

## Annex to *Mare Incognitum, Part II*: A Draft Mobile Offshore Renewables Unit Convention

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As described in *Mare Incognitum, Part I: Do We Now Need (to at Least Discuss) a Mobile Offshore Renewables Unit Convention?*<sup>1</sup> (hereinafter, *Mare Incognitum, Part I*), a variety of new, non-fixed, floating and mobile offshore renewable energy technologies are now being developed and deployed in the offshore waters of coastal states. These Mobile Offshore Renewables Units (MORUs) include floating ocean thermal energy converters, floating solar energy converters, floating tidal energy converters, floating wave energy converters, floating wind turbines, floating energy storage systems, floating grid integration systems, floating measurement units, floating offshore maintenance and

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\* © 2022 Alexander Severance. Country Lead Counsel Offshore, Siemens Gamesa Renewable Energy A/S (Denmark). The use of the text of, and commentary to, the draft *Convention on Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources*, *infra* note 13, herein is with the very kind permission of following: (i) Messrs. John Joy and William Sharpe, and the estate of the late Nigel Frawley (the original authors); (ii) the Canadian Maritime Law Association (which organized the presentation of the work of Messrs. Frawley, Sharpe, and Joy at the 2001 Comité Maritime International (CMI) Convention in Vancouver); and (iii) the CMI itself, which published the Vancouver Draft in its Jan/Apr 2004 CMI News Letter. The author is very grateful for the kind assistance of Lawrence Teh, Shelley Chapelski, and William Sharpe in facilitating this permission.

Any errors or mistakes in the transcription or editing of the Vancouver Draft's text or commentary are this author's alone. Similarly, the proposed changes to that text and commentary included in the draft Mobile Offshore Renewables Convention and commentary below represent this author's views only.

This Annex, and each of the related articles (*Mare Incognitum, Parts I-III*) hereto, would not have been possible without the understanding and infinite patience of my wife, Chesney McKinley-Severance, and our shared desire to leave the world a better place for Carter, Hana, and Jack.

1. Alexander Severance, *Mare Incognitum, Part I: Do We Now Need (to at Least Discuss) a Mobile Offshore Renewables Unit Convention?*, 45 TUL. MAR. L.J. 287 (2021) [hereinafter *Mare Incognitum, Part I*].

accommodation facilities (or “FOMA Facilities”), and floating hybrid units (combining elements or one or more other types of MORUs).<sup>2</sup> *Mare Incognitum, Part I* identified a number of unresolved international legal issues facing this promising new class of mobile assets as they travel through and are deployed in the waters of coastal states.<sup>3</sup>

As described in *Mare Incognitum, Part II: Is it Feasible to Salvage the Vancouver Draft Mobile Offshore Unit Convention by Converting It into a Mobile Offshore Renewables Unit Convention?*,<sup>4</sup> (the companion Article to this Annex and the second Article in the *Mare Incognitum* trilogy), MORUs face two fundamental problems in relation to the existing framework of international maritime conventions that govern other activities at sea. First, because many otherwise relevant and broadly accepted maritime conventions limit their application to “ships,” “vessels,” or similar terms, MORUs might fall outside convention coverage.<sup>5</sup> In this sense, MORUs’ legal position is in contrast to traditional merchant ships but similar to that of the mobile offshore units and floating platforms of the offshore oil and gas industry (each such oil and gas mobile offshore unit or floating platform, an “O&G MOU”)—in some ways a “vessel” like any other vessel, in other ways *sui generis*. Second, in relation to those potentially relevant maritime conventions that arguably already include MORUs within their scope, the level of ratification of (and the list of contracting states party to) such conventions varies widely.<sup>6</sup> This results in a different challenge to legal uniformity for MORUs, leaving MORU stakeholders to evaluate which potentially relevant maritime conventions have been ratified by the relevant coastal contracting states every time a MORU transverses a maritime border,<sup>7</sup> leaving MORU stakeholders in a legal *mare incognitum*. The need for one or more internationally binding agreements to address the legal uncertainties and issues facing Mobile Offshore Renewables Units and

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2. See *id.* at 304-320.

3. See *id.* at 321-360.

4. Alexander Severance, *Mare Incognitum, Part II: Is it Feasible to Salvage the Vancouver Draft Mobile Offshore Unit Convention by Converting It into a Mobile Offshore Renewables Unit Convention?*, 46 TUL. MAR. L.J. 1 (2022) [hereinafter *Mare Incognitum, Part II*].

5. See *Mare Incognitum, Part I*, *supra* note 1, at 324-359; *Mare Incognitum, Part II*, *supra* note 4, at 4, 7-8, 19, 45, 51-55, 62-68, 74-78; see also Alexander Severance & Martin Sandgren, *Flagging the Floating Turbine Unit: Navigating Towards a Registerable, First Ranking Security Interest in Floating Wind Turbines*, 39(1) TUL. MAR. L.J. 1, 15-28 (2014) [hereinafter *Severance & Sandgren*].

6. See *Mare Incognitum, Part I*, *supra* note 1, at 324-359; *Mare Incognitum, Part II*, *supra* note 4, at 4, 7-8, 26-27, 51-76; *Severance & Sandgren*, *supra* note 5, at 15-28.

7. See *Mare Incognitum, Part II*, *supra* note 4, at 7-8, 19-21.

their stakeholders, which were identified in *Mare Incognitum, Part I*, were assumed to exist for purposes of *Mare Incognitum, Part II*.

*Mare Incognitum, Part II* addressed some of the more common issues that would be faced by a multilateral organization or one or more national governments (each such institution, a “Sponsoring Institution”) contemplating the facilitation of the amendment or enactment of a maritime convention to address these international legal uncertainties.<sup>8</sup> It puts forth the argument that potential Sponsoring Institutions may hesitate to invest internal resources in the development of a maritime convention addressing the international legal issues facing MORUs in the earlier, riskier phases of such a project, but may be more willing to sponsor the work of others at a later phase.<sup>9</sup> Intuitively, a potential Sponsoring Institution would perceive a draft convention as a more feasible solution and a less risky proposition if it adheres to (or at least reflects) relevant commonly accepted principles of international law, is capable of overcoming technical problems common to any draft international convention, and is not excessively broad in scope.<sup>10</sup> It must provide technically feasible solutions to the issues it addresses<sup>11</sup> and be likely to receive a substantial measure of support not only from governments, but also from industry and other interested sectors.<sup>12</sup>

*Mare Incognitum, Part II* argues that one technically feasible solution to resolve these issues could be the enactment of a multitopic maritime convention specific to Mobile Offshore Renewables Units based on the draft *Convention on Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources*<sup>13</sup> presented by the Canadian Maritime Law Association at the 2001 Comité Maritime International (CMI) Convention in Vancouver (“the Vancouver Draft”).<sup>14</sup> The Vancouver Draft was intended to address O&G MOUs but covers many

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8. See *id.* at 8-13, 26-49.

9. See *id.* at 13-15.

10. See *id.* at 14-15.

11. See *Mare Incognitum, Part I, supra* note 1, at 294; *Mare Incognitum, Part II, supra* note 4, at 11-15, 26-49, 85-86.

12. See *Mare Incognitum, Part I, supra* note 1, at 294; *Mare Incognitum, Part II, supra* note 4, at 11-13, 49.

13. See *Convention on Offshore Units, Artificial Islands and Related Structures Used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources*, CMI NEWS LETTER (Comité Mar. Int’l, Antwerp, BE), Jan./Apr. 2004, 3-16, <http://www.comitemaritime.org/Uploads/Newsletters/2004/Binder1.pdf> [hereinafter *Vancouver Draft*].

14. See *Mare Incognitum, Part II, supra* note 4, at 4, 83-85.

of the same legal issues facing Mobile Offshore Renewables Units and their stakeholders.

The draft *Mobile Offshore Renewables Unit Convention* below is presented as a traditional legal blackline edit of the underlying original text of the Vancouver Draft (with inserted text not appearing in the original Vancouver Draft text indicated in underlined font, and the deletion of any text appearing in the original Vancouver indicated in a strikethrough font). The footnotes therein have been inserted by this author for the reader's convenience and reference only, and are not intended to be interpreted as part of the text. The text below is not intended to present a potential Sponsoring Institution with a conference-ready technically feasible solution, or even a draft ready for incorporation into the work program of a relevant department of Sponsoring Institution.<sup>15</sup> Rather, it is a straw-man intended as a starting point and stimulus for criticism, debate, and open collaboration as a method of developing a more feasible solution to identified issues and thereby reducing the perceived risk of such a project for Sponsoring Institutions.<sup>16</sup> Self-evidently, the draft *Mobile Offshore Renewables Unit Convention* below does not exclude the possible feasibility of other solutions.

~~MOBILE OFFSHORE RENEWABLES UNIT CONVENTION ON  
OFFSHORE UNITS, ARTIFICIAL ISLANDS AND RELATED  
STRUCTURES USED IN THE EXPLORATION FOR AND  
EXPLOITATION OF PETROLEUM AND SEABED MINERAL  
RESOURCES, 20\_\_0. (MORUC 20\_\_)~~

May 2001 Spring 2022 Draft

WHEREAS the Parties to this Convention, BELIEVE that maritime law should be universal for reasons of certainty and predictability, as well as for the facilitation of ~~trade~~ the sustainable use of the ocean and its renewable energy resources and for the avoidance of disputes and conflicts of laws; AND are therefore anxious to establish uniform rules for the regulation of certain matters, as hereinafter set forth, and protection of those engaged in offshore activities and for the protection and preservation of the marine environment, shipping and the Coastal States that are potentially affected by those offshore activities; AND believe that this would be best achieved through a Convention

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15. See *id.* at 15-16.

16. See *id.* at 15.

covering all mobile offshore renewables units and structures in all modes of operation, ~~including permanent artificial islands~~, RECOGNIZE the need to reconcile interests of States and participants in mobile offshore renewable energy activities; CONFIRM that the provisions of this Convention be consistent with the principles of the 1982 United Nations Convention on the Law of the Sea,<sup>17</sup> and the United Nations Framework Convention on Climate Change;<sup>18</sup> AFFIRM the principles of State sovereignty and autonomy of national economic development consistently with the international obligations of States to avoid damage to the environment of other States; RECOGNIZE the desirability of facilitating the commercial and technological evolution of mobile offshore renewable energy and other sustainable offshore activities, and RECOGNIZING THAT Coastal States shall not unreasonably expose neighbouring States or the common high seas area to the risk of damage to their environment as the result of action or inaction with respect to Mobile Offshore Renewables Units, Artificial Islands and Related Appurtenances.

HAVE AGREED AS FOLLOWS:

## ARTICLE I

### Definitions

1.1 For the purposes of this Convention:

- (a) ~~“Artificial Island” shall mean a permanent installation or structure rigidly affixed to the sea bed and used or intended for use for Economic Activities, including wellheads and associated equipment, but shall not include [pipelines] or installations formed from natural dredged materials or fill of natural origin~~  
[Not used.]
- (b) “Coastal State” shall mean the State Party to this Convention which exercises rights under the United Nations Convention on

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17. *United Nations Convention on the Law of the Sea*, Dec. 10, 1982, 1833 U.N.T.S. 397, 400-03 (entered into force Nov. 16, 1994) [hereinafter *UNCLOS*]. See Richard Shaw, *Offshore Craft and Structures: Report to the Legal Committee of International Maritime Organization from the International Subcommittee of the Comité Maritime International*, Y.B. 1998 ANNUAIRE (Comité Mar. Int'l) 145, 147 (1998), <http://www.comitemaritime.org/Uploads/Yearbooks/Yearbook+1998.pdf>.

18. *United Nations Framework Convention on Climate Change*, May 9, 1992, 1771 U.N.T.S. 107 [UNFCCC]; see also Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter *Paris Agreement*].

the Law of the Sea, 1982 (“UNCLOS”) for the purpose of ~~exploring for and exploiting the resources of the seabed and its subsoil~~ engaging in Economic Activities in the area in or above which the Mobile Offshore Renewables Unit is situated [or equivalent rights in the case of a State Party to this Convention which is not party to UNCLOS].

- (c) ~~“Continental Shelf” has the meaning provided in UNCLOS [Not used.]~~
- (d) ~~“Economic Activities” shall mean the exploration, exploitation, production, transfer, conversion, conditioning, transformation, management, manipulation, monitoring, measurement, processing or storage of hydrocarbons and mineral resources of the seabed or its subsoil~~ energy from the water, currents[, sun,] and winds offshore, without regard to whether such energy may be intermittently produced.
- (e) ~~“Exclusive Economic Zone” has the meaning provided the term “exclusive economic zone” in UNCLOS.~~
- (e1) “Flag State” shall have the meaning given that term in paragraph 4.4.
- (e2) “Floating Energy Storage System” shall mean [any floating system for the storage of energy created by one or more Mobile Offshore Renewables Units (regardless of whether the energy is stored as potential electrical, chemical, thermal, or kinetic energy, or otherwise)], which is used, or intended to be used, to support one or more Mobile Offshore Renewables Units.
- (e3) “Floating Grid Integration System” shall mean [any floating substation, HVDC converter, reactive power compensation system, etc.], which is used, or intended to be used, to support a Mobile Offshore Renewables Unit or Array.
- (e4) “Floating Measurement Unit” shall mean [any floating measurement or monitoring system], which is used, or intended to be used, to support a Mobile Offshore Renewables Unit or Array.
- (e5) “Floating Ocean Thermal Energy Converter” shall mean [means any floating facility which is designed to use temperature differences in ocean water to produce electricity].

- (e6) “Floating Operations, Maintenance, and Accommodation Facility” shall mean [any floating facility which provides operations, maintenance, and/or accommodation spaces for personnel and/or equipment] and which is used, or intended to be used, to support a Mobile Offshore Renewables Unit or Array.
- (e7) “Floating Solar Energy Converter” shall mean [any floating system which converts solar energy into electrical power intended for export, or storage or conversion to potential energy prior to export], including any Floating Solar Raft.
- (e8) “Floating Solar Raft” shall means [an identifiable collection of Floating Solar Modules which are intended by their design to be firmly attached to each other in operation (each of which registered in accordance with this Convention as Relevant Appurtenances to that Floating Solar Raft),] which collectively operates as a single independent generating Mobile Offshore Renewables Unit.
- (e9) “Floating Solar Modules” shall mean [any floating module generating electricity from photovoltaic panels, which by its design is not intended to be independent generating Mobile Offshore Renewables Unit but is intended to be attached to identical or similar modules as part of a single Floating Solar Raft].
- (e10) “Floating Tidal Energy Converter” shall mean [any floating system which converts tidal kinetic energy or other non-tidal ocean currents into electrical power intended for export, or storage or conversion to potential energy prior to export].
- (e11) “Floating Wave Energy Converter” shall mean [any floating system which converts the kinetic energy of waves into electrical power intended for export, or storage or conversion to potential energy prior to export].
- (e12) “Floating Wind Turbine” shall mean [any floating system which converts the kinetic energy of winds into electrical power intended for export, or storage or conversion to potential energy prior to export, using one or more hull- or kite-mounted vertical or horizontal axis turbines].
- (e13) “Internal Waters” has the meaning provided the term “internal waters” in UNCLOS.

- (e14) “International Register” has the meaning given in paragraph 4.7.
- (f) “Licence” shall mean a licence, concession, permit or other authorization issued by a Coastal State for any Economic Activities.
- (g) “Licensee” shall include a holder of a Llicence or any person or corporation with a right to a Llicence.
- (g1) “Manned,” in relation to a Mobile Offshore Renewables Unit, means [manned by Mobile Offshore Renewables Unit Workers during normal operation or so manned while in transit].
- (g2) “Mobile Offshore Renewables Array” shall mean [any constellation of Mobile Offshore Renewables Units intended to be operated together under a single Licence while engaged in Economic Activities].
- (h) “Mobile Offshore Renewables Unit” shall mean any buoyant structure of whatever nature when not permanently fixed into the sea bed which:
- (i) is capable of moving or being moved in a controlled manner while floating in or on water, whether or not attached to or resting on the sea bed during operations; and
  - (ii) is used or intended for use in Economic Activities; and
  - (iii) includes ~~units used or intended for use in the accommodation of personnel and equipment related to the activities described in this paragraph~~ any Related Appurtenances registered together with that Mobile Offshore Renewables Unit in a State Registry, which is of a category identified paragraph 2.4 and covered by a Protocol, and does not generate, store, or transform electrical power originating from the combustion of fossil fuels or nuclear fission or fusion.

For purposes of this definition, “permanently fixed into the sea bed” shall mean affixed into the sea bed in such a way that future detachment (if any) of the Mobile Offshore Renewables Unit from mooring, umbilicals, and the sea bed would likely: (a) require such expenditures, time and/or physical modification of the Mobile Offshore Renewables Unit itself; or (b) cause such damage to the Mobile Offshore Renewables Unit itself, as to render future relocation of the

Mobile Offshore Renewables Unit to another offshore site for the purposes of engaging in further Economic Activities technically or commercially unfeasible.

- (i) “Mobile Offshore Renewables Unit Worker” shall mean any person employed or engaged in contractual activities offshore, in whatever capacity in the operation of an Mobile Offshore Renewables Unit or Artificial Island.
- (j) “Mobile Offshore Renewables Unit Occupant” shall include any natural person onboard an Mobile Offshore Renewables Unit for any lawful purpose, including an Mobile Offshore Renewables Unit Worker.
- (k) “Owner” shall include the owner, charterer, lessee, and operator of a Mobile Offshore Renewables Unit or Artificial Island Related Appurtenance.<sup>19</sup>
- (l) “Pollutant” shall mean the escape of any substance or the application of any energy or process which is deleterious to the marine environment.
- (m) “Petroleum” shall mean a hydrocarbon of natural origin Not used.
- (m1) “Protocol” means, in respect of any category of Mobile Offshore Renewables Unit and associated rights to which this Convention applies, the Protocol in respect of that category of Mobile Offshore Renewables Unit and associated rights.
- (m2) “registered security interest” means a mortgage, hypothec, or such other form of publicly registered *in rem* non-possessory collateral right as declared by that State Party in accordance with Article XX, which shall have, subject to this Convention, priority over other all registered and unregistered security interests.
- (n) “Related Appurtenances” shall include: (a) in relation to Floating Solar Rafts only, Floating Solar Modules registered as a constituent part of the relevant Floating Solar Raft in accordance with this Convention;<sup>20</sup> and (b), in relation to all Mobile Offshore Renewables Units, structures or installations associated with Artificial Islands or that Mobile Offshore Renewables Units

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19. Compare International Convention on Limitations of Liability for Maritime Claims art. 1(2), Nov. 19, 1976, reprinted at 8 J. MAR. L. & COM. 533 (1976) [LLMC 1976].

20. See *Mare Incognitum, Part I*, *supra* note 1, at 305-306, 343.

(including any detachable pontoons) and which are used or intended for use with respect to activities ancillary to Economic Activities ~~or in related Offshore Occupant accommodation.~~

(n1) “Sister Unit” shall mean, in relation to any Mobile Offshore Renewables Unit, any other Mobile Offshore Renewables Unit which is part of the same Mobile Offshore Renewables Array as the first Mobile Offshore Renewables Unit and having the same Owner as the first Mobile Offshore Renewables Unit.

(n2) “State Registry” has the meaning given that term in paragraph 4.2.

(o) “Territorial Sea” has the meaning provided the term “territorial sea” in UNCLOS.

(p) “Unmanned” means not Manned.

## ARTICLE II

### Application

2.1. This Convention applies to all Mobile Offshore Renewables Units, Artificial Islands and Related Appurtenances of a category listed in paragraph 2.4 and designated in a Protocol which are used or intended for use in the Exclusive Economic Zone ~~and adjacent seaward Continental Shelf to the extent a State Party may exercise functional jurisdiction over such Continental Shelf consistently with UNCLOS~~ of a Coastal State [or are registered in a Flag State].

2.2. State Parties to this Convention may extend that application of this Convention or parts thereof to their Territorial Sea or Internal Waters.

2.3 This Convention also extends to ~~Artificial Islands~~ Mobile Offshore Renewables Units or components thereof while in towed transit from a place of construction to an intended place of installation, in towed transit between intended places of installation and/or repair, and while in the process of being salvaged or removed, until such time as their elements are brought into land territory or are otherwise lawfully disposed of.

2.4 The categories referred to in paragraph 2.1 are:

(a) Floating Energy Storage Systems;

(b) Floating Grid Integration Systems;

- (c) Floating Measurement Units;
- (d) Floating Ocean Thermal Energy Converters,
- (e) Floating Operations, Maintenance, and Accommodation Facilities;
- (f) Floating Solar Energy Converters,
- (g) Floating Tidal Energy Converters,
- (h) Floating Wave Energy Converters,
- (i) Floating Wind Turbines,
- (j) [Hybrid Mobile Offshore Renewables Units,]
- (k) [Manned Mobile Offshore Renewables Units.]

~~[Possible extension of application of Convention to new technologies e.g. seabed aquaculture, offshore commercial satellite launch facility.]~~

### ARTICLE III

#### Ownership

3.1 Mobile Offshore Renewables Units, Artificial Islands and Related Appurtenances shall have ownership either in accordance with the law of the State Party in whose territorial waters they are located, or in accordance with this Convention.

3.2 Every Mobile Offshore Renewables Unit, Artificial Island and Related Appurtenances shall be owned by a juristic entity or entities, being one or a combination of, a natural or legal person or by a State Party to this Convention.

3.3 Every State Party's law shall provide for and recognize ownership interests and registered security interests in any Flag State's Mobile Offshore Renewables Units, Artificial Islands or including Related Appurtenances (if any), registered in the Flag State's State Registry, regardless of where the Mobile Offshore Renewables Unit is located in its Exclusive Economic Zone or seaward adjacent Continental Shelf.

3.4 Every State Party's law shall provide for and recognize rights of transfer of ownership or use of Mobile Offshore Renewables Units, Artificial Islands or and Related Appurtenances.

3.5 All Mobile Offshore Renewables Units to which this Convention applies shall have a nationality.

## ARTICLE IV

## Registration

4.1 This Article applies to all Mobile Offshore Renewables Units and Related Appurtenances except those while in actual use engaged in Economic Activities in State Parties' the Territorial Sea or Internal Waters of State Parties which have not extended this Convention's application to its territorial sea or internal waters under paragraph 2.2.

4.2 State Parties shall by their national law, provide for the publicly accessible registration of ownership and mortgage, registered security interests in Mobile Offshore Renewables Units and, at the option of the State Party, registered security interests in Sister Units, at the port of the Mobile Offshore Renewables Unit's registry, a central office, or such other publicly accessible registry as the State Party declares in accordance with paragraph 20.1(b) (any such registry, a "State Registry").

4.3 State Parties shall not permit the use in their Exclusive Economic Zones ~~or seaward adjacent continental shelves~~ of unregistered or 'Stateless' Mobile Offshore Renewables Units.

4.4 Proprietary rights (including ownership of and registered security interests) in Mobile Offshore Renewables Units shall be governed by this Convention and by the law of the State Party where they are registered (each such State Party, a "Flag State").

4.5 Each Flag State Party shall take necessary measures to ensure that Mobile Offshore Renewables Units it enters in its State Registry have owners ~~or~~ and operators who are effectively identifiable for the purpose of ensuring their full accountability.

4.6 Recognition and enforcement of rights of ownership and registered security interests in Mobile Offshore Renewables Units and Related Appurtenances shall be governed exclusively by the law of the Flag State Party.

4.7 An International Register recording all Mobile Offshore Renewables Units and Related Appurtenances to which this Convention applies may be established in accordance with Article ~~12XV~~. On its establishment, the International Register shall record an Mobile Offshore Renewables Unit's identity, flag and Owner(s) [and, upon first registration, issue a unique and permanent identifying number to that Mobile Offshore Renewables Unit on behalf of/in the name of the IMO].

The International Register shall also record ~~mortgages and hypothecs~~ registered security interests on Mobile Offshore Renewables Units and their Related Appurtenances, and, subject to paragraph 4.2, Sister Units. The International Register shall require the provision by each Flag State, and be entitled to record and publish, sufficient information concerning the identity of Mobile Offshore Renewables Units and Related Appurtenance owners and holders of ~~mortgages and hypothecs~~ registered security interests to enable their identity and domicile to be known.

4.8 Upon exercising their responsibilities under paragraph 4.2, the State Registries of State Parties shall transmit all State Registry information concerning ownership and registered security interests on Mobile Offshore Renewables Units and, subject to paragraph 4.2, Sister Units, under their flag to the International Register.

4.9 The International Register shall be located in [~~Aberdeen~~Bergen, ~~United Kingdom of~~ Norway].

## ARTICLE V

### ~~Mortgages, Liens~~ Registered Security Interests and Creditors' Remedies

#### ~~Mortgages~~ Registered Security Interests

5.1 A ~~an~~ Mobile Offshore Renewables Unit and, subject to paragraph 4.2, a Sister Unit, may form the subject of a registered security interest ~~by way of mortgage or hypothec~~.

5.2 State Parties shall implement and administer publicly accessible State Registries for ~~mortgages or hypothecs~~ registered security interests of Mobile Offshore Renewables Units and, subject to paragraph 4.2, Sister Units.

#### Liens

5.3 The following claims upon Mobile Offshore Renewables Units and Related Appurtenances shall be secured by maritime liens:

- (a) loss of life or personal injury occurring offshore to Mobile Offshore Renewables Unit Occupants or arising offshore from operation of Mobile Offshore Renewables Units and Related Appurtenances;
- (b) claims of Mobile Offshore Renewables Unit Workers for wages and social benefits;

- (c) salvage;
- (d) tortious or delictual physical loss, in direct connection with the operation, transit, towing, or navigation of the Mobile Offshore Renewables Unit.

#### Creditors' Remedies

5.4 Liens under paragraph 5.3 shall have priority over ~~mortgages or hypothecs~~ registered security interests. State Parties may, under their national laws, grant a lien in respect of claims other than those referred to in paragraph 5.3, so, however, as not to modify the ranking of claims secured by registered security interests, or by the liens taking precedence thereof.

5.5 Among themselves, ~~registered mortgages or hypothecs~~ security interests shall have priority according to their time of registration.

5.6 Among themselves, liens recognized by this Convention shall have priority according to their listing in paragraph 5.3. [except that claims secured by liens under sub-paragraphs 5.3 (a) and (b), which arose before an occurrence giving rise to a claim for salvage shall rank below the claim secured by such lien for salvage].

5.7 Where a mortgagee, lien holder, or other creditor exercises possessory, sale or other remedies against ~~an~~ Mobile Offshore Renewables Unit or, subject to paragraph 4.2, a Sister Unit, it shall assume the obligations of the Owner of such Mobile Offshore Renewables Unit, as provided in this Convention, from the time of taking possession or control of the Mobile Offshore Renewables Unit.

5.8 Paragraph 5.7 shall not be interpreted as to impose liability upon such creditor for acts or omissions of the ~~O~~owners, or of persons for whose acts or omissions the ~~O~~owner is legally responsible, which occurred before the creditor exercised the remedies referred to in the preceding paragraph.

5.9 A person asserting a remedy arising from the rights provided for in this Article may assert that right by means of arrest of ~~an~~ Mobile Offshore Renewables Unit, subject to paragraph 4.2, a Sister Unit, only if, at the time of arrest, the Mobile Offshore Renewables Unit, subject to paragraph 4.2, a Sister Unit, is not on location for the purpose of engaging in Economic Activities.

5.10 When an Mobile Offshore Renewables Unit is on location for the purpose of engaging in Economic Activities, a person may assert a remedy arising from the rights provided for in paragraphs 5.1 or 5.3 by a method other than arrest (“Alternate Remedy”).

5.11 Such Alternate Remedy may be one of:

- (a) a demand that the Owner post bail or security up to the lesser of the value of the claimant’s reasonably arguable best case or the value of the Mobile Offshore Renewables Unit; or
- (b) the registration of a lis pendens or caution or similar registerable charge in the Flag State’s ~~Party State Registry~~ of the Mobile Offshore Renewables Unit.

## ARTICLE VI

### Civil Jurisdiction

6.1 Each State Party has a general right of regulation of Mobile Offshore Renewables Units, ~~Artificial Islands~~ and Related Appurtenances engaged in Economic Activities within its Internal Waters, Territorial waters Sea, and Exclusive Economic Zone ~~and seaward adjacent Continental Shelf~~. These rights must be exercised with regard to the rights of other State Parties and the common area.

6.2 State Parties shall establish a competent and adequate administration for the purpose of carrying out their obligations under this Convention.

6.3 Each State Party shall ensure that its Courts possess the necessary jurisdiction to determine rights and claims arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in the Territorial Sea and, the Exclusive Economic Zone ~~and seaward adjacent Continental Shelf~~.

6.4 Except as provided in paragraphs 6.5 and 6.6, State Parties and legal persons engaged in the ownership or operation of Mobile Offshore Renewables Units, ~~Artificial Islands and Appurtenances~~ may contract or stipulate that rights and claims arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in Territorial Sea, and the Exclusive Economic Zone ~~and seaward adjacent Continental Shelf~~ may be determined by any Court established by any State Party, or by an arbitral tribunal subject to the law of any State Party.

6.5 A claimant may assert a right or claim in tort or delict arising from subjects covered by this Convention, including rights and claims arising from acts or omissions in Internal Waters, Territorial waters Sea, and the Exclusive Economic Zone and seaward adjacent Continental Shelf before a Court of competent jurisdiction in any of:

- (i) the place of the accident;
- (ii) the domicile of the claimant or of any person alleged to be responsible; and
- (iii) any place where rights under paragraph 6.4 may be asserted.

6.6 Unless an Mobile Offshore Renewables Unit Occupant or his or her dependents are entitled to benefits under a scheme of workers' compensation under the law of the Mobile Offshore Renewables Unit Occupant's domicile, State Parties shall permit Mobile Offshore Renewables Unit Occupants the choice of places in which to assert claims as provided in paragraph 6.5, notwithstanding any contract or stipulation by the Mobile Offshore Renewables Unit Occupant to the contrary.

6.7 Each State Party shall confer on its Courts the jurisdiction to consolidate or coordinate the determination of claims commenced in the Courts of different State Parties, arising from the same accident or occurrence in respect of a matter covered by this Convention.

6.8 Any judgment given by a Court of a State Party in respect of or arising from a matter covered by this Convention, which is enforceable in the State Party of origin where it is no longer subject to ordinary forms of review, shall be recognized by any State Party except where the judgment was obtained by fraud or where the defendant was not given reasonable notice of the claim or a fair opportunity to present its case. A judgment recognized under this subparagraph shall be enforceable without the merits of the case being re-opened.

6.9 State Parties shall extend obligations of rescue of shipwrecked persons to Mobile Offshore Renewables Unit Occupants and other shipwrecked persons that an [Manned] Mobile Offshore Renewables Unit or Artificial Island may accommodate in safety.

6.10 State Parties shall recognize obligations of safe treatment and transit to shore of unauthorized individuals found on Mobile Offshore Renewables Units, Artificial Islands and Related Appurtenances as are accorded to stowaways on board ships.

## ARTICLE VII

## Penal Jurisdiction

7.1 This Article applies only to acts or omissions on or associated with Mobile Offshore Renewables Units and Related Appurtenances, of a nationality other than that of the Coastal State ~~Party~~.

7.2 In this Article:

(i) ~~(a)~~ “Regulatory Offence” means a contravention, under a law of a Coastal State or the Flag State ~~domiciliary law of the Owner~~, of operating or safety standards applying to an Mobile Offshore Renewables Unit, Artificial Island and Related Appurtenances.

(ii) ~~(b)~~ “Personal Offence” means a contravention under a law of an Mobile Offshore Renewables Unit Occupant’s domicile, a law of a Coastal State, or the ~~domiciliary law of the Owner~~ law of the Flag State, of the bodily integrity or personal property of an Mobile Offshore Renewables Unit Occupant.

(iii) ~~(c)~~ “Public Order Offence” means a contravention under a law of an Mobile Offshore Renewables Unit Occupant’s domicile, a law of a Coastal State, or the ~~domiciliary law of the Owner~~ law of the Flag State, involving loss of life, bodily injury or property damage caused by persons other than Mobile Offshore Renewables Unit Occupants.

7.3 Where their domestic law so provides for relevant offences, the Coastal State has jurisdiction over Regulatory Offences in relation to Economic Activities occurring in the Internal Waters, Territorial Sea, and the Exclusive Economic Zone of the Coastal State, and the Flag State has jurisdiction over Regulatory Offences generally.

7.3.A Where a Regulatory Offence is believed to have been committed in relation to Economic Activities occurring in the Internal Waters, Territorial Sea, or the Exclusive Economic Zone of the Coastal State, the Flag State shall afford the Coastal State the first opportunity of investigating the alleged offence and prosecuting such offence.

7.4 Where their domestic law so provides for relevant offences, the Coastal State, the ~~Owner’s domiciliary~~ Flag State, and the State of the Mobile Offshore Renewables Unit Occupant’s domicile each has jurisdiction over Personal Offences and Public Order Offences.

7.5 Where a ~~Regulatory Offence~~, Personal Offence or Public Order Offence is believed to have been committed by an Mobile Offshore Renewables Unit Occupant, the Coastal State and the Flag State shall afford the domiciliary State of the adversely affected Mobile Offshore Renewables Unit Occupant the first opportunity of investigating the alleged offence and prosecuting the Mobile Offshore Renewables Unit Occupant alleged to have committed such offence.

7.6 Where an Mobile Offshore Renewables Unit Occupant is convicted for a Personal Offence or a Public Order Offence under the ~~Owner's domiciliary law of the Flag State~~ or the law of the Coastal State, the prosecuting State may not impose a more severe penalty than that provided by the law of the Mobile Offshore Renewables Unit Occupant's domiciliary State.

7.7 Where an Owner, Licensee, or Mobile Offshore Renewables Unit Occupant is charged with a Regulatory Offence by the Coastal State or the ~~Owner's domiciliary~~ Flag State, it shall be a defence that compliance with the law of the prosecuting State would necessarily result in a contravention of the law of the other State.

7.8 Where an Owner, Licensee or Mobile Offshore Renewables Unit Occupant is convicted of a Regulatory Offence, Personal Offence or Public Order Offence, the person convicted shall not be prosecuted by a State other than the prosecuting State for an offence arising from the same acts or omissions upon which the first conviction was based.

7.9 Each State Party shall apply the [Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988/Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988], mutatis mutandis, to Mobile Offshore Renewables Units, unless and until such time such [convention/protocol] is amended to include Mobile Offshore Renewables Units within its scope and the State Party is also a contracting state to such amendment(s).

## ARTICLE VIII

### Safety

8.1 ~~Where an Artificial Island or Related Appurtenances is operated in physical association with an Offshore Unit,~~ The Coastal State shall require the Owner of the [Manned] Mobile Offshore Renewables Unit

and Artificial Island or any Related Appurtenances operated in physical association with a Mobile Offshore Renewables Unit to establish and maintain a quality assurance management and operations system for the Mobile Offshore Renewables Unit and its Artificial Island or Related Appurtenances compatible with ISM Code and ISPS Code requirements applicable to the associated Mobile Offshore Drilling Units, mutatis mutandis, unless and until such time such Code is amended to mandate the application of such requirements to the Mobile Offshore Renewables Unit and the relevant Coastal State is a contracting state to such amendment(s).

8.2 Coastal State ~~Parties~~ shall ensure that the owners or operators of ~~Artificial Islands and Related Appurtenances~~ establish and maintain operational quality assurance systems appropriate to the type of structure and operations and compatible with generally accepted quality assurance standards.

8.3 The Mobile Offshore Renewables Unit Flag state shall require that the operator of each Manned Mobile Offshore Renewables Unit designate a single person to be in command of the Manned Mobile Offshore Renewables Unit, with authority for navigation and safety purposes over all of its corresponding Mobile Offshore Renewables Unit Workers and Mobile Offshore Renewables Unit Occupants, to discontinue Economic Activities, to direct safety operations and to order the Mobile Offshore Renewables Unit's movement or evacuation without prior reference to the Mobile Offshore Renewables Unit Owner or Licensee or other management or governmental authority.

8.3.A The Mobile Offshore Renewables Unit Flag State shall require that the operator of each Unmanned Mobile Offshore Renewables Unit designate a single person to be in charge of the Unmanned Mobile Offshore Renewables Unit, with authority for navigation and safety purposes over all of its Mobile Offshore Renewables Unit Occupants, to discontinue Economic Activities, to direct safety operations and to order the Unmanned Mobile Offshore Renewables Unit's movement or evacuation without prior reference to the Unmanned Mobile Offshore Renewables Unit Owner or Licensee or other management or governmental authority.

8.4 No disciplinary action shall be taken by the employer of a person in command of a Manned Mobile Offshore Renewables Unit against that person who exercises in good faith any authority under ~~sub-article~~

paragraph 8.3 or by the employer of a person in charge of an Unmanned Mobile Offshore Renewables Unit against that person who exercises in good faith any authority under paragraph 8.3.A.

8.5 Coastal States ~~Parties~~, by law or by terms of Licences for the operation of Mobile Offshore Renewables Units ~~Artificial Islands~~ and Related Appurtenances, shall provide for standards of occupational health and safety for Mobile Offshore Renewables Unit Workers. Such standards shall be consistent with occupational health and safety practices generally accepted by the international technical community or as established by the International Labour Organization and shall include provision for:

- (~~ia~~) a comprehensible common language of command;
- (~~ib~~) permissible hours of work and overtime;
- (~~ic~~) victualling and accommodation;
- (~~id~~) protective clothing and equipment;
- (~~ie~~) training and supervision;
- (~~if~~) onboard medical resources;
- (~~ig~~) evacuation, medical treatment and repatriation of Mobile Offshore Renewables Unit Workers to injured Mobile Offshore Renewables Unit Workers' domicile;
- (~~ih~~) joint management/labour safety consultation; and
- (~~ix~~) rights to Mobile Offshore Renewables Unit Workers, of confidential communication with regulatory authorities.

The standards provided by ~~subclauses subparagraphs~~ subparagraphs (~~ib~~), (~~ic~~), and (~~id~~), (~~xi~~) and (~~xii~~) shall extend to Mobile Offshore Renewables Unit Occupants.

8.6 Coastal States ~~Parties~~ shall provide for appropriate standards of operation of offshore support craft when operated in association with Mobile Offshore Renewables Units ~~and Artificial Islands~~ engaged in Economic Activities. These standards shall include provision for:

- (~~ia~~) standby distances;
- (~~ib~~) collision avoidance;
- (~~ic~~) use of cranes and walk-to-work systems;

- (ivd) pollution prevention and control;
- (ve) firefighting; and
- (vif) search and rescue.

8.7 Coastal States ~~Parties~~ shall provide for appropriate standards of operation of offshore support aircraft and helicopters when operated in association with Mobile Offshore Renewables Units ~~and Artificial Islands~~ engaged in Economic Activities. These standards shall include provision for:

- (a) pilot and aircrew training;
- (b) flight planning;
- (c) visibility standards;
- (d) firefighting and evacuation; and
- (e) search and rescue.

8.8 Coastal States ~~Parties~~ shall provide for appropriate standards of construction and operation of diving craft and equipment operated in association with Mobile Offshore Renewables Units ~~and Artificial Islands~~ engaged in Economic Activities. These standards shall include provision for:

- (a) material and operations quality assurance;
- (b) periodic inspection and maintenance;
- (c) operator training and qualifications; and
- (d) search and rescue.

8.9 Each State Party shall require that Owners of Mobile Offshore Renewables Units, ~~Artificial Islands and Related Appurtenances~~ establish and maintain an emergency response and search and rescue plan.

8.10 The emergency response and search and rescue plan shall contain provision for reporting, distress communications, firefighting, stability control, mustering, evacuation and use of survival craft and equipment.

8.11 Coastal States ~~Parties~~ shall establish and maintain search and rescue systems adequate to the extent and type of Economic Activities being carried on in their Internal Waters, Territorial Sea, and Exclusive Economic Zone ~~or adjacent continental shelf~~.

8.12 Each State Party shall require that the Master or other person in charge of an Mobile Offshore Renewables Unit or Artificial Island report to a designated authority:

- (a) any death or serious injury of an Mobile Offshore Renewables Unit Occupant;
- (b) the sinking or destruction of an Mobile Offshore Renewables Unit or Artificial Island or Related Appurtenance;
- (c) any uncontrolled loss of stability of an Mobile Offshore Renewable Unit;
- (d) any outbreak of fire on an Mobile Offshore Renewables Unit, Artificial Island or Related Appurtenance;
- (e) any collision or grounding involving an Mobile Offshore Renewables Unit, Artificial Island or Related Appurtenance;
- (f) any structural failure of an Mobile Offshore Renewables Unit, Artificial Island or Related Appurtenance; and
- (g) any situation or condition, which, if left unattended, could induce an accident or incident of the type described above.

8.13 Coastal States Parties shall establish and maintain accident investigation services to review reports made pursuant to ~~sub-article~~ paragraph 8.12, and where appropriate to investigate reported occurrences. Where a reported occurrence involves an Mobile Offshore Renewables Unit of a flag other than that of the Coastal State, or Mobile Offshore Renewables Unit Occupants other than residents of the Coastal State, the Mobile Offshore Renewables Unit Flag State and the States of the Mobile Offshore Renewables Unit Occupant's domicile shall be entitled to designate observers to participate in the investigation and have access to information gained from the investigation. The report of the Coastal State shall be publicized.

8.14 Coastal States Parties shall ensure, through conditions of license, provision of insurance or evidence of financial responsibility, or assumption of responsibilities by domestic non-governmental organizations or governmental entities, that Owners have administrative and financial resources appropriate to the effective implementation of standards and activities for which they are responsible under this Article.

8.15 An Mobile Offshore Renewables Unit Flag State or a Coastal State may delegate administration of any operation or standard provided

for in this Article to Licensees, Mobile Offshore Renewables Unit Owners or non-governmental entities. Such delegation does not relieve State Parties to this Convention of their responsibilities of compliance with this Article.

8.16 State Parties shall ensure that delegated authorities under this Article have sufficient technical expertise and financial resources to adequately discharge such administration.

## ARTICLE IX

### Salvage Not used.

9.1 ~~This Article applies to Offshore Units, Artificial Islands and Related Appurtenances, and components thereof, while afloat or being carried by water during any period of transit or while on location other than while engaged in Economic Activities.~~ Not used.

9.2 ~~In this Article,~~

(i) ~~‘hazard to navigation’ means any obstruction above the seabed to ships exercising rights of innocent passage in territorial waters and any ships navigating or operating in the Exclusive Economic Zone or adjacent seaward Continental Shelf.~~

(ii) ~~‘discharge of pollutant’ means the discharge or emission of persistent oil or any substance or energy which has or is likely to have a deleterious effect upon the aquatic or shore biota of the Territorial Sea, Exclusive Economic Zone or adjacent Continental Shelf of any party, or of the common area.~~ Not used.

9.3 ~~Each State Party shall require that Owners or Operators of Offshore Units, Artificial Islands and Related Appurtenances have an emergency salvage plan.~~ Not used.

9.4 ~~The emergency salvage plan shall contain provision for response to uncontrolled discharges or emissions of pollutants from natural or artificial reservoirs with which the operation of the Offshore Unit, Artificial Island or Related Appurtenances is associated.~~ Not used.

9.5 ~~Each State Party shall require that the Master or other person in charge of an Offshore Unit, Artificial Island or Related Appurtenance under its jurisdiction report without delay any event involving a hazard to navigation or a discharge or probable discharge of a pollutant to:~~

- a) ~~any Coastal State in whose territorial waters, Exclusive Economic Zone or adjacent seaward Continental Shelf the event occurs;~~
- b) ~~any Party grantor of any applicable License; and~~
- e) ~~any Party in which the Offshore Unit is registered. Not used.~~

9.6 ~~Each State Party shall establish a national system for responding promptly and effectively to such reports of hazards to navigation or discharges or probable discharges of pollutants consistently with the requirements of Article 60 of UNCLOS. Not used.~~

9.7 ~~The Salvage Convention is extended to Offshore Units, Artificial Islands and Related Appurtenances while on location and not engaged in Economic Activities. Not used.~~

## ARTICLE X

### Removal

10.1 This Article applies to Mobile Offshore Renewables Units, ~~Artificial Islands~~ and Related Appurtenances located in navigable waters through which rights of innocent passage may be exercised, in the Exclusive Economic Zone ~~or on the adjacent seaward Continental Shelf.~~

10.2 In this Article, “hazard to navigation” means any obstruction above the seabed to ships or Mobile Offshore Renewables Units exercising rights of innocent passage in territorial waters and any ships or Mobile Offshore Renewables Units navigating or operating in the Exclusive Economic Zone ~~or adjacent seaward Continental Shelf.~~

10.3 Each State Party shall require that Owners or Operators of Mobile Offshore Renewables Units, ~~Artificial Islands~~ and Related Appurtenances have a plan for:

- (a) ensuring the continued safety of navigation and protection of the marine environment in the surrounding waters once use, Economic Activities, or other operations cease; or
- (b) their removal or partial removal to permit safety of navigation and protection of the marine environment.

10.4 Each State Party shall establish a national system for responding to any Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances under its jurisdiction, which becomes abandoned or

derelict and which may involve a hazard to navigation or a discharge or probable discharge of pollutants.

10.5 Where an Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances is abandoned or derelict and a hazard to navigation or the marine environment, each State Party shall take reasonable measures to mark, alter or remove any Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances within that Party's jurisdiction so that it ceases to be a hazard to navigation or to the marine environment.

## ARTICLE XI

### Pollution

#### Definition

11.1 In this Article, "Pollution Damage" means loss or damage caused outside an Mobile Offshore Renewables Unit, ~~Artificial Island~~ and Related Appurtenances ~~or outside a natural reservoir or other geologic formation~~, by the escape or discharge of a pollutant and includes the costs of preventive measures and further loss or damage caused by preventive measures.

#### Application

11.2 This Article applies to Pollution Damage caused by or arising from the emission or discharge of pollutants from Mobile Offshore Renewables Units, ~~Artificial Islands~~ and Related Appurtenances at any time ~~and to emissions or discharges from natural reservoirs or other geological formations only during the course of Economic Activities and which are caused by or arise from such Economic Activities.~~

11.3 ~~This Article applies to pollution damage caused by or arising from the emission or discharge of pollutants from ships, except survey, standby and supply vessels, while engaged in Economic Activities. Not used.~~

#### Liability

11.4 Liability for Pollution Damage caused by or arising from the emission or discharge of pollutants from Mobile Offshore Renewables Units, ~~Artificial Islands~~ or Related Appurtenances shall attach to the Owner.

11.5 The Licensee shall be liable for Pollution Damage caused by or arising from the emission or discharge of pollutants from ~~natural~~

reservoirs or other geologic formations any activities it or its agents carry out within the Licenced area, other than emission or discharge of pollutants from a Mobile Offshore Renewable Unit addressed by paragraph 11.4.

11.6 Where an Mobile Offshore Renewables Unit, Artificial Island or Related Appurtenance has more than one Owner, they shall be jointly and severally liable.

11.7 No liability for Ppollution Ddamage shall attach to an Owner or Licensee if it proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character.

11.8 Rights of compensation under this Article shall be extinguished unless legal proceedings are brought within two years from the date when the Ppollution Ddamage occurred. In no case shall legal proceedings be brought after six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

11.9 If the Owner or Licensee proves that the Ppollution Ddamage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the Owner or Licensee may be exonerated wholly or partly from his liability to such person.

11.10 No claim for compensation for Ppollution Ddamage shall be made against the Owner or Licensee otherwise than in accordance with this Convention.

11.11 No claim for compensation for Ppollution Ddamage under this Convention or otherwise may be made against the servants or agents of the Owner or Licensee.

11.12 A Licensee liable for Ppollution Ddamage under this Article shall not have any right of recourse.

## ARTICLE XII

### Apportionment of Liability

12.1 This Article applies to any occurrence which may give rise to civil liability which is causally related to:

- (a) Economic Activities;

- (b) the movement of Mobile Offshore Renewables Units, ~~Artificial Islands~~ and Related Appurtenances by water or to or from a location where Economic Activities are intended to take place or have taken place;
- (c) the presence of an Mobile Offshore Renewables Unit Worker or Mobile Offshore Renewables Unit Occupant on or in the proximity of an Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances; and
- (d) a failure or neglect to comply with or perform any duty under this Convention.

12.2 Where loss is caused by the fault or neglect of two or more persons, their liability is proportionate to the degree to which they are respectively at fault or negligent, and if it is not possible to determine different degrees of fault or neglect, their liability is equal.

12.3 Persons that are at fault or neglect are jointly and severally liable to the persons suffering the loss, but, as between themselves, they are liable to make contribution to each other or to indemnify each other in the degree to which they are respectively at fault or negligent.

12.4 A person who is entitled to claim contribution or indemnity under this Article from another person that is or may be liable in respect of a loss may do so:

- (a) by proceedings under Article V of this Convention;
- (b) by adding the other person as a party to a proceeding pending before a Court or tribunal of competent jurisdiction;
- (c) by commencing a proceeding in a Court or tribunal of competent jurisdiction;
- (d) if the other person has settled with the person suffering the loss, by commencing or continuing a proceeding before a Court or tribunal of competent jurisdiction.

12.5 No claim may be made under ~~sub-article-paragraph~~ 12.4(d) later than one year after the date of judgment in the proceeding or the date of the settlement agreement.

12.6 The Court or tribunal before which a proceeding is commenced or continued under ~~sub-article-paragraph~~ 12.4 (d) may adjust or deny the amount awarded if it is not satisfied that the settlement was reasonable.

12.7 The rights conferred by this Article on a person that is found liable or settles a claim are subject to any existing contract, consistent with the duties and obligations under this Convention, between the person claiming and a person from whom contribution or indemnity is claimed.

### ARTICLE XIII

#### Limitation of Liability

##### Application

13.1 This Article does not apply to:

- (a) claims subject to any international convention or national legislation respecting nuclear damage; and
- (b) claims by Mobile Offshore Renewables Unit Occupants or their heirs or dependants, where the law of domicile of the Mobile Offshore Renewables Unit Occupant or their heirs or dependants do not permit employers or owners or occupiers to limit their liability;

13.2 The Owner or Licensee of an Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances, and persons for whose acts or omissions they are responsible, may limit their liability as set out in this Article.

13.3 The following claims are subject to limitation of liability:

- (i)a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring in direct connection with the operation of the Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances;
- (ii)b) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances; and
- (iii)c) claims, other than under contract, in respect of the raising, removal, destruction or rendering harmless of the Mobile Offshore Renewables Unit, ~~Artificial Island~~ or Related Appurtenances.

13.4 A person shall not be entitled to limit its liability if it is proved that the loss resulted from personal act or omission, committed with intent to cause such loss, or recklessly and with the knowledge that such loss would probably result.

13.5 The limits of liability for claims arising on any distinct location, shall be calculated as follows: [Units of Account per mass ton or deadweight ton (including that of any Related Appurtenance)] [ A. for Pollution damage] [ B. for non-Pollution damage].

13.6 Where the claim in respect of which limitation is asserted arises from the operation of two or more Mobile Offshore Renewables Units or Artificial Islands by the same Owner, the limit of liability is calculated on the basis of their combined mass tonnage or deadweight tonnage.

13.7 The limit of liability shall apply to the aggregate of claims which arise on any distinct occasion.

#### THE LIMITATION FUND

##### Constitution of the fund

13.8 Any person alleged to be liable may constitute a fund with the Court or other competent authority of any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in paragraph 13.5 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

13.9 A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

13.10 A fund constituted by one of the persons mentioned in paragraph 13.2 or their insurer shall be deemed constituted by all persons stipulated in that paragraph.

##### Distribution of the fund

13.11 Subject to the provisions of paragraphs 5.3 and 5.6 of Article V and of paragraph 13.14, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

13.12 If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

13.13 Such subrogation rights in respect of claims provided for in paragraph 13.12 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

13.14 Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 13.12 and 13.13 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

#### Bar to other actions

13.15 Where a limitation fund has been constituted in accordance with this Article, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

13.16 After a limitation fund has been constituted in accordance with this Article, any Mobile Offshore Renewables Unit or Related Appurtenance (including any Sister Unit or its Related Appurtenances), belonging to a person on behalf of whom the fund has been constituted, which has been arrested within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released or alternate remedy discharged by Order of the Court or other competent authority of such State. However, such release or discharge shall always be ordered if the limitation fund has been constituted in the State where the arrest is made.

13.17 The rules of paragraphs 13.15 and 13.16 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

## Governing law

13.18 Subject to the provisions of this Article, the rules relating to the constitution and distributions of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

## ARTICLE XIV

## Financial Responsibility

14.1 To cover its liability under this Convention, each Owner of an Mobile Offshore Renewables Unit and its Related Appurtenances shall be required to have and maintain insurance or other financial security of such type and on such terms as the ~~Flag State Party~~ of the Mobile Offshore Renewables Unit shall specify, provided that the amount shall not be less than the greater of the limitation funds calculated in accordance with ~~Article paragraph~~ 13.5 in respect of the Mobile Offshore Renewables Unit and Related Appurtenances.

~~14.2 To cover its liability under this Convention each Owner of an Artificial Island or related appurtenance shall be required to have and maintain insurance or other financial security of such type and on such terms as the grantor of the License in respect of the Artificial Island or Related Appurtenances as the grantor of the License shall specify, provided that the amount shall not be less than the greater of the limitation funds calculated in accordance with Article 13.5 in respect of the Artificial Island or Related Appurtenances. Not used.~~

14.3 To assist in the discharge of its obligations under this Convention, each Licensee shall be required to have and maintain insurance or other financial security of such type and on such terms as the Coastal State grantor of the License shall specify, provided that the amount shall not be less than the cumulative amount of the limitation funds established by this Convention in respect of each Mobile Offshore Renewables Unit, ~~Artificial Island or~~ and Related Appurtenances covered by the License.

14.4 An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security, before two months have elapsed from the date on which notice of its termination is given to the competent public authority of the ~~Flag State Party~~ or Party Coastal State grantor of the License. The foregoing provision shall

similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

14.5 Any claim for compensation for ~~P~~ollution ~~D~~amage may be brought directly against the insurer or other person providing financial security for the Owner or Licensee's liability for ~~P~~ollution ~~D~~amage. In such case the liability of the defendant shall be limited to the amount specified in accordance with paragraph 13.5 irrespective of the fact that the ~~P~~ollution ~~D~~amage occurred as a result of an act or omission by the Owner or Licensee himself, done deliberately with actual knowledge that ~~P~~ollution ~~D~~amage would result. The defendant may further avail himself of the defences, other than the bankruptcy or winding up of the Owner or Licensee, which the Owner or Licensee himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the ~~P~~ollution ~~D~~amage resulted from the wilful misconduct of the Owner or Licensee himself, but the defendant may not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the Owner or Licensee against him. The defendant shall in any event have the right to require the Owner or Licensee to be joined in the proceedings.

14.6 Any sums provided by insurance or by other financial security maintained in accordance with paragraphs 14.1 and 14.2 shall be available in the first place for the satisfaction of claims under this Convention.

14.7 Where the Owner or Licensee is a State Party, the Owner or Licensee shall not be required to maintain insurance or other financial security to cover its liability.

## ARTICLE XV

### Administration and Revision

15.1 A Committee composed of a representative of each State Party is hereby established.

15.2 Within three months of the deposit of the final instrument of ratification or accession by which this Convention shall come into effect, the Committee shall meet to consider the establishment and procedures for the financing and administration of the International Register for Mobile Offshore Renewables Units authorized under Article IV.

15.3 The Committee may, by consensus or by vote of at least two thirds of State Party representatives present, recommend a procedure or procedures for the financing and administration of such International Register, and to make recommendations with respect to such other matters related to this Convention as the Parties may requisition in accordance with this Article.

15.4 If the recommendation respecting the financing and administration of the International Register is accepted under this Article, the Committee shall meet at least annually to consider the continued administration, financing or dissolution of the International Register.

15.5 At the request of the International Maritime Organization, or of the International Labour Organization, or at the request of at least one third of the parties to this Convention received by [IMO or ~~D~~epository ~~G~~overnment] within any six month period, the Committee shall meet to consider the adoption of standards or guidelines with respect to Article VIII.

15.6 At the request of at least one third of the Parties to this Convention received by [IMO or Depository Government] within any six-month period, the Committee shall meet to consider matters respecting the amendment of this Convention submitted for consideration by Parties.

15.7 The recommendations of the Committee shall be notified by [IMO or Depository Government] to all State Parties. A State Party, which, within six months of such notification, has not notified [IMO or Depository Government] that it is unable to accept such recommendation, shall be deemed to have accepted it.

15.8 A recommendation of the Committee shall become binding on State Parties if the recommendation has been achieved by consensus or is adopted unanimously, or has been accepted by at least two thirds of the State Parties.

## ARTICLE XVI ~~ET SEQ~~

### Freedom of the Seas and Innocent Passage

16.1 No State Party to this Convention shall seek to impair, limit, or deny a Mobile Offshore Renewables Unit [registered as a ship or otherwise in any other State Party] any freedom (including freedom of the high seas, navigation, or transit) or right of innocent passage which it recognizes as applying to a traditional ship, regardless of whether such

freedom or right is recognized by the first State Party in relation to a traditional ship:

- (a) under and in accordance with UNCLOS (if applicable); or
- (b) to the extent that State Party is not a Party to UNCLOS, in accordance with the customary law of the sea,

and each State Party hereto which is also a party to UNCLOS shall notify the depository of UNCLOS of their intent to conclude this Convention (including this Article XVI) in accordance with article 311 of UNCLOS.

16.2 As between the State Parties to this Convention which are also party to UNCLOS, paragraph 16.1 and UNCLOS shall be read and interpreted together as one single instrument. A Party to this Convention shall have no duty to apply the provisions of this Article XVI in relation to any Mobile Offshore Renewables Unit which is unregistered or is registered in a state which is a Party to UNCLOS but which is not a Party to this Convention. As between the Parties to this Convention, denunciation by any of them of UNCLOS, in accordance with article 317 thereof, shall not be construed in any way as a denunciation of UNCLOS as amended by this Convention.

16.3 Nothing in paragraphs 16.1 or 16.2 above shall be construed as creating any freedoms or rights in relation to Mobile Offshore Renewables Units, which do not exist for traditional ships under the law applied by the Court of a State Party which has seisin in relation to the Mobile Offshore Renewables Unit, nor as creating any such freedoms or rights for Mobile Offshore Renewables Units which do not exist for traditional ships under such law or under UNCLOS, if the latter is applicable.

## ARTICLE XVII

### Relationship Between the Convention and the Protocols

17.1 This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the [x<sup>th</sup>] instrument of ratification, acceptance, approval or accession but only as regards a category of Mobile Offshore Renewables Unit to which a Protocol applies:

- (a) as from the time of entry into force of that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between State Parties to this Convention and that Protocol.

17.2 This Convention and the Protocols relevant to a Mobile Offshore Renewables Unit shall be read and interpreted together as a single instrument.

17.3 To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

17.4 [To the extent of any inconsistency between the Protocol for Manned Mobile Offshore Renewables Units and any other Protocol, the Protocol for Manned Mobile Offshore Renewables Units shall prevail.]

17.5 The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile offshore equipment, other than a category referred to in paragraph 2.4, each member of which is uniquely identifiable, and associated rights and obligations relating to such objects, provided that such category of mobile offshore equipment is consistent with the principles or objectives of this Convention.

17.6 The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all State Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

17.7 The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

17.8 When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

17.9 Once such a Protocol has been adopted, this Convention shall apply to the category of objects covered thereby.

## ARTICLE XVIII

Allocation of Nationally Determined Contributions  
under the Paris Agreement to the UNFCCC

18.1 In the absence of any valid and binding bilateral or multilateral agreement to the contrary, the State Parties hereto agree that the Coastal State, and not the Flag State, shall be entitled to include any foreign registered Mobile Offshore Renewable Units operating under a Licence issued by the Coastal State in its Nationally Determined Contributions under the Paris Agreement to the UNFCCC and each State Party hereto which is also a party to the Paris Agreement shall notify the Conference of the Parties to Paris Agreement in accordance with of their agreement between themselves to this default international transfer of mitigation outcomes and allocation of Nationally Determined Contributions in accordance with articles 6(1) to 6(3) of the Paris Agreement with the enactment of this Convention.

## ARTICLE XIX

Mandatory Accession to Other Conventions

19.1 No Contracting State shall have any rights or obligations under this Convention unless and until it is also a contracting state to each of the following conventions:

- (a) [International Convention on Salvage, 1989]<sup>21</sup>
- (b) [International Convention on Civil Liability for Bunker Oil]<sup>22</sup>
- (c) [International Convention on the Removal of Wrecks]<sup>23</sup>

19.2 Notwithstanding paragraph 19.1, if and to the extent that any rights were accrued or obligations incurred under this Convention prior to the point in time in which the Contracting State ceased to be a contracting state in each of the conventions listed in paragraph 19.1(a)-(x), those rights and obligations shall still be enforceable by and against other Contracting States to this Convention.

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21. International Convention on Salvage, (Apr. 28, 1989), 1953 U.N.T.S. 165 (entered into force July 14, 1996) [hereinafter *Salvage Convention 1989*].

22. International Convention on Civil Liability for Bunker Oil Pollution Damage, Mar. 27, 2001, 40 I.L.M. 1493 (entered into force Nov. 21, 2008) [hereinafter *Bunker Oil Convention*].

23. Int'l Mar. Org. [IMO], IMO No. 55565, *Nairobi International Convention on the Removal of Wrecks* (May 23, 2007), <http://folk.uio.no/erikro/WWW/Wreck%20Removal%20Convention.pdf> [Wreck Removal Convention].

## ARTICLE XX

Forms of Registered Security Interests

20.1 In its document of accession to this Convention, each Contracting State shall declare:

- (a) the form of publicly accessible registered security interest (be it a mortgage, hypothec, or another form of publicly accessible registered in rem non-possessory collateral right), which, when registered in the State Registry of such Contracting State, shall have, subject to this Convention, priority over other all registered and unregistered security interests in a Mobile Offshore Renewables Unit; and
- (b) the public or private entity or entities authorized by such Contracting State to act in the capacity of its State Registry or Registries.

## ARTICLE XXVXXI ET SEQ

[provisions on signature, ratification, acceptance, approval, accession, coming into effect denunciation in relation to MORUs of any other potentially applicable and conflicting topical maritime Conventions, and depository authority, in each instance in relation to both the MORU Convention itself and each of the Protocols thereto]

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COMMENTARY ON ~~MAY—2001~~ 20\_\_ DRAFT MORUC  
CONVENTION

## Preamble

The preamble is intended to set out basic principles from which the convention is developed.

## Definitions

~~“artificial island” installations formed from natural dredged materials or fill of natural origin are excluded from operation of the convention as:~~

~~—these are more likely to be found in the internal or territorial waters of states; and~~

~~—while UNCLOS does not permit creation of artificial islands for the purpose of manipulating maritime boundaries, the creation of an artificial~~

~~island from natural materials is more likely to attract the application of domestic law relating to real property or immovables~~

In contrast to the Vancouver Draft, “Artificial Islands” has been removed entirely from the MORU Convention, as they are likely to raise different legal issues than floating equipment likely to cross maritime boundaries several times in its lifetime, capable of sinking on location or in transit, being arrested in ports, etc.

Cables and (if and when relevant) Pipelines are excluded from operation of the MORU Convention, as they are likely to be fixed assets not forming appurtenances to the MORUs and give rise to other legal concerns. Further, it is considered that existing provisions of UNCLOS<sup>24</sup> and other international agreements<sup>25</sup> sufficiently covers pipeline and subsea cable operation. Wellheads are covered, as they, rather than pipelines, are a critical link for operational risk management and the liability regime.

“Economic Activities” – these are restricted to activities associated with hydrocarbons and mineral resources in view of the express preferences of national maritime law associations the economic exploitation of the offshore areas through the production of energy from the water, currents, and winds.<sup>26</sup> Although solar energy is not specifically mentioned in UNCLOS art. 56(1)(a),<sup>27</sup> it arguably fits within the meaning of that article or the term “other economic purposes” in UNCLOS art. 60(1)(b).<sup>28</sup> Similarly, ancillary activities to energy production, including the transformation, manipulation, conversion, conditioning, monitoring, measurement, or storage of electrical power fall within the meaning of economic exploitation.<sup>29</sup>

“Coastal State” “continental shelf” “Exclusive Economic Zone” “Territorial Sea” “Internal Waters” – the UNCLOS definitions are adopted to ensure consistency of application.

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24. See UNCLOS, *supra* note 17, art. 21(1)(c), 51(2), 58(1), 58(2) (incorporating by reference Art. 112-115 into the EEZ), 79, 87(1)(c), 297(1)(a).

25. See Convention for the Protection of Submarine Telegraph Cables, Paris, Mar. 14, 1884, T.S. 380 (1888); see also Aldo Chircop & Peter L’Esperance, *Functional Interactions and Maritime Regulation: The Mutual Accommodation of Offshore Wind Farms and International Navigation and Shipping*, 30 OCEAN YEARBOOK 1, 10-12 (2016), <https://ssrn.com/abstract=2757060>; *Mare Incognitum, Part I*, *supra* note 1, at 321; *Mare Incognitum, Part II*, *supra* note 4, at 80.

26. See UNCLOS, *supra* note 17, art. 56(1)(a).

27. See *id.*, art. 56(1)(a).

28. See *id.*, art. 60(1)(b).

29. See *id.*, art. 60(1)(b).

In contrast to the Vancouver Draft which addressed O&G MOUs and their exploitation of sub-sea mineral resources (i.e. oil and gas), the term “continental shelf” has been deleted in the draft MORU Convention, on the basis that the exclusive<sup>30</sup> and sovereign rights to explore and exploit the natural resources on the continental shelf granted to the coastal state under UNCLOS<sup>31</sup> are limited to exploitation of sub-sea mineral resources and do not include the production of energy from water, currents[, sun,] and winds (i.e. Economic Activities as defined in this Convention).<sup>32</sup>

“Floating Energy Storage System,”<sup>33</sup> “Floating Grid Integration System,”<sup>34</sup> “Floating Measurement Unit,”<sup>35</sup> “Floating Ocean Thermal Energy Converter,”<sup>36</sup> “Floating Operations, Maintenance, and Accommodation Facility,”<sup>37</sup> “Floating Solar Energy Converter,”<sup>38</sup> “Floating Solar Raft,”<sup>39</sup> “Floating Solar Modules,”<sup>40</sup> “Floating Tidal Energy Converter,”<sup>41</sup> “Floating Wave Energy Converter,”<sup>42</sup> and “Floating Wind Turbine,”<sup>43</sup> are introduced to define the categories of MORUs included in paragraph 2.4 (and to which this draft MORU Convention would apply under paragraph 2.1, subject to agreement on relevant Protocols thereto).

“International Register” was used in the Vancouver Draft, but undefined therein.<sup>44</sup>

“Licensee” “Licensee” – this definition is cast broadly to reflect the wide range of rights of exploitation (e.g. generation, conversion, transmission,

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30. *See id.* art. 77(2).

31. *See UNCLOS, supra* note 17, art. 77(1).

32. *See id.* art. 77(4) (limiting non-living “natural resources” for purposes of Part VI (Continental Shelf) of UNCLOS to mineral and other non-living resources of the seabed and subsoil).

33. *See Mare Incognitum, Part I, supra* note 1, at 316-317.

34. *See id.* at 317-318.

35. *See id.* at 319.

36. *See id.* at 304-305.

37. *See id.* at 319-320.

38. *See Mare Incognitum, Part I, supra* note 1, at 305-306, 343.

39. *See id.* at 305-306, 343.

40. *See id.*

41. *See id.* at 307-308.

42. *See id.* at 308-309.

43. *See id.* at 309-316.

44. *Compare* Convention on International Interests in Mobile Equipment art. 1(p), 16-26, opened for signature Nov. 16, 2001, 118 Stat. 1095, 2307 U.N.T.S. 285 (entered into force Apr. 1, 2004) [hereinafter *CTC*].

distribution, storage) granted by Coastal States, and to ensure the MORUC Convention is applied to the substance of offshore renewables Economic Activities, regardless of the form that concessions of use may take.

“Manned” and “Unmanned” – in contrast to many O&G MOUs, many Mobile Offshore Renewables Units will be unmanned in normal operation. Hence, a distinction should be made between Manned and Unmanned Mobile Offshore Renewables Units.

“Mobile Offshore Renewables Array” – in contrast to many offshore oil and gas developments, offshore renewables projects may consist of a number of floating generating units, but nonetheless likely would be operated as a single power plant under a common production Licence. The floating generating units of the Array may be supported by a number of floating auxiliary units, under the production Licence (or their own specific Licence). The term Mobile Offshore Renewables Array has been introduced in that context.

“Mobile Offshore Renewables Unit” – This definition is intended to be functional so as to include existing, emerging and future floating renewable energy technologies (and combinations of technologies) as they are developed and addressed under a Protocol covering that technology. It should include units providing ancillary services to the primary generation/production units, and exclude from coverage present and future floating energy production technologies with significantly different pollution or risk profiles such as floating fossil fuel or floating nuclear power plants. Units used for the “accommodation of personnel and equipment” are now covered by the term “Floating Operations, Maintenance, and Accommodation Facility.” Given the wide variety of mooring concepts possible, and likelihood of long-term mooring at site for many MORUs, some attention should be paid to the meaning of “permanently fixed into the sea bed”. Given the variety of MORU Related Appurtenances concepts (including modular Floating Solar Raft concepts, detachable pontoon concepts, etc.) being explored, clarity must be provided in relation to whether those Related Appurtenances are owned by the same Owner and/or legally form part of the Mobile Offshore Renewables Unit itself or considered as a separate object.

“Mobile Offshore Renewables Unit Worker” “Mobile Offshore Renewables Unit Occupant” these persons are defined distinctively as the MORUC Convention applies in distinct ways to their distinctive

status. Insofar as many Mobile Offshore Renewables Units (particularly those which are normally Unmanned) may be primarily monitored or operated remotely from onshore facilities, the draft MORU Convention's coverage is limited to those individuals actually performing activities offshore.

“Owner” – this broad definition is intended to ensure that the obligations and benefits of the MORU Convention applies to those in effective functional control of the Mobile Offshore Renewable Unit, regardless of the form of use or operation.

“Petroleum” has been deleted in the MORU Convention as irrelevant (in contrast to the Vancouver Draft).

“Pollutant” – this definition is intended to cover the broad range of substances chemicals and processes which may be undertaken on Mobile Offshore Renewables Units and artificial islands.

“Protocol” — this definition is meant to refer to any Protocol covering a category of Mobile Offshore Renewables Units which might be enacted from time to time.<sup>45</sup>

“Related Appurtenances” — given the diversity of designs of Mobile Offshore Renewables Units (including modular Floating Solar Raft concepts, detachable pontoon concepts, etc.),<sup>46</sup> the term “Related Appurtenances” seems even more relevant than it is in relation to O&G MOUs under the Vancouver Draft and has been expanded.

“registered security interest”—in order to accommodate any form of “first-ranking” registered in rem security interests which a Flag State might wish to declare as its preferred form for Mobile Offshore Renewables Units,<sup>47</sup> a more generic term than the Vancouver Draft’s use of the traditional terms “mortgage” and “hypothec” has been used in the draft MORU Convention.<sup>48</sup> In principle, this could accommodate a “registered interest” under a hypothetical Cape Town Maritime Protocol regime encompassing Mobile Offshore Renewables Units, if and when that is enacted, and subsequently designated as its preferred form of

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45. See *CTC*, *supra* note 44, art. 1(aa).

46. See *Mare Incognitum, Part I*, *supra* note 1, at 301-321.

47. See *id.* at 337 (noting the possibility of a nation using something other than a ship mortgage or hypothec as the primary form of domestically registered security interest in a MORU).

48. Compare *CTC*, *supra* note 44, art. 1(cc) (providing a broad and flexible definition of “registered interest”).

“registered security interest” by a MORU Convention State Party under art. 20.1(a).

“Sister Unit”—given the multi-unit nature of Mobile Offshore Renewables Arrays, this concept seems even more relevant than it is in relation to O&G MOUs under the Vancouver Draft and has been used more frequently herein.

“State Registry” has been defined to distinguish the domestic registries of State Parties from the “International Register” referred to in paragraphs 4.7, 4.8, 4.9, 15.2, 15.3, and 15.4.

#### Application

2.1 ~~With the exception of artificial islands or components in transit,~~ The MORU Convention is intended to have a similar geographic scope of application to Economic Activities as UNCLOS,<sup>49</sup> but (in contrast to the Vancouver Draft) is intended to be used in conjunction with technology specific Protocols much like the Cape Town Convention. See also paragraphs 2.1, 2.4, and Article XVIII. As discussed in the Commentary above<sup>50</sup> and in contrast to the Vancouver Draft, the term “continental shelf” has been deleted in this draft MORU Convention. The possibility of an incident in State Party waters involving a foreign Flag State MORU destined for non-State Party waters should be considered.

2.2 A voluntary right extension of application of the MORU Convention to Territorial Sea or Internal Waters is intended to facilitate general adoption of the MORU Convention.

2.3 ~~It is~~ Based on the CASE CONCERNING PASSAGE THROUGH THE GREAT BELT, (FINLAND v. DENMARK),<sup>51</sup> domestic decisions and cases, and the numerous articles in legal academia over the years,<sup>52</sup> all asking “What is a ship?” and whether some strange watercraft (or a component thereof, such as an incomplete but floating MORU hull under tow) was in fact legally considered one, it is unclear that the existing international legal regime covering ships would apply to

49. See Commentary to Definitions, *supra* notes 48, 49, 50, above (explaining the removal of the term “continental shelf” from this draft Convention, in contrast to the Vancouver Draft).

50. See *id.*

51. See Passage through the Great Belt (Fin. v. Den.), Provisional Measures, 1991 I.C.J. 12 (July 29, 1991), <https://www.icj-cij.org/public/files/case-related/86/086-19910729-ORD-02-00-EN.pdf>; Passage through the Great Belt (Fin. v. Den.), Discontinuance Order, 1992 I.C.J. 348, 348-49 (Sept. 10, 1992), <https://www.icj-cij.org/public/files/case-related/86/086-19920910-ORD-01-00-EN.pdf>. [hereinafter *Great Belt*].

52. See *Mare Incognitum, Part I*, *supra* note 1, at 292-293, FN 9.

Mobile Offshore Renewables Units while in transit. In that context, paragraph 2.3 extends the application of the draft MORU Convention to periods of transit and ~~However, is much less likely that an artificial island or a component (such as the caisson foundation of a gravity-based structure) would be regarded as a ship. Therefore the OUC is intended to apply to artificial islands throughout the time of their functional existence, to ensure the objectives of safe operation and removal are met. It is a corollary of Article XVI.~~

2.4 Although the original idea for this draft MORU Convention can be traced to the bracketed text of paragraph 2.4 of the Vancouver Draft, that text has been deleted in the draft MORU Convention in favor of a slightly different approach. Unlike the Vancouver Draft but similar to the Cape Town Convention, the draft MORU Convention is intended to address an initial list of different categories of existing mobile offshore renewable energy technologies, subject to the adoption of the relevant category-specific Protocol.<sup>53</sup> Like the Cape Town Convention, it is intended to do so through a combination of generally applicable provisions in the Convention itself, as modified by any category-specific provisions in the relevant Protocol. See MORU Convention, Article XVII.

Query whether there should be specific Protocols for addressing Hybrid MORUs<sup>54</sup> (which could address how to address inter-Protocol conflicts when a Hybrid MORU such as a Floating Wind Turbine/Wave Energy Converter<sup>55</sup> is governed by two potentially conflicting category-specific Protocols—i.e. a FWT Protocol and an FWEC Protocol) or a Manned MORU Protocol to address legal issues peculiar to manned offshore facilities.

Notwithstanding the deletion of the bracketed text of paragraph 2.4 of the Vancouver Draft, 2.4 Pprovision should be is made for the extension of the MORU Convention to new forms of floating offshore sustainable economic activities consistent with the principles of the Convention, such as seabed-floating aquaculture, mariculture, plastic

53. Compare CTC, *supra* note 44, art. 2(3).

54. See *Mare Incognitum, Part I*, *supra* note 1, at 320.

55. See Nadja Skopljak, *UK Marine Energy Developer Enters Floating Wind Market*, OFFSHOREWIND.BIZ (Apr. 4, 2019), <https://www.offshorewind.biz/2019/04/04/uk-marine-energy-developer-enters-floating-windmarket/?sfns=mo> (describing FWT/FWEC hybrid unit); FLOATING POWER PLANT, <http://www.floatingpowerplant.com/> (describing a FWT/FWEC hybrid unit); Orpheo, ENEROCEAN, <http://enerocean.com/orpheo/> (combining two WTGs and wave energy converters in a hybrid unit).

waste removal, carbon dioxide removal, etc., and tourist accommodations  
~~another~~ future technologies via adoption of new Protocols in paragraphs  
17.5-17.9.

#### Ownership<sup>56</sup>

3.1 This clause is intended to facilitate application of the MORU Convention to territorial waters by those States Parties which require maritime activities in territorial waters to be undertaken by domestic flag vessels only. Outside of Territorial Seas and Internal Waters, the MORU Convention does not require Mobile Offshore Renewables Units ~~or artificial islands~~ to fly the flag of the relevant Coastal State, as long as they have some nationality.

3.2, 3.3, 3.4 (together with 4.3 and 4.6) ~~In view of the significant legal incidents of offshore unit and artificial island operation~~ As a matter of good order, it is critically necessary to avoid the operation of “stateless” Mobile Offshore Renewables Units. As a corollary, States Parties are required to recognize ownership interests and rights to transfer and use of Mobile Offshore Renewables Units and Related Appurtenances ~~artificial islands~~.

As discussed in the Commentary above<sup>57</sup> and in contrast to the Vancouver Draft, the term “continental shelf” has been deleted in this draft MORU Convention. However, it would seem that State Parties should recognize property rights in Mobile Offshore Renewables Units registered by another State Party, regardless of where that Mobile Offshore Renewables Unit is located (i.e. not only when the MORU is in the first State Party’s EEZ).

#### Registration<sup>58</sup>

4.1- 4.3 are a corollary to Article 3III and intended to carry it into effect.

4.1 This paragraph would allow a State Party to not apply Article IV to nearshore MORUs sitting in within the 12 nm line.

4.2 This paragraph, together with the definition of “registered security interest,” has been drafted in such a way as to allow a Flag State

56. See *Mare Incognitum, Part I, supra* note 1, at 335-339, 343; *Mare Incognitum, Part II, supra* note 4, at 7-8, 19-21, 53-55, 82-83.

57. See *Commentary to Definitions, supra* notes 48, 49, 50, above (explaining the removal of the term “continental shelf” from this draft Convention, in contrast to the Vancouver Draft).

58. See *Mare Incognitum, Part I, supra* note 1, at 335-339, 343; *Mare Incognitum, Part II, supra* note 4, at 53-58, 82-83; see generally *Severance & Sandgren, supra* note 5.

to declare its preferred form of “first ranking” registered security interest (be it a mortgage, hypothec, or something else), and designate whatever registry it sees fit as its “State Registry”, under paragraph 20.1.<sup>59</sup> In principle, this could accommodate a Cape Town Maritime Protocol regime encompassing Mobile Offshore Renewables Units, if and when that is enacted. This is in contrast to the Vancouver draft, which relied on traditional ship mortgages and hypothecs to provide such first ranking in rem non-possessory security.

4.5 This paragraph is derived from the 1986 United Nations Registration of Ships Convention<sup>60</sup> and is intended to ensure obligations under the MORU Convention may be enforced effectively.

4.6 This provision is analogous to the registration and mortgaging of ships.

4.7 ~~Considerable interest was expressed by some national maritime law associations for an~~ There could be much benefit gained by having an International Register of Mobile Offshore Renewables Units which (if not done by the IMO) is mandated to issue a unique identifier to all MORUs covered by the Convention and maintain an accessible central data base of the Flag State, owners, Flag State registered security interests, and holders of those registered security interests in each such MORU, particularly when this can now be done digitally. This is in contrast to the Cape Town Convention’s Register of international (vs. domestic) security interests.<sup>61</sup> This is functionally an optional clause, for the establishment, financing and continuation of the International Register is subject to the provision of the committee of States Parties under Article 15XV.

4.8 This provision places the burden on State Registries to provide the International Register with all relevant information.

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59. Compare UNCLOS, *supra* note 17, art. 94(2)(a).

60. United Nations Convention on Conditions for Registration of Ships, opened for signature Feb. 7, 1986, 26 I.L.M. 1229 opened for signature Feb. 7, 1986, 26 I.L.M. 1229, available at: [https://unctad.org/en/PublicationsLibrary/tdrsconf23\\_en.pdf](https://unctad.org/en/PublicationsLibrary/tdrsconf23_en.pdf) [hereinafter *Ship Registration Convention*].

61. See Ole Böger, *The Case for a New Protocol to the Cape Town Convention Covering Security over Ships*, 5(1) CAPE TOWN CONVENTION J. 73, 94-96 (2016), <https://doi.org/10.1080/2049761X.2016.1256432> (describing such a system in relation to a hypothetical Ship Protocol to the Cape Town Convention).

Mortgages, Registered Security Interests and Liens<sup>62</sup> and Creditors'<sup>2</sup>  
Remedies

As noted in the Commentary to the term "Registered Security Interest" above and in order to accommodate any form of "first-ranking" registered in rem security interests which a Flag State might wish to designate as its preferred form for Mobile Offshore Renewables Units under paragraph 20.1(a), the generic term "registered security interest" has been used in the draft MORU Convention in place of the Vancouver Draft's use of the more traditional terms "mortgage" and "hypothec".

5.1, 5.2 are intended to facilitate the financing of Mobile Offshore Renewables Units and to minimize conflicts of laws issues.

5.3 ~~This draft article was the subject of considerable discussion.~~ As persons having an operational or business relationship with novel technologies such as Mobile Offshore Renewables Units are generally commercially sophisticated, and therefore may manage risk by voluntary contractual means, it ~~is was~~ not thought appropriate to grant recognition of any maritime liens ex contractu. Exceptions are the maritime liens granted to Mobile Offshore Renewables Units Occupants for loss of life or personal injury and for wages and social benefits, where equal bargaining power cannot be assumed.<sup>63</sup> Claims arising from employment of Mobile Offshore Renewables Units Occupants ~~have a given could give~~ rise to significant conflict of laws issues. These are also addressed in Article 6VI.

Creditors' Remedies<sup>64</sup>

5.4-5.6 reflect generally regimes common to liens and mortgages of ships.

In relation to paragraph 5.4 and in line with other conventions governing ships and other moveable equipment,<sup>65</sup> State Parties also

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62. See *Mare Incognitum, Part I*, *supra* note 1, at 335-343, 364-368; *Mare Incognitum, Part II*, *supra* note 4, at 23, 53-62, 82-83; see generally *Severance & Sandgren*, *supra* note 5.

63. Compare International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, 1926, art. 2, reprinted at 27 AM. J. INT'L L. 28-38 (Supp. 1933), in 6E BENEDICT ON ADMIRALTY, as Doc. No. 15-6 [MLM 1926]; International Convention on Maritime Liens and Mortgages art. 4, May 6, 1993, 2276 U.N.T.S. 39 [hereinafter *MLM 1993*].

64. See *Mare Incognitum, Part I*, *supra* note 1, at 343-345, 364-367; *Mare Incognitum, Part II*, *supra* note 4, at 54, 59-60, 62-66, 82-83; see generally *Severance & Sandgren*, *supra* note 5.

65. See MLM 1926, *supra* note 63, art. 3, 6; *Compare CTC*, *supra* note 44, art. 39-40.

would be able to declare categories of maritime liens without priority over registered security interests under the draft MORU Convention.

In the discussions of paragraph 5.6 of the Vancouver Draft, there was less consensus whether a reversal of priorities in time with respect to salvage claims is necessary or desirable to encourage salvage operations of offshore units.<sup>66</sup> Query whether there would be more consensus on this point in relation to Mobile Offshore Renewables Units.

5.7, 5.8 As the continuation of, or resumption of, operation of a Mobile Offshore Renewables Unit as a part of a functioning grid system or part of other critical infrastructure may have has a far greater risk potential than, for example, an insolvent owners' bulk carrier secured in a harbor, it is desirable to control the scope of remedies exercised by secured creditors.

5.9-5.11 As the continuation of, or resumption of, operation of a Mobile Offshore Renewables Unit as a part of a functioning grid system or part of other critical infrastructure is likely of greater strategic importance to the Producing Coastal State granting the Licence, using the same example, an insolvent owners' bulk carrier secured in a harbor, these subarticles-paragraphs are similarly intended to reflect a balance between creditors' rights and the necessity of the safe and predictable operation of active Mobile Offshore Renewables Units.

#### Civil Jurisdiction<sup>67</sup>

As discussed in the Commentary to the Definitions above<sup>68</sup> and in contrast to the Vancouver Draft, the term "continental shelf" has been deleted in Article VI and throughout this draft MORU Convention.

6.1 is intended to reflect general UNCLOS policies.

6.2, 6.3 A consistent theme of the draft MORU Convention is the necessity for States Parties to properly administer it.

6.4 Apart from Mobile Offshore Renewables Unit Occupants and tort victims, the mobile offshore renewables industry should be entitled to contractual freedom in choice of law and choice of forum.

66. Compare MLM 1993, *supra* note 61, art. 5(2).

67. See *Mare Incognitum, Part I*, *supra* note 1, at 333-335; *Mare Incognitum, Part II*, *supra* note 4, at 49-50, 52-53, 64-66.

68. See Commentary to Definitions, FNs 48, 49, 50, above (explaining the removal of the term "continental shelf" from this draft Convention, in contrast to the Vancouver Draft).

6.5-6.8 Similarly to international conventions on carriage of goods by sea and for a civil liability for a pollution, a clear set of rules for jurisdictions in which claims may be commenced is desirable. If the domiciliary state of an Mobile Offshore Renewables Unit Occupant has a system of workers compensation, the Mobile Offshore Renewables Unit operator should not have to deal with forum shopping by an injured worker.

6.9-6.10~~2~~ There ~~have been~~ could be examples in the future of persons fleeing coastal areas beset by strife attempting to seek refuge aboard Mobile Offshore Renewables Units. These persons and stowaways have rights of physical protection under international humanitarian law.

#### Penal Jurisdiction<sup>69</sup>

Throughout Article VII, the references to the domiciliary law of the Owner used in the Vancouver Draft have been replaced with references to the law of the Flag State, in order to provide certainty in relation to jurisdiction where the Mobile Offshore Renewables Unit's Owner(s) is/are not domiciled in the Flag State (i.e. the Flag State has chosen to operate an open registry for Mobile Offshore Renewables Units) and to avoid potential conflicts when the owner, charterer, lessee, and/or operator are not domiciled in the same state.

In contrast to the O&G MOUs addressed in the Vancouver Draft, many Mobile Offshore Renewables Units will be Unmanned in normal operation, somewhat reducing (although not eliminating) the frequency of possible future application of the provisions of this Article for Personal Offences or Public Order Offences. Self-evidently, this would not be as true for Manned Mobile Offshore Renewables Units such as Floating Operations, Maintenance, and Accommodation Facilities.

7.1 Where the nationality Mobile Offshore Renewables Unit or Related Appurtenances is the same as that of the Coastal State, there is little potential for conflicts of law in penal jurisdiction, particularly as the MORU Convention requires States Parties to have an effective regulatory administration.

7.2 Penal offenses are classified into three categories as they attract different priorities and interests of the Coastal State, the law of the

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69. See *Mare Incognitum, Part I, supra* note 1, at 354-356; *Mare Incognitum, Part II, supra* note 4, at 76-78.

Mobile Offshore Renewables Unit's flag and the domiciliary country State of the Mobile Offshore Renewables Unit Occupant.

In contrast to the Vancouver Draft, paragraph 7.2 (b) of the draft MORU Convention recognizes potentially overlapping jurisdiction of the Coastal State and the Flag State in relation to Regulatory Offences.<sup>70</sup> This is in line with the original language of paragraph 7.7 of the Vancouver Draft, which (in contrast to paragraph 7.3 of the same) also recognized the possibility of overlapping jurisdiction of the Coastal State and the "Owner's domiciliary State" in relation to Regulatory Offences. As noted above, references to the "domiciliary law of the Owner" in the Vancouver Draft have been replaced with references to the law of the Flag State in this draft MORU Convention.

In relation to the definition of the term "Personal Offences," it is important to note that the definition of the term "Coastal State" is limited to a coastal state exercising its rights in regards to Economic Activities (vs. any coastal state) and consequently limits the circumstances in which a Coastal State can exercise jurisdiction over Personal Offences.<sup>71</sup> As noted above, references to the "domiciliary law of the Owner" in the Vancouver Draft have been replaced with references to the law of the Flag State in this draft MORU Convention.

7.3 In contrast to the Vancouver Draft, paragraph 7.3 the draft MORU Convention recognizes potentially overlapping jurisdiction of the Coastal State and the Flag State in relation Regulatory Offences in relation to Economic Activities, and separately Flag State jurisdiction over Regulatory Offences not related to Economic Activities (e.g. Flag State regulations governing a Mobile Offshore Renewables Unit in transit).<sup>72</sup> This is in line with the original language of paragraph 7.7 of the

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70. See *UNCLOS*, *supra* note 17, art. 27(1)(a), 27(5), 56(1)(b)(i), 60; see also UNITED NATIONS, MARITIME CRIME: A MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS, 5-6, 43, 64 (2017) [https://www.unodc.org/documents/Maritime\\_crime/UNODC\\_GMCP\\_-\\_Maritime\\_Crime\\_-\\_A\\_Manual\\_for\\_Criminal\\_Justice\\_Practitioners\\_2017\\_2.pdf](https://www.unodc.org/documents/Maritime_crime/UNODC_GMCP_-_Maritime_Crime_-_A_Manual_for_Criminal_Justice_Practitioners_2017_2.pdf) (allocating criminal jurisdiction in the EEZ over Resource issues to the Coastal State and jurisdiction over other issues to the Flag State); *Mare Incognitum, Part I*, *supra* note 1, at 354-356; *Mare Incognitum, Part II*, *supra* note 4, at 76-78.

71. Compare *UNCLOS*, *supra* note 17, art 27(1), 27(5), 56(1-2), 60(1-2).

72. See *id.*, art. 27(1)(a), 27(5), 56(1)(b)(i), 60; see also UNITED NATIONS, MARITIME CRIME: A MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS 5-6, 43, 64 (2017) [https://www.unodc.org/documents/Maritime\\_crime/UNODC\\_GMCP\\_-\\_Maritime\\_Crime\\_-\\_A\\_Manual\\_for\\_Criminal\\_Justice\\_Practitioners\\_2017\\_2.pdf](https://www.unodc.org/documents/Maritime_crime/UNODC_GMCP_-_Maritime_Crime_-_A_Manual_for_Criminal_Justice_Practitioners_2017_2.pdf) (allocating criminal jurisdiction in the EEZ over Resource issues to the Coastal State and jurisdiction over other issues to the Flag

Vancouver Draft, which (in contrast to paragraph 7.3 of the same) also recognized the possibility of overlapping jurisdiction of the Coastal State and the “Owner’s domiciliary State” (replaced with the term “Flag State” in this draft MORU Convention) in relation to Regulatory Offences.

7.3.A In order to prevent conflicts in the event of overlapping jurisdiction of the Coastal State and the Flag State in relation to a particular Regulatory Offence relating to Economic Activities under paragraph 7.3, this new language would give the Coastal State first opportunity to investigate and prosecute such Regulatory Offences relating to Economic Activities. It is a “Regulatory Offence”-specific modification of the language of paragraph 7.5 of the Vancouver Draft.

7.4 See comments to paragraph 7.2(ii-iii).

7.5 While Sstates Pparties may have differing a-domestic policy interests in jurisdiction over penal offenses, this paragraph is intended to give the domiciliary Sstate of the Mobile Offshore Renewables Unit Occupant first opportunity to investigate and prosecute personal or public order offenses, while permitting the Ceoastal Sstate and/or Flag State to act if the domiciliary Sstate declines to do so.

7.7, 7.8 These paragraphs are intended to avoid double jeopardy and explicitly recognize the defense of compulsory compliance.

7.9 This provision is intended to address piracy and politically motivated offenses governed in line with either under SUA 1998 or SUA PROT 1988 (depending on one’s view of the term “fixed” in relation to MORUs), until such time is that instrument is amended to explicitly include MORUs and the relevant parties are contracting states thereto.

#### Safety<sup>73</sup>

8.1 Because non-self-propelled Mobile Oøffshore Renewables Uunits are not explicitly subject to the ISM Code or the ISPS Code, there ~~are could be~~ safety concerns ~~if an in the operation of Mobile Oøffshore Renewables Uunit or is operated in conjunction with and artificial island or Rrelated Aappurtenances which themselves are itself is~~ not subject to SOLAS. This paragraph is not intended to compel application of the entire ISM Ceode or the ISPS Code to a ~~functionally associated artificial~~

State); *Mare Incognitum, Part I, supra* note 1, at 354-356; *Mare Incognitum, Part II, supra* note 4, at 76-78.

73. See *Mare Incognitum, Part I, supra* note 1, at 347-348; *Mare Incognitum, Part II, supra* note 4, at 66-67.

~~island or~~ Mobile Offshore Renewables Unit or Related Appurtenance, as long as there is compatibility between the quality assurance system in use on the ~~associated structures~~ Related Appurtenance and the Mobile Offshore Renewables Unit. At some point, SOLAS, the ISM Code, and/or the ISPS Code may be updated or amended to address MORUs and the relevant Coastal State accedes to that amendment.

8.2 This paragraph is goal oriented and intended to permit owners flexibility to adopt new technology and operational methods.

8.3, 8.3.A, 8.4 These paragraphs in the Vancouver Draft are derived from lessons learned from the offshore oil and gas industry, and reflect findings and recommendations of the OCEAN RANGER and PIPER ALPHA inquiries and are intended to ensure that the single person in command or in charge of a Mobile Offshore Renewable Unit (whether Manned or Unmanned) can take proper emergency measures without delays associated in obtaining clearances or fear of employment retribution.

8.3.A Given that there will not be a person “in command” of a non-propelled Unmanned Mobile Offshore Renewables Unit, a designated person “in charge” should nonetheless be designated for each Unmanned Mobile Offshore Renewables Unit for purposes of this Article. The distinction between a Master and a person in charge also appears in paragraph 8.12 of the Vancouver Draft, in which the phrasing “Master or other person in charge of” a Unit appears.

8.4 If there is a person in charge of an Unmanned Mobile Offshore Renewables Unit, it follows that he should be given the same protection from employer disciplinary action that person who exercises in good faith the authority granted the person under paragraph 8.3.A as granted a person in command of a Manned Mobile Offshore Renewables Unit.

8.5 This paragraph is intended to ensure the Coastal State has a basic regulatory or monitoring regime in place for ~~a Mobile Offshore Renewables Unit Workers and Occupants~~. Flexibility in the method of achieving ~~that~~ these goals is permitted. For example, a Coastal State may adopt industry standards, recognize other Flag State standards, or develop its own.

8.6, 8.7, 8.8 These paragraphs are intended to ensure that Coastal States address these safety issues. Flexibility in the method of implementing these standards is permitted. Sub-paragraph 8.6(c) should

be expanded to include walk-to-work systems, which play an increasing role in the vessels servicing the offshore renewable energy sector.

8.9-8.12 As with paragraphs 8.3, 8.3.A, and 8.4, ¶these paragraphs from the Vancouver Draft are derived from lessons learned from the offshore oil and gas industry and reflect findings and recommendations of the OCEAN RANGER inquiry.

8.13 These requirements are analogous to the protocols established by ICAO for investigation of aviation accidents involving aircraft or persons of one country involving an occurrence in another.

8.16 While administrative and operational flexibility is desirable, it should not be abused to evade effective administration.

#### Salvage<sup>74</sup>

~~9.1-9.6 The initial clauses are intended to apply OPRC principles to offshore units and artificial islands. As the principles of the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (OPRC) would be relevant to O&G MOUs, but have limited relevance in relation to Mobile Offshore Renewables Units, paragraph 9.1-9.6 of the Vancouver Draft have been deleted.~~<sup>75</sup>

~~9.7 The exclusion of the operation of the Salvage Convention to offshore units, arose in part from industry concerns over the dangers of intervention by salvors inexperienced in offshore unit characteristics. These considerations do not apply where the offshore unit is not engaged in economic activities. Under its own terms, Salvage Convention 1989 applies to vessels, defining that term as “any ship or craft, or any structure capable of navigation,” but excluding “fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.”<sup>76</sup> Insofar as Mobile Offshore Renewables Units are a craft capable of navigation, and a floating platform but never “on location engaged in the exploration, exploitation or production sea-bed mineral resources,” the extension of the Salvage Convention to Mobile Offshore Renewables Units provided in paragraph 9.7 of the Vancouver Draft~~

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74. See *Mare Incognitum, Part I*, *supra* note 1, at 348-350; see *Mare Incognitum, Part II*, *supra* note 4, at 67-69.

75. However, one might argue that the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (OPRC/HNS PROT 2000) might have more relevance.

76. See *Salvage Convention 1989*, *supra* note 21, art. 1(b), 3.

would not be needed for Mobile Offshore Renewables Units, as such units are not excluded in the first instance.

#### Removal<sup>77</sup>

10.1 In line with the Vancouver Draft, the application of the MORU Convention is extended to the navigable waters in the Territorial Sea, because the UNCLOS rights of innocent passage (see Art. XVI) presuppose a safe navigating environment. If the Coastal State obtains economic benefits from permitting all Mobile Offshore Renewables Units or artificial islands to operate in navigable waters, its obligation to ensure the safety of such waters from artificial structures should be acknowledged.

10.1-10.2 As discussed in the Commentary above<sup>78</sup> and in contrast to the Vancouver Draft, the term “continental shelf” has been deleted in this draft MORU Convention.

#### Pollution<sup>79</sup>

This Article is, as the equivalent article in the Vancouver Draft is, an adaptation of the 1977 Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources<sup>80</sup> (the CLEE Convention) with the optional clause deleted. According to some sources, the Vancouver Draft’s failure to be enacted can be attributed in part to the objection of key stakeholders of the oil and gas sector to its pollution liability provisions.<sup>81</sup>

The CLEE Convention was intended to cover pollution arising from both O&G MOUs and ships engaged in the exploitation of seabed minerals (i.e. oil and gas) and the natural reservoirs and geologic formations they were working. Although pollution damage arising from natural reservoirs and geologic formations are largely irrelevant in the

77. See *Mare Incognitum, Part I, supra* note 1, at 349; *Mare Incognitum, Part II, supra* note 4, at 68-69.

78. See Commentary to Definitions, FNs 48, 49, 50, above (explaining the removal of the term “continental shelf” from this draft Convention, in contrast to the Vancouver Draft).

79. See *Mare Incognitum, Part I, supra* note 1, at 351-354; *Mare Incognitum, Part II, supra* note 4, at 74-76.

80. Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, opened for signature May 1, 1977, 16 I.L.M. 1450 [hereinafter *CLEE Convention*].

81. See *Mare Incognitum, Part II, supra* note 4, at 83-84. The failure to enact the CLEE Convention can be contrasted with the widespread adoption of both CLC 1969 and the Bunker Convention.

context of Mobile Offshore Renewables Units and a draft MORU Convention, some mechanism allocating and limiting liability for pollution damage resulting from the escape or discharge of pollutants from Mobile Offshore Renewables Units themselves seems warranted. Although neither the Vancouver Draft nor the CLEE Convention entered into force, the Vancouver Draft's adaptation of the CLEE Convention provisions still offers one possible starting point for such a regime for Mobile Offshore Renewables Units. In that context, article XI of the Vancouver Draft has been retained in the draft MORU Convention, albeit in slightly modified form.

11.1 Compare CLEE paragraph 1(6), 2.

11.2 The reference to Pollution Damage arising from a reservoir arising during Economic Activities in this article of the Vancouver Draft is not relevant to Mobile Offshore Renewables Units and has been deleted.

11.3 The distinction in paragraph 11.3 of the Vancouver Draft between pollutants arising from ships (excluding survey, standby and supply vessels) seems to have been an effort to distinguish between the drillships and other specialized vessels directly engaged in the exploitation of an oil and gas reservoir (which would have been covered by Article XI of the Vancouver Draft), and the common survey, standby and supply vessels (which would not have been covered by the Vancouver Draft and presumably are covered by existing maritime conventions). There is no equivalent need to pull certain specialized ships into the draft MORU Convention, and consequently paragraph 11.3 of the Vancouver Draft not been retained.

11.5 The distinction between emissions of pollutants arising from the Offshore Unit itself and from the subsea reservoir being exploited by the Licensee are not relevant to Mobile Offshore Renewables Units, but a distinction between emissions of pollutants arising from particular Mobile Offshore Renewables Units and emissions of pollutants arising from other activities in support of the Licence (e.g arising from other Mobile Offshore Renewables Units, support vessels, or other infrastructure) could be made and liability attributed accordingly between the Owner(s) of the Mobile Offshore Renewables Unit(s) and the Licensee respectively.

11.6 Compare CLEE paragraph 3(2). See also Bunker Oil Convention, article 5.<sup>82</sup>

11.7 Compare CLEE paragraph 3(3).

11.8 Compare CLEE paragraph 3(4).

11.9 Compare CLEE paragraph 3(5).

11.10 Compare CLEE paragraph 4(1).

11.11 Compare CLEE paragraph 4(2).

11.12 Compare CLEE paragraph 4(3), which states that nothing in the CLEE Convention shall prejudice the question whether the “operator” liable for damage in accordance with its provisions has a right of recourse. Compare also Bunker Oil Convention, paragraph 3(6).<sup>83</sup>

To the extent that a particular category of Mobile Offshore Renewables Unit would require a different or more elaborate liability regime for Pollution Damage, this could be addressed in the Protocol for that category.

#### Apportionment of Liability

While historical admiralty law rules and the collision convention recognize apportionment of fault, in collisions between ships, not all countries domestic laws provide for similar apportionment of liability concerning wrongs not related to shipboard activities or involving structures which are not ships. In line with the Vancouver Draft, ~~¶~~this article is derived from part 2 of the Canadian Marine Liability Act,<sup>84</sup> and is intended to provide for a general apportionment regime which works consistently over all waterborne operational aspects of the mobile offshore renewables industry.

#### Limitation of Liability and the Limitation Fund<sup>85</sup>

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82. *Bunker Oil Convention*, *supra* note 22.

83. *Id.*

84. *See* Marine Liability Act, S.C. 2001, c. 6, Part 2 (Apportionment of Liability) (Can.).

85. *See Mare Incognitum, Part I*, *supra* note 1, at 350-351; *Mare Incognitum, Part II*, *supra* note 4, at 23, 25-26, 40-41, 69-76.

As with the Vancouver Draft, these articles follow the 1976 Limitation of Liability for Maritime Claims Convention (i.e. LLMC 1976).<sup>86</sup>

13.1 Compare paragraphs 3(c) and (e) of LLMC 1976.

13.2 Compare paragraphs 1(1), and 1(4) of LLMC 1976.

13.3 Compare paragraphs 2(1)(a), (c), & (d) of LLMC 1976. In contrast to the Vancouver Draft, the explicit inclusion of damage to harbour works, basins and waterways and aids to navigation within “damage to property” has been added in limb (i), in line with the approach used in paragraph 2(1)(a) of LLMC 1976.

13.4 Compare article 4 of LLMC 1976.

13.5 Compare article 6 of LLMC 1976. To the extent that Related Appurtenances are considered part of the Mobile Offshore Renewables Unit, their impact on the tonnage of the Mobile Offshore Renewables Unit should be taken into account. Given the potential surface, subsurface, and subsea footprints of a MORU Array, further clarification of the meaning of “distinct location” may be required.

13.7 Compare article 9 of LLMC 1976.

13.8-13.10 Compare paragraphs 11(1-3) of LLMC 1976.

13.11-13.14 Compare article 12 of LLMC 1976.

13.15-13.17 Compare article 13 of LLMC 1976.

13.18 Compare article 14 of LLMC 1976.

#### Financial Responsibility<sup>87</sup>

14.1 Compare, e.g., paragraph 7(1) of the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969),<sup>88</sup> paragraph 7(1) of

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86. See LLMC 1976, *supra* note 19.

87. See *Mare Incognitum, Part I*, *supra* note 1, at 350-351; *Mare Incognitum, Part II*, *supra* note 4, at 71-73.

88. International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, 973 U.N.T.S. 3 [hereinafter *CLC 1969*].

the Bunker Oil Convention,<sup>89</sup> paragraph 12(1) of the HNS Convention,<sup>90</sup> and paragraph 235(3) of UNCLOS.<sup>91</sup>

14.2 of the Vancouver Draft has been deleted, as all references to Artificial Islands have been removed from this Annex.

14.5 Compare paragraph 7(8) of CLC 1969.

14.6 Compare paragraph 7(9) of CLC 1969.

#### Administration and Revision

This Article provides a mechanism for the voluntary establishments, maintenance, and winding up of an International Mobile Offshore Renewables Units Registry, and for future amendment said to the MORU Convention with a similar deemed acceptance regime to that of SOLAS, as provided in the Vancouver Draft.

#### Freedom of the Seas and Innocent Passage<sup>92</sup>

This Article has be introduced to avoid any argument by a State Party that a Mobile Offshore Renewables Unit or its Related Appurtenance(s) is not a “ship” per se and as a consequence is not entitled to freedom of the Seas or a right of innocent passage or transit, such as those raised by Denmark in relation of Finnish Mobile Offshore Drilling Units in the CASE CONCERNING PASSAGE THROUGH THE GREAT BELT (FINLAND v. DENMARK).<sup>93</sup>

It has been structured in such a way as to require both UNCLOS and non-UNCLOS State Parties to the MORU Convention to recognize such rights.<sup>94</sup> Alternatively, it might be addressed as follows: (i) the provision would be structured as standalone inter se Amendment to UNCLOS,<sup>95</sup> and (ii) the MORU Convention would require mandate accession to that inter se Amendment for UNCLOS states as a pre requisite to joining the MORU Convention. This alternative approach would allow non MORU convention states to at least explicitly recognize

89. See *Bunker Oil Convention*, *supra* note 22.

90. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, 35 I.L.M. 1415, *superseded* by the 2010 Protocol Art. 1(1) [HNS Convention].

91. See *UNCLOS*, *supra* note 17.

92. See *Mare Incognitum, Part I*, *supra* note 1, at 333; *Mare Incognitum, Part II*, *supra* note 4, at 19-21, 51-53.

93. See *Great Belt*, *supra* note 51.

94. See *UNCLOS*, *supra* note 17, art. 58(2) (incorporating by reference art. 90).

95. See *id.* art. 311.

these rights for MORUs without being tied to the entirety of the draft MORU Convention, but would leave open the question of inclusion of non-UNCLOS states.

Relationship between the Convention and the Protocols<sup>96</sup>

In contrast to the Vancouver Draft, this Convention adopts the Cape Town Convention's use of technology specific protocols, but does so to address any international legal issues peculiar to a given technologies without limiting those protocols to issues concerning security interests on Mobile Offshore Renewables Units.

17.1 Compare Cape Town Convention article 49.<sup>97</sup>

17.2-4 Compare Cape Town Convention article 6.<sup>98</sup>

17.5-9 Compare Cape Town Convention article 51. Regarding paragraph 17.5 of the draft MORU Convention, as a political matter, some limitation on the future inclusion of categories of other mobile offshore equipment deemed inconsistent with the broader principles of the draft MORU Convention seems warranted.

Allocation of Nationally Determined Contributions  
under the Paris Agreement to the UNFCCC<sup>99</sup>

This Article has been introduced to provide a default allocation of the Nationally Determined Contributions under the Paris Agreement arising from foreign-flagged Mobile Offshore Renewables Units operating under a Licence in the Coastal State's, and not the Flag State's, Exclusive Economic Zone, Territorial Sea, or Internal Waters. In line with the Paris Agreement, this default allocation could be altered by bilateral or multilateral agreement.

Accession to Other Conventions<sup>100</sup>

To the extent that Contracting States reach the conclusion that extension of the rights and privileges granted to each Contracting State hereunder is dependent on concomitant rights and obligations in other

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96. See *Mare Incognitum, Part I, supra* note 1, at 365-367; *Mare Incognitum, Part II, supra* note 4, at 15-16, 26, 43, 56-62, 80-83, 84-85.

97. See *CTC, supra* note 44.

98. See *id.*

99. See *Mare Incognitum, Part I, supra* note 1, at 356; *Mare Incognitum, Part II, supra* note 4, at 79.

100. See *Mare Incognitum, Part II, supra* note 4, at 50-51, 67-68, 71-72, 75-76.

maritime conventions which already include MORUs in their scope, provision for such a requirement is made here.

19.1 (a) The author is of the opinion that any contracting state to a MORU convention should also be a contracting state to the Salvage Convention, 1989 insofar as the Salvage Convention, 1989 already applies to MORUs<sup>101</sup> and the sui generis salvage provisions in Article IX of the Vancouver Draft consequently have been deleted in this Annex (see above).

19.1 (b) The author is of the opinion that any contracting state to a MORU convention should also be a contracting state to the Bunker Oil Convention, insofar as the Bunker Oil Convention already applies to MORUs.<sup>102</sup>

19.1 (c) The author is of the opinion that the argument for mandatory accession to the Wreck Removal Convention may be weaker than that for mandatory accession to Salvage Convention 1989 or the Bunker Oil Convention, given the lower levels of adoption of the Wreck Removal Convention.

#### Forms of Registered Security Interests<sup>103</sup>

20.1 Given the legal distinctions between existing forms of voluntary non-possessory in rem security interests under the domestic law of different countries, and the creativity of the finance sector, the author is of the opinion that each state should be entitled to declare such forms for Registered Security Interests over its Flagged MORUs as it sees fit.<sup>104</sup>

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101. *See id.* at 64-66.

102. *See Mare Incognitum, Part I, supra* note 1, at 352-353; *see id.* at 74-75.

103. *See id.* at 339-343; *see id.* at 55-61; *see generally Severance & Sandgren, supra* note 5.

104. *See* Juan Pablo Rodriguez Delgado, *Security Interests over Ships: From the Current Conventions to a Possible Shipping Protocol to the UNIDROIT Convention-*Lege Data and Lege Ferenda**, 49 (2) J. MAR. L. & COM. 239, 244-45 (2018).