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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.
⁴ Id.
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. A few months later, President Barack Obama signed the Belarus Democracy and Human Rights Act of 2011. Even though Congress labeled the bill as a sanction, the legislation simply itemizes America’s displeasure with the Lukashenko regime. 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.

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. Belarus’s nonexistent economic influence decreases its sanction costs. 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

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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 . . .”).

with Russia\textsuperscript{15} and its strategic importance to China’s entrance into European markets\textsuperscript{16} make the small nation increasingly vital to American interests.

The preferred methods of sanctioning Belarus do not materially impact the nation’s government.\textsuperscript{17} Instead, they deteriorate the prospects of regular citizens – allegedly the intended beneficiaries of these measures.\textsuperscript{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.\textsuperscript{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.\textsuperscript{20} Free visas for ordinary citizens would help open up the country.\textsuperscript{21} Likewise, the United States and the


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

\textsuperscript{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.evrazes.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.


\textsuperscript{21} Shushkevich, supra note 20.
EU should reconsider their approach to travel bans. 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. 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. 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. Part II supplies background information on the political developments within Belarus since the Soviet Union’s collapse, including prior sanctions that the West


24 See Cann, supra note 7, at 427.

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.
30 See id. § 3(d)(1).
32 Id. §§ 1-2.
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-
nomic relief. The IMF conditioned the loans on a liberalization of economic norms, most notably a twenty-percent devaluation in the Belarusian ruble. 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. Unfortunately, this détente did not last.

On December 19, 2010, Lukashenko won a fourth term in what was deemed a rigged election. Tens of thousands of Belarusians poured out into the streets to protest, and the government reacted with a vicious crackdown, detaining hundreds. In the aftermath, Lukashenko imprisoned the majority of his opponents, most of whom still remain incarcerated. While the West renewed its criticism of the Belarusian president, the economic crisis began to wreak havoc. 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. With the nation on the verge of ruin, Belarusians initiated a protest via social media to mimic the Arab Spring. 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 ferment

36 WOEHREL, supra note 28, at 3.
37 Id.
38 Id. at 7.
40 Id.
41 Schwirtz, supra note 5.
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. 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. 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.

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,” and invoked the International Emergency Economic Powers Act and the National Emergencies Act. Additional justification for sanctions is found both in the Foreign Commerce Clause, which allows the United States to shape its international economic policies, and the Restatement (Third) of Foreign Relations Law, which expressly permits economic sanctions.

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. 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.” In exchange, Belarus, Ukraine, and Kazakhstan agreed to surrender the nuclear weapons stored within their territory. 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. Additionally, the United Nations General Assembly has passed several resolutions to denounce unilateral sanctions. 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. 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.” Unfortunately, the GATT fails to clarify what exactly constitutes an emergency or a national security threat. This lack of guidance allows

56 Id.
59 Cann, supra note 7, at 414.
61 Cann, supra note 7, at 415–16.
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each nation to claim the right to define its national security interests as it sees fit.\textsuperscript{62} States could interpret the section to include any threat to fundamental ideology, foreign policy, political stability, or domestic industry.\textsuperscript{63} Under its current language, it seems impossible for a country to violate Article XXI.\textsuperscript{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.\textsuperscript{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.\textsuperscript{66} States wishing to use the exception have articulated that the wording in Article XXI gives them more leeway in determining what works better.\textsuperscript{67} The International Court of Justice (“ICJ”) partially agreed with this assessment, but did not give states carte blanche to use Article XXI.\textsuperscript{68} In Nicaragua v. United States, the ICJ denied individual countries the ability to determine the meanings of “self-defense” and “necessity.”\textsuperscript{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.\textsuperscript{70}

Though the GATT security exception may develop limits, countries like the United States continue to impose sanctions at will.\textsuperscript{71} For example, Congress did not consider national security interests when passing the Belarus Democracy Act of 2004.\textsuperscript{72} In many ways, it has become “politically expedient to allow [A]rticle XXI to remain an unspoken authority.”\textsuperscript{73} If a sanctioned country protests such methods, then the appeal to international regulatory bodies takes a long time.

\textsuperscript{62} Id.
\textsuperscript{63} Id. at 425.
\textsuperscript{64} Id. at 415–16.
\textsuperscript{65} Id. at 422.
\textsuperscript{66} Id.
\textsuperscript{67} Id. at 422–23.
\textsuperscript{68} See id. at 422–23.
\textsuperscript{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 235–36 (5th ed. 2009).
\textsuperscript{71} Cann, supra note 7, at 425.
\textsuperscript{72} Diallo, supra note 70, at 690.
\textsuperscript{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

75 Id.
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).
benefits to regular Belarusian citizens, but it also creates new problems.\footnote{See George Plaschinsky, \textit{Is the Customs Union Good for Belarus?}, \textit{Belarus Digest} (Nov. 11, 2011), http://belarusdigest.com/story/customs-union-good-belarus-6491.} 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.\footnote{See, e.g., Andrei Liakhovich, \textit{The Reasons Behind Putin’s Unprecedented Generosity Towards Lukashenka}, \textit{Belarus Digest} (Jan. 5, 2011), http://belarusdigest.com/story/reasons-behind-putin%E2%80%99s-unprecedented-generosity-towards-lukashenka-7103 [hereinafter Putin’s Unprecedented Generosity].} 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.\footnote{Yauheni Preiherman, \textit{Belarus the Indebted}, \textit{Belarus Digest} (Dec. 9, 2011), http://belarusdigest.com/story/belarus-indebted-6882.} Russia owns the majority of this figure, providing it with incredible leverage over Belarus.\footnote{See Iacob Koch-Weser, \textit{“Lenders of Last Resort”: Sino-Russian Rivalry in Belarus?}, \textit{Belarus Digest} (Nov. 30, 2011) http://belarusdigest.com/story/%E2%80%9Clenders-last-resort%E2%80%9D-sino-russian-rivalry-belarus-6767 [hereinafter Lenders of Last Resort].} Without any significant natural resources, Belarus cannot quickly increase its real wealth.\footnote{See Average Monthly Income in Belarus – 145$, \textit{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).} Its population is too poor to finance the massive debt.\footnote{Preiherman, supra note 81.} Consequently, it will have no choice but to capitalize state assets once the loans become due.\footnote{See The Russian Expansion, supra note 78.}

Russia has already begun this type of acquisition.\footnote{Gazprom to Acquire Balance of Beltransgaz, \textit{Natural Gas Europe} (June 18, 2011, 2:26 PM), http://www.naturalgaseurope.com/gazprom-expect-acquire-balance-beltransgaz.} 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.\footnote{Gazprom to Acquire Balance of Beltransgaz, \textit{Natural Gas Europe} (June 18, 2011, 2:26 PM), http://www.naturalgaseurope.com/gazprom-expect-acquire-balance-beltransgaz.} Russia and Belarus agreed to transfer the remaining stake in Beltransgaz to Gazprom within a
week of agreeing to the EEU framework. While debt repayment did not directly motivate this deal, Belarus had no other realistic option. Minsk had to find a way to minimize future gas prices before the previous gas deal expired. It made the correct decision under the circumstances, because the creation of alternative transport routes would have eaten into Beltransgaz's profits. 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. The recent opening of the Nord Stream would have given Russia the opportunity to bypass Belarus completely. The Nord Stream passes through the Baltic Sea directly to Germany, circumventing not only Belarus but also Poland. Moreover, Russia plans to construct a southern pipeline under the Black Sea, avoiding Belarus and Ukraine. Even though Gazprom stated it would not decrease gas transport through Belarus, 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. As a result, Ukrainian and Slovakian pipelines will absorb the brunt of the cut in volume.

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

89 See id.  
90 Id.  
91 See id.  
93 Soldatkin & Pinchuk, supra note 88.  
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.  
loan of $10 billion to build Belarus’s first nuclear power station. In the long term, this will allow Belarus to alleviate its power supply problems to an extent. Preparations have already begun in western Belarus.

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. 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. The sole remaining obstacle concerns the company’s worth. Auditors valued MAZ at only $800 million, an amount the Belarusian authorities find inadequate. They wish to obtain a second opinion, but, pending the appraisal, it looks like MAZ will belong to Russia soon.

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

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

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104 Shokhina, supra note 103.
105 Id.
108 Id.
109 Id.
110 Id.
111 See The Russian Expansion, supra note 78.
112 See id.
113 Id.
Russian appropriation.\textsuperscript{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,\textsuperscript{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.\textsuperscript{117} At the moment, he happens to be indispensable to Russian interests.\textsuperscript{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.\textsuperscript{119} In contrast, Ukraine charges Russia $40 billion over thirty years for one naval base on the Black Sea.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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).

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

\textsuperscript{117} See Putin's Unprecedented Generosity, supra note 80.


totalitarian governments. While Western powers criticize dictators and limit economic interaction with authoritarian regimes, the Chinese have willingly filled the vacuums left by United States withdrawal. Similar to Moscow, Beijing has extended low interest loans in exchange for stakes in Belarusian state enterprises. 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. The Chinese have announced a plan to drastically increase foreign direct investment in Belarus. 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. Moreover, Belarus has experienced underinvestment in manufacturing and infrastructure — two strengths for the Chinese. With other countries feeling comfortable investing only in trade and services, China has the opportunity to corner the capital formation market.

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. At least five of the Chinese companies currently in Belarus are publicly listed and have a market cap of over $500 million. The two governments have already agreed to create a Chinese industrial park with a massive hotel serving Chinese businessmen. More telling, Lukashenko has expressed a desire to develop a Chinatown in Minsk. 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

123 Id.
125 Cash-flooded China to Loan $1Bln to Cash-hungry Belarus, supra note 124.
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. In addition, they have exported nuclear and thermal energy projects, as well as chemical production.

As China continues to entrench itself within its European ally, tensions between China and Russia may arise. 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. For the most part, however, these two international superpowers seem to focus on noncompeting industries. Russia is focused on Belarus’s oil and gas reserves, while China focuses on Belarus’s infrastructure and machinery. Russia and China compete, however, over Belarus’s power generation and chemical industries.

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. In 2012 alone, the Belarusian government has decided to sell $2.5 billion of state property.

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.

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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.
143 See Declaration on the Eurasian Economic Integration, ADVISORY AND EXPERT COUNCIL OF THE CUSTOMS UNIOn (Nov. 18, 2011), available at http://www.sovet-
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As China’s involvement illustrates, Belarus can offer solid investment opportunities. Unhindered access to the massive Russian market is one of the main incentives for Russia’s neighbors to join the EEU framework. The vast majority of Russia’s population resides in the European portion of the country, which places Central Asian EEU members at a disadvantage. 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. Belarus ranks considerably higher than Russia on the Doing Business Index, 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, 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. Moreover, with the OFAC’s freezing of Belarusian assets, Lukashenko probably would respond in kind if given the opportunity. 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-

144 China Helps an Ailing Autocracy, supra note 124.
149 Preiherman, supra note 81.
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/.
Considered in the EEU framework, Kazakhstan has the most favorable business environment. 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. Goods sold to Russia account for less than a tenth of the Kazakhs’ exports, but this is anticipated to increase quickly.

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. Moreover, due to its geography, Kazakhstan depends on the ability to transport goods through other countries to Western markets. The Customs Union has allowed Kazakhstan to lower these shipping costs. Though its financial sector still has problems, Kazakhstan’s fiscal future seems positive. The restructuring of three banks has reduced foreign indebtedness and the insurance sector has improved. Also, in an effort to upgrade the domestic securities market, the government has created proactive plans, which include increased collaboration with international organizations. Both Fitch Ratings and Standard & Poor’s have raised the country’s foreign currency debt

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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.
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.
159 Id.
162 See id.
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rating most likely because of these developments. Until now, the main source of economic trouble in Kazakhstan has been the lack of quality investors. 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. In 2010, Belarus’s government stated that it wished to intensify WTO accession efforts in 2012. 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. 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. To do that, the government will need to liberalize the country’s economic policies. For example, Belarus will have to relax currency control regulations. Prior to the integration efforts, all enterprises conducting business in Belarus had to sell foreign currency to the state. Now, however, as a requirement for entering the SES, the government will have to abolish this law. Further economic liberalization will naturally continue due to Russia’s guidance. 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.
167 Id.
168 Id.
170 Id.
171 See Plaschinsky, supra note 79.
172 Id.
173 See Blagov, WTO: Russian President Vows Domestic Industry Will Not Be Hobbed 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 Bel-

174 WOEHREL, supra note 28, at 2.
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.
182 S.B., supra note 22.
larusian officials, the West should first conduct a thorough analysis of those individuals it considers sanctioning.\textsuperscript{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.\textsuperscript{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.\textsuperscript{185} Belarusians also have to deal with more red tape in obtaining an EU visa than the citizens of any other European nation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{188} Also, outside of their homeland, Belarusians prefer Europe for travel and work.\textsuperscript{189} Currently, Poland is the only EU country where well-educated Belarusians can work without restrictions.\textsuperscript{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.\textsuperscript{191} With the country’s entire population less than 10 million, Belarusians are unlikely to create an unmanageable influx of people.\textsuperscript{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

\textsuperscript{183} Getting the Travel Ban Right, supra note 20.

\textsuperscript{184} Shushkevich, supra note 20.


At the time of this Comment’s writing, €1 equaled about $1.27.

\textsuperscript{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.

\textsuperscript{187} S.B., supra note 22.

\textsuperscript{188} Shushkevich, supra note 20.

\textsuperscript{189} Lukashenka in Moscow, supra note 118.

\textsuperscript{190} Id.

\textsuperscript{191} Id.

\textsuperscript{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, 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. In addition, most of Lukashenko’s support comes from older citizens. Quite simply, many of these people will die soon, and with them much of

194 Id.
195 Id.
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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.