First questionnaire from the

CMI Mobile Offshore Renewables Unit International Working Group

Fall 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.

Danish courts will recognize a MORU as a ship. Section 1(2) of the Danish "Act on Safety at Sea" states that the Minister of Trade and Industry may lay down rules on which objects are to be regarded as ships. The ministerial order entitled "Bekendtgørelse om mobile offshoreenheder"[1] [i.e. "Order on Mobile Offshore Units"] states in section 1 that, "this order shall apply to mobile offshore units which are registered under the Danish flag". It further defines mobile offshore units in section 1 subsection 2 as "mobile offshore units as defined in IMO 2009 MODU Code (Resolution A. 1023(26)) paragraph 1.3.40 and similar mobile units used for other offshore purposes such as wind or wave energy production [emphasis added]." It is our assessment that the definition of a "MORU" falls inside this scope.

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)?

Continuing on the basis of the answer above, the definition in paragraph 1.3.40 of the MODU Code is as follows:

"Mobile offshore drilling unit (MODU) or unit is a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur or salt."

There is no explicit requirement for propulsion, integrated dynamic positioning or any similar station-keeping system in the MODU Code.

Furthermore, it follows from Section 11 subsection 3 of the Merchant Shipping Act that: "Barges, lighters, dredgers, floating cranes and similar shall be considered ships but shall be exempted from the duty of notification pursuant to section 10(1) if they are not equipped with machinery for propulsion."

Therefore, the presence of propulsion, an integrated dynamic positioning or other station-keeping system is of no consequence in respect of defining the MORU as a Mobile Offshore Unit, and therefore as a ship, under Danish law.

[1] https://www.retsinformation.dk/eli/lta/2017/1694

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

   On the basis that a MORU is a ship under Danish law as stated above, it will be possible to record ownership of a MORU in the Danish public ship register (DAS). It could not be registered in the DIS because the DIS is limited to merchant ships.

   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.

      As noted above, it follows from Section 11 subsection 3 of the Merchant Shipping Act that: "Barges, lighters, dredgers, floating cranes and similar shall be considered ships but shall be exempted from the duty of notification pursuant to section 10(1) if they are not equipped with machinery for propulsion." However, there is no obligation currently requiring registration of MORU as a ship.

      However, the DAS website options for categorisation of the type of ship to be registered do not currently include any category of MORU. Our assumption is that registration of a MORU has not yet occurred and how precisely such the MORU would be categorised would require more input from the DMA to be affected.

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

      As mentioned above, a MORU would be registerable in the Danish public ship register (DAS).

   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.

      Yes, see: https://www.dma.dk/ship-survey-and-registration/flying-the-danish-flag/offshore-vessel

      "Under the Danish flag it is possible to register offshore vessels and units with certification such as crew transfer vessels (HSC cargo ship), MODU and MOU."

      It follows from Merchant Shipping Act section 1 that a ship can flying under the Danish flag must have Danish owners. It follows from subsection 2, that Danish owners are 1) Danish citizens, 2) Danish state institutions and local authorities and 3) legal entities established under Danish Law or registered as Danish companies, foundation or associations in Denmark.

      It follows from subsection 3 that a shipping partnership is Danish-owned if at least half of the shipping partnership is owner by legal person or Danish citizens covered by section 2 and the managing owner meets the conditions in subsection 2.

It follows from the Merchant Shipping Act Section 2, subsection 2, that: "With regard to ships other than merchant ships that cannot be considered Danish, cf. section 1, but which belong to person or companies covered by the European Union's rules on the right of establishment, free movement of workers and the provision of services, the Minister of Trade and Industry may lay down rules on the conditions for registrations as a Danish ship including the requirement that the ship must be, managed, controlled and directed from Denmark."

Subsection 3 states, that ships registered, cf. subsection 2, are equated with Danish ships and are entitled to fly the Danish flag."

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.

   It follows from the Merchant Shipping act section 29, that in order for a document to be registered [by the DMA], its content must be to establish, create, modify or terminate a right of ownership, a lien, a right of use or a right that restricts the owner's right to dispose in one or more specified directions. You can therefore register a charter as a restriction of availability. You will however not be able to register a time-charter as the ship will still be under the ship-owners control, and hence not restrict the availability.

   It follows from the Ship Registration Order section 40 subsection 1 which information a registration of a document must contain. It further follows from subsection 5 that registration must be signed by the ship owner. This makes it unlikely that a sublease will be registered, as it would require the shipowner to consent.

   In Denmark bareboat registration in the DAS or DIS is possible if registered as vessel or ship in a foreign register. Denmark does not have a register for the other forms of leases and charters mentioned in the question.

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?

   If the MORU is registered as a Danish ship, it will create a presumption of it also being a ship in other contexts. However, this presumption is not definitive, and there might be situations or contexts where the relevant body or court would not interpret the MORU as a ship even though it is registered as a ship. Ultimately it is up to the Danish Courts to determine the MORU's status in each situation.

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.

   Yes, if a MORU is registered as a ship in the Danish public ship register (DAS), all of the above, except for maritime liens, can be registered.

6. Is there any priority given to a registered creditor in such property in your jurisdiction? If so, please explain.

Maritime liens have priority over the other forms of liens in the ship according to the Merchant Shipping Act section 52(2). Registered claims will have priority over unregistered claims. Regarding registered claims, the ordinary order of priority will apply i.e. First come first serve.

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?

It is our assessment that a Danish Court would recognize such foreign-registered ownership.

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?

The answer to this question is uncertain.

The answer would depend on if whether the laws of the foreign jurisdiction would apply. If the foreign jurisdiction's laws apply and state that a MORU is (or isn't) to be recognized as a ship under those laws, the Danish will most likely defer to the foreign jurisdiction's law.

It should be noted that this is a very complex issue regarding choice of law. In some situations, there might even be a division between the choice of law e.g. the material law of Denmark might be applicable, but it is foreign law which is applicable regarding the classification of 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?

   Yes, it follows from section 74 in the Merchant Shipping Act, that a mortgage on a foreign ship shall be recognized as valid in Denmark provided that:

   1. the mortgage has been established and registered in accordance with legislation in the state in which the ship is registered,
   2. the register and the documents which shall be filed are available to the public and transcripts of the register and copies of these documents can be obtained from the register, and

   3. the register or the documents mentioned contain information on
      a. the name and address of the of the mortgagee or information that the mortgage is issued to the bearer,
      b. the amount secured by the mortgage, and
      c. the date and the other conditions which, pursuant to legislation in the country of registry, determine the ranking of the mortgage in relation to the registered mortgages and liens.

   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?

      Denmark signed and ratified the 1926 version but later denunciated it, as we based our model on the 1967 version. We have signed but not yet ratified the 1993 version. Therefore, the rules based on the 1967 version are still the relevant ones applicable to Denmark.

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?

    There is freedom of contract in Denmark. If the parties have made a choice on which country's law is to be applicable, this will be what applies. If no such choice has been made the Danish Courts will generally apply Danish law. Potentially they may apply the Convention on the International Sale of Goods in this regard.

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

    a. Foreign-owned but not registered, or

       It is our assessment that this would not change the answer.

    b. operated in the territorial sea of your jurisdiction?

       It is our assessment that this would not change the answer.

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:

    a. MORUs (of any type);

       We have not identified any such decisions in Denmark.

    b. Offshore wind turbines (fixed or floating);

       We have not identified any such decisions in Denmark.

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

       We have not identified any such decisions in Denmark.

    d. FSUs and FPSOs

       We have not identified any such decisions in Denmark.

    If so, please attach copies.

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)?

   Yes. Denmark has ratified the 1952 Arrest Convention. Denmark have signed but not yet ratified the 1999 Convention. Denmark has implemented the rules of the 1952 Arrest Convention in chapter 4 of the Merchant Shipping Act (Sections 91-96). Under section 96 of the Merchant Shipping Act, the rules under the Danish Administration of Justice Act are applicable for the arrest of ships. According to these rules, it is required that the debtor of the claim forming the grounds of arrest is also the registered owner of the vessel/MORU. Consequently, Denmark does not acknowledge actions *in rem* against the ship itself if the debtor is not also the registered owner.

   a. If so, on what grounds?

      A ship (including a MORU) can be arrested in Denmark as security for a maritime claim, cf. the Merchant Shipping Act section 92(1). The list of maritime claims under that Act is found in section 91(1)(1-17). The list is identical to the list in the 1952 convention article 1.1.

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

      In line with the answers to both (1) and (a) above, the domestic law of Denmark will

therefore be applicable to effecting an arrest of a ship within the Danish state's jurisdiction.

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

   A MORU may be also arrested in Denmark for non-maritime claims in accordance with the rules in the Danish Administration of Justice Act. However, under the Danish Administration of Justice Act section 627, the Bailiffs Court can make an arrest for non-maritime monetary claims when: (1) there is no other basis for execution; and (2) it must be assumed that the possibility of later obtaining recovery would otherwise be significantly impaired.

   It should be noted that it is difficult for creditors to meet the burden of proof required of the party applying for the arrest. In order to comply with condition 2, you must prove a risk of abuse. The Bailiffs Court interprets condition 2 strictly, so it is in practice difficult to obtain permission to make such an arrest.

   Furthermore, in practice, security must be provided by the applicant corresponding to the amount claimed.

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?

   Yes. Under the Merchant Shipping Act section 95(1), an arrested ship can be released from claims deriving from number 1-14 and number 17, if adequate security for the claim is posted by the debtor. It is up to the Bailiffs Court to assess whether the security is adequate.

   In case of arrest based on the claims mentioned in section 91(15) and (16), the person in possession of the ship may, against security, be allowed to continue to use the ship, or other provision may be made for the use of the ship for the duration of the arrest.

   Section 91(15) and (16) relates to ownership rights of the ship including disputes regarding co-ownership of the ship.

   a. If so, please provide authority.

      The Merchant Shipping Act section 95.

Questions related to limitations of liability

1. 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?")?

   Yes, provided that a MORU is regarded as a ship. The LLMC 1976 as amended by the 1996

Protocol is directly referred to in chapter 9 (Sections 171-182) of the Danish Merchant Shipping Act.

2. 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. Under the Merchant Shipping Act section 181(2), mobile offshore units engaged in oil and gas operations in the Danish territorial sea, EEZ, or continental shelf, may be subject to special limitations of liability derived from the Offshore Safety Act.[2] The Offshore Safety Act applies to all activities in connection with Exploration, production and pipeline transport of oil and gas and other substances and materials between offshore and onshore facilities or between multiple offshore facilities. Herein is included activities relating to operation of the floating units, connected infrastructure and pipeline (and presumably, MORUs supporting such activities).

   Under Offshore safety act 69(1), "When applying the rules in Chapter 9 of the Merchant Shipping Act to mobile installations carrying out offshore oil and gas activities, the shipowner is liable, when liability is limited, regardless of the size of the installation with up to 50 million SDR. For personal injury, this amount is increased by 30 million SDR. Clauses 1 and 2 do not apply to floating production, storage and shipping units and floating storage and shipping units."

   Note that the Offshore Safety Act explicitly only applies to offshore oil and gas activities. MORUs which are not connected to oil and gas activities would therefore still be able to apply the LLMC, even though they are a mobile offshore unit.

3. 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.

   We have not identified any other limitations of liability other than the one mentioned above.

Questions related to innocent passage and transit

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))?

   Yes.

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))?

   Yes.

   a. Would your jurisdiction recognize its own criminal jurisdiction on board a foreign-

[2] https://workplacedenmark.dk/media/9257/the-offshore-safety-act.pdf

registered MORU passing through your jurisdiction's territorial sea other than in accordance with UNCLOS Art. 27?

This is regulated in the Danish Criminal Code. Under section 6(1), Denmark has jurisdiction regarding actions made within the Danish territory.

Public prosecution for actions made on a foreign ship is subject to the decision of the Attorney General. This follows from the circular: "Announcement of RM 3-2002 on Presentation Rules and Rules of Competence etc.". The circular states:

"Public prosecution of acts committed in Danish territory (harbor, sea territory, air territory) on board a foreign vessel by and against a person belonging to or travelling with the vessel, cf. section 6 of the Danish Criminal Code, is subject to the decision of the Director of Public Prosecutions, unless

the offender is a Danish citizen or resident in the Danish state,

the public peace has been violated,

the assistance of the Danish authorities is requested by the aggrieved party,

the offence, if committed outside the Danish state, would fall under Danish criminal jurisdiction pursuant to section 8 of the Danish Criminal Code."

In conclusion: The Danish state would recognize its own jurisdiction on board a foreign registered MORU. It would however depend on the attorney general whether the case is brought.

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?

Generally, no. UNCLOS Art. 28 sets limitations for when the coastal state can have civil jurisdiction regarding foreign ships.

Where UNCLOS does not prohibit jurisdiction for the coastal state, different national laws may give Denmark civil jurisdiction.

If the foreign ship/MORU is from EU, the EU regulation 1215/2015 is applicable.

If the foreign ship/MORU is from Iceland, Norway or Switzerland the Lugano convention is applicable which is mostly identical to the EU regulation 1215/2015.

Finally, if the foreign ship/MORU is from a country not covered in situations mentioned above, the Danish Administration of Justice Act has rules regulating when Denmark will have jurisdiction.

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)?

Yes.

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))?

   Denmark is not an archipelagic state within the meaning of UNCLOS Art. 46, as Jutland is not an island.

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

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)?

   There is no special immunity or protection applicable for such state owned/controlled entities/enterprises.

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?

   Not applicable, cf. the answer to question 1.