

# VI Interdisciplinary Seminar on Climate, Energy and Sustainability

*Monday, 13<sup>th</sup> December 2021 09:30 – 13:00*

## PROGRAMME

Time	Programme
From 09:20	Arrival and zoom room opens
09:30 – 09:45	<p><b><u>Welcome and Introduction to the IV Interdisciplinary Seminar on Climate, Energy and Sustainability</u></b></p> <p><i>Associate Prof. Beatriz Martínez Romera</i>, Centre for International Law, Conflict and Governance (CILG), Faculty of Law, University of Copenhagen (UCPH)</p>
09:45 – 10:45	<p><b><u>Session 1</u></b></p> <p><b><u>Chair:</u> Dr. Alessandro Monti</b>, Postdoc, Faculty of Law, UCPH, Vice President Energy Crossroads Denmark</p> <p><b>1. Eirik Finserås</b>, PhD Fellow, University of Bergen <i>Designing a Refined Legal Framework for Legitimate Offshore Wind in the North Sea Basin (DeWindSea)</i></p> <p><b>2. Pernille Holten Poulsen</b>, PhD Fellow, UCPH <i>Climate Change Litigation in the US: Can the tort of public nuisance establish corporate liability for climate change?</i></p> <p><b>3. Andreas Heian Slettevold</b>, PhD Fellow, University of Bergen <i>Come Rain or Shine - Climate Change and Revision of Contract due to Unforeseen Circumstances: Are the Norwegian rules on revision of</i></p>

	<i>contract due to unforeseen circumstances adequately equipped to manage the commercial risks related to climate change?</i>
<b>10:45 – 11:00</b>	<i>Coffee Break</i>
<b>11:00 – 12:00</b>	<p><b><u>Session 2</u></b></p> <p><b><u>Chair:</u> Dr. Linnéa Nordlander</b>, Postdoc, Faculty of Law, UCPH</p> <p><b>1. Eva Jacqueline Wiltshire</b>, Faculty of Law, UCPH <i>What role does Land Use Change and Forestry (LULUCF) legislation play in the EU's ability to meet international climate goals, and how is this implemented in Denmark and Scotland?</i></p> <p><b>2. Alda Leony</b>, Faculty of Law, Universitas Indonesia <i>Responsibility for Deforestation in Indonesia: The Relevance of Environment Related Human Rights</i></p> <p><b>3. Manon Eleonora Lagana</b>, PhD Fellow, University of Valencia <i>EU Green Capital and EU Green Leaf Awards</i></p>
<b>12:00 – 12:15</b>	<p><b><u>Concluding Remarks</u></b></p> <p><b>Associate Prof. Emmanuel Raju</b>, Copenhagen Center for Disaster Research (COPE), Department of Public Health, University of Copenhagen</p> <p><b>Associate Prof. Beatriz Martinez Romera</b>, Centre for International Law, Conflict and Governance (CILG), Faculty of Law, University of Copenhagen</p>
<b>12:15 – 12:45</b>	<p><i><u>Lunch and networking led by:</u></i></p> <p><b>Dr. Alessandro Monti</b>, Postdoc, Faculty of Law, UCPH, Vice President Energy Crossroads Denmark</p> <p><b>Danny Mariana Ortiz</b>, Casus Clima, UCPH</p>

## **ABSTRACTS:**

**Eirik Finserås**, PhD Fellow, University of Bergen

*Designing a Refined Legal Framework for Legitimate Offshore Wind in the North Sea Basin  
(DeWindSea)*

### Abstract

The objective of the project Designing a Refined Legal Framework for Offshore Wind in the North Sea Basin (DeWindSea) is to bring up-to-date insights on technology potentials for offshore wind together with research on the legal and societal challenges associated with offshore wind development. The purpose is to support the design of a refined, efficient and adequate legal framework for offshore wind in the North Sea Basin in general, and in Norway in particular. The project will collect and analyze data on public perception and acceptance of offshore wind and related infrastructure and analyze legal challenges from large-scale wind projects in the North Sea Basin in the framework of technical options and public perception and acceptance.

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**Pernille Holten Poulsen**, PhD Fellow, UCPH

*Climate Change Litigation in the US: Can the tort of public nuisance establish corporate liability for climate change?*

### Abstract

The thesis delves into the U.S. climate change lawsuits filed against oil and energy companies under the tort of public nuisance, in order to explore whether the tort can encompass global warming in the light of two constitutional doctrines originating from the separation of powers principle; the displacement doctrine and the political questions doctrine. It is demonstrated that the displacement doctrine alone cannot explain the dismissals, as the analysis of three lawsuits shows that the courts apply a broad interpretation of the political questions doctrine, which renders climate change a non-justiciable policy issue. In addition to this, the public nuisance theory is unable to accommodate climate change because of the developments in the theory's integrated balancing test, which has transformed public nuisance into a theory of wealth maximization, justified by economic considerations. Thereby the research reveals the structural limitations of public nuisance in the climate change context, as its one-sided economic focus naturally favors industry. The prudential political question doctrine is intertwined with the balancing test in the dismissals; the test pushes the judicial branch towards the boundaries of its assigned powers (according to a functionalist understanding of the separation of powers principle) by aggravating public nuisance theory's already broad scope. In this way the public nuisance theory, through its balancing test, inherently frames the climate change claims as policy issues.

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**Andreas Heian Slettevold**, PhD Fellow, University of Bergen

*Come Rain or Shine - Climate change and revision of contract due to unforeseen circumstances: Are the Norwegian rules on revision of contract due to unforeseen circumstances adequately equipped to manage the commercial risks related to climate change?*

Abstract

The Norwegian Public Report NOU 2018:17, an analysis of the economic impacts of the findings of inter alia the 5th IPCC assessment report, holds that the consequence of climate change to the Norwegian economy is riddled with uncertainties. Nevertheless, the report finds it likely that the changes pose considerable risks, both in form of physical risks due to changes to nature itself, and transitional risks arising from the necessity of shifting society towards decarbonization and environmental protection. My project examines how such increased risks, and the difficulties in predicting where, when and how they might materialize, are accounted for in contract law. More specifically, the project analyses how and to what extent unexpected events related to climate change or transitions made in tackling climate change, might constitute grounds for modification of contractual obligations under various rules, and to what extent these rules tackle the challenges posed by climate change. The rules examined include force majeure/control liability, the contract law doctrine of failed assumptions, and revision of unfair contracts under the Contract Act § 36. The project is still in its early days, and many details as to the approach remain to be clarified. However, certain immediate sub-questions arise: in what ways might climate change endanger contractual relationships? To what extent are these dangers relevant as grounds for contract revision? What needs ought the rules accommodate to tackle climate change-related risks, and do they accommodate them? Are environmental considerations (as third-party considerations) relevant in assessing contractual fairness?

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**Alda Leony**, Faculty of Law, Universitas Indonesia

*Responsibility for Deforestation in Indonesia: The Relevance of Environment Related Human Rights*

Abstract

This paper discusses the possibility of holding the Indonesian government responsible and accountable for deforestation based on the human rights regime. The issue of human rights is correlated to the issue of deforestation. Deforestation has impacted various human rights, including but not limited to, the right to health, right to property, and cultural and religious rights. Despite several international law principles and frameworks that gives protection towards environment and in specific deforestation, it is in and of itself insufficient. States have the obligation to respect human rights protected in the State's constitution, domestic laws, or international law. First, this paper analyzes the relevant jurisprudence from international and regional courts that have decided cases in favor of human rights, as they have recognized the interrelated aspect of environmental law and fulfillment of human rights. Such jurisprudence is analyzed with relevance to Indonesia's international obligations under the law of state responsibility. Second, this paper discusses the relevance of these international norms to Indonesia. A comparison to the decision Arie Rompas, dkk. v. Presiden RI, dkk rendered by Palangkaraya District Court in Indonesia which focused on the violation of tort law. Arguments based on human rights can provide guidance on filling the gap between the existing legislation on deforestation and its implementation in Indonesia.

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**Eva Jacqueline Wiltshire**, Faculty of Law, UCPH

*What role does LULUC legislation play in the EU's ability to meet international climate goals, and how is this implemented in Denmark and Scotland?*

#### Abstract

The International Climate Change Regime is a complex patchwork of legal norms, some of which trickle down to the supranational and national levels. This thesis is a legal analysis of the Land Use, Land Use Change and Forestry (LULUCF) sector, a key element in the climate policy debate. Through systematic analysis and evaluation, it extrapolates the ways in which LULUCF accounting rules can assist states in meeting emission reduction targets with rules pertaining to the accounting and reporting of emissions and removals from a multitude of land categories, including but not limited to: forestry; afforestation; deforestation and wetlands. Under international Treaties such as the Kyoto Protocol and the Paris Agreement, states parties are required to provide data on the LULUCF sector and its land categories, including the extent to which each category captures or releases greenhouse gases. The legislation thus provides a means for meeting Treaties' targets. The LULUCF sector is examined at the international and EU levels, before considering the national level, with Denmark and Scotland as indicative examples, the latter negotiating post-Brexit flux.

Representing approximately 10% of global carbon dioxide emissions - primarily from deforestation – the LULUCF sector is not to be underestimated in the role it has played in anthropogenic climate change. Although the sector is currently a net sink in the EU, projections suggest that at current rates and without greater afforestation, uncertainty and change are imminent. Robust accounting rules and national policies purporting to create more sinks are therefore, necessitated in the actions against climate change. In 2018 and in response to the Paris Agreement, the EU enacted a new Regulation concerning the accounting of emissions and removals in the LULUCF sector. The rules therein are extremely comprehensive, though difficult to interpret. The accounting is complex and to comprehend the implications for any one of the aforementioned *acquis* (international, EU level or national), the others must also be considered. An overview of the LULUCF sector at each legislative level is discussed herein.

This investigation portrays the complex legal web that is the LULUCF sector and evaluates the ways in which the legislation contributes to its purpose. Attention is paid specifically to the category of managed forest land within the EU LULUCF Regulation, the most contentious legislative category, both during negotiation and post enactment. This, along with the other problematic points of the Regulation will be examined.

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**Manon Eleonora Lagana**, PhD Fellow, University of Valencia

*EU Green Capital and EU Green Leaf Awards*

#### Abstract

The EU Green Capital and EU Green Leaf are urban sustainability awards granted by the European Commission. The EU Green Capital Award (EGCA) is concerning cities or towns with more than 100.000 inhabitants and the participant towns shall have a cutting-edge project in urban sustainability.

The European Green Leaf Award (EGLA) started in 2014 and is dedicated to smaller cities or towns. Furthermore, the EU Green Leaf Award is focused on efforts that generate green growth and new jobs. The EU Green Leaf Award applicants shall have a population between 20.000 and 99.999 inhabitants from the EU Member States, EU Candidate Countries, Iceland, Liechtenstein, Norway, and Switzerland. A panel of experts is assessing the competing cities, following 12 urban sustainability key points. These indicators are consisting of Air Quality, Noise, Waste, Water, Nature and Biodiversity, Sustainable Land Use and Soil, Green Growth and Eco-innovation, Climate Change: Mitigation, Climate Change: Adaptation, Sustainable Urban Mobility, Energy Performance, and Governance. The EU Green Capitals to date are: Stockholm (2010), Hamburg (2011), Vitoria-Gasteiz (2012), Nantes (2013), Copenhagen (2014), Bristol (2015), Ljubljana (2016), Essen (2017), Nijmegen (2018), Oslo (2019), Lisbon (2020) Lahti (2021) and Grenoble (2022) and Tallinn (2023). Moreover, the EU Green Leaf winners are Torres Vedras and Mollet del Vallès (2015), Galway (2017), Växjö and Leuven (2018), Horst aan Maas and Cornellà de Llobregat (2019), Mechelen and Limerick (2020), Lappeenranta and Gabrovo (2021), and Valongo and Winterswijk (2022).

Finally, it should be remarked that the European Commission in the last few years is focusing its attention on the urban environment. Indeed, the same European Commission introduced the policy “sustainable cities: working together for Common Solutions”. Furthermore, the European Commission (DG Environment) is promoting the initiative Green City Accord, which has as the main purpose of making cities cleaner and healthier.