

20  
21

# PluriCourts

Centre for the Study of the  
Legitimate Roles of the Judiciary in  
the Global Order



# Table of Contents

## 2020 at a glance...PluriCourts is back in business

### Spotlight on highlights from 2021

New research project: The interface between international and national law, with a particular emphasis on Norway  
Concepts and Methods: Conference on the relationship between national and international law  
While in Paris: Climate cases and the Openness of European National Legal Orders  
New research project at PluriCourts: 'Compliance Politics and International Investment Disputes' (COPIID)  
Spotlight on: Ways to do research  
International Courts versus Compliance Mechanisms:  
Comparative advantages of non-compliance mechanisms and complaint procedures  
Seminar on the Effective Implementation of the European Convention on Human Rights  
Inter-State Cases under the European Convention on Human Rights – Experiences and current challenges  
Conference on the Independence of the Judiciary  
Annual workshop on 'The Political and Legal Theory of International Courts and Tribunals'  
Svalbard symposium: Contested Sovereignty, International Courts and Transnational Constitutionalism  
Annual Conference and Lecture  
Book launches  
State Consent to International Jurisdiction: Expert meeting 2021  
New data base  
Highlighted research findings: The shadow effect of courts  
Internal seminar at Finse  
The University of Oslo's Research Prize  
Other prizes and awards  
Professor Christina Voigt was elected chair to IUCN's World Commission on Environmental Law (WCEL): - I want the Commission to focus internationally.  
Spotlight on: Emma Brandon  
PhD Defense: Tarald Laudal Berge  
PhD defense: Vegard Tørstad  
PH.D. Midway Assessment: Runar Hilleren Lie  
Ph.D. midway assessment: Laura Létourneau-Tremblay  
New at PluriCourts  
Master thesis  
Guest Researchers  
PluriCourts in numbers  
List of publications

## 2021 at a glance...

### - A year of hybrid solutions

Though the ever-changing circumstances brought about by the COVID-19 pandemic gave rise to difficulties for many, PluriCourts saw the conclusion of yet another successful year. From the safety of our respective home offices, and when possible, the PluriCourts offices, we produced a high volume of publications, welcomed guest researchers, embarked on new projects, and saw our members wrap up their PhD journeys and take on new endeavours.

#### Projects

Malcolm Langford started a new 5-year Research Council project on compliance with international investment procedures (COPIID). The project has 17 participants from different countries and institutions, and will, among other things, provide input to the ongoing United Nations Commission on International Trade Law (UNCITRAL) reform process.

#### Events

2021 was no doubt a year of hybrid solutions. Due to the measures that were implemented, many events were held online and when possible, physical attendance was accommodated for with respect for the rules.



Among the various events we organised throughout the year, we would like to highlight two events in particular:

- The Concepts and Methods conference, which was held on the 12th of November 2021. This year's conference was centered around our new research initiative on the relationship between international and national law, which is a central part of PluriCourts' legacy.

- The conference on compliance mechanisms, held between the 27th and 28th of October 2021, allowed researchers to compare treaty-based, non-compliance procedures in international courts ('non-compliance procedures') The conference shall then result in an Open Access book publication with Cambridge University Press in 2022.

#### Publications

PluriCourts produced a wide range of publications this year: 23 articles, and 10 book chapters.

### Prizes and Appointments

We are proud to announce that this year saw major successes for the members of our research centre. Directors Andreas Føllesdal and Geir Ulfstein were awarded the University of Oslo's annual research prize for their interdisciplinary, groundbreaking research on the international legal system.

Professor Christina Voigt was appointed Chair for the World Commission of Environmental Law (WCEL) at the International Union for Conservation of Nature (IUCN)

In addition to these prizes and appointments, PhD candidate Tarald Gulseth Berge and Guest Researcher Vegard Tørstad successfully completed their PhD theses. Tørstad defended his thesis titled 'After Reform: Procedural Justice and the Legitimacy of International Institutions' before The European University Institute in January 2021 and afterwards, Berge defended his thesis titled 'State capacity in the International Treaty Regime' before the University of Oslo Department of Political Science on the 3rd of February 2021.



Photo: Yngve Vogt/UiO



# Spotlight on

## highlights from 2021



## New research project: The interface between international and national law, with a particular emphasis on Norway

Together with the Faculty of Law at the University of Oslo, PluriCourts launched a new research initiative on the interface between international and national law.

The initiative's main objective is to research the legal dimensions of the interrelationship between domestic law and a variety of branches within international law. The initiative intends to include both normative and political research, and will seek to analyse and explain both how international law is currently being implemented and how it should be implemented in Norwegian legislation, administration, and case law. Over time, the aim is also to provide

guidance for the development of the educational curricula at the Faculty on the interface between international and national law. The research initiative already has a post doc that is jointly funded by PluriCourts and the Faculty. During 2021, the initiative resulted in a conference in the format of PluriCourts annual Concepts and Methods conference (see below) and a workshop held in Paris on the openness of European national legal orders to international law and European law (see next page)



Photos: Hanna Jarstø Ervik

## Concepts and methods: Conference on the relationship between national and international law

To kick start the new research initiative, PluriCourts' annual Concepts and Methods conference on the 12th of November 2021 was dedicated to research on the relationship between national and international law.

The aim of the conference was identify interesting research questions, discuss existing research in the field, and map out how to further develop the research initiative.

The first part of the program provided comparative and political science perspectives with introductions from Helmut Aust (Freie Universität Berlin), Antonios Tzanakopoulos (University of Oxford), Astrid Kjeldgaard-Pedersen (iCourts/University of Copenhagen), and Øyvind Stiansen (PluriCourts)

The second part of the program consisted of three introductions on the interface between international and Norwegian law. Benedikte Moltumyr Høgberg (UiO) highlighted the constitutional aspects, Finn Arnesen (UiO) provided insight on the internationalization of law and legal method, and lastly, social welfare law was introduced by Ingunn Ik Dahl (UiO).

Finally, about 30 participants were divided into groups that looked closer at challenges related to the interface between international law and different areas of Norwegian law, including constitutional aspects, legal method, and human rights and social welfare law. One group was devoted to questions related to comparative and interdisciplinary aspects.

### Implications for the research initiative

At the end of the conference, the participants from the different groups came together to discuss their ideas in plenary. Participants agreed that PluriCourts has the potential to contribute to the international research agenda with its multidisciplinary approach to legitimacy. However, many also stressed the need for more specific approaches to what problems international law brings with it and argued that these aspects ought to be more thoroughly integrated into the methodological courses in the university's Law degree. As a first step, PluriCourts will create a colloquium among faculty members as a forum for further discussion on the interface of international and national law.





# WHILE IN PARIS: CLIMATE CASES AND THE OPENNESS OF EUROPEAN NATIONAL LEGAL ORDERS

In November, PluriCourts co-hosted two separate events in Paris, one on the openness of European national legal orders to international law and one concerning climate change cases before national and international courts.



Photo: Colourbox.com

## Workshop on the Openness of European National Legal Orders to International Law and European Law: Theory, Method and Developments

As part of PluriCourt's new research initiative on the interface between international and national law, this workshop was organised on the 26th of November at the Norwegian University Centre in Paris.

The aim of the workshop was to explore the legal factors – sources and methods – that determine the 'openness' of national legal orders to international and European law. In doing so, the conference sought to investigate what actors and

politics are behind the 'openness' of national legal orders, and whether 'openness' provides a fruitful analytical framework for further research on the relationship between national and international law, as well as national and European law.

The workshop had two panels focusing on the openness of selected national legal systems to national and European law and on the suitability of the concept of 'openness' as an analytical framework for future research. The workshop was attended by 22 participants on-site and an additional 12 participants on Zoom.



Photo: Johan Rubven Leiss

## Climate Change Cases before National and International Courts - Cross-fertilization and Convergence

Organized at Centre Panthéon 27. November, the conference explored a variety of climate change cases before national and international courts as well as trends of 'cross-fertilization and convergence' in relation to climate change litigation. The cases and proceedings that were discussed included Dutch, German, Norwegian and French Constitutional, Supreme and Administrative Court decisions, and cases before US and Australian courts. In addition, climate case before international courts and tribunals and treaty bodies (including climate cases before the European Court of Human Rights, the UN Human Rights Council, other UN Treaty Bodies) were also discussed.

Among the speakers were academics involved with the UN climate process, judges, members of UN Treaty Bodies, and advocates in the climate cases both from the states and complainants. They took part in five panels focusing on varied topics such as the legal basis for climate challenges, procedural principles, the temporal dimension of climate cases, environmental impact assessments in human rights and administrative law, as well as the

international dimension of climate change cases. In addition to the chairs and speakers, around 30-40 persons participated on-site and another 60-70 persons on Zoom.

## A long list of cooperating partners

Both events were co-organized with a number of different partners, which included:

- The University of Oslo, UiO (Faculty of Law, Department of Private Law and PluriCourts)
- Paris 1 Panthéon-Sorbonne University (The Sorbonne Research Institute for International and European Studies IREDIES)
- University of Strasbourg (Centre for International and European Studies CEIE)
- Inland Norway University of Applied Sciences, Lillehammer
- The Norwegian University Centre in Paris (Centre Universitaire de Norvège à Paris)

In addition, IUCN World Commission on Environmental Law also took part in organizing of the conference on climate change cases before national and international courts.



Photo: Johan Rubven Leiss

The organising committee for the two events consisted of:

Professor Mads Andenæs (UiO), Professor Freya Baetens (PluriCourts), Professor Emanuel Castellarin (University of Strasbourg), Associate Professor Johann Ruben Leiss (Inland Norway University of Applied Sciences, guest researcher at PluriCourts), Professor Paolo Palchetti (Paris 1 Panthéon-Sorbonne University). In addition, Professor Christina Voigt (PluriCourts) was part of the organising committee for the conference on climate change cases.





Photo collage: Hanna Jarstø Ervik

## Spotlight on: Ways to do research

### PluriCourts scholars are doing research on a UN reform process: – It's sort of an avantgarde thing to do

**Scholars from PluriCourts are researching and attending ongoing negotiations to reform the international investment treaty system.**

In November 2017, UN launched a reform process of the international investment treaty system. Consisting of over 3 000 international investment treaties with corresponding investor-state dispute settlement mechanisms (ISDS), the system had come under increased criticism.

- There was this notion that ISDS was a private sphere handing down judgements towards states without the public being able to access to their reasoning. This was an important driver of a perceived legitimacy crisis, explains associate professor Tarald Berge.

He is one of several PluriCourts scholars that have gained observer status during the negotiations.

- Through following the negotiations

from the room where it happens, we have produced a lot of research *for* the process but also *on* the process, Berge explains.

The negotiations takes place in working group three in the UN Commission on International Trade Law (UNCITRAL).

**Multiple roles, multiple types of research**  
Prior to the negotiations, PluriCourts was already a hub for research on investment law and its perceived legitimacy crisis.

- We knew the field and some of the negotiators before the process started, so we have been able to watch the process play out over several years and we were ready to contribute when asked, professor Taylor St John explains.

She has attended the negotiations for PluriCourts and the Copenhagen based iCourts, which is a partner of PluriCourts' research project LEGINVEST led by Professor Ole Kristian Fauchald.



Photo: Colourbox.com

## New research project at PluriCourts: Compliance Politics and International Investment Disputes (COPIID)

**In 2021, PluriCourts researchers succeeded in attracting funding from the Research Council of Norway for a four-year research project.**

The project received funding under the 'Researcher Project for Scientific Renewal' scheme by the Research Council of Norway. Led Professor Malcolm Langford, the team now counts 17 teams members affiliated with several international institutions.

The project focus on international investment arbitration, which is a controversial topic indeed. Through a network of over

3 000 investment treaties, foreign investors can sue

sue states for discrimination, loss of property, and unexpected legal changes.

While designed to prevent conflicts, the system is a lightning rod for critique. Developing countries lose frequently, tribunals only make judgments against states and investors have challenged sensitive topics such as climate change, public health and human rights. The procedure is shrouded in secrecy, dominated by Western arbitrators, and compensation levels can be astronomically high.

Researching compliance with international investment arbitration, the project will look at the under-explored area of the effect of Investor-State dispute settlement (ISDS). What happens after arbitration?

Is there compliance? Why would states comply with decisions? And how does this effect policy development and the discussions on reform?

The project will contribute to PluriCourts' existing research on investor-State dispute settlement, building on findings from PluriCourts' Investment Treaty Database (PITAD) and the research project 'Responses to the "legitimacy crisis" of international investment law (LEGINVEST)', which is also funded by the Norwegian Research Council.

The project is also partly motivated by requests from states in relations to the ongoing reform process of international investment system which is currently taking place in the UN commission UNCITRAL (see next page).



During the negotiations, PluriCourts has also played a key role generating and disseminating research into the process as a host of the Academic Forum on ISDS, which for a long time was led by Professor Malcolm Langford.

But Berge, St John, and others at PluriCourts are also doing research on the process itself. After each session, St John and colleague and Professor Anthea Roberts from the Australian National University write blogs where they discuss what has happened and how it could be squared with academic ideas.

- Writing these blogs is sort of an avant-garde thing to do, as it's not very common for academics to be allowed into a negotiating room, let alone be permitted to write about a live negotiating process. So, it's very exciting, but it can also be challenging, because we are working in real time, without knowing where the process will lead, St John explains.

### A policy disconnect

The blogs have had a real impact on the negotiations, she claims, a prominent example being a piece they wrote on whether investment treaties necessarily lead to more investment.



**The attention of the negotiators:** Taylor St John (in the middle) presenting her findings to the negotiators. Malcolm Langford is sitting on her right side. Picture: Tarald Berge.



**Part of the process:** Tarald Berge (to the left) and Malcolm Langford have designated seats and observatory status during the negotiations. Photo: Laura Létourneau-Tremblay

This was an assumption many negotiators relied on, despite it being rebutted by the general academic consensus.

- That blog post is my favorite. It is about investment flows, but it is also about a larger idea that there is sometimes a disconnect between what academics and policymakers believe, St Johns explains.

The research group has also published academic articles on specific aspects of the reform process, using their access to UNCITRAL as a laboratory for bigger themes such as participation by developing countries in international negotiations or the presence of private sector actors in multilateral discussions.

### - States literally came to us

As a trained political scientist, Berge stresses that many political scientists want to be able to do research on stuff that matters in the real world.

- I really enjoyed that at UNCITRAL, as you really see that what you have spent hours and hours working on really matters to policy makers. They use it argue



Photo: Colourbox.com

their positions policy issues and they regularly reference it from the floor. One topic the negotiators have been particularly interested in is the question of compliance.

- They don't know whether compliance is a problem or not. This matter for the new system they are trying to set up and whether it will need a compliance mechanism such as for instance a court. States literally came to us during the negotiations and asked whether we could help them find out, says Berge.

### The pandemic as a natural experiment

Going forward, Berge will also do research on how the pandemic has affected the reform process and developing countries ability to participate.

- This is a natural experiment. The negotiations were physical and then we had an external shock after which things had to be digital. But it's still the same states and they still have the same interests. All else equal, they should be as interested after as before Covid, Berge explains.

From a theoretical perspective, the digital format should increase developing countries' ability to participate by

lowering the costs of participation. However, some factors might also lead to reduced participation, such as for instance an unreliable internet line or the lack of out of office privileges.

- Developing country negotiators' tend to have many responsibilities. When they follow the negotiations from their office, many of them still have to do their normal job and answer to their bosses at the same time. They might be zooming in, but they might not be as active as they would have been otherwise. Just from a quick glance at how often states speak and how active they are, there might be at least some states that fall off when you go digital.

Berge highlights that he is still in the data-gathering phase, and that it is too early to say anything definitively yet. He is also interested in finding out how the digital format is affecting the quality of the negotiations.

Both Berge and St John are now part COPIID, PluriCourts' new research project on compliance politics and international investment disputes.

## INTERNATIONAL COURTS VERSUS COMPLIANCE MECHANISMS: COMPARATIVE ADVANTAGES OF NON-COMPLIANCE MECHANISMS AND COMPLAINT PROCEDURES

On the 27th to the 28th of October, PluriCourts hosted a two-day research conference on different types of compliance mechanisms and their comparative advantages.

Many international treaties establish “in-house” mechanisms to facilitate implementation and promote compliance. Some treaty regimes have set up particular complaints procedures and dispute resolution bodies to hear complaints by parties, private entities or affected non-party stakeholder, such as individuals and communities. Other have facilitative committees that aim to help parties overcome implementation or compliance challenges.

Led by Professor Christina Voigt (PluriCourts), the research conference was organized with the aim to compare these more informal non-compliance mechanisms (NCMs) with international

courts. Scholars and practitioners were invited to discuss whether and why in some circumstances the use of NCMs might be more effective to bring states into compliance with their treaty obligation than the recourse to international courts and tribunals, as well as how NCMs and other means of dispute resolution such as international courts relate to each other. The different system’s comparative advantages and disadvantages were also debated.

The conference gathered about 40 participants over two days, and they all contributed to facilitate long, engaging discussions across different legal disciplines with some elements of political science. As the conference was arranged in a hybrid format, the participants participated from across the world

with a good balance of gender, career status, geography and legal background. About 10 participants were physically present in Oslo while the rest participated online.

### Cambridge Book Publication

The contributions from presenters and following discussions will culminate in a book publication in PluriCourts’ book series at Cambridge University Press, “Cambridge Studies on International Courts and Tribunals”. Edited by Professor Christina Voigt and Professor Caroline Foster (The University of Auckland), the book is due in 2022.



Photo: Hanna Jarstø Ervik

## Seminar on the Effective Implementation of the European Convention on Human Rights

Together with the Council of Europe’s Steering Committee for Human Rights (CDDH), PluriCourts hosted a seminar on “The effective implementation of the European Convention on Human Rights – enhancing domestic dialogue and co-ordination”.

The seminar was held digitally on the 15th of June. It explored three over-arching themes:

- 1) the execution of the Strasbourg Court’s judgments as the cornerstone of the implementation of the Convention at the national level;
- 2) inter-agency coordination and multi-stakeholder dialogue as a precondition for an effective execution of judgments;
- 3) making full use of the cooperation with the Council of Europe.

Interventions were held by representatives from government agents, civil society, and academia. On the list of participating scholars were Matthew Saul, visiting researcher at PluriCourts and Associate Professor at Inland Norway University of Applied Sciences, and Øyvind Stiansen, Postdoctoral Fellow at PluriCourts.

### PluriCourts’ contributions

Saul’s intervention revolved around the quality of executions, and the processes enabling changes in line with judgments. He argued that the execution process can serve as an opportunity to foster the embeddedness of the Convention at the national level, as it can teach actors such

as parliamentarians and national courts what the Convention requires and their role in delivering it. Yet the quality of the execution is also important in itself, as it affects whether the judgment actually resolves the human rights issue and bring about changes that are respected in practice.

Stiansen highlighted how the ability to hold a government accountable plays into how quickly a state executes a judgment, especially when there is a lack of political will to implement a judgment. He further underlined the importance of strengthening actors who do not represent the formal government hierarchy because they can help holding domestic institutions, actors, and legislators accountable. A way to strengthen these actors is by bolstering the transparency of the execution process.

Other contributions highlighted aspects such as the shared responsibility and the involvement of the various Council of Europe organs; the importance of effective synergies between different bodies within the Council of Europe; and the need for sufficient funding and capacity building on a national level to ensure effective implementation. Civil society’s role was also stressed by several seminar participants, who emphasized their importance with respect to amicus curiae in pending cases and when submitting observations to the Council of Europe’s Committee of Ministers.





Photo: Colourbox.com

## Inter-State Cases under the European Convention on Human Rights – Experiences and current challenges

On the 12th to the 13th of April, PluriCourts co-organized a conference on the Inter-State cases pending at the European Court of Human Rights (ECtHR). The conference was co-organized in collaboration with the German Federal Ministry for Justice and Consumer Protection and the Human Rights Centre at the University of Potsdam.

A growing number of time-consuming and complex cases related to inter-state disputes are pending before the ECtHR. This is having an increasing impact on the Court's overall workload, while it also highlights underlying tensions inherent in the European Convention on

Human Rights (ECHR). In response, the Council of Europe's Steering Committee for Human Rights (CDDH) instituted a working group to examine the issue. To inform this process, the two-day conference brought together leading minds in academia and practice to examine inter-state cases from different angles, and to discuss ways to enhance their effective processing and resolution.

The conference was opened by the now former German Minister of Justice and Consumer Protection, Christine Lambrecht, the Secretary General of the Council of Europe, Marija Pejčinović Burić, and the President of the European Court of Human Rights, Róbert Spáno.

Setting the scene, the program of the first day included an introduction to the history and typology of inter-state proceedings under the ECHR and other human rights treaties, a presentation on intergovernmental work at the Council of Europe, a panel discussion, and a Q&A session.

The second day was dedicated to the different types of challenges inherent to inter-state cases that were discussed in three parallel workshops. PluriCourts' Geir Ulfstein moderated the first workshop, which focused on the challenges related to fact-finding. The second workshop focused on the challenge of processing inter-state cases and related individual applications in

parallel; and the last workshop dealt with the possibility of friendly settlements in inter-state cases.

### Workshop on the challenge of fact-finding

In the workshop led by Professor Geir Ulfstein, interventions that were held by other courts. Often, this results in ten thousands of document pages, which paints a picture of the overwhelming size of the task the Court is dealing with.

The panel also highlighted how the pandemic has shown the possibility for digital hearings, which could be used in fact-finding hearings. New technology also provides the Court with more opportunities and can be utilized to verify submitted evidence.



Photo: Colourbox.com



## CONFERENCE ON THE INDEPENDENCE OF THE JUDICIARY

The 15th of February, PluriCourts and the Norwegian Courts Administration arranged a digital conference on the Independence of the Judiciary in Norway. The judiciary was well-represented in the audience, which counted about 90 participants.

In October 2020, the Norwegian Ministry of Justice and Public Security launched a public consultation on the Official Norwegian Report on judicial reform (NOU 2020: 11). In light of this report, the purpose of the conference was to discuss the Judicial Commission's proposals for judicial reform prior to the consultation deadline.

Introducing the topic, Professor Ragna Aarli at the University of Bergen and member of the Commission gave an overview of the key reforms and bills that the Commission had suggested in their report. She argued that while the independence of the judiciary is guaranteed through the Norwegian Constitution, certain rules are so important that they should be established by law in the Constitution.

In a pre-recorded video, Professor

Tom Ginsburg from the University of Chicago then provided an international point of view. He highlighted challenges and measures taken to ensure the court's independence and stressed the importance of properly institutionalizing the procedures for appointment and removal of judges, so that disciplinary actions against judges cannot be abused. A protection of judges' tenure and salary, and a constitutionalizing of the courts' legal independence, are measures that can ensure the judiciary's independence, he argued.

The conference also included interventions from Eirik Holmøyvik, Professor and member of the Venice Commission (the Council of Europe's expert body on constitutional law), and Adele Matheson Mestad, Director of the Norwegian National Human Rights Institution (ENNHRI).

The above-mentioned speakers took part in a panel discussion on the topic, together with Kirsten Bleskestad, District Court Judge and president of the Judges Association, and Peter Frølich, Member of Parliament for the Conservative Party. These discussions were moderated by Professor Hans Petter Graver at the University of Oslo.



Foto: Francesco Saggio/UiO

## Annual workshop on 'The Political and Legal Theory of International Courts and Tribunals'

**Input and output legitimacy of international courts was the topic of the 2021 version of PluriCourts' annual political and legal theory workshop.**

For the second year in a row, PluriCourts' annual workshop on the political and legal theory of international courts and tribunals was conducted digitally.

This year's workshop was held between the 21st to the 22nd of June and was hosted by Professor Andreas Føllesdal and two Post-doctoral Fellows at PluriCourts, Johan Vorland Wibye and Matthias Brinkmann. The topic

on the agenda was the input and output legitimacy of international courts (ICs).

When applied ICs, the distinction between the input and output legitimacy raises a number of questions. Unlike domestic courts, ICs are not part of a democratic system of checks and balances, and so, a major source of input democracy is missing. At the same time, there is no obvious global public to which ICs are said to be responsive to. Many defenders of ICs stress the beneficial

outcomes they provide, which raises questions about the nature of those benefits, whether ICs manage to achieve them, and whether these benefits alone are enough to confer legitimacy.

Prior to the conference, PluriCourts had organized a call for papers within the broad theme of the conference,

which attracted nearly 70 applications.

Among these, nine scholars were invited to present their contributions.

Participants were asked to

provide feedback on others' work, which was followed up by constructive discussions in plenary. Compared to previous years, less time in the program was dedicated to the presentations of the papers to allow for more time for discussions and feedback. Participants were very satisfied with both the format and the workshop in general, with one person stating in the feedback form: "Great! Please keep the same format for future workshops."

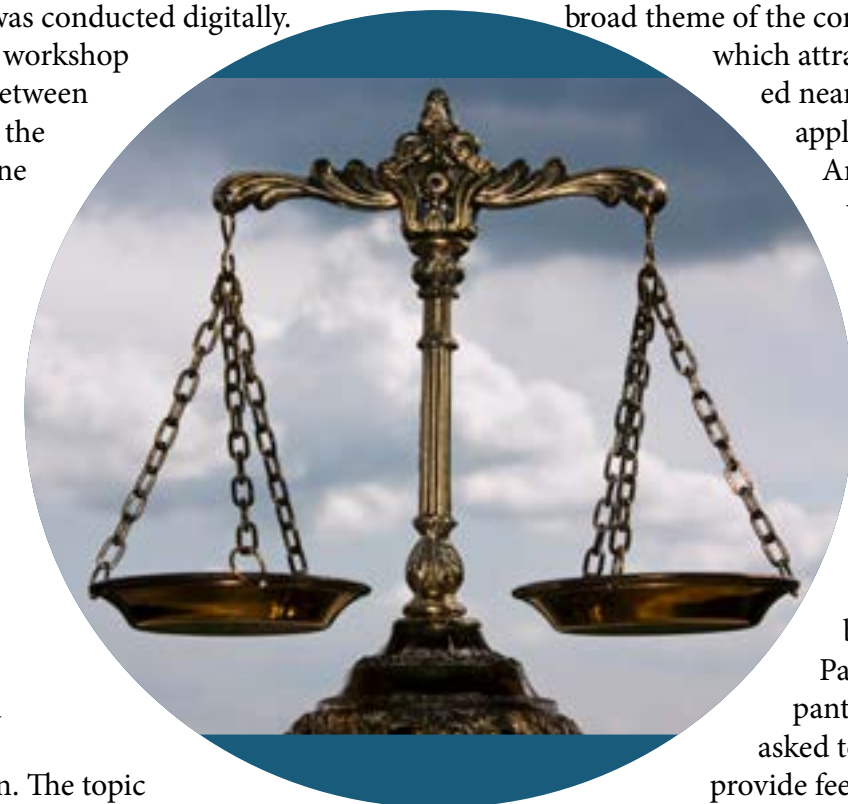


Photo: Colourbox.com





## SVALBARD SYMPOSIUM: CONTESTED SOVEREIGNTY, INTERNATIONAL COURTS AND TRANSNATIONAL CONSTITUTIONALISM



PluriCourt's Svalbard symposium held on the 6th and 7th of September, featured lively and engaging discussions on topics related to the Svalbard Treaty, international courts, and transnational constitutionalism.

On the agenda for the two-day hybrid symposium were topics related to sovereignty and international courts with an emphasis on the Svalbard treaty and international law of the sea. The symposium had 20 participants from various countries and was co-organized together with the Norwegian Centre for the law of the Sea at UiT, the Arctic University of Norway. The discussions were lively and engaging with many participants showing great initiative. The symposium's first session was dedicated to the interpretation and

application of the Svalbard treaty. Two topics discussed were of particular interest: the ongoing conflict between Norway and the EU concerning fishing quotas, and whether the treaty obligates Norway to allocate snow crab fishing quotas to international fishermen. Parallels were drawn to the Permanent Court of Arbitration's recent judgment on the South China Sea.

The second and third sessions dealt with international courts and transnational constitutionalism. Among the various topics discussed, there was a special interest in the intersection between the two sessions and whether international constitutionalism is an appropriate theoretical framework to study international courts. Participants had different opinions, with some holding that the framework should be used primarily in a domestic context whereas others suggested that constitutionalism could also be a fruitful framework to explore the legitimacy of international courts.



Photos: Guro Frostestad



# Annual Conference and Annual Lecture

True to tradition, PluriCourts organized an annual conference to provide an overview of the center's research activities during 2021, and how it relates to the overall research plan. Over two days from the 23th to the 24th, the center's researchers presented highly interesting and relevant contributions on topics such as legitimacy standards, multilevel separation of authority, independence and accountability, comparative advantage and performance. The first day, June 23, ended with an engaging and thought-provoking lecture



by Professor of Political Science, Karen Alter, on the topic 'Nationalist Backlash and the Future of International Courts'. Due to the persistent Covid-19 situation, both the conference and the lecture were once again fitted with a digital straitjacket in the form of zoom -- of course without compromising academic quality. However, the conference ended, and was duly celebrated, with a nice physical dinner on Domus Juridica's beautiful roof terrace -- where the requirements for distance and ventilation were fully met.



Photo of Karen Alter used by her permission.  
Photo from the roof top: Guro Frostestad

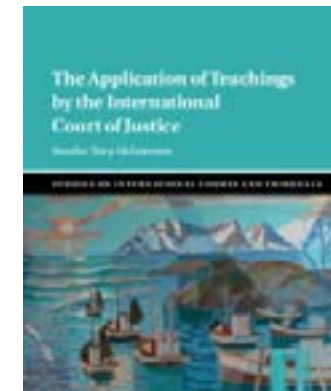
## Book Launches:

### The Application of Teachings by the International Court of Justice

On the 13th of October, Senior Research Fellow, Sondre Torp Helmersen, at the Arctic University of Norway presented his new book in a hybrid book launch organised by PluriCourts and NFIR, the Norwegian branch of the International Law Association (ILA).

Helmer's book is the newest edition to PluriCourt's Cambridge book series, Studies on International Courts and Tribunals. Titled 'The Application of Teachings by the International Court of Justice', it is the first book that at length examination of how teachings are used in such an important international institution. It uses three different methodologies: a traditional legal analysis, an empirical analysis where citations of teachings are counted, and interviews with judges and staff.

During the book launch, Helmersen presented the book's main findings, which suggests that teachings have generally low weight, but that this weight varies between different works and between different judges. The book suggests explanations for these patterns, and further seeks to contribute to the understanding of when and how teachings are used as well also why. To broaden the perspectives in answering these questions, the Court's practice is also compared with that of other international courts and tribunals. After the presentation of the book, Senior Research Fellow, Jörg Kammerhofer provided his prepared comments.



### Global Regulatory Standards in Environmental and Health Disputes

On the 8th of December, PluriCourts hosted a digital book launch for Professor Caroline E. Foster's new book, Global Regulatory Standards in Environmental and Health Disputes (Oxford University Press, 2021). The book addresses international courts' (ICs) and tribunals' formulation of emerging global regulatory standards. This must be done while balancing states' international legal interests and determining the extent of international adjudicatory intervention in domestic regulatory decision-making.

In the book, Professor Foster analyses the jurisprudence of the International Court of Justice, the World Trade Organization, cases under the UN Convention on the Law of the Sea, and investor-state dispute settlement. The panel of commentators consisted of Professors Gleider Hernández (KU Leuven), Geir Ulfstein (PluriCourts), and Nilufer Oral (National University of Singapore).



# Highlighted research findings:

## The shadow effect of courts

**International courts can have a far larger influence on domestic politics than what appears at first sight, Øyvind Stiansen suggests.**

In the fall 2019, it was revealed that the Norwegian Labor and Welfare Administration, or NAV, had misinterpreted EEA rules (EØS in Norwegian), leading to at least 80 people being falsely accused of welfare fraud. Since then, the dominant explanation for what has been termed the largest social security scandal in modern Norwegian history has been that NAV lacked knowledge of their EEA commitments. Yet this is a story with many holes, says Øyvind Stiansen, postdoctoral at PluriCourts.

- NAV had many chances to correct and understand that something was wrong much earlier, as there had already been several verdicts on this from the National Insurance Court, he stresses.

Together with colleague and assistant professor Tommaso Pavone, he published the article 'The Shadow Effect of Courts: Judicial Review and the Politics of Preemptive Reform' in the prestigious journal American Political Science Review. In it, they assert that

the NAV scandal must be understood in light of the Norwegian government's wish to avoid interference by the EFTA court. - We point out that an underlying reason for the disclosure of the NAV scandal was that NAV received a letter from the National Insurance Court (Trygderetten in Norwegian) where they threatened to send the cases to the EFTA court, Stiansen explains.



**The shadow effect of courts**  
The EFTA court litigates in EEA-related cases, yet it is not very well known in the public as it handles few cases. Generally, the Norwegian government wishes to avoid that the court litigates in important cases, as they wish to retain a national room for maneuver in the interpretation of their EEA commitments. - We argue that a certain type of politics has developed where the government tries to limit the court's ability to be an important actor by making sure that it doesn't litigate in any consequential cases. Instead, one tries to solve cases locally to make sure that they don't reach the court, says Stiansen.

Paradoxically, it is this adjustment that

Photo: UiO

leads to what Stiansen and Pavone have termed the shadow effect of courts, which shows how a court can influence domestic policy even in situations where the court decides few cases and seemingly has little political impact. According to Stiansen, the shadow effect functions differently depending on the political context.

In a country such as the US where there generally is a lot of litigation, the shadow effect can be positive for courts as it can help them have political influence even without having to litigate in every single case.

- However, for a court such as EFTA that doesn't litigate that many cases and whose authority is more politically disputed, this can be a problem for the court, as it becomes unable to build its authority by litigating important cases, Stiansen explains.

**- Sometimes you might perform better by being seen in the cards**  
Both in academia and in the Norwegian public debate, much is generally said on how the Norwegian room for maneuver is threatened and how it can best be safeguarded. However, the NAV scandal might be an example of how decision-making is sometimes is

improved by having actors outside the national system scrutinizing decisions, Stiansen argues. He suggests that this might safeguard the rights of citizens better than what would have otherwise been the case. This is a perspective Stiansen often misses in the Norwegian EU and EEA debate

- Everything is about that we need more room for maneuver nationally. Less is said about how sometimes you might perform better by being seen in the cards by supranational and international actors, as this example also shows. Just knowing that you will have to answer for your actions leads to better decision-making, Stiansen argues.

The shadow effect is stemming from political adjustments to prevent a case from reaching the court.

However, whether this leads to more incomplete reforms than what would have otherwise been the case is an open question.

- In the NAV case, it is clear that the Norwegian government at first tried to implement only limited changes, but that this didn't work. When they had first started, it became difficult to control the effects and eventually the cases reached the EFTA court anyway, says Stiansen.



Photo: Tori Loven Kirkebø

## New data base

Contributing to the research on international courts and tribunal, PluriCourts have developed several data bases on international courts. New of the year is data base on the The European Free Trade Association (EFTA) Court, an international court that has long been neglected in terms of quantitative research and statistical analysis

## The EFTA Court Database

The main objective of the new database has been to provide a quantitative and systematic overview of the EFTA Court's judicial behavior and activities, thus facilitating new and further research on the Court and its judicial politics. The database contains detailed and comprehensive information on all the settled cases of the EFTA Court from its establishment in 1994 until 2020. Coded based on the EFTA Court's modest case load of just under 300 cases, it contains a total of six datasets with information on case-specific characteristics, third-party positions, legal representatives, citations and judges. The database is primarily developed as a stand-alone project, although there might be a possibility to connect the database to the Court of Justice of the European Union (CJEU) database at a later stage, since both these courts adjudicate based on EU/EEA law.

## State Consent to International Jurisdiction:

# Expert meeting 2021

26th October 2021, the team behind the the Resrarch Council of Norway funded project "State Consent to International Jurisdiction" hosted their annual expert meeting on zoom. In the meeting, experts from all over the world where invited to comment on the team's ongoing work.

The project's leader, Professor Freya Baetens, presented the paper "State Consent to Jurisdiction under International Investment Agreements", and received comments from Professor Campbell McLachland, Professor Regis Bismuth and Associate Professor Johan Ruben Leiss.

Ph.D. Candidate Emma Brandon presented the paper "Obligations under the ICCPR to Cooperate with the ICC and Regional Human Rights Tribunals", with comments from Professor Dire Tladi and postdoctoral researcher Juan Pablo Pérez-León Acevedo.

Ph.D. Candidate Nicola Strain presented the paper "Consent and Lawmaking in WTO and ISDS regimes: The Boundaries of the Judicial Function and Jurisdiction". She received comments from Professor Ernst Ulrich Petersmann, Professor Attila Tanzi and Professor Annalisa Ciampi.



Illustration photo: Colourbox.com



# Internal seminar at Finse



**This years' internal seminar was held at beautiful Finse and featured rewarding discussions, stock taking of findings and a biking trip along the famous Rallarvegen.**

The seminar was held at Finse, the highest point of Bergensbanen, between the 15th to the 16th of September. Over two days, PluriCourts' members discussed PluriCourts' most important findings so far, how they relate to the research plan, and what members still want to work on over the next two years. The overall aim was to take stock of findings in order to get a holistic understanding of what we know so far about 'the legitimate role of the judiciary in the global order'. The discussions were rich and engaging and featured long discussions on multidisciplinary research and how to improve and use PluriCourts' remaining time most appropriately.

As the seminar was held in cabin tucked away far into the Norwegian mountains, there was also a lot of time for colleagues to socialize in the lounge or on hikes to nearby mountain peaks or the glacier. Many participants also took part in a biking trip along the famous "rallarvegen" after seminar. Immersed in a spectacular and varied scenery, the biking trip starts at Finse at 1 222 meters above sea levels and descends all the way down to Flåm at sea level.



Photos: Guro Frostestad and Hanna Jarstø Ervik





Photo: Yngve Vogt/UiO

## The University of Oslo's Research Prize

**In 2021, PluriCourts' co-directors Andreas Føllesdal and Geir Ulfstein were awarded the University of Oslo's 2021 Research Prize for their multidisciplinary, groundbreaking research on the international judicial system.**

According to the jury, Føllesdal and Ulfstein received the award because they by establishing the Centre of Excellence: PluriCourts – Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order, laid the foundation for groundbreaking research on the international legal system through an interdisciplinary approach. The jury applauded Føllesdal and Ulfstein for putting UiO on the map within the research field on

international courts and tribunals and the global legal system. Føllesdal and Ulfstein began collaborating while working at the Norwegian Centre for Human Rights in 2004. While working at the Norwegian Academy of Science and Letters, Føllesdal and Ulfstein created an interdisciplinary research group with philosophers, lawyers and political scientists, before establishing PluriCourts in 2013.

Andreas Føllesdal and Geir Ulfstein received their award during the University of Oslo's Annual Festivities on 2 September 2021. In their speech, they highlighted that multidisciplinary collaboration should be a comparative advantage for broad-based universities, like UiO, which allows colleagues and

faculties to not only formulate complex problems, but also understand them.

-Multidisciplinary collaboration carried out in a sensible way is not a threat to the individual subject – on the contrary. Collaboration across disciplines show us the added value and insight from other professionals' questions, perspectives and methods. We encourage UiO to increase its efforts to trigger these benefits of multidisciplinary and collaborations across faculties, in terms of both teaching and research, said Andreas Føllesdal and Geir Ulfstein.

## Other prizes and awards



- Professor Freya Baetens has been appointed to the Advisory Board of Max Planck Encyclopedia of Public International Law.
- Professorw Malcolm Langford has been elected as a “merited lecturer” at the University of Oslo.
- Postdoctor Øyvind Stiansen has been elected as a Steering Committee member to the European Consortium for Political Research (ECPR) 's Standing Group of Law and Courts.
- Professor Christina Voigt was elected chair to the International Union for Conservation of Nature (IUCN)'s World Commission on Environmental Law (WCEL) (See next page).

Photos: UiO





Photo: Christina Voigt

## - I want the Commission to focus internationally.

**In 2021, Professor Voigt was elected as chair of the IUCN's World Commission on Environmental Law (WCEL) for the next four years. She intends to harness its international role and its global reach.**

The International Union for Conservation of Nature (IUCN) is in many ways a curious anomaly on the international arena. Its members span both 92 states and over 1 400 civil society organizations, and it harnesses the insights of over 18 000 experts. Since its establishment in 1948, the IUCN has become a global authority on the status of the natural world and the measures needed to safeguard it.

The IUCN has six commissions within various fields, and one of them is the World Commission of Environmental Law (WCEL). This commission with around expert members will be led by PluriCourts' Professor Christina Voigt for the next four years. She has high ambitions for the coming period.

- I want the Commission to focus internationally. There is so much important international work going on and I want us to be an important player in these negotiations.

### **Networking, capacity building and pushing legal development**

Voigt already has a lot of experience in environmental multilateralism. For over ten years, she was Norway's legal adviser and negotiator in the UN climate negotiations. She is also currently the first co-chair of the Paris Agreement's Compliance and Implementation Committee.

- I'm an international lawyer, that's where my passion lies. But I also see how international law has an important impact on domestic legal development, Voigt stresses. To reach the Commission's goals and fulfill its potential, Voigt has three visions.

- First, I want the Commission to be an arena for networking and meeting where different experts within the field can share experiences, lessons and competences. Second, I want the

**Commission to push the legal development, both domestically and internationally. Third, I want to provide a forum for capacity- building by hosting seminars and conferences where we can support legal education and environmental law literacy.**

### **- This is where the topic stands**

Voigt has published widely on legal issues related to climate change, environmental multilateralism, and sustainability. These topics have gradually shifted towards the courts, says Voigt.

- This is where the topic stands at the moment. There are no scientific uncertainties anymore on the state of natural degradation or the decline of biodiversity. The science is clear, but politics aren't.

According to Voigt, the law is also fairly clear, as there already is a large amount of rules and regulations both domestically and internationally. However, the laws are not necessarily complied with or enforced.

- This is why we now see this shift to the courts. This is where these battles have to be fought, in the light of the lack of and ineffective action, Voigt stresses.

### **This is only the beginning**

Across the globe, an increasing amount of petitions related to climate change have been brought to both domestic and international courts.

Yet this is only the beginning according to Voigt, who believes that a similar wave of lawsuits related to biodiversity and natural degradation is just around the corner.

In Norway, several civil society organizations recently lost their lawsuit against the government in the Norwegian Supreme Court. The civil society organizations claimed that the government's decision to open up for new oil and gas exploration violated article 112 of the Norwegian Constitution, which gives today's and future generations a right to a livable environment.

Voigt admits that she is disappointed with the reasoning behind the judgement.

- The Supreme Court's judgment seemed to suggest that as long as the parliament had discussed the issue, they complied with the Constitution's article 112. The court recognized that it had a role, but it didn't fulfill it. It didn't look at whether the lawmakers put up sufficient means to protect the environment.



Photo: UiO

change has so far been brought to this court, which has provided no judgements on the matter so far.

The petitioners have now brought the case before The European Court of Human Rights (ECtHR) in Strasbourg. Four cases on climate change has so far been brought to this court, which has provided no judgements on the matter so far.

- I don't know how the court will react, but it will be interesting to follow, says Voigt.

### **Inspiration from the younger generation**

Working within the field of environmental law is sometimes frustrating, says Voigt.

- The changes are slow, and at the end of the day the real impacts are few and not enough yet. At the same time you see that climate change is progressing and that nature is being degraded in front of our eyes.

Yet Voigt find hope and inspiration in the younger generation, especially young climate change activists. But the change is also visible among Voigt's own students. About ten years ago, she started a course on international climate change law. In the beginning, it had about 17 students, now it has almost 200.

- I always ask my students why they take the course: This year, they answered "how can we not? This is going to be so consequential for us and our future career". I think this is very telling, says Voigt.

# Spotlight on: Emma Brandon



Photo: Hanna Jarstø Ervik

**In her PhD thesis, Emma Brandon investigates state’s obligations to cooperate with the International Criminal Court (ICC) and the regional human rights courts, even when they are not members of these courts.**

In October, Emma Brandon handed in her PhD thesis on states’ obligation to cooperate with the International Criminal Court (ICC) and three regional human rights courts; the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples’ Rights.

These tribunals are custodians of the rights of individuals, protecting them against state oppression and crimes. Legally, their ability to stand up for these rights is generally restricted to cases concerning states that have voluntarily joined their jurisdiction, which severely limits the scope of their influence as powerful states are often not parts of these jurisdictions.

Yet this might not be the entire story.

**In specific circumstances, states must cooperate**

- In my thesis, I look at how countries who aren’t part of these tribunals may still have obligations to cooperate with those tribunals on the basis of other international human rights and humanitarian law treaties that they are members of. Quite surprisingly, I found that there actually are obligations to cooperate with these tribunals on the basis of these treaties, says Brandon.

Brandon bases her findings on the Convention against Torture, the Genocide Convention, four Geneva Conventions on the laws of war, and the

International Covenant on Civil and Political Rights. However, the obligations to cooperate are very limited and only apply in specific situations.

- For the most part, it is going to concern the rare circumstances where there is dual jurisdiction, and where a violation occurred on another country’s territory but the relevant country is somehow responsible for it or there is some other connection to that country’s territory.

**Without state cooperation, the courts cannot do their jobs**

Scholars and practitioners around the world have warned that we are currently experiencing a global backlash against international law and institutions, a development that is well-known to Brandon.

She has herself interned at the ICC, where she found the lack of state cooperation to be the greatest challenge facing the tribunal.

- When states chose not to cooperate, the court cannot do its job. There are still so many fugitives that are free because states just refuse to hand them over, and there is still so much evidence that the court needs but that it cannot get without state cooperation, Brandon explains.

According to her, states are wary of the ICC and the human rights courts because they protect individuals from interference from their own governments. Often, they can therefore be perceived or framed as interfering with domestic politics. The ICC also often prosecutes government officials, which further complicates matters.

- It can often look like a big imposition on sovereignty, but states have already voluntarily given up this particular part of their sovereignty through ratifying human rights treaties, Brandon stresses.

She highlights that education and outreach are important to make states aware of their own obligations and create a better understanding of the courts’ work and positive contributions.

Brandon thesis is part of PluriCourts’ research project on state consent to international jurisdiction funded by the Research Council of Norway. The project is led by Professors Freya Baetens who is also Brandon’s supervisor.

Brandon’s PhD defense is scheduled for 1. April 2022, and she is now working as a Project Officer at the International Nuremberg Principal Academy.



# Spotlight on: PhD Defenses



## Tarald Gulseth Berge

**3. February, Tarald Laudal Berge held a digital public defense of his PhD thesis, "State Capacity in the International Investment Treaty Regime".**

Through five articles, Berge examined how states can influence the formation and functioning of international legal institutions they are party to and how the international legal commitments influence domestic politics within the bounds of the international investment treaty regime.

*-Why did you chose state capacity in the international investment treaty regime as a topic?*

The topic came together after I had started some of the individual research projects that made up the overall dissertation. Understanding how states can influence the rules that the international investment treaty regime is made up of, struck me as important in a time when the regime itself is in flux and new ways to regulate

the global marketplace for investment is being negotiated.

*-What do you consider to be your most important finding?*

A key finding in my research is that the expertise of officials representing states in both international negotiations, but also when considering domestic legal avenues to regulate foreign investment, is more important than what has previously been thought. This is not to say that economic and political power doesn't matter when international rules are established, but states with limited economic and political power can make up for some of their structural disadvantages by building relevant legal expertise around the issues under negotiation. Individuals matter in international relations!

*-Why did you chose to work at PluriCourts?*

I wanted to do my PhD at PluriCourts because it allowed me to sit in what most likely is the hub for research on international courts and tribunals, with a particularly vibrant team of researchers working on international investment law.

After his submission, Berge has continued his career as an associate professor at the University of South-Eastern Norway. However, he is still affiliated with PluriCourts through the research project COPIID (see earlier in the report).



## Vegard Tørstad

**Guest PhD researcher Vegard Tørstad defended his PhD thesis entitled After Reform : Procedural Justice and the Legitimacy of International Institutions in January 2021.**

Tørstad's thesis examines how decision-making procedures matter for the legitimacy of three international institutions: the climate negotiations at UNFCCC (United Nations Framework Convention on Climate Change), the global trading architecture under GATT/WTO, and the UN Security Council. Tørstad wrote his PhD at European University Institute, but was a guest PhD researcher at PluriCourts during the pandemic. He is now Assistant Professor at the Department of Political Science at the University of Oslo.

# PH.D. Midway Assessment: Runar Hilleren Lie

**9. March 2021, Runar Hilleren Lie successfully completed his midway assessment on his PhD project "Tracing influence- a computational study of change in the international investment system".**

Using an empirical and computational approach, Lie's thesis explores how international investment law has changed over time and attempts to identify which actors have brought about these changes.

The thesis is supervised by Professor Malcolm Langford (PluriCourts), Daniel Behn (Queen Mary University) and Professor Carl Henrik Knudsen (UiO). It is part of PluriCourts' research project "Responses to the 'legitimacy crisis' of international investment-law" (LEGINVEST). The assessor of the midway Professor Joost Pauwelyn (Graduate Institute of Geneva).

We asked Lie a few questions after the midway assessment:

*-What is your motivation for working on this topic and why is it important?*

The system has a significant impact on policy, development, and international relations across

the world. Yet despite its fairly heavy impact, there is still much we do not know about its inner workings. As the system is decentralized and lacks a single authority or organizing body, it is hard for researchers and practitioners alike to understand the system as a whole. In the project, I use computational methods to organize and analyse the full set of treaties and cases to provide an improved overview of the system's development.

*-How did you find the midway assessment?*

The midway assessment gave me the opportunity to thoroughly reflect on the project together with one of the leading scholars within the field. That type of in-depth and qualified feedback is priceless when it comes to developing the project.

*-What are the benefits and highlights of doing your Ph.D. at PluriCourts?*

Two things in particular come to mind. The first is the positive, constructive, and multi-faceted feedback you get on your work, both through the formal presentations such as Wednesday lunches, but also on a day-to-day basis around a coffee cup. The breadth and quality of ideas and comments are quite wonderful. The second is that PluriCourts is also a genuinely nice place to work as everything works well. Beyond that, there is a social dimension that is a terrific asset when doing something so challenging as a Ph.D. The support of good colleagues is simply priceless.



Photo: Guro Frostestad



## Ph.D. midway assessment: Laura Létourneau-Tremblay

**30 September, Laura Létourneau-Tremblay successfully completed the midway assessment of her PhD project entitled 'Aligning the International Investment System with Environmental Protection: Synergies or Discord'.**

Létourneau-Tremblay's project aims to assess whether and to what extent international investment law is evolving towards greater sensitivity for environmental protection. More specifically, the project maps the use of environmental language in recently signed international investment agreements and discusses some of the effects of such language on investor-state arbitration (ISA).

The thesis is part of PluriCourts' research project "Responses to the 'legitimacy crisis' of international investment law" (LEGINVEST) and is supervised by Professor Ole Kristian Fauchald (PluriCourts), Assistant professor Taylor St. John (St Andrews



Photo: Hanna Jarstø Ervik

University; and Senior lecturer Daniel Behn (Queen Mary University of London). The leader of the assessment was Associate professor Jo Martin Stigen (UiO) and the assessor was Dr Mavluda Sattorava (University of Liverpool).

After the midway assessment, we asked Laura some brief questions.

*-What is your motivation for writing your thesis this topic?*

I've always been passionate about environmental protection and climate change and I was intrigued to understand a little bit more on investor state arbitration, both on how it works and on what is the real deal about all the criticism that you often hear.

*-How did you find the mid-way assessment?*

It was so useful! The assessor (Professor Mavluda Sattorava from the University of Liverpool) provided in a way critical, but also very helpful and detailed comments. It was so helpful to help me sharpen the whole focus of the thesis but also in providing a little bit of confidence.

*-What are the next steps in the work with your thesis?*

So far, I've focused a lot on the treaties, a little bit on cases, but the next step will be to more systematically analyze all the different cases that I've identified.

*-What has been the highlight of doing your Ph.D. at PluriCourts?*

The highlight is probably just being part of PluriCourts, having great colleagues, and being able to take part in different seminars. When doing an Ph.D., being part of a great team can be very helpful, supportive, and inspiring.



## New at PluriCourts Allain Zysset

**In 2021, Alain Zysset joined the PluriCourts team as a researcher in political legal theory.**

*- What is the title of your project?*

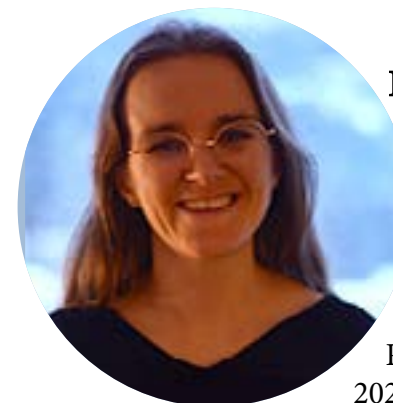
To Defer or to Surrender? The European Court of Human Rights in Populist Times

*-What is your project about?*

The project aims to offer the first comprehensive account of the Court's actual and potential response to the wave of populism consolidating across Council of Europe states. To address the issue fully, the project combines conceptual, empirical and legal analysis. Conceptually, the project builds upon the fast-growing literature in the social and political theory of populism, which will delineate the populist phenomenon and locate it among an already rich eco-system (e.g. "backlash", "democracy decay", "abusive constitutionalism"). Empirically, the project incorporates recent findings documenting the populist erosion of ECHR-relevant rights at the domestic level with a view to best conceptualizing and designing the Court's subsequent response at the supranational level. In light of these conceptual and empirical foundations, the project aims to evaluate and inform the Court's response to populism on three levels of argument: i) whether the Court has already responded to populism; ii) whether it should respond - and if yes, iii) whether and how it is equipped to do so.

*-What originally attracted you to PluriCourts?*

Its unique blend of disciplines and the freedom to pursue an independent project surrounded by top-notch scholars and infrastructure. Having myself a background in philosophy, political science and law with a research interest in ICs, I have found myself at home.



**Hanna Jarstø Ervik**

**Higher executive officer**

Hanna Jarstø Ervik started as a higher executive officer at PluriCourts in august 2021, where she is working with administration and communication. Ervik wrote her master thesis in political science at NTNU on the Council of Europe's response to democratic backsliding in Hungary. In the fall 2019, she was herself a student intern at the Norwegian delegation to the Council of Europe. Ervik also has background as a journalist in VG and as editor and chief editor in the Student media in Trondheim.

**Lara Marie Nicole Eguia**

**Research Assistant**

Lara Marie Nicole Eguia is a Masters' student in Information and Communication Technology Law at the University of Oslo. She holds a bachelor degree in International and European Law from The Hague University of Applied Sciences. At PluriCourts, Eguia will be mainly be assisting with PluriCourts' COPIID project, with the organising of PluriCourt's Wednesday Lunches where internal and external researchers are invited to present their work, as well as with other events organised at the Centre.



Portraits: UiO



# Master thesis Even Espelid



Even Espelid has been working as a research assistant at PluriCourts since August 2020. He wrote his master thesis, “Resilient against the Recalcitrant: Decision Making and Legitimacy Borrowing at the European Free Trade Association Court”, as a part of his master’s program in Political Science at the Department of Political Science, University of Oslo.

How are courts that are facing institutional challenges in a hostile political environment able to rule contrary to the political preferences of recalcitrant actors? In his master thesis, Espelid examined this puzzle by theorizing an unconventional strategy for courts to tackle the challenges of low legitimacy and the threat of noncompliance: courts can borrow legitimacy and authority from another legitimate legal body with well-entrenched and recognized jurisprudence, and then transplant it into their own judicial context.

In the thesis, he empirically examined the theoretical assumptions in the context of the European Free Trade Association (EFTA) Court. Due to its the inextricable judicial link to the European Union’s legal order, Espelid asserted that the EFTA Court masks its decision-making with EU law and Court of Justice of the European Union’s (CJEU) case law and shields itself with EU actors’ tacit support as its judicial alibi. Espelid further posited that EU actors could constrain the court by diluting its shield – namely, when they endorse the more restrictive interpretation of European law advanced by EFTA member states. Although the EFTA member states are unable to constrain the EFTA Court directly, they can do so indirectly. They can cajole the EU actors into advocating against deeper European integration. Drawing on novel data from all the EFTA Court’s judgments and submitted observations from third parties, from its establishment in 1994 to 2020, Espelid found empirical support for these theoretical arguments. Specifically, when the EU member states or the Commission advocates for less European integration, it erodes the EFTA Court’s “mask and shield”, which thereby systematically and significantly constrains the EFTA Court’s decision-making.

# Master thesis Louisa Boulaziz



Louisa Boulaziz worked as a research assistant at PluriCourts from June 2020 to September 2021. She wrote her master thesis, “Litigation in the Court of Justice of the European Union: Lawyers’ influence on supranational decision-making” as part of her master’s programme in political science.

Boulaziz’s thesis investigates how lawyers affect the decision-making of the Court of Justice of the European Union (CJEU). Research from American courts have highlighted legal representation as an important determinant of judicial decision-making. These studies widely report that good quality legal counsel are important for winning cases. However, the American judicial behavior scholars have not investigated whether their findings from national courts are relevant for studying an international court-setting, like for example the CJEU. Meanwhile, scholars of the CJEU have been devoted to studying how EU member states and the European Commission (the observers to the case) influence the decision-making of the Court. Yet, the lawyers of the applicants and defendants in cases referred to the CJEU have the ability to affect the decision-making of the Court by the same means as the Commission and the EU member states.

In her thesis, Boulaziz uses a novel dataset collected by herself and colleagues at PluriCourts to measure the impact of lawyers on case-outcomes in the CJEU. Her results indicates that litigants with legal representation have a higher probability of obtaining a favorable ruling in the CJEU. Quite surprisingly, she finds that lawyers with prior litigation experience from the CJEU obtain worse outcomes than their counterparts. However, the results indicate that experienced lawyers obtain better outcomes when they are arguing cases that are politically salient. In this international court setting, it also appears that if litigants receive EU member state or Commission support in Court, they are more likely to obtain a favorable ruling.



# Guest Researchers

Each year, PluriCourts welcomes several Norwegian and International visiting researchers to Oslo for research stays of various lengths



## Tomas Pacheco-Bethencourt

**Background:** PhD

Candidate in Philosophy from the University of Málaga, Spain. It is a truly interdisciplinary setting where everyone is generous enough to engage with your work and provide truly enriching feedback.

- *Why did you choose to be a guest researcher at PluriCourts?*

When I was considering possible destinations for a research visit, my thesis led me to wonder about the nexus between international courts, populist governments and how the courts features in populist rhetoric. This line of thought led me to get in touch with Professor Andreas Føllesdal, as PluriCourts seemed to be the perfect place to explore these questions. It turned out to be the right decision.

- *How has your stay at PluriCourts affected your research?*

It allowed me to integrate myself in the best environment to approach the question of how international courts might work as additional checks and balances mechanism when the independence of domestic courts becomes virtually non-existent, as well as matters of legitimacy. It added a whole different dimension and spin on the direction my work was going.

Most importantly, it has allowed me to get in touch with specialists, PhDs, and postdoctoral students from several disciplines.



## Ruth Weber

**Background:** Post Doctorate in Public Law at the Humboldt University of Berlin, Germany.

- *Why did you choose to be a guest researcher at PluriCourts?*

Since my dissertation dealt with the style of reasoning of constitutional jurisdiction, I am very interested in PluriCourts' basic research question on the legitimacy of courts. While I was recently writing an article on the European Court of Justice, I benefited greatly from the contributions of some PluriCourts colleagues.

- *How has your stay at PluriCourts affected your research?*

First of all, it has further opened my eyes to the study of courts, related issues and current developments. I was also able to use the time to work on my habilitation and to write an article based on my observation of the different climate policies in Germany and Norway.

- *Do you have any recommendations to other researchers who would like to have a research stay at PluriCourts?*

It certainly makes sense to get to know about PluriCourts' research and topics beforehand and to bring along openness for new approaches.



## Christoph Saake

**Background:** Graduate Research Assistant at the Chair of Professor Payandeh at Bucerius Law School, Hamburg, Germany.

- *Why did you choose to be a guest researcher at PluriCourts?*

I was looking for an opportunity to reach out to experts in the research of international courts and tribunals. PluriCourts, with its impressive collection of expertise, was the perfect fit for this. Also, as my research concerns advisory opinions which are non-binding judicial pronouncements and as such a kind of judicial oddity, PluriCourts' more holistic approach towards the study of international courts, which includes legal, philosophical and political science approaches promised to be very insightful.

Also, bring your hiking boots, there are great hiking spots all around Oslo!

- *How has your stay at PluriCourts affected your research?*

My research stay at PluriCourts has opened my eyes to many related research areas and even though I cannot address all of these areas in my PhD project, it nevertheless helped me to understand the context in which my research is situated. Also, I learned a lot from the various personal exchanges, the invaluable feedback I received on my research and the regular Wednesday lunch seminars.

- *Do you have any recommendations to other researchers who would like to have a research stay at PluriCourts?*

PluriCourts' uniqueness lies in its interdisciplinary approach towards the study of international courts and tribunals. Particularly, if your research lies at the crossroads between law, philosophy, and politics, I highly recommend applying for a research stay at PluriCourts.

## Dana Burchardt

**Background:** Senior Research Fellow at Freie Universität Berlin and Research Affiliate at the Max Planck Institute for Research on Collective Goods in Bonn, Germany.

- *Why did you choose to be a guest researcher at PluriCourts?*

I chose to be a guest researcher at PluriCourts because of the interdisciplinary of the centre and the relevance of the research conducted at PluriCourts for my own research on courts and judicial decision-making.

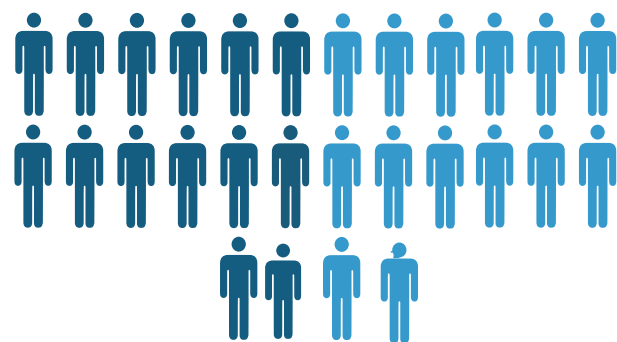
- *How has your stay at PluriCourts affected your research?*

During my stay, I received valuable feedback on my ongoing research by the PluriCourts team members. In addition, the discussion during the weekly meetings, as well as my participation in the internal seminar has further broadened my perspective as to how to fruitfully conduct interdisciplinary research.

- *Do you have any recommendations to other researchers who would like to have a research stay at PluriCourts?*

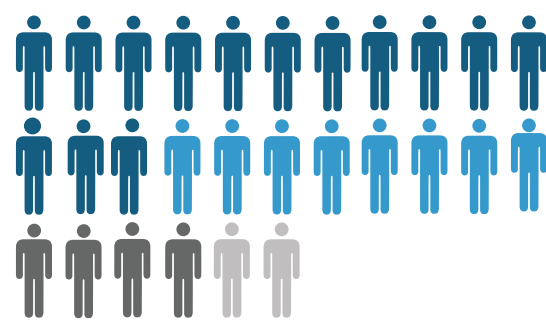
I would recommend a research stay at PluriCourts for researchers interested in international courts and questions of legitimacy of courts more broadly. It allows to engage with, and to receive feedback from, an interdisciplinary group of excellent researchers. The team is very welcoming and there is a broad range of opportunities for academic exchange both informally and formally during the various meeting formats.





**MEN**  
Overall: 50%  
Academic  
staff: 53%

**WOMEN**  
Overall: 50%  
Academic  
staff: 46%



**DISCIPLINES**  
Philosophy: 4 Political Science: 8  
Law: 14 Administration: 2

# PluriCourts in numbers

## Events

**58**  
in total

**16**  
**29**

**conferences  
and workshops**

**PluriCourts Lunch  
Seminars on topics  
pertaining to  
international courts and  
tribunals**

**Reading groups on the  
most relevant publications  
on international courts and  
legitimacy in the fields of law,  
political science, and philosophy**

**13**

4362 followers

598 followers



## Conferences and workshops

- 15. Feb: Seminar on Judicial independence
- 9. March: Midway assesment Runar Hellereen Lie
- 27. May: Digital workshop on Human rights as a standard for policy evaluations
- 15. June: The Effective Implementation of the European Convention on Human Rights - Enhancing Domestic Dialogue and Co-ordination
- 21. June: Annual Workshop on The Political and legal theory of intenational courts and tribunals
- 23. June: PluriCourts Annual Conference
- 23. June: PluriCourts Annual Lecture - 'Nationalist Backlash and the Future of International Courts'
- 6. - 7. September: Svalbard seminar: Contested Sovereignty, International Courts and Transnational Constitutionalism
- 30. September: Midway assesment Laura Letourneau - Tremblay
- 13. October: Book launch with Sondre Torp Helmersen: «The Application of Teachings by the International Court of Justice»
- 26. October: State Consent to International Jurisdiction: Expert meeting 2021
- 27. - 28. October: PluriCourts Research Conference on Compliance Mechanisms
- 12. November: Concepts and methods - the relationship between national and international law
- 26. November: Workshop on the Openness of European National Legal Orders to International Law and European Law
- 27. November: Conference on Climate Change Cases before National and International Courts – Cross-Fertilization and Convergence
- 8. December: Book Launch with Caroline E. Foster: Global Regulatory Standards in Environmental and Health Disputes



# Publications and presentations

## Book chapters

Baetens, Freya. “CETA Article 8.21: Consultations” in CETA: A Commentary. Nomos.

Baetens, Freya. “The WTO and climate change mitigation and adaptation” in Encyclopedia on Trade and Environmental Law. Edward Elgar Publishing.

Baetens, Freya; Lavista, Veronica. “Where is your tribunal? Bernard Loder (1849-1935) and the quest for international justice” in The League of Nations and the Development of International Law: A New Intellectual History of the Advisory Committee of Jurists. Routledge.

Behn, Daniel; Langford, Malcolm Stroud; Létourneau-Tremblay, Laura; Lie, Runar Hilleren. “Evidence-Guided Reform: Surveying the Empirical Research on Arbitrator Bias and Diversity in Investor State Arbitration” in International Economic Dispute Settlement: Demise or Transformation?. Cambridge University Press.

Føllesdal, Andreas. “How International Courts can Help Secure Global Public Goods Worth Having: Pure Public Goods and Beyond” in Protecting Community Interests through International Law. Intersentia.

Pérez León Acevedo, Juan Pablo. “Judicial Protective Measures for Victims and Witnesses vis-à-vis External Actors at the International Criminal Court” in The Past, Present and Future of the International Criminal Court. TOAEP - Torkel Opsahl Academic EPublisher.

Stang, Elisabeth Gording; Fauchald, Ole Kristian. “Norway: Norwegian Ombudsman for Children” in Intergenerational Justice in Sustainable Development Treaty Implementation. Advancing Future Generations Rights through National Institutions. Cambridge University Press.

Ulfstein, Geir. “United Nations Human Rights Treaty Bodies: Universality and National Implementation” in The Achievements of International Law: essays in honour of Robin Churchill. Hart Publishing Ltd.

Voigt, Christina. “International Responsibility and Liability” in The Oxford Handbook of International Environmental Law. Oxford University Press.

Voigt, Christina. “State responsibility for damages associated with climate change” in Research Handbook on Climate Change Law and Loss & Damage. Edward Elgar Publishing.

## Journal articles

Berge, Tarald Gulseth; Berger, Axel. “Do Investor-State Dispute Settlement Cases Influence Domestic Environmental Regulation? The Role of Respondent State Bureaucratic Capacity” Journal of International Dispute Settlement.

Brandon, Emma Hynes. “Aldo Zammit Borda, Histories Written by International Criminal Courts and Tribunals: Developing a Responsible History Framework”. Leiden Journal of International Law.

Brandon, Emma Hynes. “Book Review: The Inter-State Application under the European Convention on Human Rights: Between Collective Enforcement of Human Rights and International Dispute Settlement”. Nordic Journal of Human Rights.

Fauchald, Ole Kristian. “Peacebuilding Functions of International Environmental Governance”. Environmental Policy and Law.

Føllesdal, Andreas. “In defense of deference: International human rights as standards of review”. Journal of Social Philosophy.

Føllesdal, Andreas. “A just yet unequal European Union: a defense of moderate economic inequality”. Review of social economy.

Føllesdal, Andreas. “How many women judges are enough on international courts?”. Journal of Social Philosophy.

Føllesdal, Andreas. “International human rights courts and the (international) rule of law: Part of the solution, part of the problem, or both?”. Global Constitutionalism.

Føllesdal, Andreas; Hessler, Kristen. “Gender imbalance on the international bench: is normative legitimacy at stake”. Journal of Social Philosophy.

Madsen, Mikael Rask; Mayoral, Juan A.; Strezhnev, Anton; Voeten, Erik. «Sovereignty, Substance, and Public Support for European Courts’ Human Rights Rulings”. American Political Science Review.

Pavone, Tommaso. “Like Oil Floating on Water: Italy’s Olive Crisis and the Politics of Backlash against Transnational Legal Orders”. FIU Law Review.

Pavone, Tommaso; Stiansen, Øyvind. “The Shadow Effect of Courts: Judicial Review and the Politics of Preemptive Reform”. American Political Science Review.

Pérez León Acevedo, Juan Pablo. “Much Cry and Little Wool?: Determining the Exact Role of the Inter-national Criminal Court in Transitional Justice Efforts”. California Western International Law Journal.

Pérez León Acevedo, Juan Pablo. “Victims at the Central African Republic’s Special Criminal Court”. Nordic Journal of Human Rights.

Saul, Matthew. “Shaping Legislative Processes from Strasbourg”. European journal of international law.

Stiansen, Øyvind; Stadelmann, Thomas. “Empirische Forschung: Wiederwahl und richterliche Unabhängigkeit”. Jusletter.

Strain, Nicola Claire. “Shai Dothan, International Judicial Review:



When Should International Courts Intervene?”. Leiden Journal of International Law.

Ulfstein, Geir. «The Svalbard Treaty and research: Comment to Pedersen and Molenaar». The Polar Journal.

Ulfstein, Geir. “Transnational constitutional aspects of the European Court of Human Rights”. Global Constitutionalism.

Voigt, Christina. “The first climate judgment before the Norwegian Supreme Court: Aligning law with politics”. Journal of environmental law.

Wibye, Johan Vorland. “En rett for enhver plikt – om korrelasjonstesen og dens påståtte unntak». Retfærd. Nordisk Juridisk Tidsskrift.

Wibye, Johan Vorland; Høgberg, Alf Petter. «Klimadommens forsvinningsnummer – når borgere blir tredjeparter til konstitusjonelle rettighetsbestemmelser». Retfærd. Nordisk Juridisk Tidsskrift.

Zysset, Alain Fabio; Scherz, Antoinette. “Proportionality as procedure: Strengthening the legitimate authority of the UN Committee on Economic, Social and Cultural Rights”. Global Constitutionalism.

## Selected lectures and presentations

Baetens, Freya. Attribution of Conduct of State-Owned Enterprises (SOEs) to States: New Prominence, New (Interpretation of) Rules?. Three Crowns Online Seminar; 2021-02-09

Baetens, Freya. Attribution of Conduct of State-Owned Enterprises to States: New Prominence, New Rules?. SIEL Biannual conference; 2021-07-07 - 2021-07-09

Baetens, Freya. Better or worse: comparing the new model BITs of India, Colombia, the Czech Republic, and the Netherlands with their respective predecessors or older treaties?. 15th Annual Juris Conference; 2021-05-18

Baetens, Freya. CBAM: reconciling EU climate ambitions with competitiveness. Expert Roundtable, EU-Poland Climate Summit; 2021-04-21

Baetens, Freya. China and International Investment Law – An Emerging Rule-Maker?. Cambridge Handbook of China and International Law; 2021-04-24 - 2021-04-25

Baetens, Freya. International Courts: Legitimacy, Perception and Outcomes. ASIL ICTIG/ABA Joint Online Event; 2021-03-12

Baetens, Freya. Judges’ identity and diversity: differences between domestic and international adjudication. ICON•S Mundo – The Future of Public Law; 2021-07-06 - 2021-07-10

Baetens, Freya. Lifting the Corporate Veil between China and its State-Owned Enterprises. USALI; 2021-03-17

Baetens, Freya. Mind the gap – Geographical Diversity between East and West in International Arbitration. Arbitrator Intelligence Webinar; 2021-05-27

Baetens, Freya. Must the age of the individual end? The push for collective rights in international lawmaking. ESIL Annual Conference Changes in international lawmaking: actors, processes, impact; 2021-09-08 - 2021-09-11

Baetens, Freya. Protecting global public goods through erga omnes obligations: From the International Court of Justice to domestic litigation?. International Law Forum; 2021-12-20

Baetens, Freya. Public health rights vs international trade rules: how to resolve the tension? States of Emergency: Notable Issues in the Context of a Pandemic; 2021-05-27

Baetens, Freya. Structural Reform or Marginal Adjustment? Improving Nomination and Election Procedures to the International Bench. Rethinking Representation in the International Bench: Democracy, Inclusion, and Legitimacy; 2021-11-19 - 2021-11-21

Baetens, Freya. Sustainable Investment: Mobilising Legal and Institutional Reform for Investment and Long-Term Sustainable Development. CISDL Trade and Investment Law and Governance Roundtable; 2021-03-30

Baetens, Freya. Transcending Traditional Boundaries of Sovereignty and Territorial Jurisdiction: Investment Law and the Digital Economy – Response to Andrea Bjorklund. Colloquium on International Investment Law & New Technologies; 2021-12-09 - 2021-12-10

Létourneau-Tremblay, Laura. Recent International Investment Treaty Practice and Environmental Protection: Fit for Purpose?. 10th Conference of the Postgraduate and Early Professionals Academics Network of the Society of International Economic Law: PEPA/ SIEL 2021 Scotland; 2021-05-19 - 2021-05-21

Létourneau-Tremblay, Laura. The Changing Landscape of International Investment Law: Supportive of Climate Change?. International Investment Law and Climate Change Webinar, Journal of World Investment and Trade Special Issue; 2021-11-18 - 2021-11-19

Saul, Matthew. Human rights in national law and national human rights mechanisms. Intensive Course on International Human Rights –; 2021-09-02 - 2021-10-02

Saul, Matthew. International law in a nutshell – sovereignty, derogations and limitations. Intensive Course on International Human Rights; 2021-08-30 - 2021-08-30

Strain, Nicola Claire. Consent and the System of International Law. International Economic Law ‘In the Making’: New Actors and Policies; 2021-09-08 - 2021-09-08

Strain, Nicola Claire. Invoking Ideals over Legal Rules. Jurisdiction: who speaks international law?; 2021-09-03 - 2021-09-04



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