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National legislative adoption of international wildlife law after treaty ratification

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Abstract

Since the 1970s, the world has witnessed a proliferation of international treaties championing the protection of wildlife. The effectiveness of those treaties, which together comprise international wildlife law (IWL), depends on their national implementation by individual states rather than on their number. National implementation of IWL ranges from legislative action, to resource allocation, to individual behavioural change. Inadequate IWL implementation can facilitate and even lead to wildlife crime. Therefore, examining how countries operationalise their commitments derived from IWL is important to understand the efficacy (or lack thereof) of wildlife treaties. The main goal of this article is to investigate the dynamics by which nations internalise international wildlife commitments into state law, by using Norway as a case study. The article thus explores the social dynamics that shaped the domestic legal action that Norway undertook after its ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). The study is based on historical data documenting Norway's legislative processes derived from the conventions and historical records of the country's environmental conflicts. It applies Chambliss's sociology of law perspective on conflict to interpret the material. While many globalisation scholars hold that globalisation stripped states of legislative sovereignty, this article argues that Norway's wildlife policy is mostly dependent on clashes between national forces, rather than Norway conceding legislative powers to the international community. In other words, the tension between economic growth and ecosystem conservation determines how Norway implements IWL commitments. This article contributes to the literature on environmental regime effectiveness and the domestic impact of treaties.

Keywords Bern Convention · CITES · Conflict perspective · International wildlife law · Regime effectiveness · Wildlife crime

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Introduction

Elverum, a Norwegian municipality, hosts both the *Norwegian Forest Museum*, which marks the importance of hunting 'to the Norwegian history and economy' (Elverum, 2021; Norwegian Forest Museum, n.d.) and the Letjennareviret, a wolf sanctuary. The institutions are, unavoidably, in conflict. In 2019 a conflict erupted when the Elverum Predator Board, with the power of shaping the regional management of carnivores, determined that six wolves in Letjennareviret should be killed. NOAH, an animal rights organisation, reacted almost immediately with a complaint. The immediate point of conflict was whether the wolves should be killed, but at a deeper level the disagreement dealt with whether the slayings were legal under the Bern Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), an international wildlife treaty that Norway ratified in 1986. The county governor, the Ministry of Climate and Environment, and the Norwegian Environmental Agency all backed the Predator Board. NOAH sought protection from the judicial power. On 9 July 2021, the Oslo District Court declared that 'the [Predator Board's] decision is invalid' (Moen Holø & Arnesen, 2021). The court ruled that the Bern Convention 'seeks to protect wild flora and fauna…and to secure stocks capable of survival. [So], to highlight the stability of a family [of wolves] as a reason for the kill seems to be in contention with the law's intent' (NOAH v. Klima og Miljødepartementet, 2021). Nevertheless, the ruling came too late—four wolves had been slaughtered on 1 January 2020. Two years passed between the board's decision and the court's clarification of the implications of the Bern Convention for Norway. Meanwhile, four endangered wolves—the very animals the Bern Convention seeks to protect—were killed.

What looks like a niche conflict in a remote Norwegian region reports, however, global interest. The immediate question raised by the conflict is whether the Bern Convention was effective (its contents were applied, but too late). Yet, at a deeper level, the dispute raises questions about the impact of international wildlife law (IWL) in national legal systems. After ratifying an IWL agreement, how does a state incorporate it in its legal framework (if it does)? And, how can the determinants for the actions of state after ratification be theorised? Both questions fall under the scope of *environmental regime effectiveness* studies (Brandi et al., 2019).

This article seeks to understand the impact that IWL treaties have on national legislations and on the conflicts they seek to regulate. The article uses Norway as a case study to explore how it legislatively internalised its commitments under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and Bern Convention. This study relies on a historical perspective for the analysis, showing that the internal environmental conflicts that have divided Norway for decades determine how it manages its nature—despite the mandates of IWL. The implications of this finding is that the impact of IWL treaties on national legal frameworks depends on the position of the state in the global political economy. Some nations see their environmental law making sovereignty challenged by the influence of international treaties (Goyes, 2017; Velez et al., 2021). Other nations can force counterparts to comply with such treaties without themselves leading by example (Sollund et al., 2019; Sollund & Runhovde, 2020). Finally, a third group of countries

(which includes Norway) remains almost untouched even by the international commitments they voluntarily agreed to. This insight goes hand in hand with Franko's understanding of globalisation as a set of complex dynamics with different modalities filled with paradox and unevenness (Franko, 2019).

This article is structured in eight parts, after this introduction (Part I). Part II 'Background: Regime effectiveness and treaty implementation', presents a review of the literature dealing with how states transform international environmental treaties into national law, and highlights the lacunae in the field. Part III 'Theory: Chambliss's structural contradictions', exposes the theoretical framework of this study, which is inspired by William Chambliss's conflict approach to sociology of law (Chambliss, 1979, 1993). Chambliss's theory, which only accounts for national legislative processes, is however adapted to encompass law-making processes derived from the ratification of international treaties. Part IV 'Methods: Critical event analysis', describes the material used in the study: historical data including court rulings, government documents, historical accounts, and legislative preparatory works—all focused on the events that shape how Norway manages its nature. Part V 'Context: Environmental treaties, laws and regulations', offers contextual information to interpret the study's data, including an overview of the IWL system, the contents of CITES and the Bern Convention, and a description of the laws through which Norway internalised the contents of the conventions. Part VI. 'Findings: Economic growth and ecosystem conservation as determinants of national legislative adoption of international wildlife law after treaty ratification' deals with how the trajectory of internal environmental conflicts in Norway determines the way in which the country's legislators incorporate international commitments into national law. The section traces the development of environmental conflicts in Norway from the 1900s until the 2010s, including some vignettes of social clashes between those who support economic and technological growth and those who support ecosystem conservation. The section also spells out how in Norway—a core country—*internal* clashes rather than *outward* forces compel its legislators to engage with the country's international obligations. This finding adds to previous studies in identifying that the world is divided in a core and a periphery and so is the way in which nations incorporate IWL treaties. Part VIII 'Conclusion', argues that while defenders of nature are beginning to outmanoeuvre the champions of 'growth', wild fauna is only of peripheral interest in Norway. So, this study predicts that international environmental law will increasingly influence Norway's law-making behaviour, but not regarding wild fauna.

Background: Regime effectiveness and treaty implementation

This section presents a review of the literature dealing with how states transform international environmental treaties into national law. The exploration falls within the field of international cooperation studies (Underdal, 1992), sub-field of *regime effectiveness*, which evaluates the success of an international cooperative arrangement—usually a treaty—vis-à-vis a predefined set of standards (Brandi et al., 2019; Jackson & Bührs, 2015; Underdal, 1992). Despite the significant body of knowledge about the effectiveness (or lack thereof) of international treaties, this literature review

identifies a lack of information regarding how nations implement their international commitments legislatively.

The arena of regime effectiveness includes, in order of temporary proximity to the new arrangement proposition, treaty ratification, treaty implementation/domestic legal action, resource allocation, behavioural change, goal attainment and problem solving. The further away the phenomena being investigated is from the treaty, the more difficult it is to arrive at decisive conclusions about effectiveness because the multiplicity and complexity of the elements at play in the most remote themes make it impossible to trace causal links between the treaty and its consequences. This difficulty regarding IEL notwithstanding, there are examples of studies dealing with almost all the links in the regime effectiveness chain.

Scholars investigating phenomena around environmental treaty ratification have, for example, identified that treaties that are broad and with few binding obligations attract more signatory parties than those that are focused and contain compulsory duties (for instance, the 2015 climate change Paris Agreement) (Bodansky et al., 2017). Regarding domestic legal action, Brandi et al.'s (2019) extensive, quantitative study found 'a significant and positive relationship between treaties and domestic legislation', which they found to be 'more robust for PTAs [preferential trade agreements] than for IEAs [international Environmental Agreements]' (p. 15). The authors meant that most states alter their national legislation to internalise their international environmental commitments, particularly when they are derived from free trade agreements. The likely explanation for this is that states are driven by self-interest and see more immediate benefits from trade agreements. Mauerhofer et al. (2015), studying the Ramsar Convention on Wetlands, found that the level of resource allocation for the implementation of commitments derived from the convention was related to the political structure of the state. In federal nations, 'costs are equally shared between the provinces on the one hand and the federal ministry in charge of the environment on the other hand' (p. 101). In semi-federal countries, the funding of a project is highly dependent on the central government. And in unitary governments, funding requires 'political will at multiple levels, and it becomes difficult when opposed by either national or local governments' (p. 102). In a pioneering study conducted in 1993, Haas, Keohane and Levy noted that many institutions derived from IWL were so young at the time that they had not yet undergone the institutional transformations necessary to bring about behavioural change in humans (Haas et al., 1993). Regarding problem solving, Atisa explored the differential real-life outcomes in terms of nature protection of the acts of states that included stakeholders in processes of internalisation of IEA versus those that did not. The author found that 'there is a real difference in conservation between countries that have SPPs [stakeholder participation platforms] and policies, and those that do not', mainly because countries with SPPs are more prone to develop local policies, legislations and regulations (Atisa, 2020, p. 149). Liljeblad (2004) attempted to cover the full effectiveness chain, and focusing on CITES, argued that countries struggle to create global to national and national to local linkages to implement the convention.

Despite these (and other) studies covering diverse segments of the *regime efficiency chain*, there are still links awaiting to be explored. This study falls into the chain's inner link of *treaty implementation* 'defined as the adoption of legal measures

by states to translate their international commitments in their domestic legal order' (Brandi et al., 2019, p. 15). Knowledge exists indicating that commitments coming from international environmental law prompt high levels of national legislative activity (Brandi et al., 2019), but there is a lack of knowledge about *how* lawmakers get to that activity. What are the social dynamics that shape the national laws issued in response to the ratification of an international wildlife treaty? Beyond the lack of empirical studies, the main reason why that question remains an unknown is that environmental treaties give extensive discretionary powers to the signatory parties. They refrain from dictating how nations should legislate the commitments they made (Goyes, 2021a). The national legislative activity derived from an environmental treaty is important to understand the full chain of environmental regime effectiveness.

The context is important to understand how states fulfil their international commitments derived from environmental treaties. Commentators have demonstrated the inadequacy of *universal* theories in social sciences (Carrington et al., 2016, 2019; Connell, 2007; Goyes, 2019). Furthermore, the economic and political power of a country matters for understanding how it incorporates international treaties (see more on this in section VII). With that caveat, this study is about how a *core* country—economically and politically powerful Norway—incorporates the mandates of CITES and the Bern Convention into national normativity. The perspective this exploration takes is historical and focuses on social conflicts: how long-term disputes about environmental management affect Norwegian law making after the ratification of IWL treaties.

Theory: Chambliss's structural contradictions

Chambliss (1979, 1993) developed his theory of *structural contradictions* in order to understand why lawmakers legislate the way they do, in all realms, including environmental matters.[1] Previous efforts to explain legislative dynamics, which he sorted into functional (also called pluralist) and Marxist (also called ruling class theory), were unsatisfactory because they did not bear up to the scrutiny of empirical testing. Pluralists, according to Chambliss, highlight the importance of ideology, meaning that law is a reflection of social consciousness, and assert that of the diverse ideological interest groups that want to have their views reflected in the law, it is the most powerful that achieve this. Chambliss critiqued this approach because it 'tell[s] us very little about the creation of law: if all we can say is that those who will succeed are those who succeed…then we know nothing' (Chambliss, 1993, p. 4). Chambliss also found the ruling class perspective problematic on the grounds that it was too simplistic. It emphasises the structural organization of society and considers the law to be a tool of the ruling class to advance its economic interests. But because 'the ruling class is often divided in its interests', the 'theory is nonfalsifiable' as long as the

[1] I use two versions of the same text. The references to the 1979 document refer to the original article published in *British Journal of Law and Society*. The 1993 text is a revised version of the 1979 article that Chambliss published in an edited book.

ruling class is in power, and it fails to explain why the law changes (the ruling class being its creator and, by definition, still in power) (p. 7). Nevertheless, Chambliss conceded that 'there are ruling-class interests and influence in vast areas of law [that] cannot be denied' (p. 8). Chambliss recognised that some approaches combined elements from the pluralist and ruling class theories but leaned towards one of them and therefore inherited the problems of the original theories.

Chambliss desired to offer a theory that avoided 'both the determinism of a completely materialist science, and the voluntarism of idealist philosophy' (p. 21), in other words, one that evaded simplistic and abstract law-making theories that denied the complex and dynamic nature of legislative activities. He proposed that

> rather than law or society or even history determining the content of law, people make law, although, of course, they do not make it out of whole cloth. They build it on existing ideologies, institutions, and structures. But these ideologies, institutions, and structures do not have a mind of their own, but are interpreted, altered, and shaped by the human agency. (p. 25)

According to Chambliss, people operate in an institutional context (economic relations and political organizations) *agentively*, but intersected by ideologies and economic interests, people often clash. Rather than focussing on small-scale conflicts, Chambliss was interested in large and longstanding clashes. He denominated these macro-clashes as *structural contradictions*: 'Every society, nation, economic system, and historical period contains *contradictory* elements which are the moving force behind social change' (p. 9). For Chambliss, structural contradictions fuel law making; when a society experiences deep contradictions, social groups oppose each other, creating the potential for a revolution, challenging the status quo and threatening the survival of the social system. That is when law making emerges as representatives of the state attempt to save the system and its traditional functioning by creating new laws that reflect, at least partially, the interests of the contending groups. The legal outputs tend, nonetheless, to be weighted to one of the parties in contention—a consequence of the uneven power of clashing individuals and groups. In other words, legislators produce laws to conciliate conflicting group interests and so avoid the collapse of the system. Law creation is therefore 'a process aimed at the resolution of contradictions, conflicts and dilemmas which are inherent in the structure of a particular historical period' (Chambliss, 1979, p. 152). This means that to maintain their legitimacy—and political power—states and governments seek to resolve conflicts through law making.

Industrialisation at the expense of ecosystem conservation was a problem in the United States already in the early 1970s when Chambliss published his work—and it is still a major global challenge. To address this problem, Chambliss used 'the fundamental contradiction between industrialization and the quality of the environment' to develop and substantiate his theory (Chambliss, 1993, pp. 19–20). Chambliss described how, on the one hand, corporations sought to maximise short-term profits by 'exploiting the physical environment' and 'spewing forth industrial waste into rivers and oceans', and on the other, opponents of industrialisation highlighted that the exploitation of nature would bring about 'the eventual demise of the system (not to

mention the people)' (p. 20). Several laws emanated from 'the contradiction between maximum profit and destroying that environment' but only because the contradiction motivated 'conflicts between interest groups demanding change and owners attempting to maintain maximum profits and control' (p. 20).

Chambliss elucidated his theory with four warnings: First, social concern is not sufficient to initiate legislative activity. People must actively campaign, and only a fraction of their efforts will be legislatively successful. Second, the groups in conflict have unequal degrees of power (industry has more capital, and thus power, at their disposal than workers). Nevertheless, 'the shape and content of the law are…a reflection of the struggle and not simply a mirror image of the short-run interests and ideologies of "the ruling class" or of "the people"' (Chambliss, 1979, p. 170). Third, law making is different from actually 'changing patterns of social relations' (Chambliss, 1993, p. 14). Structural contradictions tend to survive legislative action, giving rise to further conflicts and further legislative activity. Fourth, laws might fail to change the system but they might still serve a legitimating function (Chambliss, 1993; see also Lemaitre Ripoll, 2008).

Chambliss's theorisation fits the data collected to conduct the present study, reason why it was chosen as the theoretical lens to interpret the material at hand. The details about the data-collection method are presented in the next section—the analysis for the material followed an inductive logic in which data directed the selection of the theory. As data made evident that Norway's environmental policy and law making is a product of the historical and structural conflicts between economic growth and ecosystem conservation, Chambliss's theory was deemed well suited to analyse in-depth the case and its implications.

Yet, Chambliss (1979, 1993) developed his theory of structural contradictions based on *national* dynamics. Reading his hypothesis from a global perspective changes slightly the contours of the structural contradictions theory. In the decades since Chambliss's proposal, globalisation scholars have questioned the primacy of the state in various matters, including law making (Aas, 2007; Andreas & Nadelmann, 2006; Jakobi, 2013). For them, global flows of capital, goods, information and humans have disrupted state-centred systems, and as a result, they have called for a move beyond state-centric thinking (Goyes, 2017). In this vein, Aas (2007) identified two main challenges to state sovereign law making: *outward*—external to the borders of a state, for example, the influence of international organisations and treaties—and *downward*—those that come from within state borders but are the product of global flows (see also Goyes, 2017). Franko also warned that globalisation is complex and filled with paradoxes and unevenness: not every country sees its legislative activity defined by outward or downward challenges (but some of them do [Goyes, 2019; Sollund et al., 2019; Velez et al., 2021]). Sollund and Runhovde (2020) and Sollund et al. (2019) have shown that when it comes to environmental issues and initiatives, Norway imposes laws and policies on partners without outward pressure significantly influencing its own laws and practices (Franko, 2019; Sollund & Runhovde, 2020). What happens, then, with the legislative sovereignty of a powerful country (like Norway) when it binds itself to international treaties? How do its international commitments affect legislation? Before the article turns to those questions, the research method of this article is described.

Methods: Critical events analysis

Conflicts abound in every country and thus, following Chambliss (1993), so do laws. Considering the number of laws passed each year in any given nation-state, Chambliss focused on *critical events* to understand why laws are created. Critical events are 'the points at which laws are produced that provide a new approach to a problem' (p. 3), that is, the cases that establish a new direction in law. This article's interest is in understand why Norwegian law making derived from the country's ratification of CITES and the Bern Convention has taken the form it has and to evaluate whether the conventions are effective in securing wildlife protection in domestic legal action. The two conventions were chosen for being the most important IWL for Norway.

The Bern Convention and CITES have generated much legislative activity in Norway. Lovdata, (https://lovdata.no) the foundation that publishes Norwegian judicial information, lists 98 documents associated with laws derived from CITES and 246 from the Bern Convention (laws, parliamentary initiatives, pre-legislative research, public propositions, reforms, registries, regulations and speeches). This article's interest, however, is not on the details of the relevant legal changes but to understand the social dynamics that determined the Norwegian legislative activity derived from CITES and the Bern Convention. Following Chambliss, this study explored first the *critical legislative events*: Regulation 1276 of 2002, which marked a new way of incorporating CITES's obligations in the country, and the Natural Diversity Law of 2009, which supposedly embraces the commitments derived from the Bern Convention. For both laws, the texts of the laws, parliamentary initiatives and pre-legislative research were used. Most of them are available on Lovdata except for the pre-legislative research of Regulation 1276 of 2002, accessed through a right of petition to the Ministry of Foreign Affairs. Second, this study connected these critical legislative events with *socio-environmental critical events*, the most important conflicts in Norway about human interaction with nature. All the material used to map socio-environmental conflicts was archival and included communications from the parliament about the environment, court rulings and historical material.

Context: Environmental treaties, laws and regulations

International environmental law (IEL) has existed for almost a century, but it was in the 1970s that activists, politicians and scientists pushed for a shift (called a *modern* orientation) to protecting the environment rather than seeing it only as a resource (Dupuy & Viñuales, 2019). International environmental law covers a wide range of issues, including climate change, environmental security, nature conservation, overpopulation, pollution and resource preservation (Bodansky et al., 2017; Carlarne et al., 2016; Dupuy & Viñuales, 2019). It is the distinct arm of IWL that interests this article the most. International wildlife law focuses on preserving wildlife (animals and plants) and, like IEL, its goals have shifted from protecting wildlife as a resource, to safeguarding economic interests while simultaneously conserving wildlife for its ecological and aesthetic value (Bowman et al., 2010). Since 1945, states have ratified more than two thousand treaties in the area of IWL (Brandi et al., 2019): written

agreements of two or more states that are regulated by international law and that establish commitments for them. Regarding such treaty expansion, commentators contend that 'the number and diversity of international instruments for the protection of animal and plant life makes any attempt to capture the major axes of this area of regulation a challenging exercise' (Dupuy & Viñuales, 2019, p. 202).

The existence of abundant IWL treaties does not automatically equate to heightened state action in the preservation of wildlife, however, as the case presented at the outset of this article demonstrates. A non-exhaustive list of interrelated causes for this phenomenon include:

- *Sovereignty*, which is a pillar of international law, determines that each state is autonomous in deciding which treaties to adhere to (Aarli & Mæhle, 2018; Armstrong, 2015; Schrijver, 2009). The permanent sovereignty doctrine was introduced in the 1940s as a 'political claim' associated with decolonisation to reassert the self-determination not only of former colonies but all other nations in the world (Schrijver, 2009). Principle 21 of the Declaration of the United Nations Conference on the Human Environment (1972) (the Stockholm Declaration) definitively inscribed the permanent sovereignty doctrine as a principle of international law and made of it 'a hugely consequential one in the contemporary world' (Armstrong, 2015) by affirming that 'States have…the sovereign right to exploit their own resources pursuant to their own environmental policies' (Handl, 1972). Chris Armstrong has critiqued the sovereignty principle for neglecting the need of joint action and responsibility to achieve planetary goals, such as the conservation of wildlife (Armstrong, 2015). Despite such criticisms, the principle of permanent sovereignty over natural resources is the 'building block of modern environmental regulation' (Dupuy & Viñuales, 2019, p. 7) and gives states the power not only to decide which treaties to adhere to, but also how to implement them (Bugge, 2019).
- The ambivalence of the philosophical pillars of IWL treaties operating in the same territories amplifies even more the states' volition in their wildlife management (states are not bounded by the conventions' substratum and can limit compliance with the formalities). When two IWL conventions have conflicting philosophical pillars, as is often the case for CITES and the Bern Convention, states are able to use the conflict to exert significant control over how to implement them (Goyes, 2021a).
- The economic and political power of a state can shield it from external pressures to implement the obligations of the IWL treaties it has ratified. Commentators have criticised the national implementation of both treaties under analysis in this article for their dependence on the geopolitical power of its parties: CITES for trumping political considerations over demonstrated conservation needs (Bauer et al., 2018) and the Bern Convention for having a Standing Committee that grants excessive political discretion to states (Epstein, 2014; Sollund, 2020; Trouwborst et al., 2017).

It is important for these reasons to investigate the dynamics by which nations incorporate international wildlife commitments into state law. State-level legislative is crucial to the overall effectiveness of a regime.

But what is the scope of these conventions? CITES is one of the most important IWL treaties in the world. Signed in 1973 and in force from 1975, it came into existence because of the efforts of the International Union for Conservation of Nature, along with other organisations, that, beginning in the 1960s, urged governments to take action to prevent illegal wildlife trade (Huxley, 2000). CITES's original goal was 'to set up a system through which the trade controls in importing countries could be matched with those in the exporting countries' to advance conservation (Huxley, 2000, p. 11). Currently, the overarching goal of CITES is to 'save wild species from extinction' by regulating wildlife trade (Hutton & Dickson, 2000, p. xv), while simultaneously committing to sustainability in order to maintain trade (Sollund, 2019). Its main mechanisms are 'regulation and restriction of the international trade in wildlife' (Hutton & Dickson, 2000, p. xv). CITES uses a system of three lists of endangered species: 'Appendix I lists species that are the most endangered among CITES-listed animals and plants….They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial'. Appendix II 'lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled'. Appendix III 'is a list of species included at the request of a Party that already regulates trade in the species and that needs the cooperation of other countries to prevent unsustainable or illegal exploitation' (CITES, n.d.). Norway joined and enforced CITES in 1976.

The Bern Convention, which was signed in 1979 and which came into force in 1982, originated in 'a request made by the Parliamentary Assembly of the Council of Europe in 1973 requesting European regulations for the protection of wildlife' (Diaz, 2010, p. 186; Jen, 1999). Its purpose is to protect European wild plants and animals—particularly those endangered—and their habitats, as well as advancing cooperation among countries to achieve this goal. One of the obligations that the Bern Convention imposes on states is to take suitable administrative and legal measures to maintain adequate population levels of species to secure their survival (Council of Europe, n.d.). The Bern Convention also functions as a basis for 'ample collaboration between the countries', for instance, through collective decisions that express the 'common view' of the partners and through the Emerald Network, which creates natural protection areas in Europe (Bugge, 2019, p. 297). This convention also works with a system of lists: Appendix I lists 'strictly protected flora species', Appendix II includes 'strictly protected fauna species', Appendix III registers 'protected fauna species' and Appendix IV records 'prohibited means and methods of killing, capture and other forms of exploitation' (Council of Europe, 2023). Norway ratified the convention in 1986.

CITES and the Bern Convention in the norwegian legal system

The Norwegian state uses a *dualistic principle*, which means that 'international law first becomes national when the relevant Norwegian authorities have decided on the measures that transform international rules into Norwegian law' (Bugge, 2019, p.

84). In other words, international law is relevant in a Norwegian territory only once national authorities create laws on the topic (Aarli & Mæhle, 2018).[2] Furthermore, in case of conflict, authorities should prioritise national law over international mandates (Bugge, 2019). Norway has two methods of converting international law into national law: *transformation*, in which parliament issues laws that 'fulfil the commitments derived from the treaty' (Aarli & Mæhle, 2018), and *incorporation*, in which the international rules are made national as they are. The trajectory along which Norway internalised the mandates of CITES and the Bern Convention is short and straightforward, but it internalised each of the conventions differently.

When Norway ratified CITES in 1976, the government took into consideration that the existing legal framework contained all the necessary tools and mechanisms to fulfil the mandates of the convention (Utenrikstepartementet, 2002). The country's authorities used existing general regulation for imports and exports, with the only twist that it was the Ministry of Environment that oversaw issuing trade authorisation for listed species. The adoption of CITES occurred through *hard incorporation*, that is, using the exact text of the convention. In 1983, the government revised Article 1a of the *Regulation on the Completion of Imports* (*Forskrift om gjennomføring av innførselsreguleringen*), to ensure practitioners would use the text of the convention itself. In 1989 the Directorate of Environmental Protection reconsidered hard incorporation and began drafting a CITES-specific regulation. The main failure, in the department's eyes, was that existing regulation was 'completely generic' thereby failing to meet the demands of 'the rule of law', 'public information', and 'penal prosecution of illegal trade with endangered species' (Utenrikstepartementet, 2002, p. 566). Those failures were identified by two other actors: the Norwegian Tax Administration, which sought to clarify the terms and procedures, and environmental NGOs, which sought to strengthen the protection of nature (Bugge, 2019).

While the discussions of Norway's integration into the European Union delayed the initiative to create a specific CITES regulation for over a decade, on 12 November, 2002, the Norwegian Department of International Affairs (Utenrikstepartementet, 2002) put forward a Royal Resolution[3] to 'formalise the CITES framework, which has been implemented in Norway since the Convention was ratified on July 27, 1976' (p. 564). The outcome was Regulation 1276 of 15 November 2002 known as the *Regulation of Implementation of the Convention of March 3, 1973, on International Trade of Endangered Species of Wild Flora and Fauna* (*Forskrift om innførsel, utførsel, besittelse mv. Av truede arter av vill fauna og flora [CITES-forskriften]*). Regulation 1276 of 2002[4] uses the technique of *soft incorporation*, that is, using the convention as a template but with minor changes, copying most of the convention in an internal regulation (thereby using it as a framework law) but making some changes in accord with national regulations and internal interests. In the words of the Department, Regulation 1276

[2] This stands in opposition to other legal systems that, using the concept of *constitutional block*, automatically make international law, national, with ratification (Uprimny, 2005).

[3] A decision the king approves upon the initiative of the government.

[4] In 2018, the Ministry of Climate and Environment revised Regulation 1276 and lodged it in the *Natural Diversity Law* rather than the Law on import and export (1997). There was no other significant change.

> mainly follows the mandates of the Convention but when it comes to the regulation for the species on list I, the suggestion is formulated as a prohibition but with possibility for dispensation. In practice, the outcome is the same as in the Convention because the requirements for authorisation of these species in the Convention are so strict that in reality it means prohibition. (Utenriksteparte-mentet, 2002, p. 566)

In comparison, the Bern Convention is incorporated into Norwegian law through *transformation*. The Arntzen de Besche law firm neatly expressed this: 'the [Bern] Convention is not directly incorporated into Norwegian law, but the Convention's commitments are fulfilled particularly through the *Natural Diversity Law and the Wildlife Law* [NDL]' (Arntzen de Besche Advokatfirma, 2017). The Norwegian government confirmed twice that it transformed its commitments derived from the Bern Convention into the NDL. First, when proposing the NDL. The Ministry of Climate and Environment wrote, 'the Bern Convention is an important premise for most of this law's decisions' (Miljøverndepartement, 2008–2009, p. 48). Second, in the biennial report that Norway sent to the Bern Convention's Standing Committee for the 2009–2010 period, in which the government noted the issuing of a 'new act on nature diversity', which sought to 'protect biological, geological and landscape diversity and ecological processes through conservation and sustainable use' (Standing Committee, 2015, p. 3).

The NDL is the overarching Norwegian law for the protection of the biological, geological and ecological diversity of the country's environment. NDL focuses on the protection and sustainable use of nature, particularly on preserving diversity for the present and the future. The law also intends to protect ecosystems based on their role in the survival of endangered species and for their cultural, aesthetic and scientific value. In addition to deterring negative interventions in nature, NDL also includes positive actions in support of the law's goals (Bugge, 2019). NDL's Article 5 centrally establishes that 'species and their genetic diversity must be protected in the long term, and that species' populations are able to survive in their natural environments.' In practice, however, the law is informed by the desire to balance the protection of the species and their ecosystems, the freedom to exploit wildlife economically and the protection of interests that are threatened by the presence of wild carnivores (Bugge, 2019, p. 262). For instance, Article 18 allows for the killing of wild predators to prevent damage to agriculture. In addition to the general protection Article 5 offers endangered wild fauna, the law also establishes the principles of *carefulness*, an *ecosystem and cumulative-effects* focus, *precaution*, and the *use of scientific knowledge* to regulate the interaction between humans and wildlife.

In sum, when incorporating CITES's mandates, Norwegian legislators copied the text of the convention. In contrast, when internalising Norway's obligations derived from the Bern Convention, Norwegian lawmakers rephrased the text. Why did the Norwegian parliament use the method of incorporation for CITES but transformation for the Bern Convention? The Norwegian Ministry of Climate and Environment hinted at the answer in its proposition of the NDL: 'trade sets some limits on the means to advance the protection and sustainable use of natural diversity. The Ministry has responded to those limits in its legislative work' (Miljøverndepartement,

2008–2009, p. 158). The ministry was concerned that the NDL would stand in the way of economic growth. CITES, because it promoted trade, could be incorporated into Norwegian law, whereas it was necessary to rephrase the Bern Convention, that is, transform it, because it had the potential to interfere with economic profit. Norwegian lawmakers' respect for economic concerns is not coincidental: a century of environmental conflicts in Norway has engrained deference to economics in the government, as I explain below. Because of this, it is necessary to view social clashes about the environment as the source of laws, even when they are derived from international wildlife treaties.

Findings: Economic growth and ecosystem conservation as determinants national legislative adoption of international wildlife law after treaty ratification

This section presents the main findings of the historical (archival) study conducted, using Norway as case study, to understand what the dynamics (determinants) are by which nations incorporate international wildlife commitments into state law. The key argument is that it is the internal social clashes between economic growth and ecosystem conservation that determined the means through which Norway incorporated the two treaties under examination: Bern and CITES. Those social environmental clashes, until the 2000s, had the following characteristics. First, the principal conflict was between nature and the economy. Second, the most visible activists fought for the protection of ecosystems, abandoning animal rights to the periphery. Third, every wave of activism about a new issue resulted in new laws that attempt to balance economic interests and ecosystem protection. As Bredo Berntsen stated, Norway's conflict over nature is an 'increasing clash between "growth and preservation"' to which the government has responded producing 'a steadily more detailed legal framework and a more encompassing management' (Berntsen, 2016, p. 26). The trajectory of social clashes ended up determining that Norway adopted CITES via hard incorporation and the Bern Convention via transformation.

In the early twentieth century, a group of natural scientists organized to address the negative impact of population and economic growth on Norwegian ecosystems.[5] The early twentieth century was a period in which the main political tension between parties was over *who* should control industry. Høyre (liberal conservatives) wanted minimal state intervention and was pro international capital, while Venstre (centrist liberals) wanted national control. In this climate, NUPN raised environmental concerns about 'hydropower, modern technology and big industries' (Berntsen, 2016, p. 13) in order to protect ecosystems from the destruction of industrial growth. In 1910, NUPN landed its first legislative victory: the *Law for the Protection of Nature* (*Lov om Naturfredning*). With this momentum, between 1910 and 1930 NUPN secured the protection of Lake Sjoa, Gjende River, Vettisfossen Falls and the Fokstumyra bird

[5] In 1916, the group began calling itself Landsforening for Naturfredning (NUPN, National Union for the Protection of Nature).

sanctuary. NUPN, however, failed to establish any national parks in its early years in spite of its efforts to do so.

In the 1930s, two open-air organisations (groups advocating the right of everyone to enjoy nature) reinvigorated the struggle to protect ecosystems, and their entrance onto the field marked the lines of contemporary Norwegian wildlife policy. These open-air organisations positioned the protection of nature as a human right to experience nature, which later became central in the 2009 NDL. WWII, however, interrupted the work of both NUPN and the open-air organisations, but Norway's post-war policies of energy production and material growth, once again ignited environmentalist action. In the 1950s, the fight focused on combating the harms of hydropower production. One exception was a small group that focused its efforts on trying to stop excessive herring fishing and blue whale exploitation. As Chambliss predicted, post-war frictions resulted in a new legislation, the *Law on the Protection of Nature* (1954, *Lov om Naturvern*) and the *Law on Open Air* (1957, *Lov om friluftsliv*). In addition, NUPN's dream of national parks materialised with the creation of the Rondane national park.

The largest confrontations in the environmental history of Norway took place in the 1970s. The government initiated a series of dam projects throughout the country to which environmentalists protested. Despite enlisting philosophers Sigmund Kvaløy Setreng and Arne Næss, environmentalists failed to prevent construction of dams in Mardalsfossen and Orkla. The third round of clashes over dams took place in Hardangervidda. By then environmentalists had allied with two open-air organisations (Norwegian Tourist Union and Hunters and Fishers Union), claiming victory and forcing the creation of, at that point, the biggest national park in Norway. The Áltá action, dubbed the 'biggest environmental uproar' (Nilsen, 2019, p. 1), has been described as 'the largest and most impactful uprising against state-led environmental destruction in the Nordic countries' (García-Antón et al., 2020, p. 8), including both Sámi and non-Indigenous activists. More than

> 10,000 protesters and 600 police officers (the largest security gathering in Norway since World War II) protested the construction of a dam in the Áltá-Kautokeino waterfall, between 1978 and 1982. The Áltá action began when Sámi Indigenous people called out 'La elva leve' (Ellos eatnu/Let the river live)…against the unilateral decision by the Norwegian government to construct a large dam across the Áltáeatnu river in Sápmi/Northern Norway that would flood large tracts of Sámi land, destroying fauna, flora, human habitation and livelihoods in its wake. (p. 8)

The protest, which included several demonstrations, championed the defence of nature and Sámi rights. The Sámi intended to protest 'until the rights of the Sámi people were clarified' and they had managed to 'stop the destruction of nature in Sápmi', declared Sámi hunger striker Somby (2020, p. 36). Similarly, Bjørklund (2020), an expert on inter-ethnic relations in Northern Norway, described 'the Áltá action as a Sámi conflict' (p. 39). The leader of the Áltá action, non-Sámi Alfred Nilsen, explained the importance of the Áltá river: 'during all times has the river been

important for the population in Kautokeino and Áltá. In the oldest times as means of transportation and food source' (Nilsen, 2019, p. 11).

Along with the waterfall confrontations, there were many other positive developments in the protection of nature in the 1970s. Parliament issued a new law, *Protection of Nature* (*Naturvernloven*) in 1970, and in 1972 Norway was the first country in the world to establish a Ministry of Environment. Nevertheless, the conflicts over energy—particularly hydropower—threw a shadow over those two achievements. This was unsurprising considering that by then the two biggest political parties, Høyre and Arbeiderpartiet (Labour Party), were both looking for significant energy growth. New social movements in the 1980s, like the influential Natur og Ungdom (Nature and Youth) and Naturvernforbundet (Friends of the Earth, Norway), warned about pollution and environmental waste. Predictably, the government responded by passing a new law: the *Law on Protection against Pollution and Waste* (1983, *Lov om vern mot forurensing og om avfall*). Bellona (Miljøstiftelsen Bellona, founded in 1986) and Greenpeace Norway (founded in 1988) joined the environmentalist action in Norway in the second part of the decade, the former fighting industrial waste and the latter advocating for the conservation of ecosystems. These organisations also picked up the struggle for national parks dating from the 1930s and produced a plan for the establishment and increased protection of parks, which was finally approved in 1993, recording 178 natural reserves and several parks by 2002.

By this time, mobilisation around the protection of species was still peripheral even though a local chapter of the World Wildlife Fund (WWF) was established in Norway, which advocated for the protection of wild salmon, threatened by farmed salmon. It was Gro Harlem Brundtland, however, who received the fullest attention in nature politics. As Norway's prime minister, Brundtland led the United Nations Commission that produced the internationally famous *Our Common Future* report (1987), also known as the Brundtland Report. Following on the heels of the first open-air organisations and the Brundtland report, in 1992 the Norwegian parliament added Article 110 (now 112) to the constitution about the right to a healthy environment. However, environmental conflicts continued along the usual track: economic growth versus ecosystem conservation. For instance, Natur og Miljø (Nature and Environment) fought for forests and mobilised to protect the Skotjernfjell, a conflict in which 'land owners and local authorities wished to harvest trees and to build cabins [while] environmental defenders advocated for the protection of nature' (Berntsen, 2016, p. 21). In addition, environmental groups mobilised around the 1996 government decision to build two gas-powered plants in Lofoten that threatened to adversely impact the region's environment. And in the twenty-first century, the disputes have been about oil drilling.

As this summary of environmental confrontations in Norway shows, the crux of the main environmental conflicts in Norway has been ecosystem protection versus economic growth. As I demonstrate below, those historical clashes have made deep marks on the political movements of Norway, influencing the nation's environmental policy and how it internalises its international commitments.

What a state does after ratifying an IWL treaty and the degree to which the treaty affects the state's legal framework depends on the state's economic and political power. The division between core and peripheral countries is useful to understand the

power of a nation: core countries control financial and legal institutions, media and communication systems, technologies, and weapons of mass destruction; peripheral countries are those that generate raw material and 'unqualified' labour force (Amin, 1997; see also Goyes, 2021b; Wallerstein, 2004). Because core countries monopolise economic and legal institutions, they can set global normative standards: core countries can impose legislative demands on peripheral countries but can evade them themselves. The core-periphery divide impacts the effect an IWL treaty has on the national legal framework of the state, depending on whether it is core or peripheral. Peripheral nations lose their legislative sovereignty to international forces—including wildlife conventions—and are forced to follow external mandates (for examples, see Franko, 2019; Sollund & Runhovde, 2020; Velez et al., 2021). Core countries are less affected by the international commitments they voluntarily make, unless national activists push the government to comply with them. These findings disprove the assertion of early globalisation scholars who saw globalisation as a homogenising force that removes legislative sovereignty from all states. Rather, this insight confirms more sophisticated interpretations that see globalisation as a phenomenon with paradoxical, uneven consequences (Goyes, 2017). Norway has the fourth highest global gross domestic product per capita (81,995.39 USD in 2021 [Bajpai, 2021]) and is highly active in international politics with 'a number of tools at its disposal to promote both Norwegian and common interests in multilateral systems' (Norwegian Ministry of Foreign Affairs, 2018–2019, p. 62). Norway is a core country. Outward forces do not determine how core countries implement IWL treaties. Rather, their history of internal environmental conflicts does.

Historically, Norway has been divided between those segments of the population that understand progress as industrialisation and economic growth, and those who want to protect ecosystems from being destroyed by infrastructure. It was unproblematic for lawmakers to directly incorporate CITES into national legislation: as a trade convention it is a tool for generating income while seemingly having no negative impact on ecosystems—although detrimental for wildlife species (Goyes & Sollund, 2016; Sollund, 2019). However, legislators were careful with the Bern Convention and preferred to transform its language in Norwegian legislation because the convention's focus on species protection can get in the way of economic profit. But this transformation functioned much like the incorporation of CITES wording: in Norway *internal clashes* rather than *outward* forces determine how the country fulfils its international obligations regardless of how IEL is incorporated.

Conclusion

This article set out to study the dynamics by which nations internalise international wildlife commitments into state law, using Norway as a case study. The main finding is that for core countries, it is the internal social clashes that determine the shape of legislative activity through which a nation adopts international wildlife law commitments. The global repercussion of the analysis, is, fists, that law making activity derived from the ratification of a wildlife treaty depends on the geopolitical position of the state. Second, that the impermeability of core countries to international

commitments can be conductive to environmental degradation and criminality. Embracing Chambliss's definition of crime as the 'behaviour that violates international agreements and principles established in the courts and treaties of international bodies' (Kramer, 2016, p. 234), then the killing of the four wolves in Elverum was a crime. Third, regarding the protection of wildlife species this study demonstrates that for a core country like Norway, the ratification of IWL treaties is insufficient to protect wild fauna: social mobilisation with an explicit focus, rather than a generic one on ecosystems, is necessary to reorient the way national legislators internalise the commitments derived from international conventions.

Major activist action for the protection of wild fauna began in Norway in 2001, and it is likely that it will have to continue some decades before it has a lasting impact on how the country internalises and operationalises its IWL commitments.

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Declarations

Conflict of Interest None.

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