First questionnaire from the

CMI Mobile Offshore Renewables Unit International Working Group

Fall 2024

REPLY FROM the MARITIME LAW ASSOCIATION OF ARGENTINA

DECEMBER 2024

Last year, the CMI established a new International Working Group (the "MORU IWG") (combining it with the Ship Nomenclature IWG) to explore legal uncertainties and potential gaps in international maritime law impacting a new and expanding class of offshore mobile units being developed, built, and used for offshore renewable energy projects in the waters of coastal states around the world—mobile offshore renewables units (or "MORU"). The MORU IWG now seeks to understand how the laws of various countries regulate (or would regulate) MORUs in various contexts, in order to determine common ground and best practices for recommendations to be offered to the CMI. In that context, the MORU IWG requests the input of each National Maritime Law Association ("NMLA") about the legal treatment of MORUs in several critical areas. Given the relative novelty of the technology in some jurisdictions, the MORU IWG has chosen to supplement this questionnaire with an attached Annex, which provides each NMLA with further background about MORUs generally, and additional context for the questions in the questionnaire more specifically.

Definition of Mobile Offshore Renewables Unit ("MORU")

For purposes of answering this questionnaire about MORUs, the MORU IWG has defined the term as follows:

> "Mobile Offshore Renewables Unit" or "MORU" means any non-self-propelled, floating offshore unit or facility consisting of:
>
> (i) a ship-shaped hull, SPAR, semi-submersible, tension-leg platform, barge, or other buoyant hull concept; AND
>
> (ii) all internal and topsides equipment permanently attached to that hull,
>
> provided that such floating offshore unit or facility:
>
> (a) is primarily designed for the purpose of directly or indirectly generating electric power or other form(s) of renewable energy by conversion of wind, wave, tidal, or solar energy, or differences in water temperatures or salinity, or a combination of any of the foregoing; OR
>
> (b) is primarily dedicated to the conversion, transformation, conditioning, transmission, distribution, and/or temporary storage and subsequent release of electrical power or other form of renewable energy originally generated by one or more MORUs described in paragraph (a) above; OR

(c) is primarily dedicated to the conversion of any electrical power or other form of renewable energy generated by one or more MORUs described in paragraph (a) above into chemical products; OR

(d) is a hybrid unit combining the functions of two or more of the classes of units described in any of the paragraphs (a), (b), and/or (c) above.

Questions related to ownership and other property interests in MORUs

Treatment of Domestic MORUs as property

1. Would the courts in your jurisdiction, recognize any (or all) of the categories of MORU as a "vessel" or "ship" or other "marine equipment" or other special type of property? If so, please explain with reference to authorities.

REPLY: In Argentina there are currently no MORUs in operation nor at any stage of development. No projects exist for their future deployment to produce electricity from any offshore energy sources. Furthermore the national Chamber of Renewable Energies stated that "no offshore farms are needed in Argentina". Consequently, in Argentina a regulatory framework for MORUs does not exist, and neither are legal or judiciary precedents on the matter.

a. Would the courts in your jurisdiction recognize any of the categories of MORU as a "vessel" or "ship" if it were equipped with an integrated dynamic positioning or other station-keeping system, (including any automated system, or remotely or autonomously directed system)?

REPLY TO a.: According to the national "Navigation Law" (Ley de Navegación) number 20094 –enacted in 1973– MORUs would not be considered "vessels" or "ships". And neither would be considered "naval crafts" (artefactos navales) because they do not assist navigation activities but are actually industrial utilities dedicated to the production or transformation of energies.

For your easy guidance, article 2 of our Navigation Law states: *"Vessel and Naval Craft Art. 2 - A vessel is any floating construction intended to navigate on water. A naval craft is any other floating construction that is an auxiliary to navigation but not intended for navigation, even if it can move on water for short distances to fulfill its specific purposes".*

2. Is it possible in your jurisdiction to record ownership interests in any (or all) of the categories of MORU in a public register?

REPLY: YES

a. If so, would it be registered as a "vessel" or "ship" or other "marine equipment" or other special type of property? If so, please explain with reference to authorities.

REPLY: NO. According to the national "Navigation Law" (Ley de Navegación) number 20094 –enacted in 1973– MORUs would not be considered "vessels" or "ships".

b. If so, would it be registered in your jurisdiction's public register of ships, or in another public register?

REPLY: Might be registered as "industrial facility" by federal and provincial regulations.

c. If it is registered in your jurisdiction (whether as a "vessel" or "ship" or other "marine equipment" or other special type of property), would it be entitled to fly the flag of your jurisdiction and be deemed to have that nationality? If so, please explain with reference to authorities.

REPLY: Should MORUs be considered equivalents to MODUs then jurisdictional regulations would apply.

3. Assuming that a MORU is the subject of leases, subleases, or charters (including demise charters) or sub-charters in your jurisdiction, is it possible to record such lease interests in any (or all) of the categories of MORU in a public register in your jurisdiction? If so, please describe. If so, please also describe the procedure to file such agreements or notice thereof.

REPLY: Indeed, it might be possible to register the MORU according to Decree Act N°15.348/46.

4. In your jurisdiction, is the acceptance by a registrar or other governmental body of a MORU (or type of MORU) as a "ship" or "vessel" or equivalent term dispositive of its legal status as a "ship" or "vessel" or equivalent term under your law for purposes other than registration under domestic law?

REPLY: According to the national "Navigation Law" (Ley de Navegación) number 20094 –enacted in 1973– MORUs would not be considered "vessels" or "ships".

5. Is it possible in your jurisdiction to record liens, maritime liens, claims, encumbrances (e.g. mortgages or hypotheques) against any such category of MORU in a public register? If so, please explain details and limitations on such register.
   REPLY: No precedent allows to respond.

6. Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.
   REPLY: No precedent allows to respond.

Treatment of Foreign MORUs as property

7. Does your jurisdiction recognize ownership of any such property (i.e. any category of MORU) as evidenced by an entry in a public register of another jurisdiction?
   REPLY: No precedent allows to respond.

8. If:

   (i) a MORU (or any type thereof) is categorized as a "vessel" or "ship" or other "marine equipment" or other special type of property in another jurisdiction and is registered and/or flagged as such in that jurisdiction, BUT

   (ii) the MORU would not be considered a "vessel" or "ship" under the domestic laws of your jurisdiction,

   would the courts or relevant authorities in your jurisdiction nonetheless treat the foreign-registered MORU as a "vessel" or "ship" for:

   a. purposes of arrest of the MORU?

   b. purposes of foreclosure on a mortgage / hypothecation of the MORU?

   c. purposes of enforcement of maritime liens on the MORU?

   d. any or all other purposes?

   In the alternative, would your courts in such cases decline to enforce an asserted claim or mortgage if the (foreign) MORU is not recognized as a vessel or ship in your jurisdiction?

   It is not easy to determine what the Courts or more over "relevant authorities" of our Country would do. Nevertheless, even though we have rules to solve conflicts of law it is not feasible that Courts or "relevant authorities" would consider a vessel and apply maritime rules to crafts that are not a vessel according to national law. However, we would not rule out that general procedural rules would apply to arrest the MORU or for foreclosure on a mortgage / hypothecation of the MORU or even to enforce liens on the MORU.

9. Would your jurisdiction accord the same priority of lienors and recorded creditors of a foreign-registered MORU as such lienors and creditors would have in the jurisdiction where the MORU was originally recorded or registered?
   REPLY: No precedent allows an accurate answer.

   a. If your jurisdiction is party to the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926 or the International Convention on Maritime Liens and Mortgages 1993, would your jurisdiction recognize a MORU as a "vessel" or "sea-going vessel" (respectively) for purposes of that Convention?

   Argentina is part of the 1926 Convention but a MORU is not a vessel and therefore, said Convention might not be applied by Courts to MORUS.

10. What law would your jurisdiction apply to, or what law would it consider to govern, a sale or a change of ownership of a foreign-registered MORU which is operated in the EEZ of your jurisdiction?

REPLY:.First of all, most probably the parties would chose the applicable law and determine the law of the country that would rule the contract and any conflict (article 2651 of our Civil and Commercial Code). In case the parties do not state the applicable law, the contract is governed by the laws of the state in which it would be fulfilled (article 2652 of our Civil and Commercial Code). In case it is not feasible to determine the place of fulfillment the applicable law would be the law of the place in which the debtor of the most characteristic duty of the contract is located. If it is not easy to to determine the place of fulfillment of the contract, the law of the state in which the contract was signed will apply. If it was signed on line, the applicable law would be the one of the state in which the offer was accepted (article 2652 of our Civil and Commercial Code).

Would your answer vary (and if so, how would it vary) if the MORU was:

a. Foreign-owned but not registered, or

b. operated in the territorial sea of your jurisdiction?

c. The solution would be the same.

11. Are there any reported decisions in your jurisdiction which address the legal classification (as "ship", "vessel" or other "marine equipment" or other special type of property) of:

REPLY: No precedent decisions. According to the national "Navigation Law" (Ley de Navegación) number 20094 –enacted in 1973– MORUs would not be considered "vessels" or "ships". And neither would be "naval crafts" (artefactos navales).

a. MORUs (of any type);

b. Offshore wind turbines (fixed or floating);

c. Mobile Offshore Drilling Units ("MODUs");

d. FSUs and FPSOs

If so, please attach copies.

In the case "Argentine Federation of Private Oil and Gas Trade Unions and another v. Total Austral SA and another," the Supreme Court held that a mobile platform on which the plaintiffs worked could not be classified as a "vessel" under Article 2 of Law 20,094 because it was not intended to navigate, even though it could move,

nor could it be considered a naval device because it was not a navigational aid.

Questions related to arrest

1. Would it be possible to arrest, seize, detain, or otherwise proceed *in rem* or otherwise against a MORU for a maritime claim in your jurisdiction (whether under domestic law or binding convention)?

REPLY: As any other object it can be seized.

   a. If so, on what grounds? General procedural rules of seizure would apply.

   b. Is the answer to this question determined by flag state law or the domestic maritime law of your jurisdiction? Yes.

2. Is it possible to arrest, seize, detain, or otherwise proceed against a MORU for ***non***-maritime claims in your jurisdiction?

REPLY: Yes.

3. If a MORU were arrested, seized, detained, etc. in your jurisdiction, would it be possible to obtain a release of the MORU from such arrest/detention on posting of an adequate security?

REPLY: Yes. If so, please provide authority.

Any arrest can be lifted providing a security such as an insurance policy covering the debt or any other kind of security as any other arrest

Questions related to limitations of liability

REPLY: Assuming that a MORU was <u>not</u> used for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of Convention on Limitations of Liability for Maritime Claims, 1976), would the owner or salvor of a MORU benefit in your jurisdiction from the limitations of liability found in the Limitations of Liability for Maritime Claims, 1976 and/or its Protocols ("LLMC 1976/1996/2012?")?

Argentina is not a party of the LLMC. Nevertheless, the MORU not being a vessel does not entitle the owner to limit its liability as a vessel does.

1. Assuming that a MORU is used to provide electrical power to *other* types of floating units or fixed or subsea facilities which were themselves exploring or exploiting the natural resources of the sea-bed or the subsoil thereof (cf. Art. 15(5) of LLMC), would the owner or salvor of that MORU benefit in your jurisdiction from the limitations of liability found in LLMC 1976/1996/2012? NO.

2. Would a MORU benefit from any other (non-LLMC based) forms of limitations of liability under the domestic law of your jurisdiction? If so, please explain with reference to authorities.Only vessel can limit its liability.

Questions related to innocent passage and transit

REPLY: No precedent allows to respond.

1. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's internal waters (cf. UNCLOS Art. 8(2))?

2. Would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's territorial sea (cf. UNCLOS Art. 17, 24(1))?

    a. Would your jurisdiction recognize its own criminal jurisdiction on board a foreign- registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 27?

    b. Would your jurisdiction recognize its own civil jurisdiction on board a foreign- registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 28?

3. If there are straits used for international navigation in the waters adjacent to your jurisdiction, would a right of transit passage (or innocent passage) be recognized in your jurisdiction for a foreign-registered MORU being towed through that strait (cf. UNCLOS Art. 38, 45)?

4. If your jurisdiction is an archipelagic State (within the meaning of UNCLOS Art. 46), would a right of innocent passage be recognized in your jurisdiction for a foreign-registered MORU being towed through your jurisdiction's archipelagic waters (cf. UNCLOS Art. 52))?

Question related to sovereign immunity and rights of owners or creditors to remove property from established MORU operations

REPLY: No precedent allows to respond.

1. In your jurisdiction, does the sovereign prohibit by law the arrest, repossession or seizure by a creditor of property under lease or contract with an organ of the state (such as a public utility)?
2. In your jurisdiction, may the sovereign/state waive immunity by contract for the benefit of creditors or lienors seeking to recover leased property (e.g. a leased MORU) or damages in the event of a default by the sovereign or another responsible party under a contract or lease to produce or supply energy to a sovereign- or state- owned entity?