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.

To our knowledge, there are no authoritative court decisions in Norway addressing the classification of MORUs, as defined in this questionnaire, as "*vessels*", "*ships*", "*marine equipment*" or other special type of property.

Under Norwegian law the main distinction is between what is a "*vessel*" or "*ship*" and what is not, and not whether a MORU would be categorised as "*marine equipment*" or other special type of property.

Norwegian law lacks a statutory legal definition of "*vessels*" and "*ships*". The courts would therefore need to conduct a case-by-case assessment of whether the relevant type of MORU shall be considered as a "*vessel*" or "*ship*", and this would need to be done in the context of the specific rules or regulations in question.

The answer as to whether a specific type of MORU is a "*vessel*" or "*ship*" may not necessarily be the same in respect of every rule and regulation where the term "*vessel*" or "*ship*" is used.

Pursuant to Norwegian case law, literature and other legal sources, a "*vessel*" or "*ship*" is generally defined by reference to their common characteristics. There are three minimum requirements that must be fulfilled:

1. The structure must be floating;
2. It must meet certain minimum dimensions; and
3. It must be intended to and capable of moving on or through water (own propulsion is not required).

In addition, there are several other factors which may be taken into consideration, typically:

4. The degree of movability
5. Frequency of movement;
6. The degree of navigability (by itself);
7. Possession of navigation equipment;
8. Resemblance to a traditional ship in design;
9. Its purpose (typically transporting goods or passengers); and
10. Eligibility for registration in a ship registry.

Not all of the above factors need to be present and the outcome depends on a discretionary assessment.

Most MORUs appear to satisfy the three minimum requirements (as set out in items 1-3 above):

1. **Floating**: MORUs are floating structures
2. **Minimum dimensions**: Most MORUs likely satisfy the minimum dimension requirement
3. **Moving on/through water**: Most MORUs are intended to, or at least capable of, moving on or through water (for example during towage to and from its intended location)

However, the degree to which the additional relevant factors are present may differ substantially based on the specific type of MORU. Some general considerations include the following:

4. **Degree of movability:** The degree of movability (i.e. how easily it can be moved) may vary significantly between different types of MORUs. For example, it would be more difficult and costly to move a wind turbine than a barge.
5. **Frequency of movement**: Most (if not all) MORUs are moved in connection with installation and decommissioning. However, how frequently they are moved in between these two phases vary greatly. MORUs that are anchored in the same location throughout its lifespan are less likely to be classified as "*vessels*" or "*ships*" than those that are e.g. moved between different locations or operate on DP.
6. **Degree of navigability**: The degree of navigability may vary significantly between different types of MORUs. For example, a floating wind turbine does not have any means of navigating on its own, while other MORUs may be able to do so. MORUs are assumed to be non-self-propelled, which could weigh against classification as a "*vessel*" or "*ship*." However, propulsion is not an absolute requirement. For instance, the general understanding in Norwegian legal literature is that barges are classified as "*vessels*."
7. **Navigation equipment**: Most MORUs do not have traditional navigation equipment, as found on most ships, but some MORUs may and would in that case be more similar to conventional "*ships*" or "*vessels*."
8. **Design**: The design of MORUs vary greatly. Some, such as those with a ship-shaped hull, resemble traditional ships to a large extent. However, SPARs, semi-submersibles, and tension-leg platforms generally do not.
9. **Purpose**: The primary purpose of MORUs is to generate renewable energy, and not to transport goods or passengers, further distinguishing them from traditional ships.
10. **Registration:** MORUs which do not qualify as a "*vessel*" or "*ship*" and exceeds 15 meters in length may voluntarily be registered in Norwegian Ordinary Ship Register.

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)?

The addition of an integrated dynamic positioning or other station-keeping system, whether automated, remotely directed, or autonomous, would be an argument in favour of a MORU qualifying as a "*vessel*" or "*ship*" under Norwegian law, as it demonstrates a degree of navigability and manoeuvrability. However, the other factors mentioned above must also be assessed in each case.

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

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.

MORUs which qualify as a "*vessel*" or "*ship*" operating in Norwegian waters and exceeding 15 meters in length, shall be registered in the Norwegian Ordinary Ship Register (NOR) or the

Norwegian International Ship Register (NIS), unless already registered under a foreign flag.

With respect to registration of MORUs that do not qualify as a "*vessel*" or "*ship*", there is a distinction between NOR and NIS.

Registration in NOR:

MORUs which do not qualify as "*vessels*" or "*ships*" may be voluntarily registered in NOR as "*other floating units*" in accordance with the Regulation on Registration of Other Floating Units published by the Ministry of Industry and Ministry of Fisheries in 1994. Such registration is subject to approval by the Norwegian Maritime Authority, cf. section 3 of the Regulation.

Registration of "*other floating units*" in NOR also requires that the owner is either (i) a Norwegian national, (ii) a shipping partnership or other company whose members have unlimited liability for its obligations, provided that Norwegian nationals are co-owners for at least six tenths, or (ii) a company registered in Norway, cf. Norwegian Maritime Code section 33, cf. section 4.

An example of such registration is the floating wind turbine ZEPHYROS ONE, which has been registered in NOR as an "*other floating unit*."

Registration in NIS:

It is possible to register "*other mobile offshore units*" in NIS. However, it is stated in the preparatory works to the Act relating to the Norwegian International Ship Registry (Ot.prp.nr.62 (1994-1995)) that this must be understood in conjunction with the Norwegian Maritime Code sections 1, 4 and 507. The Norwegian Maritime Code section 507 allows for registration of offshore drilling platforms and certain "*other similar mobile units*", provided that they are used for exploration, storage or transport of "*subsea natural resources*." Consequently, MORUs which are not used in connection with subsea natural resources cannot be registered in NIS. We note that there are ongoing discussions within the Norwegian government as to a possible legislative amendment on this point, which could potentially make such registration in NIS possible in the future.

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

The MORUs which qualify as a "*ship*" or "*vessel*" may be registered in both the Norwegian Ordinary Ship Register (NOR) and the Norwegian International Register (NIS), while "*other floating units*" may be voluntarily registered only in NOR in accordance with Regulation on Registration of Other Floating Units.

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.

MORUs which qualify as a "*vessel*" or "*ship*" and which are registered in NIS or NOR would in accordance with the Norwegian Maritime Code section 1 be deemed to have Norwegian nationality and would be entitled to fly the Norwegian flag according to section 5.

Since registered "*other floating units*" are not considered "*vessels*" or "*ships*", it does not explicitly follow from the Norwegian Maritime Code that such "*other floating units*" have Norwegian nationality and are entitled to fly the Norwegian flag. The Norwegian Maritime Code section 33, which opens for registration of "*other floating units*", refers to section 11 fourth and fifth paragraph, section 12 second paragraph and sections 13 to 20, as applicable. However, the provision does not refer to section 5 "*Use of flags. Certificate of nationality*" as applicable.

Registration in NOR grants the floating unit nationality and the right to be issued a Certificate of Nationality which confirms the ownership of the unit. The unit would not automatically be entitled to fly the Norwegian flag, as flag entitlement is specific to registered "*vessels*" or "*ships*" under the NIS/NOR.

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.

According to the Norwegian Maritime Code section 20, rights may be recorded in NIS/NOR in respect of a registered "ship". However, documents relating to a maritime lien on a ship or a lease (demise charter) or charter of a ship cannot be recorded.

It follows from the Norwegian Maritime Code section 40 first paragraph that:

> *"Passenger ships and cargo ships of 15 metres in overall length and upwards, oil drilling rigs and other mobile offshore units that are registered in another country's ship register and bareboat chartered by someone meeting the conditions of section 1 or section 4 may be bareboat registered in a Norwegian ship register for a period of up to ten years following a written request from the bareboat charterer."*

It is, however, unclear if MORUs are considered to be "*other mobile offshore units*" according to this section. The preparatory works (Prop. 32 L (2019-2020)) on pp. 43-44 states that "*This largely coincides with the types of vessels that can be registered in the Norwegian International Ship Register (NIS), cf. the NIS Act § 1 first paragraph. This means, among other things, that fishing vessels and recreational boats cannot be bareboat registered.*"

As explained above in question 2 (a), the wording "*other mobile offshore units*" seems to refer to installations which fall under section 507 of the Norwegian Maritime Code, which only encompasses installations *"intended for use in exploration for or exploitation, storage or transportation of subsea natural resources or in support of such activities*".

It is therefore not clear from the legislation whether MORUs which are not considered to be a "*ship*" under the Norwegian Maritime Code, can be bareboat registered in a Norwegian ship register.

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?

As described under question 1 above, the assessment of what qualifies as a "*ship*" or "*vessel*" under Norwegian law may not be the same in all respects and must be assessed relative to the individual rules and regulations in question. If a MORU qualifies as a "*ship*" or "*vessel*" for the purposes of registration in the ship registry, this would not in itself entail that the MORU is considered to be a "*ship*" or "*vessel*" in the context of other rules and regulations, e.g. in relation to the liability regime under the Norwegian Maritime Code.

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.

In relation to MORUs which qualify as "*ships*", maritime liens against the shipowner (e.g., for unpaid wages, salvage claims, or collision damages) arise automatically under maritime law and do not require registration, see the Norwegian Maritime Code section 51 for the listing of claims which give rise to maritime liens. Such maritime liens have priority over registered mortgages under the NMC, cf. section 52. Maritime liens also cannot be recorded in the register, see the Norwegian Maritime Code section 20.

Mortgages may be recorded against in "*ships*" registered in the NIS/NOR according to the rules in the Norwegian Maritime Code chapter 3. Mortgages can therefore be established and registered for MORUs which qualify as "*ships*".

NIS and NOR are both "*real property registries*" which allow for the possibility of taking out a voluntary mortgage on the registered object. MORUs which are registered in NOR as "*other floating units*" may be mortgaged as individually registrable chattels under the Norwegian Mortgage Act section 3-3. Legal protection is achieved by registering the mortgage to the registered MORU in NOR. MORUs which are not used in connection with subsea natural resources are not eligible for registration in NIS (cf. question 2 above). Consequently, it is not possible to register mortgages over such units in NIS.

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

Mortgages registered in accordance with the Norwegian Maritime Code chapter 3 in NIS/NOR or in accordance with the Mortgage Act Section § 3-3 in NOR, have priority over unregistered claims. The priority of registered mortgages is determined by the order of registration in the relevant register. Earlier-registered mortgages take precedence over later ones.

According to the Norwegian Maritime Code section 52, maritime liens in a "*ship*" have priority over all other encumbrances in the "*ship*".

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?

A valid ownership record in a recognised public register in another jurisdiction would typically be accepted as proof of ownership, subject to:

- Compliance with Norwegian private international law;

- The registration being maintained in a jurisdiction with a credible and transparent registry system; and
- The MORU satisfies the requirements of the foreign jurisdiction.

Although it is not explicitly stated in the Norwegian Maritime Code that Norwegian authorities recognise registration in foreign ship registers, this recognition follows from the system of the Code.

Section 13, third paragraph, of the Norwegian Maritime Code addresses the validation of notifications concerning the ownership of "*ships*" in cases of ownership transfer. It specifies that if the ship is:

> "(…) *acquired from abroad, it cannot be registered unless accompanied by a certificate from the relevant authority in the foreign country stating that the ship is not registered in the ship register or shipbuilding register there, or that it will be deleted upon registration in another country*."

This provision demonstrates that Norwegian authorities operate on the presumption that registration in foreign ship registers provides legitimacy and is recognised as proof of ownership. It implies that a ship cannot be registered in Norway unless the prior registration is terminated or deleted, reflecting a practical recognition of foreign registration as evidence of 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?

Unless specifically required under international law, Norwegian courts would decide whether the MORU should be considered a "*vessel*" or "*ship*" according to Norwegian interpretation methods in light of the relevant rule or regulation, and the fact that the MORU is registered as a ship in a foreign jurisdiction would be an interpretation aid as mentioned above, but would not in itself be decisive.

The registration of a MORU as a "*ship*" or "*vessel*" in another jurisdiction will not take precedence over Norwegian law assuming that the MORU is not regarded as a "*ship*" pursuant to the Norwegian Maritime Code or Civil Procedure Act.

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

If a mortgage is recognised in accordance with the International Convention on Maritime Liens and Mortgages Article 1, the mortgage may be enforced pursuant to the Enforcement Act of 1992. The Enforcement Act does not distinguish between Norwegian registered vessels

or ships and foreign registered vessels or ships (which are not considered "*ships*" under the Norwegian Maritime Code).

It is also provided in the Civil Procedure Act section 33-2 (3) that arrest of a "*ship*" may be ordered without specific grounds for arrest when requested by a creditor with an overdue mortgage claim on the ship.

A request for enforcement must be addressed to the District Court where the MORU that is subject to enforcement is located or is expected to be located in the near future.

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

The Norwegian Maritime Code section 51 lists the claims against the shipowner which gives rise to a maritime lien in the "*ship*", for which the ship may be arrested.

d. any or all other purposes?

Likely not.

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?

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?

According to the Norwegian Maritime Code section 75 second paragraph, priority of a registered lien in relation to other registered liens, and its effect in relation to third parties, except for priority in relation to maritime liens and retention rights, and recorded creditors, are determined according to the legislation of the state where the "*ship*" or "*vessel*" is registered.

The same applies correspondingly, as far as applicable, to installations covered by the Maritime Code section 33, cf. section 75 fourth paragraph. This entails that priority of lienors and recorded creditors of foreign registered MORUs, even though these cannot be registered as a "*ship*" under Norwegian law, will be determined according to the legislation where the MORUs are registered.

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?

Norway is a signatory to the International Convention on Maritime Liens and Mortgages 1993 and has ratified it, however, the ratification was later withdrawn. Therefore, Norway is not bound by this Convention.

Whether a MORU would qualify as "*vessel*" or "*sea-going vessel*" for the purposes of these conventions would depend on an interpretation and assessment under Norwegian law of the relevant rules in the Norwegian Maritime Code in respect of maritime liens and mortgages.

The considerations would generally be in accordance with what we have outlined in question 1 above

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?

Under Norwegian jurisdiction, the law governing the sale or change of ownership of foreign-registered MORUs operating in the Exclusive Economic Zone (EEZ) would primarily – as between the parties to the agreement – depend on the choice of law made by the parties to the agreement.

It is important to distinguish between the legal relationship between the parties to the agreement (buyer and seller) and the legal relationship with third parties (such as creditors or other claimants). The effect of the change in ownership for third parties may depend on the law in the jurisdiction where the MORU is registered.

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

No, assuming that the parties have agreed choice of law. Otherwise, this depends on ordinary Norwegian choice of law rules.

a. Foreign-owned but not registered, or

b. operated in the territorial sea of your jurisdiction?

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);

To our knowledge, there are no such reported decisions.

b. Offshore wind turbines (fixed or floating);

To our knowledge, there are no such reported decisions.

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

To our knowledge, there are no reported decisions where this has been disputed (but there are some decisions where MORUs have been assumed to be a "*ship*" for the purposes for the Norwegian Maritime Code section 507).

The Norwegian Maritime Code section 507 provides that several chapters have extended application (on a statutory basis) to offshore drilling platforms and certain other similar mobile units, provided that they are used for exploration, storage or transport of "*subsea natural resources.*" MODUs are considered as "*ships*" for the purpose of inter alia the rules on registration, liens, arrest, liability, collisions, limitation of liability, salvage, general average, and time bar.

d. FSUs and FPSOs

To our knowledge, there are no such reported decisions (but there are some decisions which assume that FSUs are "*ships*" for the purpose of the Norwegian Maritime Code section 507).

FSUs and FPSOs fall within the scope of the extended application that has been established for offshore mobile units that are similar to drilling platforms, and which are used for exploration and storage of "*subsea natural resources*", cf. the Norwegian Maritime Code section 507.

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)?

   a. If so, on what grounds?

Assuming that the MORU is considered as a "*ship*" for the purposes of the arrest rules in the Norwegian Maritime Code Chapter 4, it would be possible to arrest the MORU for a maritime claim. The maritime claim must be one of the claims listed in section 92 of the Code, which generally has implemented the list of maritime claims in Article 1 of the Arrest Convention of 1952.

In order to arrest a ship for a maritime claim, certain general requirements must furthermore be fulfilled:

1. An arrest can only be made if the debtor is the owner of the asset (here: ship) which is being arrested, see the Norwegian Maritime Code section 93 and the Norwegian Dispute Act section 33-1. Therefore, an arrest cannot be made in respect of a claim against the bareboat charterer, unless the claim is secured by a maritime lien in the ship, see the Norwegian Maritime Code section 51 and the Norwegian Dispute Act section 33-2 (3).

2. The applicant must generally prove the existence of the claim on a balance of probabilities, see the Civil Procedure Act section 33-3.

3. The applicant must prove on a balance of probabilities that he has sufficient grounds for arrest. Such grounds exist when the behaviour of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside of Norway, see the Norwegian Civil Procedure Act section 33-2 (1) and section 33-3. This requirement does not apply to claims secured by a mortgage or lien on the vessel if such claims have fallen due, see the Norwegian Dispute Act section 33-2(3).

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

The answer is determined by the domestic maritime law of Norway. The rules outlined above in the Civil Procedure Act and the Norwegian Maritime Code are applicable within the Norwegian jurisdiction, regardless of the flag state of the MORU.

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

   Assuming that the MORU is considered as a "*ship*" for the purposes of the arrest rules in the Norwegian Maritime Code Chapter 4, it would not be possible to arrest the MORU for a non-maritime claim, i.e. a claim which is not listed in the Norwegian Maritime Code section 92, unless a specific enforcement lien is granted in execution or satisfaction of a judgment, see the Norwegian Maritime Code section 91 (2).

   Assuming that the MORU is not considered as a "*ship*" for the purposes of the arrest rules in the Norwegian Maritime Code Chapter 4, it would be possible to arrest a MORU for a non-maritime claim, assuming the general requirements for arrest listed in question 1 (a) (1)-(3) above are fulfilled. It would also be possible to arrest if a specific enforcement lien is granted in execution or satisfaction of a judgment, see the Norwegian Maritime Code section 91 (2).

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

   a. If so, please provide authority.

      If a MORU is arrested, the defendant owner of the MORU would be entitled to obtain the release of the MORU from such arrest by providing security for the claim, see the Civil Procedure Act 33-9 third paragraph

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?")?

   Norway has not implemented the exclusion in Article 15 (5) of the LLMC, and the rules on limitation of liability in the Norwegian Maritime Code Chapter 9 (which implements the LLMC) have been given extended application to drilling platforms and other similar mobile units used for exploration, storage and transport of "*subsea natural resources*", cf. the Norwegian Maritime Code section 507.

   Most MORUs fall outside the scope of extended application in the Norwegian Maritime Code section 507, as they are concerned with the exploitation of wind, waves, tides, and thermal energy of the sea, and not "*subsea natural resources*."

   Whether owners or salvors of MORUs would be entitled to limit their liability is therefore a

question of interpretation of the Norwegian Maritime Code section 171, which lists the various persons entitled to limitation. The list includes inter alia "*shipowners*" and salvors.

For owners of MORUs, the right of limitation under section 171 hinges on whether the relevant MORU is classified as a "*ship*" (and the owner consequently being a *ship*owner).

With respect to salvors, if the salvor is operating from their own vessel, they would be entited to limit liability with reference to the tonnage of their own vessel. The provision in section 171 applies to salvors which do not operate from their own ship. If the salvor is not operating from any ship or from the "ship" which is being salvaged (i.e. the MORU if it is considered to be a "*ship*"), the applicable limit of liability is calculated on the basis of a tonnage of 1500, see the Norwegian Maritime Code section 175 (5).

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?

   The Norwegian Maritime Code section 507 extends the application of the rules on limitation to drilling platforms and "*other similar mobile units.*" The basic requirement is that such units are either themselves "*used for the exploration, exploitation, storage or transportation of subsea natural resources*" or used "*to assist in such activities*." The latter alternative extends the scope of section 507 to include units that indirectly support in exploiting subsea natural resources. This is further supported by the preparatory works to section 507 (NOU 1976: 59, pp. 28–29), which indicate that "*similar mobile units*" include various types of offshore vessels and platforms indirectly used in connection with exploitation of subsea natural resources, for example pipe-laying vessels, rescue platforms, floating cranes and storage platforms. MORUs, depending on their design, size, value and operational role, could potentially fall within this category, subject to a case-by-case assessment provided that the MORU may be considered as "*other similar mobile unit*" and that it can be said that when it is providing electrical power to floating units engaged in the exploration, exploitation, storage or transportation of subsea natural resources it is used "*to assist in such activities*".

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.

   There are no other non-LLMC limitation regimes under Norwegian that a MORU would benefit from, beyond ordinary tort law principles, for example the doctrine of remoteness.

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))?

   Norway is a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) and has ratified the treaty. The implementation of UNCLOS in Norway is carried out through several legislative acts, and the country asserts that its legislation aligns with and fulfils the rules and obligations established by the convention.

The right of innocent passage does not exist in internal waters according to UNCLOS article 2, cf. UNCLOS Article 17.19, giving the coastal state full jurisdiction in these maritime sones. Norway's practices align with these principles. This is explicitly established in the regulation concerning foreign vessels' access to and navigation in Norwegian territorial- and internal waters, which states that foreign vessels are entitled only to the right of innocent passage in the territorial sea (FOR-2024-11-01-2627).

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))?

According to Articles 17-19 of UNCLOS, the right of innocent passage exists in territorial waters, which allows foreign vessels to navigate through these waters as long as their passage is not prejudicial to the peace, good order, or security of the coastal state. This right applies explicitly to "*ships*," as defined within the framework of UNCLOS. This is implemented in Norwegian domestic law through the regulation concerning foreign vessels' access to and navigation in Norwegian territorial waters.

To our knowledge, there are no cases in Norway where the government has taken a position or discussed whether MORUs qualify as "*ships*" under the provisions of UNCLOS, or as implemented in the Norwegian regulation. This absence of precedent leaves the status of such vessels under Norwegian law undetermined.

   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?

Our response is based on the assumption that "*passing through*" is understood in the same way as "*passage*" as defined in UNCLOS Article 18.

The general rule is that the Penal Code applies throughout the entire Norwegian territory, cf. Penal Code section 4 first paragraph. This includes application within the territorial sea, cf. the Territorial Waters and Contiguous Zone Act sections 2 and 5.

However, Penal Code section 2 specifies that the application of section 4 is subject to the limitations established by agreements with foreign states or by other rules of international law.

In this context, it is emphasised that section 2 also reiterates that section 4 applies with the limitations arising from "*agreements with foreign states or other rules of international law*." This means that Norway is obligated to adhere to the restrictions set forth in UNCLOS Article 27, given that the provision imposes a limitation on Norway's jurisdiction.

It is further noted that UNCLOS Article 27 exclusively regulates criminal jurisdiction of the coastal state for "*ships*." Consequently, for the exceptions in this provision to apply, the criminal acts must occur on the ship towing the MORUs or on MORUs that qualify as "*ships*."

   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?

Our response is based on the assumption that "*passing through*" is understood in the same way as "*passage*" as defined in UNCLOS Article 18.

Norwegian law generally applies within Norwegian territory, including the territorial sea, cf. Territorial Waters and Contiguous Zone Act sections 2 and 5. The applicability of any law primarily depends on the geographical scope for which it is enacted. This scope must also be interpreted in light of relevant international legal rules, including UNCLOS.

The rules in UNCLOS Article 28 apply, according to its first paragraph, in cases where a state halts or redirects a vessel to exercise civil jurisdiction over a person "*on board the ship*." Consequently, UNCLOS Article 28 is only relevant in situations where the MORUs are classified as "*ships*."

If MORUs are considered to be "*ships*", the Ship Safety and Security Act (Skipssikkerhetsloven) applies. According to section 3 second paragraph litra a, the Act also applies to foreign ships in Norway's territorial waters, but "*with the limitations that follow from international law*." This implies that the rules must be interpreted in light of UNCLOS Article 28.

For instance, section 14 of the Ship Safety and Security Act provides that a ship may be navigated by Norwegian authorities in accordance with regulations, such as the Collision Regulations (Sjøveisreglene). Such navigation is a permissible redirection if it is carried out to ensure safety in the territorial sea and not "*for the purpose of exercising civil jurisdiction in relation to a person on board the ship*." This exercise of jurisdiction aligns with the rights of coastal states as outlined in UNCLOS Article 21.

Since the Ship Safety and Security Act applies "*with the limitations that follow from international law*," including UNCLOS Article 28, any navigation of a ship must be based on the authority provided by section 14 of the Act. This means that redirecting a ship to exercise civil jurisdiction over a person on board is not permitted under Norwegian law, as such an action would conflict with the limitations set forth in UNCLOS Article 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)?

   Not applicable.

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))?

   Not applicable.

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)?

   The general rule under Norwegian law is that creditors cannot seize or arrest property if the claim is directed against the state, even when the property is subject to an agreement or contract with a state entity, cf. the Dispute Act section 33-1 second paragraph, and the Enforcement Act section 1-2 first paragraph. The Dispute Act section 33-1 applies specifically to monetary claims against the state, while the Enforcement Act addresses claims in general.

   Certain state-operated entities are organized as limited liability companies (AS), special statutory companies, or state enterprises, cf. the Act on State Enterprises section 3. Enforcement and arrest are permitted against such independent legal entities, as these are not considered claims against the state itself.

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?

   The question pertains to situations where the state leases a MORU from an entity, and a third party seeks to arrest or impose a lien on the entity's MORU. Norwegian law contains no provisions that extend the state's immunity to assets provided under the state's lease agreements. This means that assets leased by the state from another entity could be subject to arrest or liens.