In the intersection of politics and law:

A study of Terje Wold's human rights engagement 1945-1968

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Abstract

By studying individual actors in human rights history, we get a deeper conceptual understanding of what human rights encompassed on an individual level. After the Second World War, the period where human rights norms were developed and institutionalised internationally, regionally and nationally, the Norwegian politician and jurist Terje Wold began to engage himself in matters of human rights. This master thesis analyses Terje Wold's engagement for human rights matters from 1945 to 1968. It follows his commitment to human rights in various transnational, international, regional, and national contexts.

Although Terje Wold used human rights as a symbolic token as Cold War rhetoric in the opposition against totalitarianism in the late 1940s, I trace a continuity of his engagement for supranationalism as a concept. To argue for supranational institutions was a manner to oppose totalitarianism and to support international peace. The support was further intensified throughout the 1950s and well into the 1960s. Terje Wold emphasised how the upholding of the rule of law, herein the due process right and judicial review of the legislature, was a prerequisite in order for human rights to function. In his opinion, human rights had little effect without proper guarantees from the state. What he wanted was more robust measures in the protection of individual rights in meeting with public administration.

Terje Wold was an ardent advocate for further European integration in Norway. Behind his support was the understanding that cooperation in Europe represented means for securing protection against human rights violations on the individual level. Wold was a supporter of the Council of Europe's binding convention, and he held high prospects for the European Economic Community. As international human rights norms were gaining traction on the international arena further into the 1960s, I trace a development and widening of Terje Wold's human rights engagement as well. This included commitment against racial discrimination, support for minority, cultural and economic rights in addition to social rights.

Acknowledgements

To study but a fragment of human rights history in-depth has been both intellectually demanding and rewarding. The thesis would not have been possible without the vital and insightful comments and discussions with my supervisor, professor Hanne Hagtvedt Vik. She truly went above and beyond in her supervision and care, and for that I am grateful.

It is only right that I extend my gratitude to Terje Wold and his family, for releasing his private archive to the public at the *Riksarkivet*. The thesis was only made possible due to this fact. I feel like I have gotten to know him through his words, which is a side-effect I think is both a blessing and a curse when writing from an actor-perspective.

Thanks to biographer Vidar Eng, for answering my questions and giving me pointers on Terje Wold's private archive early on in this project, and to Anniken Hareide, for helpful comments close to the finish line.

Thanks to former Chief Justice of the Supreme Court Carsten Smith, for his input on Terje Wold's human rights engagement. Although brief, it was instructive to me. His interest in the project was an added confirmation that the case is worthy of study.

Thanks to the Norwegian Permanent Delegation to the Council of Europe in Strasbourg, as I was lucky enough to be their intern during the autumn of 2019. The months I spent there deepened my understanding of the rule of law and my interest in legal history.

Thanks to the Fritt Ord Foundation and the Norwegian Centre for Human Rights at the Faculty of Law for granting me a generous scholarship. This allowed me to focus my time completely in the run up of this master thesis period, and was, of course, an added motivational factor. I am still in awe that they took an interest in my project.

I am lucky to say that I have brilliant friends in Simen Grinden and Marie Bragnes, who proofread parts of the thesis and offered legal expertise. I am so thankful of you two!

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Thanks to my sisters Vilde and Johanne and to my parents Helge and Annika, for your emotional support. To my dear friend Lisa, thanks for the talks, the walks and the support. To my late grandfather Tor, you were a special person in my life. My history interest came partly from you.

To my rock and companion in life, Gjermund, I thank you for proof reading, for acting as my personal Word-technician and for your unconditional love, patience and support.

With the spread of the COVID-19, the University of Oslo, the University Library and the *Riksarkivet* closed down from March 2020. Although the thesis has not been affected by this in any critical manner, I have included a short explanation in the footnotes where this is relevant to mention.

Anja Birkelund Torheim

Oslo, June 12, 2020.

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List of abbreviations

CERD	International Convention on the Elimination on All Forms of Racial Discrimination
COE	Council of Europe
CM	Committee of Ministers
ECSC	European Coal and Steel Community
EEC	European Economic Community
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICJ	International Court of Justice (International Court in the Hague)
MFA	Ministry of Foreign Affairs
MP	Member of Parliament
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNA	United Nation Association
UNWCC	United Nations War Crimes Commission

Image I: Portrait of Terje Wold in the Norwegian Parliament, the *Storting*.

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Terje Wold (1899-1972) was the Norwegian Minister of Justice during the Second World War.
He was a member of parliament from 1945 to 1949, and in 1950 he got appointed as a Justice of the Supreme Court. From 1958 to 1969, he presided as the Chief Justice. Terje Wold chaired the work in the extended Foreign Affairs and Constitutional Committee from 1945 to 1949 and the Public Administration Committee from 1951 to 1958. He was a parliamentary member of the United Nations General Assembly and the Consultative Assembly of the Council of Europe. He became the first Norwegian judge in the European Court of Human Rights. He led the Norwegian branch of the European Movement, was a member of the International Commission of Jurist and of the World Association of Judges.

Chapter 1: Introduction

How a state can guarantee the protection of human rights is both a political and a legal question. States adopt human rights norms through international declarations and treaties. Then the states commit to the latter through ratification and choose how to embed human rights commitments into their national legal systems. As historian Samuel Moyn noted: “Today it seems self-evident that among the major purposes – and perhaps the essential point – of international law is to protect individual rights”.[1]

When jurist and politician Terje Wold (1899-1972) in 1961 claimed that human rights had little value without proper guarantees to uphold them, he referred to article 10 of the Universal Declaration of Human Rights (UDHR).[2] In his opinion, human rights needed binding legal decisions, agreed upon in either supranational institutions or national legal systems. The development of human rights is situated in between the fields of politics and law, and behind the development is the individual actors who advocate for the importance of different human rights.

This master thesis explores Terje Wold’s evolving interest in and understanding of human rights norms from 1945 to 1968, both in Norway and in international contexts. By studying how Wold’s engagement of human rights was expressed, shaped, and altered in various contexts, we get an insight into what these rights encompassed for a legal and political individual during the establishing phase of international human rights norms.

Human rights were written into the charter of the United Nations (UN) in 1945 and became part of institutionalised international cooperation after the Second World War. The member states of the UN adopted the UDHR in 1948, although this was without legal binding.[3] However, discussions of human rights quickly became a subject dragged into the Cold War’s ideological politics and rhetoric. The discussions on the establishment of laws concerning human rights,

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[1] Moyn, Samuel, *The Last Utopia: Human Rights in history*. (Cambridge and London: The Belknap Press of Harvard University Press, 2010), 176.

[2] The National Archives - *Riksarkivet* (henceforth RA), Box RA/PA-1493/ Fb/0003 – «Taler, artikler», Folder 0002, labelled «Taler VI 1960-1961», «Norsk Samband for De Forente Nasjoner. Pressetjenesten, nr. 24, 5”. 1961; Article 10 in the UDHR states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”. United Nations. “Universal Declaration of Human Rights”. 5.4.20 https://www.un.org/en/universal-declaration-human-rights/.

[3] Such norms were also embedded in the Genocide Convention in 1948, the Refugee Convention of 1950, and the Convention on the Political Rights of Women in 1952. Vik, Hanne Hagtvedt, Østberg, Skage Aleksander. “Deploying the Engagement Policy: The Significance of Legal Dualism in Norway’s Support for Human Rights Treaties from the late 1970s”. *Nordic Journal of Human Rights*, 36, no. 3, (2018): 304-321, 307.

especially within the UN-system, were undermined and delayed shortly after its emergence. Alternatively, as Moyn so eloquently put it: "Human rights were death from birth".[4]

Historian Steven L. B. Jensen has written that while the 1940s was not the breakthrough era for human rights, it was a central decade. It brought us back to the establishment phase of UN history in trying to explain the birth of international human rights. Jensen argued: "At a minimum, the UN Charter defined human rights as part of the field of multilateral diplomacy".[5] With the growing focus on human rights from the 1960s onwards, due to developing movements like the anti-war-movement, the civil rights movement, and the decolonial processes, the UN General Assembly was able to adopt the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965. The member states furthermore agreed to sign the International Convents on Civil and Political Rights (ICCPR) and Economic, Social, and Cultural Rights (ICESCR) in 1966. By 1972 all three UN human rights conventions were ratified.[6]

Another significant development of human rights in the international arena came with the establishment of the regional, European organisation, the Council of Europe (COE). Cold War tensions were running high following the Prague coup by the Soviet Union in 1948, and this event played an impact in the preparations of the Congress of Europe. The establishment of COE was agreed upon in the Congress of Europe in 1948, led by the European unity movements.[7] The COE was officially formed in 1949 by 15 non-communist states from Western Europe, including Norway.[8] In 1950, the member states of the COE ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Two articles of particular notice in the ECHR are article 19 and 25. Article 19 stated that two institutions were to be established to ensure that the commitments of the conventions were overheld. These were the Human Rights Commission (the commission) and the European Court of Human Rights (ECtHR, the court).[9] Article 25 opened for the individual complaints' procedure, with individuals, non-governmental organisations (NGOs), and groups of

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[4] Moyn, *The Last Utopia,* 44.

[5] Jensen, Steven L.B. *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values*. (New York: Cambridge University Press, 2016), 46.

[6] Vik and Østberg, "Deploying the Engagement Policy", 307.

[7] Duranti, Marco. *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention.* (New York: Oxford University Press, 2017), 152-153.

[8] Duranti, *The Conservative Human Rights Revolution*, 164.

[9] Depending on the textual context, I apply both 'the ECtHR' and 'the court' as short terms for the European Court of Human Rights in this thesis. I apply 'the commission' for short for the Human Rights Commission.

individuals could bring complaints forward to the supranational institutes of the commission and the court.[10]

Numerous states, organizations, and individual political and legal actors have played a part in the development of a more human rights-based legal system in Norway. To better reflect the close relationships between international human rights norms and national law, Norway adopted a human rights law in 1999, embedding several international human rights conventions into Norwegian law.[11] These conventions, in a dispute, were to range above domestic Norwegian legal principles, yet still below the Constitution.[12] In 2014, the Storting adopted the most significant revision of the Constitution since its writing in 1814. The purpose was to further strengthen the position of human rights in national law by giving central human rights conventions ranking above Norwegian law, as in 1999, but now also conferring a constitution-level ranking upon those rights.[13]

Recent historical literature has studied the multiple meanings of human rights and the motivations of those engaged in creating and critiquing such norms and instruments.[14] The study of actors in the histories of human rights is becoming a more established field of study. As historian Glenda Sluga put it: "To rewrite the history of human rights as a historically specific idea is not to challenge its relevance; it is to acknowledge the importance of continuing to ask with more precision, what these words have meant, what might they mean, and for whom".[15]

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[10] Hareide, Anniken. «Norge og Den europeiske menneskerettighetsdomstolen: Veien fra motstand til tilslutning, 1948–1964». Unpublished master thesis. University of Oslo. 2016, 3.
[11] Own translation. "Lov 21.05.1999 om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven, mrl.)», https://lovdata.no/dokument/NL/lov/1999-05-21-30
[12] In 1999, the human rights embedded in Norwegian law included the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the international Convention on the Elimination on All forms of Racial Discrimination, the Convention against Torture and Other Cruel or Degrading Treatment or Punishment (CAT) and Convention on the Rights of Persons with Disabilities (CRPD). Ulfstein, Geir, Ruud, Morten, Føllesdal, Andreas. *Menneskerettighetene og Norge, Rettsutvikling, rettsliggjøring og demokrati*. (Oslo: Universitetsforlaget, 2017), 113.
[13] Ulfstein, Ruud and Føllesdal, *Menneskerettighetene og Norge*, 64. See the full list of all human rights embedded in Chapter E of the Norwegian Constitution.
[14] See Hoffman, Stefan-Ludwig. "Human rights and History", in *Past & Present,* 232, no. 1, (2016): 279-310 for an extensive historiographical account on human rights history.
[15] Sluga, Glenda. "René Cassin. Les droits de l'homme and the Universality of Human Rights, 1945-1966". In *Human Rights in the Twentieth Century*, edited by Stefan-Ludwig Hoffman, 107-124. New York: Cambridge University Press, 2011, 124.

Terje Wold is one of two people who has held high offices in all three branches of power in Norway; the legislature, the executive, and the judiciary.[16] He served as Minister of Justice during the Second World War from 1939 to 1945, he was an elected Member of Parliament (MP) for the Labour Party after the war and led the extended Foreign Affairs and Constitutional Committee. He served as a Justice of the Supreme Court from 1950, and became the court's Chief Justice in 1958.[17] Besides, Wold chaired the work in the Public Administration Committee in Norway from 1951 to 1958; he was the leader of the Norwegian Movement's Norwegian Council from 1956 to 1965, the first Norwegian judge of the ECtHR from 1959 to 1972, a member of the International Commission of Jurists (ICJ) and the World Association of Judges. His positions and engagement in both Norwegian and international settings were extensive.

Former Chief Justice of the Supreme Court between 1991 and 2002, Carsten Smith, stated in an interview that Terje Wold collectively, in the capacity of being a judge in the European Court of Human Rights, the leader of the Public Administration Committee and one of the first "[in this country to claim the precedence of the European Convention of Human Rights (ECHR) over Norwegian law]" was a "[leading figure in work towards human rights in this period]".[18] Smith stated that he and the Supreme Court Justice Rolf Ryssdal concurred with this view. In court, Smith once argued that three Chief Justices, Wold, Ryssdal, and himself, had claimed the precedence of the ECHR, but the Supreme Court did not alter their opinion on the ECHR as *lex superior.* When the Norwegian law on human rights was adopted in 1999, however, this view got reverberation, and as such, Terje Wold's view gained national application.[19] Smith concluded with how "[it is often the case that a "champion" for a cause reaches its effect only after their death]".[20]

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[16] RA, Box RA/PA-1493/Fb/0006 – «Taler, artikler», Folder 0003, labelled «Diverse fra mange år XIV 1968-», «Monsen, Per. Dommerne våre må ikke være knehøner, *Arbeiderbladet*, August», 1969, 14; According Eng, the other politician was the conservative politician Edvard Hagerup Bull. Eng, Vidar. *Terje Wold – en terrier fra nord*. (Tromsø: MARGbok, 2013), 9.
[17] RA, Box RA/PA-1493/Fb/0006 – «Taler, artikler», Folder 0003, labelled «Diverse fra mange år XIV 1968-», «Monsen, Per. Dommerne våre må ikke være knehøner, *Arbeiderbladet*, August», 1969, 14.
[18] Own translation. Personal communication via e-mail from Carsten Smith, 29.03.2020. E-mail correspondence on file with author. I interviewed Smith shortly over e-mail as I wanted to know more about how Wold was perceived by one of his peers. While Smith's comments were short and not really of a substantial manner, he helped me form a picture of Terje Wold as an actor who genuinely engaged himself in questions of human rights in the time period after the Second World War. At least, that is the impression Smith holds. Since the events Smith commented on occurred a long time ago, his commemoration of Wold might have altered through time. Smith and Wold did not know each other all that much. In fact, Smith stated that they only met on a few occasions. Nevertheless, it is worth including here because it gives an impression from one of Wold's peers.
[19] Own translation, Ibid.
[20] Own translation. Ibid.

This thesis will revisit many of the contexts that Wold operated in and engaged with to come closer to his contemporary human rights understanding from 1945 to 1968. By doing studying his engagements, this gives us a deeper conceptual and intellectual understanding of what human rights encompassed for a legal and political individual of his calibre during this period in Norway. My argument is that the upholding of the rule of law was integral for Terje Wold's human rights understanding. In this, Wold emphasised the full and equal access to court, due process rights, and judicial review of the legislature as a means for protecting the rights of the individual citizen. In line with how the societal development in and interest for international human rights intensified over the 1960s, Wold's understanding and engagement broadened as well.

State of research

In the research literature on human rights history, the 1940s and the 1970s are the most covered decades. The first wave of human rights history tended to focus on the 1940s, with the experiences of the Second World War and the development of the international organisation of the UN as an essential backdrop.[21] The narrative of the 1940s has been criticised for being triumphal– both regarding the influence of the experiences of the war and in the role of the UN as a mid-twentieth century disjuncture.[22] Historian Samuel Moyn among others argued that human rights reached its international break in the 1970s, with help from non-governmental organisations (NGOs) and various social movements.[23] Subsequently, there has been less research on the period between the 1950s and the 1960s. Nevertheless, this is a changing picture. Historian Steven L. B. Jensen has written an extensive account, called *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values*. In his book, he reconnects the decolonisation processes of the 1960s with international human rights norms.[24]

Both Moyn's and Jensen's works are examples of what we call transnational history, with an increased focus on the interaction between state institutions, NGOs, and individual actors.

[21] See for instance Lauren, Paul Gordon. *The Evolution of International Human Rights: Visions Seen.* (Philadelphia: University of Pennsylvania Press, 2011).
[22] 'The mid-twentieth century disjuncture' is a term borrowed from historian Mark Mazower in his chapter "The End of Civilization and the Rise of Human Rights: The Mid-Twentieth Century Disjuncture" in *Human Rights in the Twentieth Century,* edited by Stefan-Ludwig Hoffman, 29-44. New York: Cambridge University Press, 2011.
[23] Moyn, *The Last Utopia.* See also Eckel, Jan, Moyn, Samuel. *The breakthrough: Human rights in the 1970s.* (Pennsylvania: University of Pennsylvania Press, 2014).
[24] Jensen, *The Making of International Human Rights.*

Building on this, a group of Nordic historians argued that we need to consider the different ways that human rights norms have acquired social and political significance over time.[25] One way of doing this is to study specific actors' contemporary conceptual understanding of human rights. Historian Patricia Clavin, drawing on historian Pierre-Yves Saunier's definition of transnationalism, has argued that transnationalism "is first and foremost about people: the social space that they inhabit, the networks they form and the ideas they exchange".[26] Additionally, historian Ian Tyrrell argued that transnational history might be a *mental* state rather than a physical one, even though the individual might move between different geographical spaces.[27] Consequently, transnational narratives may also be histories of ideas.

According to the group of Nordic historians, there is a need for more critical historical research on the Nordic experiences of the development of human rights.[28] The Nordics have traditionally not appeared in the broader historiography of human rights. This absence might come as a result of how human rights have been relatively neglected in the domestic historiography of the Nordics. For instance, in the historiography of foreign policy, issues like security policy, European integration, and development aid have been deemed leading themes.[29] The group of Nordic historians argued that the most likely explanation behind the absenteeism of human rights is that the key actors in Nordic foreign policy also neglected human rights.[30]

In this thesis, volumes four and five of the *Norsk utenrikspolitikks historie* with the books *Inn i storpolitikken* by historian Jakob Sverdrup and *Kald krig og internasjonalisering* by historians Knut Einar Eriksen and Helge Øystein Pharo have been substantial in providing a broader historical contextualisation of foreign policy in Norway.[31] Another relevant debate in foreign policy is how Norwegian delegations ventured in international and regional organisations where human rights were discussed during the twentieth century. Historian Kjersti Brathagen's work on the Norwegian position on the European Convention on Human Rights in the years 1949 to 1951 is an essential contribution to this.[32]

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[25] Vik, Hanne Hagtvedt, Jensen, Steven L. B., Lindkvist, Linde, Strang, Johan. "Histories of Human Rights in the Nordic Countries". *Nordic Journal of Human Rights*, 36, no. 3, (2018): 189-201, 191.
[26] Clavin, Patricia. "Defining Transnationalism". *Contemporary European History*, 14, no. 4, (2005): 421- 439, 422.
[27] Tyrell, Ian. "Reflections on the transnational turn in United States history: theory and practice". *Journal of Global History*, 4, no. 3, (2009): 453-474, 468-469.
[28] Vik, Jensen, Lindkvist, Strang, «Histories of Human Rights in the Nordic Countries", 191-192
[29] Vik, Jensen, Lindkvist, Strang, "Histories of Human Rights in the Nordic Countries", 197.
[30] Ibid.
[31] Sverdrup, Jakob. *Inn i Storpolitikken 1940-1949.* (Oslo: Universitetsforlaget, 1996); Eriksen, Knut Einar, Pharo, Helge Øystein. *Kald Krig og internasjonalisering 1949-1965.* (Oslo: Universitetsforlaget, 1997).
[32] Brathagen, Kjersti. "Competition or complement to universal human rights? The Norwegian Position on a European Convention on Human Rights, 1949-51" in *Human Rights in Europe during the Cold War.* Edited by

Elements from legal history in Norway after the Second World War are critical historical contexts for the thesis. The history of judicial review in Norway, with the book *Judicial Review in Norway: A Bicentennial Debate* by Associate Professor of Law Anine Kierulf, and the article "Nordic reluctance towards judicial review under siege" by political scientist Marlene Wind and philosopher Andreas Føllesdal are examples of this.[33]

Historian Zara Steiner wrote that we can learn a great deal from studying the personalities of men and women in analyses of international history. Portraits of a protagonist emerge from writing with a biographical angle. As an example, Steiner stated that much could be learned from "the theorists of crisis behaviour about the conduct of statesmen and officials in critical situations."[34] For human rights specifically, the study of actors in the development of international human rights is one route to follow. Prominent figures such as René Cassin and Eleanor Roosevelt are examples of actors in the internationally conducted field in the UN; Winston Churchill is regarded as an important actor in developing the regional field in Europe, and in a study about the Nordics, the human rights understanding of Axel Hägerström and Alf Ross are explored.[35]

In his seminal book *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention*, historian Marco Duranti has written about how the European human rights project after the Second World War was a politically conservative one. His narrative is that conservative politicians contributed to the shaping of Europe's human rights norms during the twentieth century. Actors like Winston Churchill and David Maxwell Fyfe contributed to the making of the ECHR in 1950. The European human rights project was a manner to further the idea of a morally and integrated Christian Europe against the threat from the Soviet Union. Additionally, conservative actors

Rasmus Mariager, Karl Molin and Kjersti Brathagen, 15-25. New York: Routledge, 2014. Another account by Brathagen is "From Global Ambition to Local Reality: Initiatives for the Dissemination of the Universal Declaration of Human Rights in Norway, 1948–1952" in *The Nordic Journal of Human Rights*, 36, no. 3, (2018): 237-251.

[33] Kierulf, Anine. *Judicial Review in Norway: A Bicentennial Debate*. (Cambridge: Cambridge University Press, 2018); Føllesdal, Andreas, Wind, Marlene. "Nordic reluctance towards judicial review under siege". *Nordisk tidsskrift for menneskerettigheter*, 27, no. 2, (2009): 131-141.

[34] Steiner, Zara. "On Writing International History: Chaps, Maps and Much More". *International Affairs (Royal Institute of International Affairs 1944-),* 73, no. 3, (1997): 531-546, 539.

[35] Sluga, "René Cassin: *Les Droits de l'homme* and the Universality of Human Rights, 1945-1966"; Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House, 2001); Duranti, *The Conservative Human Rights Revolution* and Strang, Johan. "Scandinavian Legal Realism and Human Rights: Axel Hägerström, Alf Ross and the Persistent Attack on Natural Law". *The Nordic Journal of Human Rights*, 36, no. 3, (2018): 202-218.

like Churchill had a domestic political agenda – to prevent the Labour Parties from carrying out radical social and economic reforms.[36]

How internationally oriented jurists and legal experts contributed to the shaping of human rights norms during the twentieth century is a specific research field on actors in human rights history. Professor in European Law and Sociology Mikael Rask Madsen has written extensively on how jurists contributed in this, and have studied how some jurists can be called 'legal entrepreneurs' in the European field of human rights.[37] According to Madsen, a legal entrepreneur is a jurist who contributed to the construction of the emerging fields of human rights and partook in the 'legal diplomacy' of the field.[38] It is the individual actors who make the policies and thus contribute to the shaping of a field. Madsen noted that legal entrepreneurs managed to intertwine law and diplomacy, and was, as he put it, "defining the playing field of post-war European human rights".[39]

Elements of both politics and law were crucial in developing the European human rights field. Madsen argues that the development of European human rights was, at an early stage, was both a political and a legal process.[40] The atrocities of the Second World War and the breakdown of the protection of fundamental rights in the occupied countries were essential backdrops to the ECHR's central advocates.[41] The fear of another war or new hostilities along the "emerging East-West divide gave the whole undertaking a different political urgency."[42]

Terje Wold seems to be a somewhat forgotten actor in the development and shaping of human rights understanding in a Norwegian context, at least outside of the legal community. Even though many of the legal actors – the jurists – that contributed to shaping international human

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[36] See chapter three "Churchill, Human Rights, and the European Project" in Duranti, *The Conservative Human Rights Revolution,* 96-163.
[37] See more in Madsen, Mikael Rask. «The Protracted Institutionalisation of the Strasbourg Court: From Legal Diplomacy to Integrationist Jurisprudence" in *The European Court of Human Rights between Law and Politics*. Edited by Jonas Christoffersen and Mikael Rask Madsen. Oxford: Oxford University Press, 2011; Madsen, Mikael Rask. "Legal Diplomacy – law, politics and the genesis of postwar European human rights" in *Human Rights in the Twentieth Century.* Edited by Stefan-Ludwig Hoffman, 62-81. New York: Cambridge University Press, 2011.
[38] Madsen further argues, drawing on elements from sociologist Pierre Bourdieu, that a 'legal diplomacy' can be described as an 'emerging field', which is "a legal field in the course of being constructed and, therefore, mainly relying on pre-existing international and national practices". Madsen, "Legal Diplomacy", 63. See more on this in Mikael Rask Madsen, 'Transnational Fields: Elements of a Reflexive Sociology of the Internationalisation of Law', *Retfærd*, 3, no. 114 (2006): 23-41.
[39] Madsen, "Legal Diplomacy", 63. 'Legal entrepreneurs' as a term is also explained in Cohen, Antonin, Madsen, Mikael Rask. "Cold War Law: Entrepreneurs and the Emergence of a European Legal Field (1945-1965)", in *European Ways of Law: Toward a European Sociology of Law*. Edited by Volkmar Gessner and David Nelken,175-202. Portland: Hart Publishing, 2007.
[40] Madsen, "Legal Diplomacy", 63.
[41] Ibid, 65.
[42] Ibid.

rights law have been studied in the history of international and regional fields of human rights, few if any Norwegian jurists have been studied in detail.[43]

Terje Wold was present in many of the contexts where human rights were discussed in the period after the Second World War, both in international, regional, and national arenas. Therefore, his name has begun to surface in recent studies. Historian Hanne Hagtvedt Vik mentions him in her chapter "The Rights of Indigenous Peoples to Land and Natural Resources: The Sami in Norway" in the book *The Political Economy of Resource Regulation*.[44] Historian Kjersti Brathagen mentions him as a member of the Consultative Assembly in COE in 1949 in her chapter on the Norwegian positions on the COE.[45] Historian Norbert Götz mentions him in context to his activities in the UN General Assembly from 1946 to 1949.[46] Anniken Hareide mentions Terje Wold as a legal entrepreneur who helped steer towards the Norwegian ratification of the ECtHR in 1964 in her master thesis.[47] Moreover, Vidar Eng wrote a biography on Wold's endeavours as the Minister of Justice during the war in his book, *Terje Wold – en terrier fra nord* from 2013. While Terje Wold's legal career is relatively unfamiliar in public today, his political engagement as the Minister of Justice during the 'April-days in 1940' is more known.[48] Although Eng did write about Wold's legal activities as well, his focus remained on the political side. Terje Wold is therefore worthy of a more in-depth study of post-war human rights efforts, both on the legal and political sides.

The research question, methods, and delimitations

By looking at *what, how,* and *why* Terje Wold talked about human rights, this thesis will contribute to a deeper conceptual and intellectual understanding of what "human rights"

[43] Although few are studied in detail related to their human rights efforts, some jurists are more known in public than others. These includes among others Edvard Hambro, Frede Castberg, Johs. Andenæs, Torkel Opsahl, Asbjørn Eide and Carsten Smith. All of which were jurists, politicians, diplomats and/or Professors of Law during the twentieth century. Store Norske Leksikon (henceforth SNL), «Edvard Hambro», 29.05.2020. https://nbl.snl.no/Edvard_Hambro; SNL, "Frede Castberg", 29.05.2020, https://nbl.snl.no/Frede_Castberg; SNL, "Joh. Andenæs", 29.05.2020, https://nbl.snl.no/Johs._Anden%C3%A6s; SNL, "Torkel Opsahl", 29.05.2020, https://nbl.snl.no/Torkel_Opsahl; SNL, "Asbjørn Eide", 29.05.2020, https://nbl.snl.no/Asbj%C3%B8rn_Eide; SNL, "Carsten Smith", 29.05.2020, https://snl.no/Carsten_Smith.

[44] Vik, Hanne Hagtvedt. "The Rights of Indigenous Peoples to Land and Natural Resources: The Sami in Norway" in *The Political Economy of Resource Regulation*. Edited by Andreas R.D. Sanders, Pål Thonstad Sandvik and Espen Storli. Vancouver: UBC Press, 2019.

[45] Brathagen, "Competition or complement to universal human rights?".

[46] Götz, Norbert. "Absent-Minded Founder: Norway and the Establishment of the United Nations". *Diplomacy & Statecraft,* 20, no. 4, (2009): 619-637.

[47] Hareide, «Norge og den Europeiske Menneskerettsdomstolen».

[48] Eng, *Terje Wold*. Eng's biography has gained traction in the public as well. One example of this is a review of his biography in the Norwegian newspaper *Klassekampen*, "Notat fra en motstandsmann", 24.4.2020, 28-29.

encompassed for him as a political and legal actor in Norway after the Second World War. The periodisation of the thesis is from 1945 up until 1968. The reason for why the periodisation ends with 1968 is because this was the International Year for Human Rights, celebrating the twentieth anniversary of the UDHR. The thesis thus explores Terje Wold's engagement in and understanding of human rights in various settings from the early establishment phase in the late 1940s until they reached renewed international focus in the 1960s.

The research question this thesis seeks to answer is:

How and to what degree did Terje Wold engage with human rights norms in the period where these were developed and institutionalised internationally, regionally and nationally?

In answering this broad question, the thesis focuses on selected areas of Wold's legal and political work. The thesis includes Wold's years as a member of parliament (MP) from 1945 to 1949, with his engagements during his period as the chair of the extended Foreign Affairs and Constitutional Committee. It includes his role in the Public Administration Committee from 1951 to 1958, while also exploring his participation in various regional, international and transnational arenas from 1945 to 1968. Focused on in this thesis is his engagements in the European Movement and the ICJ. As his endeavours were extensive, I have chosen an assortment of his commitments. In all these contexts, I have wanted to understand how his view on human rights was expressed, shaped, and altered. If Wold held characteristics to that of a legal entrepreneur in any of these settings is also explored.

The thesis is more of a biographic account than a microhistorical account. Historian Jill Lepore has written about this in her article *Historians Who Love Too Much: Reflections on Microhistory and Biography*. She argued that "not all biographers, but most microhistorians try to answer important historical- and historiographical-questions".[49] Lepore stated that microhistory, in opposition to biography, is founded upon the idea of "however singular a person's life may be, the value of examining it lies not in its uniqueness, but in its exemplariness, in how that individual's life serves as an allegory for broader issues affecting the culture as a whole".[50] She stated that "a biographer might write about the inimitable Amelia Earhart because of her leading role in the history of flight, while a microhistorian studies humble John Hu's life because it allows him to tell a story about the impossibility of East

[49] Lepore, Jill. "Historians Who Love Too Much: Reflections on Microhistory and Biography" in *The Journal of American History*, 88, no. 1, (2001): 129-144, 133.
[50] Ibid.

meeting West".[51] My thesis is more of a biographical account because I write about Terje Wold and *his* engagement of human rights matters. It is not about Terje Wold's understanding as a manner to tell something more generally about the contemporary human rights understanding in Norway or abroad. Nevertheless, because I examine events and cases where human rights history is studied more generally, the method of microhistory is also relevant to consider.

Because Wold held positions in all three of the power branches in post-war Norway, and because he is beginning to surface in the recent research literature, he is a relevant actor to study. The thesis explores various settings and highlights how Wold understood human rights in these different settings. It cannot, however, provide answers to how other actors like him perceived human rights. It can neither reconstruct Wold's understanding of human rights as a whole, as I have not analysed all the engagements that Wold had in the period.

The thesis is additionally an account of both conceptual and intellectual history. Historians Steven L. B. Jensen and Roland Burke have assessed the various methods used in human rights history. They argue that methods used in intellectual history or the 'history of concepts' are relevant perspectives in human rights history. Historization is vital in order to narrate a convincing story about an idea. To gain a contemporary understanding of a concept or an idea, it is important not to overinterpret it and put it into a modern context. An intellectual historical account reconstructs the understanding of how different concepts were understood in the contemporary period. It is not an attempt to modernise a concept, but it is a manner to get a more in-depth insight into the historical meaning of a concept or an idea.

This thesis is an intellectual historical account. By writing about Terje Wold's contemporary human rights understanding in various engagements, we also learn more about what was discussed and talked about concerning human rights, as he was present in several positions to make up his opinion on what these rights were. Jensen and Burke argued that historical work in human rights is a mosaic of scales and sites, albeit it uses time as an organisational prism for its analysis.[52] In other words, a history of human rights is contingent on the various levels, settings, and timings that are applied in its analysis. As the thesis spans from the mid-1940s to the late 1960s, it allows us to look at the development and expansion of Wold's engagement. It explores how he engaged himself with human rights norms at different times. As such, the

[51] Ibid.
[52] Jensen, Steven L. B, Burke, Roland. "From the normative to the transnational: methods in the study of human rights history", in *Research Methods in Human Rights: A Handbook.* Edited by Bård A. Andreassen, Hans-Otto Sano and Siobhán McInerney-Lankford, 117-140. Cheltenham: Edward Elgar Publishing Limited, 2017, 119.

thesis will elaborate on how Wold's engagement intensified in line with how the international societal engagement for and commitment to human rights norms grew from the 1960s onwards.

My argument is that Wold acted as a legal entrepreneur in multiple settings throughout the thesis periodisation, and that his legacy is found mainly in the national legal landscape. This especially applies to when and where he argued that the Norwegian legal system ought to be more compliant with international law. While Madsen has focused on more well-known legal entrepreneurs, such as the French René Cassin and the Danish Max Sørensen, Terje Wold is perhaps a Norwegian equal, as he also ventured the fields of international politics and law in the same period as Cassin and Sørensen.[53] Hareide has already underlined this concerning the Norwegian ratification of the ECtHR.[54] As my study has an actor-perspective of Wold, it allows me to point to other instances where Terje Wold held characteristics as a legal entrepreneur for human rights beyond the specific case treated by Hareide.

Even though the legal entrepreneurship-angle is a theoretical perspective for the thesis, it is not the main research question. The thesis will not provide a conclusive answer to whether Terje Wold was a legal entrepreneur of human rights in the post-war era. The thesis will not give a full assessment of Wold's contribution to any human rights field in Norway or internationally, because of the limitations for a master thesis.[55] As his engagements were extensive, I have made a selection based on the possible relation to human rights. While I point to different instances of where Wold held characteristics of being a legal entrepreneur, the narrative is dependent on the available sources. It is, therefore, fragmented both in timing and scope. However, the thesis will provide a deeper understanding of how and to what degree Terje Wold engaged with human rights norms by outlining instances where he held on characteristics of being such a legal entrepreneur.

The thesis is lastly an account of political history. It outlines specific political cases that Wold attended to as a politician, and it underlines the development of human rights policies in the Norwegian political and legal landscape. Wold ventured the fields of politics and law in Norway

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[53] Cassin was the Second President of the European Court of Human Rights, legal counsel to President Charles de Gaulle and leading several NGOs and Committees. Sørensen was the President of the European Commission of Human Rights, expert consultant to the Danish Ministry of Foreign Affairs and employee of the Danish Ministry of Foreign Affairs. Madsen, "Legal Diplomacy", 77.
[54] Hareide, «Norge og Den europeiske menneskerettighetsdomstolen», 107.
[55] Such fields are for instance the European field, conducted in the Council of Europe (COE), as Madsen himself has focused on in his works, and the international field, conducted in the UN. Terje Wold partook in both organisations as a Norwegian delegate. Nonetheless, the thesis will provide answers to *if* and *how* Terje Wold's activities in these fields may have contributed to deepen his own understanding of what human rights encompassed in the contemporary era.

and internationally. It is not a specific Norwegian or international narrative. It is instead a transnational narrative of how a Norwegian individual navigated in the arenas where human rights were discussed. The thesis fits into Clavin and Saunier's definition of transnational history, as it outlines Terje Wold's engagements in different networks and organisations on the international, regional and national levels, both as a politician and as a legal actor. As such, the thesis is a transnational narrative in the intersection between politics and law.

Source material

I have retreived primary and secondary sources from various international, regional, and national settings to come closer to an understanding of Terje Wold's engagement for human rights. As in the method of quilting, his understanding of what human rights encompassed is reconstructed one source at the time. However, as his engagement was extensive, I have not included all of his commitments in this thesis. The source material is based on my interpretation of its relation to human rights. It is imperative to be transparent about this process, as unintentional biases may have contributed to my choice of the source material.

When beginning this project, it was clear to me that I wanted to use Terje Wold's private archive, located at the Norwegian National Archive – *Riksarkivet* – in Oslo as the basis for the thesis. Using his private archive as the framework for the thesis would lead me the closest to locating his motivations and understanding of what human rights were. Thus, the source material I found in the private archive led to the pathway for this thesis, with limitations and scope.

Wold's private archive is separated into three series. Series Fa is about public administration law in Norway and abroad. Series Fb includes speeches and written transcripts. Series Fc is separated into three sub-sections, with diary entries, documents dating from the German occupation of Norway, and documents from his international engagements after the war. As such, series Fb and Fc have been vital for the thesis, as the boxes here are within the thesis periodisation. The manner of how I have determined a source to be relevant is by its possible relation to human rights. I would have liked to explore series Fa more extensively, but this was not made possible due to the limitations of a master thesis.

Although a vast material, the archive is organised and structured in a manner so that it has, for the most part, been a straightforward procedure to tap into the different historical contexts of the various case files. A challenge with working with Wold's private archive is that the case

files are narrowed down to Wold's perspectives or down-written words. Thus, in order to make convincing and comprehensive arguments, I had to supplement with complementing primary and secondary source material.

Another point to make clear about Wold's private archive is that his occupation as a judge – both in the Supreme Court and the ECtHR – is not included in his private archive. Thus, I cannot make any specific arguments about his capacity as a judge in his human rights engagement. While this, of course, is a delimitation of the thesis, Wold himself wrote and spoke extensively on his perceptions of law and the rule of law in other contexts. I have, therefore, been able to include aspects of his legal perceptions in my thesis. Additionally, I have used source material from the Nordic Jurist Meetings from 1951, 1954, and 1957 to get closer to his legal understanding of the rule of law and human rights.[56]

Supplementing primary material is Retreived from the work in the Public Administration Committee, as I have used their report from 1958. The report can be found in the National Library's – *Nasjonalbiblioteket* – online archives.[57]

I have also taken use of legal anthologies, with *Festsrift till Lars Hjerner. Studies in international law,* 1990 and *Legal Essays: A tribute to Frede Castberg on the Occasion of his 70th Birthday,* 1963.[58] In *Festskrift till Lars Hjerner*, the Swedish diplomat Love Kellberg commented on Terje Wold's hesitant position to the ECtHR in 1949. In *Legal Essays*, Terje Wold himself wrote about the opposite – arguing that it was due time that Norway ratified the jurisdiction of the ECtHR. This shifting position is explored in the thesis.

Structure of the thesis

The thesis will follow a semi-thematic and chronological structure. It will chronologically span from the late 1940s until late the 1960s. However, as the thesis examines various cases and contexts in which Terje Wold was engaged in a thematical structure, there must be room for some leniency in the chronological construction of the narrative.

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[56] The Nordic Jurist Meetings. «De nordiske juristmøter». Retreived 20.3.2020 from http://nordiskjurist.org/
[57] The National Library (henceforth NB), Ministry og Justice and Police, «Innstilling fra Komiteen til å utrede spørsmålet om mer betryggende former for den offentlige forvaltning (Forvaltningskomiteen)», 1958.
[58] NB, Universitetsforlaget, "Legal essays: a tribute to Frede Castberg on the occasion of his 70th birthday 4 July 1963 = Festskrift til Frede Castberg i anledning av hans 70 årsdag 4. Juli 1963", 1963; Kellberg, Love. "Den svenska innställningen till Europarådsdomstolen for mänskliga rättigheter". In *Festsrift till Lars Hjerner. Studies in international law,* edited by Jan Ramberg, Ove Bring, Said Mahmoudi, 299-311. Stockholm: Norsteds Förlag AB, 1990.

In *chapter two*, I write about Terje Wold's engagement in Norwegian foreign policy in the late 1940s, as well as assessing Wold's argumentation and position on the ECtHR, which span decades. The chapter has both a nationally and internationally oriented focus as it explores the Norwegian foreign policy. In *chapter three*, I write about Terje Wold's engagement in the Public Administration Committee in the 1950s. The chapter is mainly national in its scope, although it includes elements from the transnational network of the Nordic Jurist Meetings as well. In *chapter four*, I write about Terje Wold's expanded engagements for human rights matters in the 1960s. Transnational contexts and networks are included here. In *chapter five*, I give my last assessments, answers to the research question, and final remarks.

Chapter 2: Engagement in Norwegian foreign policy

Terje Wold was a Member of Parliament (MP) for the Norwegian Labour Party from 1945 to 1949.[59] Human rights were just beginning to gain traction in the international society in this period, being embedded in the UN, and the COE was established. Moyn argued that these were "minor byproducts of the era, not main features".[60] However, as Jensen noted, even though the Cold War undermined human rights-talks, human rights became a topic to discuss in international relations after the war.[61] This chapter explores if and how Terje Wold reflected on and talked about human rights while being an elected official in the early post-war period. Furthermore, Terje Wold went from being sceptic to the establishment of the ECtHR in 1949, to advocating for the Norwegian ratification of the court's jurisdiction from the late 1950s and early 1960s onwards. The chapter outlines Wold's activities in the COE, to note how and why he altered his position on the ECtHR.

Terje Wold led the Storting's extended Foreign Affairs and Constitutional Committee from 1945 to 1949.[62] According to historian Jakob Sverdrup, the political focus in Norway after the war concentrated on restoration after the Nazi occupation. Domestic policies ranked higher than foreign policy on the list of political priorities.[63] The Norwegian foreign policy concerning security policy was "[expectantly, and what was waited for was a clarification in the relationship with the great powers]".[64] The Norwegian foreign policy was to position itself as a bridge-builder between the great powers, with little outspoken criticism or action taken.

According to biographer Vidar Eng, three foreign policy issues were the most important for Terje Wold in this period. These were a request from the Soviet Union about a common defence of the Svalbard archipelago, the fascist Franco-led regime in Spain, and the defence alliance

[59] Finnmark County wanted to elect Wold, as he had been an open spokesperson for the county during the war. He was the first governmental member to go back to Norway from London, and his first visit in official capacity was to Finnmark. When the war ended, he was an obvious candidate to represent the Finnmarkian branch of the Labour Party in parliament. Eng, *Terje Wold,* 217-221.
[60] Samuel Moyn argued that human rights were pushed of the international stage due to Cold War politics. He also argued that when looking at human rights the 1940s, it is not to observe their importance, but because it provides insight into why human rights only took off decades later. Moyn, *The Last Utopia*, 44-46.
[61] Jensen, *The Making of International Human Rights,* 46.
[62] Own translation. «Stortingets utvidede utenriks- og konstitusjonskomité». Syse, Christian. «Trekk av utenrikskomiteens historie – dens ledere, medlemmer og sekretærer». *Internasjonal politikk,* 67, no. 3 (2009): 453–466. The committee changed its name in 2009 to the extended Foreign Affairs and Defence Committee, *Den utvidete utenriks- og forsvarskomité*.
[63] Sverdrup, *Inn i storpolitikken,* 199.
[64] Own translation. Ibid, 198.

question that Norway faced.[65] The two latter issues appear more prominently in Terje Wold's private archive and are explored beneath.

A parliamentary minor in the 'Spanish case' 1946-1947

A common opinion in Europe after the Second World War was that it was unacceptable for the fascist rule of Franco in Spain to continue after the allied victory.[66] What the international society was to do with Spain was debated in both the San Francisco and the Potsdam Conferences in 1945. These confirmed that the great powers opposed the fascist rule and that Spain would be banned from joining the UN as a member state.[67] The question on the Spanish UN-membership and what international efforts had to be taken against the regime dragged on. The subject came up in numerous debates both in the UN and in Norway.

The case got a Norwegian aspect in March 1946 when the communist politician Randulf Dalland asked if and how the Labour Party government planned to ensure that the fascist-regime in Spain was removed and help install freedom and democracy for the Spanish people.[68] Sverdrup outlined that the issue was about whether Norway was to commence unilateral actions against the Spanish regime or to cooperate with actions taken on the international arena. [69] The governmental policy of the Labour Party ended up rejecting unilateral action, and wanted to actively push for cooperative efforts in the UN.[70]

The 'Spanish-case' stands out as one of few cases in the early post-war period where Norway took on an active role in the UN. Terje Wold contributed in this work as he was the Norwegian representative in a subject-specific sub-committee in the UN that worked towards getting an international agreement on the Spanish case during the autumn of 1946. [71] The Norwegian UN

[65] Eng, *Terje Wold,* 224. After the war, there was a question about how to secure the island of Svalbard in the North Sea. When the Soviet Union made a request to the Norwegian state about a common defence treaty of the island in 1946, Norwegian and Soviet officials met in secret to discuss the possibilities of such an agreement. Terje Wold accompanied Minister of Foreign Affairs Halvard Lange in these meetings. However, in February 1947, the Norwegian officials denied Soviet's request. Eng, *Terje Wold,* 224-225; Sverdrup, *Inn i storpolitikken*, 135-148 and part III, Chapter four, "Svalbard på nytt», 257-274.
[66] Sverdrup, *Inn i storpolitikken,* 245.
[67] Ibid.
[68] Ibid, 246. See also Eriksen, Knut E. Lundestad, Geir. *Kilder til moderne historie 1. Norsk utenrikspolitikk,* (Universitetsforlaget: Oslo, 1972), 10-11.
[69] Sverdrup, *Inn i storpolitikken,* 245-256.
[70] Ibid, 247.
[71] The case had first to be removed from the Security Council's order of business in order for the General Assembly to discuss it. It was then discussed in the General Assembly's first political committee. However, it was difficult to reach an agreement on the common proposal in the first political committee as well, which is why the case eventually ended up in the sub-committee where Wold was the Norwegian representative. Ibid, 249-250.

delegation's principal position was on a breach in the diplomatic relations with Spain but argued at the same time that it was of no purpose to decide without the support of both the US and the UK.[72] The bridge builder tactics of Norwegian foreign policy is evident here. The goal in the sub-committee was to make it possible for the great powers of the US and the UK to agree on a decision on Spain. Reaching a decision proved to be complicated. Additional proposals regarding a possible breach in diplomatic relations, which Norway supported, though not suggested, and a French proposal on an import ban on Spanish foods, almost led the sub-committee to a gridlock.[73] A more moderate suggestion from Belgium on the home calling of ambassadors and ministers instead of a full breach in diplomatic relations finally led the sub-committee to a vote. The vote ended in a majority rule that the US, the UK, and the Soviet Union all agreed on.[74]

According to Minister of Foreign Affairs Halvard Lange, in the early post-war period, Norwegian foreign policy equated support for the UN. The general sense of opinion was that Norway had to continue its support for the UN and to help "make it an efficient tool for international cooperation in all areas".[75] Nevertheless, his and the Norwegian delegation's role in the UN, should not be overstated, according to what historian Norbert Götz has argued. Norway was an "absent-minded founder" in the UN with little interest in becoming a frontrunner in the establishment period, and Terje Wold was solely a "parliamentary freshman".[76]

Historian Edgeir Benum examines the Norwegian-specific, or rather, Labour movement-specific, development of the 'Spanish case' in his seminal master thesis-turned-book from 1969, *Maktsentra og opposisjon: Spania-saken i Norge 1946-1947.*[77] Benum outlined that there were two camps in the Labour movement concerning the 'Spanish case'. On the one hand, the so-called loyal Labour politicians concurring to the Party line. They wanted a status quo and the normalisation of relations with Spain because of the problematic economic position Norway was put in given its critical position in the UN in 1946.[78] The other group was more idealistic and appeared as vocal opponents of both the Franco regime and the Labour Party's handling of

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[72] Ibid, 250.
[73] Ibid.
[74] Ibid.
[75] Eriksen, Lundestad, *Kilder til moderne historie 1*, 9.
[76] Götz, "The Absent-Minded Founder", 632.
[77] Benum, Edgeir. *Maktsentra og opposisjon: Spania-saken i Norge 1946-1947.* (Universitetsforlaget: Oslo, 1969).
[78] Ibid, 56.

the case. They wanted more action, with a Norwegian initiative against Spain in the UN, and if this was not brought forward, then Norway had to take unitary action.[79]

Terje Wold is a prominent figure in Benum's book. He is presented as a loyal politician in the Labour movement who took on a unifying role. He tried to reach an agreement on normalisation in relation to Spain within the Labour movement during 1946. As Benum wrote: "[The wish to avoid disunity in the group was a clear wish for […] the chairperson of the Foreign Affairs and Constitutional Committee, Terje Wold]."[80] Although accurately portrayed as a loyal Labour Party politician, Benum's assessment of Wold is somewhat simplified. Terje Wold's private archive includes diary entries from the UN during the autumn of 1946. These reveal that he *did* favour a Norwegian and international breach in the diplomatic relations with Spain, while at the same time concurring to the Labour Party line of normalisation in late 1946.

Wold took on a unifying position because he was both the chairperson of the extended Foreign Affairs and Constitutional Committee and a parliamentary delegate in the UN General Assembly. As the chair of the Foreign Policy and Constitutional Committee, Wold led the parliament's work in foreign policy. A part of his role was to unite the political opposites in the case. Nevertheless, his personal opinions on the matter were more idealistic and differed from what he argued for internally in the Labour Party in 1946.

Eng similarly has claimed that because the Labour Party was so deeply involved in the Spanish case, Wold's role came more in the background.[81] Eng's suggestions offer support for Götz's notion that Wold was a parliamentary freshman in the UN-delegation. Even so, historian Helge Pharo noted that during the autumn of 1946, both the major and the minor actors in the UN General Assembly "promoted their views and took their positions on whether to blacklist the Franco regime or have it admitted to the international system as a legitimate player".[82] Terje Wold's position was of the former, which his diary entries, outlined in the paragraphs below, clearly demonstrate.

The Spanish case played a formative role for Wold's generation of Labour Party politicians. Pharo argued that the sympathies with the republican forces in Spain lived firmly in the ruling Labour Party after the Second World War. This sympathy steered the Norwegian delegation in

[79] Ibid, 55.
[80] Own translation. Ibid, 56.
[81] Eng, *Terje Wold*; Sverdrup, *Inn i storpolitikken,* 245-255.
[82] Pharo, Helge Øystein. "Small State Anti-Fascism: Norway's Quest to Eliminate the Franco Regime in the Aftermath of World War II". *Culture & History Digital Journal*, 7, no. 1 (2018): 7.

their efforts to isolate the Franco regime in the UN.[83] Understandably, notable actors such as the Minister of Foreign Affairs Halvard Lange, Prime Minister Einar Gerhardsen, and the Labour Party's Secretary-General Haakon Lie, are seen as particularly important in this case, due to their significant involvement.[84] When looking upon the Spanish case as a precursor for Terje Wold's engagement in matters of international law, however, Wold's reflections of the 1946 autumn session of the General Assembly are worth including. His reflections about supranationalism are particularly noteworthy, as they contribute to clarify his contemporary legal and political thinking.

While a significant part of Wold's reflections were on the procedural manner of which committee was to handle the case and why, he was clear about a few substantial matters. In his opinion, "[the situation in Spain is not only of a character which sets in danger the maintaining of international peace and security, but it is a direct threat against peace]".[85] His concern was that the fascist regime in Spain was a threat to international peace and security. According to Madsen, the concept of antifascism greatly influenced the European post-war legal entrepreneurs' in the establishing phase of institutionalised human rights.[86] Thus, Wold's antifascist thinking was in line with the individuals who shaped and contributed to the establishment of the European human rights field.

Wold demonstrated an openness towards the concept of supranationalism in 1946. Concerning the fascist threat that the Franco-regime posed, Wold referred to article 39 in the UN Charter.[87] Wold wanted the Security Council to examine whether Spain's form of government posed a threat to the peace, and he was open to the idea of a UN intervention in Spain. Nonetheless, Wold did not believe it would be possible to reach an agreement on this.[88]

Another dimension to this is that Wold argued with what can be characterised as *political* arguments, in that the UN should be able to interfere within Spain's jurisdiction. Since Wold was both a politician and a jurist, this coincides with what Madsen termed as "legal diplomacy",

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[83] Pharo, "Small State Anti-Fascism", 2.
[84] Sverdrup, *Inn i storpolitikken,* 245-255 and Pharo, "Small State Anti-Fascism", 7.
[85] Own translation. RA, Box RA/PA-1493/Fc/L0001 – "Dagbøker 1940-1949», Folder 0003, labelled «Dagbok 03.10.1946-23.03.1947», «Det spanske spm, 29.10», 1946.
[86] Madsen, "Legal Diplomacy", 65.
[87] Article 39 states that "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security" Repertory of Practice of United Nations Organs. "Article 39". Retreived 21.2.20 from https://legal.un.org/repertory/art39.shtml
[88] RA, Box RA/PA-1493/Fc/L0001 – "Dagbøker 1940-1949», Folder 0003, labelled «Dagbok 03.10.1946-23.03.1947», «Det spanske spm, 29.10», 1946.

meaning that the development of human rights law was as much a political process as a legal one in its establishing phase.[89] Politics and law were interlinked in the early post-war years in the international arena. It is evident that the 'Spanish case', with the discussion on membership and efforts in the UN, cannot be understood in direct relation to later human rights law. Nevertheless, the reflections of Terje Wold shows that both political and legal processes applied in his interpretation of what measures were contained by the UN Charter.

While Wold was a unifying actor within the Labour Party, with an official position towards the normalisation of Norway and Spain, it is also clear that he had more idealistic personal opinions on the matter. Although Wold was not at the frontline of Norwegian foreign policy when participating in this case in the UN, he did contribute by representing Norway in the case-specific sub-committee. Wold was central to the conversation on the case, both in the UN and in the Labour Party. He argued for normalisation of relations while at the same time having personal opinions that opposed the Spanish-regime. Therefore, it appears that both moral beliefs and realistic concerns played a part when he discussed the 'Spanish case' nationally and internationally.

Reflections on the North Atlantic Treaty Organisation

Another case that Terje Wold engaged himself in was how the Norwegian state was to position itself in the question of a possible defence alliance after the Second World War. According to Eng, Wold became favourable to the North American Treaty Organisation (NATO) before many of his Labour party peers.[90] In December 1947, Wold wrote in his diary that: "[…] Russian communism is in my opinion the same as Slavic imperialism]".[91] His opinion on the dangers of communism deepened further throughout 1948 with the Czechoslovakian spring.[92] He meant that a defence alliance had to be created to secure the Norwegian borders from the potential Soviet threat or a hypothetical new war, and he outlined alternatives to the Storting in this regard.

[89] Madsen, "Legal diplomacy", 63.
[90] Eng, *Terje Wold,* 226.
[91] Own translation. Ibid, 226-227.
[92] In late February 1948, a communist takeover of Czechoslovakia occurred. Czechoslovakia represented the last democracy in the Eastern Bloc that at the same time had concurred to the Soviet foreign policy line. This event stirred a massive reaction in Norway, and the communist rule was seen as a possible internal threat to the Norwegian peace. Sverdrup, *Inn i storpolitikken,* 293-294.

The first alternative was that the Soviet Union could reach out to Norway. Wold believed it to be possible that Soviets could reach out, given the recent Svalbard-case.[93] However, given the Czechoslovakian spring and his scepticism towards communism in general, he was a strong-willed opponent of this option. The second alternative was to reach out to the United States. He wrote: "[I do not think it is too much to say that our relative security today for a great deal depends on the United States' politics]".[94] He also noted that: "[…] I do not believe it would be right if we today sought American guarantees for our own military security, even if we were to get it. […] We must not forget that equally as important as our security is for us today, is the point that we in generations ahead shall subsist and live alongside our great neighbour in the east]".[95] Again, the bridge-builder analogy is obvious. Wold did not want to choose either the US or the Soviet Union. Given the Norwegian-Soviet border, he believed it would be irresponsible for Norway to alienate entirely from the Soviet Union by accepting American support. The third and last option Wold laid out was a Nordic cooperative effort with Sweden and Denmark.[96] Norway would eventually sign the North Atlantic Treaty in 1949, and the road to the Norwegian membership in NATO is covered elsewhere, and it will not receive further attention here.[97] Nevertheless, a relevant contribution is that Wold's argument for a defence alliance, was that it would give reassurance in terms of not being alone, should potential aggression by the Soviet Union or a new war be the case.

In 1952, Wold wrote two articles to the Norwegian newspaper *Arbeiderbladet*, outlining his support of NATO and why it had been the right decision to enter the organisation in 1949.[98]

Wold put much emphasis on how NATO was a Western-European project and *not* an initiative from the US. Wold mentioned that the North Atlantic Treaty was not, as the opponents of NATO often suggested, an American initiative, but rather a European idea. This point is significant, as Wold seems to have had definite views on European integration in general. A European initiative must have been easier to accept than a thoroughly American initiative, due to the predicament of being a neighbouring country with the Soviet Union. Belgium, France, Luxemburg, the Netherlands, and the United Kingdom took the initiative to the so-called

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[93] See footnote 65 for a short presentation of the Svalbard-case.
[94] RA, Box RA/PA-1493/Fb/ L0002 – «Taler, artikler», Folder 0002, labelled «Taler IV 1945-1957», "Tale i Stortinget: Tsjekkoslovakia, utenriks og forsvar. 05.03".1948, 7-8.
[95] Own translation. Ibid, 8-9.
[96] Ibid, 8-9.
[97] See for instance Sverdrup, *Inn i storpolitikken,* 1997.
[98] RA, Box RA/PA-1493/Fb/L0002 – «Taler, artikler», Folder 0002, labelled «Taler IV 1945-1957», «Om NATO og Norge», 1952(?); RA, Box RA/PA-1493/Fb/L0002 – «Taler, artikler», Folder 0002, labelled «Taler IV 1945-1957», «Noen betraktninger om utenrikspolitikken», 1952.

Brussels Pact of 1948. In continuation of this, the North Atlantic Treaty was developed.[99] Wold further noted that: "[I remember well the impression it made when Belgium's Minister of Foreign Affairs, Spaak, during the UN's General Assembly in 1948 declared that Belgium was afraid of the Soviet Commonwealth, and then Minister of Foreign Affairs, Bevin [of the UK] said the same]."[100]

Here, Wold stated how the ministers of foreign affairs Ernest Bevin and Paul-Henri Charles Spaak influenced his opinions and perceptions on the Soviet Union and on the threats that communism posed. In Wold's opinion then, NATO seemed to be the safest alternative for Norway against the threat from the East. When he argued for why, ideas of solidarity, human rights, and freedom from oppression were given as reasons. He stated that: "[When we in 1949 chose to actively go in for the A-pact [sic], the reason was not only our security, but also because of solidarity against oppression of freedom and human rights]".[101]

Human rights are not usually connected with NATO's emergence. and if it is, the connection is generally symbolic.[102] As outlined above, Terje Wold reflected on this relationship between security and human rights. Although he referred to human rights, this was mainly of a symbolic and superficial character. He furthermore stated that:

> "[It is the aggressive communism that today is a threat against the most basic values that we build our peace on, but we must not compromise the case we are now facing in solidarity by seeking support with Franco, who by Hitler's and Mussolini's help defeated the human rights and the freedom that we are defending]."[103]

This quote underscores how his human rights-talk was of a symbolic manner, used as rhetoric in the opposition against communism and fascism. A rational understanding is that when Wold connected NATO and human rights, it was due to the fear of totalitarianism. European integration ideas and opposing the Soviet Union on multiple fronts, including moral issues, appeared to be integral in Wold's interpretation of why Norway decided to join the organisation.

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[99] RA, Box RA/PA-1493/Fb/L0002 – «Taler, artikler», Folder 0002, labelled «Taler IV 1945-1957», «Om NATO og Norge», 1952(?), 1-3.
[100] Ibid, 3.
[101] Ibid, 7.
[102] Even though the North Atlantic Treaty did require signatories to be "determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law"; it did not require NATO states to respect these principles. Duranti, *The Conservative Human Rights Revolution,* 178-179.
[103] RA, Box RA/PA-1493/Fb/L0002 – «Taler, artikler», Folder 0002, labelled «Taler IV 1945-1957», «Noen betraktninger om utenrikspolitikken», 1952, 7.

Historian Marco Duranti has written about human rights symbolism in the 1940s. He argued that appeals for human rights in connection with international organisations established in the late 1940s were mostly a symbolic statement of "shared goals and values rather than minimal criteria that the states must meet in order to retain their membership".[104] In Duranti's words, it was "dictated by political necessity".[105] Although Duranti made his connection of human rights symbolism to the UN, it applies to NATO in Terje Wold's understanding. The political necessity in the UN was to yield on formal obligations for its member states when it came to human rights. Thus, the UDHR ended up being merely a declaration, and not a legally binding document, as this was too difficult for the member states to agree on. Regarding NATO, human rights were not even mentioned in the organisation's statutes. In the words of Terje Wold, the political necessity to join NATO was to secure the state in a hypothetical new war, halt the spread of communism, and create a common set of values in the Western states. These values were made up of *inter alia* ideas of human rights. Nevertheless, Wold's inclusion of human rights was of a symbolic rationale with no real substance. Moyn argued that:

> "by 1947-48 and the crystallization of the Cold War, the West succeeded in capturing the language of human rights for the crusade against the Soviet Union; the language's main promoters ended up being conservatives on the European continent. Having failed to carve out a new option in the mid-1940s, human rights proved soon after to be just another way for arguing for one side in the Cold War struggle".[106]

Terje Wold's reflections and comments on human rights in the early Cold War show similarities with how Moyn and Duranti argued. Human rights questions, if referred to at all, was as a weaponization of how the Soviet Union did not adhere to them. Terje Wold's reflections on human rights in the debate on NATO fit nicely into this frame.

From a parliamentarian sceptic to a legal advocate for the ECtHR

Although being sceptic towards the ECtHR, Terje Wold's position on the institution changed throughout the 1950s, and in 1959 he became the first Norwegian member of the court. Consequently, from the late 1950s, Wold's position was to push for the Norwegian ratification of the court, which came in 1964.[107] In examining closer Wold's original hesitation and how

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[104] Duranti, *The Conservative Human Rights Revolution,* 165.
[105] Duranti, *The Conservative Human Rights Revolution,* 165.
[106] Moyn, *The Last Utopia*, 45.
[107] See Hareide.

and why he altered his position on the court, we get a more comprehensive account for his human rights engagement during the late 1950s and early 1960s. However, as Duranti underscores, it is imperative to keep in mind that historical analysis has a certain probability level. "As in a court of law, a preponderance of circumstantial evidence is generally considered a sufficient basis for inducing a historical actor's motivation. […] The quest for absolute certainty in history more often than not proves elusive."[108] Thus, when evaluating for reasons behind Terje Wold's altered position on the ECtHR, other plausible alternatives than what I explore here may also apply.

The Swedish diplomat Love Kellberg wrote an article in the Swedish position towards the establishment of the ECtHR in *Festskrift till Lars Hjerner. Studies in international law* from 1990.[109] In it, Kellberg wrote that during the first meeting of the Committee of Ministers (CM) in 1949, the Swedish Minister of Foreign Affairs, Bo Östen Undén, and his Norwegian colleague, Halvard Lange, were sceptic to the idea of human rights becoming a primary issue in the COE.[110] The reasoning behind was that human rights were already discussed in the UN, as the organisation had formed a Human Rights Commission in 1947 and 1948, culminating with the UDHR in December 1948.[111] The Swedish and Norwegian politicians were concerned with duplication of work, as they did not want to risk the work on human rights already commenced in the UN. According to historian A.W. Brian Simpson, another reason for Halvard Lange's hesitation was that with the addition of each new organisational body of the COE, the organisation's costs would rise as well. In the early post-war days, Norwegian politicians were wary of additional costs to their budgets, as the focus was on recovering after the German occupation.[112] Historian Kjersti Brathagen wrote that another explanation behind Lange's position was scepticism toward a regional alternative to the UN's developing human rights system.[113]

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108 Duranti, *The Conservative Human Rights Revolution,* 333.
109 Kellberg, Love. «Den svenska innställningen till Europarådsdomstolen for mänskliga rättigheter». In *Festsrift till Lars Hjerner. Studies in international law,* edited by Jan Ramberg, Ove Bring, Said Mahmoudi, 299-311. Stockholm: Norsteds Förlag AB, 1990, 299.
110 Ibid, 300.
111 Ibid.
112 Simpson, A.W. Brian. *Human rights and the End of Empire: Britain and the Genesis of the European Convention.* (New York: Oxford University Press, 2001), 667; Brathagen, "Competition or complement to universal human rights?", 20.
113 Brathagen, "Competition or complement to universal human rights?", 20.

The origins of the European Convention (ECHR) and, ultimately, the ECtHR is traced back to The Congress of Europe held in May 1948.[114] The convention's origin story, unlike the development of the UDHR led by governmentally appointed UN-delegates, is connected to transnational movements of European unity.[115] Historian Ed Bates has written that the ECHR's drafting was a convoluted process. It could only be completed on the acceptable terms to the states' concerned, and many states had opposing views.[116] Based in Strasbourg, France, the organisation was established in August 1949, with the signature of the Statute of the COE.[117] After much deliberation on which articles the ECHR was to include, the process dragged on to November 1950, when the Convention became open for signatures.[118] The states agreed on two organisational bodies of the COE, the Committee of Ministers (CM) and the Consultative Assembly.[119]

From the beginning, it was not apparent that human rights efforts were to be included in the organisation. The Danish Minister of Foreign Affairs Gustaf Rasmussen was, unlike his Scandinavian colleagues, in favour of discussing human rights in COE. He argued that precisely because the UDHR was without legal binding, he wanted to include human rights in the COE context.[120] He proposed to negotiate human rights further during a CM-meeting in 1949, but the CM voted the Danish proposition down. In a turn of events a few days later, the Consultative Assembly insisted that the CM had to take the question of human rights into the negotiations nevertheless.[121] Duranti underlined that because many of the Consultative Assembly members had affiliations with the European unity movements, it was the transnational unity movements that catalysed CM's decision to include human rights and ultimately adopt a convention on human rights.[122] The outcome of the negotiations and debates in 1949, was the signing of the ECHR in 1950. Article 19 of the ECHR promised the establishment of binding supranational entities, with the commission and the court.

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[114] Bates, Ed. *The Evolution on the European Convention on Human Rights.* (New York: Oxford University Press, 2010), 49.
[115] Duranti, *The Conservative Human Rights Revolution,* 322.
[116] Ten Western European states were involved in the drafting process. These were Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom. Bates, *The Evolution on the European Convention on Human Rights*, 49.
[117] Ibid, 49.
[118] Ibid, 49-50.
[119] Ibid, 50.
[120] Kellberg, «Den svenska innställningen till Europarådsdomstolen for mänskliga rättigheter», 300.
[121] Ibid.
[122] Duranti, *The Conservative Human Rights Revolution,* 322.

Terje Wold participated as a Norwegian parliamentary delegate in the Consultative Assembly during the negotiations in 1949. Kellberg outlined how the establishment of a court system was discussed in the Consultative Assembly while Wold was a member. Kellberg noted that: "[It is not without interest to ascertain that the Norwegian representative in the assembly Terje Wold – later Norwegian Chief Justice of the Supreme Court – pronounced himself as against the establishment of a court of human rights in the COE as it was an addition to the international court of justice (ICJ) in Hague. Wold later became a strong advocate for the ECtHR.]"[123] In other words, because an international court in Hague, within the UN-system, already existed, Wold saw no point in establishing another international court at the time. His position reflects the Norwegian foreign policy line of the era, with uncompromising support of the UN-system, and wanting to avoid duplication of work.

As the chairperson in the extended Foreign Affairs and Constitutional Committee, Benum outlined how Wold concurred with the Norwegian foreign policy line in the 'Spanish case'. It appears that the same applied in the Consultative Assembly of the COE. However, Wold's opinion does not entirely coincide with what Brathagen noted on the Norwegian position on international law. Wold was in favour of both European integration and was open to the concept of supranationalism. Brathagen noted that the common position of politicians, bureaucrats and experts between 1949-1951 was:

> "[…] as norms which may form the basis for inter-state legal obligations, but not rules to be implemented and/or enforced by any supranational entity. Traditional international law should form the framework within which states cooperate to promote the respect of human rights, perhaps within a system similar to that of the International Labour Organisation. Anything supranational, whether universal or to increase the chances of a federal solution in Europe, would not gain support in the late 1940s and early 1950s".[124]

It seems as though that Terje Wold represented a middle ground, concurring with the Norwegian foreign policy line – arguing that the establishment of the court would be a duplication of work in the UN. Parallelly, he agreed with what the Welsh politician Arwyn Lynn Ungoed-Thomas and the Belgian politician Henri Rolin argued on the matter. Ungoed-Thomas stated that "all that was needed was a Commission with the power to publicize its Report, for the member States of the Council of Europe would then be able to react to this."[125] Wold concurred with this, claiming that it would be enough to establish a human rights

[123] Own translation. Kellberg, «Den svenska innställningen till Europarådsdomstolen for mänskliga rättigheter», 301.
[124] Brathagen, "Competition or complement to universal human rights?", 20.
[125] Bates, *The Evolution of the European Convention on Human Rights, 70-71.*

commission as he perceived it unrealistic to create another international court at that time.[126] Thus, he agreed to the supranational entity of the commission but opposed the court itself. Despite the opposition some members in the Consultative Assembly had, the court and the commission were in the end included in the ECHR in 1950. The clauses of the individual petition right and the jurisdiction of the court were made optional for the states to ratify.

The two optional clauses were made optional due to the general scepticism to supranationalism and the current political climate in the 1950s and 1960s, given the situation of the Cold War and the increasing decolonisation processes. The individual petition right was especially difficult for the colonial powers of France and the UK.[127] On the other hand, along with Sweden, Norway had not accepted the jurisdiction of the court itself. Hareide claimed that after the court entered into force in 1959, the members of the Strasbourg-institutions, which then included Terje Wold as a judge, believed that the most critical task was to convince the member states to ratify both optional clauses of the ECHR.[128]

Norway had agreed to the individual petition right of the ECtHR already in 1955, but the ratification on the court's jurisdiction was still lacking. [129] Although I have found no evidence of Wold commenting on the individual petition right in 1955, the support had a substantial backing both in the Storting and the Norwegian Ministry of Justice legal department. Hareide wrote that the process leading forward to the Norwegian recognition of the individual petition right was relatively unproblematic.[130] Therefore, it is likely that Wold supported the individual petition right.[131]

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[126] Ibid. Bates builds his argumentations on the preparatory works of the convention from 1949 and 1950 - the *Travaux Préparatoires*. I would have liked to examine the preparatory works in order to locate if Terje Wold stated his opinions on other instances than the establishment of the court. The official collection of these are to be found in the A. H. Robertson, ed., *Collected Edition f the "Travaux Préparatoires" of the European Convention on Human Rights.* (The Hague: Martinus Nijhoff, 1975-85). A collection of these are also presented in a book from 2001, *Human rights in Europe: a study of the European Convention on Human Rights* by J. G. Merrills and A. H. Robertson. As the University Library closed due to the spread of COVID-19 on March 12. 2020, I have not been able to examine neither of the mentioned works. Another possibility was then to explore the available interactive PDF-file of the *Travaux Préparatoires,* published by the Council of Europe itself. However, as stated in the file, these are internal documents published by the organisation's Registry, and there are no guarantees of its completeness. The discussions on article 19 are omitted from the PDF-file. See the PDF-file for reference here: https://www.echr.coe.int/Documents/Library_TravPrep_Table_ENG.pdf

[127] Hareide, «Norge og den Europeiske Menneskerettsdomstolen», 84.

[128] Ibid, 87.

[129] Ibid, 99.

[130] Ibid, 45.

[131] As chapter three will examine, Wold was an ardent supporter of individual rights of the citizen in the relation with public administration from the early 1950s onwards. This furthers the supposition that he agreed to the individual petition right of the ECtHR as well.

Hareide wrote that Terje Wold gave his recommendation on the jurisdiction of the court in 1958/59, and from then on acted as a legal entrepreneur, ushering for the Norwegian ratification.[132] Based on her research in primary source material from the Ministry of Justice, she explained Wold's support with how the Norwegian Ministry of Justice had changed their opinion on the relationship between the ECtHR and the Norwegian Constitution. The relationship between the Constitution and the Court had come up for discussion in 1958. Two opposing views in the Ministry of Justice appeared, one side for the ratification and one side against. The Ministry of Justice concluded that there were no obstacles in the relationship between the supranational court and the Constitution.[133] Terje Wold was elected as the first Norwegian member of the ECtHR in January 1959.[134] It was thus after the Ministry of Justice gave their support and after he was appointed as an ECtHR judge that his role as a legal entrepreneur for the Norwegian ratification truly manifested itself.

There are several likely aspects behind Wold's turnaround in the debate on the Norwegian ratification of the ECtHR. He was no longer tied to the Norwegian foreign policy line, the way he had been when discussing the establishment of the court in 1949. Nor did he appear to be concerned about the duplication of work with the international court.

Additionally, Hareide underscored the role played by the Norwegian Dr. Juris Frede Castberg. He had claimed that although the ECHR posed a new type of constitutional question, the ratification of the supranational court did not represent a breach with the Constitution, in his opinion. He presented his argumentations to the 20. Nordic Jurist Meeting in 1954. According to Hareide, Castberg's presentation played a contribution to the Ministry of Justice's turnaround on the ECHR.[135]

Additionally, it is likely that Wold was influenced by the remarks made by Frede Castberg in 1954, and thus, he played a role in Wold's turnaround on the court. Castberg's presentation was named "[Constitutional questions that arise with the state's participation in international organisations]".[136] Terje Wold was also present during the Nordic Jurist Meeting in 1954.[137] As

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[132] Hareide, «Norge og den Europeiske Menneskerettsdomstolen», 72.
[133] Ibid, 53-56.
[134] Bates, *The Evolution of the European Convention on Human Rights*, 178-182.
[135] Hareide, «Norge og den Europeiske Menneskerettsdomstolen», 55.
[136] Own translation. Nordic Jurist Meetings. «SEKSJON I, Behandling av emnet: Konstitusjonelle spørsmål som oppstår ved statens deltagelse i internasjonale organisasjoner», 1954. Retreived 20.5.2020 from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_20_20_02.pdf_.pdf
[137] From the records of the meeting, we know that Terje Wold was present during the Nordic Jurist meeting because he commented on another presentation, held by the Ministry of Justice's Director General Finn Hiorthøy, on the legal relationship between the state and the employees working in public administration. Nordic Jurist Meetings. «PLENARMØTE Behandling av emnet: Rettsforholdet mellom staten og dens tjenestemenn»,

a testament to Castberg's influence, Wold referred to Castberg in his article on "[The European Convention on Human Rights and Norway]" from 1963. In it, Wold remarked Castberg's argumentation from 1954, stating that the ECHR was constitutional.[138] Another aspect for Wold's support, as underlined by Hareide, is that it was a simple manner for Norway to reach more integration with Europe.[139] Wold was a strong supporter of European integration, as chapter four will elaborate further.

After Wold's appointment as a judge ECtHR in 1959, he had taken on a role as a legal entrepreneur, arguing that the ratification of the court system was not something that should be prolonged in the case of Norway. According to Madsen, the predictions of what could be expected in Strasbourg played a significant role for the jurists of the organisation in convincing the member states to accept both the individual petition right and the court's jurisdiction.[140] When Wold argued and advocated for the court from 1959, he did so in the prospects of how significant the court *could* become in its protection of human rights.

During the early 1960s, Wold's advocating role for the ECtHR further intensified. In the mentioned article"[The European Convention on Human Rights and Norway]" from 1963, he claimed it was a paradox that Norway had ratified the individual petition right, but not the court's jurisdiction. This article is one of his most cited articles and reveals much about his positions on supranationalism, international law, and human rights.

Wold argued that the ECHR posed a considerable effect in shaping the future of international law and that it was important for the member states to uphold all the provisions of the convention.[141] He especially understood the individual petition right as vital in making the court system effective and durable. Wold stated that with the establishment of the two international structures of the commission and the court, the member states were entering a new and welcome era of international law. By this, an individual was granted a right to make a complaint about his or her government to the international structures of the commission and the court.[142] With this unusual step in international law, he deemed it understandable that the member states'

1954. Retrieved from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_20_20_01.pdf_.pdf

[138] Own translation. Wold, Terje," Den europeiske menneskerettighetskonvensjonen og Norge" in *Legal Essays: A tribute to Frede Castberg on the occasion of his 70th birthday 4 July 1963*, Oslo: Universitetsforlaget, 1963, 364-365.

[139] Hareide, «Norge og den Europeiske Menneskerettsdomstolen», 73.

[140] Madsen, "Legal Diplomacy", 76.

[141] Wold, Terje, "Den europeiske menneskerettighetskonvensjonen og Norge" in *Legal Essays: A tribute to Frede Castberg on the occasion of his 70th birthday 4 July 1963*, Oslo: Universitetsforlaget, 1963, 371.

[142] Ibid, 360.

governments were sceptic toward this during the establishing phase in 1949. Wold had been sceptic, but as aforementioned, his scepticism did not come because of a hesitation towards the development of international law or supranationalism in itself. It came because he was afraid of duplication of work with the ICJ in the Hague.

Wold went on to give some explanatory notes on the dualistic legal system in Norway. A concern with ratifying the ECtHR was that the Norwegian Constitution had provisions that seemed to hinder that decisions made in the Norwegian court system could be tried and overturned by an international court system. The Norwegian dualistic legal system is built on the prerequisite that international law is an independent legal system that is separate from the internal court system. In a dispute, the Norwegian law ranged over international law.[143] However, Wold underlined that the legal system's duality was not a hindrance for Norway in this case. He argued, along the same lines as Castberg, that the Norwegian Constitution did *not* pose any obstacles and that an international court system could try a decision reached in the Norwegian Supreme Court.[144] To support his argument, he claimed that this already applied in Norway. Norway had ratified the jurisdiction of the ICJ in the Hague with the acceptance of the UN Charter.[145]

Wold also argued that the commission and the ECtHR were welcome innovations in the field of international law. He compared the commission with the "[work of the Scandinavian system of the 'Ombudsman' in the national field]", stating that the commission would "[work as an international complaint authority, which all who means that their rights are violated can turn to]".[146] Furthermore, Wold argued that:

> "[A convention on human rights must necessarily stand in another position than trade treaties and other bilateral agreements. This is completely in coherence with the development we have had in the years after the war. The individual gets more and more status in international law as directly committed and justified, and the international law's highness as above the national law prevails]".[147]

Wold stated that it was a backward notion that the countries did accept the concept of human rights, but not the control that an independent and impartial court could carry out. He pointed especially to Norway, stating that Norway already had a long tradition of judicial review. This situation was different in Sweden, as Sweden then, for the first time, would have to recognise

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[143] Ruud, Morten, Ulfstein, Geir. *Innføring i folkerett.* (Oslo: Universitetsforlaget, 2011), 52.
[144] Wold, Terje. "Den europeiske menneskerettighetskonvensjonen og Norge", 365.
[145] Ibid.
[146] Own translation. Ibid, 372-373.
[147] Ibid, 359.

that the Swedish government's decisions could befall under judicial review by an international court. Wold saw no antagonism between the legislature, the administration, and the court system in Norway. In his opinion, there existed a mutually understood separation of functions to protect the rule of law.[148]

Lastly, Wold argued that if human rights were to be upheld, one had to have in place certain specific "[control mechanisms – guarantees – in order for this to truly be accomplished]".[149] This quote is essential when coming closer to an understanding of Wold's commitment to human rights norms. In order to protect human rights, he believed the most important thing to secure was a mechanism to control and guarantee the rights. The protection of the rule of law thus laid central to his altered position on the ECtHR, and his understanding of human rights.

Chapter findings

This chapter has outlined how Terje Wold reflected on several political matters during his time as an MP, representing the Labour Party. I have found that Wold played a small role in the political debates in the post-war years and that human rights played a minor and symbolic role. Although playing a minor role in discussing the 'Spanish-case' in the UN, this case emphasised that Wold was generally open to supranationalism. In his reflections on NATO, Wold *did* include human rights as a reason for why Norway had to enter the defence treaty. Nevertheless, as outlined by Moyn, when human rights were mentioned in the 1940s, it was generally symbolic as byproducts of the era. When Wold talked about human rights, they were used as a weapon to oppose the Soviet Union in the Cold War rhetoric.

Terje Wold began ushering for the Norwegian ratification on the ECtHR after he got appointed as a judge in 1959. His support intensified itself at the beginning of the 1960s when outlining that the ECtHR was in line with the Constitution and that it could become fundamental in the protection of individual human rights. The fact that Frede Castberg had underscored this in the mid-1950s was a reason behind Wold's turnaround. For Wold, it was necessary to underline how the ECtHR represented an innovation in international law regarding human rights. He especially understood the individual petition right as key in making the court system both

[148] Ibid, 369-371.
[149] Ibid, 371.

durable and effective. His engagement for the protection of individual rights was something that crystallised throughout the 1950s. This development is examined in the following chapter.

Chapter 3: Public administration, human rights and the rule of law, 1951-1962

Terje Wold noted in 1962 that: "If human rights are not upheld in my country, then the rule of law has ceased to prevail".[150] Parallel to Wold's international engagement with human rights at the UN and the COE, he had worked and lectured nationally on the protection of the rule of law, which he understood to be an essential human rights norm. The rule of law, herein the full and equal access to court by an impartial and independent court and judicial review of the legislature, was, in his opinion, prerequisites for realising other human rights norms.

One of Wold's substantial efforts in the 1950s was his work in the Public Administration Committee. The Committee laid the groundwork for three central acts ensuring a higher degree of government transparency and awarding certain rights to the individual. These were the Parliamentary Ombudsman Act (1962), the Public Administration Act (1967), and the Freedom of Information Act (1970).[151] The Committee worked to delineate the role and importance of the rule of law in public administration. Studying this committee provides an opportunity to explore if, and in what ways, the Committee shaped Wold's understanding of contemporary human rights. His level of commitment to the work conducted here, as well as how the Committee report discussed human rights, are explored in this chapter.

Additionally, Terje Wold himself noted that he was not that interested in how or why human rights originated. By stating this, he related to the contemporary legal debate on legal realism versus the natural law in the understanding of human rights. This chapter, therefore, explores how he positioned himself in this debate.

Becoming the chairperson of the Public Administration Committee

In the wake of the Second World War, the political parties at the Storting agreed on a joint political program for the revival of Norway after the German occupation.[152] However, the parties soon disagreed over the form, extent, and procedural aspects of government regulation.

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[150] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 7.

[151] Own translation. "Lov 22.06.1962, nr. 8 om Stortingets ombudsmann for forvaltningen (sivilombudsmannsloven); Lov 10.02.1967 om behandlingsmåten i forvaltningssaker (forvaltningsloven); Lov 19.06.1970, nr. 69 om offentlighet i forvaltningen". in Sandmo, Erling. *Siste ord: Høyesterett i norsk historie 1905-1965*, (Oslo: Cappelen Forlag AS, 2006), 453.

[152] Sejersted. Francis. *Demokrati og rettsstat.* (Oslo: Pax Forlag, 2001), 310. The Communist Party was the only Party that opposed.

To streamline the revival process, the ruling Labour Party had begun the development of a certain set of provisional acts on rationing goods and supplies, pricing regulation, and corporate decisions from 1944.[153] The acts were given wide authority as the Storting delegated what initially was their responsibility, with the parliamentary review of the acts, over to the government in order to make the revival after the war more efficient.[154] The acts first became known as *lex Thagaard*, named after the Norwegian pricing director Wilhelm Thagaard, and later with the adding of *lex Brofoss*, named after the Minister of Finance Erik Brofoss.[155] *Lex Thagaard* span from 1945 to 1947, while *lex Brofoss* span from 1947 until 1952, when the wide authority of the provisional acts was no longer on the political agenda.[156] In the development of these provisional acts and the subsequent debates, there was a "deep ideologic gap" between the conservatives in opposition and the social democrats in government.[157] A gap also existed within the Labour Party itself.

The Labour Party was, on the one hand, comprised on the one hand of a younger generation of politicians, "full of courage and will to rule", who saw the rule of law as an unnecessary obstacle against political possibilities and initiatives.[158] In opposition to these, were the older generation of Labour Party politicians, and those who also held backgrounds in law. While the younger generation argued for the wide authority that the provisional acts granted, the older generation opposed the wide authority that the government was granted on the basis of what it *could* have to say for the situation of the rule of law in Norway. In other words, they feared a weakening of the rule of law. This older generation with legal backgrounds included the then appointed Justice of the Supreme Court, Terje Wold. Wold had taken up office in the Supreme Court in 1950, after the conclusion of his period as MP in 1949.[159]

The legal community in Norway scrutinised the different aspects of the provisional acts and what consequences they could have for the rule of law.[160] Professor of Law Johs. Andenæs was a particularly active and respected voice in this debate.[161] Terje Wold also engaged himself in this. To some extent, it seemed that the use of provisional acts after the war intensified the discussion on whether Norway needed more robust control procedures in the public

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[153] Lie, Einar. *Norsk økonomisk politikk etter 1905.* (Oslo: Universitetsforlaget, 2012), 79-81; Sejersted, *Demokrati og rettstat*, 310.
[154] Sejersted, *Demokrati og rettstat,* 311.
[155] Sejersted, 310; Lie, *Norsk økonomisk politick etter 1905*, 85-87 and 90-94.
[156] Lie, *Norsk økonomisk politick etter 1905,* 95.
[157] Sejersted, *Demokrati og rettsstat,* 310.
[158] Ibid, 311.
[159] Eng, *Terje Wold,* 241.
[160] Sejersted, *Demokrati og rettsstat,* 331-332.
[161] Ibid.

administration sector. The discussions, which gained a stronghold from 1947 onwards, showed that the situation of the rule of law with its lacking procedures in public administration had a generally strong presence in the public opinion.[162] Thus, the need for new procedures in the public administration arose.

The application of the concept 'the rule of law' poses some challenges when applying the English word in a Norwegian context. Jurist Anders Ryssdal stated that 'the rule of law' comprise of two components; both "rettstat" [state of law – as the German *Rechtstaat]* and "rettssikkerhet" [legal security] constitute what is comprised as "the rule of law" in the English language. The word "rettferdighet" [justice] also has a relation to the concept.[163] When applying the concept of "the rule of law", then, all three mentioned words are central in the Norwegian understanding.[164]

According to historian Francis Sejersted, certain politicians with legal backgrounds, such as Wold, were forced to take a position on the provisional acts, even if this meant going against their previous actions as politicians and the current policy understanding in the Labour Party.[165] Even though Wold was not an MP after 1949, he was still a member of the Labour Party and remained politically engaged. Wold had contributed to the making of *lex Thagaard* in the capacity as Minister of Justice during the war. He was an active ally for this policy up until, at least, 1947.[166] Eng noted that during a debate in the Storting in June 1947, Wold defended the usage of the provisional laws, stating that "[the acts are […] necessary and *therefore* constitutional]."[167] Yet, Eng nuanced Wold's support as well, by outlining how a few op. eds. in the newspaper *Aftenposten* in 1947 gave the impression that Wold was somewhat hesitant in transferring power over from the legislature to the government.[168]

During a Nordic Jurist Meeting in Stockholm in 1951, both Terje Wold and Johs. Andenæs discussed the rule of law and the provisional acts. Johs. Andenæs held a presentation called "[Guarantees for the rule of law]."[169] In his presentation, Andenæs outlined that there were two

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[162] NB, Ministry og Justice and Police, «Innstilling fra Komiteen til å utrede spørsmålet om mer betryggende former for den offentlige forvaltning (Forvaltningskomiteen)», 1958, 1.
[163] Ryssdal, Anders. «Rettsstaten under press». *Nytt Norsk Tidsskrift*, 22, no. 1 (2005): 48-59, 49.
[164] Ibid.
[165] Another example mentioned by Sejersted is O. C. Gundersen, who, like Wold, contributed in the making of *lex Thagaard*. Sejersted, *Demokrati og rettsstat,* 334.
[166] Eng, *Terje Wold,* 235.
[167] Ibid.
[168] See footnote 224 in Eng, *Terje Wold,* 291.
[169] Own translation Nordic Jurist Meetings. «Garantier for rettssikkerheten», 1951. Retreived 10.5.2020 from http://nordiskjurist.org/meetings/garantier-for-rettssikkerheten/

possible alternatives if the governing Labour Party was to secure the rule of law while applying provisional acts at the same time. First, they had to "make substantial rules that would make judicial review possible", and then they had to increase "the rule of law with rules for a more robust method of procedures within the administration".[170] Again, there was a push for attaining more control over administrative procedures. Associate Professor of Law Anine Kierulf has written that even though Andenæs tried to come up with alternatives for how the rule of law could be secured while applying provisional acts, he was mostly sceptic towards giving the government such concessions from the legislature.[171]

Terje Wold went even further in his support of the rule of law than his jurist colleague Andenæs during the Nordic Jurist Meeting in 1951. Wold was "uncompromisingly on the side of the rule of law".[172] He argued that "no decisions regarding public administration were to be adopted if the legal security of the individual citizen was jeopardised in the process".[173] Wold outlined that: "[even in our Nordic countries, where the legal society is based on the rule of the public and parliamentary governance, we are today witnessing a development when it comes to the position of the state in society, which makes it fully justifiable to raise the question of guarantees for the rule of law]".[174] Furthermore, he stated that: "[no one can be in doubt that the state in all modern countries is taking on bigger and new tasks in all of society's areas and that the administration, consequently, in their decisions, are more and more interferent in the individual citizen's right in society]".[175] These arguments made in 1951 indeed represents a change in opinion, considering how he had supported the government and the provisional acts in 1947, only four years earlier. In arguing for more guarantees for the rule of law and that administrative procedure had to be scrutinised, Wold was on the side of the individual citizen, arguing for their rights.

Why then, did Terje Wold's position on the provisional acts change? It is worth remembering that Norway had been under a state of emergency during the war, in which the adoption of such provisional acts is more commonly accepted in public. After the war, a grand committee had

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[170] Own translation. Sejersted, *Demokrati og rettsstat,* 332.
[171] Kierulf, Anine. *Judicial Review in Norway: A bicentennial debate.* (Cambridge: Cambridge University Press, 2018), 115.
[172] Sejersted, *Demokrati og rettsstat*, 333.
[173] Ibid.
[174] Own translation. Nordic Jurist Meetings. "Tredje møtesdagen. Garantier for rettssikkerheten ved administrative avgjørelser», 1951, 249. Retreived 12.5.2020 from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_19_19_06.pdf_.pdf
[175] Own translation. Nordic Jurist Meetings. "Tredje møtesdagen. Garantier for rettssikkerheten ved administrative avgjørelser», 1951, 249. Retreived 12.5.2020 from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_19_19_06.pdf_.pdf

begun working towards making the legal provisions of *lex Thagaard* and *lex Brofoss* into permanent acts from 1947 onwards. As noted by historian Einar Lie, when the proposal on a permanent act on rationalising was presented in 1952, the practices from *lex Thagaard* and *Brofoss,* such as having a governmental authority to oversee mergers and closures of businesses, were no longer in fashion in public opinion.[176] Moreover, Lie noted how such practices had not functioned as intended.[177] Accordingly, Wold's opinion might have changed in light of these developments. Another aspect is that Terje Wold had taken up office in the Supreme Court in 1950. This may have made it easier to hold an uncompromised position as a protector of the legal society as opposed to furthering political governance while being an MP for the Labour Party.

During the Nordic jurist meeting in 1951, Wold argued that the increase in tasks that had taken place in public administration after the war had created a conflict between society and the individual citizen that appeared to be almost unsolvable. He considered that: "[on the one hand, we have the development of society, which demands that the state take on more and more tasks and increasingly intervenes in a more controlling manner in the lives of the individual, and on the other hand, we have the demands of the protection of law and security of law for the individual]."[178]

According to biographer Eng, Wold's positional shift from a supporter of, and contributor to the provisional acts in the Labour Party government, to an outspoken oppositional, made him more likeable with the conservative side of Norwegian politics. The conservatives had argued against the wide authority of the provisional acts for years. In the conservative side of Norwegian politics, the position of the individual rights in society stood much stronger than for the ruling Labour Party. However, Wold's voice was still acknowledged within the Labour Party as well.[179] It was against this backdrop that the Justice of the Supreme Court, Terje Wold, was appointed by the ruling Labour Party as the chairperson for the Public Administration Committee in 1951.

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[176] Lie, *Økonomisk politikk etter 1905,* 95.
[177] Ibid.
[178] Own translation. Nordic Jurist Meetings. "Tredje møtesdagen. Garantier for rettssikkerheten ved administrative avgjørelser», 1951, 250. Retreived 12.5.2020 from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_19_19_06.pdf_.pdf
[179] Eng, *Terje Wold,* 235.

Human rights in the Public Administration Committee report, 1958

The mandate of the Public Administration Committee was to develop more robust forms of procedures in the public administration. The Public Administration Committee gave its recommendations in a Committee Report in 1958. The Committee report outlined how the judicial review of the legislature was of vital importance and that the right to full and equal access to court was expressed in international human rights norms, and therefore had to be upheld. There is thus a connection between the Public Administrative Committee's and Wold's understanding of human rights, as he emphasised these aspects as well.

The court system in Norway was able to try and, where the courts saw it fit, overrule the government's decisions to protect individual rights better. According to the Public Administration Committee, this judicial review was understood as an important international human right, which Norway's domestic legal system ought to follow as well. Although Norway had had a long tradition for such judicial review, the Public Administration Committee revisited the concept and connected it further to international human rights norms.[180] In fact, Norway was the first country in Europe to acknowledge judicial review and it was "practiced soon after 1814 […] and ascertained by the Supreme Court in 1866".[181]

The Public Administration Committee emphasised how judicial review was vital, and in what area and to what extent this was recommended to be practiced in the Norwegian society:

> "[We find it natural that in Norway (and Denmark), the courts can try the government's decisions. and we redeem this as rather fundamental for our judicial review. It is precisely the relationship between the society (the government) and the individual, which in our time in most countries has led to demands, not only to strengthen but also to expand the judicial review]".[182]

The Public Administration Committee underlined UDHR – explicitly mentioning article 10 – and the ECHR, as essential components for the individual's right to protection concerning the public administration.[183] This passage is noteworthy in two ways. First, it tells us that

[180] See Kierulf, Anine. *Judicial review in Norway: a bicentennial debate.* (Cambridge: Cambridge University Press, 2018)

[181] Føllesdal, Andreas, Wind, Marlene. "Nordic reluctance towards judicial review under siege" in *Nordisk tidsskrift for menneskerettigheter*, vol. 27, no. 2, 2009: 131-141, 135; Kierulf, Anine, Judicial review, (2018): 12-13.

[182] Own translation. NB, «Innstilling fra Komiteen til å utrede spørsmålet om mer betryggende former for den offentlige forvaltning (Forvaltningskomiteen)», 1958, 402.

[183] Article 10 in the UDHR states that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

international human rights norms, and specifically Article 10 of the UDHR were discussed, and it shows a link between the Committee's and Terje Wold's emphasis on article 10 of the UDHR.

Although human rights were not commonly associated with public administration, the Public Administration Committee linked the two together in their report in 1958. Although brief, the mention is similar to how Terje Wold reflected in correspondence with the Norwegian United Nations Association (UNA) a few years later, in 1961. In this correspondence, Wold argued that article 10 of the UDHR, with the right to a fair and public hearing by an independent and impartial tribunal, was the most significant human right.[184] He explained his opinion by saying that if this right was upheld in society, other human rights would, in turn, follow. Because the argumentation is so similar, it is a testament to how the work conducted in the Committee contributed to shaping Wold's human rights engagement.

In defining judicial review, political scientist Marlene Wind and philosopher Andreas Føllesdal distinguish between constitutional review in general, and judicial review. They note that constitutional review is done by different bodies, such as "parliamentary committees and specialized courts" and that judicial review is "performed by ordinary and specialized courts".[185] In Norway, both constitutional and judicial review is performed by the ordinary courts. Terje Wold commented on this during another Nordic Jurist Meeting in 1957. He stated: "[The court's judicial control with the public administration's decisions as it is established by current case law is satisfactory]."[186] Wind and Føllesdal noted that a critical role of judicial review is to "maintain the constitutional division of power and protect individual rights against encroachment by the legislature. Generally, reviews seek to protect the interests of citizens against the abuse of power".[187]

As mentioned above, another Nordic Jurist Meeting took place in 1957. During this meeting, Terje Wold gave a presentation titled "[Judicial review and the public administration's decisions]", of which a part of his presentation was about the Norwegian system of judicial review.[188] During the presentation, he argued along the same lines as to how the Committee

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[184] More on this follows from page 41- .

[185] Føllesdal, Andreas, Wind, Marlene. "Nordic reluctance towards judicial review under siege" in *Nordisk tidsskrift for menneskerettigheter*, vol. 27, no. 2, 2009: 131-141, 132-133.

[186] Own translation. Tamm, Henrik. *De Nordiske Juristmøter 1872-1972: Nordisk Retssamvirke gennem 100 År.* (København: Nyt Nordisk Forlag Arnold Busck, 1972).

[187] Føllesdal, Andreas, Wind, Marlene. "Nordic reluctance towards judicial review under siege" in *Nordisk tidsskrift for menneskerettigheter*, vol. 27, no. 2, 2009: 131-141, 134

[188] Own translation. Nordic Jurist Meetings. «DOMSTOLSKONTROLLEN MED FORVALTNINGENS VEDTAK». Retrieved 14.5.2020 from http://nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_21_21_17.pdf_.pdf.

report would do in 1958 when mentioning human rights. He posed the question of "[should there be general access to judicial review?]", which he answered:

> "[In Norway (and Denmark), in contrast, we find it quite natural that the courts also review the government's decisions and consider this to be fairly fundamental to our entire system of judicial review. It is then also precisely the society (the government) and the individual who, in our time in most countries, has led to demands not only to strengthen but also extend judicial control. Both the UN Declaration of Human Rights of 1948 and the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 underline the individual's right to protection in relation to society as a general human right. Article 10 of the United Nations Human Rights Declaration reads: "Everyone has the right, under full equality, to have his case fairly and publicly dealt with by an independent and impartial court, when his rights and obligations are to be determined." This is the view we must build upon. It is difficult to understand that not everyone in a judicial community shall have access to the protection of a court in terms of his right or duty".[189]

Both the structure and substance of Wold's argument made during the Nordic Jurist Meeting in 1957 are similar to how the Committee emphasised judicial review in their report, published only a year later. He once again mentioned Article 10 of the UDHR, arguing that the judicial review system had to build further on international human rights. It is therefore likely to understand Terje Wold's emphasis on the independent court system, with impartial judges and the inclusion of judicial review, as being influenced by the work conducted in the Public Administration Committee throughout the 1950s. Although there is a linkage between how Wold and the Public Administration Committee argued on judicial review, it may be that other processes or cases also helped steer his understanding in this direction.

The fact that human rights were neglected in the domestic arena may be why they were mentioned only once in the Public Administration Committee report of 1958. By following an argument of the Nordic historians' group in the special edition of *The Nordic Human Rights Journal* from 2018, they claim that the Nordic countries represent a puzzling place in twentieth-century history literature on human rights. The coverage in the research literature is mostly non-existent, and if the Nordic countries are mentioned, it is usually superficial.[190] If the Nordics do appear in twentieth-century histories of human rights, however, they are mentioned as "vehicles of progressive change", and the histories are usually out of context, disconnected from the domestic and regional concerns.[191]

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[189] Ibid, 91.

[190] Vik, Jensen, Lindkvist, Strang, "Histories of Human Rights in the Nordic Countries", 192. They exemplified this with how the Nordics are not mentioned at all in Moyn, *The Last Utopia.*

[191] Ibid, 193.

To complement the Nordic historians, human rights violations were mainly regarded to be of international concern. With the end of the Second World War, came the rise of new international organisations, declarations, and conventions. The second half of the twentieth century was marked by "the global expansion of the nation-state and the increasing erosion of state sovereignty through (among other things) transnational legal norms such as human rights".[192] However, there were significant difficulties with the *political* implementation of these rights. Historian Stefan-Ludwig Hoffman outlined that four sets of problems were in the frontline for political implementation during the second half of the twentieth century. These were: "1) Cold Was contestations and 2) decolonialization, both primarily from the late 1940s and the early 1960s; 3) the global campaign against the pariah states such as Chile and South Africa and the new humanitarianism; and 4) the demise of communism and the emergence of dissidence in Eastern Europe, both in the 1970s and 1980s."[193] What all these sets of problems have in common is that they were of international concern to the Norwegian foreign policy. It was probably not that obvious to observe how human rights concerns could also apply to domestic concerns, especially those connected to public administration matters. Nevertheless, Wold himself lingered on the connection between public administration and human rights in Norway. He connected the two concepts on more than one occasion in the years following the Committee report in 1958. He took on characteristics as a legal entrepreneur on the national legal level in making these connections and engaging for human rights protection in matters of public administration in Norway.

Public addresses on administration, the rule of law and human rights, 1961 and 1962

Terje Wold had a consistent concern for the human right to be protected from unlawful interference by the state. He referred to international human rights norms when arguing for this right. Moreover, he argued that the full and equal access to court was a prerequisite in guarantying the upkeep of human rights. He separated human rights into different groups of traditional, civil and political, and economic, cultural, and social rights. His human rights engagement was furthermore becoming global in its reach, with highlighting that the rule of law was of vital importance to newly decolonised countries. Wold also believed that if human

[192] Hoffman, Stefan-Ludwig. "Genealogies of Human Rights", in *Human Rights in the Twentieth Century.* Edited by Stefan-Ludwig Hoffmann, 1-28. New York: Cambridge University Press, 2011, 14.
[193] Ibid.

rights were to be upheld in a society, the due process rights had to be fully secured, both in Norway and abroad.

To further substantiate these elements, the following section analyses sources from three different occasions. These are a correspondence to the United Nations Association (UNA) of Norway in 1961, a speech held to a student group of the University of Life Sciences in Ås and a speech held to the Norwegian-African Youth Congress in 1962. On these occasions, Wold elaborated on the role of human rights in society and the fundamental character of the rule of law. When read and interpreted alongside each other, the three addresses form a clearer representation of what Wold understood human rights to encompass in the contemporary era. They also give a clear impression of how he reflected on and addressed ongoing international developments of law and politics.

Terje Wold emphasised how human rights had to be a concern of the international society, and not only up to the states' internal laws and policies to handle. He argued that before the Second World War, they could not speak of human rights as international concepts. They were matters of internal affairs, and it was the state itself that determined what constituted human rights. Wold believed that the Second World War changed this perception. He laid out how the work in the international organisation of the UN, with the adoption of the UN-charter, was foundational for establishing human rights in the international arena. However, without a legal binding of the states, he was much more optimistic towards the European field of human rights, conducted in the COE.[194] As outlined in chapter two, his support for adopting binding decisions in the COE, with the ECtHR, came well after its establishment.

Wold repeatedly emphasised the fundamental character of UDHR's article 10, the full and equal access to court. Wold argued that this article had to be given special attention in both the Norwegian and international society.[195] He stated that human rights would not have much value if society could not guarantee their maintenance. He believed the equal right of access to court to be fundamental for guaranteeing the upholding of human rights. In other words, the legal systems had to be functioning in order for human rights to be upheld.

Another aspect of his understanding is that Terje Wold separated human rights into three different groups, along the same lines as to how they had been classified in the UDHR. The

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[194] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 11-25.
[195] RA, Box RA/PA-1493/ Fb/0003 – «Taler, artikler», Folder 0002, labelled «Taler VI 1960-1961», «Norsk Samband for De Forente Nasjoner. Pressetjenesten, nr. 24, 5". 1961, 5.

first group was what he called traditional human rights, with the right to life, civil rights, freedom, security, and property rights, as well as freedom of speech, religion, association, organisation, and equality before the law.[196] The other group was political rights, with democratic rule and the freedom against tyranny and dictatorship. The third group was the rights of social and economic freedoms. He stated that civil and political rights were worthless for people who suffered under such societal conditions that led them to lead distressful lives and go hungry.[197] Nevertheless, he argued at the same time that social and economic rights were not truly subjective rights that each person could claim. For instance, in article 110 of the Norwegian Constitution, it was stated that any able person could make a living by their work, and he believed this to "[probably amount as a social or economic human right]".[198] He considered it difficult for an individual citizen to claim this right in practice, as it was problematic to base a complaint on the right to work.[199] Wold measured the political and civil rights of the first two groups to be the most fundamental for the individual citizen.

When Wold claimed the civil and political rights to be more fundamental than economic and social rights, he concurred with the East-West divide of rights-talk that applied during the Cold War. He reasoned his emphasis on civil and political rights with how "[it is enough to validate this with our own experiences during the war and to the refugees that in the post-war time that has fled from East to West]."[200] Central historical accounts underline how human rights became a political battle between East and West on norms and morality during the Cold War.[201] Wold's interpretation fits into this image. Nonetheless, in chapter four, we shall see that Wold nuanced his opinion in a parallel commitment to the Sami-population in 1962, as well as giving the third group of rights increasingly more focus further into the 1960s. Thus, it seems that when Terje Wold spoke about human rights on a more superficial level – as in this instance, where he spoke to a student group about the human rights' place in society – he emphasised civil and political rights. He underlined the importance of social, cultural, and economic rights when he engaged in more specialized topics.

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[196] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 1.
[197] Ibid, 2.
[198]Own translation. Ibid, 3.
[199] Ibid, 3.
[200] Own translation. Ibid, 4.
[201] See for instance Lauren, *The Evolution of International Human Rights*; Mazover, "The End of Civilization and the Rise of Human Rights: The Mid-Twentieth-Century Disjuncture"; Hoffman, Stefan-Ludwig, *Human Rights in the Twentieth Century*; Mariager, Rasmus, Molin, Karl and Brathagen, Kjersti. *Human Rights in Europe during the Cold War.*

Another central aspect in Wold's weighing on the different rights-groupings was that no matter which grouping was the most important, the rule of law had to be secured within a country first. In order to secure this, more robust protection of individual rights was needed. He related this to the increasement of the administrative sector in the post-war era.[202] Wold deemed it necessary and right that it was the governmental institutions that had the power to govern a country. It was only right that these institutions made decisions that concerned the individual citizen and affected the citizen's personal and economic interests, as well as the citizen's social and cultural rights. However, it was in dealing with the individual in the individual's relationship with the community, that the position could become more difficult. Wold argued:

> "Here we often will have – on the one hand, the public interest and on the other the right and the just expectations of the individual citizen. In all communities there, therefore, will be a particular need of means of control that the power excercised [sic] in the name of the community is not abused, and it will mainly be necessary to have such means to protect the human rights and fundamental freedoms of the individual. In this respect, the European Convention of Human Rights – as you will know – goes so far that the individual has the right of petition to an overnational [sic] authority – the Human Rights Commission in Strasbourg – for protection against his own country. But first all national – internal – means of control must be exhausted".[203]

Wold argued for a more robust legal framework for the individual citizen in meeting with the public administrative sector. He argued that the highest protection or guarantee a society could provide for the individual citizen was the protection of the rule of law. He argued that without the rule of law, all other rights an individual citizen had would be of little or no value.[204] This was partly a reason for why he was positive towards supranationalism, with the mentioned commission in Strasbourg as an example.

Wold also commented on how the administration in Norway had increased considerably during the post-war years, which he connected to the rise of the modern welfare state.[205] He said that although the rise of administration in the welfare state was a right and important development, more safeguards were needed to protect individual citizens. "If the executive shall be able to fulfil its task, it is necessary that the administrative agencies are given wide powers. The individual citizen is in his dayly [sic] life more and more dependent upon the decisions of the

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[202] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», "The Individual and the Community (The Rule of Law)", 1962, 4.
[203] Ibid, 8-10.
[204] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 9-10
[205] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», "The Individual and the Community (The Rule of Law)", 10.

administration. This development […] has increased the need for sufficient safeguards."[206] It comes as no surprise then, that he raised the work he had chaired in the Public Administration Committee in this context as a manner of how safeguarding the rule of law within the administration could be done.[207]

Wold argued that: "I think that some safeguards to protect the interest of the individual should be laid down in a general administrative procedure act so that in all administrative cases, the citizen will have the guarantee of natural justice."[208] He also stated that the rule of law had to be understood as more than just principles of legality. He argued that the rule of law in a community had some fundamental rights and freedoms which were not only upheld in law, but also in life itself.[209] In mentioning 'natural justice' and how some rights and freedoms were given at birth, Wold's assessment seems to be related to natural law.[210]

Terje Wold revealed that he had global sensibilities regarding the rule of law at the beginning of the 1960s. During the so-called Norwegian-African Youth Congress in August 1962, Wold gave a speech called "The Individual and the Community (The Rule of Law)".[211] Wold's speech was on the contemporary Norwegian system, with two themes: the situation on the rule of law in Norway at the time, and what guarantees the Scandinavian countries had to uphold individual rights in order to safeguard the rule of law. The congress itself was part of a broader international trend, focusing on self-determination in the colonised countries and racial discrimination connected to the civil rights movement in the US and the Apartheid-regime in South-Africa. This trend was also visible at efforts at the UN and its adoption of a Convention on Elimination on All Forms of Racial Discrimination (CERD). As historian Steven L. B. Jensen outlined, the two main topics "in the influential UN General Assembly debate in 1962 were racial discrimination and religious intolerance."[212]

Moreover, Wold placed UDHR article 10 in an international context. The due process rights had a "[particular significance]", especially for countries in Africa and Asia that were gaining

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[206] Ibid, 11.
[207] Ibid, 13.
[208] Ibid, 13.
[209] Ibid, 3.
[210] More on this follows on page 47 of this chapter.
[211] The focus of the meeting was the ongoing process of decolonialisation, with notable speakers such as the Kenyan politician Joseph Murumbi, who spoke about "Colonialism and new-colonialism. National independence"; the former Secretary-General of the UN Trygve Lie, who gave a lecture about "The UN's role in the world today"; the Moroccan left wing-politician Mehdi Ben Barka, who talked about "Political directions in Africa"; and the South-African anti-apartheid politician Oliver Tambo, who spoke on "Racial problems in Africa". RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», "PROGRAM OF THE CONGRESS".
[212] Jensen, *The Making of International Human Rights,* 105.

their national independence. Wold argued how they ought to construct systems of independent and impartial courts that could safeguard the due process rights.[213] To him, human rights, and especially the due process right, was crucial to secure in the ongoing decolonisation processes.

Keeping in mind Terje Wold's former political position as the Minister of Justice in exile in London during the Second World War and his then-current position as the Chief Justice, it is not surprising that he related the importance of an independent court system and due process rights to national independence, freedom, and democracy. He placed this right as the most important one in the contemporary period. In other words, the legal institutions had to be functioning in order for human rights to follow.

Another aspect of Wold's understanding of the rule of law was the way judicial review of the legislature represented an essential manner in the protection of individual rights. Regarding proceedings made by the government, Wold argued that the most crucial guarantee the citizen could have in this was the judicial review conducted by the court system.[214] Remembering that he argued that UDHR Article 10 was the most important human right in his opinion, it is reasonable to interpret his emphasis on judicial review, as another imperative aspect in protecting human rights in society. However, he did not think that this right sufficiently applied in Norwegian society yet. He wrote that: "[These guarantees are what we call the due process rights, and the most important and basic right is to have your case fairly and publicly tried by an independent and impartial court]."[215] Wold emphasised that even though this particular right *did* exist in Norway, it was necessary to make sure that the access to court should be the same in every aspect of the Norwegian society. A possible interpretation of this is that the act on administrative procedures had yet to be adopted at this point in 1961. The act on administrative procedures became adopted in 1967.[216] Wold understood due process rights as an aspect of gaining more effective protection of human rights.

Although the government had not yet examined the administrative procedure act, the Public Administration Committee's recommendation on the establishment of an Ombudsman institution was well on its way. The Ombudsman institution was adopted in June 1962 and commenced its work in 1963. Professor of Socio-Legal Studies Denis Galligan and Research

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[213] Own translation. RA, Box RA/PA-1493/ Fb/0003 – «Taler, artikler», Folder 0002, labelled «Taler VI 1960-1961», «Norsk Samband for De Forente Nasjoner. Pressetjenesten, nr. 24, 5". 1961, 5.
[214] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», "The Individual and the Community (The Rule of Law)", 13-14.
[215] Own translation. RA, Box RA/PA-1493/ Fb/0003 – «Taler, artikler», Folder 0002, labelled «Taler VI 1960-1961», «Norsk Samband for De Forente Nasjoner. Pressetjenesten, nr. 24, 5". 1961, 5.
[216] See page 33.

Fellow in Socio-Legal Studies Deborah Sandler have argued that "many contingencies and variables, from right to right and country to country, are relevant to the implementation of human rights standards: the local, the particular, and the cultural relativities all have to be accommodated in any attempt to make rights effective."[217]

When making these addresses in 1961 and 1962, it was undoubtedly the situation of the rule of law that, in his opinion, needed attention when discussing the standard and implementation of human rights, both in the Norwegian and international context. This is understandable, as Wold was first and foremost a legal actor. After all, it was in this area that he held expertise.

A legal realist?

Scholars have explained Scandinavian reluctance to human rights in the years following the Second World War with emphasising the influence of legal realism among leading lawyers.[218] Historian Johan Strang has written about the difference between legal realism and natural law in his article "Scandinavian Legal Realism and Human Rights: Axel Hägerström, Alf Ross and the Persistent Attack on Natural Law".[219] A legal realist is someone who denounces the notion of natural law, and "the idea that law should reflect a divine or eternal morality."[220] A legal realist believes that moral judgements are neither true nor false, and argues that normative statements have no place in the legal science and should be left for politics to figure out.[221] Politically, legal realists left more leeway for political authorities and especially favouring parliaments over judicial review. In Scandinavia, legal realists are associated with Social Democracy and the rise of the welfare state after the Second World War.[222]

Critics of legal realism have argued that "the strong position of legal realism and its insistence on the primacy of politics over law is a major reason for the comparatively weak protection of the minority, individual and human rights in the Nordic countries. Due to the strong influence of legal realism, it is argued, the judiciary has been marginalised on behalf of the legislative and executive powers, which has manifested itself in Nordic distress regarding 'European constitutionalism', judicial review, and human rights".[223] However, the school of legal realism

[217] Sandler, Deborah, Galligan, Denis. "Implementing human rights" in *Human rights brought home.* Edited by Simon Halliday and Patrick Schmidt, 23-56. Oregon: Hart Publishing, 2004, 55.
[218] See Slagstad, Rune. "Legal Realism in Norway".
[219] Strang, «Legal realism».
[220] Ibid, 202-203.
[221] Ibid, 203.
[222] Ibid.
[223] Ibid, 203-204.

gained less traction in Norway and Finland than in Sweden and Denmark because the first two countries were younger nations of more legalistic political culture.[224] The tradition of judicial review of the legislature is an example of this.

Terje Wold's human rights engagement appeared somewhat fluid in its form, whether it was as a support for the political decisions or in his emphasis on both the international law and the national legal system as providers for human rights protection. As a testimony of this, Strang stated that it is necessary to note that: "neither human rights nor legal realism were fixed and stable doctrines, but contested intellectual legacies that were modified, reinterpreted and redescribed by individual actors in response to continuously transforming circumstances and challenges."[225] Moreover, he underlined the recent turn in histories of human rights to include a more contextual approach, "stressing the shifting meanings of human rights across time, as well as the struggles to define human rights at particular points in history."[226]

Terje Wold argued that what was perceived as human rights at any given time was in a constant development alongside societal development in general. As aforementioned, he argued that human rights and the rule of law were interlinked. Furthermore, Wold stated that the ECHR was a great achievement in the field of international law, and he expected more development in the field of international law as well.[227] This position hints to Terje Wold having opinions as a 'legal realist' in his contemporary understanding of human rights, as he related the legal development of human rights to political decisions. Nevertheless, as Wold advocated for the critical role of judicial review of the legislature, he was not a classical Scandinavian legal realist as outlined by Strang. On the other hand, Wold stated that the citizen had some guarantees of natural justice, as mentioned in the previous section, he appears more on the side of natural law.[228]

Wold himself claimed that it was of little interest to discuss the origin of human rights. He left this open as he questioned: "[Is it inalienable, unchangeable, and fundamental rights that all human beings are born with, as the natural law philosophers are claiming, or must the basis be found within the community's development? […] I leave this question be.]".[229] For Wold, it

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[224] Ibid, 202.
[225] Ibid, 204.
[226] Ibid.
[227] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», "The Individual and the Community (The Rule of Law)", 1962. 7.
[228] See page 45.
[229] Own translation. RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 6-7.

was enough to determine that in all the free constitutions, developed from the late 18th century onwards, a common denominator was that they all had a declaration of some inalienable and inviolable rights that the community was to guarantee for the individual citizen. In his opinion, human rights had thus always been a question of the relationship between the individual and society. He stated: "[It is the society that shall maintain the human rights, and it is always also society that has violated the human rights or is in the incapacity of seeing them through]".[230]

It was not necessary for Wold to determine himself as neither a natural law philosopher nor a legal realist. He was not a classical legal realist, as outlined by Strang. Nor was he a typical natural law philosopher. An important aspect with Wold's understanding is that he saw that the constitution laid the foundation for human rights in a given society and that it was the responsibility of the society to maintain and uphold the human rights. In the contemporary era, this was conceptions that he shared with the conservative side of politics, and not with the ruling Labour Party. As Duranti has noted, conservatives sought to make a [European] human rights system based on the rule of law, a pluralistic system, and greater autonomy for individuals, as opposed to majority rule, a unitary state system and absolute sovereignty of nations and parliaments.[231] However, these considerations were not exclusive to conservatives, nor did all conservatives share these ideas.[232] As such, Terje Wold stands as an example of a legal actor with the same mindset as conservatives, who, at the same time, was on the other side of the political spectrum.

Wold stated that: "[the protection or guarantee that the society gives the individual citizen in their legal status is in reality in itself the most important human right. Without the rule of law, all other rights that the individual has will be of little or no value]."[233] Furthermore, that the individual and the society were interdependent is underscored by this statement:

> "[We are today facing the fundamental problem: power v. right. All experience and all history show us that it is not always easy for the power holders of the society to arrange the power under the law. It is therefore probably right to say that we must thank the society and the constitutions for the human rights and the freedom that we have, but at the same time it is precisely upon the society that the individual must claim protection for their human rights and their freedom]".[234]

[230] Own translation. Ibid.
[231] Duranti, *The Conservative Human Rights Revolution,* 402-403.
[232] Duranti, *The Conservative Human Rights Revolution,* 402-403.
[233] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 9.
[234] Ibid.

While this might be understood as a critique of the government in the post-war political environment, this critique was not intentionally directed against the Labour Party or the employees in public administration. As Johs. Andenæs noted: "[During the entirety of the Public Administration Committee's work, Terje Wold emphasised that the desire for increased security in the administration did not equal a mistrust in the public administration as a whole]".[235] The strong support for the rule of law for was a position he held throughout the 1950s onwards. The fact that he had been a Labour Party politician, and that he saw himself as a social democrat, did not alter this fact, at least not after his period as an elected MP had ended in 1949. Based on the analyses of the addresses in this chapter, Wold held sympathies with both sides of the debate on legal realism and natural law. However, he did not classify himself as a supporter of either school of thought.

Chapter findings

Terje Wold's engagement in the period of 1951 to 1962 on the domestic arena in Norway has been explored in this chapter. He was not interested in the origin story of human rights and placed himself on the side-lines of the legal realism versus natural law debate.

He appeared as a persistent advocate for the importance and protection of the rule of law. Wold acted as a legal entrepreneur in the field of public administration in Norway. He not only chaired the work conducted in the Public Administration Committee but also advocated for this on numerous and various occasions in 1962 and 1963. He helped shape the notion that public administrative procedures were connected to international human rights norms. In his understanding, it was through judicial review of the legislature, that the rule of law and the human rights of the individual citizen in society could be secured.

Wold argued that article 10 of the UDHR, with the right to a fair and public hearing by an independent and impartial tribunal, was the most essential human right, and with this in place, other human rights norms would function as well. Subsequently, he linked the upkeeping of due process rights with human rights protection.

The chapter underlined how Wold had begun including social, economic, and cultural rights in his engagement for human rights in both Norway and abroad. An engagement that intensified further into the 1960s, as the next chapter will underline.

[235] Own translation. Andenæs, Johs. «Ombudsmannsinstitutsjonen 25 år». *Lov & rett*, vol. 79, 1988.

Chapter 4: Transnational networks and international politics in the 1960s

According to biographer Vidar Eng, Terje Wold's interest in and experience with both foreign policy and justice policy was extensive during the 1960s. Eng stated that Wold was especially interested in human rights questions and the rule of law in this period.[236] This chapter underlines how Terje Wold's wide international engagements for human rights matters in the 1960s came as a consequence of more international scrutiny and international focus in general. As explored by historian Steven L. B. Jensen, human rights began to ascertain attraction on the international arena from the 1960s onwards. Jensen related this to how the UN human rights project, deemed a failure due to the Cold War rhetoric in the organisation, was essentially reborn in the early 1960s, in and around the issues of race and religion. It was global political developments in the 1960s, with ongoing decolonial processes and social movements that "challenged and transformed East-West positions in international human rights", which again help steer matters of human rights into international law.[237]

Jensen enhanced that "chronology, precedent, and by extension, political impact leads us towards a greater sense of historicity in the human rights narratives."[238] When Terje Wold engaged himself for international human rights questions in the 1960s, then, he did so with more legitimacy from the societal developments occurring. Wold's persistent engagement for the rule of law from the 1950s was a commitment that he brought with him into the 1960s as well, arguing for this in both transnational and international contexts. A seemingly new engagement during this decade was to highlight cultural, economic, and social rights, both in national and international contexts. Terje Wold's understanding of human rights was thus elastic, in which he related and responded to the broader societal developments.

Terje Wold was a member of the European Movement from 1956 to 1965 and was a member of the ICJ from 1963 onwards. The chapter examines Wold's engagements in these transnational settings, as issues brought forward in these settings helped shape his understanding of human rights in this decade.

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[236] Eng, *Terje Wold,* 247.
[237] Jensen, *The Making of international human rights*, 2.
[238] Jensen, *The Making of international human rights,* 15.

Intensification of international human rights matters

The 1960s saw an increased public outcry about human rights violations occurring around the globe. According to historian Hanne Hagtvedt Vik, the most crucial reason for why the 1960s saw a rise in human rights-talk on an international scale was that with the ongoing decolonisation processes, new states were embedded into international organisations like the UN.[239] These newly formed states were more inclined to vote for new conventions and declarations. Additionally, the spread of information technology, with the Vietnam War being the first war to get live news coverage, and the establishment of NGOs such as Amnesty International in 1961, contributed to human rights gaining international traction.[240] Historian Steven L. B. Jensen argued that the 1960s saw a significant reframing of the human rights project, brought forward by an emphasis on racial discrimination and religious intolerance.[241] The 1960s saw increased attention to the principle of universality in international law, in addition to universality as a principle for the type of organisation that the UN embodied, with new states increasingly being embedded as member states.[242]

Terje Wold was also engaged in work against racial discrimination. His engagement against racism was permeated by his concern for the upkeeping of international law and the rule of law. During a speech to a student group from the University of Life Sciences in 1962, he talked about the Apartheid-regime in South-Africa.[243] South Africa had implemented the legal system of Apartheid-policy in 1948 to segregate the non-white population from the white, both geographically and in all areas of society, in order to preserve the white minority population.[244] Wold stated that human rights were political questions in the UN that each member state still understood as a matter of internal affairs. He argued that the development in the UN up to that point had hampered and hindered the understanding of human rights as being universal in their

[239] Vik, Hanne Hagtvedt. «Internasjonale menneskerettigheter» in *Krig og fred i det lange 20. århundre.* Edited by Hilde Henriksen Waage, Rolf Tamnes and Hanne Hagtvedt Vik, 259-282. Oslo: Cappelen Damm Akademisk, 2015: 271.
[240] Ibid, 272.
[241] Jensen, *The Making of International Human Rights,* 276
[242] Ibid, 4.
[243] This speech is explored in chapter three, underlining among other things that Wold was beginning to show tendencies of global sensibilities in his understanding of human rights. Because the analytical points of universality and racial discrimination are explored in this chapter, however, elements from the speech is included here as well.
[244] Eriksen, Tore Linné. *Sør-Afrikas historie. Forkoloniale samfunn, apartheid og frigjøring.* (Kristiansand: Portal forlag, 2016), 96-100. Associate Professor of African and African Diaspora Studies Xavier Livermon has outlined that the Apartheid-regime did not suddenly emerge in 1948. Instead, it was a "culmination of a number of policies of colonial capitalism that emerged from the very founding of South Africa as a Dutch colonial outpost in 1652." Livermon, Xavier. "Apartheid" in *Keywords for African American Studies.* Edited by Erica R. Edwards, Roderick A. Ferguson, Jeffrey O. G. Ogbar, 15-18. New York: NYU Press, 2018: 15.

reach. He especially mentioned South-Africa as an example in this, stating that the country had to depart from the Apartheid-policy due to its violation of the human rights commitments.[245] In Wold's opinion, when human rights were agreed to in international conventions, they had to be upheld by the state in question. Furthermore, human rights were not only a matter of internal affairs but of international concern. Terje Wold spoke about the universality of human rights, both concerning international law and the UN. This is a testimony of Jensen's argument about the growing understanding of human rights as universal in international relations.

Wold went on to tell the students about a meeting he had had with the first Nobel Peace Prize laureate from South Africa, the teacher, priest, and politician Albert Luthuli. In meeting with Luthuli, Wold was interested in hearing about how the South-African judges reacted to the 'race-laws' and the Apartheid-policy in South-Africa.[246] To contextualise his question, Wold outlined how the Supreme Court of Norway had shut down their offices during the German occupation of the Second World War. He stated that the Supreme Court did not want to surrender Germany's occupational power as it violated international law and the Constitution.[247] Luthuli answered Wold that to the best of his knowledge, all the judges in South-Africa applied the 'race-laws' as it was the current policy.[248] This event exemplifies that the upkeeping of the rule of law was included in Wold's engagement against racial discrimination. Because Wold perceived the 'race-laws' in South-Africa to be human rights violations, he meant that the South-African Supreme Court had to respond to this by shutting down their offices. That he saw the guarantee the rule of law as a prerequisite for the upkeeping of human rights is evident in this instance.

Even though Wold kept his focus on the rule of law, he also engaged in a broader set of human rights during the 1960s. His wider engagement can be compared to that of the more famous American jurist Louis Henkin (1917-2010). Moyn has written about Henkin's career in his book

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[245] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 14-15.
[246] Own translation. When I apply the word 'race-laws', this is because it was the word Terje Wold used in his speech.
[247] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 15; Historian Erling Sandmo has written about the road to shutting down the Supreme Court in December 1940. See chapter 8 «Den gjenværende statsmakt: Høyesterett i 1940» and chapter 9 «I andres sted: Den kommissariske høyesterett 1941-1945» in his book *Siste Ord: Høyesterett i norsk historie 1905-1965.* (Oslo: Cappelen, 2006).
[248] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler 1962-1964», Folder 0001, labelled 0001 «Taler VII 1962-», «Samfunnet og menneskerettigheter», 1962, 15.

The Last Utopia: Human rights in history.[249] Henkin developed an enthusiasm for human rights at a surprisingly late date, seemingly out of nowhere.[250]

It is beneficial to compare the two actors – at least when looking upon *why* their human rights engagement increased as it did. In Moyn's assessment of Henkin, he argued that "it seems from a look at a career like Henkin's that it was the radical shift in public climate that best accounts for the mutation that occurred. Human rights were reclaimed from anticolonialism, and made a central part for the first time of the foreign policy of American liberalism".[251] Intensified public outcries for human rights in general during the 1960s can contribute to explaining *why* Terje Wold began engaging himself in a more varied set of cases regarding human rights. This is a similarity to Henkin's increased engagement. When human rights were applied in new and different contexts in the international arena throughout the 1960s, this altered and broadened how and why Wold engaged with matters of human rights. In the previous chapter, I discussed the speeches held in Ås and in Oslo in 1962 and the global focus that these revealed. On these occasions, he emphasised especially the rule of law. On other occasions, parallel in timing, Wold began engaging in other dimensions of international human rights norms.

To exemplify this increased focus, Wold engaged himself with questions of minority rights in 1962. He gave a speech to the Nordic Sami Conference in Kiruna on what minority rights and human rights the Sami population could claim in international law.[252]

In his speech to the Nordic Sami Conference, Wold concluded that there were no internationally established legal criteria that could determine what groups were to be defined as a minority in the contemporary era. In his opinion, nevertheless, the Sami population *did* constitute a minority group in international law. He stated that minorities were protected by and could call upon human rights protection in their pleas. He referred to article 14 in the ECHR in this. However, he stated that even though this article determined that equal rights for minority groups within a country had to apply, it did not state that certain rights were applied.[253] Wold argued that

[249] According to Moyn, Henkin was a leading figure in the US in regard to international law. Henkin is arguably most known to the public as the author of the book *The Rights of Man Today* from 1978. Moyn, *The Last Utopia,* 193-211.
[250] Ibid, 201.
[251] Ibid*,* 209.
[252] St. meld. nr. 21 (1962-1963), *On cultural and economic measures of special interest for the Sami-speaking population.* Oslo: Ministry of Church and Education. https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1962-63&paid=3&wid=b&psid=DIVL599
[253] Article 14 in the ECHR states that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Retreived 30.5.2020 from https://www.echr.coe.int/Documents/Convention_ENG.pdf

minority groups should have the right to certain special protection from their respective states, especially in order to preserve their languages. n other words, Wold argued for more robust protection of minority groups' cultural rights, and that these should be specified by international law.

Only in 1992 did the COE's member states agree to adopt The European Charter for Regional or Minority Languages, and by this, underscoring the certain right minority languages held in international law.[254] Terje Wold must be seen as a pioneering voice in this, as he argued for this certain right of languages three decades before the European charter was adopted. This is not to state that he contributed in shaping this legal practice; it is only an observation that he was an early voice in arguing for more commitment to cultural rights for minorities. As Jensen underlined, "the power of law is first constituted in a belief of law's rule represented in ideas and practices and only later does institutional decision-making appear".[255]

Wold also said it was important to differentiate between the certain rights that a minority group should be granted by international law and the societal tasks that a county or a group should expect the state to resolve in the national legal system. He argued: "[In all societies there will be areas – districts, groups – that society must take special consideration in relation to social and economic matters]."[256] He exemplified this with how the specific reindeer farming areas in Norway constituted such an area that should, in his opinion, be protected by the national legal systems.[257]

Wold stated that the considerations of these specific cultural and economic rights were of *political* concern, and not legal. It was therefore not up to him, as a legal actor, to further these rights. Nevertheless, he stated that the Norwegian society as a whole, and not only the Sami population, would benefit in keeping the Sami culture preserved as it was of value to the shared

[254] Council of Europe. "European Charter for Regional or Minority Languages. Retreived 1.6 from https://www.coe.int/en/web/european-charter-regional-or-minority-languages

[255] Jensen built his arguments on the book *The Cultural Study of Law* by the American legal scholar Paul Kahn. According to Jensen, Khan argued that to understand the power of law, we must start by looking at the legal imagination instead of paying too much attention to legal institutions" and that the legal imagination has "the power to represent the world one way rather than another, to create expectations among one set of possible answers, and to limit our capacity even to imagine alternatives." Kahn, Paul. *The Cultural Study of Law. Reconstructing Legal Scholarship*. (Chicago: 1999), 135–136 in Jensen, *The Making of International Human Rights,* 12.

[256] St. Meld nr. 21 (1962-1963), 58.

[257] Ibid, 56-58.

cultural heritage in Norway.[258] In 1978, over a decade after Wold stated this as an economic right, Norway adopted the act on reindeer farming areas.[259]

When Wold argued for these cultural and economic rights for minority populations, he held characteristics as a legal entrepreneur of human rights. Although Wold stated that it was not up to him – as a *legal* actor – to claim these rights, he *did* make a case for them. In his opinion, these cultural and economic rights should be protected by a combination of international and national law. In arguing for this, Wold's interpretation of national and international law took a normative turn. He innovated the understanding of what place minority rights were to have in both the international and national society. That his speech was included in the parliamentary white paper is a testimony of how this was a legal development of minority rights. Wold acted in line with what Madsen termed as 'legal diplomacy', in that he operated in the intersection of politics and law, arguing for legal development in both international and national law. As Madsen argued: "during the first two decades of the life of European human rights law, this new legal knowledge and *savoir-faire* was, at the end of the day, a very advanced form of diplomacy: legal diplomacy."[260]

Social rights in the International Commission of Jurists

Terje Wold's engagement and understanding of economic, social, and cultural rights were developed further into the 1960s, as he engaged in the transnational network of the ICJ. The ICJ is a transnational non-governmental organisation (NGO) devoted to the understanding and observance of the rule of law and the legal protection of human rights throughout the world.[261] The ICJ was founded in Geneva, Switzerland, in 1952, and Terje Wold became a member in 1963.[262]

Initially, the organisation, comprised of jurists from the Western world with interest for international law, worked to promote the rule of law, as a manner to recruit "free world" jurists in the opposition of the "socialist legality" in the East.[263] Moyn noted that the organisation

[258] Ibid, 63.
[259] The first act on reindeer farming areas in Norway was adopted in 1978. The new act on reindeer farming areas was adopted in 2007. https://lovdata.no/dokument/NL/lov/2007-06-15-40
[260] Madsen, "Legal diplomacy", 78-79.
[261] The International Commission of Jurists. "About". Retreived 2.6.2020 from https://www.icj.org/about/
[262] Stortinget. «Terje Wold". Retreived 2.6.2020 from https://stortinget.no/no/Representanter-og-komiteer/Representantene/Representant/?perid=TEWO.
[263] Claude, Richard Pierre. "Reviewed Work(s): The International Commission of Jurists, Global Advocates for Human Rights by Howard B. Tolley" In *Human Rights Quarterly*, 16, no. 3 (1994), 576-578.

slowly incorporated human rights in its framework, beginning from the late 1950s and early 1960s. They began issuing country reports, trial observations, and inquiry committees about specific abuses of human rights and the rule of law.[264] In the beginning, the ICJ's focus was thus on violations of political and civil rights. However, in line with how human rights reached more universal understanding in the UN in the 1960s, the ICJ's leader during the 1960s, the Irish politician Sean MacBride, envisioned how the UDHR needed to be "the Charter of liberty of the oppressed and downtrodden" wherever they were in the world.[265]Consequently, the ICJ began focusing more on social, cultural, and economic rights as well.

From an ICJ-congress in 1965, Terje Wold himself noted that: "[Particularly noteworthy is […] that practicing lawyers must give part of their time to familiarize themselves with social and economic matters and the way that these issues can be resolved within the framework of the law]".[266] This relates to what Moyn underlined, that "the rise of human rights in international law occurred not for reasons internal to international law as a profession, but due to the ideological changes that set the stage for a moral triumph of human rights – one that in turn gave a whole new relevance to the field."[267] When the ICJ underlined the role and position that social, economic, and cultural rights then, Terje Wold saw this as a noteworthy development in the legal field of human rights.

Two written transcripts from Wold's commitment in the ICJ are relevant to assess when examining his increased engagement.[268] Both transcripts are from 1968. They are analysed in order to better reflect on how his engagement was shaped by events and cases occurring in the 1960s in general. Moreover, they also outline how the ICJ partly contributed to shaping Wold's engagement. The first transcript is a speech, held on two occasions to the Norwegian Bar Association in Bergen and Stavanger. The second is an article about the right to social services in the celebratory issue of the *Journal of the International Commission of Jurists*, as 1968 was the UNESCO-appointed International Year of Human Rights, celebrating the 20th anniversary

[264] Moyn, *The Last Utopia,* 275; See Tolley Jr. Howard B. *The International Commission of Jurists: Global Advocates for Human Rights*. (Philadelphia, University of Pennsylvania Press, 1994); International Commission of Jurists. "Part One: 1952-1970", Retreived 15.5.2020 from https://www.icj.org/history/part-one-1952-1970/#lightbox/2/.

[265] Lauren, *The Evolution of International Human Rights,* 240-241.

[266] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», «Juristenes internasjonale oppgave», 1968, 10.

[267] Moyn, *The Last Utopia,* 210.

[268] Supplementing material on "[Norwegian jurists' international cooperation with the ICJ and the WPTLC]" – the International Commission of Jurists and the World Peace Through Law Centre, is located at the National Archives in Oslo. Due to the spread of COVID-19, I have not been able to examine this material, as the archive locked down from March 12. 2020.

of the UDHR. Among the themes he touched upon in these two instances were that international jurists had a role in the contribution to the international legal society, that the ICJ was a commitment against totalitarianism and that internationally oriented jurists functioned as international ombudsmen reporting on human rights violations. He also reflected on how social, economic, and cultural rights had reached less progress in the international arena than civil and political rights. He related this to how human rights had been discussed in the UN. He thus saw the expansion in the UN in the 1960s as a welcome development.

Terje Wold outlined that from its beginning, ICJ had been working against violations and legal discrepancies in communist countries. He noted that the ICJ was an organisation that "[directed the spotlight against dictatorship, terror, and violations without consideration of political philosophy]".[269] Wold mentioned how this included scrutiny of the communist regime on Cuba *and* the Franco-regime in Spain. Opposition against totalitarianism and communism was a persistency in Wold's engagement, from opposing the Soviet Union and Spain as an MP in the late 1940s to his commitment to the ICJ in the 1960s. This was not specifically an engagement *for* human rights, but it was an engagement against totalitarianism.

Historians Akira Iriye and Petra Goedde have argued how the battle over how to define human rights in the post-war period almost immediately became entangled into the Cold War struggle between the East and the West. The US and Western Europe claimed that communism represented a violation of human rights because it deprived those living under its rule of fundamental rights and freedoms. The Soviet Union stated that the West's capitalist system propagated human rights violations against the poor, as it fostered economic exploitation.[270] The ICJ was also an arena where the ideological opposition between the East and the West proved to be a driving force. However, as Wold outlined, the ICJ had opened up for examinations of legal relations in other countries as well.[271] Wold mentioned the French violations against Tunisia in the Bizerte-conflict and the Cassel-case in Liberia occurring in 1961 as early cases where ICJ took the initiative, and he mentioned the Vietnam war as the most recent case.[272]

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[269] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», «Juristenes internasjonale oppgave», 1968, 6.

[270] Iriye, Akira, Goedde, Petra. "Human Rights as History", in *The Human Rights Revolution. An international history,* edited by Akira Iriye, Petra Goedde, and William I. Hitchcock,3-26. Oxford University Press, 2012: 6-7.

[271] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», «Juristenes internasjonale oppgave», 1968, 3-4.

[272] Ibid, 4.

According to Wold, the ICJ functioned as a watchdog service and as an international ombudsman's institution for human rights and the rule of law.[273] Wold mentioned the Norwegian ambassador Edvard Hambro, secretary-general of the Norwegian Bar Association Rolf Christophersen, and the lawyer Erik Paulson as some of the international jurist-ombudsmen with a mandate to report on human rights abuses and violations of the rule of law.[274] Wold understood the ICJ as an international ombudsman's institution, conducting reports about the rule of law and human rights violations on an international scale. As explored in chapter three, Wold was in charge of the Public Administration Committee that recommended the establishment of the Norwegian Parliamentary Ombudsman Act of 1963.[275] It is thus likely that Wold perceived the Norwegian ombudsman institution as an institution that could have a mandate of specific human rights protection. In Norway, human rights protection was included in § 3 of the ombudsman's act in 2004.[276]

Terje Wold claimed that political and civil rights had seen more progress than social, economic, and cultural rights in the international arena.[277] He argued that personal freedom and security, equality before the law, and civil and political rights were not static rights. They were subject to the law of a changing society, and had to "meet the needs of a free community at every stage of its development".[278] While he understood political and civil rights as a part of a longer evolution, he stated that the idea of social services as a human right was a relatively recent development.[279] Wold commented on the UN's development, from the UDHR in 1948 to the two Covenants agreed upon in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).[280] Wold hoped that the birth of these Covenants would help make sure that the member states implemented human rights in their respective countries, political and civil rights, and social, economic, and cultural rights. Historian Devin O. Pendas argued that even though

[273] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», «Juristenes internasjonale oppgave», 1968, 4.
[274] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», «Juristenes internasjonale oppgave», 1968, 6.
[275] See chapter three.
[276] The Norwegian Parliamentary Ombudsman Act, "Lov om endring i lov 22.6.1962 nr. 8 om Stortingets ombudsmann for forvaltningen". https://lovdata.no/dokument/LTI/lov/2004-01-16-3
[277] RA, Box RA/PA-1493/Fb/L0006 – «Taler, artikler 1967-1972», Folder 0003, labelled «Taler XIII 1968», Journal of the International Commission of Jurists. June 1968, Vol. IX, no. 1. Wold, Terje, The right to social services" 1968, 41.
[278] Ibid.
[279] As outlined in chapter three, Wold was not concerned with the origin story of human rights. His view was more of a pragmatic kind, stating that because most of the free constitutions of the 18th century onwards had included parts about rights in some form, he deemed human rights to be legitimate in a legal sense.
[280] The Covenants entered into force in 1976.

"human rights claims have often sought legal validation, the success of human rights rhetoric has frequently derived from its plasticity and expansiveness. Human rights can be, and frequently have been, defined broadly".[281] The fact that Wold began to underline social, economic, and cultural rights must be seen in a broader historical context of the societal and legal development in general.

The European Movement and the EEC-debate in 1962-63

Historian Marco Duranti wrote how European integration and human rights were connected through conservative efforts to "restore the ethical unity of European civilization".[282] This reached its culmination in the adoption of the European Convention on Human Rights (ECHR) in the Council of Europe (COE) in late 1950. Five months later, in 1951, the European Coal and Steel Community (ECSC) was launched. It took another seven years before the Treaty of Rome was signed, and with it came the establishment of the European Economic Community (EEC) in 1957.[283] The following section examines Terje Wold's engagement for European integration by being an active supporter of the EEC. Human rights protection and the upkeeping of the rule of law were reasons behind his support. Terje Wold was the second leader of the European Movement in Norway. This was a position he held from 1956 to 1965.[284] As a leader, Wold engaged himself in ideas of European integration, both regarding moral issues such as human rights, as well as political cases, as the EEC-debate in 1962-63.

Duranti claimed that only recently had the history of European integration "been told trough a transnational lens."[285] He argues that in order to give a more comprehensive narrative on the European project, we need to apply both 'romantic' and 'technocratic' dimensions. He means by this that the romantic strands of Europeanism have traditionally been the histories of the various ideas of a common Europe. At the same time, the technocratic dimension is the history

[281] Pendas, Devin O. "Toward World Law? Human rights and the failure of the legalist paradigm of war", in *Human rights in the twentieth century.* Edited by Stefan-Ludwig Hoffman, 215-235. (New York: Oxford University Press, 2011), 235.
[282] Duranti, *The Conservative Human Rights Revolution,* 345.
[283] Ibid.
[284] Brathagen noted that the Norwegian delegate from the Conservative party, Herman Smitt-Ingebretsen, was one of the few Norwegian delegates in the Consultative Assembly of the COE in 1949 who was also a member of the European Movement. Smitt-Ingebretsen was the movement's founder for the Norwegian branch and the first leader from its establishment in 1949 to 1956; Own translations. The European Movement in Norway was established in 1949 under the name "[The European Movement's Norwegian Council]" and changed its name in 1965 to "[The European Movement in Norway]".
[285] Duranti, *The Conservative Human Rights Revolution,* 346.

of international institutions, organisations, and law.[286] In exploring Terje Wold's involvement in the European Movement, both dimensions are needed, especially when exploring his engagement for the European project to human rights. It is the Norwegian EEC-debate from 1962 and 1963 that most prominently appear in his private archive. He held several speeches during these two years, connecting European integration to ideas of freedom, international peace, and human rights.

Norway had to consider membership in the regional organisation because of external factors. Due to British reluctance for the European project during the 1950s, Norway was not inclined to join either. As Eriksen and Pharo stated, Norwegian membership in the EEC without British membership was not likely.[287] However, following the British and the Danish applications over the summer of 1961, the debate on Norwegian membership was triggered. It forced the Norwegian government decide over the autumn and winter of 1961 and 1962.[288] The pro-European integration movement in Norway was scarce, both in the political landscape and in the general population.[289] Despite this, the Norwegian application for membership was handed over to the EEC in May 1962.[290]

Terje Wold engaged himself in the debate and showed himself as a strong supporter of the EEC in 1962 and 1963. As the leader of the Norwegian branch of the European Movement, he held speeches on several occasions, both internally to the members of the European Movement, and externally, to different labour unions in Norway. The following section examines his argumentations for joining the EEC in these various settings. The speeches are analysed side-by-side in order to make a more coherent narrative. An argument was that because Norway had already ratified the supranational institutions of the COE, he saw no legal implications of the EEC on the Norwegian legal system. Furthermore, he argued that Norway's future was interlinked with Europe. Wold's argumentation of support was also global in its reach. As Norway had begun with international aid-campaigns, he considered European cooperation to be a given as well. Additionally, he argued that further legally binding European integration was a means in better securing the rule of law, human rights, and not least, international peace and security. Common for the speeches on the EEC is that he appears as both a political and a legal actor.

[286] Duranti, *The Conservative Human Rights Revolution,* 345
[287] Eriksen, Pharo, *Kald krig og internasjonalisering,* 327.
[288] Ibid.
[289] Ibid, 328.
[290] Ibid, 331.

Wold argued that a Norwegian commitment to the EEC was in line with the commitments Norway already had taken in international law, with the COE as an example of this.[291] At the time in 1962, Norway had yet to accept the jurisdiction of the ECtHR. However, Norway had ratified the ECHR and the right to individual petition, in 1951 and 1955. Accordingly, regarding the Treaty of Rome, he argued that the individual petition right was an innovative step in international law, and it had laid rest to the "[orthodox teachings about the unrestricted right of national sovereignty. In principle, then, it is no difference between the ECHR and the Treaty of Rome's supranational arenas.][292]

Wold understood the Treaty of Rome to be limited in scope, with a clear objective on free movement of work, capital, and transport policy. If the Treaty of Rome was to succeed, he deemed it crucial to have supranational arenas that could reach binding decisions.[293] In other words, if international cooperation was to succeed, supranationalism was a prerequisite. Wold's understanding of this remained the same, whether the discussion was on the legal ramifications of the ECHR or of the Treaty of Rome. Nevertheless, he revealed some initial objections against the idea of another international court and its authority to set aside a Norwegian court judgement, even if this only applied to the cooperative areas of the Treaty of Rome. [294] It is interesting to note that this preliminary objection was similar to how he had opposed to the ECtHR in 1949, on the grounds of duplication of work. However, he stated that when he had considered it more in-depth, he had to admit that it would not be possible to establish a common market unless the foundation for the treaty was interpreted in the same way in all member states. Therefore, he deemed it necessary that the member states had to agree to supranational court – in this instance, the European Court of Justice (ECJ) – and that this institution had the authority to reach a final decision.[295]

Wold also saw European integration as an advantage in securing the Norwegian state. He connected this with how Norway's fate was interlinked with Europe, given the experiences of the Second World War. This reveals an enduring engagement, as he related European integration to his argumentation for NATO in the late 1940s.[296] Wold recalled a speech that he had heard during the Second World War. This war-time speech was held by the Norwegian

[291] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0001, labelled «Taler VII», "Meddelelse fra formannen nr. 58, den 10. September 1962. Innhold: Norge og Europa. (Et foredrag holdt av høyesterettsjustituarius Terje Wold", 1962, 12.
[292] Ibid.
[293] Ibid.
[294] Ibid, 13.
[295] Ibid.
[296] See more on NATO in chapter two.

historian and politician from the Liberal Party (*Venstre*), Jacob S. Worm-Müller, in 1941. Worm-Müller had remarked that although the future appeared dim at the time, the future of Norway was forever linked with the European as well as France's fate.[297] Wold stated how: "[I could not completely understand it at the time, but the thought has been with me]" that "[when one considers the question of our continent's future in serious assessment, one will not, I believe, get rid of the notion made by Worm-Müller in 1941]".[298] Wold believed it was essential to look at foreign policy development in Europe after the war. He argued that: "[The strong development in the European cooperation that has advanced after the war – binding international cooperation that in many ways have been epoch forming and gone a new way in the area of international law.]"[299]

Another aspect of Wold's support for the EEC was related to how the Norwegian foreign policy had turned to the Global South in the 1950s. He asked of what use it was to "[make plans for the backward countries in Africa]" and "[bringing aid to India]", if Norway could not overcome themselves and "[reach out our hand for cooperation and community with the people in our continent that are the closest to us]". [300] During the early 1950s, Norway had begun with internationally oriented aid-programs to the Global South, such as the pioneering Indian-Norwegian fishing project, the *Kerala-project*, spanning from 1952 to 1972.[301] In Wold's opinion, the support of a regional cooperative initiative like the EEC was just as important as supporting international aid programs, such as the mentioned Kerela-project. In his support of the EEC, Wold specifically mentioned human rights and the rule of law. He stated that the basis for the decision on the EEC had to be on "[understanding, togetherness, and community because this is the only thing that brings about what we all want: peace, human rights, and the rule of law."][302] Although he understood that questions of economics were an important reason for

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[297] In 1941, Worm-Müller had just travelled all around the world to witness the war efforts of the Allies. He had made his way to London, where he held a speech for the representatives of the Norwegian exile government, among them the then current minister of justice Terje Wold. At that point in time, the future appeared bleak, with Italy shifting side to the Axis powers, and France being beaten in their own territory. RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0001, labelled «Taler VII», «Tale ved Europabevegelsens Norske Råds middag på «Braemar», 29.1.1962", 1962, 2; Italy declared war on France and Britain in June 1940 and by October 1949, France was overtaken by Germany. Bell, P. M. H., *The Origins of the Second World War in Europe.* (UK: Pearson Longman, 2007), 357-358.
[298] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0001, labelled «Taler VII», «Tale ved Europabevegelsens Norske Råds middag på «Braemar», 29.1.1962", 1962, 3.
[299]Own translation. Ibid, 4-5.
[300] Own translation. RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0001, labelled «Taler VII», «Fra møte i Universitetets gamle festsal». 11.4.1962, kl. 20, arrangert av Europabevegelsens norske råd", 1962, 1.
[301] Eriksen, Pharo, *Kald krig og internasjonalisering,* 173-175.
[302] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0001, labelled «Taler VII», «Fra møte i Universitetets gamle festsal». 11.4.1962, kl. 20, arrangert av Europabevegelsens norske råd", 1962, 1.

which the decision had to be made, he argued that economics was not everything. Idealistically, he argued that "[economics and standards of living must not be the most important, and neither the decisive point in this debate]".[303] In his opinion, further European cooperative efforts, like the EEC, would contribute to lasting peace and security on the European continent. Hareide underlined how Terje Wold supported the idea of an extensive European economic, political, and legal cooperation, as he believed this would contribute to the freedom and peace of the European people.[304] Thus, it was through regional political and legal cooperation in Europe that Wold believed peace, human rights, and the rule of law could be achieved.

Historian Hilary Allen has sketched out the Norwegian application-process to the EEC, spanning from 1962-63. The issue was decided not by the Norwegians themselves, but by the veto on British membership from France in January 1963. This effectively put an end to the negotiations on the Norwegian application process as well.[305] In an outcry over the results, Terje Wold gave a passionate speech to the European Movement's Norwegian Council in late January 1963. He claimed that the veto by the French president Charles de Gaulle represented a symptom of a nationalistic power policy which threatened Western cooperation.[306] Wold argued that Norway should not give up their work towards membership in the ECC. He ended his speech with how "[De Gaulle has to be stopped before it is too late]".[307] His ardent choice of words expresses how dramatic he considered the French veto to be.

The EEC-debate was a difficult case in the Norwegian political landscape. The fact that Terje Wold, as the Chief Justice of the Supreme Court, both led the European Movement's Norwegian Council and had an open willingness for membership, could have become quite controversial. Vidar Eng claimed that Konrad Nordahl, the then-current leader of *Arbeidernes Faglige Landsorganisasjon* (the Norwegian federation of trade unions – LO), was sceptical about Wold's overly political engagement in the case.[308]

For Terje Wold himself, the normalisation might have been a blessing in disguise, as questions of his conceivably too strong political engagement had come under fire before.[309] Terje Wold's,

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[303] Own translation. Ibid.
[304] Hareide, "Norge og Den Europeiske Menneskerettsdomstolen", 105.
[305] Allen, Hilary. *Norway and Europe in the 1970s.* (Oslo: Universitetsforlaget, 1979), 51.
[306] RA, Box RA/PA-1493/Fb/L0004 – "Taler, artikler", Folder 0002, labelled «Taler VIII», «Tale ved Europabevegelsens middag om bord M/S Blendheim» 31. januar 1963", 1963, 1.
[307] Own translation. Ibid, 2.
[308] Eng, *Terje Wold,* 261. Eng stated that this possibly applied for the Labour Party Prime Minister Einar Gerhardsen and the leader of *Norsk Arbeidsgiverforening* (the Norwegian employers' association – NAF), A. P. Østberg as well.
[309] Wold had been criticized for his political engagement for Troms and Finnmark during his time in the United Nations War Crime Commission (UNWCC) in 1945-1946. Eng, Vidar. *Terje Wold,* 249. He became once again

and the Supreme Court's position in the post-war social democratic society were redeemed to be too political. Historian Jens Arup Seip argued for this view, in the debate on the Supreme Court's political position with jurist Johs. Andenæs in 1964.[310] Seip argued that in politically charged cases, the Supreme Court based their decisions on what the politicians wanted. He argued that the judges "[made an effort to turn the law in the direction of what way the political compass pointed]."[311] Both Wold and Andenæs responded to the criticism immediately. Wold published an article in the journal *Lov og Rett*, with a quantifiable overview of all the cases the Supreme Court had taken on where the state was a party during the last twenty years.[312] Andenæs nuanced the debate even further and stated among other things that while the Supreme Court did have a political function, this was not the same as being a political arena, as to which Seip had claimed it to be.[313] Nevertheless, based on the analyses of the speeches Terje Wold held on the EEC in 1962 and 1963, it is not that surprising that a legal actor of his position, being the Chief Justice of the Supreme Court, received critique from actors like Konrad Nordahl and Jens Arup Seip.

Anniken Hareide outlined that it was difficult to trace if Terje Wold engaged in work on the international arena because he viewed this to be especially meaningful or because it was a consequence of his extensive participation.[314] She saw this as a question of cause or effect and stated that it would be of interest to reveal what effect the participation in international work had on his political views.[315] Based on the analyses of the various engagements Terje Wold had for European integration, he *did* understand this to be a political area that was especially important in order to better secure the international peace, security, and human rights. His European engagement included commitments to NATO and COE, as underlined in chapter two and support of the EEC, as shown in this chapter. The reason behind his continued support was that these supranational organisations had binding decision-making powers that would make the member states more compliant with international law. Moreover, through this, he believed that international peace and security could be reached. Although being influenced by the Cold

criticized for being overly politically engaged in 1965, with revisiting of the role of Nygaardsvold's exile government during the Second World War and the treatment they received in the post-war Norwegian political landscape. See chapter 13 in Eng, "1965: "En fæl vår med mange stygge angrep».

[310] See more on this debate in Sandmo, *Siste ord*, 14 and 498-99; Kierulf, Anine, Slagstad, Rune. «Historikeres fortellinger om juss». *Tidsskrift for rettsvitenskap,* 125, no. 4, (2012): 421-457, 421.

[311] Sandmo, *Siste ord,* 14.

[312] Wold, Terje. «Domstolenes deltakelse i justisforvaltningen" *Lov og Rett,* 3, vol. 7, (1964).

[313] Kierulf, Slagstad, "Historikeres fortellinger om juss", 425.

[314] Hareide outlined that this question also applied for Frede Castberg, Edvard Hambro and Peer Berg as well. Hareide, "Norge og Menneskerettsdomstolen", 107.

[315] Ibid, 107.

War rhetoric as a politician in the late 1940s, his support for supranationalism in Europe was a consistent engagement.

Chapter findings

This chapter has outlined how the 1960s saw an intensification in matters of human rights on the international scale. Underlined in this chapter is how this expansion affected Terje Wold's understanding and emphasising of human rights. He began engaging himself against racial discrimination, arguing that the Apartheid-policy in South-Africa constituted as human rights violations. Subsequently then, as he understood human rights and the rule of law to be interlinked, he argued that the South-African Supreme Court had to shut down their offices, as the Apartheid-policy was a breach in the rule of law.

Terje Wold held characteristics as a legal entrepreneur of human rights as he engaged himself in questions of minority rights of the Sami-population. He acted in the intersection of politics and law, claiming in his opinion that the cultural and economic rights of minorities had to be better secured in both international and national law. He was innovative in arguing that certain specific laws had to apply for minorities in order to preserve their rights better.

He argued how the ICJ's members acted as internationally oriented ombudsmen, with the mandate to report about human rights violations. He furthermore argued for social, economic, and cultural rights as being essential human rights norms. Wold's inclusion of these rights as important during the 1960s must be understood in the wider historical context as well as that the ICJ had begun including social and economic rights in their work.

In his engagement in the European Movement, Terje Wold advocated for Norwegian membership in the EEC. He argued that European integration through further binding international cooperation, with supranational arenas, was important in order to gain a deeper protection of the rule of law and human rights. It was through international and regional cooperation that Terje Wold believed human rights could be upheld.

Chapter 5: Conclusion

This master thesis has explored Terje Wold's human rights engagement from 1945 to 1968. His role as a politician in the 1940s, the work in the Public Administration Committee in the 1950s, and engagements in international politics and transnational networks throughout the periodisation have been examined in this thesis. I wanted to get a deeper understanding of how his view on human rights norms was expressed, shaped, and altered. The thesis has underlined how some engagements remained while others were both altered and expanded throughout the period.

Human rights norms did not play a significant role in Terje Wold during the 1940s. When engaging with human rights in this period, it was mainly in a symbolic manner. During his time as a Member of Parliament, it was fear of totalitarian regimes, with the communist regime in the Soviet Union and the fascist regime in Spain that were central concerns. However, as he talked about these totalitarian regimes, he included concerns about human rights, the rule of law, and international peace.

When Wold engaged himself in the 'Spanish case' in the UN in 1946, he argued that the UN should have the authority to intervene in Spain due to its fascist government. He believed that Spain represented a vital threat to international peace, and he considered it plausible that the UN could intervene within Spain's internal affairs. Wold showcased an openness towards supranationalism as a concept, which was a viewpoint that endured throughout the thesis periodisation.

A significant finding is that his engagement for European integration endured throughout the thesis periodisation. He engaged himself in the NATO-debate, the COE, and the EEC-debate. In these engagements, human rights norms came up in a variable degree. More so in the COE than in NATO and the EEC. However, important aspects of his European engagement are that he believed that increased European integration was imperative because it could lead to international peace, it could provide better reassurances for upkeeping the rule of law for the respective member states, and it could make available stronger guarantees for upholding human rights. The fact that all these organisations offered some level of supranational institutions was crucial in this understanding. In 1963, his engagement for supranationalism reached its peak, as he argued how the ECHR should have superiority over the Norwegian law.

Terje Wold's reflections on NATO shows two essential aspects of his engagement. It was imperative to secure Norway against the potential threat of the Soviet Union while also stressing

that the security cooperation in NATO was not an inherently American idea or project. Terje Wold *did* relate membership in NATO to human rights. He believed it was through such international cooperative efforts that international peace, security, and human rights could be achieved. Nevertheless, as argued by Duranti and Moyn, human rights played more of a symbolic role in opposing totalitarian regimes, both fascist and communist, in the discussions on political cases in the 1940s. When Wold included human rights in his argumentation for NATO, there was no real focus on how human rights could be protected.

Terje Wold was fervent in his support of the EEC. In the debate on Norwegian membership in the EEC in 1962-1963, Terje Wold acted as a political actor, comparing the legal ramifications of the ECHR and the Treaty of Rome. He argued how there were no obstacles between the ECHR and the Treaty of Rome because when Norway had agreed to the clause of the individual petition right in the ECHR in 1955, this had laid rest to the unrestricted right of national sovereignty.

Although Terje Wold had been hesitant in the establishment phase of the ECtHR in 1949, this was not because he was sceptic towards supranationalism as a concept. He was open to the idea of a Human Rights Commission but hesitated in the establishment of the ECtHR on the grounds of duplication of work with the international court in the Hague. As the 1950s came along, it appears as though that his opinion on the ECtHR altered as well. Hareide related his shift of position to the Norwegian Ministry of Justice as they became open for the court in 1958. Moreover, jurist Frede Castberg also contributed to changing Wold's position. Castberg had held a presentation to the Nordic Jurist Meeting in 1954, arguing that there were no obstacles between the Norwegian legal system and the supranational court in Strasbourg. Wold referred to these ideas in his article on the ECHR in 1963, arguing along the same lines as Castberg had done. Wold believed that supranational institutions could better provide guarantees for human rights protection of the individual because they could, in effect, overrule a government decision.

That Terje Wold had a persistent engagement for the protection of individual rights, and the rule of law are other central findings in this thesis. During the 1950s and into the early 1960s, Terje Wold's engagement for human rights norms began to attain a real substance and form, unlike in his political engagement in the 1940s. The work in the Public Administration Committee from 1951 to 1958 was a significant benefactor in this. Wold underlined how human rights protection and the rule of law were interlinked, as he focused on judicial review of the legislature, due process rights, and the equal access of court. Terje Wold argued that it was vital in the Norwegian legal system that the court could review the government's decisions, as

this was a way to provide robust control of public administration. Wold argued that international human rights norms, mentioning the UDHR and the ECHR, were essential when arguing for this form of judicial review. In fact, he understood UDHR Article 10 to be the most significant human right.[316] As such, the due process rights was an essential human right, in his opinion.

From the 1960s onwards, Terje Wold's engagement in and understanding of human rights norms increased. He began engaging himself against racial discrimination, for minority rights and economic, cultural, and social rights. Human rights were gaining traction on the international scene in general, with the adoption of numerous human rights conventions, widespread social movements, and decolonial processes. When Terje Wold's engagement for human rights intensified throughout the 1960s, it came as a consequence of these movements.

Behind Wold's engagement against racial discrimination, laid his understanding that the Apartheid-regime in South-Africa violated international human rights. Thus, he argued that the South-African Supreme Court had to shut down their offices, as with the violation of human rights norms in the country, the rule of law had also ceased to exist.

In 1962, Terje Wold argued that minority groups, exemplified with the Sami-population, could claim specific cultural and economic rights, herein certain special rights of preservation of language and specific reindeer farming areas. He argued how language preservation had to be upheld by international law. He argued that national legal system should protect specific reindeer farming areas.

Another element to Terje Wold's engagement in the 1960s is his commitment to the ICJ. Wold stated that members of the ICJ acted as international ombudsmen in reporting on human rights violations. By arguing for this, his understanding of the ombudsman institution is made more explicit. The Public Administration Committee had in 1958 recommended the Norwegian state establish such an institution to be a complaint organ for the individual citizen in meeting with public administration. Wold argued that the ICJ had the same mandate of rights-protection applied in international society in the ICJ.

In the ICJ, Wold argued how social rights were important human rights norms. He argued that social rights had gained less traction on an international scale due to how human rights had been discussed in the context of the UN. He, therefore, saw the UN's expansion in the 1960s as a welcome development, with more member states being imbedded and more conventions being

[316] "Everyone has the right, under full equality, to have his case fairly and publicly dealt with by an independent and impartial court, when his rights and obligations are to be determined."

adopted. Furthermore, he saw it as noteworthy when the ICJ underlined the role and position that social, economic, and cultural rights played and that these rights could be resolved in the framework of the law.

Terje Wold's increased focus on social, economic, and cultural rights in the 1960s came as a consequence of both influence from the ICJ and because of social movements like the decolonialisation processes, altering the position of the UN. As Moyn argued: "the rise of human rights in international law occurred not for reasons internal to international law as a profession, but due to the ideological changes that set the stage for a moral triumph of human rights – one that in turn gave a whole new relevance to the field".[317]

Terje Wold held characteristics as a legal entrepreneur in underlining how the Norwegian legal system ought to be more compliant with international human rights norms in areas where the rule of law was concerned. He argued for better and more robust forms of judicial review of the legislature and due process rights as ways to better protect the individual rights in meeting with public administration in the 1950s, and he argued for cultural and economic rights of minorities in the 1960s. Wold argued that *the* essential human rights norm was equal access to the court. Without a proper guarantee of this human right, Wold believed that the other human rights would cease to exist. His legacy can be found in the national legal landscape of public administration and minority rights. In contrast, his international engagement for human rights matters came as a result of broader historical developments.

A noteworthy aspect of Terje Wold's human rights understanding is that he did not position himself on either the side of natural law or on legal realism. He related their legitimacy with how they were included in numerous 18th centuries constitutions, and that they were imperative in the legal development of a state.

Terje Wold was, therefore, an actor who, through the extensive efforts and commitments to human rights, was situated in the intersection of politics and law. His human rights engagement from 1945 to 1968 surrounded around ideas of European integration, international cooperation, individual rights and the rule of law.

[317] Moyn, *The Last Utopia,* 210.

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