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Ilya Zlatkin
University of Richmond

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OPPORTUNISTIC DISCIPLINE: USING EURASIAN INTEGRATION TO IMPROVE SANCTIONS AGAINST BELARUS

Ilya Zlatkin

PART I: INTRODUCTION

“The last true dictatorship in the heart of Europe.”¹ Since former United States Secretary of State Condoleezza Rice coined this phrase in 2005, this less than flattering title has clung to Belarus.² For its part, however, the former Soviet republic’s government has done enough to maintain the moniker. Under President Alexander Lukashenko’s rule, the authorities have quashed nonviolent demonstrations, imprisoned political adversaries, and dominated media outlets.³ After thousands of Belarusians protested Lukashenko’s reelection in December 2010, the Belarusian president further clamped down on the public’s right to assemble.⁴ In addition, seven opposing candidates found themselves behind bars.⁵

Despite the West’s assertion that President Lukashenko violated human rights, Lukashenko refused to change his approach, prompting a new wave of economic and political sanctions.⁶ Regardless of legal arguments against sanctions, such measures often fail to produce desired results.⁷ Worse, they frequently hamper the invoking party’s aims,⁸ and this case is no different. Still, the United States and the European Union (“EU”) can improve the currently detrimental framework. A positive outcome requires the reassessment not only of

¹ ANDREW WILSON, *BELARUS: THE LAST DICTATORSHIP IN EUROPE*, at x, xi (2011).

² *Id.*

³ Michael Mostyn, *Democratic Wave Bypasses Belarus*, THE TORONTO STAR, Dec. 28, 2011, <http://www.thestar.com/opinion/editorialopinion/article/1108141—democratic-wave-bypasses-belarus>.

⁴ *Id.*

⁵ Michael Schwartz, *Belarus Signals It Could Seize Opponent’s Son*, N.Y. TIMES, Jan. 9, 2011, <http://www.nytimes.com/2011/01/10/world/europe/10belarus.html?pagewanted=all>.

⁶ See *House Passes Bill Tightening Belarus Sanctions*, HUFFINGTON POST (Dec. 20, 2011, 9:54 PM), <http://www.huffingtonpost.com/huff-wires/20111220/us-belarus/>.

⁷ Wesley A. Cann, Jr., *Creating Standards and Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance Between Sovereignty and Multilateralism*, 26 YALE J. INT’L L. 413, 449 (2001).

⁸ *Id.* at 446-47.

Belarus's role in the international arena, but also of its internal ideological developments.

In August 2011, the U.S. Office of Foreign Assets Control ("OFAC") froze the properties of four Belarusian enterprises, prohibited American citizens from transacting with these state-owned businesses, and added more individuals to the Specially Designated Nationals ("SDN") List.⁹ A few months later, President Barack Obama signed the Belarus Democracy and Human Rights Act of 2011.¹⁰ Even though Congress labeled the bill as a sanction, the legislation simply itemizes America's displeasure with the Lukashenko regime.¹¹ The Act does not impose any new penalties on the country, though it does attempt to pressure the International Hockey Federation ("IHF") into relocating a tournament the IHF previously granted to Belarus.¹²

Facially, the sanctions imposed by the OFAC and the Belarus Democracy and Human Rights Act seem to cost the United States little. While the United States might not achieve its goal of crippling the Lukashenko regime, it can appear proactive in the fight against oppression.¹³ Belarus's nonexistent economic influence decreases its sanction costs.¹⁴ If in fact the United States stands to lose nothing, then it would be remiss to not pass an anti-Lukashenko declaration, regardless of the normative arguments against such action. The real costs of sanctioning Belarus, however, are not limited to bilateral trade with the former Soviet republic. Belarus's perpetual alliance

⁹ *Treasury Sanctions Four Entities of State-Owned Belarusian Petrochemicals Conglomerate*, U.S. TREAS. DEPT. (Aug. 11, 2011), http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/belarus_notice_08112011.pdf. See generally *Specially Designated Nationals List (SDN)*, U.S. TREAS. DEPT., <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (last updated Mar. 7, 2012).

¹⁰ *Barack Obama Signs into Law Belarus Sanctions Bill*, RIA NOVOSTI (Jan 4, 2012, 7:59 AM), <http://en.ria.ru/world/20120104/170614305.html>.

¹¹ See Belarus Democracy and Human Rights Act of 2011, Pub. L. No. 112-82, 125 Stat. 1863 [hereinafter Belarus Democracy and Human Rights Act].

¹² *Id.* § 3(10). Since the bill's passing, the IHF has already stated that it does not intend to get involved in political struggles. It will host the 2014 World Championships in Minsk. *E.g., Ice Hockey Championship to be Held in Europe's Last Dictatorship?*, CHARTER '97 (Jan. 9, 2012), <http://charter97.org/en/news/2012/1/9/46557/>.

¹³ See, e.g., Belarus Democracy and Human Rights Act § 3(1) ("It is the policy of the United States to . . . condemn the conduct of the December 19, 2010, presidential election and crackdown on opposition candidates, political leaders, and activists, civil society representatives, and journalists . . .").

¹⁴ See EUROPEAN COMMISSION, EU BILATERAL TRADE AND TRADE WITH THE WORLD – USA (Jan. 10, 2012), available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113465.pdf.

with Russia¹⁵ and its strategic importance to China's entrance into European markets¹⁶ make the small nation increasingly vital to American interests.

The preferred methods of sanctioning Belarus do not materially impact the nation's government.¹⁷ Instead, they deteriorate the prospects of regular citizens – allegedly the intended beneficiaries of these measures.¹⁸ Better solutions exist. While the advent of the Single Economic Space (“SES”) and the Eurasian Economic Union (“EEU”) will render some sanctions inept, these new institutions could provide an avenue for improving the American position.¹⁹

In addition, the United States should reevaluate Belarus's economic and political landscape. If the United States government wishes to improve the lives of ordinary Belarusians, it should consider altering aspects of travel regulations.²⁰ Free visas for ordinary citizens would help open up the country.²¹ Likewise, the United States and the

¹⁵ See Fyodor Ptitsyn, *Russia Saves Strongman Lukashenko from Complete Isolation*, PRAVDA (Nov. 14, 2011), http://english.pravda.ru/russia/economics/14-11-2011/119610-russia_belarus-0/; Vladimir Putin Supports the Merger of Russia and Belarus, THE TELEGRAPH (Aug. 1, 2011), <http://www.telegraph.co.uk/news/worldnews/europe/russia/8675759/Vladimir-Putin-supports-merger-of-Russia-and-Belarus.html>.

¹⁶ *All-round Ties with China Priority for Belarus*, CHINA DAILY (Dec. 22, 2011), http://www.chinadaily.com.cn/usa/china/2011-12/22/content_14309094.htm.

¹⁷ Cf. Yaroslau Kryvoi, *The Robert E. Hudec Article on Global Trade: Why European Union Trade Sanctions Do Not Work*, 17 MINN. J. INT'L L. 209, 243–44 (2008).

¹⁸ See Belarus Democracy and Human Rights Act § 3(2)–(5).

¹⁹ The SES, which began operating in 2012, is a common market. This removes all barriers to movement of factors of production among Russia, Belarus, and Kazakhstan. In November 2011, these three nations also signed a set of documents, setting the framework for a transition to the EEU – a complete economic union scheduled to begin operating in 2015. Kyrgyzstan and Tajikistan plan to join as well. See INTEGRATION COMM. SECRETARIAT OF THE EURASIAN ECON. CMTY., EURASEC TODAY 35 (2011). [hereinafter EURASEC TODAY], available at http://www.evrases.com/i/other/EurAsEC-today_eng.pdf; *Russia, Belarus, Kazakhstan Agree on Economic Union*, RADIO FREE EUROPE/RADIO LIBERTY, Nov. 18, 2011, http://www.rferl.org/content/russia_belarus_kazakhstan_plan_economic_union/24395264.html.

²⁰ See Andrei Liakhovich, *Getting the Travel Ban Right*, BELARUS DIGEST (Nov. 27, 2011), <http://belarusdigest.com/story/getting-travel-ban-right-6713> [hereinafter *Getting the Travel Ban Right*]; *Shushkevich: Best Sanctions – Free Visas*, TELEGRAF.BY (Jan. 5, 2012), <http://telegraf.by/en/2012/01/shushkevich-luchshie-sankcii-besplatnie-vizi> [hereinafter *Shushkevich*].

²¹ *Shushkevich*, supra note 20.

EU should reconsider their approach to travel bans.²² Rather than continuing to blacklist members of the Belarusian bureaucracy, the West should closely examine the behaviors of individual politicians. Realistically, only time will lead to change, but proper management of sanctions may achieve that goal quicker.

Though this comment focuses on the effects of America's sanctions, it inherently implicates the EU. While Belarus does not play a major role in the American economy, it does significantly impact the EU's economy.²³ Ineffective sanctions, regardless of who imposes them, harm both the innocent citizens of the sanctioned country and the citizens of states who interact with the sanctioned country.²⁴ Consequently, any successful solution likely depends on EU participation. Western governments cannot *directly* accomplish every solution proposed here. Some changes, only the private sector can drive, but governments need to provide the proper incentives to elicit the desired responses.

This comment does not condemn or condone the Lukashenko regime's policies. Instead, it evaluates the effectiveness of the U.S. sanctions and provides some feasible alternatives. Also, this comment avoids normative arguments against sanctions, concentrating more on the probable economic and political effects.²⁵ Part II supplies background information on the political developments within Belarus since the Soviet Union's collapse, including prior sanctions that the West

²² *Getting the Travel Ban Right*, *supra* note 20. See S.B., *Nomenclature and the Hope for Democracy in Belarus*, BELARUS DIGEST (Dec. 8, 2011), <http://belarusdigest.com/story/nomenclature-and-hope-democracy-belarus-6886>.

²³ See EUROPEAN COMMISSION, EU BILATERAL TRADE AND TRADE WITH THE WORLD – BELARUS (Jan. 10, 2012), available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113351.pdf [hereinafter EC STATISTICS - BELARUS].

²⁴ See Cann, *supra* note 7, at 427.

²⁵ One of the most powerful arguments against sanctions is their selective enforcement, which creates a double standard. *Id.* at 450–52. In short, the United States chooses to punish an authoritarian regime in Belarus while choosing to ignore human rights violations in Uzbekistan and political imprisonment in Ukraine. The United States has imposed farcical, half-hearted sanctions in Venezuela. See generally, Muzaffar Suleymanov, *What United States Can't Accept in Belarus, It Supports in Uzbekistan*, COMM. TO PROTECT JOURNALISTS BLOG (Jan. 11, 2012, 2:15 PM), <http://www.cpj.org/blog/2012/01/what-us-cant-accept-in-belarus-it-supports-in-uzbe.php>; Yulia Tymoshenko's Trials, THE ECONOMIST, Oct. 15, 2011, <http://www.economist.com/node/21532290>; Michael Economides, *Silly Sanctions Against Venezuela Boost Hugo Chavez*, FORBES, June 13, 2011, <http://www.forbes.com/sites/greatspeculations/2011/06/13/silly-sanctions-against-venezuela-boost-hugo-chavez/>. Interestingly, Venezuela is not even listed on the United States Treasury's website as a sanctioned country. See *Sanctions Programs and Country Information*, U.S. TREAS. DEPT., <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (last updated Jan. 12, 2012).

imposed. Part III explains why the United States can legally institute sanctions. Parts IV and V discuss how American sanctions facilitate appropriation of significant Belarusian state assets by Russia and China, respectively. Part VI posits that the United States can use Eurasian integration to benefit its own economic interests, which include helping ordinary Belarusian citizens. Part VII examines the practice of using travel bans to sanction Belarusian officials and suggests a change to the visa regime as a way to further Western goals. Part VIII concludes this comment.

PART II: BACKGROUND

Alexander Lukashenko came to power in 1994, less than three years after the Soviet Union collapsed.²⁶ He succeeded in minimizing opposition to his rule during the transitional turbulence of the following decade.²⁷ The U.S. Congress passed the Belarus Democracy Act of 2004 in response to waves of repression and reports of Belarus's weapons trade with Iran.²⁸ Aside from listing grievances, the Act intended to promote democracy in Belarus, even permitting fund allocation to support the opposition.²⁹ The Act was only supposed to last two years,³⁰ but without any improvement in the country's situation, President George W. Bush issued Executive Order 13405 reaffirming condemnation of the Belarusian government.³¹ Executive Order 13405 authorized asset freezes and prohibited American citizens from helping circumvent these financial sanctions.³² Later in the year, Congress passed the Belarus Democracy Reauthorization Act of 2006, renewing the 2004 version.³³

The outlook brightened in 2008 when the Belarusian government released political prisoners and improved its human rights policies.³⁴ In response, both the United States and the EU removed sanctions.³⁵ With the onset of the financial crisis, the Belarusian leadership had to rely on the International Monetary Fund ("IMF") for eco-

²⁶ WILSON, *supra* note 1, at xi.

²⁷ *See id.* at 194-208.

²⁸ STEVEN WOEHREL, CONG. RESEARCH SERV., RL 32534, BELARUS: BACKGROUND AND UNITED STATES POLICY CONCERNS 2 (2010).

²⁹ Belarus Democracy Act of 2004, § 3(a), Pub. L. No. 108-347, 118 Stat. 1383 (codified as amended at 22 U.S.C. § 5811 (2012)).

³⁰ *See id.* § 3(d)(1).

³¹ Exec. Order No. 13,405, 71 Fed. Reg. 35,485 (June 20, 2006).

³² *Id.* §§ 1-2.

³³ Belarus Democracy Reauthorization Act of 2006, Pub. L. No. 109-480, 120 Stat. 3666 (2012) (codified as amended at 22 U.S.C. § 5801 (2012)).

³⁴ WOEHREL, *supra* note 28, at 2.

³⁵ *Id.* Though it was proposed, attempts to pass the Belarus Democracy Reauthorization Act of 2008 stalled. *H.R. 5970: Belarus Democracy Reauthoriza-*

conomic relief.³⁶ The IMF conditioned the loans on a liberalization of economic norms, most notably a twenty-percent devaluation in the Belarusian ruble.³⁷ The EU even invited Belarus to participate in the Eastern Partnership Initiative, an attempt to develop former Soviet republics that have not yet joined the EU.³⁸ Unfortunately, this détente did not last.

On December 19, 2010, Lukashenko won a fourth term in what was deemed a rigged election.³⁹ Tens of thousands of Belarusians poured out into the streets to protest, and the government reacted with a vicious crackdown, detaining hundreds.⁴⁰ In the aftermath, Lukashenko imprisoned the majority of his opponents, most of whom still remain incarcerated.⁴¹ While the West renewed its criticism of the Belarusian president, the economic crisis began to wreak havoc.⁴² A sharp increase in natural gas prices exacerbated the country's woes, as the Belarusian ruble inflated by over 100 percent in less than a year.⁴³ With the nation on the verge of ruin, Belarusians initiated a protest via social media to mimic the Arab Spring.⁴⁴ Unlike the Arab Spring, however, this did not yield regime change. In August 2011, the OFAC issued new sanctions against four state-owned conglomerates – a fer-

tion Act of 2008, GovTRACK, <http://www.govtrack.us/congress/bill.xpd?bill=H110-5970> (last visited Feb. 11, 2012).

³⁶ WOEHREL, *supra* note 28, at 3.

³⁷ *Id.*

³⁸ *Id.* at 7.

³⁹ A.O., *Belarus's Election: Lukashenka Uncovered*, THE ECONOMIST, Dec. 20, 2010, <http://www.economist.com/blogs/easternapproaches/2010/12/belarusselection>.

⁴⁰ *Id.*

⁴¹ Schwirtz, *supra* note 5.

⁴² Yauheni Preiherman, *2011: Year Under the Sign of Crackdown*, BELARUS DIGEST (Dec. 29, 2011), <http://belarusdigest.com/story/2011-year-under-sign-crackdown-7133>. In April 2011, the busiest Minsk subway station was bombed. Rampant inflation followed. Though the two problems are almost certainly unrelated, they converged and exacerbated the atmosphere of fear within the country. See generally Y.K., *The Consequences of the April 11 Minsk Bombing*, BELARUS DIGEST (Apr. 12, 2011), <http://belarusdigest.com/2011/04/11/the-consequences-of-the-april-11-minsk-bombing>.

⁴³ *Belarus' Base Inflation in 11 Months of 2011 Reported at 113.6 Percent*, NAVINY.BY (Dec. 9, 2011, 4:10 PM), http://naviny.by/rubrics/english/2011/12/09/ic_news_259_382426/.

⁴⁴ Ellen Barry, *Sound of Post-Soviet Protest: Claps and Beeps*, N.Y. TIMES, July 14, 2011, http://www.nytimes.com/2011/07/15/world/europe/15belarus.html?page_wanted=all.

tilizer manufacturer, a tire factory, a fiber producer, and a major oil refinery.⁴⁵

The combination of popular unrest and Western pressure most likely caused Lukashenko to search for new ways of entrenching himself. In October, Russia's Prime Minister (and most likely future President) Vladimir Putin pitched his idea of a "Eurasian Union," an economic union of former Soviet republics.⁴⁶ With Lukashenko's urging, the parties streamlined the process, and the presidents of Russia, Belarus, and Kazakhstan met a month later to create the framework for Eurasian reintegration.⁴⁷ At the end of December, Congress passed the Belarus Democracy and Human Rights Act of 2011, which President Obama signed on January 3, 2012, placing various visa and financial restrictions upon many Belarusian officials.⁴⁸

PART III: AMERICA'S JUSTIFICATIONS FOR IMPOSING SANCTIONS

National law permits the United States to pass the Belarus Democracy and Human Rights Act. In issuing an executive order freezing Belarusian assets, President George W. Bush labeled the situation in Belarus an "unusual and extraordinary threat to . . . national security and foreign policy,"⁴⁹ and invoked the International Emergency Economic Powers Act⁵⁰ and the National Emergencies Act.⁵¹ Additional justification for sanctions is found both in the Foreign Commerce Clause, which allows the United States to shape its international economic policies,⁵² and the Restatement (Third) of Foreign Relations Law, which expressly permits economic sanctions.⁵³

⁴⁵ *New Sanctions Against Belarus*, U.S. DEPT. OF STATE (Aug. 11, 2011), <http://www.state.gov/r/pa/prs/ps/2011/08/170405.htm>.

⁴⁶ Dmitry Polikanov, *Soviet Reunion?*, RT (Oct. 20, 2011, 2:48 PM), <http://rt.com/politics/columns/man-nature-political-animal/soviet-cis-russia-economy/>; Robert Bridge, *One Eurasian Union, Please. And Hold the Imperialism!*, RT (Oct. 19, 2011, 6:08 PM), <http://rt.com/politics/union-putin-integration-soviet-207/>.

⁴⁷ *See Agreement on the Eurasian Economic Community*, World Bank, <http://wits.worldbank.org/GPTAD/PDF/archive/EAEC.pdf> (last visited Mar. 9, 2012); *see also Russia, Belarus, Kazakhstan Agree on Economic Union*, *supra* note 19.

⁴⁸ *Barack Obama Signs into Law Belarus Sanctions Bill*, *supra* note 10.

⁴⁹ Exec. Order No. 13,405, 71 Fed. Reg. 35,485 (June 20, 2006).

⁵⁰ *See* 50 U.S.C. § 1702 (2006).

⁵¹ *See* 50 U.S.C. § 1631 (2006).

⁵² U.S. CONST. art. I, § 8, cl. 3.

⁵³ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE U.S. § 703 cmt. f (1987) ("A state may criticize another state for failure to abide by recognized international human rights standards, and may shape its trade, aid or other national policies so as to dissociate itself from the violating state or to influence that state to discontinue the violations.").

In denouncing these new sanctions, however, the Belarusian government claims that the United States has breached the security assurances it made in the Budapest Memorandum of 1994.⁵⁴ The United States (along with the United Kingdom and Russia) promised former Soviet republics that it would “refrain from economic coercion designed to subordinate to [its] own interest.”⁵⁵ In exchange, Belarus, Ukraine, and Kazakhstan agreed to surrender the nuclear weapons stored within their territory.⁵⁶ Belarus also claims that the United States has violated exactly the same obligations under the Helsinki Final Act, which the United States had concluded with the USSR.⁵⁷ Additionally, the United Nations General Assembly has passed several resolutions to denounce unilateral sanctions.⁵⁸ In a practical sense, however, none of these international rules are likely to matter. Though the United States may simply choose to ignore its international law obligations as it has often done in the past, it will likely point to Lukashenko’s illegal acts to justify its own violations. In doing so, the United States likely will claim that the Belarusian President’s actions pose an international security threat.

The General Agreement on Tariffs and Trade (“GATT”) creates a framework for unimpeded trade, but it does provide an out for national security reasons.⁵⁹ Article XXI, also called the “security exception,” states that “[n]othing in [the GATT] shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations.”⁶⁰ Unfortunately, the GATT fails to clarify what exactly constitutes an emergency or a national security threat.⁶¹ This lack of guidance allows

⁵⁴ *Lukashenka’s Dictatorship Started Nuclear Blackmailing of U.S.*, Charter ’97 (Aug. 19, 2011), <http://charter97.org/en/news/2011/8/19/41757/>.

⁵⁵ *Security Assurances: Memorandum on Security Assurances in Connection with the Republic of Belarus’ Accession to the Treaty on the Non-Proliferation of Nuclear Weapons K-7* (Dec. 5, 1994), available at <http://www.pppn.soton.ac.uk/bb2/Bb2secK.pdf>.

⁵⁶ *Id.*

⁵⁷ Press Release, Republic of Belarus, MFA Press Secretary Andrei Savinykh Replies When Asked by the Media on the Countermeasures in Response to United States Sanctions (Aug. 19, 2011), available at http://www.belarus.by/en/press-center/press-release/mfa-press-secretary-andrei-savinykh-replies-when-asked-by-the-media-on-the-countermeasures-in-response-to-us-sanctions_i_0000002559.html.

⁵⁸ G.A. Res. 62/162, ¶ 4, U.N. Doc. A/RES/62/162 (Mar. 13, 2008); G.A. Res. 62/183, ¶ 2, U.N. Doc. A/RES/62/183 (Jan. 31, 2008).

⁵⁹ Cann, *supra* note 7, at 414.

⁶⁰ General Agreement on Tariffs and Trade art. XXI, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

⁶¹ Cann, *supra* note 7, at 415–16.

each nation to claim the right to define its national security interests as it sees fit.⁶² States could interpret the section to include any threat to fundamental ideology, foreign policy, political stability, or domestic industry.⁶³ Under its current language, it seems impossible for a country to violate Article XXI.⁶⁴

Attempts to justify this mentality have revolved around the distinction in wording between Article XXI and Article XX, which lists other exceptions to GATT rules.⁶⁵ While the security exception allows a nation to take measures “it considers necessary,” Article XX allows nations to take “necessary” steps to invoke the other exceptions.⁶⁶ States wishing to use the exception have articulated that the wording in Article XXI gives them more leeway in determining what works better.⁶⁷ The International Court of Justice (“ICJ”) partially agreed with this assessment, but did not give states carte blanche to use Article XXI.⁶⁸ In *Nicaragua v. United States*, the ICJ denied individual countries the ability to determine the meanings of “self-defense” and “necessity.”⁶⁹ The ICJ nonetheless upheld the use of unilateral economic sanctions in *Nicaragua*, basing its decision on the principle that a state has the right to choose its trade partners.⁷⁰

Though the GATT security exception may develop limits, countries like the United States continue to impose sanctions at will.⁷¹ For example, Congress did not consider national security interests when passing the Belarus Democracy Act of 2004.⁷² In many ways, it has become “politically expedient to allow [A]rticle XXI to remain an unspoken authority.”⁷³ If a sanctioned country protests such methods, then the appeal to international regulatory bodies takes a long time

⁶² *Id.*

⁶³ *Id.* at 425.

⁶⁴ *Id.* at 415–16.

⁶⁵ *Id.* at 422.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.* at 422–23.

⁶⁹ Susan Rose-Ackerman & Benjamin Billa, *Treaties and National Security*, 40 N.Y.U. J. INT'L L. & POL. 437, 448–49 (2008). It is worth noting that the ICJ does not have a formal obligation to follow its former rulings but it still frequently relies on its prior decisions in its reasoning. The ICJ typically explicitly distinguishes precedent from its current case when it chooses to deviate from this informal *stare decisis*. See LORI F. DAMROSCH ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 255–56 (5th ed. 2009).

⁷⁰ Claire M. Diallo, Note, *The United States Empire: Is Any Sovereign Nation Safe After the Russian and Belarus Democracy Acts?*, 91 IOWA L. REV. 673, 706–07 (2006).

⁷¹ Cann, *supra* note 7, at 425.

⁷² Diallo, *supra* note 70, at 690.

⁷³ Cann, *supra* note 7, at 425.

with no guarantees of success. For this reason, a sanctioned country such as Belarus has no real recourse other than retaliation. Of course, it has virtually no leverage, so sanctions will remain “legal” in practice until the imposing nation decides to lift them. In fact, as discussed below, current conditions have rendered U.S. sanctions against Belarus not only moot, but also detrimental to American interests.

PART IV: RUSSIA'S EVER-PRESENT INFLUENCE

Belarus's close ties to Russia are not a secret. Lukashenko dissented when the Belarusian legislature voted to secede from the USSR⁷⁴ and has since consistently supported reintegration.⁷⁵ The two nations have a close relationship despite their periodic disagreements.⁷⁶ As the SES develops and progresses toward the EEU, Belarus's dependence on its big brother will continue to grow. Russia's considerable influence makes the majority of sanctions ineffective by creating low-cost trade outlets for sanctioned Belarusian enterprises.⁷⁷ More pertinently, Belarus's precarious economic position permits Russia to vulture ownership of Belarusian state-owned ventures.⁷⁸ Reintegration with other former Soviet republics does bring considerable

⁷⁴ See Andrei Liakhovich, *Belarus-Russia: Optimistic Rhetoric and Unsolvability Contradictions*, BELARUS DIGEST (Nov. 16, 2011), <http://belarusdigest.com/story/belarus-russia-optimistic-rhetoric-and-unsolvable-contradictions-6482>.

⁷⁵ *Id.*

⁷⁶ See Ptitsyn, *supra* note 15; Vladimir Putin Supports the Merger of Russia and Belarus, THE TELEGRAPH, Aug. 1, 2011, <http://www.telegraph.co.uk/news/world-news/europe/russia/8675759/Vladimir-Putin-supports-merger-of-Russia-and-Belarus.html>.

⁷⁷ It is worth giving brief (and non-comprehensive) definitions of the different levels of integration. A free trade agreement eliminates import tariffs and quotas between the signatories. A customs union builds on a free trade area by, in addition to removing internal barriers to the trade of goods, also creating a unified external trade policy. A common market improves on a customs union by removing all obstacles to the mobility of people, capital and other resources, as well as eliminating non-tariff barriers to trade, within the area. An economic union further harmonizes economic institutions and policies. See generally *Different Forms of Integration*, U.N. UNIV. OCW, <http://ocw.unu.edu/programme-for-comparative-regional-integration-studies/introducing-regional-integration/different-forms-of-integration/> (last visited Feb. 20, 2012) (explaining the various ways that social systems integrate with one another). The Single Economic Space, which started operating on January 1, 2012, is a common market. See *EurAsEC*, EURASIAN ECON. CTR., www.eurasian-ec.com/index.php?option=com_content&task=view&id=2&Itemid=7 (last visited Feb. 20, 2012).

⁷⁸ See Andrei Liakhovich, *The Russian Expansion: Tricolor, Mercedes and a Three-fold Increase in Salary*, BELARUS DIGEST (Dec. 26, 2011), <http://belarusdigest.com/story/russian-expansion-tricolor-mercedes-and-three-fold-increase-salary-7102> [hereinafter *The Russian Expansion*].

benefits to regular Belarusian citizens, but it also creates new problems.⁷⁹ In contrast to the people, the Lukashenko regime only stands to profit.

To some extent, sanctions against Belarusian state-owned companies do succeed in hurting those ventures. The aftermath, however, makes those measures counterproductive to Western interests. The Belarusian president has shown that he will repay Russia for its support with shares of Belarusian industries so long as he remains in power of Belarus.⁸⁰ The economic crisis has forced Belarus to rely on loans from other countries to stay afloat. Meanwhile, the nation's foreign debt sits at over a third of its projected GDP.⁸¹ Russia owns the majority of this figure, providing it with incredible leverage over Belarus.⁸² Without any significant natural resources, Belarus cannot quickly increase its real wealth.⁸³ Its population is too poor to finance the massive debt.⁸⁴ Consequently, it will have no choice but to capitalize state assets once the loans become due.⁸⁵

Russia has already begun this type of acquisition.⁸⁶ Gazprom, the state-owned Russian natural gas conglomerate, previously had obtained a 50 percent ownership in Beltransgaz, the Belarusian natural gas transportation company, in 2006.⁸⁷ Russia and Belarus agreed to transfer the remaining stake in Beltransgaz to Gazprom within a

⁷⁹ See George Plaschinsky, *Is the Customs Union Good for Belarus?*, BELARUS DIGEST (Nov. 11, 2011), <http://belarusdigest.com/story/customs-union-good-belarus-6491>.

⁸⁰ See, e.g., Andrei Liakhovich, *The Reasons Behind Putin's Unprecedented Generosity Towards Lukashenko*, BELARUS DIGEST (Jan. 5, 2011), <http://belarusdigest.com/story/reasons-behind-putin%E2%80%99s-unprecedented-generosity-towards-lukashenko-7103> [hereinafter *Putin's Unprecedented Generosity*].

⁸¹ Yauheni Preiherman, *Belarus the Indebted*, BELARUS DIGEST (Dec. 9, 2011), <http://belarusdigest.com/story/belarus-indebted-6882>.

⁸² *Id.*

⁸³ See Iacob Koch-Weser, "*Lenders of Last Resort*": *Sino-Russian Rivalry in Belarus?*, BELARUS DIGEST (Nov. 30, 2011) <http://belarusdigest.com/story/%E2%80%99Clenders-last-resort%E2%80%9D-sino-russian-rivalry-belarus-6767> [hereinafter *Lenders of Last Resort*].

⁸⁴ See *Average Monthly Income in Belarus - 145\$*, BELSAT TV (Nov. 17, 2011), <http://belsat.eu/en/wiadomosci/a,5836,average-monthly-income-in-belarus-145.html> (showing that Belarusians' average monthly income was only \$145 at the end of 2011).

⁸⁵ Preiherman, *supra* note 81.

⁸⁶ See *The Russian Expansion*, *supra* note 78.

⁸⁷ *Gazprom to Acquire Balance of Beltransgaz*, NATURAL GAS EUROPE (June 18, 2011, 2:26 PM), <http://www.naturalgaseurope.com/gazprom-expect-acquire-balance-beltransgaz>.

week of agreeing to the EEU framework.⁸⁸ While debt repayment did not directly motivate this deal, Belarus had no other realistic option.⁸⁹ Minsk had to find a way to minimize future gas prices before the previous gas deal expired.⁹⁰ It made the correct decision under the circumstances, because the creation of alternative transport routes would have eaten into Beltransgaz's profits.⁹¹ As Lukashenko was quick to point out, the pipeline would lose all value without any gas flowing through it – a factor completely in Russia's control.⁹² The recent opening of the Nord Stream would have given Russia the opportunity to bypass Belarus completely.⁹³ The Nord Stream passes through the Baltic Sea directly to Germany, circumventing not only Belarus but also Poland.⁹⁴ Moreover, Russia plans to construct a southern pipeline under the Black Sea, avoiding Belarus and Ukraine.⁹⁵ Even though Gazprom stated it would not decrease gas transport through Belarus,⁹⁶ Lukashenko would have left much to chance. Now, with full control of Beltransgaz, Russia has nothing to lose from continuing to pump gas through Belarus.⁹⁷ As a result, Ukrainian and Slovakian pipelines will absorb the brunt of the cut in volume.⁹⁸

In return for the remaining shares of the transit company, Belarusians received the lower gas prices they coveted.⁹⁹ Gas-price hikes were the primary cause of the Belarusian economy's collapse earlier in the year.¹⁰⁰ As part of the deal, Belarusians received a forty percent "integration discount,"¹⁰¹ as well as \$2.5 billion as compensation for the remaining shares.¹⁰² In addition, the Beltransgaz deal includes a

⁸⁸ Vladimir Soldatkin & Denis Pinchuk, *UPDATE 2 – Russia Woos Belarus with Gas Price Cut, \$10 Billion Loan*, UK REUTERS (Nov. 25, 2011, 6:13 PM), <http://uk.reuters.com/article/2011/11/25/russia-belarus-idUKL5E7MP1JW20111125>.

⁸⁹ *See id.*

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² *Lukashenka Describes Gas Agreements with Russia as Very Advantageous*, NAVINY.BY (Dec. 3, 2011), http://naviny.by/rubrics/english/2011/12/03/ic_articles_259_176044/.

⁹³ Soldatkin & Pinchuk, *supra* note 88.

⁹⁴ *The Pipeline*, NORD STREAM AG, <http://www.nordstream.com> (last visited Feb. 15, 2012).

⁹⁵ Soldatkin & Pinchuk, *supra* note 88.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*; Plaschinsky, *supra* note 79.

¹⁰⁰ Soldatkin & Pinchuk, *supra* note 88.

¹⁰¹ *Id.*

¹⁰² Scott Rose, *Russian-led Fund to Disburse Belarus \$440 Million Next Month*, BUSINESS WEEK, Nov. 28, 2011, <http://www.businessweek.com/news/2011-11-28/russian-led-fund-to-disburse-belarus-440-million-next-month.html>.

loan of \$10 billion to build Belarus's first nuclear power station.¹⁰³ In the long term, this will allow Belarus to alleviate its power supply problems to an extent.¹⁰⁴ Preparations have already begun in western Belarus.¹⁰⁵

The Beltransgaz deal had plenty of positive results for ordinary Belarusian citizens. The country's coffers received an immediate infusion, and the drastic decrease in gas prices will likely help remedy short-term economic woes.¹⁰⁶ The steady source of power from the nuclear reactor will likewise help. Unfortunately, the pipeline sale also set a conspicuous precedent of Russian appropriation of significant Belarusian state assets. Already, the Belarusian government intends to sell the Minsk Automobile Plant ("MAZ") to its Russian counterpart KamAZ.¹⁰⁷ The sole remaining obstacle concerns the company's worth.¹⁰⁸ Auditors valued MAZ at only \$800 million, an amount the Belarusian authorities find inadequate.¹⁰⁹ They wish to obtain a second opinion, but, pending the appraisal, it looks like MAZ will belong to Russia soon.¹¹⁰

Moscow likely will continue the pattern of acquiring Belarusian industries.¹¹¹ It has already sent a clear signal to its neighbor's enterprises that they should *want* to belong to Russia.¹¹² Immediately following the Beltransgaz transaction, the company's executives all received a threefold bump in salary and a new car.¹¹³

Considering that the four newly-sanctioned companies do not trade much with the United States, American sanctions will not impoverish them.¹¹⁴ If the EU balks at conducting business with them, however, then losses may make these enterprises more susceptible to

¹⁰³ Ekaterina Shokhina, *A New Eurasian Union is Born*, EXPERT MAGAZINE (Nov. 29, 2011), available in English at http://rbth.ru/articles/2011/11/29/a_new_eurasian_union_is_born_13838.html; Soldatkin & Pinchuk, *supra* note 87.

¹⁰⁴ Shokhina, *supra* note 103.

¹⁰⁵ *Id.*

¹⁰⁶ See Soldatkin & Pinchuk, *supra* note 88.

¹⁰⁷ *Surikov: Belarusians Drag Feet MAZ and KamAZ Merger*, TELEGRAF.BY (Jan. 5, 2012), <http://telegraf.by/en/2012/01/surikov-belorusi-tormozyat-sliyanie-maza-i-kamaza>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See *The Russian Expansion*, *supra* note 78.

¹¹² See *id.*

¹¹³ *Id.*

¹¹⁴ *United States Sanctions "Harmless" for Belneftekhim*, BELARUSIAN TELEGRAPH AGENCY (Aug. 12, 2011), <http://news.belta.by/en/news/econom?id=649636>. Total trade with the United States accounts for only 0.3 percent of Belarusian exports. EC STATISTICS – BELARUS, *supra* note 23.

Russian appropriation.¹¹⁵ While Russian ownership brings with it certain efficiencies, perks, and short-term infusions of cash, long run revenues will still flow out of Belarus. Thus, if the United States cares about the wellbeing of Belarusian citizens,¹¹⁶ these sanctions will counter American interests. When Belarus reforms, its people will have been deprived of their most effective moneymaking businesses.

Realistically, Lukashenko will remain in power only as long as Russia wants him in that role.¹¹⁷ At the moment, he happens to be indispensable to Russian interests.¹¹⁸ If Washington wishes to change the state of affairs in Belarus, it should try to find incentives for Moscow to elicit regime change. Russia's gains are not limited to economic advantages. Russia has two military bases in Belarus, for which it pays no rent.¹¹⁹ In contrast, Ukraine charges Russia \$40 billion over thirty years for one naval base on the Black Sea.¹²⁰ Politically, Moscow can also rely on Lukashenko as a mouthpiece against the West. While the Kremlin has to tread carefully in its diplomatic relations with the United States and the EU, Lukashenko has thrown plenty of derogatory comments their way.¹²¹ Unless Russia finds an alternative that suits its interests at least as well, it will continue supporting Lukashenko.

PART V: CHINA'S GROWING INFLUENCE

In the last few years, a new superpower has gained an interest in Belarus. China has exhibited a tendency to swoop into nations with

¹¹⁵ Cf. *Belshina Export to Non-CIS up 2.2 Times in H1*, BELARUSIAN TELEGRAPH AGENCY (Aug. 5, 2011), <http://news.belta.by/en/news/econom?id=648280> (indicating that one of the sanctioned companies had experienced a significant increase in exports to Europe just before the United States sanctions were instituted).

¹¹⁶ See *Belarus Democracy and Human Rights Act*, *supra* note 18, at § 3(2)-(5).

¹¹⁷ See *Putin's Unprecedented Generosity*, *supra* note 80.

¹¹⁸ See S.B., *Lukashenka in Moscow: The Prodigal Son Is Coming Back?*, BELARUS DIGEST (Dec. 1, 2011), <http://belarusdigest.com/story/lukashenka-moscow-prodigal-son-coming-back-6742> [hereinafter *Lukashenka in Moscow*].

¹¹⁹ *Lukashenko Reminds of Russia's Free Rent of Two Military Bases in Belarus*, BELARUSIAN TELEGRAPH AGENCY (Apr. 25, 2010), <http://news.belta.by/en/news/president?id=522386>.

¹²⁰ Philippe Conde & Vasco Martins, *Russia's Black Sea Fleet in Sevastopol Beyond 2017*, DIPLOWEB.COM (May 23, 2010), <http://www.diploweb.com/Russia-s-Black-Sea-fleet-in.html>.

¹²¹ E.g., *Belarus President Lukashenko Calls George W Bush World's Main Terrorist*, MOSNEWS.COM (Mar. 19, 2006), http://www.nogw.com/download/2006_lukash_bush_terrorist.pdf.

totalitarian governments.¹²² While Western powers criticize dictators and limit economic interaction with authoritarian regimes, the Chinese have willingly filled the vacuums left by United States withdrawal.¹²³ Similar to Moscow, Beijing has extended low interest loans in exchange for stakes in Belarusian state enterprises.¹²⁴ For example, in October 2011, Belarus received a \$1 billion loan at three percent interest, for which China will get preference in the purchase of Belarusian chemistry assets.¹²⁵ The Chinese have announced a plan to drastically increase foreign direct investment in Belarus.¹²⁶ Beijing does not fear the risks associated with an economically unstable partner, mainly because Chinese state-owned investors do not face as much pressure to make quick profits.¹²⁷ Moreover, Belarus has experienced underinvestment in manufacturing and infrastructure – two strengths for the Chinese.¹²⁸ With other countries feeling comfortable investing only in trade and services, China has the opportunity to corner the capital formation market.¹²⁹

Beijing's actions clearly support the idea that it takes its relationship with Belarus seriously. Over the past two years, Chinese banks have invested \$15 billion in Belarus.¹³⁰ At least five of the Chinese companies currently in Belarus are publicly listed and have a market cap of over \$500 million.¹³¹ The two governments have already agreed to create a Chinese industrial park with a massive hotel serving Chinese businessmen.¹³² More telling, Lukashenko has expressed a desire to develop a Chinatown in Minsk.¹³³ The two nations' budding cooperation extends beyond the business sector. The Chinese are building a satellite for Belarus, the first time they have done so for any

¹²² See Andrew Brady Spalding, *The Irony of International Business Law: United States Progressivism and China's New Laissez-Faire*, 59 UCLA L. REV. 354, 354 (2011).

¹²³ *Id.*

¹²⁴ Jacob Koch-Weser, *China Helps an Ailing Autocracy*, BELARUS DIGEST (Nov. 10, 2011), <http://www.belarusdigest.com/story/china-helps-ailing-autocracy-6495> [hereinafter *China Helps an Ailing Autocracy*]; *Cash-flooded China to Loan \$1Bln to Cash-hungry Belarus*, RT (Sept. 20, 2011), <http://rt.com/news/china-loan-belarus-deal-929/>.

¹²⁵ *Cash-flooded China to Loan \$1Bln to Cash-hungry Belarus*, *supra* note 124.

¹²⁶ Jacob Koch-Weser, *Chinese FDI in Belarus: Investing in a Backwater?*, BELARUS DIGEST (Oct. 27, 2011), <http://www.belarusdigest.com/story/chinese-fdi-belarus-investing-backwater-6359> [hereinafter *Chinese FDI in Belarus*].

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *See id.*

¹³⁰ *Cash-flooded China to Loan \$1Bln to Cash-hungry Belarus*, *supra* note 124.

¹³¹ *China Helps an Ailing Autocracy*, *supra* note 124.

¹³² *Id.*

¹³³ *Id.*

European nation.¹³⁴ In addition, they have exported nuclear and thermal energy projects, as well as chemical production.¹³⁵

As China continues to entrench itself within its European ally, tensions between China and Russia may arise.¹³⁶ Based purely on economic importance, Russia should win over China in Belarus. Russia accounts for about half of Belarus's foreign trade, while China comprises less than five percent.¹³⁷ For the most part, however, these two international superpowers seem to focus on noncompeting industries.¹³⁸ Russia is focused on Belarus's oil and gas reserves, while China focuses on Belarus's infrastructure and machinery.¹³⁹ Russia and China compete, however, over Belarus's power generation and chemical industries.¹⁴⁰

Even with this potential for friction, they can split the Belarusian pie easily. Considering that Belarus is set to privatize 180 state-owned ventures, Russia and China are in a prime position to carve up Belarus between them.¹⁴¹ In 2012 alone, the Belarusian government has decided to sell \$2.5 billion of state property.¹⁴² With this trend, it is conceivable that even if Lukashenko is ousted, there may be limited room for Western influence.

PART VI: TAKING ADVANTAGE OF THE EURASIAN UNION

Eurasian integration offers substantive aspects that counteract American interests and defeat economic sanctions. Still, the creation of a Eurasian common market will likely offer the United States certain opportunities, some of which it can use to deal with Belarus. If it acts quickly, the United States can rely on integration among the former Soviet republics to help it secure a foothold in the growing market. Even without United States involvement, however, the EEU's stated goal of having all member nations join the World Trade Organization ("WTO") will help liberalize the Belarusian economic system.¹⁴³

¹³⁴ Xin Dingding, *China to Build Satellite for Belarus*, CHINA DAILY (Sept. 20, 2011), http://europe.chinadaily.com.cn/china/2011-09/20/content_13737721.htm.

¹³⁵ *China Helps an Ailing Autocracy*, *supra* note 124.

¹³⁶ *Lenders of Last Resort*, *supra* note 83.

¹³⁷ EC STATISTICS – BELARUS, *supra* note 23, at 6.

¹³⁸ *Lenders of Last Resort*, *supra* note 83.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Belarus Government Plans to Sell State Property for \$2.5 Billion in 2012*, TELEGRAF.BY (Jan. 3, 2012), <http://telegraf.by/en/2012/01/v-2012-godu-v-belarusi-planiruyut-prodat-gossobstvennosti-na-2-5-mlrd-dollarov>.

¹⁴³ *See Declaration on the Eurasian Economic Integration*, ADVISORY AND EXPERT COUNCIL OF THE CUSTOMS UNION (Nov. 18, 2011), available at <http://www.sovet->

As China's involvement illustrates, Belarus can offer solid investment opportunities.¹⁴⁴ Unhindered access to the massive Russian market is one of the main incentives for Russia's neighbors to join the EEU framework.¹⁴⁵ The vast majority of Russia's population resides in the European portion of the country, which places Central Asian EEU members at a disadvantage.¹⁴⁶ On the other hand, Belarus, which is the only other European member of the EEU framework, can offer cheap labor and proximity to the target EEU market.¹⁴⁷ Belarus ranks considerably higher than Russia on the Doing Business Index,¹⁴⁸ making it a surprisingly solid option for American businesses searching for investment opportunities. Similarly, the United States may benefit significantly by emulating Russia and China in providing low interest loans in exchange for stakes in Belarusian state-owned enterprises. Though Belarus's recent economic troubles have caused rating agencies to lower the ratings of Belarusian debt,¹⁴⁹ it still remains an intriguing opportunity. Admittedly, such a scheme would require the United States to overhaul its sanction structure entirely. Current United States sanctions discourage foreign aid to the Belarusian government.¹⁵⁰ Moreover, with the OFAC's freezing of Belarusian assets, Lukashenko probably would respond in kind if given the opportunity.¹⁵¹ Nonetheless, if the United States decides to deviate from the erroneous approach of sanctioning Belarusian enterprises, it could see a significant windfall. If the United States hesitates, however, it may lose its chance.

The United States can invest in other EEU members and also benefit from Eurasian integration. Of the five nations currently con-

ts.ru/poleznie_materiali/normativno_pravovie_dokumenty/deklaraciya_o_evraziyskoy_ekonomicheskoy_integracii/.

¹⁴⁴ *China Helps an Ailing Autocracy*, *supra* note 124.

¹⁴⁵ See *The World Factbook – Belarus*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/bo.html> (last updated Nov. 15, 2011).

¹⁴⁶ See Anatoly Vishnevsky, *Replacement Migration: Is It a Solution for Russia?*, 6, U.N. Doc. UN/POP/PRA/2000/14 (Aug. 15, 2000), available at <http://www.un.org/esa/population/publications/popdecline/vishnevsky.pdf>.

¹⁴⁷ Sergei Blagov, *International Trade Customs Union of Kazakhstan, Russia, Belarus Approves Kyrgyzstan's Membership*, Int'l Trade Rep. Online (BNA) No. 28, at A-18 (Oct. 20, 2011).

¹⁴⁸ See *Economy Rankings*, WORLD BANK (June 2011), <http://www.doingbusiness.org/rankings>.

¹⁴⁹ Preiherman, *supra* note 81.

¹⁵⁰ See, e.g., Belarus Democracy Act of 2004, § 3(a), Pub. L. No. 108-347, 118 Stat. 1383 (codified as amended at 22 U.S.C. § 5811 (2012)).

¹⁵¹ For now, the only retaliatory sanction that Belarus has instituted is the suspension of a uranium exchange program. *No Future for US-Belarus Relations*, RT (Jan. 13, 2012), <http://rt.com/politics/belarus-democracy-gordon-opposition-683/>.

sidered in the EEU framework,¹⁵² Kazakhstan has the most favorable business environment.¹⁵³ The Central Asian republic stands to benefit significantly from Eurasian integration, and the United States can use it as a gateway into the EEU. Unlike Belarus and Kyrgyzstan, Kazakhstan does not depend on Russian markets to survive.¹⁵⁴ Goods sold to Russia account for less than a tenth of the Kazakhs' exports,¹⁵⁵ but this is anticipated to increase quickly.¹⁵⁶

Since the EurAsEC customs union ("Customs Union") began operating in 2010, Kazakhstan's exports to Russia have increased by almost 40 percent, and its exports to Belarus have more than doubled.¹⁵⁷ Moreover, due to its geography, Kazakhstan depends on the ability to transport goods through other countries to Western markets.¹⁵⁸ The Customs Union has allowed Kazakhstan to lower these shipping costs.¹⁵⁹

Though its financial sector still has problems, Kazakhstan's fiscal future seems positive.¹⁶⁰ The restructuring of three banks has reduced foreign indebtedness and the insurance sector has improved.¹⁶¹ Also, in an effort to upgrade the domestic securities market, the government has created proactive plans, which include increased collaboration with international organizations.¹⁶² Both Fitch Ratings and Standard & Poor's have raised the country's foreign currency debt

¹⁵² Currently, Russia, Belarus, and Kazakhstan have agreed to form the EEU by 2015. Kyrgyzstan and Tajikistan have both indicated that they are interested in joining. Blagov, *supra* note 147, at A-18.

¹⁵³ *Russia, Kazakhstan and Belarus Promise Eurasian Union Not to Become New USSR*, GAZETA.KZ (Nov. 22, 2011), <http://engarticles.gazeta.kz/art.asp?aid=352668>.

¹⁵⁴ See *World Factbook – Kazakhstan*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/kz.html> (last updated Feb. 23, 2012); see also *World Factbook – Belarus*, *supra* note 145; *World Factbook – Kyrgyzstan*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/kg.html> (last updated Feb. 23, 2012).

¹⁵⁵ *World Factbook – Kazakhstan*, *supra* note 154.

¹⁵⁶ See Plaschinsky, *supra* note 79.

¹⁵⁷ *Id.* EurAsEC is the Eurasian Economic Community, which initially set in motion the creation of a customs union and a common market among former Soviet republics. See also, EURAsEC TODAY, *supra* note 19, at 35.

¹⁵⁸ *WTO Accession*, EMBASSY OF THE REPUBLIC OF KAZAKHSTAN, <http://www.kazakhembus.com/index.php?page=wto-accession> (last visited Feb. 14, 2012).

¹⁵⁹ *Id.*

¹⁶⁰ Scott Rose, *Kazakhstan Upgraded at Fitch to Tie Russia on Foreign Assets*, BLOOMBERG (Nov. 21, 2011), <http://www.bloomberg.com/news/2011-11-21/kazakhstan-upgraded-at-fitch-to-tie-russia-on-foreign-assets-1-.html#>.

¹⁶¹ *Financial Sector*, EMBASSY OF THE REPUBLIC OF KAZAKHSTAN, <http://www.kazakhembus.com/index.php?page=banking-system> (last visited Feb. 14, 2012).

¹⁶² See *id.*

rating most likely because of these developments.¹⁶³ Until now, the main source of economic trouble in Kazakhstan has been the lack of quality investors.¹⁶⁴ The United States has the ability to fill that void. If it does not, then another country will likely take advantage of Kazakhstan's favorable legal infrastructure and economic opportunities.

Even if the United States decides not to invest in the EEU or to extend loans to Belarus, Eurasian integration may elicit some positive changes. The EEU strives to have all of its members become a part of the WTO in the near future.¹⁶⁵ In 2010, Belarus's government stated that it wished to intensify WTO accession efforts in 2012.¹⁶⁶ During the economic crisis of 2011, however, the legislature limited exports of gasoline, food, and other essential consumer products to countries outside the Customs Union.¹⁶⁷ This was a step in the wrong direction, but with Russia getting the green light to enter the WTO, Belarus will not be far behind.¹⁶⁸ To do that, the government will need to liberalize the country's economic policies.¹⁶⁹ For example, Belarus will have to relax currency control regulations.¹⁷⁰ Prior to the integration efforts, all enterprises conducting business in Belarus had to sell foreign currency to the state.¹⁷¹ Now, however, as a requirement for entering the SES, the government will have to abolish this law.¹⁷² Further economic liberalization will naturally continue due to Russia's guidance.¹⁷³ These byproducts of Eurasian integration will inherently benefit American interests.

PART VII: READJUSTING TRAVEL LAWS

Since 2006, both the United States and the EU have intermittently placed Lukashenko and members of his government on travel

¹⁶³ Rose, *supra* note 160.

¹⁶⁴ *Financial Sector*, *supra* note 161.

¹⁶⁵ *Presidents of Belarus, Russia and Kazakhstan Sign Eurasian Economic Integration Declaration*, BELTA (Nov. 11, 2011), http://news.belta.by/en/main_news?id=667406.

¹⁶⁶ Sergei Blagov, *WTO: Kazakh Minister Says Nation Will Finalize WTO Accession Negotiations by End of 2012*, Int'l Trade Rep. Online (BNA) No. 28, at 1078 (June 30, 2011).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See Sergei Blagov, *WTO: Russian President Vows Domestic Industry Will Not Be Hobbled by WTO Commitments*, Int'l Trade Rep. Online (BNA) No. 28, at 1973 (Dec. 8, 2011).

¹⁷⁰ *Id.*

¹⁷¹ See Plaschinsky, *supra* note 79.

¹⁷² *Id.*

¹⁷³ See Blagov, *WTO: Russian President Vows Domestic Industry Will Not Be Hobbled by WTO Commitments*, *supra* note 169.

blacklists.¹⁷⁴ Soon after the United States issued its newest round of sanctions in early 2012, the EU followed suit by blacklisting 135 Belarusian officials.¹⁷⁵ Probably more so than any other sanction, travel bans are much more applicable through the EU than the United States. While travel bans do succeed in punishing only those whom the West wishes to discipline, they are not necessarily effective in forcing the desired results.¹⁷⁶ Although the current travel ban structure is not detrimental to Western interests, its breadth should be reconsidered.¹⁷⁷ As a corollary, Western powers should also change their visa laws.¹⁷⁸

While the United States and the EU desire changes in the Belarusian government, the volume of banned Belarusian officials is excessive.¹⁷⁹ Not all Belarusian politicians sympathize with Lukashenko's policies, particularly in the realm of economics.¹⁸⁰ From a more symbolic standpoint, in stark contrast to the norm, certain officials even deliver all their public speeches in Belarusian.¹⁸¹ Interestingly, whereas in past years a disgruntled politician would have to leave the ruling party in order to oppose mainstream policies, it has become possible for Belarusian politicians to dissent while remaining a member of the government.¹⁸²

This indicates that perhaps the West's best chance of ousting Lukashenko involves allowing current members of the Belarusian government to liberalize the regime from the inside. Of course, this is no easy task. The United States and the EU cannot expressly support particular Belarusian politicians, as that would likely doom the politicians' careers. A decision not to ban particular officials, however, may implicitly support politicians who might not share the current government's views. Instead of categorically blacklisting all prominent Be-

¹⁷⁴ WOEHREL, *supra* note 28, at 2.

¹⁷⁵ *EU Closes Its Border for 135 More Belarusian Officials*, TELEGRAF.BY (Jan. 13, 2012), <http://telegraf.by/en/2012/01/es-zakroet-svoyu-granicu-esche-dlya-135-belorusskih-chinovnikov>.

¹⁷⁶ See, e.g., Mathew Charles, *The EU and Belarus: Sanctions? What Sanctions?*, EU OBSERVER, Jan. 27, 2012, <http://euobserver.com/7/115040> (describing the ineffectiveness of the travel ban, as a blacklisted Belarusian official was able to go to a conference in France).

¹⁷⁷ See *Getting the Travel Ban Right*, *supra* note 20.

¹⁷⁸ See *Shushkevich*, *supra* note 20.

¹⁷⁹ See *Getting the Travel Ban Right*, *supra* note 20.

¹⁸⁰ See S.B., *supra* note 22.

¹⁸¹ See Y.K., *Who Rules Belarus?*, BELARUS DIGEST (Nov. 21, 2011), <http://belarusdigest.com/story/who-rules-belarus-6597> [hereinafter *Who Rules Belarus?*].

¹⁸² S.B., *supra* note 22.

larusian officials, the West should first conduct a thorough analysis of those individuals it considers sanctioning.¹⁸³

If the West wishes to make a meaningful change that would help ordinary Belarusian citizens without helping the government, it should revise its visa regimes in regard to Belarus.¹⁸⁴ Free visas for non-blacklisted individuals would go a long way. Currently, visas to the European Union range from €60 to €99 – a huge portion of the average monthly income in Belarus.¹⁸⁵ Belarusians also have to deal with more red tape in obtaining an EU visa than the citizens of any other European nation.¹⁸⁶ In a country where freedom of the press is virtually nonexistent, travel restrictions can exacerbate the lack of Western thought.

Free visas should not cost the West much, but they would facilitate more exchange and cooperation projects.¹⁸⁷ Such a policy would also make it easier for Belarusians to obtain Western educations, which is arguably one of the most effective ways to infuse Western ideals into a country.¹⁸⁸ Also, outside of their homeland, Belarusians prefer Europe for travel and work.¹⁸⁹ Currently, Poland is the only EU country where well-educated Belarusians can work without restrictions.¹⁹⁰ Though the EU has every right to be concerned with security and illegal immigration, Belarusians have not exhibited any threatening signs in those areas.¹⁹¹ With the country's entire population less than 10 million, Belarusians are unlikely to create an unmanageable influx of people.¹⁹² Moreover, a distinction should be drawn between free visas and uncontrolled travel. The West would still have the capability of screening the people to whom it issues visas. In comparison to

¹⁸³ *Getting the Travel Ban Right*, *supra* note 20.

¹⁸⁴ *Shushkevich*, *supra* note 20.

¹⁸⁵ *Schengen Visa Fees*, SHENGEN VISA FEES, http://www.euro-dollar-currency.com/schengen_visa_fees.htm (last visited Feb. 13, 2012) (showing costs of Schengen visas); *Average Monthly Income in Belarus – 145\$*, BELSAT (Nov. 17, 2011), <http://belsat.eu/en/wiadomosci/a,5836,average-monthly-income-in-belarus-145.html> (listing the average monthly income of Belarusians at the end of 2011). At the time of this Comment's writing, €1 equaled about \$1.27.

¹⁸⁶ George Plaschinsky, *Belarus Is the World's Schengen Visa Champion*, BELARUS DIGEST (Jan. 31, 2012), <http://belarusdigest.com/story/belarus-worlds-schengen-visa-champion-7541>. It is worth noting that Europeans also struggle with the visa process when they wish to visit Belarus. Lack of reciprocity, however, should not have any effect on the EU's choice of visa regime. These are *unilateral* sanctions, after all. *Id.*

¹⁸⁷ S.B., *supra* note 22.

¹⁸⁸ *Shushkevich*, *supra* note 20.

¹⁸⁹ *Lukashenka in Moscow*, *supra* note 118.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

the more costly economic sanctions, free visas for the marginal number of individuals who may wish to travel to Europe is an insignificant expense. Most importantly, this policy would help the West forge closer ties with Belarus's people as opposed to its government.

PART VIII: CONCLUSION

Though international law validates economic and political sanctions, such sanctions are detrimental to Western interests. Assuming that the West actually wishes to improve the plight of Belarusian citizens, sanctioning Belarusian enterprises is not the best means to accomplish this goal. While the Belarusian government cannot respond in a fashion that would be detrimental to the United States, the political and economic forces at play in this Eastern European nation should concern Washington. Although it is no surprise that Russia continues to build its influence within Belarus, China's recent entry should also concern the United States. These two Eastern superpowers will continue appropriating Belarusian assets. While Belarus will acquire short-term relief from its economic woes, it will sell out its future. At the same time, American enterprise should actively consider entering the EEU market; if not in Belarus then in Kazakhstan, which provides an excellent climate for foreign investment. EEU members will have to compete among each other to draw foreign investment, and the United States should take advantage of these opportunities.

The West also should reconsider its travel bans and visa regimes. Though blacklists succeed in punishing the government rather than the populace, they still fail to help ordinary Belarusians. Younger politicians espouse more liberal ideologies,¹⁹³ and while they are still part of the Lukashenko machine, they might be the most effective source of change. Travel bans, instead, only serve to alienate them. Likewise, high costs of visas prevent many Belarusians from visiting, working, and studying in Western countries. Eliminating these debilitating costs should not pose economic or security threats to the West, while it would expose Belarusians to the Western methodologies of thinking and living.

Regardless of the West's policies, change in Belarus will not occur overnight. A new generation of Belarusians may need to come to power before any real change occurs. Right now, Belarus is mostly a gerontocracy, similar to the Soviet Union in its later years.¹⁹⁴ In addition, most of Lukashenko's support comes from older citizens.¹⁹⁵ Quite simply, many of these people will die soon, and with them much of

¹⁹³ *Who Rules Belarus?*, *supra* note 181.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Lukashenko's support. When that finally occurs, the West should benefit from having politicians and voters who have not been isolated and alienated as before.