



**COMMUNICATION SUBMITTED UNDER ARTICLE 15(2) OF THE ROME
STATUTE OF THE INTERNATIONAL CRIMINAL COURT:**

**Supplementary information on
the Situation in Belarus/Lithuania/Poland/Latvia and Ukraine:
The Flight FR4978 Incident**

26 May 2021

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I. INTRODUCTION

1. On 19 May 2021, International Partnership for Human Rights ('IPHR'), in collaboration with Global Diligence LLP, Truth Hounds and Norwegian Helsinki Committee (the 'Filing Parties') submitted a Communication under Article 15(2) of the Rome Statute to the International Criminal Court ('ICC Statute') (hereinafter the 'First Communication'). The filing parties alleged that the conduct of the Lukashenko regime in the Republic of Belarus qualifies as a widespread or systematic attack on the civilian population pursuant to a state policy to commit such an attack, and that as part of this attack, the regime has forcibly deported thousands of citizens to Lithuania, Latvia, Poland and Ukraine through expulsion and other coercive acts – i.e. the crime against humanity of deportation (Article 7(1)(d) of the ICC Statute) and the crime against humanity of persecution (Article 7(1)(h) of the ICC Statute). The filing parties averred that the ICC may exercise its jurisdiction over the alleged crimes, as at least part of the conduct took place on the territory over which the Court has jurisdiction.
2. On 23 May 2021, news broke out about the forced diversion of Ryanair flight FR4978 to Minsk airport, and the consequent detention of opposition blogger Roman Protasevich and his partner Sofia Sapega. The detention took place on board a Polish-registered aircraft on an international flight between Athens and Vilnius. The purpose of this Supplementary Communication is to establish that this reprehensible conduct by the Lukashenko regime: (1) falls within the jurisdiction of the ICC pursuant to Article 12(2)(a) of the ICC Statute and should be considered as part of the Prosecutor's preliminary examination of the situation in Belarus; and (2) constitutes relevant contextual information that should form part of the Prosecutor's decision to open a full investigation. Crucially, in light of this shocking event, the filing parties urge the Prosecutor to publicly launch a preliminary examination of the situation in Belarus as a matter of urgency, to signal an end to impunity for and to deter such conduct.

II. THE FLIGHT FR4978 INCIDENT – THE KNOWN FACTS

3. Roman Protasevich is a well-known opposition blogger and former editor of the influential Nexta and Nexta Live Telegram channels. The social media channels played a key role in broadcasting the post-election violence in Belarus during the information blackout by the Lukashenko regime, and was used as a forum for sharing information about protest action. In the wake of Lukashenko's pre-election crackdown on independent journalists and bloggers,¹ Mr Protasevich fled Belarus and acquired political asylum in Poland.² He has been placed on a 'terrorist list' by the Belarusian authorities and charged with organising mass riots and inciting hatred – crimes punishable by up to 15 years of imprisonment.³ Ms Sapega – a Russian citizen – is Mr Protasevich's partner and has no known connection to the events in Belarus.

4. Whilst all of the facts relating to this incident are yet to be fully established, there is a reasonable basis to believe that the following events took place between 23 and 24 May 2021:
 - On 23 May 2021, at around 7:00 GMT, Mr Protasevich reported to his colleagues that he was being followed by a suspicious Russian-speaking man at Athens airport. The man stood behind Mr Protasevich in the boarding queue, tried to engage him in innocuous conversation and visibly attempted to take a photograph of Mr Protasevich's travel documents.⁴ As Mr Protasevich boarded Flight FR4978, the man disappeared and did not board the aircraft.

 - Ryanair flight FR4978 – a commercial aircraft registered in Poland (registration SP-RSM) – took off from Athens, Greece at 07:29 GMT and proceeded on its scheduled course to Vilnius, Lithuania.⁵

 - At 09:46 GMT, the flight crew was ordered by the Belarusian air traffic control to divert its course and make an emergency landing at Minsk airport. Belarusian

¹ *EU Observer*, "Belarus: Inside Lukashenko's crackdown on independent voices", 7 July 2020, available at: <https://euobserver.com/foreign/148862>.

² *BBC News*, "Who is Roman Protasevich? Belarus dissident journalist in profile", 24 May 2021, available at: <https://www.bbc.com/news/world-europe-57229635>.

³ *Ibid.* But

⁴ Messages sent by Mr Protasevich.

⁵ *Flightradar24*, "Ryanair flight 4978 to Vilnius forcibly diverted to Minsk", 23 May 2021, available at: <https://www.flightradar24.com/blog/ryanair-flight-4978-to-vilnius-forcibly-diverted-to-minsk/>.

state media confirmed that the aircraft was diverted on President Lukashenko's orders.⁶ The official reason given for the diversion was a report of an explosive device aboard the aircraft. At the time of the diversion, flight FR4978 was closer to Vilnius than Minsk (an estimated 40 kilometres from the Belarus – Lithuania border), whilst Minsk Airport was the fifth closest from the aircraft.⁷

- At 09:48, the aircraft crew reset the aircraft's transponder to emergency landing code (squawking) 7700.⁸
- The aircraft was escorted to Minsk airport by a Belarusian Mig-29 fighter jet.⁹ A video posted online by 'Aviatica' purports to show the Mig-29 fighter jet after completing its mission (board number 48 "red" belonging to the 61st Fighter Air Base in Baranavichy).¹⁰ The jet appears carry six air-to-air missiles, including four *P-73JI* rockets, two *P-27P* rockets and a PTB-1500 external fuel tank. Lithuanian authorities have also reported that a Belarusian Mi-24 helicopter was used during the diversion.¹¹ At this point, it is not known whether the flight crew received an explicit threat of force from Minsk, nevertheless, the threat would have been implicit in the use of military aircraft.
- At 10.16 GMT, Flight FR4978 landed at Minsk airport. Despite the official position that there was an explosive device aboard the aircraft, Belarusian authorities made no effort to evacuate the passengers and crew to a safe location.

⁶ *Belta*, "Lukashenko orders to land Ryanair jet in Minsk after bomb alert", 23 May 2021, available at: <https://eng.belta.by/president/view/lukashenko-orders-to-land-ryanair-jet-in-minsk-after-bomb-alert-140132-2021/>.

⁷ *Flightradar24*, "Ryanair flight 4978 to Vilnius forcibly diverted to Minsk", 23 May 2021, available at: <https://www.flightradar24.com/blog/ryanair-flight-4978-to-vilnius-forcibly-diverted-to-minsk/>.

⁸ *Ibid.* N.B.: On 25 May 2021, Belarusian Transport Ministry released a purported partial transcript of the exchange between ground control and flight FR4978. The authenticity of the transcript has not been verified: Meduza, "Belarusian Transport Ministry publishes transcript of conversation between Ryanair pilot and Minsk dispatcher", 25 May 2021, available at: <https://meduza.io/en/news/2021/05/25/belarusian-transport-ministry-publishes-transcript-of-conversation-between-ryanair-pilot-and-minsk-dispatcher>.

⁹ Use of Mig-29 fighter jet was confirmed by the Belarusian Ministry of Defence: see - https://www.youtube.com/watch?v=dsyfJ_HqjtQ.

¹⁰ YouTube, "BelAF Mig-29 landing", 23 May 2021, available at: <https://www.youtube.com/watch?v=AV8Im44Ztol> (the video has not been independently verified).

¹¹ "Asta Skaisgirytė, chief foreign policy adviser to the Lithuanian president, said that Belarus used two military aircraft, a MiG-29 fighter jet and a Mi-24 helicopter, in the operation" – LRT, "Belarus scrambles air force, diverts Vilnius-bound flight to Minsk to arrest dissident", 23 May 2021, available at: <https://www.lrt.lt/en/news-in-english/19/1415539/belarus-scrambles-air-force-diverts-vilnius-bound-flight-to-minsk-to-arrest-dissident>; See also video of announcement: <https://www.youtube.com/watch?v=Cn57T5QLkhQ>.

Instead, Belarusian law enforcement entered the aircraft and prioritised the arrest of Roman Protasevich and his partner Sofia Sapega.¹²

- At 13:58 GMT, the Chief of Organized Crime and Corruption Fighting Directorate of Belarus (GUBOPiK/GUBAZik) published a photograph of Mr Protasevich next to two state security officers, confirming his detention.¹³
- Belarusian authorities then proceeded to check luggage and passengers and released flight FR4978 for its onward journey to Vilnius at 17:47.
- According to Ryanair CEO, Michael O’Leary, there may have been Belarusian state security (KGB) agents on the aircraft.¹⁴ There have been some reports that at least four other passengers, who may have been affiliated with state security, disembarked at Minsk airport.¹⁵
- On 24 May 2021, Belarusian authorities released a video of Mr Protasevich in which he appears to read from a pre-prepared statement confirming that he is in good health, adequately treated by law enforcement and is confessing to his role in organising mass protests in Minsk. Commenting on this video, Mr Protasevich’s father notes a visible scar on his forehead, what appears to be a broken nose and ‘powder’ covering up other potential bruises on his face, suggesting that he was forced to record this video under duress.¹⁶
- On 25 May 2021, Belarusian authorities released a video of Ms Sapega in which she appears to read from a pre-prepared statement in which she “confesses” to being an editor of a Telegram channel that publishes identifying information about Belarusian law enforcement agents.¹⁷ Her delivery and mannerisms indicate that this “confession” was induced under duress.

¹² *BBC*, “Belarus Ryanair flight diverted: Passengers describe panic on board”, 25 May 2021, available at: <https://www.bbc.com/news/world-europe-57180275>.

¹³ The post was subsequently removed (Archived post available).

¹⁴ *Newstalk*, “O’Leary: Forced landing in Belarus was ‘state-sponsored hijacking’”, 24 May 2021, available at: <https://www.newstalk.com/news/oleary-forced-landing-in-belarus-was-state-sponsored-hijacking-1199561>.

¹⁵ *DailyMail*, “How four ‘Belarusian KGB agents tailed journalist Roman Protasevich onto Ryanair flight from Athens and argued with cabin crew over bogus bomb threat’ before plane was forced to land under MiG-29 fighter jet escort”, 24 May 2021, available at: <https://www.dailymail.co.uk/news/article-9612935/How-four-Belarusian-KGB-agents-tailed-journalist-Roman-Protasevich-Ryanair-flight-Athens.html>.

¹⁶ *Telegraph*, “Roman Protasevich shown in video on Belarus state TV as father says son is already being tortured”, 25 May 2021, available at: <https://www.youtube.com/watch?v=7Q8ZuuKMRVk>.

¹⁷ *YouTube*, “Belarus: Girlfriend of arrested journalist Protasevich appears in video”, 26 May 2021, available at: <https://www.youtube.com/watch?v=KHPqtiaTmw>.

III. ILLEGAL DETENTION OF MR PROTASEVICH AND MS SAPEGA FALLS WITHIN THE COURT'S JURISDICTION

5. The filing parties aver that the arrest and detention of Mr Protasevich and Ms Sapega aboard Flight FR4978 amounts to the crime against humanity of unlawful detention (Article 7(1)(e) of the ICC Statute) and may also be relevant to the alleged crime against humanity of persecution (Article 7(1)(h)).¹⁸
6. Unlawful detention may be prosecuted as a crime against humanity, where the detention of civilians is in violation of fundamental rules of international law and takes place as part of a widespread or systematic attack on the civilian population.¹⁹ The lawfulness of detention is assessed on a case-by-case basis, focusing on the legitimacy of the grounds for detention, the detainer's legal powers and compliance with minimum procedural safeguards.²⁰ International law requires detention to be grounded in applicable domestic law and procedure, "which itself must not be arbitrary and the enforcement of this law in a given case must not take place arbitrarily", and to comply with fundamental human rights standards.²¹
7. In the present case, the detention of Mr Protasevich and Ms Sapega began with the unlawful diversion of flight FR4978 off its course during an international flight between Athens and Vilnius. The use of military aircraft suggests that the diversion took place under threat of force. Whilst Belarusian authorities claim that the diversion was ordered in response to a report of an explosive device on board, no such device was found, and no evidence of the report has been produced. Other evidence points to the fact that the diversion was made solely for the purpose of detaining Mr Protasevich and Ms Sapega. The aircraft was minutes away from the Lithuanian border and was closer to Vilnius and three other airports than Minsk. Moreover, the flight circled densely populated areas of Minsk before landing – suggesting that Belarusian authorities did not consider the aircraft to be a threat to civilians. Upon landing, rather than evacuating passengers and crew away

¹⁸ See paras. 146 et seq. of the First Communication.

¹⁹ ICC Statute, Article 7(1)(e).

²⁰ ICRC, Rule 99. Deprivation of Liberty, Customary IHL, available at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule99.

²¹ ICTY, Trial Chamber II, *Prosecutor v. Milorad Krnojelac*, "Judgement," [IT-97-25-T], 15 March 2002, para. 114.

from a potential ‘bomb’, law enforcement prioritised the detention of Mr Protasevich and Ms Sapega. Consequently, flight FR4978 was forcefully diverted for the purpose of detaining Mr Protasevich and Ms Sapega and is clearly intended as a threat to dissidents and journalists.

8. The official ground for detaining Mr Protasevich is his alleged involvement in the organisation of peaceful post-election protests in Minsk. The authorities have qualified the protests as a riot and have labelled Mr Protasevich as a ‘terrorist’. In reality, this is a thinly veiled attempt to gag independent media and other forms of dissent against the regime. There is no evidence that Mr Protasevich’s activities at Nexta or elsewhere threatened Belarus’ national security or incited social hatred as alleged by the authorities. The law in this case is being applied in an arbitrary and politically motivated manner, violates fundamental free speech guarantees and is intended to frighten the regime’s opposition. The authorities have provided no justification for the arrest and detention of Ms Sapega, who appears to have no connection to the events in Belarus.
9. This conduct by the Lukashenko regime falls squarely into the regime’s widespread or systematic attack on the civilian population described in the First Communication.²² The arbitrary arrest and unlawful detention of opponents and critics of the regime is part and parcel of its policy to suppress resistance to Lukashenko’s hold on power. The regime has previously threatened to target so-called “traitors to the Motherland” – including through extra-territorial operations against journalists and activists located on foreign soil.²³ The diversion of flight FR4978 appears to be part of this policy.
10. The detention of Mr Protasevich and Ms Sapega on flight FR4978 falls within the jurisdiction of the ICC. According to Article 12(2)(a) of the ICC Statute, “*the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute*”

²² First Communication, para. 70 et seq.

²³ *EU Observer*, “Belarus threatens to kill two UK dissidents”, 11 January 2021, available at: <https://euobserver.com/foreign/150557>; Reformation, “Глава КГБ пообещал найти изменников и предателей «через десятилетия» (Head of KGB promises to seek traitors for decades)”, 11 Feb. 2021, available at: <https://reform.by/201154-tertel-rasskazal-o-terroristicheskikh-gruppah-v-belarusi>; Telegram, @Azarenok_TV/1891, 29 April 2021, available at: https://t.me/Azarenok_TV/1891; Reformation, “Карпенков: с террористами будет вестись борьба по законам контртеррористических операций (Karpenkov: we will deal with terrorists in accordance with the laws of anti-terrorist operations)”, 29 April 2021, available at: <https://reform.by/221474-karpenkov-s-terroristami-budet-vestis-borba-po-zakonom-kontrterroristicheskikh-operacij>.

[...] If the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft”. In the present case, the detention of Mr Protasevich and Ms Sapega took place aboard flight FR4989. The detention began at the point that Belarusian authorities diverted the aircraft under threat of force – effectively detaining the entire aircraft and all passengers aboard the aircraft for the purpose of detaining Mr Protasevich and Ms Sapega. After the aircraft landed, Belarusian law enforcement entered the aircraft and took Mr Protasevich and Ms Sapega into custody. Flight FR4978 was a commercial aircraft registered in Poland (registration SP-RSM) on an international flight between Greece and Lithuania. Poland is a State Party to the ICC Statute. Consequently, the unlawful detention took place on board an aircraft registered in a State Party to the ICC Statute and the ICC may exercise jurisdiction on this basis.

IV. THE DIVERSION OF FLIGHT FR4978 CONSTITUTES IMPORTANT CONTEXTUAL INFORMATION FOR THE SITUATION IN BELARUS

11. Further or alternatively to the crime against humanity of illegal detention of Mr Protasevich and Ms Sapega, the flight FR4978 incident is directly relevant to the situation described in the First Communication and provides important contextual information for the ICC Prosecutor’s consideration.
12. In making a determination on whether to pursue a full investigation into the situation in Belarus, the ICC Prosecutor is permitted to consider all relevant facts, including those that take place outside of the Court’s jurisdiction.²⁴ The flight FR4978 incident is relevant to the contextual elements of crimes against humanity as well as to the gravity of the situation in Belarus. It demonstrates the extent to which the Lukashenko regime is

²⁴ ICC-01/19, Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation’, Pre-Trial Chamber III, 14 November 2019, para 93: [W]hile the Court is not permitted to conduct proceedings in relation to alleged crimes which do not fall within its jurisdiction, it ‘has the authority to consider all necessary information, including as concerns extra-jurisdictional facts for the purpose of establishing crimes within its competence’. *In other words, the Court is permitted to consider facts which fall outside its jurisdiction in order to establish, for instance, the contextual elements of the alleged crimes.* In the situation at hand, the Chamber has considered the information regarding alleged coercive acts (including alleged murder, forcible transfer of population, imprisonment, torture, rape, or persecution) which have allegedly occurred entirely on the territory of Myanmar for the purpose of evaluating whether the Prosecutor has a reasonable basis to believe that an attack against the Rohingya civilian population pursuant to a State policy may have occurred. [...] *[A]lthough the Court does not have jurisdiction over these alleged crimes per se, it considered them in order to establish whether or not the contextual elements of crimes against humanity may have been present.* (emphasis added)

prepared to go to silence the opposition, and his brazen disregard for international law and international peace and security. It also demonstrates the Lukashenko regime's willingness – as previously stated by key members of the regime²⁵ – to target opponents and critics outside of Belarus.

13. Thus, an announcement by the ICC Prosecutor that the situation in Belarus, including the flight FR4978 incident, are under investigation by the Court, will signal an end to impunity for such conduct and may have an important deterrent effect.

V. CONCLUSION AND REQUEST

14. For the foregoing, the filing parties respectfully request the ICC Prosecutor to include the flight FR4978 incident into her consideration of the situation in Belarus (and Lithuania, Latvia, Poland and Ukraine), with a view to seeking authorisation to open a full investigation into the alleged crimes.

Done in London, Brussels, Oslo and Kyiv on 26 May 2021.

²⁵ *EU Observer*, “Belarus threatens to kill two UK dissidents”, 11 January 2021, available at: <https://euobserver.com/foreign/150557>; Reformation, “Глава КГБ пообещал найти изменников и предателей «через десятилетия» (Head of KGB promises to seek traitors for decades)”, 11 Feb. 2021, available at: <https://reform.by/201154-tertel-rasskazal-o-terroristicheskikh-gruppah-v-belarusi>; Telegram, @Azarenok_TV/1891, 29 April 2021, available at: https://t.me/Azarenok_TV/1891; Reformation, “Карпенков: с террористами будет вестись борьба по законам контртеррористических операций (Karpenkov: we will deal with terrorists in accordance with the laws of anti-terrorist operations)”, 29 April 2021, available at: <https://reform.by/221474-karpenkov-s-terroristami-budet-vestis-borba-po-zakonam-kontrterroristicheskikh-operacij>.