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The Lukashenko Case: Is He Persona Non Grata in the Diplomatic Sense?

Abstract	97
Introduction	98
I. The Vienna Convention: The Right Law in the Lukashenko Case?	100
II. What Are Lukashenko's Mandated Duties and Rights?	105
III. Is the Lukashenko Case a Public Interest Case?	106
IV. Magnitsky-Like Mechanisms Throughout the World.....	112
Conclusion	120

ABSTRACT

In 2020, Alexander Lukashenko was reelected as president of Belarus. Outcry by local protesters that the election was not a fair one has arguably been crushed by Belarus's law enforcement agency. Lukashenko was, therefore, declared persona non grata in the international sphere, principally by the European Union (EU), three Baltic states, the United Kingdom (U.K.), and Canada, all of which have created their global human rights sanctions framework in the context of the United States-campaigned Magnitsky mechanism. Referencing the Vienna Convention on Diplomatic Relations as a noteworthy piece of public international law, this Article argues that the term persona non grata is incorrectly used to describe Lukashenko's case. Sanctioning Lukashenko lacks a causal link with conventional diplomacy. Due process is the only effective means of preempting this case from coming under the spotlight of public interest and human rights debates that are affected by geopolitical considerations.

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INTRODUCTION

As unveiled in John Considine's treatise, the term *persona non grata* is derived from the phrase *persona grata*, the origin of which is traceable to church diplomacy in Europe in the 15th century.¹ Using *persona grata* became legally viable in the 19th century, and from an international perspective (though in a rather restricted sense at the time), the term had been used frequently in response to the evolution of a well-known customary practice in international law that one nation's government is eligible to decline a particular diplomatic envoy dispatched by another nation.² In other words, the use of the term *persona non grata* would play an indispensable role in countenancing the doctrine that any nation's relevant government authorities can ask foreign diplomatic personnel to leave its territory without an obligation to explain or provide a sound reason.³ Instead, government authorities may purely base their decision on a straightforward announcement that the person concerned is not welcome.⁴

In modern times, the Vienna Convention on Diplomatic Relations, adopted in 1961 and entered into force in 1964,⁵ is supposed to be the most relevant piece of public international law in this specific area. The connotation of *persona non grata* is primarily demonstrated in Article 9 of the Vienna Convention. It points out that "the head of the [diplomatic] mission or any member of the diplomatic staff of the [diplomatic] mission" may be made *persona non grata* by the receiving state "at any time and without having to explain its decision."⁶ By the same token, the receiving state may announce that "any other member of the staff of the [diplomatic] mission is not acceptable."⁷ In either case, the sending state will have to "recall the person concerned or terminate his functions with the [diplomatic] mission."⁸ If the sending state declines or fails to timely recall its diplomat, the receiving state may not recognize the person in question as a staffer of that diplomatic

¹ See John Considine, *The Origin of the Phrases Persona Grata and Persona Non Grata*, 91 *Neophilologus* 525 (2007).

² See *id.* at 536.

³ See *id.* at 534.

⁴ See *id.*

⁵ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95; see Barry Carter, *Vienna Convention on Diplomatic Relations*, INT'L L.: SELECTED DOCUMENTS 328 (2007).

⁶ Vienna Convention on Diplomatic Relations, *supra* note 5, art. 9.

⁷ *Id.*

⁸ *Id.*

mission.⁹ Furthermore, the receiving state may, at its discretion, declare any person accredited by the sending state persona non grata before he enters the land of the receiving state.¹⁰ For example, this occurs even when a person has not yet departed from the sending state and is still en route to the receiving state.

Not long ago, Belarus president Alexander Lukashenko was declared persona non grata by the European Parliament (on behalf of the EU) as well as by Latvia, Estonia, and Lithuania.¹¹ The EU and the three Baltic states refused to accept the outcome of Belarus's presidential election held on August 9, 2020, which they believed had been manipulated and misrepresented, resulting in Lukashenko unfairly winning his reelection by a large margin.¹² They particularly condemned the violence perpetrated by Belarus's police force against peaceful local protesters in Minsk who challenged the election results and demanded that a new presidential election occur under the supervision of a neutral, independent, and internationally accredited overseer.¹³ In the meantime, while not literally resorting to the phrase persona non grata, the U.K. and Canada imposed an entry ban on Lukashenko and froze his private assets that were located within their jurisdictions.¹⁴ Hence, the EU, Latvia, Estonia, Lithuania, the U.K., and Canada will now deny entry to Lukashenko due to his current status as persona non grata as designated by them documentarily or otherwise.¹⁵ This is not the first

⁹ See *id.*

¹⁰ See *id.*

¹¹ See Russian News Agency, *European Parliament Does Not Recognize Lukashenko as Elected President of Belarus*, TASS (Aug. 17, 2020), <https://tass.com/world/1190499> [<https://perma.cc/F64V-PM9U>]; *Baltic States Declare Belarus' Lukashenko Persona Non Grata*, UNIAN (Aug. 31, 2020), <https://www.unian.info/world/belarus-protests-baltic-states-declare-lukashenko-persona-non-grata-11130086.html> [<https://perma.cc/7FA5-6RBX>].

¹² See *European Parliament Does Not Recognize Lukashenko as Elected President of Belarus*, *supra* note 11; *Baltic States Declare Belarus' Lukashenko Persona Non Grata*, *supra* note 11.

¹³ See *European Parliament Does Not Recognize Lukashenko as Elected President of Belarus*, *supra* note 11; *Baltic States Declare Belarus' Lukashenko Persona Non Grata*, *supra* note 11.

¹⁴ See Jonny Tickle, *In Unprecedented Step, UK & Canada Impose Sanctions on Lukashenko & Other Belarus Big Wigs Over 'Rigged Elections' & 'Repression'*, RT (Sept. 29, 2020), <https://www.rt.com/russia/502055-uk-canada-sanctions-against-belarus/> [<https://perma.cc/2FQ6-ACYA>].

¹⁵ See *id.*

time the EU has imposed a travel ban on Lukashenko since he became president of Belarus in 1994.¹⁶

Ordinarily, imposing sanctions as such against Lukashenko is something within the sovereign ambit of these nations; there should be no doubt about it. But categorizing him as *persona non grata* could lead to a major problem. Lukashenko is currently not a career or an interim diplomat *per se*, nor is he likely to be a prospective diplomat. A sovereign nation declaring him *persona non grata* might prompt us to align such declaration with those illustrated by the Vienna Convention on Diplomatic Relations regarding this small but noteworthy specialism. It sparks the question of whether *persona non grata* is exclusive to foreign diplomats, or if Lukashenko is now simply treated as an unwelcome person in the commonsense way that is shrouded in diplomatic nuances.

This Article intends to explore the possible basis on which Lukashenko's *persona non grata* status has come into being as a nuanced diplomatic term. It delves into the appropriateness of applying the Vienna Convention on Diplomatic Relations to the Lukashenko case. In addition, it attempts to unravel the riddle of whether classifying Lukashenko as *persona non grata* by any relevant government authorities makes some original diplomatic sense. Finally, this Article argues that due process is necessary, and the Lukashenko case ought not to be arbitrarily affected by any unfavorable geopolitical element.

I

THE VIENNA CONVENTION: THE RIGHT LAW IN THE LUKASHENKO CASE?

Traditionally, to conform to diplomatic law, declaring someone *persona non grata* was reserved for foreign diplomats.¹⁷ This would occur because of the diplomat's intentional or plotted abuse of his diplomatic privileges or protections by having committed illegal acts in the host country, or due to his inappropriate intervention in the

¹⁶ See *Lukashenko – EU Persona Non Grata*, BNN (Feb. 1, 2011), <https://bnn-news.com/lukashenko-eu-persona-grata-15991> [<https://perma.cc/C57Y-C4YP>].

¹⁷ See Rosalyn Higgins, *The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience*, 79 AM. J. INT'L L. 641 (1985); Eric Witiw, *Persona Non Grata: Expelling Diplomats Who Abuse Their Privileges*, 9 N.Y. L. SCH. J. INT'L & COMPAR. L. 345 (1988); Veronica L. Maginnis, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, 28 BROOK. J. INT'L L. 989 (2003); Jennifer H. Kappus, *Does Immunity Mean Impunity? The Legal and Political Battle of Household Workers Against Trafficking and Exploitation by Their Foreign Diplomat Employers*, 61 CASE W. RESV. L. REV. 269 (2010); Anna Raphael, *Retroactive Diplomatic Immunity*, 69 DUKE L.J. 1425 (2020).

receiving state's internal matters at the behest of the sending state.¹⁸ What is more, it may not be a rare phenomenon to uncover that, in practice, a foreign diplomat is declared persona non grata by the receiving state purely as a vengeful measure against the sending state (hence, in effect, having nothing to do with that foreign diplomat's personal behavior on the surface) if the receiving state happens to be at odds with a specific policy put forward by the sending state.¹⁹ In all cases, declaring someone persona non grata may require a state to first invoke the Vienna Convention on Diplomatic Relations. In theory, the Lukashenko case ought to be no exception on this front.

However, in view of orthodox theories, the Vienna Convention on Diplomatic Relations is conceivably in the realm of diplomatic law. And proceeding to weaponize the persona non grata declaration is of a *discretionary* nature only.²⁰ Thus, in reality, it could be hard to make a strong case in the context of diplomatic law for pressing charges against Lukashenko when he is still president of Belarus. The need to exercise presidential power and fulfill the duties of a president may verify the assumption that it would be unlikely that Lukashenko would be engaged in a diplomatic role overseas during his current tenure.

In the preamble to the Vienna Convention on Diplomatic Relations, it is asserted that "peoples of all nations from ancient times have recognized the status of diplomatic agents."²¹ Under Article 1, a diplomatic agent is interpreted as "the head of the [diplomatic] mission or a member of the diplomatic staff of the [diplomatic] mission."²² Here, the term mission, without doubt, ought to refer to diplomatic mission. The ensuing Article 3 includes the following functions of a diplomatic mission:

- (a) representing the sending State in the receiving State;
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving State;

¹⁸ See Higgins, *supra* note 17; Witiw, *supra* note 17; Maginnis, *supra* note 17; Kappus, *supra* note 17; Raphael, *supra* note 17.

¹⁹ See Jean d'Aspremont, *Persona Non Grata*, MAX PLANCK ENCYCLOPEDIA OF INT'L L. 4 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1448767 [<https://perma.cc/4N9C-85BG>].

²⁰ See *id.* at 8 (emphasis added).

²¹ Vienna Convention on Diplomatic Relations, *supra* note 5, pmbl.

²² *Id.* art. 1.

- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.²³

In addition, under Article 4, the sending state is required to make sure that the receiving state has granted an *agrément* to the person assigned as head of the receiving state's diplomatic mission.²⁴ However, the government of the receiving state can, at its discretion, refuse to bestow such an official endorsement (with no need to provide a reason in any circumstances).²⁵

Thus, a diplomatic mission must operate under the governance of the Vienna Convention on Diplomatic Relations.²⁶ Additionally, it is worth mentioning the Vienna Convention on Consular Relations. On the heels of the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations was promulgated in 1967.²⁷ In comparison to a permanent diplomatic mission (e.g., an embassy), a consulate is usually of a smaller size and operates on a smaller scale, dealing with minor diplomatic issues only.²⁸

In the same light as Article 9 of the Vienna Convention on Diplomatic Relations, Article 23 of the Vienna Convention on Consular Relations allows the receiving state to declare a consular officer *persona non grata* or affirm that any other member of the consular staff is not acceptable.²⁹ In all these circumstances, the sending state must respond in the same way as it does in the case of what is set forth in the context of the Vienna Convention on Diplomatic Relations (i.e., giving up the designation of the person in question or discontinuing his ongoing consular functions).³⁰ Also, the receiving state may disavow

²³ *Id.* art. 3.

²⁴ *Id.* art. 4.

²⁵ *Id.*

²⁶ See *Embassies, High Commissions and Consulates*, POLITICS.CO.UK, <https://www.politics.co.uk/reference/embassies-high-commissions-and-consulates/> [<https://perma.cc/6PDU-GARF>].

²⁷ Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261; Carter, *supra* note 5, at 342.

²⁸ Amanda Briney, *What's the Difference Between an Embassy and a Consulate?*, THOUGHTCO (Jan. 22, 2020), <https://www.thoughtco.com/embassy-and-consulate-overview-1435412> [<https://perma.cc/K7N6-BB52>].

²⁹ Vienna Convention on Consular Relations, *supra* note 27, art. 23.

³⁰ See *id.*

an appointed consular officer's eligibility to take office even though he has not entered the territory of the receiving state.³¹

Looking back in history, it is easy to see that the rollout of the Vienna Convention on Diplomatic Relations occurred at a certain point when Western states were in the heat of the Cold War, with the Soviet-led Eastern Bloc as their political and diplomatic rivalry. The end of World War II gave rise to a new geopolitical landscape on the world stage. According to Eileen Denza, in the initial years after the Vienna Convention on Diplomatic Relations came into force, most *persona non grata* incidents surfaced on the grounds of espionage.³² The end of the Cold War witnessed a subsequent decline in expelling and recalling *persona non grata* diplomats on the suspicion of spying, espionage, terrorism, and subversive activities.³³ Terrorism and subversive activities still constitute the main reasons for expelling foreign diplomats, so long as they are handpicked by the receiving state (rightly or wrongly) and stigmatized as a type of unwelcome person.³⁴

As recently as 2020, there have been an eye-catching array of *persona non grata* cases occurring around the globe. On November 28, 2020, Montenegro declared a Serbian Ambassador *persona non grata* on the grounds of his “long and continuous meddling in the internal affairs of Montenegro” and asked him to leave the country.³⁵ On November 8, 2020, “because of the confirmed destructive nature of the activities of the said persons,” the Ministry of Foreign Affairs of Belarus declared two British diplomats stationed in the U.K. Embassy in Belarus *personae non gratae*.³⁶ On September 23, 2020, Bulgaria requested two Russian diplomats leave the country within seventy-two hours as they were deemed *personae non gratae* for carrying out “spying activities in Bulgaria since 2016 . . . [by] collecting data on plans to upgrade the Bulgarian army and maintain the technical

³¹ *See id.*

³² Eileen Denza, *DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS* 64 (4th ed. 2016).

³³ *See id.* at 65–69.

³⁴ *Id.*

³⁵ *Montenegro Declares Serbian Ambassador Persona Non Grata*, AP NEWS (Nov. 28, 2020), <https://apnews.com/article/montenegro-serbia-russia-0c008dec1865b3e485cb96fa48f97df8> [<https://perma.cc/2BR5-F763>].

³⁶ *Belarus Declares Two UK Diplomats “Persona Non Grata,”* BELTA (Nov. 10, 2020), <https://eng.belta.by/politics/view/belarus-declares-two-uk-diplomats-persona-non-grata-134881-2020/> [<https://perma.cc/JWF9-DKJH>].

readiness of military hardware.”³⁷ On August 25, 2020, Austria asked a Russian diplomat to leave the country due to his activity in violation of the Vienna Convention on Diplomatic Relations, and unsurprisingly, on the same day, Russia declared an Austrian diplomat in Moscow *persona non grata* as ostensible revenge.³⁸ On August 28, 2020, Russia declared a Norwegian diplomat *persona non grata* in order to retaliate against Norway’s expulsion of a Russian diplomat a week before in connection with a man who had been imprisoned for allegedly spying for Russia.³⁹ On June 1, 2020, two Pakistani diplomats of the High Commission of Pakistan in New Delhi were asked to leave India within twenty-four hours by the Indian Government following spying accusations.⁴⁰

The most recent and noteworthy tit-for-tat expulsions occurred between the United States and Russia. On April 15, 2021, the U.S. administration announced that ten Russian diplomats were asked to leave the United States and accused Russia of unlawfully interfering in the U.S. presidential election and hacking government agencies.⁴¹ On April 21, 2021, Moscow declared ten U.S. diplomats *personae non gratae*, clearly a retaliatory response against the enmity generated by the United States a week earlier.⁴²

Regardless of different conditions, *persona non grata* declarations tend to be diplomatically pertinent or context dependent, solely pointing to career foreign diplomats. Consequently, there is hardly any way that the Vienna Convention on Diplomatic Relations could fit nicely into the Lukashenko case, let alone the Vienna Convention on Consular Relations, which, as opposed to the former, is of a far more

³⁷ *Russian Diplomats Declared Persona Non Grata Leave Bulgaria — Embassy*, TASS (Sept. 26, 2020), <https://tass.com/politics/1205271> [<https://perma.cc/MK9C-6PMQ>].

³⁸ *See Austrian Diplomat Declared Persona Non Grata Left Russia*, TASS (Sept. 2, 2020), <https://tass.com/world/1196555> [<https://perma.cc/Y9VJ-9ZN7>].

³⁹ *See Russia Expels Norwegian Diplomat, Blasts “Destructive Line,”* AP NEWS (Aug. 28, 2020), <https://apnews.com/article/europe-b1b432971df4d3d772e7f81822a6db6b> [<https://perma.cc/GB24-YZX9>].

⁴⁰ *See Helen Regan, Sophia Saifi & Rishabh Madhavendra Pratap, India Accuses Two Pakistan Embassy Officials of Spying and Orders Them to Leave the Country*, CNN (June 1, 2020), <https://edition.cnn.com/2020/06/01/asia/india-pakistan-diplomats-expelled-spying-intl-hnk/index.html> [<https://perma.cc/5Q2P-RBU7>].

⁴¹ *See Eric Tucker & Aamer Madhani, US Expels Russian Diplomats, Imposes Sanctions for Hacking*, AP NEWS (Apr. 16, 2021), <https://apnews.com/article/us-expel-russia-diplomats-sanctions-6a8a54c7932ee8cbe51b0ce505121995> [<https://perma.cc/8RA9-UZHB>].

⁴² *See Elena Teslova, Russia Expels 10 US Diplomats: Moscow Declares 10 Employees of US Embassy Persona Non Grata*, AA (Apr. 21, 2021), <https://www.aa.com.tr/en/world/russia-expels-10-us-diplomats/2216110> [<https://perma.cc/8FSK-2CN3>].

derivative character in terms of being perceived as a sort of diplomatic law.

II

WHAT ARE LUKASHENKO'S MANDATED DUTIES AND RIGHTS?

So far as his present position is concerned, Lukashenko is not a career or honorary Belarusian diplomat. In accordance with what is exhibited by the Official Internet Portal of the President of the Republic of Belarus, “[t]he rights, responsibilities and status” of Lukashenko are known to have been granted by the 1994 Belarus Constitution.⁴³

Based on the information released by the Official Portal, it is clear that Lukashenko is “the Head of State, the guarantor of the Constitution of . . . Belarus, the rights and freedoms of man and citizen.”⁴⁴ He is supposed to be a man who “embodies the unity of people, guarantees the implementation of the domestic and foreign policy guidelines, represents . . . Belarus in relations with other states and international organizations.”⁴⁵ And he will be committed to “tak[ing] measures to protect the sovereignty of . . . Belarus, its national security and territorial integrity, ensur[ing] political and economic stability, continuity and interaction between state administration bodies, and mediat[ing] between state administration bodies.”⁴⁶ Moreover, it is notably spelled out by Belarus’s government authorities that Lukashenko (as president) “has immunity” and “his honor and dignity are protected by law.”⁴⁷

As long as he is still president of Belarus, Lukashenko will have a wide range of exercisable constitutional rights.⁴⁸ Additionally, Lukashenko has legislative powers. He is empowered to utilize “decrees and executive orders which are legally binding nationwide.”⁴⁹ In certain circumstances as specified by Belarus’s Constitution, Lukashenko is entitled to employ “ordinances having the force of

⁴³ *Status and Powers*, PRESIDENT OF THE REPUBLIC OF BELR., <https://president.gov.by/en/president/status-i-polnomochiya> (last visited Oct. 6, 2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

law.”⁵⁰ And he can play a decisive part in Belarus’s foreign policy as well as national security and defense issues.⁵¹

However, Lukashenko’s mandated duties and his constitutional rights to exercise as president of Belarus have little intersection with diplomatic law. This raises an important question: on what legal grounds was Lukashenko declared *persona non grata* by the EU, the three Baltic States (Latvia, Estonia, and Lithuania), the U.K., and Canada? If diplomatic law is not relevant, is the accusation of human rights abuses against Lukashenko the rationale for doing so?

III

IS THE LUKASHENKO CASE A PUBLIC INTEREST CASE?

As diplomatic law cannot entirely account for Lukashenko’s *persona non grata* status, public interest concerns may have been the justification for the sanctions.

Some say that “[i]n the legal world, public interest cases are those brought to protect the environment, human rights, civil liberties, or vulnerable members of society,”⁵² and “[m]any countries around the world have developed . . . ‘public interest standing’ tests that allow their citizens to stand up for the public interest by bringing cases to stop unlawful activities.”⁵³ In connection, Harvard Law School enumerated a sizable string of principal public interest issue areas, one category being human rights.⁵⁴ On the other hand, the official Belarusian media

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² IMPROVING ACCESS TO JUSTICE IN PUBLIC INTEREST CASES, ECOJUSTICE, <https://ecojustice.ca/case/improving-access-to-justice-in-public-interest-cases/> [https://perma.cc/6ZBJ-FNQ8].

⁵³ *Id.*

⁵⁴ Those public interest issue areas (in alphabetical order) consist of: AIDS/HIV, Animal Issues, Arts/Entertainment, Bankruptcy/Debt, Business/Economic Issues, Children/Youth, Civil Rights/Liberties, Communications, Consumer, Criminal, Death Penalty, Disability, Domestic Violence, Economic Development, Education, Elderly, Environment/Energy/Utilities, Family, Farm/Migrant Worker, First Amendment, Gay/Lesbian/Bisexual/Transgender Issues, Government Accountability/Legal Reform/Whistleblowers, Gun Control Issues, Health/Medical, Homelessness/Housing, Human Rights, Immigration/Refugee, Intellectual Property/Technology, Juvenile Defense, Labor/Employment, Municipal Law, Legal Services, Native American/Tribal Law, Personal Injury/Medical Malpractice/Product Liability, Poverty, Prisoner Issues, Property/Real Estate, Prosecution, Public Defenders, Racial/Ethnic Justice/Cultural Rights, Religious Issues, Reproductive Issues, Security/Defense/Arms Control, Tax, Trade, Transitional Justice/Democratic Process, Trusts and Estates, Voting/Campaign Finance, and Women’s Issues. See *Public Interest Issue Areas*, HARV. L. SCH., <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-issue-areas/> [https://perma.cc/7DBK-92WM].

praises Lukashenko as a leader for his articulation that “Belarus is a state for the people” and that “[e]verything [the state has] already created or will put into life serves exclusively this purpose [the people].”⁵⁵ But that popularity is undetectable elsewhere; outside Belarus, Lukashenko is negatively viewed because of the accusations of human rights abuses and violations against him.

Since being elected Belarus’s president for the first time in 1994, Lukashenko has been at the helm of this former republic of the former Soviet Union for twenty-six years (preceded by the dissolution of the Soviet Union in 1991). According to Sofya Orlosky, Lukashenko has won all six presidential elections in Belarus by unfair means; he has had a rubber-stamp parliament to support him; journalists’ freedom to report the truth has been put in a straightjacket; and there has been no way to legally establish “a rights-focused civil society organization” in Belarus.⁵⁶ In 2019, Belarus was graded 153rd out of 180 countries on the Press Freedom Index, according to Reporters Without Borders.⁵⁷ And per Belarusian law, anyone caught insulting Belarus’s president faces possible imprisonment of up to five years, and anyone caught criticizing Belarus abroad risks a jail sentence of up to two years.⁵⁸ Unsurprisingly, over the years, Lukashenko has reportedly made use of Belarus’s Committee for National Security (KGB) to successfully protect his presidency from being toppled, whether openly or in a clandestine way.⁵⁹

Having said that, Belarus has consistently been acknowledged as one of the top ten safest countries on earth in terms of a low crime rate and low instances of unrest.⁶⁰ Unfortunately, the latest election in August 2020 sparked a firestorm in Belarus. The opposition leader Sviatlana Tsikhanouskaya boycotted the election results as fraudulent, asserting that she won the presidential election even though the official data published by the Belarusian Central Election Commission showed

⁵⁵ *President Is the Head of State*, PRESIDENT OF THE REPUBLIC OF BELR., <http://president.gov.by/en/president> (last visited Oct. 6, 2021).

⁵⁶ See Hollie McKay, *Who Is Belarus President Alexander Lukashenko, ‘Europe’s Last Dictator’?*, FOX NEWS (Aug. 17, 2020), <https://www.foxnews.com/world/who-is-europes-last-dictator-alexander-lukashenko> [<https://perma.cc/8YVQ-ALPS>] (quoting Sofya Orlosky, Senior Program Manager of Freedom House Europe and Eurasia.).

⁵⁷ *See id.*

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ *See id.*

that Lukashenko received 80.1% of votes,⁶¹ a seemingly landslide victory. Human rights groups reported that police unlawfully arrested and tormented peaceful protesters.⁶² According to the United Nations, over the three months following the August election, Tsikhanouskaya was in exile in Lithuania, and the Belarusian law enforcement agency arrested about 27,000 protesters, and at least four died in the course of confronting the police on the street.⁶³

The British Foreign Secretary Dominic Raab announced in a statement that “[t]he world has watched with horror at the violence used by the Belarusian authorities to suppress the peaceful protests that followed this fraudulent presidential election.”⁶⁴ Additionally, the Canadian Minister of Foreign Affairs François-Philippe Champagne adamantly said:

Canada joins its partners in the international community in condemnation of the crackdown on peaceful protestors following the presidential election in Belarus. We do not accept the results of this fraudulent presidential election in Belarus and call for free and fair elections. We further call for a thorough investigation to be conducted through the Organization for Security and Co-operation in Europe. Thousands of people across Belarus are in the streets calling for an end to police brutality, the release of political prisoners and credible elections . . . Canada will continue to stand with the people of Belarus, and we will work with our international partners to ensure that their voices are heard and that those responsible for undermining democracy and for brutal actions against protestors are held to account.⁶⁵

Out of the three Baltic states that had clarified their stance earlier, Lithuania’s Foreign Ministry piloted the initial rollout of a proposal for imposing sanctions against those “individuals suspected of involvement in brutal crackdowns on protesters” in Belarus.⁶⁶ Latvia’s foreign minister Edgars Rinkevics pointed out that “[Latvia is] giving

⁶¹ *See id.*

⁶² *See id.*

⁶³ *See* Guy Taylor, *Alexander Lukashenko Clings to Power in Belarus*, WASH. TIMES (Dec. 9, 2020), <https://www.washingtontimes.com/news/2020/dec/9/alexander-lukashenko-clings-power-belarus/> [<https://perma.cc/NQJ5-RDNS>].

⁶⁴ McKay, *supra* note 56.

⁶⁵ Global Affairs Canada, *Statement by Minister Champagne on Belarusian Presidential Elections*, GOV’T OF CAN. (Aug. 17, 2020), <https://www.canada.ca/en/global-affairs/news/2020/08/statement-by-minister-champagne-on-belarusian-presidential-elections.html> [<https://perma.cc/5WK6-ZFNZ>].

⁶⁶ Liudas Dapkus, *Baltic States Impose Sanctions Against Belarus Ahead of EU*, ABC NEWS (Aug. 31, 2020, 6:53 AM), <https://abcnews.go.com/International/wireStory/baltic-states-impose-sanctions-belarus-ahead-eu-72725120> [<https://perma.cc/QYW9-8BQ6>].

a clear signal that such actions are not acceptable and that those responsible for such acts are not welcome in Latvia,” and “[w]e call upon the European Union to promptly proceed with similar decisions.”⁶⁷ Estonian foreign minister Urmas Reinsalu remarked that “[w]ith these sanctions, we are demonstrating that we are addressing the human rights violations in Belarus with utmost seriousness,” and “[a]t the same time, we consider it important not to punish the people of Belarus.”⁶⁸

On August 11, 2020, the EU published a statement indicating that the presidential elections in Belarus on August 9, 2020, “were neither free nor fair.”⁶⁹ It reprimanded the Belarusian authorities because “[they] deployed disproportionate and unacceptable violence causing at least one death and many injuries”; “[t]housands of people were detained and the crackdown on freedoms of assembly, media and expression intensified”; and the presidential election launched in Belarus this time “did not meet the international standards expected of an OSCE participating State.”⁷⁰ The EU pledged to review its relations with Belarus and that it might consider punishing those responsible for the “violence, unjustified arrests, and falsification of election results.”⁷¹

To this day, the EU has already imposed three rounds of sanctions against the relevant Belarusian authorities, affecting eighty-eight Belarusian persons and seven organizations.⁷² These Belarusian individuals and organizations include various high-ranking government officials, political leaders, judicial figures, and economic actors.⁷³ The first round of sanctions were imposed on October 1, 2020.⁷⁴ The second round commenced on November 6, 2020, including Lukashenko.⁷⁵ The

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Press Release, Belarus: Declaration by the High Representative on Behalf of the European Union on the Presidential Elections, European Council (Aug. 11, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/08/11/belarus-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-presidential-elections/> [https://perma.cc/BG5F-CWV8].

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Press Release, Belarus: EU Imposes Third Round of Sanctions Over Ongoing Repression, European Council (Dec. 17, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/12/17/belarus-eu-imposes-third-round-of-sanctions-over-ongoing-repression/> [https://perma.cc/4AHB-6BSS].

⁷³ *Id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

third round launched on December 17, 2020, having added some other individuals to the blacklist.⁷⁶ The sanctioned Belarusian individuals were banned from traveling to or within the EU, and their private assets located within the EU were frozen.⁷⁷ Furthermore, EU citizens or firms were prohibited from funding any of those condemned Belarusian persons or organizations.⁷⁸ The EU authorities anticipated that the sanctions could force Belarusian government authorities, especially Lukashenko himself, to stop using violence against Belarus's citizenry, one step toward reinvigorating Belarus's democratization.⁷⁹

While being bombarded with the sanctions, Lukashenko denied the allegations. He insisted that certain overseas forces were plotting to abrogate him, and he asked the Belarusian public to heed the NATO forces deployed near the Belarusian border that want to overturn the August 2020 election.⁸⁰ Meanwhile, he did not refute that, under his leadership, Belarus now has very few allies in the world and that Vladimir Putin is his only friend at the present time.⁸¹ Thus, is Belarus, a nation with a population of about ten million, currently being made a pawn between its Russian patron and various Western states?⁸² If such a proposition is true, would it suggest that the conventional geopolitical clashes might well weigh against the human rights considerations in the Lukashenko case?⁸³

Based on Oleg Chupryna's analysis, Lukashenko is perhaps trying to forge simultaneously a delicate balance between ratcheting up economic reliance on Russia and prudently averting impairment of Belarus's sovereign independence.⁸⁴ Over the past decades, Belarus has garnered quite a lot of Russian economic assistance, especially in connection with massively subsidized oil and natural gas supplies.⁸⁵

⁷⁶ *See id.*

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ *See* McKay, *supra* note 56.

⁸¹ *See* 'We Need to Be Closer to Russia': Lukashenko on His Friendship with Putin, Western Sanctions, and the Belarusian Opposition, MEDUZA (Jan. 11, 2021, 9:21 AM), <https://meduza.io/en/feature/2021/01/11/we-need-to-be-closer-to-russia> [<https://perma.cc/55MT-6N88>].

⁸² *See* Taylor, *supra* note 63.

⁸³ *See id.*

⁸⁴ *See* Oleg Chupryna, *Lukashenko, Putin and the Protests: Why Belarus Is Being Pulled Further into Russia's Orbit*, LONDON SCH. OF ECON. (Dec. 2, 2020), <https://blogs.lse.ac.uk/europpblog/2020/12/02/lukashenko-putin-and-the-protests-why-belarus-is-being-pulled-further-into-russias-orbit/> [<https://perma.cc/4CN4-SL3M>].

⁸⁵ *See id.*

Unfortunately, the nation's currently grim economy will still indisputably require Russian rescue funds soon.⁸⁶ Of course, there will be a price to pay for working with Russia. Moscow yearns to assert its geopolitical influence on Belarus while not only supporting Belarus's economy but also trying to not incite the Belarusian citizenry.⁸⁷ But, on the other hand, Putin may have to walk the tightrope in deciding how to most aptly help Lukashenko under current circumstances, for Putin might reluctantly take measures that apparently disobey the inclination of many Belarusians.⁸⁸ More importantly, most Belarusian citizens do not wish to have the country absorbed into Russia's territorial sphere if it is purely for an economic need or historical and cultural reasons.⁸⁹ Even Lukashenko himself is highly cautious to avoid committing mistakes unforgivable by his people. Indeed, in the mid-1990s, Lukashenko contemplated creating a Union State between Belarus and Russia, anticipating that one day he might become the head of that Union State.⁹⁰ Putin's succession of Boris Yeltsin made Lukashenko shrewdly and swiftly abandon that aspiration.⁹¹ Nonetheless, Lukashenko endeavors to mend relations with those mainstream Western states.

On February 1, 2020, the U.S. State Department's spokesperson Morgan Ortagus announced that Secretary of State Michael R. Pompeo met with Lukashenko to "discuss[] U.S. commitment to a sovereign, independent, and prosperous Belarus" and to demonstrate a desire to normalize the countries' bilateral relationship through exchanging ambassadors.⁹² While the EU, the three Baltic States, the U.K., and Canada were all poised to sanction those designated Belarusian citizens and organizations (including Lukashenko), the U.S. president appeared markedly silent about whether he would denounce the election outcomes

⁸⁶ *See id.*

⁸⁷ *See id.*

⁸⁸ *See id.*

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *Secretary Pompeo's Meeting with Belarusian President Lukashenko*, U.S. EMBASSY IN BELR. (Feb. 1, 2020), <https://by.usembassy.gov/secretary-pompeos-meeting-with-belarusian-president-lukashenko/> [<https://perma.cc/GM8F-6V5L>].

as bogus and reprehend the alleged crackdown on mass protests in Minsk.⁹³

On the other hand, while being plagued by the raging political crisis, Lukashenko had reportedly envisioned a solution in reliance upon carrying out a certain sort of constitutional reform in the country.⁹⁴ He mentioned that he may choose to step down once a new Belarusian Constitution is put forward and accepted by Belarus's citizens.⁹⁵ But this comment did not convince his opposition, who believed this promise was again Lukashenko's ploy "to buy time for himself."⁹⁶

So, what has really happened in the Lukashenko case? Should it count as a serious public interest case or a violation case? If it could squarely fall into the public interest case category, why is there an absence of Belarusian individual citizens, some of whom ought to have brought the case to court, either locally or within the EU or a more sophisticated international jurisdiction, given today's relatively democratic legal environment globally? Could our findings amply corroborate the accusations that Lukashenko's alleged wrongdoing has resulted in a genuine case of human rights abuse?

Here, the remarks made by Danielle Archibugi and Mariano Croce may ring a bell: "[Human rights] must not remain the rights of those who have no right."⁹⁷ So be it!

IV

MAGNITSKY-LIKE MECHANISMS THROUGHOUT THE WORLD

On December 7, 2020, the EU publicly announced the establishment of its "global human rights sanctions regime," Europe's Magnitsky-like legal system purported to punish those grave human rights abusers or violators whose alleged ferocious conduct is verifiable beyond reasonable doubt.⁹⁸ The regime would be implemented by imposing a

⁹³ See Trevor Hunnicutt, *Biden Accuses Trump of Silence on "Dictator" in Belarus*, U.S. NEWS & WORLD REP. (Sept. 25, 2020, 8:45 PM), <https://www.usnews.com/news/world/articles/2020-09-25/biden-accuses-trump-of-silence-on-dictator-in-belarus>.

⁹⁴ See *Lukashenko Promises New Belarus Draft Constitution by End of This Year*, REUTERS (Jan. 10, 2021, 6:01 PM), <https://www.jpost.com/breaking-news/lukashenko-promises-new-belarus-draft-constitution-by-end-of-this-year-654938>.

⁹⁵ See *id.*

⁹⁶ *Id.*

⁹⁷ Daniele Archibugi & Mariano Croce, *Legality and Legitimacy of Exporting Democracy*, in LEGALITY AND LEGITIMACY IN GLOBAL AFFAIRS 435 (Richard Falk et al. eds., 2012).

⁹⁸ See Hagar Hajjar Chemali, *The European Magnitsky Law—A Milestone with a Lot of Potential*, ATL. COUNCIL (Dec. 10, 2020), <https://www.atlanticcouncil.org/blogs/new->

travel ban and an asset freeze (regardless of those foreign citizens' legitimate place of residence or their current whereabouts or hideouts), to a certain extent referencing the United States' Magnitsky legislation, the origin of which dates back to 2012.⁹⁹ Having ratified this regime, the EU has ultimately joined a team previously composed of the U.K., Canada, and the three Baltic States, besides the United States, all having hammered out a legal mechanism based on the U.S. prototype.¹⁰⁰ Australia is expected to start following suit in the near future.¹⁰¹ This foretells that perhaps, just as Karin Fierke commented, in today's world, no state can escape without being held accountable or duly punished if it has committed a verifiable grave human rights abuse or violation against its citizens.¹⁰² But international law's deference to sovereignty and nonintervention may neutralize any attempts at justice.¹⁰³ Nonetheless, the U.S. government is always ready to export democracy beyond its national borders,¹⁰⁴ and such national idiosyncrasies should rarely be overlooked or underestimated on any affordable scale.

The Magnitsky Act passed in the United States (i.e., the Sergei Magnitsky Rule of Law Accountability Act of 2012)¹⁰⁵ was originally triggered by a Russian human rights case. In Russia, Sergei Magnitsky, a lawyer and auditor, laid bare some evidence of stunning corruption and fraudulent activities by the relevant persons with relation to the Russian Government.¹⁰⁶ He was put in jail for tax evasion and

atlanticist/the-european-magnitsky-law-a-milestone-with-a-lot-of-potential/ [https://perma.cc/C869-2S2E].

⁹⁹ *See id.*

¹⁰⁰ *See* Andrew Rettman, *EU Adopts 'Magnitsky Act' Against Human Rights Abusers*, EUOBSERVER (Dec. 8, 2020, 7:12 AM), <https://euobserver.com/foreign/150312> [https://perma.cc/L4VU-8H3D].

¹⁰¹ *See generally* Naomi Neilson, *Leading Legal Body Cautiously Welcomes Magnitsky Laws*, LAWYERSWEEKLY (Dec. 9, 2020), <https://www.lawyersweekly.com.au/biglaw/30238-leading-legal-body-cautiously-welcomes-magnitsky-laws> [https://perma.cc/A34G-5H7P].

¹⁰² *See* KARIN M. FIERKE, *DIPLOMATIC INTERVENTIONS: CONFLICT AND CHANGE IN A GLOBALIZING WORLD* 77 (2005).

¹⁰³ *Id.*

¹⁰⁴ *See generally* STEVEN W. HOOK, *U.S. FOREIGN POLICY: THE PARADOX OF WORLD POWER* 408–11 (2014).

¹⁰⁵ Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, 126 Stat. 1496; 22 U.S.C. § 5811; *see also* MICHAEL A. WEBER & EDWARD J. COLLINS-CHASE, Cong. Rsch. Serv., IF10576, *THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT* (2020), <https://crsreports.congress.gov/product/pdf/IF/IF10576> [https://perma.cc/Z4PM-SART].

¹⁰⁶ *See id.*

tormented; he died in custody in November 2009 without having undergone any due legal process.¹⁰⁷ The Magnitsky Act required the U.S. president “to identify the person(s) involved in the detention, abuse, or death of Magnitsky, and the ensuing cover-up, or those responsible for gross human rights violations against persons in Russia.”¹⁰⁸ Any person that the president identified would have his private assets frozen within the U.S. jurisdiction, his business relationship with any U.S.-related individual or organization banned, and his entrance onto U.S. land barred.¹⁰⁹

The Global Magnitsky Act, another piece of legislation subsequently adopted by the United States (i.e., the Global Magnitsky Human Rights Accountability Act of 2016),¹¹⁰ is similar to the preceding Magnitsky Act and extends the coverage of sanctions to any relevant foreign person (not merely focusing on Russian elements).¹¹¹ It empowers the U.S. president

to deny entry into the United States, revoke any already-issued visa, and block property under U.S. jurisdiction of, and prohibit U.S. persons from entering into transactions with, any foreign person (individual or entity) that [he] determines is “responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights” . . . against those working . . . to expose illegal activities of government officials or . . . to obtain, exercise, defend, or promote human rights and freedoms, including rights to a fair trial and democratic elections; or is a foreign government official responsible for acts of significant corruption, a senior associate of such an official, or a facilitator of such acts, which include the expropriation of private or public assets for personal gain, corruption in government contracts or natural resource extraction, bribery, or the offshore sheltering of ill-gotten gains.¹¹²

In December 2017, Donald Trump released Executive Order 13818, further enlarging the scope of human rights abusers or violators to encompass not only those who are “to be responsible for” but also those who are “complicit in, or to have directly or indirectly engaged in, serious human rights abuse.”¹¹³

¹⁰⁷ *See id.*

¹⁰⁸ *Id.*

¹⁰⁹ *See id.*

¹¹⁰ National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 1261–65 (2016).

¹¹¹ *See* WEBER & COLLINS-CHASE, *supra* note 105.

¹¹² *Id.*

¹¹³ *Id.*

The U.K.'s Global Human Rights Sanctions Regulations 2020 came into force on July 7, 2020.¹¹⁴ A piece of secondary legislation promulgated under the U.K.'s Sanctions and Anti-Money Laundering Act 2018,¹¹⁵ it did not use the name "Magnitsky" as part of its title. Nevertheless, the substance of the Regulations is quite comparable to those embodied in the Global Magnitsky Act enacted by the United States. Similarly, the U.K.'s new human rights sanctions regime aimed to "deter, and provide accountability for, activities which, if carried out by or on behalf of a State within the territory of that State, would amount to a serious violation by that State of an individual's [right]."¹¹⁶ As Dominic Raab told the U.K. Parliament, the Regulations will weaponize "travel bans and asset freezes" to sanction those significant human rights abusers or violators.¹¹⁷ The scope of protection is focused on "the right to life [menaced or jeopardized] by assassinations and extra-judicial killing," "the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment," and "the right to be free from slavery, servitude or forced or compulsory labor."¹¹⁸ The offenders are not limited to state officials but include non-state actors and embrace "those who facilitate, incite, promote, or support these crimes" as well.¹¹⁹

As mentioned above, the EU launched a new legal mechanism for imposing sanctions against noted international human rights abusers or violators. Like the U.K., the EU intentionally avoided using the name "Magnitsky" in the title to debut its new mechanism, perhaps in the hope of having it be distinguishable from the fully-fledged U.S. model. The EU Council issued a decision and a regulation on December 7, 2020, officially initiating the new framework.¹²⁰ Like the United States and the U.K., the EU's restrictive measures are composed of a travel

¹¹⁴ See *UK Announces First Sanctions Under New Global Human Rights Regime*, GOV.UK (July 7, 2020), <https://www.gov.uk/government/news/uk-announces-first-sanctions-under-new-global-human-rights-regime>.

¹¹⁵ *Id.*

¹¹⁶ *UK Sanctions Relating to Global Human Rights Sanctions*, GOV.UK (July 6, 2020), <https://www.gov.uk/government/collections/uk-global-human-rights-sanctions>.

¹¹⁷ *Global Human Rights Sanctions Regime: Foreign Secretary's Statement to Parliament*, GOV.UK (July 6, 2020), <https://www.gov.uk/government/speeches/statement-on-the-global-human-rights-sanctions-regime>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Press Release, European Council, EU Adopts a Global Human Rights Sanctions Regime (Dec. 7, 2020), <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/> [<https://perma.cc/TQ3W-SCH6>].

ban and an asset freeze on listed perpetrators.¹²¹ And no EU person or organization is legally allowed to finance any of “those listed, either directly or indirectly.”¹²² Those listed are known to include “individuals, entities and bodies,” covering “state and non-state actors” who are “responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred.”¹²³ Their acts may include “genocide, crimes against humanity and other serious human rights violations or abuses (e.g. torture, slavery, extrajudicial killings, arbitrary arrests or detentions).”¹²⁴ The EU Council is responsible for constructing, reviewing, and modifying the EU’s prevailing sanctions list from time to time.¹²⁵

However, there are concerns about whether this new EU sanction regime could engender positive effects on future law enforcement practices in the EU. For instance, Richard Youngs doubts if “the EU will use its new regime frequently or only in a small number of cases,” as, over recent years, EU imposition of relevant sanctions on democracy and human rights charges “has invariably targeted fewer individuals, with softer restrictions and for shorter periods of time, than the U.S. measures in each case.”¹²⁶ This history reveals that the EU tends to adopt a more reserved, noninterference approach.¹²⁷ Youngs was also concerned about “the pecking order of priorities,” since the EU presently has several sanctions regimes to adhere to.¹²⁸ In this respect, and in the light of Article 1(2) of the EU Council Decision of December 7, 2020, the EU is equally likely to observe any existing customary international law and those widely accepted norms and protocols of international law when implementing this new human rights sanctions regime. Such pertinent legal instruments include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and other Cruel, Inhuman or Degrading

¹²¹ *See id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *See id.*

¹²⁶ Richard Youngs, *The New EU Global Human Rights Sanctions Regime: Breakthrough or Distraction?*, CARNEGIE EUR. (Dec. 14, 2020), <https://carnegieeurope.eu/2020/12/14/new-eu-global-human-rights-sanctions-regime-breakthrough-or-distraction-pub-83415> [<https://perma.cc/PN5M-ERAQ>].

¹²⁷ *Id.*

¹²⁸ *Id.*

Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention for the Protection of All Persons from Enforced Disappearances; the Convention on the Rights of Persons with Disabilities; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Rome Statute of the International Criminal Court; and the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹²⁹

In fact, long before this new human rights sanctions regime was created, the EU had established its general strategy for establishing and normalizing its relations with Belarus. The EU positioned its relations with Belarus as covering “technical dialogues on specific topics,” “cooperation through the multilateral track of the Eastern Partnership,” “support to civil society and victims of repression,” “visa facilitation and readmission agreements with Belarus which entered into force on 1 July 2020,” “several cooperation projects launched in 2018 and 2019 in the area of border and migration management,” and “dialogue on the reforms needed to modernize Belarus and on the potential for developing relations with the EU.”¹³⁰

In principle, it cannot be denied that the EU has audaciously but cautiously valued the “[safety], stability and prosperity, democracy and rule of law in Eastern Europe and the southern Caucasus.”¹³¹ To this end, in 2008, the European Council approached the European Commission with an Eastern Partnership proposal to set up “a single, coherent policy framework towards countries that became the new EU eastern neighbourhood.”¹³² The Eastern Partnership scheme commenced in 2009, involving the EU and six Eastern European and Southern Caucasus partner states (including Belarus, Armenia,

¹²⁹ See *Council Decision (CFSP) 2020/1999 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses*, OFFICIAL J. OF THE EUR. UNION (Dec. 7, 2020), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2020.410.01.0013.01.ENG&toc=OJ%3AL%3A2020%3A410I%3ATOC> [https://perma.cc/9VTT-HA3F].

¹³⁰ *EU Relations with Belarus*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/policies/eastern-partnership/belarus/> [https://perma.cc/5JS3-R52P].

¹³¹ *Eastern Partnership*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/policies/eastern-partnership/> [https://perma.cc/CT25-QCQ4].

¹³² *Id.*

Azerbaijan, Georgia, Moldova, and Ukraine).¹³³ In March 2020, the European Commission published the post-2020 Eastern Partnership policy objectives, containing the five goals of “resilient, sustainable and integrated economies”; “accountable institutions, the rule of law and security”; “environmental and climate resilience”; “digital transformation”; and “fair and inclusive societies.”¹³⁴

Furthermore, the Eastern Partnership could be perceived as a geographic crystallization of the European Neighbourhood Policy (ENP), by virtue of which “the EU works with its southern and eastern neighbours to achieve the closest possible political association and the greatest possible degree of economic integration.”¹³⁵ The ENP came into force in 2004, with the goal of institutionalizing the EU’s relations with the EU’s sixteen eastern and southern neighbor countries (including Belarus) to create “the closest possible political association and the greatest possible degree of economic integration.”¹³⁶ This policy was introduced through a communication titled “Wider Europe – Neighbourhood,” which had been taken in by the European policy goal of “[g]ood governance, democracy, rule of law and human rights,” “economic development for stabilisation,” “security,” and “migration and mobility,” which is supposed to dovetail with the EU’s prevailing global foreign policies and defense tactics.¹³⁷

Against the backdrop of today’s EU governing institutions and resourceful choices, Pavel Slunkin’s suggestions are worth considering in light of the pressing situation that is disrupting Belarus’s citizens and Lukashenko himself—the solution of which will, by all means, have a direct link to the final fate of Lukashenko’s long-standing political career. Slunkin felt that the effect of the EU imposing human rights sanctions on those listed Belarusian officials (including Lukashenko) might be marginal when compared with resorting to directly imposing

¹³³ *See id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *European Neighbourhood Policy (ENP)*, EUR. UNION EXTERNAL ACTION SERV. (Feb. 2, 2021, 4:25 PM), https://eeas.europa.eu/diplomatic-network/european-neighbourhood-policy-enp/330/european-neighbourhood-policy-enp_en [<https://perma.cc/YE6N-5RWY>]. Those 16 ENP states include Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, Syria, Palestine, Tunisia, Ukraine. *See id.*

¹³⁷ *Id.*

an economic embargo on Belarus.¹³⁸ On the other hand, the EU ought to estimate that a large injection of financial aid into Belarus's economy could be accomplished in no time—particularly once the political climate there allows for a new presidential election free of corruption.¹³⁹ All the while, the EU must craft a framework that properly addresses the victims of the corrupt political landscape.¹⁴⁰ Such measures would include giving free education to sacked students, providing decent jobs to protesters who became unemployed because of their opinions, rescuing and arranging access to any required medical treatment to those hurt in scuffles, and entitling all Belarusian citizens to a visa-free treatment within the EU territory as their hard-earned geopolitical emancipation.¹⁴¹

Nevertheless, the EU may be eager to perceive what has happened in Belarus as a pure geopolitical crisis.¹⁴² It seems to avoid stoking the chaos in Belarus that is dangerously disintegrating the unity of its civil society.¹⁴³ More crucially, it is difficult to tell if Russia agrees with the EU's position. Understandably, Moscow might tolerate Lukashenko remaining in power, so long as Belarus could leapfrog its bureaucratic roadblocks to achieve some constitutional reforms that feasibly comply with international standards.¹⁴⁴ However, Russia's influence on Belarus's economic and geopolitical conditions would quite likely be unswervingly maintained and wielded whenever circumstances warrant.¹⁴⁵

Last but not least, no matter the outcome, a legal technicality is lurking in a conspicuous way yet to be resolved: Lukashenko, even if he can be verified as a serious human rights abuser or violator, ought not to be branded *persona non grata* by an official declaration made by the EU nations, the three Baltic States, the U.K., and Canada—and

¹³⁸ See Pavel Slunkin, *Glass Half Full: The EU's Policy on Belarus*, EUR. COUNCIL ON FOREIGN RELS. (Nov. 20, 2020), <https://ecfr.eu/article/glass-half-full-the-eus-policy-on-belarus/> [<https://perma.cc/45NA-C5W9>].

¹³⁹ See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² See Arkady Moshes, *Belarus Protests Have Explosive Potential for EU-Russia Relations*, THE MOSCOW TIMES (Dec. 1, 2020), <https://www.themoscowtimes.com/2020/12/01/belarus-protests-have-explosive-potential-for-eu-russia-relations-a72189> [<https://perma.cc/8MFA-4B4L>].

¹⁴³ See *id.*

¹⁴⁴ See *id.*

¹⁴⁵ See *id.*

perhaps later, Australia. As far as the applicable law is concerned, any Magnitsky-like legislation cannot substitute for diplomatic law where the term *persona non grata* could make its originally conceived diplomatic sense lawfully mandated. Confusing the two is an error susceptible to being challenged one day. Having said so, in practice, it might be unrealistic for Lukashenko to make any real attempt at filing an appeal on this technicality. Lukashenko certainly understands that it is hardly plausible that the ongoing tempest that is scourging his image and reputation will taper off in his favor in the foreseeable future.

CONCLUSION

Lukashenko, having been declared *persona non grata* by the EU and the three Baltic States, is now being denied entry to their land and facing a freeze on any of his private assets within their territorial domains. Lukashenko is also currently banned from entering the U.K. and Canada, and, as the official messages suggest, his personal identifiable personal assets in those two countries are frozen as well. Unlike the EU, the three Baltic States, the U.K., and Canada, the United States did not formally declare any personal punishment or financial sanctions against Lukashenko. It is quite unlikely that Lukashenko will be allowed to enter the United States (at least at the present moment), albeit the United States may not necessarily opt to freeze Lukashenko's assets as the EU, the three Baltic States, the U.K., and Canada have decided to do.

As such, Lukashenko's predicament is largely attributable to Western democracies' innate resentment of the purported falsification of Belarus's August 2020 presidential election outcomes, as well as their sympathy toward Belarusian protesters yearning for unrestrained, democratic elections. Many people in those Western states undoubtedly view Lukashenko as a human rights abuser, an impostor having usurped Belarus's president's legitimate position, and a bureaucratic dictator entrenched in a European citadel at odds with the civilized world.

Nonetheless, before the accusations against Lukashenko can be fully and infallibly proven, geopolitical considerations must not distort the lucidity and fairness of any serious judgment to be made that will gravely influence the lifetime reputation and political destiny of a private individual, being one of an elite few or otherwise. More momentously, the Vienna Convention on Diplomatic Relations is not the applicable law in the Lukashenko case, so declaring him an unwelcome person by using the term *persona non grata* cannot simply

2022]

*The Lukashenko Case:
Is He Persona Non Grata in the Diplomatic Sense?*

121

be taken as an inadvertent linguistic error; it derails the original purpose of the term reserved exclusively for diplomatic declaration and discourse.

