

## **Research strategy 2011-2016**

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## 1. Background

The research strategy of the Scandinavian Institute of Maritime Law for 2011-2016 builds on our earlier research strategies, as well as on the discussions that took place in June 2011 at our seminar for the Institute's staff and board members. The strategy describes the Institute's general research objectives, the resources at the Institute's disposal, and ways in which each of the Institute's departments may achieve these research objectives.

We start by demarcating the scope of the research undertaken at the Institute.

## 2. Scope of research

The Scandinavian Institute of Maritime Law is a Scandinavian institute governed by a Scandinavian board. The Institute's articles state that

*The Scandinavian Institute of Maritime Law shall promote research and teaching in the Scandinavian countries in the fields of maritime law, general transport law, energy and petroleum law, and other related fields. The Institute shall also maintain a high level of competence in the general law of property rights and obligations.*

Accordingly the Institute's core research areas are currently maritime law, road freight law, general transport law, international trade law, petroleum contracts, regulatory law in the petroleum sector, and energy markets law (both gas and electricity). As stated above, the Institute is also required to "maintain a high level of competence in the general law of property rights and obligations". In the light of the research undertaken at the Institute in recent years, we should also add competence in EU law, international law and administrative law.

Given the Institute's Scandinavian identity and the fact that it is part-funded by the Nordic Council of Ministers, research undertaken at the Institute should be based on a Scandinavian perspective. In recent years, however, the Council has become more globally oriented and has been focusing increasingly on environmental research.

The Faculty's academic priorities are set forth in the [Faculty of Law's Strategic Plan for 2010-20](#) ("*Strategic Plan*"). When considered in relation to this plan, the Institute's fields of research fall within the following academic priorities: "law, the State and markets" and "law and the environment". Furthermore, internationalisation has been promoted as a priority objective both in the Faculty's recent evaluation by the Research Council of Norway and in the *Strategic Plan*, cf. *A ground-breaking university* (point 3). This objective is relevant both to research content and also to the channels used for publication. The *Strategic Plan* also promotes an interdisciplinary approach as a research objective.

### **3. General priority objectives**

Based on the requirements outlined above, we have formulated the following research objectives:

#### **3.1 Competence**

The Institute must *maintain* a high level of competence within its core research areas of maritime law, road freight law, general transport law, international trade law, petroleum contracts, regulatory law in the petroleum sector and energy markets law (gas and electricity). The Institute must also ensure that it possesses competence within the general law of property rights and obligations, EU law, international law and administrative law.

The Institute shall *further* its competence within these core research areas through the analysis of research topics such as:

- i. developments in national, Scandinavian and international rules and contracts;
- ii. organisational developments within the shipping, petroleum and energy sectors;
- iii. existing and new legislation in the areas of property rights and obligations, administrative law, EU law and international law; and
- iv. environmental factors and developments in environmental law.

#### **3.2 Orientation**

Research undertaken at the Institute must be primarily *Scandinavian* in orientation and should be intended to be of use within Scandinavia.

Where relevant, research should be internationally oriented.

#### **3.3 Academic orientation**

Where expedient for the understanding or further development of a research topic, an interdisciplinary approach is to be preferred.

### **4. Implementation: Department of Maritime Law**

Research undertaken within the Department of Maritime Law has traditionally been divided between three areas: Contracts, Liability and Safety. We had now added a fourth area: Infrastructure in the Transport Sector.

#### **4.1 Contracts**

Shipping contracts have traditionally been a core research area at the Institute. Research in this area covers the wide range of contracts associated with shipping and transport: shipbuilding contracts, sale and purchase contracts, ship finance contracts, insurance

contracts, and contracts for the transport of goods and passengers. All these contracts are comprehensive, complex and internationally oriented, as well as being strongly influenced by English law. Research in this area is highly relevant for the maintenance and further development of Nordic and international competence in the areas of maritime law, the general law of property rights and obligations and EU law. In some instances environmental considerations may also be relevant. Below we list relevant areas for research.

**Ship finance/third-party rights** Traditionally a strong area of focus for the Institute, although less research has been carried out in the area of ship finance in recent years.<sup>1</sup> Research topics in this area may be studied in conjunction with recent national and international trends concerning financial instruments and the regulation of the financial sector. Research may involve contractual contents, the protection of third-party rights and relevant legislation. The fact that these types of contracts are frequently written in English and contain clauses derived from English law calls for a comparative approach.

**Shipbuilding contracts** These contracts have been a particular focus of research in the Department of Petroleum Law, although the Department of Maritime Law also has competence in this area. Our competence may be further developed by examining shipbuilding contracts in the context of general building and construction law, as well as by applying an internationally-oriented comparative-law perspective. For example, research could be undertaken to clarify the respective legal positions of Norwegian shipbuilding clients and subcontractors when vessels are constructed abroad either under non-Norwegian contractual regimes or under regimes that include some Norwegian clauses.

**Ship sale and purchase** There has also been relatively little activity in this area in the Department in recent years.<sup>2</sup> However competence in this area can be maintained/further developed through comparisons based on general sales law.

**General cargo transport, including multimodal transport** This is one of the Institute's core areas of competence. This competence can be maintained and further developed through the examination of:

- i. transport regimes hitherto relatively neglected by researchers, particularly rail transport. This research should adopt an international/comparative-law perspective
- ii. New rules, cf. primarily the new convention on the transport of goods by sea (the Rotterdam Rules). This research should adopt a Scandinavian/international perspective.
- iii. The need for mandatory legislation in today's transport markets. An interdisciplinary approach would be very welcome in this area.
- iv. Multimodal transport regulation in the light of the EU project "Encouraging modal

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<sup>1</sup> See however Gjertsen: Kreditorsidens struktur i obligasjonslån [Bond-holder structures], MarLus 395 and Østlie: Finansielle covenants i låneavtaler [Financial covenants in loan agreements], MarLus 362

<sup>2</sup> See however Dale: Kjøp og salg av Second Hand Vessels [Sale and purchase of second-hand vessels], MarLus 372

shift", including reasons for the failure of previous attempts to harmonise the international regulation of multimodal transport, and the expediency of any such harmonisation.

This research should adopt an international/comparative-law perspective.

- v. Multimodal transport regulation in relation to general sales law and rules on risk allocation and liability.
- vi. Multimodal transport regulation in relation to the trend for carriers to offer more comprehensive ranges of services (e.g., logistics and storage).
- vii. The integration of environmental considerations into the regulation of unimodal and multimodal transport.

**Charterparties** This is another core area of maritime law, and one in which the Institute has a high level of competence.<sup>3</sup> Offshore charterparties are relevant to research in the fields of both maritime and petroleum law. Accordingly this area offers excellent opportunities for cross-departmental collaboration. Competence in this area may be maintained and further developed through the examination of:

- i. Damages for breach of charterparty. Research here may refer to general contract law and apply an international perspective.
- ii. Charterparty clauses in the light of general environmental considerations. Any such analysis should adopt an international perspective. An interdisciplinary approach may also be useful.
- iii. Charterparty clauses in relation to the general law of torts, sales law and contract law. Such an analysis may be Scandinavian or international in nature, and may also refer to the field of law and economics.
- iv. Offshore charterparties in the light of general national and international contract law.
- v. Offshore charterparties in the light of the recent trend for carriers to offer more comprehensive ranges of services.

In the Department of Petroleum Law, Ivar Alvik is researching real performance and risk allocation in drilling contracts. This fits well with the Department of Maritime Law's focus on offshore charterparties, and in particular our focus on contractual clauses relating to the provision of services.

**Maritime insurance contracts** This has been a core area of our maritime law research, not least because of the Institute's participation in the drafting of both the Norwegian Maritime Insurance Plan 1996 and the Norwegian Cargo Insurance Conditions 1995 and 2004. A great

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<sup>3</sup> This topic has been the subject of two doctoral theses in recent years: Solvang: Forsinkelse i havn [Delay in harbour] and Bråfelt: Fleksibilitet i certepartiforhold [Flexibility in charterparty relationships]. In addition two research assistants have completed dissertations, Evje: Regelendringer i tidsbefraktningforhold [Timecharter rule changes], MarIus 351 and Wold: Certepartiregulering av risiko for terror [Charterparty regulation of the terrorism risk] (to be published in MarIus 407)

deal has been written within this area in recent years.<sup>4</sup> Competence in this area may be further developed through the examination of:

- i. Regulatory developments resulting from the adoption of the Norwegian conditions throughout Scandinavia.
- ii. Energy security. This is an area in which we have so far undertaken little research.
- iii. Cargo insurance in relation to the COTIF-CIM liability rules.

## **4.2 Safety at sea**

An important research area for the Department in recent years has been safety at sea.<sup>5</sup> Our safety at sea project has addressed legal problems relating to safety at sea, the protection of the maritime environment and anti-terrorism measures at sea, particularly in relation to shipping and the Northern Areas. The project has a strongly international profile and has been interdisciplinary in approach. Environmental considerations also feature strongly in the research.

The project is now nearing completion, but the competence it has generated may be further developed through research linked to:

- i. Environmental protection.
- ii. Safety regulation and risks relating to piracy and terrorism.
- iii. Safety of life at sea.

In general this research may be linked to:

- i. Activities in the Barents Region.
- ii. New legal challenges arising from EU-related cooperation.

## **4.3 Liability**

The regulation of liability in shipping is another core area of research competence at the Department of Maritime Law. In recent years, much of our research into issues relating to liability has come within the scope of our safety at sea project (see above). The Institute's competence may be further developed by an examination of maritime liability rules in the light of:

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<sup>4</sup> Lund: Medforsikring i P&I forsikring [Co-insurance in P&I insurance], Munthe Kaas: Direktekrav mot en P&I assurandør når sikrede er insolvent [Direct claims against the P&I insurer in the event of the insured's insolvency], MarIus 384, and Kløve: P &I assurandørens risikoeksponering ved tap av eller skade på gods under unimodal og multimodal transport [the P&I insurer's risk exposure for loss of or damage to goods during unimodal and multimodal transport], MarIus 402, Sørensen: Konstruktiv totalforlis [Constructive total loss], MarIus 36. Finally, one relevant thesis has been completed as part of our safety at sea project, Solum: Sikkerhetsregulering og kaskoforsikring av skip [Safety regulation and hull insurance], MarIus 399.

<sup>5</sup> The project has generated a long list of publications at various levels. Ringbom: The EU Maritime Safety Policy and International Law (PhD thesis); Pozdnakova: Anonymity of shipowners as a maritime security problem; and Places of refuge for vessels in the Barents sea: Perspectives of the Norwegian-Russian cooperation (post-doctoral research papers), together with many articles by Erik Røsæg, various guest lecturers and our research assistants, for further details see <http://www.jus.uio.no/nifs/forskning/prosjekter/sjosikkerhet/index.html>.

- i. General Norwegian, Scandinavian and international rules on liability.
- ii. Infrastructure developments in the transport sector, including State responsibilities in this area, including the provision of maps/charts, lighthouses etc., buoys, pilotage, GPS etc. Clearly such research will be Scandinavian in orientation, although it may also have international application.<sup>6</sup>

#### **4.4 Public infrastructure in the transport sector**

A new area for research in the Department is public infrastructure in the transport sector. Research topics in this area may contribute to the further development of classic maritime-law competence in a number of ways. For example, through the examination of the State's responsibility for infrastructure (cf. above) or alternatively by considering traditional maritime law contracts in the light of infrastructure restructuring. Such topics may also provide the foundations for a new area of competence through the examination of:

- i. the relationship between the infrastructure owner (which will frequently be central or local government) and the persons responsible for its operation; and
- ii. the relationship between carriers and the purchasers of transport services.

An important consideration here is the relationship between State control and private contractual rights. Although this has been an important research topic for the Department of Petroleum Law, until now it has not been particularly relevant for the Department of Maritime Law.

## **5. Implementation: Department of Petroleum and Energy Law**

The Department of Petroleum Law's main activities to date are reflected in the *Activities Overview 2010-2011*. Possible topics for future research are listed in the Department's 'ideas bank', which is updated each year.

Research within the Department is divided approximately 50:50 between the petroleum and energy sectors (the latter deals with all forms of energy other than petroleum). Research concerning each sector is undertaken from the perspectives of public, private and EEA law. From the Department's point of view, the distinction between petroleum law and energy law is becoming increasingly blurred. For example, there are significant similarities in the regulation of the gas and electricity markets, and marine energy law is based to a large extent on the systems and principles applied in petroleum law. Although there are no watertight compartments, there are however fundamental differences that recommend the adoption of separate research strategies for each area.

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<sup>6</sup> During the autumn of 2011, our research assistant Ingrid Bjørke Larsen will be writing about State liability in relation to accidents that involve the Norwegian Coastal Administration's navigational services (pilot services, VTS centres, lighthouses and buoys). Another research assistant, Lars Erik Schjeide, is writing about the Norwegian Coastal Administration's actual or potential liability in the event of an actual or threatened acute pollution incident.

## **5.1 Petroleum law**

In recent years our research has addressed the regulation of the gas market, with Norwegian regulation reflecting the EU gas market directive. Our researchers have also studied downstream gas regulation in Europe and a doctoral thesis has been completed concerning standard contracts for short-term gas sales (Sondre Dyrlund, 2007). This is however a wide-ranging and fast-moving area that requires continuing research and the preparation of further dissertations/theses by both research assistants and PhD candidates. A related theme is the architecture of the new Norwegian gas transmission network and the role of Gassco in this connection.

**The area of overlap between petroleum and environmental law** has been, and will continue to be, a topic of dissertations/theses at all levels. Carbon capture and storage (CCS) raises a number of legal questions in the area of overlap between traditional petroleum and environmental law. This topic may be addressed from a number of perspectives: international law, administrative law, contract law or the law of torts. Developments in EU law will also be of importance. Although this area is perhaps not one of unanimous political prioritisation, it is desirable for the Department of Petroleum Law to continue to build up competence in this area, including by means of collaboration with the Natural Resources Group.

**LNG** has developed somewhat differently than we would have predicted a few years ago, partly because of the increasing importance of shale gas. However this is clearly an aspect of the Norwegian petroleum industry into which the Department should undertake further research.

**HSE** (health, safety and environment) has been and continues to be an important research topic at the Department. Many theses on this topic have been published over the years. The Department is participating in the Department of Maritime Law's safety at sea project and our PhD candidate Hanne Sofie Logstein is working on a thesis concerning functional requirements and management systems in safety regulation in the petroleum sector. Among other considerations, Ms Logstein is examining regulatory techniques in this area. The Department should maintain and further develop its research into safety regulation.

The **maturity** of parts of the Norwegian continental shelf, the participation of new players in licensing rounds, corporate-governance requirements for licence-holders groups, and changes in the balance of power between operators and other licence holders have given rise to a need for new research into long-standing areas of petroleum law. The use of existing infrastructures is a constantly relevant topic that takes on new forms as the continental shelf reaches maturity. The same applies to the removal of infrastructure, a topic that raises a whole spectrum of issues ranging from international law to the laws of contract and tort. On the development front we are seeing new forms of projects, including the increased use of FPSOs, which is leading to new ownership and operating structures. Several dissertations/theses and papers have been written on such topics in recent years, but there is still a need for more research.



## **5.2 Energy law**

A key task for the Department is to maintain and further develop the competence within the field of energy law that has been build up since 1999, when Ulf Hammer completed his doctoral thesis "Facilitation of the energy market". A wide range of publications have emanated from the Department since that time in the form of research assistants' dissertations, doctoral theses and academic papers.

**Market regulation** will continue to be central to the Department's energy law research, particularly in the light of legal developments in this field within the EU, together with the development of a common European energy market.

**Security of supply** is the object of increased attention by both national and international authorities. This topic gives rise to number of complex issues concerning the use of legal means to define, facilitate and enforce security of supply. The Department has previously analysed aspects of these issues, but there is still a need for more in-depth research.

Cross-border topics have been the subjects of several doctoral theses, particularly Henrik Inadomis' thesis on private-sector power plant projects in developing countries (2007) and Anne-Karin Nesdam's thesis on the internal transport market, with particular focus on the European regulation of grid access in the power and gas sectors (2007). Catherine Banet, a PhD candidate, is working on a thesis about green certificates, a topic which lies in the area where energy and environmental law overlap. It is clear that further research efforts are needed in this area, among other reasons due to Norway's obligations under the Kyoto protocol. Potential research topics include the management of carbon-related issues (carbon storage and the establishment of markets for carbon quotas, as well as the development of new energy sources and associated markets for green certificates). Major regulatory challenges lie ahead.

## **5.3 An international perspective on petroleum and energy law**

Until now, international petroleum and energy activities have not generally occupied a prominent position on the Department's research agenda, although a number of dissertations/theses over the years have been written partially or wholly from this perspective, in part due to the influence of EU/EEA law. Gradually, however, it has become ever clearer that Norwegian petroleum and energy operations have entered into, or at least are entering into, a new phase in which these operations will become more international in nature. Industrial operations that have their base, equity and expertise in Norway are adopting an increasingly international orientation away from the Norwegian continental shelf. This is true of oil and energy companies (e.g. Statoil and Statkraft), as well as of Norwegian supply companies (such as Aker Solutions and Aibel), Meanwhile service providers in, e.g., the drilling and seismic exploration sectors, have long been operating internationally. At the same time we are also experiencing growing "exports" of Norwegian experience and insight in the area of petroleum and energy resources management. One example is [the NORAD oil-for-development initiative](#).

These exports of Norwegian expertise, technology and equity in the petroleum and energy sectors have given rise to new topics for legal research. One of the Department's most important strategic commitments in the coming years will concern the furtherance of Norwegian legal expertise and research in these areas. Our first research-assistant-level project in this area is already underway, and we are working on project outlines that will form the basis for a long-term and thematically varied research effort. Examples of relevant research areas include:

- i. different regulatory models for the political governance of petroleum and energy undertakings, particularly contract- and licence-based models);
- ii. political risk management and the use of international legal mechanisms to protect investments;
- iii. legal instruments, including supply contracts, for the management of long-term investment projects abroad;
- iv. challenges resulting from the less stringent human-rights and HSE standards that may be encountered abroad.

#### **5.4 Long-term objectives**

The department's long-term research strategy is based on three "pillars". These "pillars" do not however prevent research into other topics that may become relevant, including, for example, the exploitation of petroleum reserves in the Northern Areas and new rules concerning the public ownership of power plants. We will also seek to carry out further research within "traditional" research topics in petroleum law. A number of these have taken on renewed relevance and, to some extent, assumed new characteristics as the Norwegian continental shelf has matured.

Firstly we are aiming to carry out further research into energy markets law. The department's parallel focus on the gas and electricity markets arises from what we see as a clear regulatory convergence between the two markets. This is illustrated in the EU's new directives for the gas and electricity markets, which were adopted simultaneously in 2003 and are very similar in content. These are supplemented by two regulations addressing, respectively, access to electricity transmission grids for cross-border electricity trading and access to natural gas transmission grids. All these pieces of EU legislation, with the exception of the regulation concerning natural gas transmission grids, were incorporated into the EEA Agreement in 2005 and implemented into Norwegian law. These directives and regulations aim to establish a *genuine* internal energy market in Europe and form the foundations of the emerging field of European energy markets law.

Energy markets law is a fast-growing field. This has been demonstrated by the European Commission's adoption of its third package of legislative proposals for electricity and gas markets. The package includes new rules on the ownership unbundling of TSOs and new rules on the organisation of national energy regulators. A PhD candidate has joined the department in order to write about the organisation of the new energy regulators and related legal issues. The department's long-term goal is to be at the leading edge of research in this area.

*Secondly*, we are aiming to develop expertise in the area of overlap between energy and environmental law. Once again this area is one of regulatory convergence. It is interesting to note that organised markets appear to be key instruments in this area of resources management (markets for green certificates, markets for climate quotas). This is an area in which the department can build further on the competence it has gained from research into energy markets. It is also worth noting that this is another fast-growing area. This has been demonstrated by the European Commission's new package of measures concerning energy/the environment, which contains new rules on renewable energy and carbon capture and storage (CCS). In this area the department's efforts will be based primarily within the Natural Resources Group. Funding will mainly take the form of grants from the Research Council of Norway, although naturally we will also exploit parallels with traditional petroleum law in the form of research carried out within the department's existing areas of activity.

*Thirdly*, we are participating in the safety at sea project in collaboration with the Department of Maritime Law (see point 4.2 above). Researchers within the Institute's two departments will be analysing safety regulation within their respective sectors, as well as closely related issues concerning liability and jurisdiction. Key areas of focus within petroleum law will include the adoption of norms in the form of functional requirements (with associated guidelines), their relationship with rules for floating and undersea installations (and shipping rules generally), their relationship with equivalent rules on land (given the fact that such activities are increasingly land-based), and their relationship with different supervisory organs.

*Fourthly*, we aim to commence a project linked to international petroleum and energy operations (see point 3 above). This will place considerable demands on our resources, as well as posing significant academic challenges, but we see as essential the integration of such a perspective into the department's activities.

## **5.5 Publishing in English**

At the council meeting held in 2004 the Department was encouraged to prepare a strategy for publishing in English. In the law, the trend towards internationalisation is becoming more and more relevant within the energy sector. There are a number of ways in which this trend is significant for the work of the Department.

Within the research area of energy markets law, the Department has established links with an international network. The annual European Energy Law Seminar in Noordwijk is organised by the Scandinavian Institute of Maritime Law in collaboration with the University of Groningen and NeVER, the Dutch energy law association. We have also established links with an international network that organises aspects of the IBA's biennial international energy law seminar. Each of the above-mentioned seminars is followed up by the publication of a book in English. Representatives of the Department regularly contribute articles to these books, as well as contributing articles to international journals as well as to [the Institute's own yearbook, SIMPLY](#).

Together with the Universities of Copenhagen, Groningen and Aberdeen, the Institute is participating in the establishment of the North Sea Energy Law Programme (NSELP), which is partially EU-funded (<http://nselp.eu/>). This programme is targeted primarily at practising lawyers within Europe. Each institution will commit to providing one two-week period of intensive teaching, with students meeting four times during the course of a single year. Each student will complete the course by submitting a substantial dissertation. Oslo's designated topic, "Oil and Gas Exploration and Production", was taught for the first time in January 2010. As part of the reading materials we have obtained English translations of parts of Professor Kaasen's book "Petroleum Contracts" (year), as well as a translation of an article about formalism in production contracts.

Henrik Inadomis and Henrik Bjørnebye both wrote their theses in English. Catherine Banet is also writing her thesis in English. These theses demonstrate that the topics for such major pieces of written work are becoming more and more international in nature. A current departmental goal is for all PhD candidates – regardless of the topics of their theses – to publish at least one paper in an international journal while working towards their PhDs.

The natural resources group has established links with international networks in relation to its project in the field of energy/environment, see point 3 above. One of the group's goals is for its members to publish regularly in international journals.

The group does not require its research assistants to write up their work in English. Normally such an objective would not be realistic in view of the deadlines applying to such projects. We do however encourage research assistants to write summaries of their papers in English. The Institute's yearbook SIMPLY (published as part of the MarLus series) is a natural place for the publication of such English-language summaries. Many of our research assistants also have the opportunity to present lectures on their research topics in English.

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