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COMMUNICATIVE ACTION AND THE ISTANBUL CONVENTION

ABSTRACT This paper links the Theory of Communicative Action and the Istanbul Convention to scrutinize the rationality behind this human rights treaty. It analyzes whether arguing could occur within the Istanbul Convention and whether it provides the framework conditions for argumentative rationality. It finds that the Istanbul Convention has the potential for arguing, which it needs as it does not have any power to enforce the provisions outlined in the Convention nor to sanction dissent. For ratifying state parties, the Istanbul Convention does provide a framework for argumentative rationality by compromising a common lifeworld, the inclusion of the public sphere, and resembling an ideal speech situation. Furthermore, the Theory of Communicative Action also explains dissent in the form of non-ratification of or withdrawal from the Convention. Considering some Council of Europe member states' ideological backlash to the Convention, this paper finds that these countries are not part of the common lifeworld that equates human rights with women's human rights.

Keywords: Istanbul Convention, Council of Europe, human rights, communicative action

Confronted with the grim reality that between 20 to 25 per cent of women in Europe have suffered physical violence, 10 per cent have experienced sexualized violence, and 45 per cent have experienced other manifestations of gender-based violence (Council of Europe 2011, 1)[2], the Council of Europe (CoE) introduced the *Convention on Prevention and Combating Violence against Women and Domestic Violence* in 2011. The Convention – opened for signature in Istanbul and therefore referred to as the *Istanbul*

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2 And these numbers have by no means receded in the past ten years (see Gender Equality Index 2020).

Convention – is regarded as the most comprehensive "instrument for preventing and combating violence against women and domestic violence" to date (Lange 2020). Thirty-four countries have ratified the Istanbul Convention, and 11 more have signed it (Auswärtiges Amt 2021). Ratifying states have several positive obligations: they must prevent, punish, and investigate instances of violence against women and have policies in place to facilitate this (Council of Europe 2011, 11). The Istanbul Convention is, furthermore, the first treaty that "provides a legally binding definition of violence against women as a violation of human rights and a form of discrimination against women" (Council of Europe 2020a, 11); it integrates due diligence by defining it as the obligation of the state to enact the provisions of the Convention.

Moreover, "acts of violence by non-state actors" are attributed to state responsibility (ibid.). The Istanbul Convention's *Group of Experts in Action against Violence against Women and Domestic Violence* (called GREVIO) was set up to monitor the state's execution of the provisions of the Convention. It is primarily based on coordination between different actors (states, non-governmental and civil society organizations) and reporting, which is intended to stimulate a dialogue between different actors.

These actors communicate with each other to find solutions to combat violence against women and domestic violence. Indeed, all international relations are based on communication (Müller 1994, 25). Moreover, according to Jürgen Habermas, speech is how subjective actors can attain argumentative rationality instead of strategic rationality. Strategically, it would not make sense for states to ratify and enact a convention that tackles a problem so inherently manifested in a state's society, primarily if violations are attributed to state responsibility. Argumentative rationality utilizing communicative action can therefore be a productive attempt to explain the rationality behind the (non-)ratification of this human rights treaty. Especially considering the recent fervent backlash that has confronted the Istanbul Convention (see Council of Europe 2019a, 19–20; Council of Europe 2019b; European Parliament 2018) and with Turkey even withdrawing from the Convention altogether in 2021, the Theory of Communicative Action might give conclusions as to why argumentative rationality has not reigned. Therefore, this paper will link the Theory of Communicative Action to the Istanbul Convention, scrutinizing the rationality behind this human rights

treaty. As will be argued, the Istanbul Convention does provide a framework for potential argumentative rationality by compromising a 'common lifeworld', including the 'public sphere', and resembling an 'ideal speech situation.' However, these conditions are not present within select Council of Europe state members: the discourse there is not freed from ideology, as not all state parties equate women's rights with human rights, which hinders the ratification of the Convention.

THE THEORY OF COMMUNICATIVE ACTION

The Theory of Communicative Action (hereafter referred to as TCA) was postulated by Habermas. As Nicole Deitelhoff and Harald Müller summarize, the "TCA has as its cornerstone mutual agreement (*Verständigung*) through the exchange of arguments. Communicative action depicts an interaction in which actors attempt to coordinate actions by reaching agreement on the definition of the situation and the norms to be applied to it" (Deitelhoff and Müller 2005, 168). By exchanging arguments, these can also be challenged and changed (ibid.), whereas the better argument counts in the end (Diez and Steans 2005, 133). Arguments are exchanged by introducing what is termed 'validity claims.' These can take the form of "comprehensible, and wellformed [*sic!*] speech-acts [that] make an objective claim to truth, a normative claim to rightness, and expressive and evaluative claims to authenticity and sincerity" (Habermas 1986, 319–328 as cited in Deflem 2008, 271). These validity claims depend on the speakers sharing a 'common lifeworld:' they need to "share the same objective world of facts, feel compelled by the same social world of norms, and – approximately – share similar subjective worlds of feelings and emotions" (Deitelhoff and Müller 2005, 168; see also Habermas 1986, 100). They must furthermore mutually recognize each other (Müller 1994, 27). This common lifeworld makes communicative action possible, but to achieve mutual understanding and gain a rational consensus, there is also a need for an 'ideal speech situation.' It exists if the power of the participants is not asymmetrical and when each participant has equal access to the discourse (Müller 1994, 27). If these conditions of communicative action – as opposed to strategic action, where actors try to deceive and make promises or threats – are met, actors can

achieve rational consensus through argumentative rationality. This can lead to long-term cooperation of actors (Deitelhoff and Müller 2005, 168–169). Müller (1994, 29–30) summarizes what is needed for this cooperation between states: they need to trust in the authenticity of the 'validity claims,' agree on the situation at hand and the normative framework, and be able to negotiate a "distributional compromise". Thus, the framework conditions must be met, and arguing must take place.

In the field of international relations, "social constructivists, in particular, have found the concept of communicative action, that is, action driven by the search of the better argument rather than strategic power, helpful for theorizing change", especially concerning the implementation of human rights on the national level (Diez and Steans 2005, 133, in reference to Risse 2000). Although Deitelhoff and Müller (2005) posit that it is empirically hard to distinguish between strategic and communicative action, they do "accept that arguing is always present in international negotiations, and turn their attention to the effect of arguing, and the conditions under which it prevails over bargaining" (Diez and Steans 2005, 133). Given this empirical caveat, it has been suggested that research on the topic should not seek to establish whether actors argue but "focus on the conditions under which arguing and reason-giving actually matter" (Risse 2004, 299), and if it is argued, to what extent the formal conditions are met (Herborth 2007, 162). Therefore, this paper establishes whether arguing could occur within the Istanbul Convention and whether the formal conditions of the TCA are present. Applying the TCA to such human rights treaties makes sense because they are a form of global governance that "has to rely *solely* on non-hierarchical modes of steering in the absence of a world government with a legitimate monopoly over the use of force" (Risse 2004, 292). This non-hierarchical steering is based on the legitimacy of rules and norms – the more states accept the legitimacy of such treaties, the more they will comply, as "the legitimacy of a rule can result from beliefs in the moral validity of the norm itself, but it can also result from beliefs in the validity of the procedure by which the rule had been worked out", thus linking the TCA with these non-hierarchical forms of global governance (ibid., 292–293). Consequently, not only does arguing garner more participation from state parties to treaties but "voluntary compliance" might be achieved (ibid., 311). The Istanbul Convention,

with its monitoring system that relies on a reporting procedure where several different actors[3] communicate over the issues at hand, could potentially be an institution that centers on communicative action. This will be tested by considering the TCA's framework conditions (a 'common lifeworld,' the inclusion of the 'public sphere,' and an 'ideal speech situation') and if the Convention provides the possibility of arguing. Thus, it will be tested how much of a potential for arguing the Istanbul Convention can generate – and how argumentative rationality has fared concerning the Convention.

THAT'S ARGUABLE! – HOW ARGUING WORKS AND WHAT IT HAS TO OFFER

International human rights treaties – such as the Istanbul Convention – aim to socialize actors "into international norms" so that they "implement these norms into their domestic practices" (Risse 2000, 28). The Istanbul Convention is based on due diligence and puts positive obligations on the state; therefore, it does "promote changes in attitudes and behavior that condone violence against women" (Council of Europe 2019a, 16–27) on the state level. Through ratification, the state parties accept the normative frame of the Convention. However, the Istanbul Convention also seeks states to 'do the right thing' and implement the provisions to safeguard women. To ensure this, the Convention employs a supervisory procedure that requires states to submit reports every four years. During the evaluation process, the first report is based on a questionnaire provided by GREVIO, while at the same time, shadow reports are submitted from relevant non-governmental and civil society organizations (NGOs, CSOs), as well as independent national human rights bodies (Council of Europe 2020a, 18; Council of Europe 2021). GREVIO then evaluates these reports and carries out an evaluation visit. Subsequently, a report is drafted based on all the gathered information, which is sent to the concerned state party for commentary. GREVIO considers the comments, and a new report is again sent to the state party for

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3   These actors involve the bodies of the Istanbul Convention, the state party under evaluation, non-governmental organizations, members of civil society, national human rights bodies, Council of Europe bodies, and other international treaty bodies (Council of Europe 2022a).

commentary. The new comments and the final report by GREVIO are then published and submitted to the Committee of Parties of the Istanbul Convention. The Committee of Parties makes recommendations to the state; the state party submits these recommendations to its parliament, which – ideally – adopts necessary recommendations by means of legislative implementation.

This reporting procedure is in line with what Thomas Risse refers to as bottom-up hierarchy, which is based on "learning processes and policy diffusion" (Risse 2004, 288). He proposes to view this as a social and intersubjective process; this enables "communicative practices [to] quickly become the micro-mechanisms by which ideas get diffused, and new ways of thinking are learned" (ibid.). In order to unleash this potential, arguing and reason-giving are needed. Arguing is also needed because the CoE does not have any power at its disposal to enforce the provisions nor to sanction dissent; "rather, one can engage actors … in an arguing process to persuade them of the normative appropriateness of international rules and of the need to accept them as behavioral standards" (Risse 2004, 306). As Risse summarizes:

> "in the mode of arguing, actors mutually challenge the factual as well as normative validity claims inherent in any statement of interests and preferences. Discursive contestations of norms and facts assume centre stage concerning this type of negotiation, which aims at reaching consensus rather than a bargaining compromise. Attempts at socializing actors into new norms and persuading them of their validity also fall into this category" (Risse 2018, 317).

Therefore, communication that centers around arguing is central in international negotiations; hence, it is vital to establish what constitutes arguing. Deitelhoff and Müller distinguish between three types of communication: bargaining, "which is based on fixed preferences and uses threats and promises of reward to coordinate actions"; rhetorical action "as a hybrid mode which assumes that the *audience* addressed is accessible to the power of arguments"; and arguing, "which assumes principally open preferences" (Deitelhoff and Müller 2005, 179). Risse furthermore defines arguing (and subsequent persuasion) as a means to reach reasoned consensus by way of

"voluntary agreement about norms and rules reached through arguing and persuasion" (Risse 2004, 301). In arguing, discourse participants mutually assess the validity of an argument to reach a reasoned consensus; arguments are exchanged and subject to change (ibid., 296–197). Thus, the participants "no longer hold fixed interests during their communicative interaction but are open to persuasion, challenges, and counter-challenges" (Risse 2000, 33). For arguing to work, an agenda and the "'common knowledge' about the situation and the underlying principles for negotiations" must be devised (ibid., 20). Setting an agenda serves to convince actors that there is indeed a problem that needs to be discussed (ibid.). Concerning the Istanbul Convention, the Convention text itself set the agenda. Arguing furthermore requires that an "external authority" on the subject matter is accepted "to validate empirical or normative assertions" (Risse 2004, 298). In the case of the Istanbul Convention and other international negotiations, this is done in the form of agreed-upon (and ratified) treaties. Hence, the Convention bodies serve and are accepted as an external authority through ratification of the Convention. However, the process after ratification is where arguing matters most: "Later on and once governments have signed on to international treaties, naming and shaming, and, thus the use of communicative action, becomes more important" (ibid., 307). This is ensured by the Convention in the first step of evaluation, where states' reports are challenged by the shadow reports that problematize and shed light on women's human rights in a country. Furthermore, the evaluation visit validates the situation on the ground; thus, the Convention bodies themselves and the NGOs, CSOs, and the independent national human rights bodies serve as the external authority and ensure arguing. Arguing can also be empowering for 'weaker actors' (ibid., 303); thus, it can strengthen the role of NGOs, CSOs, and states' independent human rights bodies in international organizations. As the section on the ideal speech situation shows, the state parties to the Istanbul Convention are forced to accept these civil society actors as equals. And, in the right contexts, namely a common lifeworld, an ideal speech situation, and publicity, arguing becomes more effective (Deitelhoff and Müller 2005, 172). The following sections will show how the contextual framework for arguing and, thus, for communicative action are present within the Istanbul Convention.

THE COUNCIL OF EUROPE: A COMMON LIFEWORLD?

The Council of Europe (CoE) is the leading European human rights organization. It has 47 member states across Europe. It is centered around dialogue and coordination (Council of Europe 2020b). Argumentative rationality presupposes that the participants of discourse are able to emphasize with one another and that they share a 'common lifeworld' (*gemeinsame Lebenswelt*) in a Habermasian sense:

> "The abstract concept of the world is a necessary condition if communicatively acting subjects are to reach an understanding among themselves about what takes place in the world or is to be effected in it. Through this *communicative practice,* they assure themselves at the time of their common life-relations, of an intersubjectively shared *lifeworld*" (Habermas 1986, 13).

Although the member countries of the CoE arguably share a lot of the same opinions about what is going on in the world, the question arises if this is also the case for women's rights. With Habermas not precisely specifying "how much a common lifeworld people need to share in order to communicate in a reasonable manner" (Risse 2000, 15), other scholars have tried to theorize this. A common lifeworld ensures "arguing actors with a repertoire of collective understanding to which they can refer when making truth claims" (Risse 2004, 195). These actors need to be of one "cultural tradition", and they need to share "the normative standards of their society" (Deflem 2008, 271). Although European cultural traditions are diverse, their membership in the CoE testifies that they share the normative standards of a European society regarding human rights. Moreover, as Risse argues, a non-hierarchical international institution "should allow for the structural conditions in international relations to allow for discursive and argumentative processes" (Risse 2000, 15). And as it is normatively hard to argue against human rights, international human rights institutions are already a common lifeworld (Deitelhoff and Müller 2005, 173). Especially in an institution so well-established as the CoE, it can be assumed that "common norms, principles and decision-making procedures" are already engrained (ibid.). And indeed, through the ratification process, member states accept

the norms inherent in the Istanbul Convention as well as its reporting procedure. Already after ratification and signature, "the State Parties have had to modify their policies and legislation" to align with those outlined in the Convention (Council of Europe 2019b, 7). As Müller argues, "prenegotiations [*sic*] usually encompass a phase whereby actors construct such a common lifeworld in a symbolic sense, mainly through narratives" (Müller 1994 as cited in Risse 2000, 15). Therefore, the CoE member states that have ratified Istanbul Convention can be considered to have a 'common lifeworld.' However, those that have not are not part of that 'common lifeworld,' as the section *Rationality Lost? The Ideological Backlash* shows. However, for the CoE member states that have ratified the Convention, the shadow-reporting of NGOs, civil society actors, and national human rights bodies, as outlined in the reporting procedure carried out by GREVIO, gives these non-state actors the possibility "to reframe issues in order to establish norms that may serve as such a basic common lifeworld" (Deitelhoff and Müller 2005, 173). This inclusion of the public sphere will be discussed in the next section.

SHADOW REPORTS: INCLUDING THE PUBLIC SPHERE

NGOs, CSOs, and independent national human rights bodies are essential to the Istanbul Convention. They submit shadow reports on the situation in the country evaluated by GREVIO. Thus, they provide information that could counter that of the state party in question. They are also essential because NGOs, CSOs, and independent national human rights bodies are major institutions active in combatting violence against women and domestic violence (Luparelli 2020, 55; Council of Europe 2011, 3). According to Habermas, this public sphere is an important place of deliberation as it "stabilizes the use of public reason, limits the range of arguments that can legitimately be made and establishes a kind of external authority for assessing competing validity claims" (Habermas 1992 as cited in Deitelhoff and Müller 2005, 174). And indeed, within the framework of the Istanbul Convention, the public sphere – in the form of NGOs, CSOs, and independent national human rights bodies – is an external authority that challenges states' reports by submitting their own shadow reports. Their authority derives from their expertise as the institutions that provide most services for

women who have experienced violence (Council of Europe 2011, 13). Their contesting viewpoints of the situation for women allow for arguing, whereas the better argument counts. If not otherwise requested, shadow reports are made public by GREVIO (Council of Europe 2020a, 21) and, along with the state visits, publicly scrutinize the facts given by the evaluated state. However, subsequent arguing about the competing facts on the human rights situation of women is done 'behind closed doors' by means of writing and commenting on reports, and not face-to-face between the different interlocutors. This raises the question of how the public sphere, apart from submitting shadow reports, can challenge the validity of claims made by the state parties. This is especially intriguing as "Habermas' original points concerning communicative action involved arguing not so much behind closed doors" (Habermas 1990; 1992 as cited in Risse 2000, 21). However, Risse claims that arguing can work exceptionally well in situations that lack transparency:

> "A reasoned consensus might be achievable more easily if the secrecy of the deliberations prevails and actors are not required to justify their change of position and the like in front of critical audiences. Behind closed doors, negotiators can freely exchange ideas and thoughts more easily than in the public sphere where they have to stick to their guns" (Risse 2004, 311–312).

As with norm-violating behavior, governments are held in check with their validity claims in that the "situation on the ground" is consistently contested by the public sphere (Risse 2004, 307–308). However, it is reported by those civil society actors that the Convention seeks to include that an ideological backlash in some countries is creating "increasing obstacles to their work": they experience less consultation and are given less information by authorities on policies subject to the Convention, and it has become increasingly difficult for them to obtain funding (Council of Europe 2019b, 11). In Hungary, Poland, and Croatia (of which only Hungary has not ratified the Convention), some NGOs' funding was even redirected to "alternative, government-friendly women's organizations" (Krizsán and Roggeband 2018, 95). Hence, some countries do not obey the inclusion of the public sphere – while being present within the framework of the Convention. An explanation for this defection of the Convention could be the function of

a public sphere: to hold state authority accountable (Calhoun 1992, 6–7). If government-critical NGOs cannot hold the state accountable, the state does not have to argue about disregarding the provisions of the Convention. However, in its recommendation, the Istanbul Convention's Committee of Parties recommends that Poland create a better environment and channel more funding to independent NGOs (Council of Europe 2022c). Croatia is currently undergoing evaluation, but the Committee of Parties will likely issue the same recommendation. Thus, the Istanbul Convention does try to achieve parity concerning the public sphere. Moreover, if the public sphere is an equal interlocutor in the discourse, arguing automatically occurs, even if it is 'behind closed doors.' The mode of 'behind closed doors' arguing renders the interlocutors not discussing the norm itself anymore, but whether or not violations occur and in what scope. Therefore, "the two sides gradually [accept] each other as valid interlocutors," and they thus also share a common lifeworld because they mutually accept each other and their claims (Risse 2004, 307–308). The next section shows that this can even resemble an 'ideal speech situation.'

STIMULATING A DIALOGUE: AN IDEAL SPEECH SITUATION

The last formal condition for argumentative rationality that this paper will discuss is that discourse needs to resemble an 'ideal speech situation.' As outlined above, one of the preconditions for communicative action is that the participants of a given discourse "need to recognize each other as equals and need to have equal access to the discourse" while also being open to the public sphere (ibid., 295–296). As the last section established, the discourse of the Istanbul Convention's monitoring process is open to the public as NGOs, CSOs, and independent national human rights bodies are actively engaged. However, any asymmetrical power hierarchies must be nullified so that the better argument is taken seriously and thus can count in the end. International institutions, in this case, the monitoring body GREVIO – which is not a complaints body nor a legal entity – are "neutral instances"; they "help foster trust and empathy between participants and establish equal rights of participation" (Deitelhoff and Müller 2005, 173). Consequently, the Istanbul Convention does provide an 'ideal speech situation' to a degree be-

cause it is a neutral instance where states, NGOs, CSOs, and independent national human rights bodies have equal access to the discourse. However, it is questionable if power asymmetries between the state and non-state entities disappear and if state parties voluntarily submit themselves to the discourse.[4]

Habermas himself conceded that he did not assert "'that a valid consensus can only be achieved under conditions of the ideal speech situation'" and that the idea of this ideal speech situation has been met with criticism and has been labelled as "'idealistic' and 'utopian'" (Habermas 1995, 553 as cited in Risse 2000, 17, 16). And, as Risse argues, there is no such thing as an "'ideal speech situation' in real life" (Risse 2003, 296). However, in true argumentative discourse, he contends, there is also no need for this: "If we try to understand each other, if we start deliberating in this sense, we cannot do so without assuming that relationships of power and other asymmetries recede to the background for the time being" (ibid.). And as the state members of the Istanbul Convention are forced to into a dialogue by means of the Convention's provisions and by pressure from the public sphere – and thus through the "pressure of […] transnational networks" (ibid., 308) – this indeed does not embody an 'ideal speech situation,' as these state actors are then not freely participating in the discourse. But, in what Risse terms "argumentative 'self-entrapment'," actors rhetorically and strategically succumb to external pressure, e.g., pressure posed by the public

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4 Concerning power asymmetries, especially Feminist International Relation scholars see Habermas' idea of the 'ideal speech situation' as problematic: marginalized people's voices have always been silenced, and thus they advocate "forms of empathetic negotiation and dialogue across diverse identities and boundaries" (Diez and Steans, 136). The shadow reporting includes many different actors on the state level: different NGOs, CSOs, and independent national and transnational human rights bodies – and it is not uncommon that shadow reports are submitted by refugee advocacy groups, or, as is the case for Serbia, by associations that offer services for minority women (in this case the Association of Roma Novi Bečej, see Udruženje Roma Novi Bečej 2022). And if there are power asymmetries between states and non-state actors, such as when NGOs lose funding, the Istanbul Convention actively tries to establish parity in arguing with the state party in its recommendation, as shown in the previous section with the example of the recommendations issued for Poland.

sphere as argued above; however, they still end up in true argumentative behavior, nonetheless (Risse 2004, 308). This is because even this "forced dialogue" by means of the reporting procedure of the Istanbul Convention constitutes a "true argumentative [exchange]" (ibid.), as the member states, through signature and ratification, accept the Istanbul Convention and its monitoring body, GREVIO, as well as ensuring NGOs, CSOs, and independent national human rights bodies as equal participants of the dialogue. In doing so, they "try to establish some common definition of the human rights situation, and to agree on the norms guiding the situation" (ibid.). In this case, that is accepting potentially competing claims about the human rights situation of women. Through reporting of the state and NGOs, CSOs, and independent national human rights bodies, a dialogue is stimulated in the sense that "the actors do not simply repeat their arguments in the public discourse, but respond in increasing detail to the points made by their communication partners" (ibid.), i.e., by commenting on the GREVIO reports. Thus, if a state party implemented the recommendations made after the conclusion of the reporting procedure, this would constitute argumentative rationality. However, there is a lag between law and implementation, as the CoE itself concedes (Council of Europe 2019b, 4). Nonetheless, the CoE attests that "since its opening for signature, the Istanbul Convention has had a tangible and positive impact on the protection of women against violence" with changes to laws subject to the Convention (ibid., 9). Although the IC does stimulate an equal dialogue between its interlocutors, thus providing a framework for an ideal speech situation, the discourse on women's human rights within CoE member states is not free from ideology.

RATIONALITY LOST? THE IDEOLOGICAL BACKLASH

As established, the framework conditions needed for participants to engage in communicative action are present within the Istanbul Convention. However, that does not mean that argumentative rationality has been reached. For communicative action to work, the participants of a given discourse must trust each other enough to implement the reached consensus (Müller 1994, 27). However, it is much too early to judge if this has happened: legislative acts are a lengthy process; thus, a definite statement cannot be made

on the implementation of the issued recommendations. Moreover, communicative action cannot be foretold: the open-endedness of results is not only required by good academic research practice but also by the TCA itself; mutual agreement by way of communicative action cannot be predicted (Herborth 2007, 158). Furthermore, as face-to-face discourse happens behind closed doors, it is empirically hard to examine "communicative utterances of speakers" to find instances of communicative action, as Risse proposes (2000, 18–19). As Deitelhoff and Müller assert, it can be so hard to prove that arguments are exchanged simply by virtue of communicative action that they speak of TCA as "a *theoretical paradise* that is *empirically lost!*" (Deitelhoff and Müller 2005, 177) Another limitation of the TCA is that 'mutual understanding' has not always been taken up favorably by all theoretical strands. Post-Structuralism contends "that Habermas' Critical Theory [is] characterized by a problematic commitment to rationalism and the modernist aspiration to totality" (Diez and Steans 2005, 135). It contends that "Western universal reasoning" is always exclusionary and "that the search for a form of morality acceptable by everyone should be abandoned" (ibid.).[5]

Another related criticism of the TCA is that Critical Theory's "distinctiveness […] lies in its desire to foster an intersubjective 'conversation' aimed at mutual understanding and communication free from ideological domination" (Diez and Steans 2005, 134) – and this is exactly where the Istanbul Convention encounters problems. In a report on the challenges of the Istanbul Convention, the Parliamentary Assembly of the CoE explains that the IC

"is misrepresented by its opponents as an attack on family values or as promoting a hidden agenda. These misconceptions and deliberate misinterpre-

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5   The European imposition of its values of individual liberty, for example, has been cited as a reason for the backlash against the IC that has occurred in many Central and Eastern European countries. A study commissioned by the European Parliament, citing left-wing criticism (see Kovats 2016) of the backlash on women's rights in many Eastern European countries, contends that this backlash in this particular geographical region can be ascribed to "attacks on modernism" that is due to the EU's focusing on individual women's rights while neglecting socio-economic realities of women in the Eastern European countries (European Parliament 2018, 15–16).

tation for political purposes undermine the added value and high potential of the Convention as well as the considerable achievements made in the past years and effective implementation of the Convention" (Council of Europe 2019b, 4).

Examples of this "ideological war", as the Council of Europe sees it (Council of Europe 2019b, 11), are Poland, Bulgaria, Hungary, Croatia, and Turkey, among others.[6] Poland challenged the legitimacy of the Convention before ratification, as state officials claimed it was an "expression of feminist ideology" that would threaten family values; it now has plans to withdraw (Krizsán and Roggeband 2021, 1–2). Bulgaria declared the provisions of the Istanbul Convention to be "incompatible with its Constitution in 2018", while in Hungary, it was asserted that it was a "Trojan horse used by proponents of gender ideology to smuggle their ideas into law" (ibid., 2). Both countries have signed but not ratified the Convention. In Croatia, the implementation after ratification has been halted because of protests about the "ideological nature" of the Convention (ibid.). And Turkey, the first state to ratify the Istanbul Convention, withdrew last year on allegations that the Convention had been "hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Türkye's social and family values" (Directorate of Communications 2021). Since neither Hungary nor Bulgaria has ratified the Convention, ideological sentiments are in the way of achieving argumentative rationality, as without ratification, these states do not submit themselves to arguing within the Convention. The Council of Europe ascribes this 'ideological war' to different actors in the political landscape, including religious institutions and even NGOs that promote counter-factual falsehoods about the Convention, e.g., an alleged erosion of family values, or the alleged imposition of a third gender or same-sex mar-

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6   Out of all CoE member states, 11
        "have signed but not ratified it (Armenia, Bulgaria, Czech Republic,
        Hungary, Latvia, Liechtenstein, Lithuania, Republic of Moldova,
        Slovak Republic, Ukraine and the United Kingdom). Azerbaijan
        and the Russian Federation are the only member States who have
        neither singed nor ratified it" (Council of Europe 2019b, 8).
    The most fervent opposition to the convention has grown in member
    states such as Bulgaria, Croatia, Czech Republic, Hungary, Latvia, Lit-
    huania, Poland, Romania and the Slovak Republic (ibid., 11).

riage (Council of Europe 2019b, 11–12). The impact of these actors "is particularly important in areas where access to diversified sources of information is limited and non-faith non-governmental organizations (NGOs) are not present" (ibid., 11), posing a problem of parity concerning the concepts of the 'ideal speech situation' and the public sphere. There has been a shift in the political discourse in Eastern European countries: "from positions that were either largely supportive or silent on gender equality to openly challenging previously adopted and accepted gender equality policy positions" (Krizsán and Roggeband 2018, 91). And as Krizsán and Roggeband suggest, "discursive (de)legitimation of gender policy objectives" complement and are interrelated to "dismantling and reframing existent policies, … backsliding in implementing institutions, coordination, policy programming and funding, … and dismantling accountability and inclusion mechanisms" (Krizsán and Roggeband 2018, 93). And the Council of Europe

> "concludes that in some countries, the backlash has mostly remained at the level of rhetoric and discourse, while in others, it has been translated into concrete measures. In general, it is connected, to a significant degree, with intensifying campaigning against so-called 'gender ideology'" (Council of Europe 2019b, 12).

The states that experience an ideological backlash against women's rights are those CoE member states that have either not ratified the Convention halted its implementation, or are actively promoting withdrawal from the Convention (except for Romania). But since other CoE members have ratified the IC, it raises the question if a 'common lifeworld' within Europe only applies to some states – and only to human rights in general, obfuscating the fact that human rights include rights reserved for women.

CONCLUSIONS

The Istanbul Convention, a human rights treaty that combats violence against women and domestic violence, is centered on creating a dialogue with its member states. Communication is also central in international relations; with no world government in place, communication is vital for problem-solving.

Thus, this paper linked the Theory of Communicative to the Istanbul Convention. It was established what arguing, communicative action, and argumentative rationality are, after which the framework conditions for communicative action were introduced. It was found that the Istanbul Convention does provide a framework for potential argumentative rationality. This is because the Council of Europe members that have ratified the Istanbul Convention constitute a 'common lifeworld' regarding women's human rights. Through the ratification of the Convention primarily, member states share the normative understanding surrounding the topic that the Istanbul Convention addresses. By including the public sphere – NGOs and CSOs and independent national human rights bodies – in its reporting procedure, the Istanbul Convention furthermore ensures that an external authority can counter-challenge the arguments of the state parties in the form of shadow reports. Thus, through the involvement of an external authority, arguing is ensured. Even though deliberations occur behind closed doors within the monitoring procedure, this could further enable arguing as actors tend to argue more freely and less constrained when the public is not actively engaged. Lastly, the Istanbul Convention also resembles an 'ideal speech situation.' The participants in the discourse (states, NGOs and CSOs, human rights institutions, and GREVIO) enjoy equal access; there is no asymmetrical power imbalance stemming from the Convention itself, as it is a neutral instance. Even though states might be forced to participate in this dialogue about women's human rights, this involuntary participation still ensures arguing.

However, one caveat that hints at the possibility that argumentative rationality was not achieved is that the Istanbul Convention's reception has been by no means free of ideology and that several CoE member states have not ratified or implemented the Convention. Several countries have questioned the Convention's intention, and one has even withdrawn. The ideological backlashes that the Convention has faced in some Eastern European member states to the CoE attest that while the conditions for argumentative rationality are present within the framework of the Convention, they are not present within these countries. Ideological sentiments against the Convention are an obstacle to an 'ideal speech situation,' do not include but sometimes even dismantle the public sphere, and do not share a lifeworld that is common to that of the Istanbul Convention. This questions whether

there is a common lifeworld regarding women's rights within the Council of Europe, putting the legitimacy of the Istanbul Convention at stake. Because to some states, human rights do not include women's human rights.

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Komunikativno delovanje i Istanbulska konvencija

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Sažetak: U ovom tekstu se povezuju teorija komunikativnog delovanja i Istanbulska konvencija da bi se ispitala racionalnost u osnovi ovog međunarodnog ugovora o ljudskim pravima. Tekst analizira da li se unutar Istanbulske konvencije može odvijati argumentacija i da li ona daje osnovu za argumentativnu racionalnost. U tekstu se ukazuje da Istanbulska konvencija ima potencijal za raspravu, koji joj je i neophodan imajući u vidu da nema gotovo nikakvu moć ni ovlašćenja na raspolaganju da primeni odredbe navedene u Konvenciji niti da sankcioniše odstupanja i neslaganja. Za države koje su ratifikovale Istanbulsku konvenciju, ona obezbeđuje okvirne uslove za argumentativnu racionalnost praveći kompromis u zajedničkom svetu života (*lifeworld*), uključivanjem javne sfere i podsećanjem na idealnu govornu situaciju. Dalje, teorija kominikativnog delovanja pomaže u objašnjavanju neslaganja u vidu odbijanja da se ratifikuje Konvencija ili povlačenja iz Konvencije. Razmatranjem ideološkog *backlash*-a u nekim državama članicama Saveta Evrope, ovaj tekst pokazuje da ove države nisu deo zajedničkog sveta života koji izjednačava ljudska prava sa ženskim ljudskim pravima.

Ključne reči: Istanbulska konvencija, Savet Evrope, ljudska prava, komunikativno delovanje