STATELESS, RIGHTLESS AND WEAPONIZED

THE EUROPEAN UNION'S HUMAN RIGHTS CONTRADICTIONS IN THE EU-BELARUS BORDER CRISIS

Master's thesis – International Relations in Historical Perspective
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Abstract

This thesis focuses on the contradictory attitude of the European Union regarding the safeguarding of the human rights of migrants and refugees, specifically in the case of weaponized migration that was started by Belarussian President Aleksandr Lukashenko in 2021. Since many Middle Eastern migrants and refugees were neglected in the woods by Belarussian and Polish authorities, their rights were violated. However, the EU did not interfere, even though the institution is internationally obligated to comply with the safeguarding of the human rights of migrants and refugees. This shows one of the many contradictions that are a part of the EU's ontology. This thesis analyses the history of the contradictions and violations that have taken place in the field of human rights of migrants and refugees. In addition to this, this thesis leads you through the pathways of the EU-Belarus conflict, by showing more contradictions in the EU's attitude towards human rights in general and finally, this thesis argues that the EU's goal in the EU-Belarus border crisis is to defeat Lukashenko rather than save people's lives.

Keywords: weaponized migration, human rights violations, refugees, European Union, *crimmigration*

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Stateless, Rightless and Weaponized

Introduction

The value that the European Union (EU) places on safeguarding human rights seems to depend on the context and on the particular group of people. In their migration policy, security objectives have become more prioritized than the human rights of the migrants and refugees. Ever since the 'refugee crisis' of 2015, the EU has increasingly raised its borders against migrants, making it more difficult to set foot on European soil.[1][2] 'Such arguably inhumane practices demonstrate a European migration system that is failing and contradicts their public stance on the safeguarding of human rights. This trend has led to inhumane situations where pushbacks and 'safe third country deals' have become commonplace in EU member states. However, this is striking as the EU as a liberal institution is obligated to comply with international legal agreements concerning refugees and migrants, as stated in the Universal Declaration of Human Rights and the UN Refugee Convention.

The Belarus-EU border crisis of 2021 shows many characteristics of the EU's dilemmas and its contradictory behaviour concerning human rights. This crisis emerged after the EU implemented sanctions on the Belarussian regime. As a response to these sanctions, President Aleksandr Lukashenko sent thousands of migrants and refugees to the Belarussian-EU border, utilising state-controlled tourist agencies and airlines operating in the Middle East. The member states Poland, Lithuania and Latvia were unwilling to offer asylum to these groups of migrants and refugees and the EU called this a 'hybrid threat'.[3] This phenomenon of instrumentalizing people to reach diplomatic goals, is what Kelly M. Greenhill named 'Coercive Engineered Migration' (CEM), also known as weaponized migration. She defines this as: 'those cross-border population movements that are deliberately created or manipulated in order to induce political, military and/or economic concessions from a target state or states.'[4]

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[1] Sarah Léonard and Christian Kaunert, 'The securitisation of migration in the European Union: Frontex and its evolving security practices', *Journal of Ethnic and Migration Studies* 48 (2022) 1417–1429, 1418.

[2] This thesis uses the term 'refugee crisis' with citation marks to indicate that the discursive term is wrong while still referring to the event in 2015. As Michał Krzyżanowski, Anna Triandafyllidou & Ruth Wodak argue: 'this term 'the concept is both wrong (the recent processes have mainly concerned migrants in general and asylum seekers and not refugees, in particular) and purposefully uses the notion of crisis which, as such, implies larger facets of, in most cases irrevocable, sociopolitical and politico-economic change.' Michał Krzyżanowski, Anna Triandafyllidou and Ruth Wodak, 'The Mediatization and the Politicization of the "Refugee Crisis" in Europe', *Journal of Immigrant & Refugee Studies* 16 (2018) 1–14, 3.

[3] European Commission, 'Asylum and return: Commission proposes temporary legal and practical measures to address the emergency situation at the EU's external border with Belarus' (Brussels, 1 December 2021).

[4] Ibidem 13.

There have been many cases in which people were deliberately instrumentalized to achieve diplomatic goals. For example, in 1956, Cuban President Fidel Castro demonstrated how easily he could disrupt the U.S. immigration policy by opening the borders for any Cubans who wished to live in the U.S.[5] The U.S. administration stood unprepared towards the influx of migrants and this resulted in secret negotiations between President Johnson and Castro. Another example of this can be found in 1991 when many Albanians tried to leave their country for Italy. This mass exodus was first perceived with some sympathy by the Italian people but later resulted in discontent. The end of this "crisis" was important to the Italians, so they made a deal with Albanian President Ramiz Alia. He would implement a stricter border policy in exchange for Italian food and financial aid packages. As a final example, the German government agreed to pay US dollars 76.4 million in exchange for Poland taking back asylum seekers in 1994.[6]

These cases are characterized by the fact that both parties perceive the migrants and refugees as weapons or threats. This makes migrants paws in international conflicts. The same has happened in the Belarus-EU border crisis. Labelling migrants as hybrid threats, indicates that the EU also perceives them as threats. However, by perceiving these migrants as hybrid threats, the EU looks away from the fact that they are human beings, entitled to human rights and thus simultaneously avoids its own legal responsibility to safeguard these human rights. This thesis will therefore investigate this border conflict as a case study to uncover the EU's contradictory attitude towards human rights of migrants and refugees. The research question will be:

'How is the EU's contradictory attitude towards human rights of migrants and refugees reflected in their response to weaponized migration in the 2021-2022 EU-Belarus border crisis?'

This research question will be answered by three sub-questions: Firstly, what were previous contradictions and violations within international human rights and migration policy and how were these perceived by scholars from 1951 until now? Secondly, how is the EU's contradictory response reflected in the trajectories leading to this crisis? Thirdly, what implications does the EU response have on the safeguarding of the human rights of migrants at the border zone?

By concentrating on these questions this thesis finds explanations in the broader historical context, which shows that the EU's attitude towards human rights is neither new nor exceptional and that the dilemmas have always been present in the history of human rights of migrants and

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[5] Kelly M. Greenhill, *Weapons of mass migration: forced displacement, coercion, and foreign policy*. Cornell studies in security affairs (Cornell paperbacks; London 2016) 293.
[6] Ibidem, 318.

refugees. Moreover, this thesis shows the EU's contradictory attitude in its history, in the pathways leading to this crisis and in their response to this crisis. By uncovering these contradictions, this thesis contributes to existing research on the limitations of the EU's migration policy. This is not only academically relevant in research, but these contradictions and limitations also show that there is need for improvement of the EU's migration policy. Another analytical contribution to the field is the focus of this thesis on human rights violations in cases of CEM. This provides more insight into the workings of safeguarding human rights when these humans are perceived as a threat, resulting in conflicting interests and the neglection of these human rights. This neglection gives this thesis also societal importance, because it is crucial to underline that people are dying at the EU-Belarus border zone. Hopefully, by answering these questions this thesis will contribute to an understanding of how this could have happened, and we can prevent it from ever happening again.

Literature review

There are dense bodies of existing literature that form the fundament of this research project. I will elaborate on two main strands of scholarly work and explain how this thesis aims to fill a gap between them.

A lot has been written about the EU's deterring attitude towards migrants and about the diminished focus on migrants' human rights. Previous works set the basis for the main EU attitude towards migrants that this research can be built on. James C. Hathaway contributed to this historiographical debate with his extensive book *The Rights of Refugees under International Law.*[7] He argued that '"the legal duty to protect refugees is understood to be neither in the national interest of most states, nor a fairly apportioned collective responsibility.'[8]

In cooperation with Thomas Gammeltoft-Hansen, Hathaway wrote the article 'Non-refoulement in a world of cooperative deterrence'.[9] This article analyses the schizophrenic attitude of liberal states towards migrants.[10] The main point of this article is that 'powerful states are faced with a trade-off between the efficiency of non-entree mechanisms and the ability to avoid responsibility under international refugee law.' Gammeltoft-Hansen and Hathaway argued that international law would play a vital role in the future to cooperatively protect refugees globally. Following up on this, Gammeltoft-Hansen in cooperation with Nikolas F. Tan contributed to the literature with their analysis on the 'end of the deterrence paradigm'. They describe the 'deterrence paradigm' as a particular instantiation of the global refugee protection regime, in which deterrence policies have become the dominate responses. This resulted in an emerging schism between the liberal values and the self-protective stance of the developed world regarding refugee protection.

Throughout the literature on the deterring attitude of developed states regarding refugee protection, there have been significant findings that are relevant for this research project. My main take-away is that powerful states will be increasingly challenged by their own liberal

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[7] James C. Hathaway, *The Rights of Refugees under International Law* (2021).

[8] Hathaway, *The Rights of Refugees,* 1000.

[9] Thomas Gammeltoft-Hansen and James C. Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence', *Columbia Journal of Transnational Law* 53 (2014) 235–284.

[10] In this context, 'schizophrenic' refers to the following notion that Gammeltoft-Hansen and Hathaway made: 'Determined to remain formally engaged with refugee law and yet unwavering in their commitment to avoid assuming their fair share of practical responsibilities under that regime, wealthier countries have embraced the politics of non-entree, comprising efforts to keep refugees away from their territories but without formally resiling from treaty obligations', as read in: Thomas Gammeltoft-Hansen and James C. Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence', *Columbia Journal of Transnational Law* 53 (2014) 235–284, 235.

values and international law while simultaneously aiming to create a non-entrée climate for migrants and refugees. This thus leads to a schizophrenic attitude towards migrants.

A second body of literature that is vital to this research, is literature on the concept of coercive engineered migration (CEM). Kelly M. Greenhill introduced this concept in her book *Weapons of Mass Migration.* Greenhills's research had a considerable impact on international relations (IR) research and shed a new light on the ways that migration could be used for diplomatic purposes. By giving a historical overview, she recognised more than fifty cases of CEM, which Greenhill also names 'Weapons of Mass Migration'. Other researchers consequently used her theory to show other cases of CEM. For example, Nefise Ela Gokalp Aras showed how CEM played a role in EU-Turkish relations.[11] Furthermore, Gerasimos Tsourapas and Sotirios Zartaloudis showed How Greece was able to 'blackmail' the EU as a member state, using the threat of a migration flow as ammunition.[12] Tsourapas also made another contribution to the debate in cooperation with Fiona B. Adamson by introducing the concept of *migration diplomacy*, in which they refer to the subject of migration as an important area of states' diplomatic relations.[13]

Some researchers disagree with Greenhill's concept of 'weapons of mass migration'. According to Lev Marder, the use of this metaphor results in the militarization of language and consequently in the dehumanization of migrants.[14] This research aims to solve that problem by looking at the human rights side of weapons of mass migrations. It is vital to look at both the human side of the migrants who suffer human rights abuses as well as the metaphors and language that are used by the EU to justify their actions.

All in all, both bodies of literature provide for an extensive academical basis for this research project. While there has been much research on the schizophrenic deterring attitude of developed states towards migrants in relation to international refugee law as well as on the principle of coercive engineered migrants as a weapon to use against liberal states, no researchers have yet investigated the human rights perceptions of a target state that is threatened

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[11] Nefise Ela Gokalp Aras, 'Coercive Engineered Syrian Mass Migration in the EU-Turkey Relations: A Case Analysis for Future Reference', *International Migration* 57 (2019) 186–199.

[12] Gerasimos Tsourapas and Sotirios Zartaloudis, 'Leveraging the European Refugee Crisis: Forced Displacement and Bargaining in Greece's Bailout Negotiations', *JCMS: Journal of Common Market Studies* 60 (2022) 2, 245–263.

[13] Fiona B. Adamson and Gerasimos Tsourapas, 'Migration Diplomacy in World Politics', *International Studies Perspectives* 20 (2019) 113–128.

[14] Lev Marder, 'Refugees Are Not Weapons: The 'Weapons of Mass Migration' Metaphor and Its Implications', *International Studies Review* 20 (2018) 576–588.

by CEM. The perceptions on refugee human rights in the context of them being used as a weapon is thus a gap that this research aims to fill.

Theoretical Framework

Coercive Engineered Migration and Weaponized Migration

Greenhill's Coercive Engineered Migration will be applied as a broad framework in this research project. Therefore, it is vital to explain the main workings of the concept. Greenhill's definition of the concept is as follows: 'Those cross-border population movements that are deliberately created or manipulated in order to induce political, military and/or economic concessions from a target state or states.'[15] An important component of CEM is coercion, which refers to the 'the practice of inducing or preventing changes in political behaviour through the use of threats, intimidation, or some other form of pressure.' Coercion is put into effect by the use of migration flows as 'instruments of persuasion'.[16]

With weaponized migration, I refer to the act in which a migrant is turned into a weapon by one state to threaten another state in order to achieve diplomatic objectives. While this use of metaphors can have a dehumanizing effect, this term is used because it has been proven by Greenhill that migration can in fact be used as a weapon and by deconstructing the term 'weaponized migrants' or 'weapons of mass migration', the phenomenon itself will not be deconstructed. Therefore, I believe that it is of importance to focus on the human rights of these weaponized migrants, to humanize them, without ignoring the agency of the coercing state which uses these groups as weapons.

Liberal states are more often targets in CEM because of their obligations to adhere to international norms and standards. 'Democracies are more likely than their illiberal counterparts to have codified juridical human rights and migration-related commitments, they are correspondingly more vulnerable to claims of hypocrisy if they seek to behave in ways that contravene such commitments.'[17] By closing the borders for groups of (coercive engineered) migrants, liberal states risk *hypocrisy costs.* Greenhill defines this as: 'symbolic political costs that can be imposed when there exists a real (or perceived) disparity between a professed commitment to liberal values and/or international norms, and demonstrated state actions that

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[15] Greenhill, *Weapons of mass migration,* 13.
[16] Ibidem, 12-13.
[17] Ibidem, 4.

contravene such a commitment.'[18] This thus happens when human rights of migrants are not considered. By using CEM, 'weaker' states aim to accomplish certain goals. Examples of these goals are financial aid, political recognition and military interventions.[19] Furthermore, migration-related fears can catalyse consequential political and military responses towards CEM, which could increase the hypocrisy costs of liberal states.[20]

The EU-Belarus conflcit as weaponized migration

What makes this border conflict a case of CEM? Lukashenko deliberately transferred thousands of migrants to the border zone of the EU as a response to the sanctions that were imposed on him. Therefore, I argue that this case can be specified as CEM. Lukashenko's response. Furthermore, the EU's increasingly xenophobic and deterring attitude towards migrants while being a liberal institution makes them the ideal target for CEM, because of the consequential hypocrisy costs that could be expected. It can also be expected that the EU would respond with substantial investments in border security, as the historical examples have shown before. In 2002 and 2004, Lukashenko also threatened with CEM, to which the EU responded with the creation of FRONTEX.[21] By responding in a security centred manner, thus protecting oneself against the 'weapons', the weapons, being human beings are probably not the priority to protect. Finally, it must be addressed that human beings are not weapons in their essence when they are framed or perceived as a threat to diverse interests.

Asylum-seekers, migrants and refugees

In the various academic debates and field of studies, there are different definitions for asylum-seekers, migrants and refugees. According to the UNHCR, migrants are people who chose to move, not because of a direct threat, but mainly to improve their lives.[22] Refugees are defined as persons fleeing armed conflict or persecution.[23] Asylum seekers are defined as people whose request of sanctuary yet has to be processed.[24] In other words, the statuses of these people is unknown. This raises questions on Greenhill's use of the word 'migrant', because in this case and a lot of other cases of CEM, it is yet to be decided whether someone is a migrant or a refugee. Greenhill uses all three of the terms but as she does not investigate the motives of the fleeing people, there is no direct need to use a certain definition. In the EU-Belarus border

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[18] Greenhill, *Weapons of mass migration,* 52.

[19] Ibidem, 34.

[20] Ibidem, 5.

[21] Ibidem, 5.

[22] UN High Commissioner for Refugees (UNHCR), ''Refugees' and 'Migrants' - Frequently Asked Questions (FAQs)' (31 August 2018), https://www.refworld.org/docid/56e81c0d4.html (consulted on 5 August 2022).

[23] UNHCR, 'Refugees and Migrants'.

[24] UN High Commissioner for Refugees (UNHCR), 'Asylum-seekers', https://www.unhcr.org/asylum-seekers.html (consulted on 5 August 2022).

conflict, it is difficult to label these groups of people, as the main problem in the conflict is the unwillingness of the bordering countries to initiate their asylum procedures. Without an asylum procedure, their identity and fleeing motives remain unclear. Therefore, I will use the concepts asylum-seekers as well as 'migrants and refugees'.

Methodology

To answer the main research question of this thesis, ''How is the EU's contradictory attitude towards human rights of migrants and refugees reflected in their response to weaponized migration in the 2021-2022 EU-Belarus border crisis?', this thesis will investigate both primary and secondary sources, as well as historical and contemporary sources. Historical sources will be adressed to answer the research question in a manner in which it can be positioned in a broader historical context. This will be valuable because looking at historical similarities of a certain phenomenon, can change our perspective and put it in a broader historical context in which historical examples diminish its novelty or exceptionalism. Furthermore, history can also help in explaining the ontology of certain events, structures, and actions.

Since the nature of the sources used in this thesis usually differs from chapter to chapter, I will describe and elaborate on them in this order. Chapter one will elaborate on historical examples of contradictions and violations of within international human rights and migration policy. Therefore, this chapter will be a literature review of the notions of scholars on these contradictions and violations. The sources that are addressed originate from 1945 until now and thus offer historical perspectives on these contradictions and violations. Therefore, these sources can be classified as both primary and secondary sources. In chapter two, the historical trajectories to this conflict will be investigated by looking at EU-Belarus relations and internal politics of the countries bordering Belarus, which simultaneously resulted in the emergence of this conflict. This chapter addresses secondary sources to describe the nature of the EU-Belarus relations, based on previous scholarly research. The internal migration politics and sentiments will be researched by means of secondary as well as primary sources, opinion polls and news reports to strengthen my argument.

Various primary sources such as NGO reports from Human Rights Watch (HRW), Amnesty International, Helsinki Foundation for Human Rights and the Association provide insight into the human rights violations at the EU-Belarus border zone.

Moreover, to further map out the situation at the border zone, different reports from the Asylum Information Database (AIDA) are addressed. This is a research database managed by the

European Council on Refugees and Exiles (ECRE).[25] Their research does not reflect the views or perspectives of the European Commission. In addition to this, the non-profit organisation Lighthouse Reports has offered a valuable report concerning the identities of the victims of this conflict. I am aware that by conducting interviews with the migrants and refugees stranded at the border zone, would have offered a more elaborate perspective on their identities and grievances. However, due to language and geographical limitations this was not possible. That is why I have tried to overcome this limitation by utilising many different reports to provide a more layered view.

In chapter three, the response of the EU will be examined. As the EU is a very elaborate organ with different actors, this thesis will only examine the response of the European Commission and certain actors within the European Council. As the EC is the executive organ, its response can be perceived as reflective for the standpoints of the EU on a certain matter. Furthermore, as the European Council consists of the leaders of all the member states, their statements could normally not be considered as an EU perspective. However, the High Representative of the European Council is the exception to this rule, as this person speaks on behalf of the EU. A limitation of these sources is that they do not tell what they want to conceal. That is why these sources are put into conversation with sources that have condemned the EU of violations, to show the discrepancy in their attitude. This chapter will therefore look at EU statements and declarations, as well as reports and accounts condemning the EU, in relation to the EU-Belarus border crisis, to investigate the nature of the EU's response to this crisis. Moreover, every chapter titled is accompanied with a quote from the NGO reports on the human rights violations in the EU-Belarus crisis to underline the gravity of the situation.

Outline

This thesis consists of three chapters. Chapter one will research historical contradictions and violations within international human rights and migration policy from the perspectives of academics from 1945 until now. Chapter two will elaborate on the trajectories that led to this conflict and how the EU's contradictory attitude towards human rights is reflected in these trajectories. This chapter presents a dual narrative in which on the one hand the EU-Belarus relations are investigated, from the start of the 1990s until now, and on the other hand the internal politics of the bordering countries will be examined from 2015 until now. Consequently, the nature of the consequential violations will be investigated. Chapter three then

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[25] AIDA, 'About AIDA', https://asylumineurope.org/about-aida/ (consulted on 12 August 2022).

researches the EU response to this conflict. This thesis will conclude with an overarching conclusion.

CHAPTER I:

DEAD-END DILEMMA'S

"The Europeans claim they respect human rights," says Mahmood Dler Ismail. "Then why did they leave my child to die in the woods?"[26]

The current abuses happening at the Belarus-EU border are shocking but not surprising. From the end of the Second World War, starting with the implementation of the Universal Declaration of Human Rights in 1947 and the UN Refugee Convention in 1951 until now, the history of human rights of migrants and refugees show us numerous contradictions and cases of violations. The aim of this chapter is to show previous contradictions and violations by providing a literature review on scholars' perceptions of the contradictions and violations within the system of international human rights of migrants and refugees. These perceptions originate from the Second World War until now and will be analysed chronologically. Putting the current events in a historical context will then help in explaining where these abuses come from.

Before the Second World War, the concept of a universal framework of human rights was unthinkable. Citizens' rights were a national responsibility and a concept that included rights for all humans was non-existent. After the Second World War it had become clear that even though states should have protected the rights of their citizens, they had failed to achieve this. Under the guise of 'Never again', the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, came into being and functions as the cornerstone of human rights.[27]

Rights for the stateless

Scholars devoted attention to the violations of human rights and human dignity of migrants during and after the Second World War. Philosopher Hannah Arendt used the concept 'statelessness' to express her criticism of the rights regime during WWII. Arendt argued that statelessness referred to the phase in which one no longer is protected by their state and is thus

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[26] Mohannad Al-Najjar e.a., 'Hypothermia, Drownings and Exhaustion: A Chronicle of the Refugee Deaths along the Border Between Poland and Belarus', *Der Spiegel* (22 December 2021).
[27] United Nations General Assembly, *Universal Declaration of Human Rights* (1949).

rightless.[28] During the Second World War, this not only happened to people who lost their nationality, but also to asylum seekers, refugees and migrants, who were no longer protected by their national jurisdiction in foreign territory. Arendt presented a paradox that has become one of the most important critiques of human rights: 'Precisely when one appears as nothing but human, stripped of all social and political attributes, it proves very difficult to claim and exercise the rights that one is entitled to by virtue of being born human.'[29] In other words, one must be part of a community to rely on human rights, but when one has left or fled a community, one is precisely in dire need of these human rights.

Even though Arendt's notions are still relevant today, there were also other major developments in international human rights at that time, The Universal Declaration of Human Rights being one of them. For migrants and refugees, the most important article in the declaration is article 14 which proclaims that everybody has the right to seek and enjoy asylum from persecution in other countries.[30] However, the contradiction here was that the right to be *granted* asylum was excluded from the declaration.[31] At the time of shaping the declaration, a proposal had been made to include a provision that guaranteed every individual the right to be granted asylum. However, this proposal was rejected because it would contradict with the sovereignty of states. The contradiction between sovereignty of states and human rights of migrants is a recurring theme and arguably presents the main contradiction in the history of human rights of migrants.

Furthermore, the UN Geneva Convention from 1951 also presented a framework of rights for refugees, to tackle the problem of rightlessness through statelessness. The Geneva Convention is essential for two reasons. First, it provides legal measures for the protection of refugees such as the principle of non-refoulement. This had not been executed before.[32] Second, international agencies became responsible for the protection of the rights of refugees. Concludingly, the Geneva Convention offered refugees rights that they would have been deprived of before and guarded them on a supranational scale.

Contradictions

Could this legal framework offer protection to all human beings who migrate or are forced to migrate? The short answer is no. These conventions remained contradictory, in both their

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[28] Hannah Arendt quoted in Ayten Gündogdu, *Rightlessness in an Age of Rights : Hannah Arendt and the Contemporary Struggles of Migrants* (New York, 2015), 3.
[29] Hannah Arendt quoted in Gündogdu, *Rightlessness in an Age of Rights,* 3.
[30] UN, *Universal Declaration.*
[31] Atle Grahl Madsen, 'The European Tradition of Asylum and the Development of Refugee Law', *Journal of Peace Research* 3 (1966) 3, 278-289, 283.
[32] Paul Weis, 'The International Protection of Refugees', *The American Journal of International Law* 48 (1954) 2, 193-221.

judicial sense which still excluded many people who did not meet the label of the 'refugee', as in their implementation which often diverged and led to violations and abuses – which are still relevant today. In other words, human rights abuses and contradictions between the conventions and reality are not new or unique. Furthermore, as scholar Paul Weis also argued in 1972, the problematic character of an issue 'which follows from the conception of international law as a law between states is "international in scope and character" and can only be solved by international cooperation, by the methods of international law.'[33] With this, he points out a valid pitfall of international law and international agreements, the fact that cooperation is necessary to make it effective.

In the 1960s and the 1970s new problems and contradictions appeared. 'With all of these spectacular advances, it is a depressing thought that we have, as yet been unable to resolve the human problems which afflict international migrants and impede the flow of international migration'.[34] With this criticism, scholar Gaynor Jacobson referred to the deprivation of human rights of migrants, which despite of the international legislation still occurred, specifically in the USSR which denied permission to millions of Jews to emigrate and reunite their family.[35] Furthermore, scholar Atle Madsen stated in 1966 that there was a lot of room for development in the spectrum the right of asylum, which would later appear on the agendas of multiple conventions and conferences.[36]

Another contradiction that gained attention in the 1970s, was the legal status of sea refugees. The principle of non-refoulement stated in the Geneva convention that a persecuted person cannot be sent back to his country of origin. This is an essential right of a refugee, however, the legal status of a refugee at sea was more difficult to define. This has been referred to as the dilemma of the sea refugee.[37] After the Vietnam War, thousands of refugees had fled the country in hope of being rescued at sea.[38] Passing ships refused to offer them shelter and hundreds of the fleeing people did not survive. According to Pugash, the sea refugee was positioned in a unique position in international law, because the principle of non-refoulement was not valid on international waters. Other scholars also considered the dilemma and also concluded that the principle of non-refoulement was useless in situations like this. This shows

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[33] Paul Weis, 'Human Rights and Refugees (II)', *International Review of the Red Cross* 12 (1972) 597–606, 604.
[34] Gaynor I. Jacobson, 'The Refugee Movement: An Overview Documentation', *International Migration Review* 11 (1977) 514–523, 523.
[35] Jacobson, 'The Refugee Movement'.
[36] Madsen, 'The European Tradition', 13.
[37] James Z. Pugash, 'The Dilemma of the Sea Refugee: Rescue without Refuge United Nations', *Harvard International Law Journal* 18 (1977) 3, 577–604.
[38] Pugash, 'The Dilemma of the Sea Refugee, 577.

a major contradiction in international law, which led to human suffering but was considered legal.[39]

Changing motives, changing concepts

In the 1980s, the world looked at different and larger asylum flows than before. Scholar Gil Loescher also called it a period in which the world stood on the edge of a 'world refugee crisis'.[40] Motives and conflicts had changed, and the gross of the refugee population originated from the Third World, which suffered from regional conflicts and political upheavals. This resulted in flows of refugees that were no longer contained regionally, consisted of people who looked for refuge in Europe. These new asylum flows changed the perception on migrants and refugees in Western Europe and increased their restrictive practices and deterrent measures.[41]

As motives to flee had changed, the traditional concept of a 'refugee' as stated in the Geneva Convention also became less applicable. There were less cases of the 'traditional' individual persecution based on politics, religion or race and more cases of people who fled because of civil war, military occupation, natural disasters, gross violations of human rights or bad economic conditions.[42] There was however no legal obligation to protect these 'humanitarian refugees', as scholar Kay Hailbronner refers to them.[43] Many humanitarian organisations addressed this legal gap, without result. According to Hailbronner, because of the states' fear of losing control of their borders, it would be very unlikely that the principle of non-refoulement would be broadened to protect more human beings from suffering. Therefore, he concluded that the principle was merely 'wishful legal thinking'.[44]

The 1980s also marked the start of the making of a European territory. With the creation of Schengen in 1985 and its implementation in 1995, people could move through different European states without any restrictions. This also had implications for migrants. At the time of policymaking, different NGO's, churches, and other interest groups were concerned that Western Europe would not consider the protection of refugees and would make it more difficult to enter Europe.[45]

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[39] Isi Foighel, 'The Legal Status of the Boat-Pople', *Nordisk Tidsskrift for International Ret* 48 (1979) 217–244; Brian Roberts, 'Can the Boat People Assert a Right to Remain in Asylum Comment', *University of Puget Sound Law Review* 4 (1980) 176–211.
[40] Gil Loescher, 'The European Community and refugees', *International Affairs* 65 (1989) 4, 617–636, 623.
[41] Loescher, 'The European Community and refugees', 618.
[42] Kay Hailbronner, 'Nonrefoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?', *The New Asylum Seekers: Refugee Law in the 1980's* 10 (1988) 123–158.
[43] Hailbronner, 'Nonrefoulement and "Humanitarian" Refugees'.
[44] Hailbronner, 'Nonrefoulement and "Humanitarian" Refugees'.
[45] Loescher, 'The European Community and refugees'.

Due to the war in Yugoslavia, numerous asylum seekers sought for refuge within the Schengen border zone. Because of the Schengen system, asylum seekers had the possibility to, once they were on European territory, apply for asylum in different countries and then choose the country which they preferred. This phenomenon is called 'asylum shopping' and is known as one of the causes that led to the creation of a common asylum policy in Europe (CEAS) and the creation of the Dublin regulation.[46] This regulation received a lot of critique and shows some real problems – both for refugees and migrants, as for the arrival states. Simply put, the Dublin regulation states that the countries of arrival are responsible for the asylum procedures of migrants, resulting in a lack of capacity at the country of arrival, overflowing asylum centres, and consequential human rights abuses. [47] This problem is perceived as a result of a lack of European solidarity.[48]

The deterrence paradigm

The shift of migration policy from a national to a European level in the 1990s, transformed border control into border management, as Thomas Spijkerboer argues.[49] This change entailed a transformation from a reactive to a pro-active border system. When borders were a national issue, the border authorities responded on the people arriving at the border, being a reactive response. Lifting migration policy to a European level resulted in measures to influence migration behaviour beyond the border. In other words, EU migration policy aimed to prevent migrants from trying to come to Europe.[50] With systems like visa policies, it became more difficult for people from certain countries to even depart from their country. European border control thus already started at the airport of the country of origin. So, when it was no longer possible to travel through the air, migrants would opt for more dangerous routes by travelling through the sea.[51] European border management would thus make it difficult and dangerous for migrants to arrive and the attitude towards migrants thus became more hostile and deterring.

This shift towards border management fits well within the 'deterrence paradigm'. This paradigm is characterised by focussing on deterring migrants rather than safeguarding their human rights.[52] After 9/11, this trend continued and the attitude towards migrants became more

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[46] Valsamis Mitsilegas, 'Solidarity and Trust in the Common European Asylum System', *Comparative Migration Studies* 2 (2014) 2, 181–202, 185.
[47] Mitsilegas, 'Solidarity and Trust in the Common European Asylum System', 199.
[48] Ibidem, 199.
[49] Thomas Spijkerboer, 'Moving Migrants, States, and Rights Human Rights and Border Deaths', *The Law & Ethics of Human Rights* 7 (2013) 2, 213–242, 218.
[50] Spijkerboer, 'Moving Migrants', 218.
[51] Spijkerboer, 'Moving Migrants', 217.
[52] Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy', *Journal on Migration and Human Security* 5 (2017) 1, 28–56, 28.

hostile. Some scholars perceive 9/11 as the key turning point in the securitisation of migration.[53] However, this has been a trend in which Western countries have become increasingly deterring and hostile towards migrants, to the point in which they became a security issue. The securitisation of migration did not happen due to one key event but was rather rooted in an increasing deterring Western attitude towards migrants. The securitisation of migration is therefore more a process which has slowly turned helpless persons into possible terrorists. Because of this, the dichotomy between protecting national security while upholding international human rights became more apparent.[54]

From then on, regarding the safeguarding of international human rights, European migration policies became a sinking ship. As it became more difficult for migrants to set foot on European soil, Europe itself also did not reach their international obligations anymore. The obstacles that they present for migrants became more and more contradicting with the Geneva Convention of 1951.[55] A product of the deterrence paradigm and consequential securitising of migration was the establishment of FRONTEX, which became another tool within the EU's framework of border management. FRONTEX was established in 2004 and its initial objective was to coordinate intelligence driven operational cooperation at EU level to strengthen security at external borders.[56] The agency has been criticised a lot, among others for its contradictions with regards to international law. Many of its operations and especially the ones at sea did not comply to the international legal obligations.[57] The guards of FRONTEX that 'protect' the European borders can be seen as another development in the completing of Fortress Europe, making it even more difficult to enter the continent.[58]

Another problem that came into being was the phenomenon of 'human smuggling', which started to happen more often from the 1990s on. It is not difficult to find the answers to 'why' this suddenly began occurring, as the European policies made it increasingly difficult for migrants to enter their territory. Restrictive border management thus resulted in different and

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[53] Krzysztof Jaskulowski, 'The securitisation of migration: Its limits and consequences', *International Political Science Review* 40 (2019) 5, 710–720, 716.
[54] François Crépeau, Delphine Nakache and Idil Atak, 'International Migration: Security Concerns and Human Rights Standards', *Transcultural Psychiatry* 44 (2007) 311–337, 311.
[55] Geoff Gilbert, 'Is Europe Living Up to Its Obligations to Refugees?', *European Journal of International Law* 15 (2004) 5, 963–987, 987.
[56] Anna Triandafyllidou and Angeliki Dimitriadi, 'Deterrence and Protection in the EU's Migration Policy', *The International Spectator* 49 (2014) 4, 146–162, 155.
[57] Efthymios Papastavridis, ''Fortress Europe' and FRONTEX: Within or Without International Law?', *Nordic Journal of International Law* 79 (2010) 75–111.
[58] 'Fortress Europe' is a metaphorical term representing the increasing impermeability of the European border system for unwanted migrants.

dangerous measures for migrants to take. Scholar Aninia Nadig already called for a reorientation on human smuggling and migration by Western Europe, as she argues that Europe needs to move away from its 'fortress' mentality and stop with perceiving human smuggling as a security threat.[59]

EU migration policy: a sinking ship

Unfortunately, Nadig's insights were not heard and approximately ten years later, when the 'refugee crisis' started, the major fails and contradictions of the European migration policies came to the surface. In multiple occasions, this led to grave human rights violations. In the following I will show that it was not a crisis that was caused by the refugees, but rather by a lack of coherent and efficient asylum policies within the EU.

First, it became clear that the Dublin agreement was not only highly ineffective, unfair, but even dangerous for migrants. Because the border countries had the responsibility to arrange asylum for arriving migrants and refugees, they were soon overflowed with more people than they could provide for. Due to a lack of a comprehensive and cohesive asylum policy in Europe, other countries soon turned a blind eye.[60] This led to dangerous situations in overcrowded refugee centres, in which people had to live under inhuman situations.[61] Arguably, would the EU as a whole have improved their solidarity and sense of responsibility, these problems would have easily been prevented.

Secondly, more human rights violations under EU responsibility are a consequence of the deals that the EU closes with 'safe third countries'.[62] The irony of these 'safe third countries' is that they are often very unsafe and their actions contradict with international human rights conventions. So, the EU sending migrants to these countries is rather striking. An example of grave human rights violations under EU responsibility in safe third countries is the Italy-Libya deal, in which migrants are brought back from the Mediterranean to Libya and live under dehumanizing circumstances in crowded prison resembling asylum centres in which many suffer rape and torture.[63] The EU-Turkey deal also functions as such an example. Under the

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[59] Aninia Nadig, 'Human Smuggling, National Security, and Refugee Protection', *Journal of Refugee Studies* 15 (2002) 1, 1–25, 22.

[60] Agustin Jose Menindez, 'The Refugee Crisis: Between Human Tragedy and Symptom of the Structural Crisis of European Integration', *European Law Journal* 22 (2016) 4, 388-416, 415.

[61] Menindez, 'The Refugee Crisis', 398.

[62] 'A procedural mechanism for shuttling asylum seekers to other states said to have primary responsibility for them, thereby avoiding the necessity to make a decision on the merits because another country is deemed or imagined to be secure', in Guy S Goodwin-Gill, Jane McAdam and Emma Dunlop, 'Part 2 Asylum, 8 The Concept of Asylum', in: *The Refugee in International Law* (2021).

[63] Elodie Thevenin, 'Between human rights and security concerns: politicisation of EU-Turkey and EU-Libya agreements on migration in national parliaments', *European Security* 30 (2021)3, 464–484, 467.

guise of 'out of sight, out of mind', the EU, according to Delphine Nakache and Jessica Losier, could not care less.[64]

Thirdly, the 'refugee crisis' presented itself as an event in which there was no cohesive European message. German Chancellor Angela Merkel, known for her famous rhetoric of 'Wir schaffen das' and for suspending the Dublin procedure, stood against Hungarian president Viktor Orban who claimed to reject refugees because they would threaten 'Christian civilizations'.[65] This shows the complexity of international cooperation on these matters.[66]

And now, there are still many problems, contradictions and violations present regarding human rights of migrants and refugees. Many current refugees and migrants have to deal with violent pushback situations, the Croation border zone in which the border guards beat up unarmed migrants and refugees, being an example of this.[67] *Crimmigration* – the criminalisation of immigration – has increased and new policies concerning human smuggling and its penalisation have been implemented in Europe, resulting in a high fine and even a possible prison term for saving a drowning migrants life at the Greek sea.[68] Rescuing migrants at sea has thus become a crime, a 'crime of solidarity'.[69] Getting punished for protecting a human being is another phenomenon that puts the icing on the cake of the dehumanisation resulting from EU border management.

Conclusion

Through time and again, violations and contradictions have come to the surface. First, the *sovereignty – human rights dilemma* denied granting asylum as a human right in the Universal Declaration of Human Rights in 1947. Second, legal contradictions such as the dilemma of the sea refugee, or the narrow definition of a refugee in general, have resulted in dehumanizing situations for people who are looking for shelter. Thirdly, this chapter has shown the trend of increasingly deterring attitudes in EU migration policies that has laid the foundation for the emergence of its contemporary behaviour. During the last four decades, the EU migration

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[64] Delphine Nakache and Jessica Losier, 'The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?', *International Relations* (2017), 1-8, 3.

[65] Michael Ignatieff, 'The Refugee as Invasive Other', *Social Research: An International Quarterly* 84 (2017) 1, 223–231, 223.

[66] Agustin Jose Menindez, 'The Refugee Crisis: Between Human Tragedy and Symptom of the Structural Crisis of European Integration', *European Law Journal* 22 (2016), 400.

[67] Lydia Gall, 'Violent Pushbacks on Croatia Border Require EU Action', *Human Rights Watch* (29 October 2020), https://www.hrw.org/news/2020/10/29/violent-pushbacks-croatia-border-require-eu-action (consulted on 17-05-2022).

[68] Maartje van der Woude, Vanessa Barker and Joanne van der Leun, 'Crimmigration in Europe', *European Journal of Criminology* 14 (2017) 1, 3–6; Martina Tazzioli, 'Crimes of solidarity: migration and containment through rescue'*, Radical Philosophy* 2 (2018) 1, 1-9.

[69] Tazzioli, 'Crimes of solidarity', 9.

policy has become increasingly hostile and repelling. This migration regime can be fit in the 'deterrence paradigm', in which national security and sovereignty have become more important than protecting and safeguarding human rights, thus leading to politics in which migrants are being deterred. With the emergence of the EU, border control made place for border management. Border management slowly dehumanised and institutionalised the EU migration regimes, resulting in the securitisation and criminalisation of migrants. The EU border management regime failed time and again, due to a lack of cooperation, insufficient policies such as the Dublin agreement and a general lack of solidarity towards other states – but also towards migrants, resulting in criminalising solidarity. Thus, at the borders of Fortress Europe, the stateless are not only rightless, but they have also become criminals.

CHAPTER II:

PATHWAYS TO CRISIS

'After days in the woods, Gaylan Dler Ismail could no longer walk. His brother Arkan carried him on his back. Arka says that Polish soldiers refused to help them. "They just watched as Gaylan died.'[70]

The EU-Belarus border zone crisis did not happen overnight. Since the implementation of CEM concerns the 'perpetrator' as well as the 'victim', this chapter will analyse the EU-Belarus relations since the beginning of the 1990s. Analysing the historical nature of these international relations will help in explaining the emergence of the conflict. In addition to this, the emergence of this conflict is also related to the internal migration politics and perceptions of the bordering countries. In other words, if there are unwelcoming public or political perceptions towards migrants or refugees, these people are perceived as a threat, which creates the possibility to weaponize migrants and thus can result in humanitarian crises. Therefore, the internal migration politics and perceptions of the states bordering Belarus play a vital role in the emergence of the crisis.

This crisis is a story about two kinds of human rights abuses, one of which is publicly condemned by the EU and the other seems to be ignored by the EU. Analysing this contradiction therefore entails a dual narrative of EU-Belarus relations on the one hand, and the trajectories of the national migration politics on the other hand to find the pathways that led to the humanitarian crisis that followed. In this chapter, I will uncover these pathways through an analysis of the dynamics of the EU-Belarus relations from the 1990s until now and the role of human rights within these relations. In the second part of this chapter, I will elaborate on the emerging xenophobic and Islamophobic sentiments in the border countries that led to practices of *crimmigration* which negatively impacted the safeguarding of human rights of migrants, years before the current crisis started. These analyses will uncover the EU's contradictory

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[70] Al-Najjar ea., 'Hypothermia, Drownings and Exhaustion.

attitude in which the institution presents itself as a normative power when it comes to abuses abroad, but keeps their eyes closed when it comes to abuses at its own territory.[71]

Changing dynamics in EU-Belarussian relations

The EU-Belarussian relations have changed from time to time. From the 1990s onwards, the EU has struggled with maintaining a relationship with a dictatorship. Conflicting interests, in which the EU struggled with balancing security motives with the safeguarding of human rights, often resulted in hostile situations between the EU and Belarus. In this section, I will show the changing dynamics and their influence on the current crisis.

The aftermath of the Cold War marked the start of both the emergence of the EU and of Belarus. The border zone between the EU and Belarus did not formally exist yet, due to the lack of eastern member states. However, due to the Western fear of East-West migration, the EU used central European states, such as Poland, as buffer zones in order to contain possible migration flows.[72]

Scholar Elena Korosteleva described the EU-Belarus relationship as spasmodic. With 'spasmodic', she refers to the bilateral behaviour of repeated rapprochement followed by sudden rejection, that has been happening over the past decades.[73] The relationship between the EU and Belarus, which had started off well after the end of the Cold War, increasingly worsened between 1994 and 1997, due to the Belarussian change in regime, transforming the country into a dictatorship.[74] There was no uniform policy towards Belarus. However, the EU made efforts to demonstrate to Belarus that they would not accept its transformation into a dictatorship and the subsequent human rights abuses.[75]

The dynamics deteriorated after the European Enlargement of 2004. The enlargement resulted in a direct border zone between Belarus and European territory, as three of the newly admitted member states were Latvia, Lithuania and Poland. I argue that this new border situation did not only separate two distinctive spheres of influence, but it also manifested itself as an impetus for Belarus to utilise new leverage tools on the EU, namely CEM. In other words, using migrants

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[71] Ian Manners introduced the term Normative Power Europe (NPE) and referred to it as the notion that the European Union is a normative power in world politics, in which the pursuit of human rights is an integral part of the EU's ontology. Ian Manners, 'Normative Power Europe: A Contradiction in Terms?', *JCMS: Journal of Common Market Studies* 40 (2002) 2, 235–258, 253.

[72] Claire Wallace, Oxana Chmouliar and Elena Sidorenko, 'The eastern frontier of Western Europe: Mobility in the buffer zone', *Journal of Ethnic and Migration Studies* 12 (1997), 259-286, 259.

[73] Elena A. Korosteleva, 'The European Union and Belarus: democracy promotion by technocratic means?', *Democratization* 23 (2016) 4, 678–698, 679.

[74] Giselle Bosse, 'A Partnership with Dictatorship: Explaining the Paradigm Shift in European Union Policy towards Belarus*', *JCMS: Journal of Common Market Studies* 50 (2012) 3, 367–384, 372.

[75] Bosse, 'A Partnership with Dictatorship', 372.

as weapons. These leverage tools are the main spill in the current EU-Belarus conflict but have also played a role in its history.

There are two historical examples of CEM executed by Lukashenko to put pressure on the EU. Lukashenko's first threat to 'flood the European Union with illegal immigrants' stemmed from his disagreement with being rejected at the NATO summit in Prague in November 2002. Because of the many migrants and refugees that had arrived in Belarus, Lukashenko was able to carry out this threat. Luckily for the EU, he did not follow through despite being rejected at NATO and EU expansion towards Belarus from the West.[76] The second threat was similar, except that Lukashenko demanded millions of euros from the EU to stop him from sending the migrants. The EU disagreed with his proposal and instead invested billions in border management at the outer borders of the new member states, including the creation of FRONTEX that emerged from these threats.[77]

The internal contradiction in the EU's objectives regarding the relationship with Belarus has been vital to the emergence of former conflicts, the 'spasmodic relationship' and to the current border crisis. Giselle Bosse constructed the 'values/security nexus', to explain this problem.[78] 'idealist values of 'winning the hearts and minds' of the Belarusian population increasingly collide with traditional realist goals of protecting EU interests and the stability of the Belarusian state', Bosse argues. The idealist goal of 'Europeanisation' or democratisation of Belarus thus contradicts with EU's desire to have security at the border zones. The border zone between the EU and Belarus thus proved to be perceived as a threatening zone for the EU, but they did not have the proper tools to deal with it.[79] Therefore, they started to build on a pragmatic relationship with Belarus, as Lukashenko preferred. This change in attitude is what Bosse calls the Paradigm Shift in European policy towards Belarus.[80] According to her, 'it has also gradually moved from democracy promotion towards interest-based functional co-operation in its relations with the most 'reluctant democratizer' in eastern Europe.[81] This transformed the former values/security nexus into a security focused attitude towards Belarus.

By contrast, I argue that this attitude has changed again towards a value-centred attitude. After the fraudulent elections in August 2020, many Belarussians started protesting. These protests

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[76] Greenhill, *Weapons of Mass Migration*, 327.
[77] Ibidem, 328.
[78] Giselle Bosse, 'Challenges for EU governance through Neighbourhood Policy and Eastern Partnership: the values/security nexus in EU–Belarus relations', *Contemporary Politics* 15 (2009) 2, 215–227.
[79] Bosse, 'Challenges for EU governance, 223.
[80] Bosse, 'A Partnership with Dictatorship, 379.
[81] Ibidem, 367.

were characterized by the excessive violence executed by the Belarussian authorities, leading in many arrests and large-scale abuses of human rights.[82] Since October 2020, the EU has imposed different sanctions on Belarus as a response to the violence and repression.[83] These sanctions included a travel ban and asset freeze for the people that would have been involved in the repression and violence. In November, the EU imposed new sanctions and in December, the EU imposed a third round of sanctions. These sanctions were imposed to improve the human rights situation in Belarus, and therefore it seems to be that the EU was value-centred again.[84] Then, in May 2021, after the forced landing of a Ryanair plane by Belarussian authorities and the subsequent arrest of two passengers, the EU introduced a new package of sanctions. 'This decision was made in view of the escalation of serious human rights violations in Belarus and the violent repression of civil society, democratic opposition and journalists.'[85] This again shows the EU's value-centred attitude. Lukashenko finally responded on these sanctions with the weaponization of migrants, or CEM. By cooperating with tourist agencies and Middle Eastern airlines, Lukashenko assisted the transport of thousands of migrants to the border zone of the EU.

The dynamics between the EU and Belarus can thus be characterized as spasmodic and seem to be changing by means of changing interests. When the relationship is strictly based on security interests, there seems to be no dispute. However, once the EU tries to impose their values such as democracy on Belarus, conflict arises. This translated itself in the emergence of conflict after the enlargement of the EU, which both threatened Lukashenko and aided the emergence of the current conflict. The border zone between the EU and Belarus embodies these dynamics at certain moments, from Lukashenko's threats and the implementation of FRONTEX in 2004 to the weaponization of migrants as a response on EU sanctions today.

Internal migration politics in the border states
Weaponized migration can only become a strong asset when migrants are perceived as weapons. Eastern European countries have clearly demonstrated a strong anti-immigration

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[82] OHCHR 'Belarus: Massive human rights violations unprecedented in scope and gravity, says UN expert' (5 July 2021), https://www.ohchr.org/en/press-releases/2021/07/belarus-massive-human-rights-violations-unprecedented-scope-and-gravity-says (consulted on 13 June 2022).
[83] European Council, 'Timeline - EU restrictive measures against Belarus' https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/belarus-timeline/ (consulted on 13 June 2022).
[84] European Council, 'Belarus: EU adopts 5th package of sanctions over continued human rights abuses and the instrumentalisation of migrants' (2 December 2021), https://www.consilium.europa.eu/en/press/press-releases/2021/12/02/belarus-eu-adopts-5th-package-of-sanctions-over-continued-human-rights-abuses-and-the-instrumentalisation-of-migrants/ (consulted on 13 June 2022).
[85] European Council, 'Timeline'.

stance since the refugee crisis of 2015.[86] This stance is already one of the key causational factors for fractured diplomacy within the EU on the subject and may well turn this dispute into a humanitarian crisis if the EU is unable to *either* change this sentiment, or amend existing policies. The Eastern European countries that appeared hesitant and largely unwilling to offer these groups of migrants and refugees asylum – unless the EU met unattainable financial conditions for only small numbers of refugees – they assisted in the making of this 'literal death trap'.[87] In the following section, I will analyse where this anti-immigration sentiment has come from in the countries bordering Belarus, respectively, Poland, Lithuania and Latvia. Consequently, I will explain the implications of these attitudes on their migration policy and subsequently on the human rights of migrants and refugees arriving in these countries.

There is an East-West division within the EU regarding refugee acceptance, presumably refugees with another cultural or ethnical background. This has translated itself in strong Islamophobic narratives which have been politicized.[88] An explanation for this can be found in its history. While Western countries became quite experienced in welcoming refugees from other ethnic and cultural backgrounds, eastern countries underwent isolated positions due to the Soviets closed border regime.[89] This can be recognised in the data of the World Values Survey, which researched attitudes towards Muslims from 1981 until 2005. It is striking that the percentage of people who would not like to have Muslims as neighbours remains under the 15% in West-European countries, while in East-European countries, this percentage is around the 20%, with an excessive 32% in Lithuania.[90]

This inexperience with hosting refugees is not the only reason for the low acceptance rate regarding refugees in Eastern European countries. These countries are still rebuilding from the imploding of the Soviet Union, which has resulted in slow economies and the people's preoccupation concerning their own wellbeing is often prioritised above that of other people with other cultural or ethnical backgrounds.[91] These sentiments have been politicized in different Eastern European countries after the so-called refugee crisis of 2015. Scholar Ivan Kalmar argues that this embodies the East-West divide in Islamophobia in Europe. Even though

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86 Dace Dzenovska, 'Eastern Europe, the Moral Subject of the Migration/Refugee Crisis, and Political Futures', *Near Futures Online* (2016) 1.
87 Jack Sapoch et al., 'Who died at Europe's border', *Lighthouse Reports* (22 December 2021), https://www.lighthousereports.nl/investigation/who-died-at-europes-border/ (consulted on 2 April 2022).
88 Nina Miholjcic, 'What is preventing successful immigrant integration in the central and eastern European societies?', *Journal of Community Positive Practices* 9 (2019) 2, 14–24, 15.
89 Miholjcic, 'What is preventing succesful immigrant integration', 15.
90 Marc Helbling, *Islamophobia in the West: Measuring and Explaining Individual Attitudes* (Florence, 2012), 92.
91 Ibidem, 15.

the Islamophobic narratives are quite similar, the degree to which it has been politicised, and thereby started to undermine human rights, is more significant in Eastern European countries.[92] The patterns of prejudice are recognisable in all three of the states bordering Belarus.

The Polish immigration policy in the 1990 had been mainly based on geographical, ethnic, and cultural proximity.[93] In other words, Poles stood welcoming towards 'ethnically similar people who did not stand out in Polish society'.[94] This image of migration changed rapidly after its politicization in 2015, during the so-called refugee crisis. The leader of the governing law and & justice party Jarosław Kaczyńsk stated that refugees would bring unknown health diseases.[95] The newly elected government therefore created an 'us vs. them' narrative. These discourses, narratives and ultimately public sentiments hightened against these migrants and refugees, who took on innacurate labels such as 'threats to security', 'criminals' and even 'terrorists'.[96] They would be a threat for both the economy and the Polish Christian culture. There are many opinion polls that show how the politicization of migration has reached public perception. Opinion polls show that when asked specifically about refugees from the Middle East and Africa, opposition in Poland is very strong. In May 2015, 53% of Poles expressed objection to accepting refugees from this area. In April 2016, this number rose to a remarkable 71%.[97] These sentiments are also reflected in the current crisis, as an EU survey shows that the majority of the Poles oppose the admission of refugees at the Belarussian border and is against helping these refugees.[98]

As I stated before, Data from the World Value Centre showed that Lithuania expressed the highest anti-Muslim hostility within the EU (32,2%) between 1981 until 2005, which is thus characterizing for their stance towards Muslim refugees from the Middle East.[99] The same politicized narratives as in Poland started to appear after the emergence of the 'refugee crisis' in 2015.[100] In 2019, a Lithuanian public survey showed that Muslims and refugees were among

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[92] Ivan Kalmar, 'Islamophobia in the East of the European Union: an introduction', *Patterns of Prejudice* 52 (2018) 5, 389–405, 390.

[93] Robert Koulish e.a., *Crimmigrant Nations: Resurgent Nationalism and the Closing of Borders* (New York, 2020), 237.

[94] Koulish, *Crimmigrant Nations,* 238.

[95] Ivan Krastev, 'The Refugee Crisis and the Return of the East-West Divide in Europe', *Slavic Review* 76 (2017) 2, 291–296, 293.

[96] Koulish, *Crimmigrant Nations,* 240.

[97] CBOS Public Opinion Research Center, 'Polish Public Opinion' (April 2016). https://www.cbos.pl/PL/publikacje/public_opinion/2016/04_2016.pdf (consulted on 9 August 2022).

[98] Magdalena Lesinska, 'Majority of Poles oppose the admission of migrants from Polish-Belarusian border | European Website on Integration' (30 November 2021) https://ec.europa.eu/migrant-integration/news/majority-poles-oppose-admission-migrants-polish-belarusian-border_en (consulted on 8 August 2022).

[99] Helbling, *Islamophobia in the West*, 92.

[100] Nikolay Zakharov and Ian Law, *Post-Soviet Racisms* (London 2017), 28.

the least favourable groups in the country.[101] The majority would help migrants with a corresponding Christian background and only a quarter would help migrants with a Muslim background. These attitudes towards migrants are mostly created through media portrayals and political narratives, and not through personal experiences.[102]

In Latvia, the attitude towards welcoming refugees has also been very negative.[103] A European Union survey in 2019 showed that more than half of the respondents had expressed a desire to distance themselves from Syrians and that only 20% had no prejudices against people of other ethnicities or origins.[104]

After the EU implemented resettlement policies (that were aimed to provide a fairer migration system based on solidarity) these three countries refused to comply to the rate of refugees that they were expected to offer asylum to. Even more so, they fell short of the expected rate.[105] This thus resulted in a very hostile climate for refugees with a different ethnical or cultural background and simultaneously uncovered a new discrepancy in EU migration policy, because its own member states did not obey to its migration policy. Consequently, these hostile refugee climates have transformed into policies of *crimmigration* that are violating human rights of migrants and refugees.

Examples of the effect of *crimmigration* on migration policy is the implementation of strict detention systems in Poland in which even children are detained.[106] In Lithuania this development can be recognised by its mass detention centres. In September 2021, NGO's and public rights groups protested these 'mass detention of migrants and pushbacks'.[107] The petition that they stood for reads: "'We [...] are deeply concerned about the irregular migration

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[101] European Commission, 'Lithuanian public opinion survey shows negative attitudes toward refugees, Muslims' (30 May 2019), https://ec.europa.eu/migrant-integration/news/lithuanian-public-opinion-survey-shows-negative-attitudes-toward-refugees-muslims_en (consulted on 13 June 2022).
[102] Diversity Development Group, 'Lithuanian Report on Migration, Sustainability and Development Education' (April 2018) http://www.developtogether.eu/documents/outputs/national-audit-reports/Lithuania.pdf (consulted on 13 June 2022).
[103] Eldad Davidov e.a., 'Individual values, cultural embeddedness, and anti-immigration sentiments: Explaining differences in the effect of values on attitudes toward immigration across Europe', *KZfSS Kölner Zeitschrift für Soziologie und Sozialpsychologie* 66 (2014) 263–285, 272.
[104] Agnese Lāce, 'Survey shows Latvian attitudes are still closed to people of other ethnicities and origins', *European Website on Integration'* (12 March 2019) https://ec.europa.eu/migrant-integration/news/survey-shows-latvian-attitudes-are-still-closed-people-other-ethnicities-and-origins_en (consulted on 8 August 2022).
[105] Eirik Christophersen, 'A few countries take responsibility for most of the world's refugees', NRC (November 2020), https://www.nrc.no/shorthand/fr/a-few-countries-take-responsibility-for-most-of-the-worlds-refugees/index.html (consulted on 8 August 2022).
[106] Koulish, Crimmigrant Nations, 245.
[107] LRT, 'Rights groups decry Lithuania's 'mass detention of migrants, pushbacks' (2 September 2021), https://www.lrt.lt/en/news-in-english/19/1484651/rights-groups-decry-lithuania-s-mass-detention-of-migrants-pushbacks (consulted on 13 June 2022).

management measures adopted by the Government of the Republic of Lithuania and the attitude being shaped in our society and the media that demonises irregular migrants and justifies human rights violations,"[108].

Both Poland and Lithuania have attempted to legalise pushbacks, which contributes to their *crimmigration* policies and does not meet with international obligations.[109] From August to December 2021, the Lithuanian border guards have pushed back 8000 migrants. In addition to this, in November 2021, Lithuania has started building the first European wall to deter migrants.[110] Reports on the situation in Terespol, the town where the Polish border crossing station is situated, show more examples of the precarious situations and also show how the current humanitarian crisis is not really unique. In 2012, the Asylum Information Database already reported on cases in which entry was refused and others in which the asylum seekers were detained based on abusing the asylum procedure.[111]

The situation deteriorated in 2016 and the pushbacks and denials of access became a regular event. The Helsinki Foundation of Human Rights worked on a report on the Brześć-Terespol border crossing between Poland and Belarus.[112] In this report, they stated that Polish Border guards 'seem to ignore the intention to submit an application for international protection expressed by foreign nationals at the border crossing station in Terespol and refuse them entry to Poland.'[113] These pushbacks were unlawful as these foreign nationals were persecuted in their own country and were looking for shelter in Poland. These pushbacks forced them to live in Brest, Belarus for months. The groups that were of most concern were groups of children, who were not only living under severe conditions, which risked a deterioration in their health conditions, but these children were also deprived of the right to education.[114] The Association

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[108] Mano Teises, 'Prieglobsčio prašymas nėra nusikaltimas – už žmogišką elgesį su migrantais' (2 September 2021) https://manoteises.lt/peticija/prieglobscio-prasymas-nera-nusikaltimas-uz-zmogiska-elgesi-su-migrantais/ (consulted on 13 June 2022).

[109] Alison Abrahams, 'Lithuania: Pushbacks, illegal detention, deception and abuses against refugees and migrants', Amnesty International (27 June 2022) https://www.amnesty.org/en/latest/news/2022/06/lithuania-pushbacks-illegal-detention-deception-and-abuses-against-refugees-and-migrants/ (consulted 9 August 2022); Reuters, 'Poland passes legislation allowing migrant pushbacks at border', Reuters (14 October 2021), section Europe.

[110] Janis Laizans, 'Lithuania starts building first European wall to ward off migrants from Belarus', Reuters (8 November 2021), https://www.reuters.com/world/europe/lithuania-starts-building-first-european-wall-ward-off-migrants-belarus-2021-11-04/ (consulted on 13 June 2022).

[111] Karolina Rusilowicz et al., 'National Country Report: Poland', *Asylum Information Database* (15 April 2013), 11.

[112] Marta Górczyńska and Marta Szczepanik, 'A road to nowhere. The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus*, Helsinki Foundation for Human Rights* (October 2016).

[113] Górczyńska and Szczepanik, 'A road to nowhere, 16.

[114] Ibidem, 19.

for Legal Intervention, also researched the border crossings in Poland and drew similar conclusions, amongst others that 'the access of foreigners to refugee procedure is sabotaged by border guards on a mass scale at the border crossing in Terespol.'[115]

After 2016, the situation did not improve. The Asylum Information Database reported on the same challenges for migrants and refugees in 2019.[116] The emergence of COVID-19 increased the difficulty to cross the border. More so, the virus was often used as an excuse to avoid obligations to offer shelter to refugees.[117] Crucially, we must consider that these violations were already status quo at the Eastern borders of Fortress Europe and in these cases of violations, in contrast with the Belarussian human rights violations, there is no executive organ that raises awareness towards these violations. This shows the EU's hypocrisy towards human rights violations. These circumstances therefore offered fertile soil for what Greenhill called 'hypocrisy costs'. Sending more migrants to these border zones, known for their pushbacks and violations, would worsen the EU's reputation of the human rights protector or 'normative power'. The situation severely deteriorated from 7 June 2021 onwards. Refugees and migrants arriving at the border are mostly from the Middle East.

The people at the border zone are pushed back from both sides. Vulnerable groups are among these people, including children, pregnant women, elderly people and people with health issues. Pushing them back on two sides leaves these groups trapped in the woods, where they are prone to extremely inhumane conditions that have even resulted in death. In December 2021 at least seventeen people have died at the border zone, among them multiple young men and women, one of them pregnant. The main cause of death was hypothermia and drowning.[118] This number could be higher as it has become difficult for NGOs and aid services to gather information in this area, because the Polish government has restricted NGO's and journalists to visit the area.[119]

The pushbacks are the most problematic event happening in this EU-Belarus border crisis for multiple reasons. First, refusing to offer asylum to refugees is a violation of international human

[115] Aleksandra Chrzanowska et al., 'At the border: Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport', *Association for Legal Intervention* (2016), 99.
[116] Karolina Rusilowicz et al., 'Country Report Poland: 2019 Update', *Asylum Information Database* (31 December 2019).
[117] Karolina Rusilowicz et al., 'Country Report Poland: 2021 Update', *Asylum Information Database* (31 December 2021), 21.
[118] Al-Najjar ea., 'Hypothermia, Drownings and Exhaustion.
[119] UNHCR, 'UNHCR urges States to end stalemate at Belarus-EU border and avoid further loss of life' (22 October 2021), https://www.unhcr.org/news/press/2021/10/6172af254/unhcr-urges-states-end-stalemate-belarus-eu-border-avoid-further-loss-life.html (consulted on 13 June 2022).

rights and international refugee rights, to which Poland, Lithuania and Latvia as member states and the EU as an institution should comply. Second, pushing people back to Belarus has proven to be very dangerous for migrants and refugees as they regularly become a victim of physical and sexual violence and the living conditions are entirely inadequate.[120] HRW reported on 'grave violations in a makeshift warehouse that was used for Belarus' Bruzgi camp, including a gang rape, beatings, and inhuman living conditions.'[121] These processes left the most vulnerable groups – people without citizen rights – in the most precarious situations and this contradicts and undermines the values and rights that both states must comply to.

Conclusion

Both the dynamics of the EU-Belarus relationship and the internal migration policies and sentiments in the border countries have played their part in the emergence of the EU-Belarus border crisis. Because of the EU dilemma between values and security, the relation with Belarus has known a spasmodic history. The 2004 EU enlargement resulted in a direct border zone between the EU and Belarus, which raised new threats and tensions on both sides. Failing to democratise or 'Europeanise' Belarus, the EU moved its relationship with Belarus towards one that was security-based in 2012. However, when internal repression arose in 2020, the EU again shifted towards a more value-centred attitude towards Belarus. This inconsistent approach resulted in the public condemnation of Belarussian human rights violations and multiple packages of sanctions, to which Lukashenko responded with the implementation of CEM.

The internal migration policies and sentiments of the border countries have proven to be fertile soil for human rights violations of migrants and refugees. Since the 'refugee crisis', xenophobic and Islamophobic sentiments were uncovered in the three former Soviet countries. There is a strong reluctance against welcoming refugees with another cultural or ethnical background, due to the long period of isolation and inexperience with refugees. of the politicizing of migration, xenophobia and Islamophobia raised in public discourse. This resulted in *crimmigration* policies such as detention centres, building walls and the legitimisation and legalisation of pushbacks. The hostile environment that was created has caused inhuman situations for migrants and refugees, long before this crisis even started. In 2021, the situation deteriorated, causing a stand-off between Polish and Belarussian border guards, both unwilling to accept the groups of migrants that had to live under inhuman circumstances in a no-mans-land. The EU's

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[120] Human Rights Watch, 'Violence and Pushbacks at Poland-Belarus Border' (7 June 2022), https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border (consulted on 13 June 2022).
[121] Human Rights Watch, 'Violence and Pushbacks'.

contradictory attitude towards human rights is therefore well reflected in the pathways to this crisis, where human rights violated in Belarus are condemned and human rights violations in the member states are concealed. This crisis is therefore a product of a contradiction, in which some human rights violations are publicly condemned, and others are structurally ignored.

CHAPTER III:

VULNERABLE VICTIMS OR 'HYBRID THREATS'

I crossed many times to Poland but was pushed back to Belarus every time [by Polish border guards]. I was in the forest for eight days, in this no man's land… I didn't have food or water for four days…[122]

NGOs and media began reporting on the harmful situations that the refugees and migrants were in shortly after the start of the border crisis. Multiple times, these reports asked for interference of the European Commission to keep up their human rights obligations.[123] The crisis emerged on the 7 June 2021 and since then multiple groups of migrants and refugees were transformed to Belarus and coerced to cross the border. This coercion went accompanied by violent behaviour of the Belarussian authorities, forcing the migrants and refugees to cross the border, and simultaneously was followed by violence of the Polish authorities, prohibiting them to enter the country. This consequently resulted in a stand-off in which the migrants and refugees became the ultimate victim. So, how did the European Union deal with the abuse of human rights when the situation was coerced against them?

As the previous chapters showed, human rights violations on European territory are certainly not new. It is, however, quite contradictory that the current human rights abuses in the Belarus-EU conflict are a result of the EU's interference in Belarus' human rights abuses. The discrepancy of the EU's attitude towards human rights abuses remains to play a role in this chapter, as it will show how the EU only pays attention to human rights violations if they can shift the blame to Belarus. The aim of this chapter is to investigate what implications the EU response to this case of CEM has on the safeguarding fundamental rights of migrants.

This chapter will analyse different EU press releases, statements, and speeches to discover the discursive structures and consequently the EU's response towards this situation. These sources cover the period between July 2021 until December 2021. This chapter reflects on what has

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[122] Lydia Gall, ' *"Die Here or Go to Poland"*: Belarus' and Poland's Shared Responsibility for Border Abuses', *Human Rights Watch* (24 November 2021), 11.

[123] 'Poland / Belarus Border: A protection crisis', *Amnesty International* (29 September 2021), https://www.amnesty.org/en/latest/research/2021/09/poland-belarus-border-crisis/ (consulted on 23 June 2021).

been said in these sources and what has been concealed, because both of these actions have meaning. Therefore, the source analysis is divided into three categories: the EU's humanitarian response, the EU's border security response and the EU's concealments. In the last category, EU sources are put in conversation with the NGO reports to reveal these omissions and their consequences. Finally, the implications of the EU's response towards this case of CEM to the fundamental rights of weaponised migrants will be discussed in the conclusion.

The EU's 'humanitarian' response

This section shows the EU's attitude towards human rights violations of migrants in the EU-Belarus border crisis. As will become clear, the sources indicate that the EU is concerned about the human rights violations in the border areas. However, something is not in line with this concern because, repeatedly, the human rights violations are directly linked to the accusation of Belarus as the main perpetrator. Notably, this gives us an insight into the contradiction in interests that is at heart of human rights protection in cases of CEM. On the one hand, the EU as a liberal institution needs to raise awareness of the vulnerability of the people at the border zone and the need for humanitarian protection. On the other hand, as these migrants are weaponized against the EU, it is also in the EU's interest to discredit Belarus. Therefore, the interests, complying to international human rights law while discrediting Belarus, result in a narrative in which the EU acknowledges the human rights violations, without giving any attention to their own agency in these violations. Needless to say, these conflicting interests do not help in solving the humanitarian problems at the border zone. In the following, I will elaborate on this by building my argument onto the sources.

The EU's acknowledging of the human rights violations is always accompanied by a direct or indirect accusation towards Belarus. After the emerging of the 'border crisis', the first response from the European Commission was offering humanitarian assistance to Lithuania, on their request.[124] 'These people, many of them vulnerable, need urgent support such as food and shelter. The European Union and other Member States will not leave Lithuania in this difficult situation alone', is what Janez Lenarčič, Commissioner for Crisis Management stated.[125] Furthermore, commissioner of home affairs Ylva Johansson stated in the same source 'The authoritarian regime in Belarus is exploiting human beings for political reasons: this is completely unacceptable.' In addition to this, she also focused on meeting the basic humanitarian needs of the migrants. This shows an example of the accusing of Belarus while

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[124] European Commission, 'Migration: EU helps channel humanitarian support to migrants in Lithuania', *Press release* (Brussels, 23 July 2021).
[125] European Commission, 'Migration: EU helps channel humanitarian support'.

simultaneously trying to meet the international obligations concerning human rights of migrants. Furthermore, the same narrative is met in other sources. For example, Ursula van Leyen stated that with 'no one's life should be used for political issues', at a press conference in October 2021.[126] This also shows the acknowledgment of the humanitarian situation while implicitly shifting the blame towards Belarus. There is a constant emphasis on the vulnerability of the people and the unacceptability to use them as paws for political purposes.[127] 'Using human beings in need to advance political goals violates fundamental European values and principles.'[128] This sentence shows the EU's normative stance, or at least the normative stance that they want to present to the international community. Furthermore, another example of acknowledging human rights violations while accusing Belarus, is the press release of the European Commission of 23 November 2021. In this source is stated that 'Belarus' actions have precipitated a humanitarian crisis', while the EU allocates 700,000 euros to humanitarian assistance for 'vulnerable migrants and refugees stranded in Belarus'. [129]

It is striking that in many of the sources the migrants are described as victims who are led by misinformation and violently forced to cross the border.[130] Lukashenko is constantly mentioned as the exploiter of human beings for political purposes and the EU condemns this. Lukashenko is however not the only culprit in this humanitarian crisis, the criminal networks and partner countries are also at fault:

> Let me be very clear about what is happening: people are being sold a lie by smugglers, international smuggling networks, who fly them to Minsk and create the impression they will ensure safe passage to Europe. This is happening via partner countries and regional hubs and this will not be allowed to continue.[131]

The EU thus acknowledges the gravity of the situation for the people at the border zone and seems to take the discursive moral high ground. The emphasis on the vulnerability of the people

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[126] Ursula von der Leyen, 'Opening remarks by President von der Leyen at the joint press conference with President Michel following the meeting of the European Council of 21-22 October 2021', *European Commission Press release* (Brussels, 22 October 2021).

[127] Ursula von der Leyen, 'Opening remarks by President von der Leyen'.

[128] Joseph Borrell, 'Belarus: Declaration by the High Representative on behalf of the European Union on the instrumentalisation of migrants and refugees by the regime', *European Council* (30 July 2021).

[129] European Commission, 'EU proposes blacklisting of transport operators involved in facilitating the smuggling or trafficking of people', *Press release* (Brussels, 23 November 2021).

[130] Ursula von der Leyen, 'Opening remarks by President von der Leyen.'

[131] Margarítis Schinás, 'Statement by Vice-President Schinas in Lebanon to address the situation at the Poland-Belarus border', *European Commission* (Brussels, 12 November 2021).

and their weaknesses is furthermore not surprising as the EU benefits from putting the emphasis on the crimes that Lukashenko instigated, as it gives the EU a better and Lukashenko a worse reputation in public opinion. By emphasising the vulnerability of these people while simultaneously blaming Belarus for this outcome, the EU thus creates a narrative in which Belarus becomes the ultimate culprit.

The EU's border security response

Even though the EU has thus emphasized and acknowledged the humanitarian implications of the crisis, their response to the crisis is mainly security-centred. This goes in line with the trend of increasing deterrence and border management practices. The gravity of the humanitarian situation is, by contrast, a contribution to the legitimisation of extensive border management policies than a genuine source of concern for the EU. The EU-Belarus border crisis therefore functions as an incentive for more securitization. In the following, I will explain why.

First, the words that seem to return in almost every speech and statement are 'hybrid attack' and 'weaponizing migrants'. This militarisation of language legitimises the implementation of defence mechanisms. Furthermore, it suggests that European security is at risk. Multiple sources support this argument. On the 9th of November, President Charles Michel claimed stated: 'We are facing a brutal, hybrid attack on our EU borders. Belarus is weaponizing migrants' distress in a cynical and shocking way.'[132] In December 2021, Ursula von der Leyen stated 'the situation at our border with Belarus should be seen in a wider context, mainly the deliberate attempt to destabilise the security of our democracies and those of our neighbours.'[133] The EU thus securitized this border situation, as it was perceived as an attack on democracies and the EU itself.

Second, another reason to believe that EU security outweighs the security of the people at the border, is the increase of *crimmigration* policies as a consequence of this event. In September 2021, the EU proposed the 'renewed action plan against migrant smuggling'. 'In the case of migrant smuggling, migrants willingly engage in the irregular migration process by paying for the services of a smuggler to cross an international border'. This shows how the EU perceives migrant smuggling. The EU statements indicate that the current insecurity of the migrants at the Belarus border offered a legitimisation for this action plan, as it was designed to reduce

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[132] Charles Mitchel, '"State of Europe" - Speech by President Charles Michel at the Berlin Conference 2021', *European Council* (Berlin, 9 November 2021).
[133] Ursula von der Leyen, 'Speech by President von der Leyen at the European Parliament Plenary on the preparation of the European Council and EU's response to the global resurgence of COVID-19', *European Commission* (Strasbourg, 15 December 2021).

unsafe migration. [134] In this action plan it is stated that 'sustainable and safe legal pathways to Europe are also needed to offer protection to those in need and job opportunities to attract the talent that the EU economy needs.'[135]

However, as became clear in the second chapter, the external borders of the EU often seem to have xenophobic and Islamophobic public opinion and consequently deterring border authorities which make fair asylum procedures impossible. This can also be recognised in the opinion poll which showed that the majority of the Poles was not willing to offer help to these refugees.[136] Moreover, this is reflected in the fact that the Polish border authorities have prohibited NGO's, journalists and medical teams from visiting the border.[137] This has led to isolated events that could not be monitored by NGO's and journalists. In addition to this, this resulted in situations in which refugees in need could not be assisted by NGO's which can help them through a fair asylum system. Above all, this is forbidden and condemned by international law.[138] Therefore, for some migrants and refugees, engaging in smuggling practices is the only solution and these 'criminal networks' also often consist of relatives or friends.[139] This is also what scholars Sheldon Zang, Gabriella Sanchez and Luigi Achilli argue. Migrant smuggling can, in some cases, thus also be perceived as a crime of solidarity and by restricting this, it becomes even more difficult for some people in need to arrive in a safe country.[140]

Third, the security-oriented response can also be recognised in the consequential border management procedures, some of which were previously ethically undesirable. An example of this is the debate on physical border infrastructure that emerged as a response to Lukashenko's instrumentalization of migrants. Physical border infrastructure contributes even more to this xenophobic, deterring European discourse, as the UNHCR also emphasizes.[141] Defence walls do not only protect the EU from Lukashenko's attacks, but it also increases the difficulty for

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[134] European Commission, 'Questions and Answers – Fighting against the exploitation of migrants' (Brussels, 29 September 2021).

[135] European Commission, 'Questions and Answers – Fighting against the exploitation of migrants', *(*Brussels, 29 September 2021).

[136] Lesinska, 'Majority of Poles oppose the admission of migrants.

[137] Medicins Sans Frontieres, '8 things to know about the EU/Belarus border crisis' (31 December 2021), https://www.msf.org/8-things-know-about-eubelarus-border-crisis (consulted on 8 August 2022).

[138] Lesinska, 'Majority of Poles oppose the admission of migrants from Polish-Belarusian border'.

[139] Sheldon X. Zhang, Gabriella E. Sanchez and Luigi Achilli, 'Crimes of Solidarity in Mobility: Alternative Views on Migrant Smuggling', *The ANNALS of the American Academy of Political and Social Science* 676 (2018) 1, 6–15, 13.

[140] Zhang, Sanchez and Achilli, 'Crimes of Solidarity'.

[141] Filippo Grandi, 'UN High Commissioner for Refugees addresses European Parliament marking 70 years of the Refugee Convention', *UNHCR* (10 November 2021).

people that end up in Belarus, and find themselves in dehumanising conditions to reach safe countries.

Furthermore, the fact that 700 thousand euros were spent on humanitarian assistance, in comparison to 200 million euros on border security, in the same week, also indicates a difference in priority.[142] More examples of the increase of border management procedures are the previously mentioned action plan against migrant smuggling but also the many investments in 'electronic surveillance technology, patrol vehicles, equipment for border guards and the construction of border crossing-points, but also satellite imaging and critical infrastructure.'[143] In addition to this, in December 2021, the EU temporarily expanded the measures for the bordering countries which enabled them to derogate from EU rules. This enabled them to hold asylum-seekers in detention for up to 20 weeks and these measures also made deportations easier.[144]

The multiple border management policies that come forth as a response to this conflict contribute to the trend of border management and the deterrence paradigm. Border management and deterrence practices largely obstruct rather than contribute to the safeguarding of the fundamental rights of human beings. It could therefore be stated that the EU utilises the implications of this border conflict for its own agenda, to increase EU border management, to exceed ethical boundaries and to further rise the walls of fortress Europe. Thus, weaponized migrants framed as a hybrid threat, function as a concrete legitimisation for the EU's deterrent border practices.

Concealing the truth?

Following up on what has been told by the sources, a lot can also be deducted by looking at the actions that have been left out of the sources. Even though it is true that most of the human rights violations have been executed by Belarussian authorities, the EU and the national governments of the member states have also played a role. The lack of interference and the implementation of far-reaching *crimmigration* strategies only contribute to the human rights violations and go against the non-refoulement principle. In this section, I will elaborate on this.

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[142] EC, 'EU proposes blacklisting of transport operators'.

[143] Ursula von der Leyen, 'speech by President von der Leyen at the European Parliament Plenary on the conclusions of the October European Council and the situation in Belarus and at its border with the EU', *European Commission* (Strasbourg, 23 November 2021).

[144] European Commission, 'Asylum and return: Commission proposes temporary legal and practical measures to address the emergency situation at the EU's external border with Belarus' (Brussels, 1 December 2021).

There is a complete absence on EU member state agency in the committing of fundamental rights violations. Addressed by NGOs, the violations of fundamental rights did not only concern Belarus but did also concern Poland. And there are multiple documents and reports of NGOs, urging the European Commission to interfere in these situations.[145] Human Rights Watch reported on Belarus' and Poland's shared responsibility for the human rights violations. Despite pleading for asylum, many people were violently pushed back by the Polish border authorities.[146] These pushbacks often led to inhumane practices executed by the Belarussian border guards, including sexual and physical violence.[147] This goes against the principle of non-refoulement as these people clearly end up in dangerous situations. In an interview with Lydia Gall on Human Rights Watch, she stated: 'The European Commission should start showing solidarity with the victims at the border on both sides who are suffering and dying. Belarus may have orchestrated the crisis but that doesn't absolve Poland and EU institutions of their human rights obligations'.[148]

It is therefore striking that these specific human rights violations have never been addressed by the European Commission. Even more so, the EU kept emphasising their support of Poland, Lithuania and Latvia as can also be recognized by the far-reaching emergency toolkit that the EU offered to the border countries in December 2021.[149] According to Amnesty International, 'these emergency measures were unjustifiable and will weaken the EU's legal framework on migration and asylum.'[150] Furthermore, the EU solidarity with these member states can be recognised in other speeches and statements. For example, Von der Leyen stated: 'I want to assure you here of the EU's full solidarity with Latvia, Poland and Lithuania in these challenging times.'[151] In addition to this, high commissioner Joseph Borrell stated that Lukashenko's

[145] Gall, '"Die Here or Go to Poland"', 5; Katarzyna Czarnota and Marta Górczyńska 'The Lawless Zone – Polish-Belarussian Border Monitoring', *Helsinki Foundation of Human Rights* (30 June 2022), 52; NRC, 'Joint Statement: Call on the EU: Restore Rights and Values at Europe's Borders', (29 November 2021) https://www.nrc.no/news/2021/november/joint-statement-call-on-the-eu-restore-rights-and-values-at-europes-borders/ (consulted on 23 June 2022).
[146] Gall, '"Die Here or Go to Poland"', 15
[147] Human Rights Watch, 'Violence and Pushbacks'.
[148] Human Rights Watch, 'Belarus/Poland: Abuse, Pushbacks At Border' (24 November 2021), https://www.hrw.org/news/2021/11/24/belarus/poland-abuse-pushbacks-border (consulted on 23 June 2022).
[149] European Commission, 'Asylum and return: Commission proposes temporary legal and practical measures to address the emergency situation at the EU's external border with Belarus', *Press release* (Brussels, 1 December 2021).
[150] Amnesty International, 'Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU' (20 December 2021). https://www.amnesty.eu/news/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/ (consulted on 23-06-2022).
[151] Ursula von der Leyen, 'Statement by President von der Leyen at the joint press conference with NATO Secretary-General Stoltenberg and Latvian Prime Minister Kariņš in relation to the situation in Belarus and at its border with the EU', *European Commission* (28 November 2021).

initiation of this crisis was an attempt to distract the attention from the human rights situation in Belarus.[152] The EU, by deliberately focusing the attention on the Belarussian human rights violations and omitting their own, does not do much better.

These examples thus show how the EU is justifying these violating practices, by claiming solidarity with these member states and expanding the instruments that contribute to these violating practices. Even though there have been many reports of NGO's, trying to raise awareness for the wrongdoings of both Belarus and the EU and Poland, the EU has been concealing their own violations. A possible explanation for this behaviour can be found in the theory of CEM, as these concealments are a way for the EU to avoid hypocrisy costs. Therefore, by shifting the blame towards Belarus, while concealing their own violations, the EU holds on tightly to their international reputation. Furthermore, this behaviour also contributes to the argument that EU's security objectives heavily outweigh their humanitarian objectives. By claiming solidarity and thus implicitly justifying these violations, they protect their relations with the border states, which they need to maintain security from Lukashenko's 'weaponized migrants'.

Conclusion

In this chapter, I have shown the EU's response towards the human rights violations resulting from the EU-Belarus crisis. The main point of this chapter is that the EU is condemning Belarus for their human rights violations, while similar violations and anti-immigration measures happen within their own agency, which the EU conceals to improve their public reputation in this dispute. In the following, I will summarize why.

First, it became clear that the EU has shown traces of a humanitarian attitude towards this conflict, by describing the migrants as vulnerable and by providing them with humanitarian assistance. However, the focus was constantly on Belarus' agency in committing these violations on vulnerable people. By constantly describing these humanitarian violations in relation to Belarussian agency, the EU manages to create a narrative in which Belarus becomes the ultimate culprit. This does not improve the humanitarian conditions – as much as it does improve the EU's position in this conflict.

Second, after reading the sources closely, it can be concluded that the EU's security objectives heavily outweighed the humanitarian objectives. The militarization of language legitimised the implementation of defence mechanisms and the fundamental rights violations of migrants.

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[152] Joseph Borrell, 'Belarus: EU broadens scope for sanctions to tackle hybrid attacks and instrumentalisation of migrants', *European Council* (15 November 2021).

Moreover, it legitimised the increase in *crimmigration* policies and multiple border management procedures were introduced which only made it more difficult for migrants to reach safe territories.

Third, what has been omitted in these sources is the agency of the member states in the committing of human rights abuses with Poland in particular. NGOs have asked for interference of the European Commission, but without response. Rather, the EU has shown constant solidarity with the bordering member states and even provided more mechanisms to deter migrants. This contributes to the argument that the EU's security objectives outweigh the humanitarian objectives.

All in all, the EU's response to this case of CEM has negative implications on the safeguarding of the fundamental rights of migrants. The EU's response primarily focuses on border security objectives, crimes of solidarity and the increase of *crimmigration*. In addition to this, the supporting of member states that push back migrants only contributes to the negative implications. Therefore, the safeguarding of the fundamental rights of migrants is clearly not the EU's priority in the EU-Belarus border conflict.

Conclusion

Throughout this work this thesis has shown that the EU's behaviour towards human rights violations has been contractionary. The histories of human rights and refugee rights have shown that the current case is not exceptional, and the historical development of human rights and refugee rights is known for its contradictions and violations. The EU's behaviour towards human rights violations of migrants and refugees can then be positioned in a larger historical context of increasingly deterrent immigration practices. This started with dilemma's regarding sovereignty and human rights protection in 1947. Over the years, other contradictions appeared due to differentiating contexts. During the last four decades, the attitudes towards immigration have become increasingly deterrent. The 1980s marked the start of this deterrence paradigm, which meant that national security and sovereignty became more important than the safeguarding of human rights. This also translated itself in the EU's attitudes towards immigration after its emergence in the 1990s. Through border management mechanisms, the EU slowly dehumanised and institutionalised immigration, resulting in *crimmigration* and crimes of solidarity. Throughout the history of contradictions and violations of human rights and refugee rights, there are clear pathways that lead to the EU's current behaviour towards immigration in which security is more important than the safeguarding of human rights.

Similar contradictions and dilemmas appeared after uncovering the pathways to this crisis. The EU-Belarus relationship has characterized itself with being spasmodic, meaning that rapprochement is followed by sudden rejection. Ever since the EU and Belarus started sharing a border zone, the diplomatic climate has been manifested here. The two cases of CEM threatened by Lukashenko of 2002 and 2004 are examples of this manifestation, as is the current case of CEM. In its relationship with Belarus, the EU has also been struggling with balancing their values and their security objectives. From time to time, the EU tried to democratize Belarus, which resulted often resulted in hostile responses from Belarus. Between 2012 and roughly 2020, after failing to democratise Belarus, the EU moved its relationship to a purely security-based nature. However, after the human rights violations in 2020, the internal repression, and the violence committed by Belarussian authorities, the EU openly condemned and sanctioned the Belarussian regime.

The internal policies and sentiments towards refugees and migrants in the border countries can explain why this dispute between Belarus and the EU manifested itself in a humanitarian crisis. First, these countries have proven to be reluctant towards refugees with different cultural or

ethnical background which originated in their Soviet history. Xenophobic and Islamophobic sentiments are now apparent and have been politicized since the refugee crisis of 2015, leading to hateful narratives in which refugees were perceived as terrorists and criminals. These countries perceived immigration as threatening and this resulted in *crimmigrating* practices such as massive detention centres, detaining children, building walls and the legalisation and legitimation of pushbacks. To clarify, CEM is only perceived as threatening, as long as the migrants that are sent to a certain territory are perceived as weapons. This is obviously the case for these border countries who have shown xenophobic and Islamophobic sentiments towards migrants and refugees which already led to human rights violations before CEM had started.

These trajectories uncover the EU's hypocrisy towards human rights and refugee rights. While they have been openly condemning and sanctioning others, the violations of their own member states remain an aspect of the refugee crisis that the EU is unwilling to acknowledge or act on. This hypocritical attitude regarding human rights is also translated in their response towards this case of CEM. The EU has managed to set up a narrative in which there seems to be great attention towards human rights violations, as long as these are connected to the Belarussian agency in committing these. Utilising words for these migrants that emphasise their vulnerability, they manage to frame Lukashenko as the ultimate culprit and keep their own reputation clean.

However, their real response towards this crisis is mainly security-oriented, as the sources have clearly shown. By implementing the militarization of language by framing this case of CEM as a hybrid threat, the EU does not only perceive these humans as weapons, they also use it as a legitimisation to introduce far-reaching border management measures that counteract the safeguarding of human rights. This is not the only practice that counters the safeguarding of human rights, the public solidarity with the border countries and the justification of their border management also contributes this attitude of the EU's human rights hypocrisy.

To answer the main question of this thesis: ''How is the EU's contradictory attitude towards human rights of migrants and refugees reflected in their response to weaponized migration in the 2021-2022 EU-Belarus border crisis?', this contradictory attitude is reflected in the change of perception of these migrants and refugees. When Lukashenko can be blamed of the human rights violations, the EU talks about vulnerable victims. However, they become 'hybrid threats' when the EU focuses on its security. These conflicting perceptions therefore contribute to a neglecting of the safeguarding of these human rights. This thesis has shown that this contradictory attitude can be explained through the histories of contradictions and violations in

human rights and refugee rights and the trajectories towards this crisis that showed the same dilemma for the EU: the dilemma between security and human rights. This plays a role in their broader regime, in their relations with Belarus and in their current response towards the EU-Belarus border crisis. Border security is the EU's real priority in this dilemma, but once it comes to human rights violations that have been committed by others, public condemnation is the answer.

By showing that the EU's contradictory human rights abuses has been present in its history, in the trajectories to this crisis and in their response to weaponized migration, this thesis has made two vital analytical contributions. First, it has contributed to the theoretical workings of CEM regarding the safeguarding of human rights. It has shown that human rights violations can also work as a weapon for the EU to construct a narrative in which Belarus becomes the main culprit. These violations are not the main concern for the EU but are instrumentalized in their narrative against Belarus. Second, it has contributed to the research on the increasingly deterring attitude of the EU towards migrants and refugees, which is still very present today. This has consequently led to an inadequate treatment of migrants and refugees. A greater acknowledgement of their own limitations is the only way to begin safeguarding adequately. This does not have to come at the cost of the current policy, but greater awareness could extend what the EU already has in place.

Of course, there are limitations to this thesis which need to be considered. As I have only focused on one case study, these findings cannot be generalized for the full account of the EU's behaviour towards human rights in cases of weaponized migration. Moreover, these can also not be perceived as a general way of response to human rights violations in cases of CEM. I would therefore suggest further comparative research into different case studies of weaponized migration with a specific focus on human rights violations. This will provide more insight into the responses to human rights violations when the humans in question are weaponized.

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