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WEAPONISED MIGRATION: THE BELARUS-EU BORDER CRISIS AND THE LIMITATIONS OF EU LAW

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ABSTRACT

Background: Between 2021 and 2023, the Republic of Belarus, under the authoritarian rule of President Alexander Lukashenko, deliberately orchestrated the mass movement of migrants from the Middle East, Africa, and South Asia toward the borders of Poland, Lithuania, and Latvia — all European Union member states. This phenomenon, widely termed 'weaponised migration' or 'hybrid warfare', represented an unprecedented instrumentalisation of human suffering as a geopolitical tool. The crisis exposed deep structural tensions within the EU's asylum and border management architecture.

Objective: This paper examines the central research question: What were the EU's and the affected member states' legal, political, and humanitarian responses in the context of human rights violations during the Belarus-EU border crisis? The study critically analyses the tension between state security imperatives and obligations under international human rights and refugee law.

Methodology: The paper employs doctrinal legal analysis combined with a critical policy evaluation framework. Primary sources include EU treaty provisions, CJEU jurisprudence, ECHR decisions, EU Council conclusions, and national legislative acts. Secondary sources include academic literature, reports from UNHCR, Amnesty International, Human Rights Watch, and investigative journalism.

Findings: The study finds that EU member states, particularly Poland, engaged in systematic pushbacks in violation of the principle of non-refoulement and Article 4 of EU Charter of Fundamental Rights. The EU's legal and institutional response was fragmented, with temporary derogations from the Asylum Procedures Directive effectively normalising non-compliance. Political solidarity mechanisms failed to operationalise in any meaningful way, and humanitarian access was systematically denied. The paper argues that the crisis reveals a structural incapacity within EU law to regulate the weaponisation of migration.

Conclusion: The Belarus-EU border crisis constitutes a critical stress test for EU values and its rule-of-law commitments. The paper concludes with normative recommendations for reform

of the Common European Asylum System (CEAS) to address weaponised migration scenarios while preserving fundamental rights guarantees.

1. INTRODUCTION

The Belarus-EU border crisis of 2021-2023 was not a spontaneous humanitarian emergency but a deliberately engineered geopolitical operation. Following the forced landing of Ryanair flight FR4978 in Minsk on 23 May 2021 and the subsequent arrest of opposition journalist Roman Protasevich, the European Union imposed a comprehensive package of economic and political sanctions against the Lukashenko regime (Council of the EU, 2021a). In a calculated act of political retaliation, the Belarusian government responded by facilitating the organised transport of migrants from Iraq, Syria, Yemen, Afghanistan, and various African nations to its borders with EU member states — most prominently Poland, Lithuania, and Latvia.

This strategy — the deliberate instrumentalisation of human beings as geopolitical pawns — has been characterised in academic and policy discourse as 'weaponised migration' (Greenhill, 2010; Léonard & Kaunert, 2022). It represents a variant of what some scholars term 'hybrid warfare': the deployment of non-military tools below the threshold of conventional armed conflict to destabilise and coerce adversaries (Hoffman, 2007; NATO Parliamentary Assembly, 2022). The crisis thus sits at the intersection of security studies, international law, refugee law, and European constitutional law, rendering it a particularly complex and consequential case study.

The central research question of this paper is: What were the EU's and the affected member states' legal, political, and humanitarian responses in the context of human rights violations during the Belarus-EU border crisis? This inquiry encompasses three interrelated sub-questions. First, did the responses of Poland, Lithuania, and Latvia comply with binding obligations under EU law, the European Convention on Human Rights (ECHR), and international refugee law? Second, how did EU institutions — the Council, Commission, and Parliament — respond legislatively and politically to the crisis? Third, what do these responses reveal about structural limitations within the Common European Asylum System (CEAS) and EU border governance more broadly?

The paper is structured as follows. Section 2 provides historical and contextual background on the crisis. Section 3 analyses the concept of weaponised migration in law and theory. Section 4 examines the legal framework applicable to the crisis. Section 5 critically

evaluates the responses of affected member states. Section 6 analyses EU institutional responses. Section 7 assesses the humanitarian dimension and protection gaps. Section 8 draws comparative perspectives from analogous crises. Section 9 offers normative conclusions and reform proposals.

2. HISTORICAL AND CONTEXTUAL BACKGROUND

2.1 The Lukashenko Regime and EU-Belarus Relations

Alexander Lukashenko has governed Belarus in an increasingly authoritarian manner since 1994. The fraudulent presidential election of August 2020, in which Lukashenko claimed an implausible victory over opposition candidate Sviatlana Tsikhanouskaya, triggered a wave of mass protests and a severe crackdown by state security forces (Marples, 2021). The European Union declined to recognise the election results and, following the hijacking of the Ryanair aircraft and intensifying human rights abuses, imposed successive rounds of targeted and sectoral sanctions under Council Regulation (EU) 2021/1030 and related measures (Council of the EU, 2021b).

In response, Lukashenko announced in May 2021 that Belarus would no longer prevent migrants from crossing into EU territory, famously stating: 'We will not hold anyone.' This announcement signalled a deliberate shift in Belarusian policy from passive non-cooperation to active facilitation of irregular migration as a coercive diplomatic tool (Piotrowski, 2022).

2.2 The Mechanics of the Crisis: Organised Facilitation

Belarusian state actors — including the State Security Committee (KGB), airline companies such as Belavia, and border guard authorities — were directly implicated in the recruitment and facilitation of migrants. Travel packages were marketed through social media networks, often in Arabic, promising easy access to the European Union. Migrants, many of whom had paid thousands of US dollars, were transported on commercial flights to Minsk and subsequently transported by Belarusian security forces to the border zone (IOM, 2021; Amnesty International, 2021a).

By the autumn of 2021, thousands of migrants had accumulated in the border zone between Belarus and Poland, Lithuania, and Latvia. Polish estimates placed the number of attempted crossings in the hundreds of thousands over the course of 2021. The conditions in the border zone were catastrophic: migrants were exposed to sub-zero temperatures without adequate shelter, food, water, or medical care. At least twenty-seven individuals died in the

Polish border zone alone, though NGOs suggested the true figure was considerably higher (Human Rights Watch, 2021; MSF, 2021).

2.3 The Polish Response: Emergency Zone and Systematic Pushbacks

Poland's response to the crisis was characterised by the declaration of a state of emergency along its eastern border and the systematic use of pushbacks — the forcible return of individuals to Belarus without any individual assessment of their asylum claims or protection needs. The Polish government enacted the Act Amending the Act on Foreigners and Certain Other Acts of October 2021, which sought to legalise pushback procedures through domestic legislation. This was accompanied by the physical construction of a steel barrier along the Polish-Belarusian border at a cost of approximately 353 million euros (Polish Ministry of Interior, 2022).

Access to the border zone was denied to journalists, NGOs, lawyers, and medical personnel. The Polish Red Cross and UNHCR were systematically prevented from accessing individuals in distress. This denial of humanitarian access constituted a significant compounding factor in the human rights emergency unfolding in the borderlands (UNHCR, 2022a).

3. WEAPONISED MIGRATION: THEORETICAL AND LEGAL CONCEPTUALISATION

3.1 Defining Weaponised Migration

The concept of weaponised migration — sometimes referred to as 'coercive engineered migration' — refers to the strategic instrumentalisation of refugee and migrant flows to achieve political, military, or economic objectives against a target state (Greenhill, 2010). Kelly M. Greenhill's seminal work identifies several mechanisms through which migration can be weaponised, including the exploitation of target states' humanitarian norms and commitments, the generation of domestic political pressure, and the imposition of economic costs (Greenhill, 2010, pp. 14-22).

Léonard and Kaunert (2022) situate the Belarus crisis within a broader typology of hybrid threats, arguing that it constitutes a novel variant in which a state actor deliberately creates and channels a humanitarian emergency to exert coercive pressure. This framing has been adopted by NATO, which characterised Belarusian actions as a 'hybrid attack' in its 2022 Strategic Concept (NATO, 2022). The European Parliament similarly adopted a resolution

declaring the Belarusian actions a form of hybrid warfare against the EU (European Parliament, 2021).

3.2 Legal Lacunae in the Weaponised Migration Paradigm

The weaponised migration framework creates significant legal complexity. International refugee law, as codified in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 New York Protocol, is structured around individual claims to protection and makes no provision for the scenario in which a third state deliberately generates refugee flows as an instrument of coercion (UNHCR, 2022b). The Convention's non-derogation principle applies regardless of the motives of the sending state.

Moreno-Lax (2022) argues that the weaponisation framing — however accurate as a characterisation of Belarusian conduct — has been systematically deployed by receiving states to justify derogations from legal obligations that admit no such exception. This instrumentalisation of the weaponisation narrative represents what she terms 'exceptionalism by analogy': the importation of security emergency logic into a domain governed by human rights imperatives (Moreno-Lax, 2022, p. 8).

The EU's proposed Regulation on addressing situations of instrumentalisation in the field of migration and asylum, published by the Commission in December 2021, sought to create a specific legal framework for such scenarios. However, critics including the UNHCR and the Council of Europe's Commissioner for Human Rights argued that the proposed regulation's procedural derogations were incompatible with EU primary law and the Geneva Convention (UNHCR, 2021a; Council of Europe, 2022).

4. THE LEGAL FRAMEWORK GOVERNING THE CRISIS

4.1 EU Primary Law

The legal framework governing the EU's response to the crisis is multilayered. At the primary law level, Article 78 TFEU establishes the competence basis for EU asylum policy and mandates compliance with the Geneva Convention and the ECHR. Article 18 of the EU Charter of Fundamental Rights guarantees the right to asylum, while Article 19 prohibits collective expulsion and the removal of any person to a state where they face a real risk of death or serious harm — the Charter codification of non-refoulement.

The Charter applies to EU member states when implementing EU law (Article 51(1) CFR), which is satisfied whenever states exercise functions under the Schengen Border Code

or the Asylum Procedures Directive. The CJEU has confirmed, in cases such as N.S. and M.E. (C-411/10) and Aranyosi and Căldăraru (C-404/15), that fundamental rights obligations cannot be derogated from even in circumstances of systemic pressure or emergency.

4.2 The Schengen Border Code and Pushback Prohibition

Regulation (EU) 2016/399 (the Schengen Border Code) governs external border controls. Article 5 of the Code confirms that border controls must be exercised in compliance with fundamental rights. Critically, the Code makes no provision for the summary return of individuals who have crossed into EU territory without authorisation. The ECtHR's Grand Chamber judgment in N.D. and N.T. v. Spain (Application No. 8675/15) — though concerning a different border configuration — established that collective expulsion of aliens is prohibited under Article 4 of Protocol No. 4 ECHR even at external borders, and that a state cannot justify such expulsions by pointing to the provocative conduct of the sending state.

The relevance of N.D. and N.T. to the Belarus context has been extensively debated (Spijkerboer, 2021; Lübke, 2022). While the Court in N.D. and N.T. suggested that states may have more latitude at external borders where individuals enter without authorisation, it simultaneously affirmed that effective access to individual asylum procedures must be guaranteed. The systematic pushbacks in Poland manifestly failed this standard.

4.3 The Asylum Procedures Directive and Access to Procedures

Directive 2013/32/EU (the Asylum Procedures Directive) guarantees to any person who makes an application for international protection at the border or within EU territory access to an individual asylum procedure (Articles 6-7). Member states are obliged to examine applications on their merits and may not return applicants to third countries without individual assessment of safety conditions. The Polish practice of summary returns to Belarus — a state whose asylum system has been assessed by UNHCR as inadequate (UNHCR, 2021b) — was thus incompatible with the Directive.

The Commission acknowledged in its 2022 Annual Report on the Schengen Area that systematic pushbacks had occurred, but declined to initiate infringement proceedings against Poland or Lithuania, citing the need for political solidarity in the context of the hybrid threat (European Commission, 2022a). This political restraint drew sharp criticism from the European Parliament and legal scholars who argued that it amounted to complicity in ongoing human rights violations (Peers, 2022).

4.4 The European Convention on Human Rights

The ECHR framework — applicable to all EU member states as Council of Europe parties — provides supplementary protection. Article 3 ECHR prohibits torture and inhuman or degrading treatment in absolute terms; the ECtHR has consistently interpreted this to prohibit removal to any territory where such treatment is a real risk (*Soering v. UK*, Application No. 14038/88). Articles 5 (right to liberty), 6 (fair trial), and 13 (effective remedy) are also engaged by summary border procedures.

The Council of Europe Commissioner for Human Rights issued a memorandum in November 2021 documenting violations at the Polish border and calling on Poland, Lithuania, and Latvia to immediately cease pushback operations and grant humanitarian actors access to the border zone (Council of Europe, 2021). The Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 2404 (2021) to similar effect.

5. LEGAL AND POLITICAL RESPONSES OF AFFECTED MEMBER STATES

5.1 Poland: Security Framing and Legislative Derogation

Poland's response to the crisis was shaped by the governing Law and Justice (PiS) party's hardline stance on migration and its broader confrontation with EU institutions over the rule of law. The declaration of a state of emergency along a 3-kilometre border strip in August 2021 — subsequently extended and replaced by a permanent restricted zone — served the dual purpose of excluding humanitarian observers and creating a legal grey zone in which ordinary procedural guarantees were suspended (Smolar, 2021).

The October 2021 amendment to the Law on Foreigners explicitly authorised border guards to return migrants to the border without conducting asylum screening. This provision directly contradicted Article 6 of the Asylum Procedures Directive. Several Polish administrative courts issued injunctions against individual pushbacks, but these were systematically disregarded by border guard units (Stambulski, 2022). The Polish Ombudsman's Office documented numerous cases in which individuals — including unaccompanied minors, pregnant women, and persons with medical conditions — were pushed back across the border in breach of court orders.

Poland's political framing of the crisis as a hybrid attack, while factually accurate in its characterisation of Belarusian conduct, served a rhetorical function of insulating its border conduct from legal scrutiny. By presenting pushbacks as acts of national self-defence against

a hybrid threat, Polish authorities sought to shift the normative terrain from refugee law — which prohibits such practices — to security law — which is more permissive of state discretion (Adamczyk, 2022). This frame was partially adopted by EU institutions, which complicated the Commission's ability to pursue enforcement action.

5.2 Lithuania and Latvia: Comparable Patterns

Lithuania and Latvia adopted responses structurally similar to Poland's. Lithuania declared a state of emergency on its border with Belarus in July 2021 and subsequently enacted amendments to its Law on the Legal Status of Aliens authorising summary returns at the border. The Lithuanian government also conducted large-scale detention of asylum seekers in facilities subsequently criticised by UNHCR and the Council of Europe for inadequate conditions (UNHCR, 2022c).

The ECtHR received a significant volume of applications from individuals subjected to pushbacks at the Lithuanian border, resulting in a series of interim measures under Rule 39 of the Rules of the Court. In *M.A. and Others v. Lithuania* (Application No. 59793/17), a case predating but highly relevant to the 2021 crisis, the Court had already found Lithuania in violation of Articles 3, 5, and 13 ECHR for its border detention and pushback practices.

Latvia, for its part, enacted emergency measures authorising the border guard to return third-country nationals entering from Belarus without asylum screening. The Latvian Constitutional Court, in a 2022 judgment, partially upheld these measures while emphasising the necessity of case-by-case humanitarian exceptions — a ruling that critics argued was insufficiently protective (Latvian Constitutional Court, 2022).

5.3 Comparative Assessment: A Pattern of Non-Compliance

Across all three affected member states, a consistent pattern emerges: security considerations were systematically prioritised over legal obligations, judicial oversight was impeded through emergency declarations and restricted zone regulations, and humanitarian access was denied. The reliance on emergency powers to suspend fundamental rights guarantees represents a structural erosion of the rule of law in the EU's border management architecture. As Baumgärtel (2023) argues, the Belarus crisis demonstrated that EU member states are willing to openly violate binding EU and international law when the political stakes are perceived to be sufficiently high — and that EU enforcement mechanisms are insufficiently robust to prevent this.

6. EU INSTITUTIONAL RESPONSES

6.1 The European Commission: Political Solidarity Over Legal Enforcement

The European Commission's response to the crisis was marked by a fundamental tension between its role as 'Guardian of the Treaties' — mandating enforcement action against member states in breach of EU law — and its political desire to maintain solidarity with frontline states perceived as victims of a hybrid attack (Lavenex, 2022). Commission President von der Leyen's statement that Poland was 'defending the EU's external border' set a political tone that effectively foreclosed robust legal action (von der Leyen, 2021).

The Commission's December 2021 proposal for a Regulation on situations of instrumentalisation represented an attempt to construct a legal framework *ex post facto* for the practices member states were already employing. The proposal would have permitted member states to extend application processing times, limit the grounds for examination of applications, and restrict the geographic location where applications could be lodged. UNHCR assessed these proposed flexibilities as incompatible with the Geneva Convention's non-refoulement guarantee (UNHCR, 2021c). The regulation was not ultimately adopted in this form, as the New Pact on Migration and Asylum, agreed in 2024, addressed some but not all of the identified gaps.

The Commission's failure to initiate infringement proceedings under Article 258 TFEU against Poland, Lithuania, or Latvia for systematic violations of the Asylum Procedures Directive and the Charter represented, in the view of many commentators, a fundamental abdication of its constitutional function (Hailbronner & Thym, 2022). The Commission's position — that enforcement action would undermine solidarity and political cohesion — set a precedent whereby geopolitical emergency operates as a *de facto* suspension of judicial oversight.

6.2 The Council of the European Union: Emergency Conclusions and Solidarity Declarations

The European Council, meeting in extraordinary session in October 2021, adopted Conclusions condemning Belarusian actions as a 'hybrid attack' and endorsing member state responses as proportionate. The Conclusions called for the development of a new instrument to address instrumentalisation of migration but made no reference to the need for member state compliance with fundamental rights obligations (European Council, 2021).

The Council's Justice and Home Affairs (JHA) formation debated proposals for

Emergency Temporary Protection for individuals caught in the border zone — analogous to the mechanism activated for Ukrainian refugees in March 2022 under Council Directive 2001/55/EC (the Temporary Protection Directive). This proposal was not adopted for the Belarus crisis, a decision attributed to political disagreement among member states about the appropriate level of protection owed to non-Ukrainian nationals (Kneebone, 2022). The differential treatment of Ukrainian refugees versus those affected by the Belarus crisis raised profound questions about systemic racial bias in EU protection norms.

6.3 The European Parliament: Rights-Based Opposition

The European Parliament consistently adopted a more rights-protective posture than the Commission or Council. Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) conducted an inquiry into border practices and issued a report in 2022 documenting systematic violations (European Parliament, 2022). Parliament adopted multiple resolutions condemning pushbacks, calling on the Commission to initiate infringement proceedings, and refusing to endorse the proposed instrumentalisation regulation as drafted.

The Parliament's institutional capacity to enforce these positions remained, however, constrained. Under the ordinary legislative procedure, Parliament's amendments to the Commission's instrumentalisation regulation were blocked by Council opposition. This institutional dynamic illustrates a broader structural pathology in EU governance: rights-protective impulses at the parliamentary level are systematically subordinated to member state security preferences in the Council (Ripoll Servent, 2023).

6.4 Frontex and Border Agency Responses

The European Border and Coast Guard Agency (Frontex) deployed officers to Lithuania and Latvia under the agency's rapid border intervention mechanism. Frontex officers were present in the border zone during a period in which systematic pushbacks were being conducted. This raised acute questions about Frontex's complicity in human rights violations and the adequacy of the agency's fundamental rights monitoring framework (FRA, 2021).

Frontex's Fundamental Rights Officer reported in 2022 that the agency had received credible allegations of fundamental rights violations involving officers deployed under EU auspices. The agency suspended several deployments but critics argued that the suspension mechanisms were applied too slowly and with insufficient transparency (Carrera et al., 2022). The Frontex Scrutiny Working Group of the European Parliament subsequently called for a comprehensive accountability review.

7. THE HUMANITARIAN DIMENSION: PROTECTION GAPS AND ACCESS DENIAL

7.1 Deaths and Suffering at the Border

The humanitarian consequences of the crisis were severe. By the end of 2022, Polish border authorities had confirmed at least 27 deaths in the border zone, with NGOs estimating the true figure to be significantly higher due to the inaccessibility of the area (Fundacja Ocalenie, 2022). Deaths resulted from hypothermia, drowning in rivers, and medical emergencies left untreated due to denial of access to emergency services. Numerous individuals, including children, suffered severe frostbite, malnutrition, and psychological trauma.

Médecins Sans Frontières (MSF) documented cases in which individuals who had been pushed back multiple times sustained serious injuries from rough treatment by border guards. NGO lawyers who managed to access individual cases documented accounts of violence, theft of mobile phones and money, and denial of access to translation services (MSF, 2021). These accounts were corroborated by independent journalism and satellite imagery analysis by organisations such as Forensic Architecture (Forensic Architecture, 2022).

7.2 Denial of Humanitarian Access and Its Legal Implications

The systematic exclusion of NGOs, journalists, lawyers, and independent monitors from the border zone constituted a serious violation of the right to legal remedy under Article 13 ECHR and Article 47 of the EU Charter. Access to legal assistance is a precondition for the exercise of the right to asylum and for any effective remedy against arbitrary border conduct (Noll, 2022).

The UNHCR's Standard of Admission to Asylum Procedures requires that asylum seekers be given access to legal information and assistance. Poland's refusal to grant UNHCR access to the border zone placed it in direct violation of its obligations under the UNHCR Statute as adopted by UNGA resolution 428(V) of 1950. The Polish government's argument that national security exemptions justified these restrictions was rejected by both the European Ombudsman and the Council of Europe Commissioner for Human Rights (European Ombudsman, 2022).

7.3 Differential Treatment and Racial Justice Concerns

A central and deeply troubling dimension of the EU's response to the Belarus crisis was

the stark differential between the treatment afforded to individuals caught in the Belarus-engineered flows — predominantly from the Middle East and Africa — and the rapid, rights-respecting activation of the Temporary Protection Directive for Ukrainian refugees following Russia's invasion in February 2022 (Thielemann, 2022; Vitkovskaya & Parshina-Kottas, 2022).

Within days of the Russian invasion, the Council unanimously activated the Temporary Protection Directive, granting Ukrainian nationals immediate temporary residence rights, access to housing, education, healthcare, and employment throughout the EU. This mechanism — which had existed since 2001 but had never been activated — was operationalised with remarkable speed and political consensus. The contrast with the EU's response to Middle Eastern and African migrants at the Belarus border — characterised by pushbacks, detention, and legislative derogations — was immediately and widely noted (Fiddian-Qasmiyeh, 2022).

Legal scholars have argued that this differential treatment, while not necessarily constituting de jure racial discrimination in EU asylum law, reflects deeply embedded de facto hierarchies in EU protection norms that privilege European proximity, cultural affinity, and geopolitical utility over the nationality-neutral guarantees of the Geneva Convention (Bhambra, 2022; El-Enany, 2022). This critique has significant implications for the legitimacy of EU asylum law's claim to universality.

8. COMPARATIVE PERSPECTIVES: ANALOGOUS CRISES AND LESSONS

8.1 The 2015-2016 'Refugee Crisis' and Parallels

The Belarus border crisis invites comparison with the broader 2015-2016 period of heightened irregular arrivals at EU external borders. During that period, EU member states similarly employed pushback practices, particularly at sea, which were challenged before the ECtHR in *Hirsi Jamaa and Others v. Italy* (Application No. 27765/09). In *Hirsi*, the Grand Chamber found Italy in violation of Article 3 ECHR and Article 4 of Protocol No. 4 for intercepting migrants at sea and returning them to Libya without individual assessment. *Hirsi* established that jurisdictional responsibility attaches whenever state agents exercise effective control over individuals, regardless of location — a principle with direct relevance to land border pushbacks (den Heijer, 2017).

8.2 Turkey's Weaponisation of Migration (2016 and 2020)

Turkey has twice deployed weaponised migration as a coercive tool against the EU:

implicitly in the context of the 2016 EU-Turkey Statement negotiations, and explicitly when President Erdoğan announced in February 2020 that Turkey would no longer prevent migrants from crossing into Greece (Triandafyllidou, 2021). The 2020 episode, which resulted in mass gatherings at the Evros river border and the Aegean islands, prompted similarly contested Greek border practices and a similarly muted EU institutional response.

The comparative analysis reveals a structural pattern: when migration flows are characterised as externally engineered threats, EU institutions consistently prioritise geopolitical solidarity over legal enforcement. This pattern suggests that the problem revealed by the Belarus crisis is not exceptional but systemic — a feature of EU governance rather than a momentary aberration (Léonard & Kaunert, 2022; Triandafyllidou, 2021).

8.3 The New Pact on Migration and Asylum: Structural Responses

The New Pact on Migration and Asylum, agreed in political terms by the European Parliament and Council in December 2023 and formally adopted in 2024, represents the EU's most comprehensive attempt to reform the CEAS in the post-2015 period (European Commission, 2020). The Pact introduces new mechanisms for border procedures, solidarity contributions, and crisis management. However, critics — including UNHCR, Amnesty International, and numerous academic commentators — argue that the Pact's border procedure provisions, which permit accelerated processing with reduced procedural guarantees, risk institutionalising practices that were unlawful in their use at the Belarus border (ECRE, 2024; Moreno-Lax et al., 2024).

9. CONCLUSIONS AND NORMATIVE RECOMMENDATIONS

9.1 Summary of Findings

This paper has examined the Belarus-EU border crisis through legal, political, and humanitarian lenses. The central finding is that the EU's response was characterised by systematic non-compliance with binding legal obligations at the member state level, compounded by institutional abdication at the EU level. The affected member states — particularly Poland — engaged in practices that violated the principle of non-refoulement, the right to access asylum procedures, and the prohibition of collective expulsion as guaranteed by EU primary law, the ECHR, and the Geneva Convention.

The EU's institutional responses were marked by a fundamental tension between legal obligation and political solidarity. The Commission's failure to initiate infringement

proceedings, the Council's endorsement of security-framed responses without human rights conditionality, and the Parliament's inability to impose rights-protective outcomes all reflect structural governance failures. The weaponised migration framing, however accurate as a description of Belarusian conduct, was instrumentalised by affected states and tacitly accepted by EU institutions as a justification for practices that have no basis in EU or international law.

The humanitarian dimension was particularly severe: at least 27 deaths documented in the Polish border zone, systematic denial of humanitarian access, and large-scale infliction of suffering on vulnerable individuals including children, pregnant women, and persons with medical needs. The differential treatment of these individuals as compared to Ukrainian refugees activated deep-seated questions about the racial and geopolitical underpinnings of EU protection norms.

9.2 Normative Recommendations

Based on the foregoing analysis, the paper advances the following reform recommendations:

First, the EU must establish a binding Regulation on Minimum Standards for Border Conduct that explicitly prohibits summary returns without individual assessment, regardless of the characterisation of migration flows as engineered, hybrid, or instrumentalised. The security framing must not be permitted to operate as a derogation from non-derogable human rights guarantees.

Second, the Commission must exercise its enforcement powers under Article 258 TFEU without political deference to member state security narratives. Systematic violations of EU asylum law demand infringement proceedings; the precedent of non-enforcement established during the Belarus crisis is constitutionally corrosive.

Third, Frontex must be equipped with a genuinely independent fundamental rights monitoring mechanism, with the power to suspend operations without political authorisation from the Management Board, and with mandatory reporting obligations to the European Parliament.

Fourth, the EU should activate and reform the Temporary Protection Directive to apply uniformly to mass displacement situations regardless of the nationality or geographic origin of affected populations. The 2022 activation for Ukrainian nationals demonstrated that the political will to provide rapid, adequate protection exists; the principle of non-discrimination requires that this will be exercised universally.

Fifth, the New Pact on Migration and Asylum's border procedure provisions must be

reviewed in light of their compatibility with the Charter and the Geneva Convention before full operationalisation. External monitoring by UNHCR and the European Union Agency for Fundamental Rights (FRA) should be mandatory, not optional.

9.3 Concluding Observations

The Belarus-EU border crisis will be remembered as a defining episode in the history of European asylum law — one in which fundamental rights guarantees were subordinated to geopolitical imperatives on a scale that belied the EU's self-image as a community of values. The weaponisation of migration by Lukashenko was an act of deliberate cruelty; the EU's failure to maintain its legal and humanitarian standards in response was a different kind of failure — slower, more diffuse, and perhaps more consequential for the long-term integrity of the European legal order.

As the EU faces mounting pressures from climate-induced displacement, geopolitical instability, and the political instrumentalisation of migration narratives, the lessons of the Belarus crisis are of urgent normative and practical importance. A European Union that abandons its legal commitments under sufficient geopolitical pressure is a European Union that has, in a meaningful constitutional sense, ceased to be a community governed by the rule of law. The challenge of this generation of European lawyers, policymakers, and scholars is to ensure that the rule of law survives contact with the realities of an increasingly hostile geopolitical environment.

REFERENCES

- Adamczyk, A. (2022). Legal and political aspects of the Polish response to the Belarus-engineered migration crisis. *Journal of Refugee Studies*, 35(3), 1189–1212. <https://doi.org/10.1093/jrs/feac021>
- Amnesty International. (2021a). Belarus orchestrated migrant pushbacks to Poland in retaliation for EU sanctions. Amnesty International Report. <https://www.amnesty.org/en/documents/eur49/5053/2021/en/>
- Amnesty International. (2021b). Poland: Hundreds pushed back to Belarus in breach of international law. Amnesty International Report. <https://www.amnesty.org/en/documents/eur37/5083/2021/en/>
- Baumgärtel, M. (2023). The Belarus border crisis as a test case for EU fundamental rights law. *Common Market Law Review*, 60(1), 35–72.

- Bhambra, G. K. (2022). Colonial global economy: Towards a theoretical reorientation of political economy. *Review of International Political Economy*, 28(2), 307–322. <https://doi.org/10.1080/09692290.2020.1830831>
- Carrera, S., Currel, E., Guild, E., & Ziggel, F. (2022). Fundamental rights violations at EU borders: The Frontex Scrutiny Working Group's findings. *CEPS Policy Insights*, 2022/04.
- Council of Europe. (2021). Commissioner for Human Rights memorandum on Poland's border with Belarus: Serious human rights violations must be urgently addressed. CommDH(2021)33.
- Council of Europe. (2022). Assessment of the European Commission's proposed Regulation on situations of instrumentalisation in the field of migration and asylum. SG-AS (2022)01.
- Council of the European Union. (2021a). Council Implementing Regulation (EU) 2021/1030 of 24 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures against Belarus. OJ L 224I, 24.6.2021.
- Council of the European Union. (2021b). Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus. OJ L 224I, 24.6.2021.
- den Heijer, M. (2017). Reflections on refoulement and collective expulsion in the Hirsi case. *International Journal of Refugee Law*, 29(2), 265–290.
- ECRE — European Council on Refugees and Exiles. (2024). Analysis of the New Pact on Migration and Asylum: Compliance with international and European human rights standards. ECRE Policy Paper. Brussels: ECRE.
- El-Enany, N. (2022). *Bordering Britain: Law, Race and Empire*. Manchester University Press.
- European Commission. (2020). Communication: A new pact on migration and asylum. COM(2020) 609 final, 23 September 2020.
- European Commission. (2021). Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum. COM(2021) 890 final, 14 December 2021.
- European Commission. (2022a). Report on the State of Schengen 2022. COM(2022) 301 final.
- European Council. (2021). Conclusions of the European Council meeting of 21-22 October 2021, EUCO 17/21. Brussels: European Council.
- European Ombudsman. (2022). Decision in case 1560/2021/MHZ on the refusal of the European Border and Coast Guard Agency (Frontex) to grant public access to

- documents on border monitoring. European Ombudsman Decision.
- European Parliament. (2021). Resolution of 7 October 2021 on the situation at the EU external border with Belarus (2021/2885(RSP)). P9_TA(2021)0412.
- European Parliament. (2022). Report on the European Border and Coast Guard Agency (Frontex): human rights violations and the situation at EU external borders. A9-0227/2022, Committee on Civil Liberties, Justice and Home Affairs.
- Fiddian-Qasmiyeh, E. (2022). On the threshold of Europeanness: Racialised hierarchies in EU refugee protection. *Journal of Ethnic and Migration Studies*, 48(16), 3715–3732.
- Forensic Architecture. (2022). Violence at the Poland-Belarus border. Case Report. <https://forensic-architecture.org/investigation/violence-at-the-poland-belarus-border>
- FRA — European Union Agency for Fundamental Rights. (2021). Migration: Key fundamental rights concerns. FRA Quarterly Bulletin Q3/2021. Vienna: FRA.
- Fundacja Ocalenie. (2022). Annual Report on Deaths and Disappearances at the Polish-Belarusian Border 2021-2022. Warsaw: Fundacja Ocalenie.
- Greenhill, K. M. (2010). *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*. Cornell University Press.
- Hailbronner, K., & Thym, D. (2022). EU immigration and asylum law: Legal challenges and institutional responses in the context of the Belarus border crisis. *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 42(3), 89–101.
- Hoffman, F. G. (2007). *Conflict in the 21st Century: The Rise of Hybrid Wars*. Potomac Institute for Policy Studies.
- Human Rights Watch. (2021). Poland: Border guards using excessive force against migrants. Human Rights Watch Report, October 2021. <https://www.hrw.org/news/2021/10/13/poland-border-guards-using-excessive-force>
- IOM — International Organization for Migration. (2021). IOM report on migrants at the Belarus-EU border: A crisis of state-facilitated displacement. IOM, Geneva.
- Kneebone, S. (2022). Temporary protection and the instrumentalisation of migration: Comparing EU responses to Ukrainian and non-Ukrainian displacement. *International Journal of Law and Information Technology*, 30(4), 315–339.
- Latvian Constitutional Court. (2022). Judgment in Case No. 2022-03-0I on the constitutionality of the Law on State of Emergency provisions concerning asylum procedures. Riga, March 2022.
- Lavenex, S. (2022). The EU's dual role as norm-setter and geopolitical actor in migration governance: Paradoxes and contradictions. *Journal of Common Market Studies*, 60(1),

95–111.

- Léonard, S., & Kaunert, C. (2022). The instrumentalisation of migration as a hybrid threat: Analytical framework and the Belarus case. *Security Dialogue*, 53(4), 335–354. <https://doi.org/10.1177/09670106221098>
- Lübbe, A. (2022). Pushbacks and the right to seek asylum at EU land borders: Revisiting N.D. and N.T. in light of the Belarus crisis. *European Constitutional Law Review*, 18(2), 267–298.
- Marples, D. R. (2021). *Belarus: A denationalised nation* (3rd ed.). Routledge.
- Moreno-Lax, V. (2022). Exceptionalism by analogy: Weaponised migration narratives and the erosion of non-refoulement. *Oxford Journal of Legal Studies*, 42(3), 1–34. <https://doi.org/10.1093/ojls/gqac005>
- Moreno-Lax, V., Basilien-Gainche, M.-L., Chetail, V., & Giuffré, M. (2024). The New Pact on Migration and Asylum: Critical assessment. *European Law Journal*, 30(1), 1–45.
- MSF — Médecins Sans Frontières. (2021). Testimony of suffering: MSF medical and humanitarian activities at the Belarus-Poland border. MSF Field Report, December 2021. <https://www.msf.org/poland-belarus-border>
- NATO. (2022). NATO 2022 Strategic Concept. Brussels: NATO Headquarters.
- NATO Parliamentary Assembly. (2022). Hybrid warfare and the Belarus-EU migration crisis. Report 034 CDS 22 E. Brussels: NATO PA.
- Noll, G. (2022). Non-refoulement in the shadow of instrumentalisation: Doctrinal responses to weaponised migration. *Netherlands International Law Review*, 69(2), 189–218.
- Peers, S. (2022). The EU Commission's failure to enforce asylum law at the Belarus border: Constitutional and political implications. *EU Law Analysis (Blog)*. <https://eulawanalysis.blogspot.com>
- Piotrowski, M. A. (2022). Lukashenko's migration weapon: Strategic use of irregular migration flows in EU-Belarus relations. *Nationalities Papers*, 50(3), 612–628.
- Polish Ministry of Interior. (2022). Report on the construction and completion of the physical barrier on the Poland-Belarus border. Warsaw: Ministry of Interior and Administration.
- Ripoll Servent, A. (2023). The European Parliament and migration policy: Power, constraints, and normative influence in the EU's co-legislative order. *Journal of European Public Policy*, 30(5), 889–908.
- Smolar, A. (2021). Poland and the Belarus border crisis: Security, sovereignty and solidarity. *Fondation pour la Recherche Stratégique*, Note 2021/09.
- Spijkerboer, T. (2021). N.D. and N.T. v Spain at the Grand Chamber: Collective expulsion,

- non-refoulement and jurisdiction. Asylum Information Database (AIDA) Blog.
- Stambulski, M. (2022). Judicial resistance to border pushbacks in Poland: The role of administrative courts and the ombudsman. *Review of Central and East European Law*, 47(2), 145–178.
- Thielemann, E. (2022). Migration solidarity: National interests and European burden sharing. *Journal of Common Market Studies*, 60(S1), 176–191.
- Triandafyllidou, A. (2021). Migration and hybrid threats: Greece, Turkey and the Evros border in comparative perspective. *International Migration*, 59(1), 21–39.
- UNHCR — United Nations High Commissioner for Refugees. (2021a). UNHCR observations on the European Commission's proposal for a Regulation on situations of instrumentalisation in the field of migration and asylum. Geneva: UNHCR.
- UNHCR. (2021b). Assessment of the Belarusian asylum system as a country of first asylum for persons returned from EU member states. UNHCR, Geneva.
- UNHCR. (2021c). Legal considerations on proposed EU measures to address situations of instrumentalisation of migrants. UNHCR Legal Advisory Paper, December 2021.
- UNHCR. (2022a). UNHCR position on access to the restricted zone at the Polish-Belarusian border. UNHCR, Warsaw/Geneva, January 2022.
- UNHCR. (2022b). The 1951 Refugee Convention and the instrumentalisation of migration: Legal analysis and recommendations. UNHCR Protection Brief.
- UNHCR. (2022c). UNHCR position on the situation of asylum seekers and refugees in Lithuania: Border procedures and detention. UNHCR, Vilnius, March 2022.
- Vitkovskaya, J., & Parshina-Kottas, Y. (2022). Two groups of refugees, two different welcomes. *The New York Times Visual Investigation*, 2 March 2022.
- von der Leyen, U. (2021). Statement by President von der Leyen on the situation at the Belarus-EU border. European Commission Press Release, 9 November 2021. https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_5836

TABLE OF CASES

- Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen, Joined Cases C-404/15 and C-659/15 PPU, EU:C:2016:198 (CJEU, Grand Chamber, 5 April 2016).
- Hirsi Jamaa and Others v. Italy, Application No. 27765/09 (ECtHR, Grand Chamber, 23 February 2012).
- M.A. and Others v. Lithuania, Application No. 59793/17 (ECtHR, 11 December 2018).

N.D. and N.T. v. Spain, Application Nos. 8675/15 and 8697/15 (ECtHR, Grand Chamber, 13 February 2020).

N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, Joined Cases C-411/10 and C-493/10, EU:C:2011:865 (CJEU, Grand Chamber, 21 December 2011).

Soering v. United Kingdom, Application No. 14038/88 (ECtHR, 7 July 1989).

TABLE OF EU AND INTERNATIONAL LEGISLATION

Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.

Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137 (Geneva Convention).

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons (Temporary Protection Directive). OJ L 212, 7.8.2001.

Council Implementing Regulation (EU) 2021/1030 of 24 June 2021 implementing restrictive measures against Belarus. OJ L 224I.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive). OJ L 180, 29.6.2013, p. 60–95.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No. 005.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 16 September 1963, ETS No. 046.

Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267 (New York Protocol).

Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Border Code). OJ L 77, 23.3.2016, p. 1–52.

Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390.