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Belarus' Violation of International Obligations in Connection with Artificial Migration Pressure on the Belarus–European Union Border

Abstract: This paper attempts to assess events related to the huge scale of the influx of migrants in the summer of 2021 at the Belarusian borders with Lithuania, Poland and Latvia. The involvement of the Belarusian government had a key impact on the nature of the events and led to Belarus' violation of its international obligations. In particular, Belarus has violated the Geneva Convention Relating to the Status of Refugees (1951), the 1967 additional Protocol Relating to the Status of Refugees, the 1966 UN International Covenant on Civil and Political Rights and the United Nations Convention against Transnational Organized Crime of 2000 and the Protocols Thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air). The illegal actions taken by Belarus were described as a hybrid attack aimed at destabilizing Europe. Minsk's creation of an engineered migration pressure on the border with the EU can be considered part of a hybrid strategy – one of the dominant methods in geopolitical confrontation and the struggle for influence in international relations. The present paper verifies the research hypothesis that Belarus has deliberately violated international law by inducing engineered migration at the border with the EU in order to paralyse the migration situation in the neighbouring EU Member States. The violation of international law has not resulted in any major international consequences.

Keywords: Belarus, coercive engineered migration, migration pressure, refugees, weaponizing migration, violation of international law

Introduction

After the recent presidential elections in Belarus in August 2020, President Alexander Lukashenko made no secret of his intention to use migration as a weapon in retaliation for the sanctions imposed by the EU against his government.¹ As early as May 2021, the Belarusian leader warned that Belarus would not enforce border controls with the EU: ‘We stopped drugs and migrants. Now you will eat them and catch them yourselves.’² An analysis of the events that began in the summer of 2021 on the border between Belarus and Lithuania, and then Poland and Latvia, proves that this was a real threat. The involvement of the Belarusian government had a key impact on the nature of the events. The purpose of this paper is to demonstrate Belarus’ violation of its international obligations. Particular attention has been paid to the provisions of the Geneva Convention Relating to the Status of Refugees (1951), the 1967 additional Protocol Relating to the Status of Refugees, the 1966 UN International Covenant on Civil and Political Rights, and the United Nations Convention against Transnational Organized Crime of 2000 and the Protocols Thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air). The present paper verifies the research hypothesis that Belarus has deliberately violated international law by inducing engineered migration at the border with the EU in order to paralyse the migration situation in the neighbouring EU Member States. The hypothesis was verified using the dogmatic method.

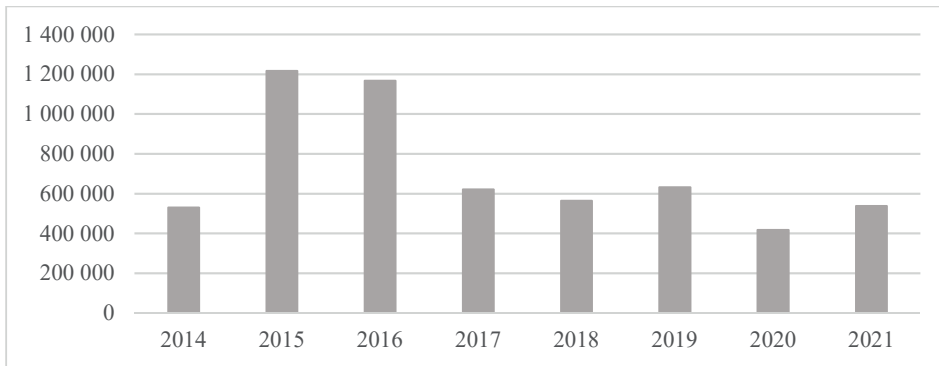
1. Migration crisis, artificial migration pressure or ‘coercive engineered migration’?

Events on the EU’s border with Belarus should not be referred to as a migration crisis due to the fact that equating the word ‘crisis’ with the situation on the border

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- 1 Y. Miadzvetskaya, *Designing Sanctions: Lessons from EU Restrictive Measures against Belarus*, ‘The German Marshall Fund of the United States: Policy Paper’ 2022, <https://www.gmfus.org/sites/default/files/2022-06/Designing%20Sanctions%20Lessons%20from%20EU%20Restrictive%20Measures%20against%20Belarus.pdf> (accessed 12.10.2022); A. Szabaciuk, *The Crisis on the Polish–Belarusian Border in the Context of Rising Tensions in Eastern Europe (Part 2)*, ‘Komentarze IES’ 2021, no. 471, <https://ies.lublin.pl/wp-content/uploads/2021/12/ies-komentarze-471.pdf> (15.10.2022).
 - 2 M. Bennetts, *Belarus and Lukashenko Face Consequences for Migrant Crisis*, ‘The Times’ 12.11.2021, <https://www.thetimes.co.uk/article/belarus-and-lukashenko-face-consequences-for-migrant-crisis-jmlfzxcpr> (24.10.2022); Congressional Research Service, *Migrant Crisis on the Belarus–Poland Border*, <https://crsreports.congress.gov/product/pdf/IF/IF11983> (24.10.2022).

could evoke associations with the 2015–2016 migration crisis.³ At that time, millions of Arab and African migrants and refugees were trying to enter the EU after a war broke out in countries of the Middle East.⁴ Nearly 2.5 million people applied for asylum in the EU.⁵ In contrast, the events on the border with Belarus did lead to a crisis, but the scale of the problem in 2021 was incomparably smaller (Figure 1). Therefore, the use of the term 'migration crisis' is not justified.

Figure 1. Number of first-time asylum applicants (non-EU citizens) in all EU Member States between 2014 and 2021

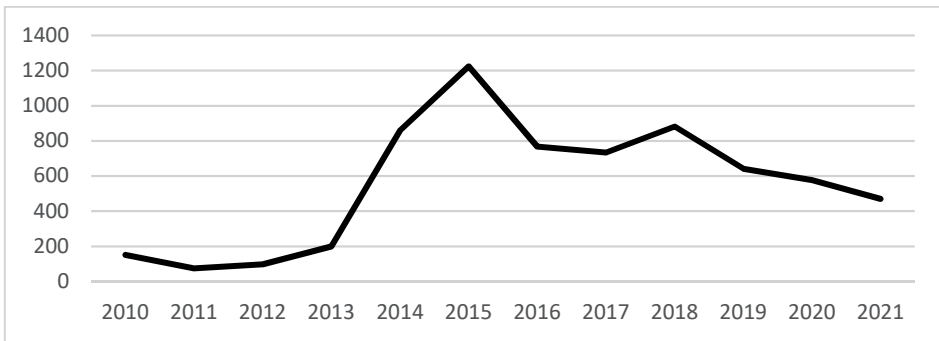


Source: prepared by the author based on Eurostat, *Asylum Applicants by Type of Applicant, Citizenship, Age and Sex – Annual Aggregated Data*, https://ec.europa.eu/eurostat/databrowser/view/migr_asyappctza/default/table?lang=en (05.10.2022).

- 3 E. Braw, Stop Calling What's Happening with Belarus a Migration Crisis, 'Politico' 16.11.2021, <https://www.politico.eu/article/belarus-border-migration-geopolitical-crisis-nato-eu/> (05.10.2022); R. Koulish, M. van der Woude, Introduction: The Problem of Migration, (in:) R. Koulish, M. van der Woude (eds.), *Crimmigrant Nations: Resurgent Nationalism and the Closing of Borders*, New York 2020, p. 4.
- 4 E. Kuzelewska, A. Weatherburn, D. Kloza (eds.), *Irregular Migration as a Challenge for Democracy*, Cambridge 2018; S. Spencer, A. Triandafyllidou, *Irregular Migration*, (in:) P. Scholten (ed.) *Introduction to Migration Studies*, Cham 2022, pp. 191–204; N. Hajiyeva, The Current Dynamics of International Migration in Europe: Problems and Perspectives, 'Eastern European Journal of Transnational Relations' 2018, vol. 2, no. 2, pp. 34–35; A. Doliwa-Klepcka, The New Pact on Migration and Asylum as a Response to Current Migration Challenges – Selected Issues, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, pp. 12–13; D. Vinci, Ufficio Tutela Metropolitan presso il Comune di Bologna, 'Miscellanea Historico-Iuridica' 2020, vol. 19, no. 1, pp. 355–356; K. Karski, Migration, (in:) A. Raisz (ed.) *International Law from a Central European Perspective*, Miskolc-Budapest 2022, pp. 219–238.
- 5 Pew Research Center, <https://www.pewresearch.org/global/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/> (24.10.2022).

However, from the point of view of EU Member States that have a border with Belarus (Poland, Lithuania and Latvia), the scale of the problem in 2021 was comparable to the situations in 2015 and 2016. For the three countries, the events at the border had the features of a crisis, given the humanitarian challenges, among other things.⁶ What should also be taken into account is the fact that compared to Western European countries, countries of Eastern Europe have much less experience in receiving migrants, including refugees.⁷ The issue is not only the lack of sufficient preparedness to manage this type of migration, but most importantly the fifteen-fold increase in the number of asylum applications in Lithuania in 2020 and 2021 (Figure 2).

Figure 2. Number of first-time asylum applicants (non-EU citizens) in Poland, Lithuania and Latvia between 2014 and 2021.



Source: prepared by the author based on Eurostat, *Asylum Applicants by Type of Applicant, Citizenship, Age and Sex – Annual Aggregated Data*, https://ec.europa.eu/eurostat/databrowser/view/migr_asyappctza/default/table?lang=en (05.10.2022).

From the point of view of the response to the events at the border between Belarus and the EU, the use of appropriate terminology was essential in creating a separate narrative about threats to EU security and, at the same time, was an effective weapon against disinformation from Minsk. The EU Commission president, Ursula von der Leyen, aptly described Belarus' actions as a hybrid attack aimed at destabi-

6 P. Partogi Nainggolan, *Illegal Immigrant Crisis and Poland–Belarus Border Conflict*, p. 9, https://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-XIII-23-I-P3DI-Desember-2021-160-EN.pdf, (10.02.2023); Editorial, *Humanitarian Crisis at the Poland–Belarus Border: Politics is Putting Migrants at Risk*, 'The Lancet Regional Health – Europe' 2021, vol. 11, [https://www.thelancet.com/pdfs/journals/lanepi/PIIS2666-7762\(21\)00271-4.pdf](https://www.thelancet.com/pdfs/journals/lanepi/PIIS2666-7762(21)00271-4.pdf) (10.02.2023).

7 E. Kuźelewska, A. Piekutowska, *The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum*, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, p. 27.

lizing Europe, and the EU's response to the Lukashenko regime's aggressive actions indicated the need for a holistic approach to the fight against hybrid threats and the mitigation of their potential impact on the security of the EU and its citizens.⁸ Some observers felt that such migration phenomena were a part of a hybrid strategy, which is becoming one of the dominant methods in the geopolitical confrontation and the struggle for influence in international relations, including 'migration flow'.⁹ The most appropriate description of the events on the border between Belarus and the EU in 2021 seems to be 'politically motivated artificial migration pressure', as this reflects the real nature of those events.¹⁰ Belarus' strong political motives, which resulted in the importation of migrants and their use in political struggles on an international scale, cannot be ignored. The potential reasons for this struggle as identified by Konieczny include Minsk's retaliation for EU sanctions on Russia, which also affected the Belarusian economy, an attempt to punish Poland for supporting free elections and recognizing the elections held in Belarus as fraudulent, and an effort to force EU countries to recognize Lukashenko's government in Belarus and hold peace talks.¹¹ It should be emphasized that migratory pressure against the EU is not a new phenomenon, but this is the first time that the determination of migrants to find a way to enter the territory of the EU was exploited in such a cynical manner.

The role of the Belarusian government is important to the assessment of the events. While initial media reports suggested that Belarusian authorities encouraged but were not necessarily involved in organizing crossing of the EU border by migrants, later reports disclosed documents that indicated the involvement of Belarusian state-owned companies in the coordination of the migrants' travel to the EU border. When evidence emerged that indicated that the influx of migrants from Belarus was not only tolerated but actively facilitated by the government in Minsk,¹² both

8 S. Kaufman, M. Plachta, Migration Enforcement, 'International Enforcement Law Reporter' 2021, vol. 37, p. 475.

9 M. Frotveit, International Migration as an Instrument of Hybrid Aggression, 'Modern Historical and Political Issues: Journal in Historical & Political Sciences' 2022, vol. 45, pp. 128–139; J. Boronio, Crisis on the Polish–Belarusian Border – What Strategy for Warsaw? 'Eurasia Daily Monitor' 2021, vol. 18, no. 172; W. Repetowicz, Broń 'D' jako zagrożenie asymetryczne, 'Wiedza Obronna' 2018, nos. 1–2, pp. 118–119.

10 B. Fraszka, Sytuacja na granicy polsko-białoruskiej: przyczyny, aspekt geopolityczny, narracje [The situation on the Polish–Belarusian border, the geopolitical aspect, the narrations], <https://warsawinstitute.org/pl/sytuacja-na-granicy-polsko-bialoruskiej-przyczyny-aspekt-geopolityczny-narracje/> (06.10.2022).

11 M. Konieczny, Border Crime in the Aspect of the Hybrid War between Belarus and Poland, 'Studia Prawnoustrojowe' 2022, vol. 57, p. 323.

12 S. Nowacka, Migration from Arab States and the Crisis on the Border with Belarus, 'Polski Instytut Spraw Międzynarodowych' 2021, <https://pism.pl/publications/migration-from-arab-states-and-the-crisis-on-the-border-with-belarus> (25.10.2022); O. Babakova, K. Fiałkowska, M. Kindler, L. Zessin-Jurek, Who is a 'True' Refugee? On the Limits of Polish Hospitality, <https://www.migracje.uw.edu.pl/wp-content/uploads/2022/06/Spotlight-JUNE-2022-1-2.pdf> (25.10.2022).

the EU and NATO, as well as individual governments, accused Belarus not only of orchestrating this crisis but also of violating international law.¹³

Due to the migration pressure deliberately created by the Belarusian authorities, the events at the EU–Belarusian border were referred to as ‘coercive engineered migration’, a term similar to ‘politically motivated artificial migration pressure’. This is defined by Kelly M. Greenhill as cross-border population movements created intentionally or manipulated to elicit political, military and/or economic concessions from the target state or states.¹⁴ Greenhill gives numerous examples of the instrumentalization of migration to achieve specific benefits. In 1956, the Cuban president Fidel Castro demonstrated how easily he could disrupt the immigration policy of the United States by opening the border to all Cubans wishing to live there. The US administration was not prepared for the influx of migrants, which resulted in secret negotiations between President Johnson and Castro. Another example is the events of 1991, when many Albanians tried to leave their country for Italy. This mass exodus was initially viewed with some sympathy by the Italian people, but as time passed, it resulted in discontent. Rome struck a deal with Tirana, which promised to introduce a stricter border policy in exchange for Italian food and financial aid packages. Another example of coercive engineered migration is Turkey’s handling of the influx of Syrian refugees into the EU.¹⁵

Janko Bekić, recognizing the events on the border between Belarus and Poland as a classic example of coercive engineered migration, points to Lukashenko’s two objectives: (1) to force the EU, particularly Poland and Lithuania, to abandon support for the pro-democratic movement in Belarus; and (2) to force the EU to lift sanctions imposed on the Minsk regime in the wake of the August 2020 presidential elections. In addition, the Russian Foreign Minister Sergei Lavrov suggested that the EU should fund the Belarusian efforts to stop illegal migration (as it did with Turkey in 2016), thus exposing the initiators of this operation.¹⁶ There is evidence of the involvement of the Belarusian authorities in events at the border with the three EU Member States,

13 A. Sari, B. Hudson, *Stirring Trouble at the Border: Is Belarus in Violation of International Law – Part 1*, <https://www.justsecurity.org/79222/stirring-trouble-at-the-border-is-belarus-in-violation-of-international-law/> (25.10.2022).

14 K.M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Ithaca, NY 2010, pp. 7–86.

15 For more information, see N. Ela Gokalp-Aras, *Coercive Engineered Syrian Mass Migration in the EU–Turkey Relations: A Case Analysis for Future Reference*, ‘International Migration’ 2019, vol. 57, no. 1.

16 J. Bekić, *Coercive Engineered Migrations as a Tool of Hybrid Warfare: A Binary Comparison of Two Cases on the External EU Border*, ‘Croatian Political Science Review’ 2022, vol. 59, no. 2, p. 160; see also K. Karski, P. Mielniczek, *The Notion of Hybrid Warfare in International Law and Its Importance for NATO*, ‘NATO Legal Gazette’ 2019, Issue 39, pp. 67–80.

which is important for the determination of whether Belarus has violated international law.¹⁷

2. The actions of Belarus and the fulfilment of its obligations under the Geneva Convention

Since 2001, Belarus has been a party to both the Geneva Convention and the New York Protocol, which has resulted in the requirement to fulfil its international obligations related to the protection of refugees.¹⁸ The Belarusian government is required to protect everyone's right to seek asylum, to provide protection against forced return for all those in need of international protection, and to respect the rights of refugees as enshrined in the Convention. Some of the migrants at the Belarus–EU border were refugees, so it is reasonable to ask whether Belarus complied with its international obligations.

In order to provide a constructive answer to such a question, it is first necessary to determine whether the migrants at the Belarusian border should be considered refugees. In an interview with CNN, President Lukashenko expressly called them refugees.¹⁹ Article 1(A)2 of the Refugee Convention, as amended by the 1967 Protocol thereto, defines a refugee as someone who (1) is outside the country of his or her nationality, and (2) is unable or unwilling to avail him- or herself of the protection of that country; these characteristics conform to those migrants who arrived in Belarus. On the other hand, fulfilment of the requirement of a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' can be established as part of the procedure for the determination of refugee status.²⁰ The 1951 Convention does not indicate what procedure should be adopted to determine refugee status; states that are parties to the Convention are free to establish the procedure they deem most appropriate in the context of their constitutional and administrative structure. As a rule, refugee status is determined on a case-by-case basis. However, it is possible that entire groups become migrants in situations that indicate that they could be determined to be

17 Grupa Analityczna, *Granica dyktatora. Polska i Białoruś wobec kryzysu granicznego*, 2021, https://studium.uw.edu.pl/wp-content/uploads/2022/01/Raport_Bialorus_2021_4PL.pdf (25.10.2022).

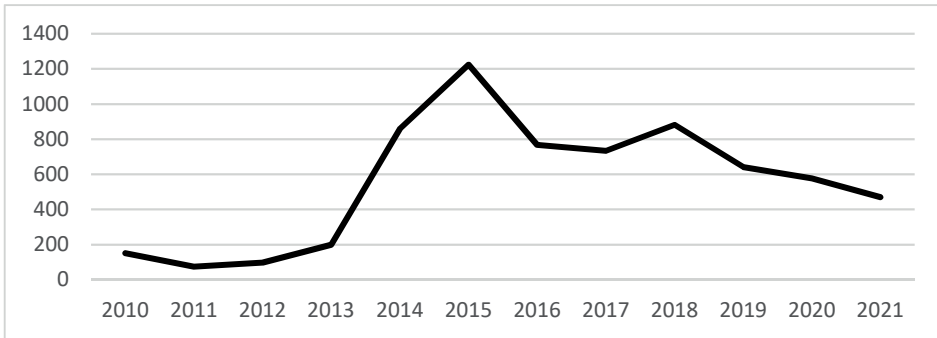
18 Law of the Republic of Belarus No. 10-Z of 2001 on the Accession of the Republic of Belarus to the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees [Belarus], 4 May 2001, <https://www.refworld.org/docid/420a11f44.html> (08.10.2022).

19 CNN interview with Belarus leader Alexander Lukashenko (transcript), published 2:16 AM EDT, 2 October 2021, <https://edition.cnn.com/2021/10/02/europe/belarus-lukashenko-interview-transcript/index.html> (08.10.2022).

20 Convention Relating to the Status of Refugees, <https://www.unhcr.org/3b66c2aa10> (accessed 09.10.2022).

refugees in case-by-case procedures. In such cases, the need for assistance is often urgent, and for purely practical reasons, it may not be possible to carry out case-by-case procedures. A ‘group assessment’ of refugee status is then carried out, where each member of the group is recognized as a refugee *prima facie* (i.e. in the absence of evidence to the contrary).²¹ Given that most of the migrants at the EU–Belarus border came from Iraq, but some also from Syria, Afghanistan and other countries in the Middle East and Africa,²² it could be assumed that at least some of them comply with the definition of a refugee given in the Geneva Convention, with *prima facie* grounds for filing a successful asylum application as defined by the Convention. However, the statistics on asylum applications in Belarus show no upward trend in 2021 (Figure 3).

Figure 3. Number of asylum applicants in Belarus as a country of asylum between 2010 and 2021.



Source: prepared by the author based on UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/download/?url=iC0R3a> (10.10.2022).

In 2021, 471 people applied for asylum in Belarus. As a side note, it should be mentioned that Belarus is not among the major refugee-receiving countries and it was only in 2015 when the number of people seeking protection there exceeded 1,200. In 2021, refugee status was granted in Belarus to only 4% of applicants, and temporary protection was granted to 55% of them (Figure 4).

According to Article 41 of the Law of the Republic of Belarus of 23 June 2008 no. 354-Z on Granting Foreign Citizens and Persons without Citizenship the Status of Refugee, Additional Protection, Asylum and Temporal Protection in the Republic of

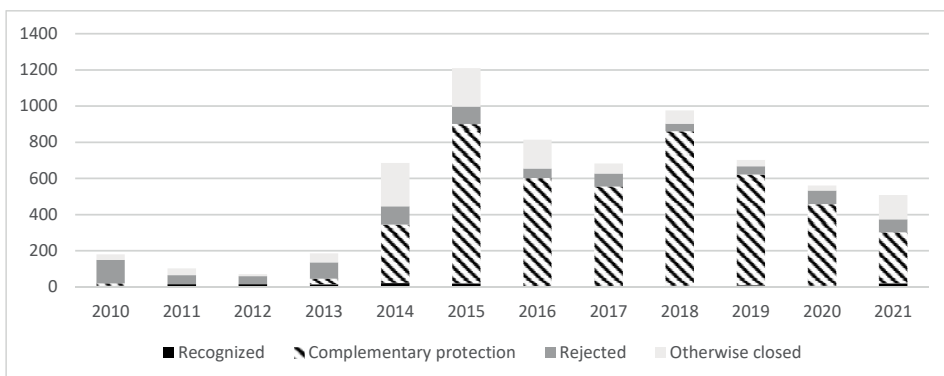
21 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Geneva 2019, p. 20.

22 Congressional Research Service, *Migrant Crisis...*, *op. cit.*

Belarus,²³ in the procedure for determining refugee status, interviews are conducted for the purpose of registering the applications; at a later stage of the procedure, interviews are not mandatory if the decision-making body considers them unnecessary. In addition, according to paragraph 2 of the article, the registering authority may register applications without holding any interviews if it concludes that the decision to grant refugee status can only be made on the basis of written documents. As a result, there is a very high probability that in Belarus, the decision to grant refugee status can be made without conducting individual interviews with those who apply for protection.²⁴

Thus not all migrants were granted refugee status, but at the same time, the course of events at the Belarusian border with Poland, Lithuania and Latvia did not allow observers to clearly identify who has refugee status, who is applying and who is migrating for purposes other than those provided for in the Geneva Convention.

Figure 4. Number and type of first-instance asylum decisions in Belarus as a country of asylum between 2010 and 2021.



Source: prepared by the author based on UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/download/?url=iC0R3a> (10.10.2022).

As Mieczysława Zdanowicz rightly points out, recognition of refugee status does not make someone a refugee, but only confirms the fact that he or she is one.²⁵ How-

23 http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=106686&p_country=BLR&p_count=448&p_classification=17&p_classcount=25 (23.10.2022).

24 T. Kruessmann, A.A. Soltanowich, *Refugee Status as a Bar to Extradition? A Comparative Perspective on Russian and Belarusian Law*, 'Journal of the Belarusian State University Law' 2019, vol. 2, pp. 38–45.

25 M. Zdanowicz, *Poland's Stance on the Refugee and Migration Crisis in the European Union*, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, p. 92; see also E. Karska, *Kilka uwag o uchodźstwie jako zagadnieniu prawnym*, (in:) E. Karska (ed.), *Uchodźstwo XXI wieku z perspektywy prawa międzynarodowego, unijnego i krajowego*, Warsaw 2020, pp. 9–21; B. Mikołajczyk, *Pacta*

ever, referring to the words of the president of Belarus himself, who used the term ‘refugees’, and having further regard to their country of origin, it is necessary to draw attention to the following articles of the Geneva Convention. According to Article 32, a state that is a party to the Convention may not expel a refugee who is staying lawfully in its territory for reasons other than national security or public order. As Article 32 of the Convention applies to refugees, this means that the measures taken and implemented by the Belarusian state agencies to expel persons present at the country’s borders were most likely in violation of the provisions of that article. At the same time, Article 33 of the Geneva Convention does not apply: the non-refoulement principle specified therein does not apply to the EU, whose Member States are considered safe for asylum.²⁶ It is difficult to assess whether this escaped the attention of the Belarusian authorities or was cynically used against the EU, but when recognizing the principle of non-refoulement as inapplicable to the actions taken by Belarus, it is worth noting that over the years, the principle has evolved into a customary norm of international law.²⁷

3. The actions of Belarus and the fulfilment of its obligations under the International Covenant on Civil and Political Rights and the United Nations Convention against Transnational Organized Crime

Since 1973, Belarus has been a party to the International Covenant on Civil and Political Rights (ICCPR).²⁸ According to Article 13 of the Covenant:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Since Article 13 entitles each foreigner to individual consideration of his or her case, the collective expulsion of migrants from Belarus violates that article.

sunt servanda pod presją migracyjną. Uwagi na temat kryzysu na polsko-białoruskiej granicy, (in:) A. Kozłowski (ed.), *Rządy prawa jako wartość uniwersalna. Księga jubileuszowa Profesora Krzysztofa Wójtowicza*, Wrocław 2022, pp. 471–484.

26 A. Sari, B. Hudson, *Stirring Trouble...*, *op. cit.*

27 A. Chodorowska, A. Trylińska, *The Concept of the Principle of Non-Refoulement in Refugee Law, ‘Dyskurs Prawniczy i Administracyjny’* 2021, vol. 2, pp. 7–23.

28 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (3.10.2022).

LeJune rightly points out in his analysis the clear violation of the treaty in question. Although Belarus is legally bound by its ratification of the Covenant, enforcement mechanisms pose an additional obstacle to keeping its commitments. When a state ratifies a treaty, it commits to respecting and ensuring the rights of every person in its jurisdiction. However, treaties 'mandate the state to define and implement measures' in a manner that the state deems appropriate given the state's sovereignty. Thus state sovereignty has become the 'Achilles heel' of the human rights system and hinders the enforcement of treaties. Despite the binding nature of the ICCPR, there are no effective sanctions for failure to comply with the obligations of the states that are parties to it. The Human Rights Committee, established pursuant to Article 28 of the Covenant, may mention in its annual report the failure of a state party to the Covenant to submit mandatory reports, but such a reprimand is not considered significant, let alone severe, by such states. Since the ICCPR does not provide for penalties against non-complying states, Belarus has repeatedly violated its obligations under the Covenant with impunity.²⁹

In August 2022, the Belarusian Council of Ministers initiated a law on the withdrawal from the First Optional Protocol of the ICCPR, which Belarus joined in September 1992. The Protocol allows the Human Rights Committee to receive and consider human rights complaints from individuals. The withdrawal means that it is not possible to seek justice in cases of violations of human rights under the ICCPR.³⁰

Belarus is also a party to the United Nations Convention against Transnational Organized Crime, including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air. As a party to these legal documents, it is obliged to take steps to prevent and combat human trafficking and migrant smuggling, in particular through cooperation with other state parties. According to the First Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children), human trafficking is narrowly defined as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

It should be emphasized that exploitation 'shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced

29 S. LeJune, 'Europe's Last Dictator': Police Brutality and Human Rights Violations in Belarus, *'North Carolina Journal of International Law'* 2021, vol. 47, no. 591, pp. 603–607.

30 Human Rights House Foundation, Statement: Belarusian Authorities Must Not Withdraw Belarus from First Optional Protocol of the ICCPR, <https://humanrightshouse.org/statements/belarusian-authorities-must-not-withdraw-belarus-from-first-optional-protocol-of-the-iccrp/> (19.10.2022).

labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.³¹ Although the media described the actions of the Belarusian authorities as 'human trafficking', there is no evidence that the definition has been fulfilled in connection with the (overall) situation of the migrants in the territory of Belarus.

At the same time, LeJune points out that a significant number of migrants may fulfil the definition of 'smuggling of migrants' in the meaning of the Second Protocol (Protocol against the Smuggling of Migrants by Land, Sea and Air), as there are strong reasons to believe that Belarus not only failed to meet its obligations under that instrument, but also that the Belarusian authorities were directly involved in the prohibited activities.³² In fact, according to the Protocol, smuggling of migrants means organizing the illegal entry of a person into a state party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit. The adoption of the term 'financial or other material benefit' in the definition of migrant smuggling was a debated issue during the negotiations of the Protocol. In the end, a broad definition was adopted, and this benefit should be understood as broadly and comprehensively as possible.³³

According to the Protocol, Belarus is not only obliged to criminalize the smuggling of migrants (Article 6), but also to take a number of other measures to prevent the use of means of transportation owned by carriers to commit this crime (Article 11).³⁴ Article 11 ('Border measures') is directly related to immigration control: states are required to adopt legislative and other measures to prevent the use of means of transportation to smuggle immigrants. In this regard, the Belarusian state-owned airline has vehemently denied any involvement in human trafficking. This position was presented in response to initial reports in July 2021, when Lithuanian officials said they had found documents relating to detained Iraqi migrants that included visa applications through two Belarusian travel agencies and four boarding passes for a Belavia flight from Istanbul to Minsk.³⁵ In September 2021, Deutsche Welle published

31 United Nations, General Assembly Resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime, Annex II: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (20.10.2022).

32 S. LeJune, 'Europe's Last Dictator'..., *op. cit.*, pp. 603–607.

33 A. Schloenhardt, J.E. Dale, Twelve Years on: Revisiting the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, 'Zeitschrift für öffentliches Recht' 2012, vol. 67, no. 1, p. 136.

34 UN General Assembly Resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime, Annex III: Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (21.10.2022).

35 L. O'Carroll, A. Roth, Belarus State Airline Denies It Is Involved in Trafficking Migrants, 'The Guardian' 10.11.2021, <https://www.theguardian.com/world/2021/nov/10/ireland-briefs-air>

an article about having obtained information from a Baghdad travel agent about sending people to Istanbul or Dubai, from where they could take a Belavia flight to Minsk.³⁶ Most importantly, while Article 11 does not oblige carriers to issue opinions or assess the validity of travel documents, this responsibility lies with the state parties to the Protocol.³⁷

While a state has the right to manage border security and policies, it is obligated to abide by international law, including respect for human rights and the right to seek asylum. Belarus is a state party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The UN High Commissioner for Refugees and the International Organization for Migration have jointly asserted that 'Belarus must uphold its obligations under international law and guarantee the safety, dignity, and protection of the rights of people stranded at the border'.³⁸

Conclusion

The events at the borders between Belarus and Lithuania, Poland and Latvia in 2021 are undeniably a humanitarian crisis for many migrants and their families. Human rights organizations explicitly stated that Belarus was guilty of the most serious violations of these rights.³⁹ Migrants have been cordoned off by the Belarusian Border Guard, which made them unable to return to Belarus.⁴⁰

Who bears responsibility for these tragic events? The final list of culprits may be long (including middlemen and those using illegal push-backs), but this paper focuses on Belarus. Minsk's involvement made a key impact on the nature of the events. Lukashenko's revealed goals, manipulation and instrumentalization of migration lead one to adopt, with reference to the events in question, the term 'coercive engineered migration' proposed over a decade ago by Greenhill. Nevertheless, adoption of the right terminology does nothing to redress the tragedy that occurred at the

craft-leasing-firms-on-possible-belarus-sanctions (21.10.2022).

36 R. Mudge, From Iraq to Belarus – How Migrants Get to Europe, 'Deutsche Welle' 11.09.2021, <https://www.dw.com/en/the-route-from-iraq-to-belarus-how-are-migrants-getting-to-europe/a-59636629> (21.10.2022).

37 T. Obokata, The Legal Framework Concerning the Smuggling of Migrants at Sea under the UN Protocol on the Smuggling of Migrants by Land, Sea and Air, (in:) B. Ryan, V. Mitsilegas (eds.), *Extraterritorial Immigration Control*, Leiden 2010, p. 155; on the state's responsibility, see A.T. Gallagher, F. David (eds.), *The International Law of Migrant Smuggling*, Cambridge 2014.

38 Congressional Research Service, *Migrant Crisis...*, *op. cit.*

39 Helsinki Foundation for Human Rights, *Sytuacja na granicy polsko-białoruskiej: 'to jest kryzys humanitarny'* [Situation on the Polish–Belarusian border: 'This is a humanitarian crisis'], <https://www.hfhr.pl/na-granicy-pl-by/> (25.10.2022).

40 M. Górczyńska, J. Białas, D. Witko, *Legal Analysis of the Situation on the Polish–Belarusian Border. Situation on: 9 September 2021*, <https://www.hfhr.pl/wp-content/uploads/2021/09/Legal-analysis-ENG.pdf> (25.10.2022).

gates of the EU. However, this is a starting point for further analysis of the emerging legitimate questions of legal liability.

The purpose of this paper was to demonstrate the violation of international law by Belarus by its provoking an artificial migration pressure. The paper positively verified the research hypothesis, according to which, first, Belarus violated acts of international law; second, this violation of international law did not entail any serious international consequences; and third, the situation on the Belarus–EU border is an example of an artificial migration pressure deliberately caused by Belarus.

There is no doubt that key acts of international law were violated: Articles 32 and 33 of the Geneva Convention, Article 13 of the International Covenant on Civil and Political Rights and Articles 6 and 13 of the Protocol against the Smuggling of Migrants by Land, Sea and Air of the United Nations Convention against Transnational Organized Crime. This latter Protocol may be of particular importance in assessing the responsibility of Belarus. This is due to the broad definition of the smuggling of migrants adopted in the Protocol, the term ‘financial or other material benefit’ uncompromisingly adopted at the Protocol’s negotiation stage, and the indication of the responsibility of the state parties to the Protocol with regard to immigration control. On the other hand, those acts of international law whose implementation has been required of the state parties may be ineffective in accordance with the principle of sovereignty. This can happen in particular when the *superanus* does not come from democratic elections – as exemplified by the events described on the borders between Belarus and the three Member States of the EU.

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