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Framing Europe in Human Rights, Framing Human Rights in Europe: Authoritarianism, Migration, and Climate Change in the Council of Europe

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Introduction

Established in the aftermath of the Second World War and the early years of the Cold War, the Council of Europe ("CoE") is an international organisation that has united European states around a discourse of human rights. Through the work of its organs, it has played a decisive role in the construction and preservation of a particular image of Europe through human rights, on the one hand, and in defining human rights issues in distinctively European ways, on the other. With Russia's war of aggression against Ukraine, the CoE has now assumed a renewed role in the reconfiguration and reinforcement of this image of Europe and its regulatory and normative power in defining human rights and their limits. The Reykjavík Summit of the CoE in May 2023 and its concluding declaration ("Reykjavík Declaration") have sought to reaffirm the unity of European states around the discourse of human rights as European values in the face of Russia's aggression against Ukraine, alongside what is described as the "current and future challenges" facing Europe.

Against this backdrop, this Reflection will seek to demonstrate how the CoE has turned human rights into a constitutive feature of the image of Europe, and how this image in turn enables and constrains particular understandings of human rights. We thus seek to highlight the underexplored and often taken for granted aspect of "Europe" in the CoE, and of the "European" in the European Convention on Human Rights (ECHR). To do so, we draw on the notion of frames, referring to the "schemata of interpretation" through which the world is perceived and understood.[1]

One inherent function of frames is their selective operation, tying together certain considerations or conditions while leaving others out:[2] they can be thought of as "principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens, and what matters".[3] In their spatial dimension, frames select scales that define and distort relationships, raising questions of collective identity, political community, and social justice.[4] The notion of Europe, in that vein, can be thought of also as a spatial frame that plays a crucial role in what is emphasized or what and who is left aside in the work of the CoE as a specifically European organisation.

In what follows, we first provide a bird's eye view of the way that Europe itself has been framed within the CoE (framing Europe in human rights). In a second step, we show how this image of Europe shapes how human rights are understood in the European context (framing human rights in Europe), using the Reykjavík Declaration's treatment of authoritarianism, migration, and climate change as examples. Our core argument is that Europe is framed in a way that associates it with human rights, assuming European states to have long traditions of human rights and being committed to upholding them – often by contrasting them to other actors or regions of the world, its "constitutive others".[5] Problems in the area of human rights are thus framed as something that "happens to" Europe and its values rather than originating there, which in turn leads the CoE to neglect the contributions of European political, economic and legal arrangements in causing these problems and to propose limited ways of dealing with them.

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[1] Erving Goffman, *An Essay on the Organization of Experience – Frame Analysis* (Northeastern University Press 1986 [1974]) at 21. On the uses of frames in international legal scholarship, see e.g. Andrea Bianchi and Mosche Hirsch (eds), *International Law's Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (OUP 2021); André Nollkaemper, 'Framing Elephant Extinction' (2014) 3(6) *ESIL Reflections*.

[2] Judith Butler, *Frames of War* (Verso 2009) at 25-26; Robert M. Entman, 'Framing: Toward Clarification of a Fractured Paradigm' (1993) *Journal of Communication* 51, at 53-54.

[3] Todd Gitlin, *The Whole World is Watching – Mass Media in the Making & Unmaking of the New Left* (University of California Press 1980) at 6.

[4] Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Columbia University Press 2010) at 61-67.

[5] Stuart Hall, '"In but not of Europe": Europe and its Myths' (2002) *Soundings* 57, at 60.

Framing Europe in Human Rights

Signed on 5 May 1949, the Statute of the CoE in its Preamble defined its framers as "like-minded countries of Europe" and the rationale behind its establishment as the preservation of "the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law." Less than two years after the establishment of the CoE, when its newly minted members concluded the ECHR, they reiterated this definition of European countries as "like-minded and hav[ing] a common heritage of political traditions, ideals, freedom and the rule of law" in its Preamble. According to the ECHR's Preamble, the CoE was established to achieve "greater unity" between its members, and to this end, to ensure "the maintenance and further realization" of human rights, which were already part of their traditions and heritage. This framing of Europe's history and present in human rights not only turned human rights into "what European states do"[6] but also, through the rhetoric of common heritage, "what they have always done." The CoE thus associated Europe with long experience in matters of human rights and the veneer of progress that came with it.

Framing Europe's past and present in human rights as such, however, was only possible if certain aspects of Europe's pre- and post-war history were left out. The recent fascist past in several European states served as a justification for the project of human rights as a preventive measure, but the narratives that emerge from the preparatory work on the ECHR ultimately treat it as secondary in contrast to centuries or even millennia of enlightened humanism in Europe. They do not disclose any effort of self-reflection as to whether the European political, economic and legal arrangements might have foreclosed possibilities of preventing the rise of fascism, the Holocaust and the Second World War or of providing timely protection to those fleeing the Nazis.

Instead, the counterpoint to human rights was externalised to Eastern Europe by framing human rights as opposed to the trinity of "Fascism, Hitlerism, Communism" as the "scourges of the modern world".[7] The communist East, which was framed as totalitarian, served as a constitutive other of the CoE, a counterpoint that allowed it to construct its own identity as "free Europe". The list of civil and political

[6] An aspect that also finds expression in the ECtHR's use of the so-called European consensus argument: see Frédéric Mégret, 'The Apology of Utopia: Some Thoughts on Koskenniemian Themes, With Particular Emphasis on Massively Institutionalized International Human Rights Law' (2013) 27(2) *Temple International Law & Comparative Law Journal* 455, at 481; Jens T. Theilen, *European Consensus between Strategy and Principle. The Uses of Vertically Comparative Reasoning in Regional Human Rights Adjudication* (Nomos 2021), chapter 3; Claerwen O'Hara, 'Consensus, Difference and Sexuality: Que(e)rying the European Court of Human Rights' Concept of "European Consensus"' (2021) 32 *Law and Critique* 91, at 107.

[7] Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights vol I (Martinus Nijhoff 1975) at 40 (Statement by Pierre-Henri Teitgen).

human rights and emphasis on their enforceability served to highlight the difference and superiority of the states involved in the CoE.[8] Even as they framed themselves as like-minded with confidence, however, the level of protection that they provided for human rights in their domestic settings variegated to an extent that some of the members of the CoE had strong authoritarian tendencies right from the outset.[9]

The emphasis on a long tradition of human rights in Western Europe also did not prompt the statesmen involved in the drafting of the ECHR to engage in any discussion on the democratic legitimacy of their colonial rule over the global South or the compatibility of their acts and policies in their colonies with human rights. To the contrary, maintaining colonial rule was a core concern of several member states, leading to the infamous "colonial clause" (Article 56, previously Article 63 ECHR) which prevented human rights scrutiny in the colonies unless otherwise declared by the colonial power at issue. The colonial clause was justified in racialised terms of the colonies being at an insufficient "state of civilization" for the application of human rights: once again, the problem was thus externalised to the colonised regions, while the European states were tasked with "bringing civilization to their overseas territories" as part of the civilising mission.[10]

With the end of the Cold War, the CoE was dramatically transformed, extending its membership to the former communist states of the Eastern Europe. Yet, the patterns of framing Europe in human rights persisted, despite the fact that CoE's new members were not deemed in conformity with the image of Europe that was constructed through human rights. The admission of former Soviet Bloc countries not only turned the CoE into the guardian of their required transition to liberal democracy but also gave the CoE organs the long-desired opportunity to enforce the idea of Western Europe as "an example":[11] the new member states soon found themselves subject to infantilising demands of "catching up" with Western Europe based on pre-conceived standards of what human rights should involve.[12]

The accession of Eastern European states into the CoE also meant that Europe imagined through comparisons, competitions, and oppositions lost one of its crucial constitutive others, curtailing the

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[8] Esra Demir-Gürsel, 'For the Sake of Unity: The Drafting History of the European Convention on Human Rights and its Current Relevance' in *The European Court of Human Rights: Current Challenges in Historical Perspective*, eds. Helmut Philipp Aust and Esra Demir-Gürsel (Edward Elgar Publishing 2021) at 120-126.

[9] Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017) at 179-180.

[10] Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights vol III (Martinus Nijhoff 1976) 266 (comments of the Committee of Experts on Art. 7 of their current draft, which would later become part of Art. 63 ECHR).

[11] See, e.g., Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights vol I (Martinus Nijhoff 1975) at 116 (Statement by David Maxwell Fyfe).

[12] See Wojciech Sadurski, *Constitutionalism and the Enlargement of Europe* (Oxford University Press 2012) at 12 with examples.

CoE's abilities to define the inside and outside of its European frame with confidence. Long before Russia's act of aggression against Ukraine and its subsequent exclusion from the CoE in March 2023, it had already become difficult for the CoE to preserve the image of Europe constructed through a discourse on human rights loyally enforced by the like-minded states of Europe. Not only have authoritarian trends within the CoE membership become further entrenched. Those member states commonly defined as "established democracies", too, have expressed their growing discontent with the supervisory powers of the European Court of Human Rights ("ECtHR") and openly questioned the ECtHR's rulings based on sovereigntist grounds.

It was against this backdrop that the member states of the CoE gathered in Reykjavík in May 2023 to reaffirm their commitment to the ECHR system and their support to the CoE, following Russian aggression against Ukraine and its expulsion from the organisation. The concluding Reykjavík Declaration, bearing the subtitle "United Around Our Values", is remarkably clear about the continuity of its image of Europe: it states that "our vision for the Organisation remains the same" as at its founding and emphasises the "ideals and principles which are our common heritage." It continues to locate progress through human rights in Europe – for example, CoE norms and treaties are seen as the way forward even outside of Europe and the Declaration pledges to "advance compliance with the Organisation's ambitious standards beyond European borders."

The construction of the CoE's own identity by reference to a constitutive outside likewise makes a return. The heads of state explain that "we, the Leaders of Europe, have come together to state our resolve to unite around our values and against Russia's war of aggression against Ukraine, a flagrant violation of international law and everything we stand for." They add that "Russia's war of aggression is not just a violation of international law, but an attack on our democracies." As welcome as a clear statement against Russian aggression is, this particular framing also serves as a means to depict remaining CoE member states as united around human rights, and thus to reinforce the image of Europe defined by human rights but under attack by external forces.

Framing Human Rights in Europe

In the Reykjavík Declaration, the European heads of state underlined their resolve as European democracies to protect human rights, democracy, and the rule of law in the face of "current and future challenges." But how these challenges and the potential solutions to them are framed is inextricably entangled with the image of Europe discussed above, which presents Europe as a progressive place associated with human rights. Problems are externalised as originating elsewhere and framed as happening to Europe and its values. Using the Reykjavík Declaration's framing as an entry point, we

briefly trace the dynamics around the notion of Europe in three areas: authoritarianism, migration, and climate change.

Authoritarianism and totalitarianism have long been framed by the CoE as either being brief aberrations of the Europe's past or as lying outside of "free Europe". The Reykjavík Declaration speaks vaguely of such issues within the CoE, notably not mentioning its own and its members' failures to address the authoritarian entrenchment in Russia and other member states[13] – despite the emphasis on the prevention of totalitarianism and authoritarianism being one of the formative ideas of the CoE. The Declaration mostly leaves aside the Cold War period's concept of "totalitarianism" by using it only in its narration of the CoE's history. It frames "authoritarianism" and "autocratism" as what the CoE stands against, on the one hand, and "democratic backsliding" as something that is admitted as currently present within the CoE membership but has to be "prevented" and "resisted," on the other. The Declaration carefully orders the text and its references to authoritarianism and democratic backsliding in a way that it associates Russia with the former and unnamed others within the CoE only with the latter.

Until its expulsion, the CoE refrained from defining Russia (or any other member state) as an autocracy. What has turned Russia into an autocracy in the Declaration seems to be its war of aggression against Ukraine. Similarly, what seems to have erased the previous doubts as to Ukraine's level of democracy and compliance with human rights in the aftermath of the war is the depiction of its people (in Appendix II to the Declaration) as "defending not only their sovereign State but also the principles and values of the Council of Europe" against autocratic Russia.[14]

The Reykjavík Declaration reiterates the foundational discourse of the CoE which drew connections between authoritarianism and war and holds that "true democracies that uphold the rule of law and ensure respect for human rights were the best defence against authoritarianism, totalitarianism and war on our continent." Given Russia's previous aggressions on the continent, the wars waged also by other member states' outside of Europe, or even within their own territories against their own fellow citizens, the emphasis on the "war on our continent" implicates that it is not any war or act of violence that suffices to qualify a state as authoritarian. It is a war against a member state in a way that would

[13] Başak Çalı & Esra Demir-Gürsel, 'The Council of Europe's Responses to the Decay of the Rule of Law and Human Rights Protections: A Comparative Appraisal' (2021) 2 *European Convention on Human Rights Law Review* 165; Nils Muižnieks, 'The Council of Europe's Response to Recent Democratic Backsliding' in *European Yearbook of Human Rights*, eds. Philip Czech et al (Intersentia 2019).

[14] See also Anastasiya Kotova and Ntina Tzouvala, 'In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law' (2022) 116(4) *American Journal of International Law* 710, at 718 on the framing that Ukraine has "earned" its place in Europe "by defending both European borders and European values".

jeopardize the security and stability of "true democracies" of Europe.[15] It is only by framing authoritarianism as such and Russia's aggression against Ukraine as linked to authoritarianism that all others remaining within the CoE can be defined as "true democracies" or as "backsliders" at worst. In the CoE context, the politics of naming and treating a country as democracy, autocracy or backslider are thus strictly linked to the management of unity, security and stability in Europe.

Migration is another topic in which the trope of Europe as threatened from the outside plays a particularly prominent role. Migrants are commonly depicted as in some way a threat to Europe. This can be framed in culturalist terms (threats to the European way of life and to European values), economic terms (threats to the European standard of living and to European social security systems), or others. In all cases, migration is assumed to threaten the rights of Europeans. These framings assume a relatively homogenous, well-off Europe that might become more heterogenous and dysfunctional only through the arrival of migrants. The Reykjavík Declaration draws on this notion of Europe when it pledges to support "frontline States" in the context of migration. Its use of military vocabulary not only echoes the actual militarisation of border controls but also highlights Europe's defensive posture figuring itself as under threat from migrants.

It is not surprising, then, that the Declaration speaks of "the increasing challenges of migration" – it is migration itself (and the "trafficking and smuggling of migrants") that is framed as the problem, rather than the regulation of migration and the treatment of migrants by European states. The framing thus places migrants and smugglers in a position of responsibility, but not European states themselves. These depictions of migration also exemplify how frames interpret the world not only by foregrounding some aspects, but also by moving others out of the frame. Notably, migration law is heavily racialised – but not framed as such within the CoE.[16] The Reykjavík Declaration does not mention European colonialism and its current relevance for migration, thus moving approaches such as migration as decolonisation out of the frame.[17]

Instead, the Declaration holds that "[d]ignity and equality are the foundation of modern European societies", commits to "strengthening work towards inclusive societies without marginalisation, exclusion, racism and intolerance" and pledges to "use an intersectional approach". This commitment follows immediately upon the paragraph on the "challenges of migration" just discussed – which itself, however, makes no mention of exclusion or racism. The paragraph break separating it from the

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[15] For a discussion on the significance for the CoE of the particularities surrounding Russia's war of aggression against Ukraine, see Esra Demir-Gürsel, 'The Council of Europe's Sharp Turn: Russia's Expulsion and its Possible Implications for Other Member States' (*Verfassungsblog*, 25 March 2022).

[16] See for international law more broadly E. Tendayi Achiume, 'Racial Borders' (2022) 110 *Georgetown Law Journal* 445, at 449; on the dynamics of how the racialization is moved out of the frame, see Sué González Hauck, 'Über die Grenzen des Rechts' (*Verfassungsblog*, 14 March 2022).

[17] E. Tendayi Achiume, 'Migration as Decolonization' (2019) 71 *Stanford Law Review* 1509.

discussion of these topics frames migration as racially neutral. In this way, Europe is shielded from accusations of racism and colonialism, even as the following commitment to anti-racism and intersectionality allows the Declaration to present "modern European societies" as progressive.[18]

Climate change, too, is a racialised phenomenon: most starkly, both its causes and its effects are unevenly distributed, with colonial continuities clear in the delineation of those suffering from it and those suffering less or even profiting from it.[19] The disparities between industrialised states, mostly in the global North, and the majority of states in the global South are easily moved out of the frame when climate change is approached, for example, as an issue of the Anthropocene by reference to "all humankind".[20]

In the Reykjavík Declaration, a similar dynamic is at play in that pollution, climate change and loss of biodiversity are framed as a "triple planetary crisis" with an impact "on human rights, democracy and the rule of law". It is true, of course, that these issues are of global reach. To frame them as "planetary" without further differentiation, however, makes it difficult to raise Europe's responsibilities vis-à-vis the rest of the world. Indeed, these issues are not discussed in Appendix V of the Declaration, which provides more detail on action to be taken on environmental issues.

Whereas its reaching out to a planet-wide scale invisibilizes Europe's responsibilities for climate change, the Reykjavík Declaration does not shy away from scaling down to Europe when it comes to the protection of the rights of Europeans. Its final sentence implicitly comes back to the issue of climate change: "With this Declaration," the heads of state say, "we set the path forward for our countries and for the Council of Europe, for the benefit of all Europeans, including future generations". With its reference to future generations, often a contested issue in the context of climate change and human rights, this framing seems to make a progressive move. Yet the focus on securing benefits only for "all Europeans" including future Europeans – despite the earlier insistence on climate change as a "planetary crisis" – exposes its exclusionary side: it is only the effects of climate change on Europeans, and its "impact" on the values of human rights, democracy and the rule of law as framed by the CoE, that are cause for concern.

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[18] This is not an unusual dynamic in institutional commitments to anti-racism and intersectionality: see Sara Ahmed, 'The Nonperformativity of Antiracism' (2006) 7(1) *Meridians* 104; in the context of human rights, see Jens T. Theilen, 'Intersectionality's Travels to International Human Rights Law' (2024) *Michigan Journal of International Law*. See also Ida Danewid, 'White Innocence in the Black Mediterranean: Hospitality and the Erasure of History' (2017) 38(7) *Third World Quarterly* 1674, at 1681 on the connections between white amnesia regarding colonialism and the self-image of "European goodness, humanity, and antiracism".

[19] Olumide Abimbola et al, 'Racism and Climate (In)Justice. How Racism and Colonialism shape the Climate Crisis and Climate Action' (2021).

[20] See critically Sigrid Boysen, *Die postkoloniale Konstellation. Natürliche Ressourcen und das Völkerrecht der Moderne* (Mohr Siebeck 2021), at 101-102.

Nor is this approach unique to the Reykjavík Declaration. For all the excitement surrounding the climate cases currently pending before the ECtHR, it seems very unlikely that those from the global South affected by European emissions could successfully challenge European states' climate policies in this forum. The notion of human rights as located in Europe, as discussed in the preceding section, underlies a multitude of legal doctrines from extraterritoriality and victim status to causation and state responsibility. Many of these doctrines are controversial even in climate cases involving applicants from within Europe: for those from the global South, they pose an even more formidable hurdle. As Lea Raible has put it, the ECtHR is "unlikely to close the accountability gap between major emitters and geographically distant victims".[21]

Outlook

For all their differences, analysing the CoE's treatment of authoritarianism, migration, and climate change with a view to their framing in relation to the notion of Europe reveals remarkable similarities; many other topics could be considered to similar effect.[22] Frame analysis allows us to consider the "little tacit theories" underlying texts like the Reykjavík Declaration. It can draw from the language used, what is invoked or left aside, the way that different topics and terms are placed alongside or separated from one another, and which scales are chosen in which contexts. In this way, frame analysis highlights how texts like the Declaration shape our understanding of human rights issues in certain ways and how their underlying assumptions constrain possible solutions.

We have aimed to foreground the role of the notion of Europe for frames of the CoE, both in terms of how Europe itself is framed in human rights and in terms of human rights being framed in specific ways in Europe. These aspects are of course interrelated: we might also say that Europe is framed through human rights and human rights are framed as European. Accordingly, human rights problems are framed as something that "happens to" Europe and its values rather than originating there, leading to a selective approach in dealing with pressing human rights issues and neglecting the responsibilities of Europe in their emergence.

[21] Lea Raible, 'Expanding Human Rights Obligations to Facilitate Climate Justice? A Note on Shortcomings and Risks' (*EJIL:Talk*, 15 November 2021); for a note of caution on the role of courts in the fight against climate change more generally, see Lys Kulamadayil, 'Between Activism and Complacency, International Law Perspectives on European Climate Litigation' (2021) 10(5) *ESIL Reflection*.

[22] See e.g. on torture as un-European Michelle Farrell, 'The Marks of Civilisation: The Special Stigma of Torture' (2022) 22 *Human Rights Law Review* 1, at 3 and 19; on Europe's Muslim 'other' Ratna Kapur, *Gender, Alterity and Human Rights* (Edward Elgar 2018), chapter 4.

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