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## TO EXPLOIT OR NOT TO EXPLOIT: THE STRUCTURE AND DEVELOPMENT OF ARGUMENTS OVER THE USE OF WETLANDS

*This paper considers the discourse surrounding the exploitation of wetlands (also called marshlands, bogs, mires and peatlands) in Finland. The focus of the paper is on the development of the arguments used in the discourse - thus the paper also gives an insight into how the legal regimes concerning wetlands have developed. The arguments are analysed using the dualistic and deconstructive model developed in Critical Legal Studies by Martti Koskenniemi. The hypothesis is that, to some extent, the model developed for international law can be adapted to fit national laws, but that significant problems may still arise.*

*Throughout the history of discourse on wetlands, legal arguments have essentially dealt with the conflict between the conservation of wetlands or their exploitation for peat, which is a source of energy. Three arguments are discussed in this paper: 1) The 'sovereignty argument'; 2) The 'no harm argument'; and 3) The 'climate change argument'.*

*The sovereignty argument has been dominant from the beginning of the industrialised production of peat, but the no harm argument has been steadily gaining weight. Interestingly, the climate change argument lacks traction in the discourse even though the importance of wetlands in adaptation to climate change is common knowledge. This paper argues that regional and national authorities use legislation and the no harm argument in innovative ways. These innovations may be useful for the aims underlying the climate change argument.*

### The theme and the frames

Situated in Northern Europe, Finland has vast amounts of wetlands or bog.<sup>1</sup> Approximately one-third of Finland's land area is wetland, but only one-third of all wetlands are in the 'natural' condition - that is, not disturbed by human activities.

Only a little over ten per cent of wetlands are protected in conservation areas, leaving the rest open to exploitation. For centuries it was common to drain wetlands to meet the needs of forestry and agriculture, but since the 1970s, wetlands have mainly been used for peat production. Peat is formed in wetlands when vegetation decays under anaerobic conditions. In Finland, peat is excavated and burned in special power stations, from which Finland obtains six to seven per cent of its energy for consumption.

The use of peat has been, and continues to be, a highly controversial issue, evidenced by the fact that it has proven impossible to draft specific legislation to regulate the activity. Thus, although excavating peat from the mires nowadays requires a permit, the legal statute underpinning the permit system was actually drawn up to regulate point source polluters.<sup>2</sup>

Even though climate change denial is not a commonly-held position in Finland, the scientific data on the effects of peat production are subject to severe misinterpretation. Finland has been active in promulgating,

<sup>1</sup> Sinikka Pärnänen, Doctor of Laws and civil servant at the Regional Environmental Administration, has helped greatly in the preparation of this paper. I owe her the most sincere thanks, although, naturally, I take full responsibility for any mistakes in the text. Naturally also, the opinions in the text are entirely my own.

<sup>2</sup> Finnish Environmental Protection Act (86/2000) and Water Act (587/2011). The EPA can be found in English at <<http://www.finlex.fi/fi/laki/kaannokset/2000/en20000086.pdf>>; and the previous version of the Water Act at <<http://www.finlex.fi/en/laki/kaannokset/1961/en19610264.pdf>>. The official translation of the Water Act in force is not yet published.



within the European Union, a view that peat ought be considered a ‘slowly renewable energy source’, neglecting the devastating effects that burning peat has on the climate.<sup>3</sup> At the same time, Finland acknowledges the seriousness of climate change and does its share in supporting carbon emissions reduction instruments, such as REDD+,<sup>4</sup> which aims to tackle deforestation in developing countries.<sup>5</sup> For example, one REDD+ instrument, the Forest Carbon Partnership Facility (FCPF), has been funded by Finland to the tune of 11 million euros. Finland is also a partner in the REDD+ Partnership.<sup>6</sup>

This paper discusses how this dualism in politics is argued. It outlines the arguments used for and against burning peat; whether they have changed with increased awareness of climate change; and whether they have concrete form in legislation or in recent case law, or can they only be found in the *travaux préparatoires*. Finland’s long history of exploiting the wetlands provides a rich source for analysing the discourses.

Using Critical Legal Studies, especially the work of Koskenniemi,<sup>7</sup> as the foundation for analysis, three categories of arguments are evident: the ‘sovereignty argument’, the ‘no harm argument’ and the ‘climate change’ argument. This paper discusses each one separately. The paper’s conclusion focuses on how the different arguments may be mutually beneficial for future action on climate change.

Koskenniemi deconstructed arguments used in international law and claims that they all fall into a dualistic pattern: they represent either formalism or anti-formalism; concreteness of normativity; the sovereignty of a state or the application of the no harm principle; and so on. According to Koskenniemi, this is due to the inherent indeterminacy of rules and a situation where the otherwise interminable legal discussion is interrupted by some external element, that is, politics. In this way politics and law are inextricably bound together.<sup>8</sup>

## The ‘sovereignty argument’

The sovereignty argument is a nationalist approach, asserting that a country can exploit its natural resources as it pleases. The argument is strongly anthropocentric, emphasising a nation’s rights to consider its territory as a source of natural resources. The dominant use of the argument can vary according to the era in question and according to the knowledge and technical means at the exploiter’s disposal.

The sovereignty argument can be analysed in two parts: the argument advanced before climate change became an issue; and current circumstances.

### The sovereignty argument in the past

Peat is a traditional source of energy in Finland. Its industrial use begun as early as 1876, although on a small scale. The Second World War increased interest in domestic energy sources, but it was the energy crisis of the 1970s that motivated the first serious attempts to exploit the energy stored in wetlands. The domestic market created the demand as availability of other energy sources became more scarce. With soaring energy prices, industrial-scale exploitation of peat began.<sup>9</sup>

<sup>3</sup> *Kansallinen ilmasto ja energiastrategia 2005* (National Climate and Energy Strategy, 2005), 22; Intergovernmental Panel on climate Change, *2006 IPCC Guidelines for National Greenhouse Gas Inventories* (WMO & UNEP, 2006) vol 2, ch. 1.15, fn 5.

<sup>4</sup> REDD+ is the acronym used for: Reducing Emissions from Deforestation and Forest Degradation, plus the role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks.

<sup>5</sup> Curbing deforestation in the tropics, including the destruction of mangroves - which form a significant carbon sink - would help to slow down climate change. The concept of ‘blue carbon’ refers to carbon sunk in the terrestrial parts and soil beneath mangroves. Mangroves are the wetlands of the tropics, sharing many features with the mires in the northern hemisphere.

<sup>6</sup> REDD+ is meant to be a tool for rapid action. It lacks a separate institution governing the actions of partners, which is its best or worst feature, depending on the viewpoint. The stance of Ministry of Foreign Affairs of Finland can be found at <http://forin.finland.fi/public/default.aspx?contentid=209747&nodeid=43579&contentlan=2&culture=en-US>.

<sup>7</sup> Martti Koskenniemi, *From apology to utopia: The structure of international legal argument* (Cambridge University Press, reissued with a new epilogue, 2005), 67, 474, 600; Martti Koskenniemi, *The Politics of International Law* (Hart Publishing, 2011) 35. The first chapter of the reissued book provides a summary of Koskenniemi’s theory.

<sup>8</sup> *Ibid.* Thus the aim in this paper is not to take a critical look at Koskenniemi’s theory or Critical Legal Studies in general. Koskenniemi’s deconstructive pattern is simply shifted to another regulatory environment to test its adaptability to other contexts. Even though Koskenniemi’s theory may seem an oversimplification, it can be usefully put to the test here; as will be seen below, the problem of the wetlands in the context of national law coalesces rather well with this international law pattern.

<sup>9</sup> Tiina Korvela. ‘Turvetuotannon luovallistaminen muuttuvassa ympäristössä’ (2009) 30(2) *Ympäristöjuridiikka* 21, 23.



It is only a slight exaggeration to say that the sovereignty argument was the only one used during the energy crisis - other arguments were not encouraged. Whether other arguments were ever seen as unpatriotic is not clear.

The entire production cycle of peat to energy was scrutinised by a series of committees. The legal status of the exploitation was clarified in their work. The development of justifications for peat exploitation is evident in the Minutes of the committees' meetings.

The very first committee, the Energy Peat Commission, was formed during the energy crisis in the early 1970's. It clearly supported the sovereignty argument: '[b]efore wetlands are put under conservancy the possibilities of giving the wetlands over to peat production must be fully examined'.<sup>10</sup> In its recommendations, the Committee did acknowledge that it was advisable to use those wetlands that had already been drained, since they had lost their 'natural' condition.<sup>11</sup>

The recommendations of the Energy Peat Commission did not result in the development of legislation to regulate the exploitation of wetlands and use of peat. The next committee, the Peat Committee, convened in the early 1980s. As its title suggests, the committee focused on the development of peat production and exploitation of the wetlands.<sup>12</sup> The evolutionary distance travelled between the two committees was demonstrated by the Committee's formulation of a statement concerning the need for regulation of peat production - or rather that there was no need for specific legislation to be passed, since existing statutes were enough to meet the needs of industry and wetlands.

The Parliament of Finland twice attempted to pass legislation concerning peat production. Nevertheless, the Government - that is, the Cabinet - was reluctant to act and the Parliament had to remind it twice of its request.<sup>13</sup> In spite of Parliament's argument that, since the use of wetlands for peat production was so controversial, industries using peat should be regulated under special legislation, such legislation has still not been drafted.<sup>14</sup>

### The current sovereignty argument

It is a well-established fact that burning peat to produce energy has serious effects on the climate. One might have expected that after the public learned about the consequences of climate change, and the actions to prevent it became everyday politics, the sovereignty argument would no longer be in use; the climate change problem is global, after all. However, the sovereignty argument is alive and well in Finland.

For example, the National Emergency Supply Agency (NESA) recently announced the urgent need for more wetlands to be used for peat production because of their importance for Finland's energy policy. The agency noted that production rates had been low in the summer of 2012 because it had been an excessively wet season and peat could not be excavated.<sup>15</sup> The solution for the drop in the 2012 production offered by the NESA was not to search for a more reliable - and less deleterious to climate - energy source, but to increase the amount of wetland under production so that year-on-year differences in production would not cause a decline in the peat supply.

The stance taken by the NESA is even more extreme than the position of some production companies: they do - at least for the sake of their good name - acknowledge the need to balance conservation and production. Nevertheless, there are currently a great many more applications for new production sites and for expanding old ones than in previous decades. Admittedly, this is predominantly because old production sites are becoming depleted. It takes approximately 20-30 years to deplete a production site. Wetlands first brought into industrial production in the 1970s are now nearing the end of their production value and new

<sup>10</sup> Energy Peat Commission, 'Report of the Energy Peat Commission' (Komiteamietintö (KM) report no 142, 1973) II.

<sup>11</sup> Establishing what exactly is the 'natural' or 'original' condition is always a work of the imagination; pristine original states of ecosystems do not exist. Baaner and Josefsson described this flawed understanding of ecology in regulation when they examined the modern Union water management legislation. See Henrik Josefsson and Lasse Baaner, 'The Water Framework Directive—A directive for the twenty-first century?' (2011) 23(3) *Journal of Environmental Law* 463, 467-468.

<sup>12</sup> The Peat Committee, 'Introduction' (Komiteamietintö (KM) report no 4, 1983), 4.

<sup>13</sup> Korvela, above n 9, 29.

<sup>14</sup> II LaV lausunto n:o 1 PeV:lle 25.11.1983 (The First Statement of the Second Legal Affairs Committee to the Constitutional Law Committee), 3. Finland lacks a separate constitutional court. The relationship of the proposed acts to the constitutional questions is decided by the Committee for Constitutional Law of the Parliament, ie the surveillance is conducted in advance, not in retrospect.

<sup>15</sup> NESA, 'Turvepula johtaa huoltovarmuuden vaarantumiseen' (Press Release, 16 October 2012), <<http://www.huoltovarmuus.fi/ajankohtaista/uutisarkisto/Turvepula-johtaa-huoltovarmuuden-vaarantumiseen-30320.a>>.



wetlands are urgently needed. The urgency of the situation is also the main reason why the sovereignty argument is still so prevalently used in the justification for new production sites.

The two main companies producing peat justify their actions by arguing that peat production, as a domestic energy source, is inherently more reliable than energy produced beyond the country's borders. They also market peat use as a 'local' energy source since energy production occurs near the excavation site - energy production from peat is only cost-effective if burnt close to the peat source. The Finnish peculiarity of redefining peat as 'a slowly renewable energy source' is also noticeable among the justifications put forward by producers; they classify peat as 'bioenergy'.<sup>16</sup>

The sovereignty argument was prevalent in 2011 when the National Strategy for Mires and Peatlands was drawn up. This issue will be discussed in greater detail below under the climate change argument heading.

## The no harm argument

Conservationists generally advance the no harm argument in relation to wetlands. Most commonly, they argue that the *status quo* of the wetlands must be preserved and nothing significant can be gained by destroying wetlands for the sake of energy.

### The no harm argument in the past

In general it can be said that the no harm argument has gained weight slowly but steadily. The argument existed - even though it was peripheral and somewhat neglected - even at the outset of industrial peat production in the 1970's. The dissenting opinion on the Energy Peat Commission in 1973 stated that the needs of peat production and the needs of conservation of the wetlands should be reconciled.<sup>17</sup> Bearing in mind the Energy Peat Commission's exploitation agenda, the writer of the dissenting opinion was truly ahead of his time.

Over the next decade, at the time of the Peat Committee, there were attempts to arrive at a balance between conservation and exploitation. Even though the Peat Committee focused on exploiting the wetlands as extensively as possible, the Committee did make a distinction between wetlands to be included in national conservation programs and those to be conserved at a local level. However, the effect of the distinction on the recommendations of the Committee was negligible. The Peat Committee decided that local wetlands that could not be used for peat production could be used for conservation purposes and the conflict between conservation and production could be solved by restoration of production sites. The Committee resolved that the conflicting demands of conservation and production could be solved by government-approved mire conservation programmes.<sup>18</sup>

As highlighted above in the discussion on the sovereignty argument, Parliament was more willing to use the no harm argument than the committees drafting the regulation. The Parliamentary decision to require a separate statute to resolve the conflict between use of wetlands for conservation and peat production was a triumph for the no harm argument. However, although the preparation of a separate statute was eventually begun, with a strong emphasis on the no harm argument in the draft, that emphasis was withdrawn in spite of it being the main reason for the legislation; the interest groups believed that inclusion of a no harm argument would be too restrictive.<sup>19</sup> After several amendments, the draft was considered too feeble to be useful and was cancelled in 1994.

### The current no harm argument

Currently the no harm argument is more in the limelight than it was during the last attempt at legal recognition. The Finnish Association for Nature Conservation (FANC) has prioritised the protection of wetlands in its activities. For this reason, the procedures for granting permits to exploit peat takes time; FANC keeps local activists well-informed about their rights to protest, how to influence the process and appeal decisions. In reality, therefore, the no harm argument is alive and well.

<sup>16</sup> The companies are Vapo and Turveruukki <<http://www.vapo.fi/en>> (in English) and <<http://www.turveruukki.fi>>.

<sup>17</sup> Energy Peat Commission, above n 10, 55-56.

<sup>18</sup> The Peat Committee, above n 12, 165.

<sup>19</sup> Ministry of the Environment, 'Ympäristöministeriön perustelumuistio' (Memorandum of Reasoning, 21 March 1985) 1.



One interesting example of current case law illustrates the vehemence with which this battle is being fought. The Regional Environmental Administration allowed peat production at a site in central Finland.<sup>20</sup> Following various appeals, the case was heard by the Supreme Administrative Court (SAC), which did not overturn the ruling of the lower court to allow production. The appellant, a municipality, did not let this hinder its aims. It complained about the ruling of the SAC to the Parliamentary Ombudsman, who exercises ultimate oversight over administration. The municipality also filed a complaint with the European Commission, arguing that if Finland allows peat production at the site, it is acting in contravention of its obligations as a member state.<sup>21</sup>

As already noted, the current situation is that applications for peat production are adjudicated according to existing legislation - the *Water Act*, the *Environmental Protection Act* and so on. The permit procedures, and especially their duration, are a main source of risk for production companies. The *Water Framework Directive* ('WFD'), which was drafted by the European Union to protect the surface and ground waters of the territories of the European Union Member States,<sup>22</sup> is another source of risk to production.

Initially, in the course of implementing the WFD in Finland, the focus was on the administrative obligations imposed by the WFD. The Finnish Government decided that the WFD has no competence in the area of water protection in Finland.<sup>23</sup> However, the SAC of Finland decided otherwise in 2010 in the *Area K* case.<sup>24</sup> The *Area K* case dealt with peat production, especially with the deterioration of waters such production causes: humus run-off to water bodies nearby and further downstream. The SAC decided on the relevance of WFD, ruling that peat production must not lead to a deterioration in the quality of the waters if the waters are currently assessed to be of moderate quality.<sup>25</sup>

The *Area K* case demonstrates how the no harm argument has the potential for wider application. When it comes to the wetlands, it need not be the wetlands themselves that are the object of regulation. The surrounding area, especially the condition of the surrounding waters and/or downstream waters can be used in arguments for the protection of the wetlands. This is especially useful in Finland where, legally, wetlands cannot be protected simply by applying the *Environmental Protection Act*.<sup>26</sup>

## The climate change argument

In order to understand why the climate change argument has remained immature, it is useful to consider the discourse of the exploitation of wetlands and climate change.

As mentioned at the beginning, Finland is a diligent member in the family of the nations and does its share in the fight against global warming. Unfortunately, these attempts do not seem to extend to the country's own backyard; Finland has tried to convince the rest of the world that peat is not actually a fossil fuel but 'a slowly renewable energy source'.<sup>27</sup> The fact that 'slowly' means some tens of thousands of years has been given limited space in the argument - as limited, indeed, as the fact of the damage caused to the climate by burning peat. In recent years, the attempt to emphasise this argument at the international level has been largely set aside, but it has remained in use at the national level.

<sup>20</sup> Itä-Suomen ympäristölupavirasto 22.11.2007 Nro 123/07/1 (Ruling n:o 123/07/1 of the Environmental Permit Agency of Eastern Finland, 22.11.2007).

<sup>21</sup> The decisions of the Municipality's Environmental Committee of 25 May 2011 are (in Finnish only) at <<http://www.saarijarvi.fi/d5web/kokous/2011769-6.HTM> and <http://www.saarijarvi.fi/d5web/kokous/2011778-6.HTM>>.

<sup>22</sup> *Water Framework Directive*, 2000/60/EY ('WFD').

<sup>23</sup> HE 120/2004 (Governments Proposal to the Parliament 120/2004) 21.

<sup>24</sup> KHO 20.8.2010 t. 1869.

<sup>25</sup> According to the WFD, Member States must assess the ecological status of the surface waters. The ecological status can be either 'high', 'good', 'moderate', 'poor' or 'bad' - the overall objective of WFD is to reach 'good' quality status for all the water bodies in the Union.

<sup>26</sup> KHO 2005:27. The SAC ruled that since the *Environmental Protection Act* requires that environmental degradation must be caused by emission, and since, in peat production, no emission to the wetland itself occurs, the *Act* does not protect the wetland from the (permanent) damage caused by the peat production.

<sup>27</sup> The attempt was not successful at the European Union level: the Union still defines peat as a fossil fuel according to the stance taken by the IPCC: '2006 IPCC Guidelines for National Greenhouse Gas Inventories' even though the part of the wetlands is under reevaluation to be concluded as '2013 Supplement to 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Wetlands', see <http://www.ipcc-nggip.iges.or.jp/home/wetlands.html> (accessed 22 November 2012). At the national level, the previous Government of Finland continued to refer to peat as 'slowly renewable bioenergy'; the national discussion has slowed down since the current Government took office.



Among recent legislative actions of the current government is the preparation of a national *Climate Act*. The first report towards formulation of the *Act* was delivered in May 2012. The draft is, understandably, rather general, bearing in mind the short drafting time. The draft cites the use of wetlands as one of the methods for improving the carbon balance. The report states that the most efficient way of improving the carbon balance of the wetlands is to avoid draining them and to focus peat production on wetlands that have already been drained or which have otherwise lost their 'natural' condition.<sup>28</sup> A complete shutdown of peat production is not mentioned as a solution, probably reflecting the political view that peat is a slowly renewable bioenergy.

To mitigate all the competing aims for wetlands, a National Strategy for Mires and Wetlands (NSMW) was compiled in 2011.<sup>29</sup> It aims to provide thorough guidelines for the use of wetlands. The drafting of the NSMW sought to focus on the current challenges to use and protection of wetlands. Owing to the terms of reference, the committee charged with forming the strategy did not include the issue of climate change in its work. The strategy is meant to deal with the various uses of the wetlands, not with the effects such usage has on the climate. A dissenting opinion summed up the problem: 'the NSMW looks backwards, not to the future. It frames the use of the wetlands as it has always been, not as it should be in light of current challenges'.<sup>30</sup>

In conclusion, it can be said that the climate change argument does exist, but as a vague and fragile one - just as the no harm argument was once. It took from three to four decades for the no harm argument to take root. It might take as long for the climate change argument to take effect. In 2012, the climate change argument enjoyed the same strength of 'one dissenting opinion' as the no harm argument did in the 1970's. Equally, this means that there is a dualism in Finland's climate politics which, like that of many other countries, is not only unresolved but not even part of the official discourse.

## Conclusions - the audacity of hope

If the situation with the climate change argument is as gloomy as it is sketched out here, is there any hope left for the wetlands of Finland? A few trends are evident; they are speculative but, nonetheless, somewhat encouraging. If the trends evolve further, the future might be brighter than it seems at first glance.

The first trend is the way that regional environmental authorities interpret the sources of law they use, especially the national strategies on the one hand and river basin management plans on the other. Alongside the above-mentioned NSMW, there is a National Strategy for the Framework of the Water Pollution Control Until 2015 (Water Pollution Control Strategy). The latter has been in use since 2006.

The relevant issue here is how these strategies and frameworks have been used. Regional authorities have not been referring to the Water Pollution Control Strategy in their rulings. This is mainly due to the decisions of the SAC, according to which strategies of this sort can, if desired, be taken into account when a ruling is given, but no obligation exists to pay attention to them.<sup>31</sup> Hence, lower authorities have refrained from referring to the Water Pollution Control Strategy and, instead, have utilised the river basin management plans drafted according to the *WFD*. The SAC approves of this practice, as is evident in the handling of the *Area K* case.

If this tendency to dismiss strategies in judicial decision-making continues - and nothing implies a change - the NSMW and its conservative approach to the use of the wetlands might, to a significant extent, be disregarded. Most likely, this means adjudication that is more sensitive to local conditions - that is, the condition of the waters near to wetlands - because the river basin management plans are the only ones left as normative sources for the quality of waters.

<sup>28</sup> Ekroos, Ari - Warsta, Matias, *The Report on the Feasibility of a Climate Act* (Kansallisen ilmastonlain säätämismahdollisuuksista. Selvitys ympäristöministeriölle 29.5.2012), 61.

<sup>29</sup> Proposal for a National Strategy for the Sustainable and Responsible Use of Mires and Peatlands, Ministry of Agriculture and Forestry, Working Group Memorandum 2011:1. Available (in Finnish only) at <[http://www.mmm.fi/attachments/ymparisto/suojaturvemaat/5xxrwGBpQ/Suostrategia\\_final\\_160211korjattu150411.pdf](http://www.mmm.fi/attachments/ymparisto/suojaturvemaat/5xxrwGBpQ/Suostrategia_final_160211korjattu150411.pdf)>.

<sup>30</sup> Dissenting opinion of Tapio Lindholm, available (only in Finnish) at [http://www.mmm.fi/attachments/ymparisto/suojaturvemaat/5wVmNY9tj/Tapio\\_Lindholm\\_19.01.2011.pdf](http://www.mmm.fi/attachments/ymparisto/suojaturvemaat/5wVmNY9tj/Tapio_Lindholm_19.01.2011.pdf) (accessed 22 November 2012).

<sup>31</sup> KHO 2010:32. According to the classification of the Scandinavian legal dogmatics, the Strategies go under the category of *permissible* sources of law, not *binding* or even *weakly binding* sources. See Aulis Aarnio, *The Rational as Reasonable: A Treatise on Legal Justification* (Reidel, Dordrecht cop. 1987), 89ff.



This leads to the second trend currently in evidence: the novel use of the no harm argument. While the climate change argument is as fragile as it is, the no harm argument seems to be able to carry weight. This means that, in situations where a number of arguments could, in theory, favour the protection of wetlands from peat excavation, the only legally solid argument is the no harm argument. However, the winning point in the argument is not the wetland itself but the waters around and in the lower reaches of the wetland. This argument has been used by regional authorities for some time. In fact, now that the SCA has validated the practice, the no harm argument seems to demonstrate its adaptability to contemporary challenges rather convincingly.

The dominance of two arguments for the use of wetlands - in spite of three contenders - fits Koskenniemi's theory. The climate change argument has gained little weight, and the two arguments in use are the sovereignty argument and the no harm argument.

How do the theoretical frameworks of adjudication or regulation fit into this real-life situation of regulating wetlands in the Finnish legal system? Quite well it seems if the answer is sought from critical theory. In fact, the analysis of the management of the Finnish wetlands seems embarrassingly revealing. The bipartite structure of legal discourse seems to occur at the national level as much as it does at the international level. The implication is that a new argument for the management of Finnish wetland must be subsumed by either one of the existing categories of the legal order for it to have an impact.

Does it follow from this that the division between law and politics can be as blurred in national law as it generally is in international law? According to this example it would seem so. If an environmental issue is left as unregulated as the usage of wetlands in Finland appears to be, the adjudication in the field follows the rough and simplified patterns developed within international law.

