditioning, manufacture or storage of energy generated from renewable resources.

In 2024, the CMI MORU IWG held a day long workshop for CMI members and MORU sector participants (including MORU project developers, registries, class societies, banks, insurers, and NGOs, followed by a parallel session on MORU for the broader CMIat the CMI Symposium in Göteburg. Following this successful start, the MORU IWG circulated the 1st Questionnaire on MORUs to the constituent members of the CMI (the national maritime law associations) and received approximately 20 NMLA responses. These were summarized in a day long workshop and a parallel session at the CMI Conference in Tokyo. The purpose behind the questionnaire was, in accordance with the standard modus operandi of a CMI working group, to gather as much information as possible on the existing legal infrastructure, and practical operation of units caught within the definition of "MORU"s, in order to identify whether there existed a need for measures to promote greater predictability and uniformity in respect of the treatment of such units, and if so, what form that intervention might take, i.e. but without limiting the options, whether guidelines might assist, or whether a draft convention might present the most effective, and viable way forward to address various areas of legal uncertainty or lack of uniformity in relation to MORUs. As set out in greater detail immediately

below, the IWG has concluded, on the basis of the responses furnished to it, that a convention would provide the most effective means of addressing the lack of uniformity in respect of the treatment of these units in several contexts, and that, having regard to the requirements of the market, as well as the need for increased sources of renewable energy, a more thorough consideration of a potential MORU Convention by the broader CMI is merited.

**The purpose of this text.**

This text intends to set out the thought process, and course of debate of the MORU IWG in the drafting of the attached draft MORU Finance Convention , including the need for intervention to promote uniformity between the application national law regimes, specific issues of concern, tensions between competing rights where it was felt that balance was needed, and the reasons for the balance struck within the IWG. It is hoped that any person reviewing the text might find insight into the IWG's consideration of these issues of assistance, in deciding whether to take the draft further, and whether to keep, amend or delete the various formulations provisions as proposed.

Set out below, therefore, are the overarching considerations, and "tensions" between rights and interests as currently found in the varied national legal regimes as identified by the IWG. Following on from that is an article by article treatment of the attached draft MORU Finance Convention, including the proposed purpose of each, the issues which each seek to address, and the competing interests which they seek to balance.

**General considerations underpinning the drafting of this explanatory text.**

Some explanation may be appropriate as to the selection of, and identification of the specific type of property the subject matter of the Convention. The query may be raised, "Why this specific type of property?". Two important considerations may be identified.

Firstly, as floating, and ultimately mobile units, these are clearly distinguishable from property permanently fixed to the seabed, however at the same time MORUs do not enjoy widespread recognition or treatment as ships in the traditional sense. MORUs are mobile and are likely to be relocated by tow several times in their lifetime, whether for installation, transit to port for heavy repair, redeployment to new sites, or final decommissioning. Any of these transits may cross an international maritime boundary. In operation, they may deployed in deeper waters than other technologies, including in both territorial seas and exclusive economic zones of coastal states. The combination of these factors creates a need for a specific legal regime.

Secondly, the reason for the limiting of the scope of a Convention to those floating units producing (in the broader sense of the term) renewable energy necessarily derives from the need to distinguish these floating units from both those floating units used by the offshore oil and gas industry (and similarly, otherwise comparable floating fossil fuel power plants and nuclear facilities) and from fixed-bottom offshore energy installations of any type. While the attached draft Convention draws considerable inspiration from each of previous drafts prepared by the CMI in respect of mobile offshore oil and gas units over several decades, the international regulation of MORUs presents clearly distinct issues and priorities, in particular the likelihood of large arrays of serially produced MORUs; the methods of their construction, operation, repair, redeployment, and decommissioning; and the relative reduced risk of environmental pollution (and corresponding reduced political resistance to a convention from potential convention state parties) when compared to other offshore energy technologies.

Recognising the benefits which MORU's can bring as regards sources of renewable energy for coastal states, and the need for the same having regard to climate change imperatives, a fundamental consideration behind the MORU IWG's consideration of a convention for MORUs was the identified need to provide a more auspicious and uniform legal environment for the financing of these mobile offshore units. Without prejudice to any future work of the CMI on other MORU-relevant topics, the MORU IWG concluded that an initial focus on better integrating MORUs within the existing legal structures underpinning modern maritime finance would be of greatest immediate benefit and help facilitate the greater flow of finance towards mobile offshore renewables projects around the world.

The primary requirement identified was legal certainty in respect of, inter alia, the legal status of the property, ownership, public registration, and establishment and priority of security interests in the property, mutual recognition of publicly registered ownership and mortgages/hypotheques by state parties, rules in relation to other security interests, and provisions providing clarity in relation to certain other financial risks. In the context of providing legal certainty, certain broad topics were identified:

- What are the physical bounds defining a MORU, as distinguished from ship's equipment.
- The need for greater harmonisation of recognition of property rights, as well as the harmonisation of the concepts relating to asset registration/and secured rights in the property.

- Ensuring that operational risks associated with the property are well defined, appropriately limited, and insurable.
- The need for clear enforcement and dispute resolution mechanisms.
- Ensuring compatibility with UNCLOS, while making the regime compatible with non-UNCLOS states.
- Integration with international provisions promoting environmental (and climate governance) imperatives.

The need to further consider and if necessary clarify the relationship of the Convention with other maritime conventions, such as those governing salvage, wreck removal, or pollution liability to prevent or minimise conflicts between the draft Convention and existing maritime law and other maritime conventions.The MORU IWG has taken a conscious decision to refrain from expanding the scope of the draft Convention into certain contentious topics where it felt that inclusion of that topic would unnecessarily jeopardize its overall likelihood of passage.

## B. Analysis of the drafting of the Convention, article by article.

### 1. TITLE

The initial title referred only to the financing of MORU's however it was decided to ultimately opt for "the Registration and Financing" of MORUs to more directly encourage the public registration of MORUs in the future and extend the provisions and protections in relation to recognition of publicly registered ownership to those MORU not requiring finance.

### 2. Preamble

There was some debate about whether to include the words "*as well as for the facilitation of the sustainable and economic use of the ocean and its renewable energy resources and*" in the preamble, there being differing views on whether the overt reference to the climate change goals and sustainability was appropriate. This language has been retained in this draft.

### 3. Article I - Definitions

Certain definitions were the subject matter of IWG debate.

The term "economic activities" received varying comments from the members of the MORU IWG, it being suggested that the definition might be closer to the definition of MORU, and it was specifically noted that the definition of

"economic activities" referenced and applies to technology not explicitly included in Article 56(1)(a) of UNCLOS (i.e. offshore tidal and solar energy production). However, this was not seen as being in conflict with the inclusive language of that provision of UNCLOS and remains in the definition.

There was discussion about whether a definition of "mobile offshore renewables array" was required, this being ultimately suppressed as adding complication which was unnecessary. Similarly, the definition of "sister unit" was removed from the text.

The term "maritime lien" also received comment, as regards the possibility of providing for an independent, and not such a self-referential definition, in the interests of application in those jurisdictions with no traditional (or other) recognition of the maritime lien in the common law sense. It was suggested that the definition from Article 4 of the 1993 Geneva Convention might be incorporated. Alternative refinements were suggested to the current draft of "maritime lien", which is taken from the definition of the same term in the very recent Beijing Convention on the International Effects of Judicial Sales of Ships , extending the scope of the maritime lien to "any charge or liability" that is recognised "or subject to recognition as being secured maritime lien". The query was also raised whether a definition of "applicable law" regulating the existence or creation of a maritime lien might not be preferable. However, the decision was ultimately taken to leave the definition as it now currently appears, which (as noted above) mirrors the definition in the Beijing Convention on the International Effects of Judicial Sale of Ships.

There was a definition of "preferred lien" in an earlier version of the draft Article I which was ultimately supressed, where the need for the same in the text of the final draft could not be clearly identified.

Arising out of the definition of "mobile offshore renewables unit" included in the 1st Questionnaire, a query was raised on the adequacy of the description of the technical and abstract characteristics of the same. The definition of the relevant sources of energy was also raised, it being suggested that a definition closer to the text of Article 56(1)(a) of UNCLOS would be preferable, which grants coastal states sovereign rights in relation to the economic exploitation of their exclusive economic zone to produce "energy from the water, currents and winds"(). Furthermore, a query was raised on permitting the extension of such a unit to the production, or storage of renewable energy as chemical products (e.g., "green hydrogen" and "green ammonia"), and whether the extension of the scope of the Convention to include activities potentially involving the storage (but not transport) of large quantities of potentially hazardous

chemicals which negatively impact on the take-up or acceptability of the instrument, bearing in mind that the operational aspects (and risks) of MORU on site (including temporary storage of such substances in the MORU until offloading to another vessel) would be regulated by the coastal state in whose waters the MORU was deployed as per Art. 56 of UNCLOS. After discussing these potential amendments, the IWG determined that the definition of Mobile Offshore Renewables Units used in the 1st Questionnaire should be replaced with the definition of Mobile Offshore Renewables Units you find in the attached text.

The term "Related Appurtenances" and whether the definition should include mooring systems within that term was also discussed, as well as the significant component of the value of a MORU Array (when taken as a whole) being represented by the mooring systems, making it desirable that it should be recognised as being susceptible to registration, and the protections under the Convention. Against this point, it was recognised that a MORU, by definition, was mobile and it seems that the current operational trend in the MORU is to utilize mooring systems permanently attached to the seabed and detachable from the MORU itself (vs. utilizing a mooring system which might be retracted from the seabed and stored on board the MORU when in transit).

**4. Article II - Application**

The scope of the application of the Convention was debated. A discussion ensued about whether the Convention might only apply to MORU's in the EEZ, with a requirement for express application by each signatory State to its territorial and internal waters. The final draft proposed by the IWG was to apply the Convention without prescribing its application to specific maritime zones contemplated by UNCLOS (i.e. regardless of whether the MORU is located in an EEZ, territorial waters, internal waters, or otherwise). This will be subject to further review.

**5. Article III – Ownership**

In order for the ownership protections of the draft MORU Finance Convention to apply, the MORU would be required to be registered. Security interests may be registered and shall be recognised, however the definition of such interests was ultimately limited to mortgages or hypothèques (or other comparable security interest declared by a state party to be its preferred form of security interest having—subject to the draft Convention—priority over other security interests)[1]. A MORU registered in any State party shall be entitled to have

[1] This option was considered necessary as the nature of the registration of a MORU (e.g., whether as a "ship", "vessel", "floating installation" or something else) and place of registration (e.g. in a ship

ownership and registered interests recognised in another state party. After an intense debate over the need for a MORU to have a "nationality" as a component of its registration on the registry of a State Party, it was decided not to make any such provision.

**6. Article IV – Registration**

Consideration was given to have a requirement that all State Parties should permit the registration of property interests and security in MORU's on its relevant register or give each State Party the option to do so if it so chose. The reason advanced to mandate that each State Party permit registration of MORUs was that this would promote visibility of such interests, as well as promoting harmonisation of registrable interests between different public registries. A query was also raised as to whether making the provision of a registry for MORU's in each State Party obligatory was not necessary for the enforceability of the provisions of the Convention.

After much debate and a clearly expressed preference for registered MORUs (cf. Article 9.3), it was determined that introducing the obligation on a State Party to open its registry to MORU'S or establish a separate register for MORUs might be an unwanted obstacle to early ratification and accession by potential coastal state parties without the short term fiscal or legislative possibilities to do so but which would nonetheless like to obtain some of the potential benefits of the draft Convention, e.g. by becoming a State Party to the draft Convention and thereby extending the draft Convention's rights and protections to MORUs flagged by other State Parties, the coastal state would have access to lower cost MORU finance).

As such, the MORU IWG concluded that the opening of a State Party's existing register (or establishing a separate register) to such interests in MORUs should be optional. However, the MORU IWG also concluded that, regardless of whether a State Party opens its registry to MORUs or establishes a separate register for MORUs (or allows deployment of foreign flagged MORUs in its waters), each State Party to the draft Convention must accept that the recognition and enforcement of those property rights in any MORU registered in a State Party would be governed by the law of the MORU's flag state (as described below). The same considerations were applied to the registration of

registry or other form of public registry) of registration of ownership rights in MORUs may vary from state party to state party, as will the nature of possible security interests in a MORU available under national law (be it a mortgage, hypotheque, or other form of comparable registerable security interest with priority).

mortgages and hypothèques as dealt with in Article 5 below. *See also the last paragraph of Section 8 below.*

There are requirements for public accessibility of such registries, and the obligation on the flag state to make the owners of the MORU's on its relevant registry identifiable. A query was raised as to the need to specify the publicity requirements for the registration of such interests, such as those established by the 1993 Geneva Convention.

As mentioned above, the controversial issue in respect of the law governing the recognition and enforcement of rights of ownership and security interests was determined in favour of the "flag state" and flag state law under Articles 4.4, 4.6, and 5.5.

The question of competing claims over a MORU, and their priority *inter se*, particularly in respect of a lien where the *lex causans* might be other than that of the flag state was raised, but no specific provision included dealing with the same.

**7. Article V – Mortgages or hypothèques and Creditors' Remedies**

The mandatory or optional nature of facilitating the registration of such interests was debated, and the same approach followed as with Article IV above—there is no obligation on a State Party to open its registry to MORU mortgages or hyptheques or establish a separate register for such interests in MORUs, only that each State Party accept the recognition and enforcement of those rights and interests under the law of the MORUs relevant flag state.

Consideration was given to the issue of maritime liens taking priority over mortgages or hypothèques and a provision included at article 5.3 and 5.4 to ensure that such maritime liens, where permitted, are allowed under national maritime law the same priority as they would be afforded to maritime liens over self-propelled ships. This was seen as respecting the traditional priority afforded to maritime liens in domestic law, while at the same time ensuring uniformity of approach as regards MORUs as an object of maritime law. Consideration was given to included a closed list of interests susceptible to being granted priority as "maritime liens" in order to promote legal certainty, thereby reducing risk for financiers and promoting affordable finance; however this was ultimately not provided for, as many members of the IWG felt that such a list was unlikely to be viable having regard to differences in maritime lien practices across domestic jurisdictions.

The complexity of the question of priority between preferred interests in the MORU was recognised as very difficult (even in the base case of a traditional,

self-propelled ship), particularly where different laws might apply, depending on where the right over the vessel came into being, the law applicable to the source of the relevant obligation, or the situation of the property at the relevant time (as referenced above in respect of the *lex causans*). It was pointed out that the laws that may be engaged in a priority fight are

(a) the Flag State of the MORU;

(b) the state where a lien/claim arose; or

(c) the state where the MORU is arrested, detained, or subject to judicial sale.

And achieving uniformity in respect of the applicable law determining priority between competing claims could prove a considerable challenge, and impede the ratification and adoption of the Convention. Due to these difficulties, a number of contemplated provisions in respect of creditor remedies (cf. the CMLA draft of a Mobile Offshore Units Convention, 2001), and the regulation of priorities were simply omitted from the attached draft in favour of the legal status quo for self-propelled ships under domestic law.

**8. Article VI – Civil Jurisdiction**

The question arose, in the context of civil jurisdiction, as regards the consolidation, coordination or accumulation of claims arising out of the same incident, whether express provision should be made for the assignation of preference to the Courts of particular states, such as, for instance, the Courts of the Coastal State, then those of the lien claimant State and then the Flag State. No provision was ultimately included, however.

There was discussion regarding the need to provide for recognition of the decisions relating to MORU's of the Courts of other State Parties, and a specific incorporation of a duty to recognise decisions given under the Beijing Convention on the International Effects of Judicial Sales of Ships. A query was raised as to the need to introduce the provisions of the Hague Judgments Convention 2019 (Article 6.8), although the current draft contains no provisions for the same as it stands.

Art. 6(2) is not to be read in contradiction of the use of the word "may" in Art. 4.2 or 5.2—rather, it should be read to require a state party to establish of a competent and adequate administration to carry out its obligations under the Convention, which may include (at the State Party's option) public registration of ownership under Article 4.2 and public registration of Mortgages or hypotheques under Art. 5.2.

## 9. Article VII – Limitation of Liability

In accordance with the purpose of the Convention, to provide greater legal certainty and thereby facilitate the financing and deployment of MORU's, the need to ensure that the risks associated with such floating units were quantifiable and finite was identified. On this basis, it was determined that limitation of liability should be included for MORUs, despite the indications that the potential liability exposure for other actors, or the coastal state, was somewhat limited when compared to . Despite the sui generis status of MORU's, it was considered that the most viable means of providing for limitation of liability was by reference to the existing liability regimes for self-propelled ships. The IWG reviewed various potential liabilities, to which limitation might be relevant; collision liability (e.g. during tow in, tow out, following loss of mooring/when adrift, and when struck by another vessel when on site), pollution liability (again considered relatively limited compared to other offshore energy technologies), wreck removal, liabilities to crew/service personnel and issues surrounding end of life decommissioning. While limitation of liability was considered to be important from the perspective of insuring these assets, the risks posed by the same was considered to be relatively low, such as to not make limitation provisions an obstacle to ratification or adoption.

From a practical perspective, the IWG was conscious that limitation of liability for self-propelled vessels could not be "tacked on" simpliciter, and for this reason a further provision (article 7.2) was introduced to deal with the issue of tonnage for the purposes of limitation.

## 10. Article VIII – Financial Responsibility.

As a quid pro quo for limitation of liability, as is common in such international instruments, and as a means of promoting confidence and acceptance of the technology for coastal states, the draft Convention incorporates an obligation for MORU's to carry insurance, although the detail of the same is left to the Flag State Party to determine, and the provision does not specify what risks such insurance should cover, nor whether it should attach only when the asset is being towed, or is in working position, or both.

## 11. Article IX – Freedom of Navigation

This article was originally entitled "Freedom of the Seas and Innocent Passage" however a broader, or more generic title was ultimately adopted, intended to be more in line with the terms of UNCLOS and without unnecessarily limiting

the scope of the same by referring to specific navigational rights, whether under customary international law or UNCLOS. The Working Group notes that granting MORUs navigational freedoms equivalent to those of self-propelled ships may give rise to uncertainty regarding their continued qualification as "artificial islands, installations and structures" under Article 60 of UNCLOS. Such uncertainty could affect the applicability of Article 60(5)–(6), which authorize coastal States to establish safety zones around offshore installations. The Group may therefore wish to ensure that Article IX is not interpreted as altering the status of MORUs for the purposes of UNCLOS Article 60.

**12. Article X - Allocation of Nationally Determined Contributions under the Paris Agreement to the UNFCCC**

After some discussion, it was determined that a default treatment of nationally determined contributions (NDCs) under United Nations Framework Convention on Climate Change (UNFCCC) in favour of the coastal state where the MORU is deployed, in those circumstances where the coastal state in which a MORU is deployed and the flag state of that MORU differ.

**13. Article XI - State Party's Declaration of its Form of Mortgage or hypothèque for MORUs**

This article intends to allow flag states which (for various reasons) will not use traditional ship mortgages or hypotheques to designate its preferred form of publicly registered priority security interest (in lieu of a mortgage or hypotheque) under the Convention. This flexibility was added to accommodate different domestic law security interest forms which State Parties might ultimately extend to MORUs, while keeping the treatment of such forms under the draft Convention in line with the treatment of mortgages and hypotheques.

**14. Article XII et Seq**

These boilerplate provisions are to be discussed later.