

NOTES

UNREST IN BELARUS: THE LEGAL PERSPECTIVES FOR RUSSIAN INTEGRATION AND THE POTENTIAL WESTERN RESPONSE

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I. INTRODUCTION

The August 2020 Belarusian Presidential Election caused political unrest after President Alexander Lukashenko controversially won reelection by earning over eighty percent of the vote.¹ Lukashenko's opponent, Svetlana Tikhanovskaya, disputed the results and claimed victory, but Lukashenko exiled her immediately after the election.² The people of Belarus took to the streets in mass to protest Tikhanovskaya's exile and demanded for Lukashenko's resignation.³ In response to the protests, Lukashenko secretly moved up his inauguration from November to late September while arresting thousands of opposition leaders and protesters.⁴ Lukashenko has not yet indicated any intention of stepping down, but in December he made a general promise to the people to amend the Belarusian Constitution.⁵ The opposition ultimately rejected Lukashenko's proposed amendment as a tactic to end the protests.⁶ To this day, the protests continue and Belarusian police have detained over 30,000 protesters since they began.⁷

Not only was the response to the election met with internal unrest, but the international community also pressured Lukashenko to step down. Immediately following the election, the European Union opposed Lukashenko's reelection and called for Belarus to release the ballot counts.⁸ Lukashenko responded by closing Belarus's western border, which is shared with several EU Member States, and blamed the origins of the protests on the West.⁹ After Lukashenko's adversarial response and his crackdown against protesters, both the EU and U.S. decided to stop recognizing Lukashenko as

¹ *Timeline of Election Turmoil in Belarus*, RTE (Aug. 11, 2020), <https://www.rte.ie/news/newslens/2020/0811/1158602-belarus/>.

² *See id.* (reporting that Tikhanovskaya was compelled to flee to Lithuania for her children's sake).

³ *Id.*

⁴ Yuras Karmanau, *Belarus President Sworn in at Unannounced Inaugural Ceremony*, AP (Sept. 26, 2020), <https://apnews.com/article/alexander-lukashenko-belarus-inaugurations-elections-minsk-c1d91895962eab5120e1dd2ae5fb2b16>.

⁵ *Thousands of Protesters March in Belarus, Dozens Detained*, ALJAZEERA (Dec. 6, 2020), <https://www.aljazeera.com/news/2020/12/6/belarus-opposition-rallies-in-latest-protest-amid-arrests>.

⁶ RFE/RL's Belarus Service, *As Belarus Protests Enter Sixth Month, Lukashenka Repeats Vague Promise of Change*, RADIOFREEEUR. RADIOLIBERTY (Jan. 10, 2021, 15:42 GMT), <https://www.rferl.org/a/as-belarus-protests-enter-sixth-month-lukashenka-repeats-vague-promise-of-change/31040652.html>.

⁷ *Id.*

⁸ *Timeline of Election Turmoil in Belarus*, *supra* note 1.

⁹ *Belarus President Closes Western Borders, Puts Army on High Alert*, ALJAZEERA (Sept. 17, 2020), <https://www.aljazeera.com/news/2020/09/17/belarus-president-closes-western-borders-puts-army-on-high-alert/>.

the legitimate president of Belarus.¹⁰ Due to the ongoing unrest, it is unclear whether the West will exert any more pressure on Lukashenko to force his resignation.

Any further action from the West likely depends on the response from Belarus's closest ally—Russia. The two states became politically and economically intertwined, considering Belarus was originally part of the Soviet Union, fueling discussions about integrating the two states in the late 1990s, but they have somewhat drifted apart since.¹¹ For years, Belarus and Russia have been constantly bickering over oil and natural gas prices, and Russia felt especially betrayed when Belarus remained neutral during the 2014 Ukrainian Crisis.¹² Nevertheless, Russia backed Lukashenko after the controversial 2020 Election result and continues to recognize him as the official sitting president of Belarus.¹³ In addition, Russia offered Belarus a \$1.5 billion loan to keep Belarus's economy afloat during the unrest.¹⁴ It is possible that Russia's offer to send special forces to Belarus may alarm the West seeing that the last time Russia sent troops to an Eastern European neighbor was to Ukraine in 2014, which caused more unrest and led to the Russian annexation of Crimea.¹⁵

The current Belarusian instability could help Russia expand its influence throughout Eastern Europe and create more conflict between Russia

¹⁰ Dave Lawler, *U.S. No Longer Recognizes Lukashenko as Legitimate President of Belarus*, AXIOS (Sept. 23, 2020), <https://www.axios.com/us-lukashenko-president-belarus-353ed235-98f7-446f-919a-6a6cdab81975.html>.

¹¹ Yauheni Preiherman, *Can Belarus Become a Success Story of European Security?*, EUR. COUNCIL ON FOREIGN RELS. (Feb. 21, 2019), https://www.ecfr.eu/article/commentary_can_belarus_become_a_success_story_of_european_security (In 1999, Russia and Belarus signed the Union State treaty and agreed to stay sovereign while coordinating economic and foreign security policies. But since that treaty, they have drifted apart because “Minsk and Moscow have different understandings about what it means to be allies.”); *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Belarus*, OFFICE OF THE HISTORIAN, <https://history.state.gov/countries/belarus> (last visited Sept. 30, 2021) (That Belarus had previously been a constituent republic of USSR).

¹² See *id.* (stating that Russian officials thought Belarus's neutral stance in the Russian-Ukrainian conflict went “against Russia's interests,” and that Belarus should have stood by Moscow as it experienced increased Western pressures).

¹³ Shaun Walker, *Belarus: Lukashenko Vows to Stay in First Interview Since Protests*, THE GUARDIAN (Sept. 8, 2020), <https://www.theguardian.com/world/2020/sep/08/belarus-lukashenko-vows-to-stay-in-first-interview-since-protests> (As support for Lukashenko and recognition of his presidency, “Putin . . . promised to send a contingent of special forces to Belarus to prop up Lukashenko's rule if necessary.”).

¹⁴ *Belarus President Closes Western Borders, Puts Army on High Alert*, *supra* note 9.

¹⁵ Adam Twardowski, *The Return of Novorossiya: Why Russia's Intervention in Ukraine Exposes the Weakness of International Law*, 24 MINN. J. INT'L L. 351, 352 (2015) (Russia's annexation of Crimea raised the likelihood of a protracted geopolitical standoff and denigration of international legal norms designed to provide consultative processes for the diffusion of interstate tensions).

and the West. With Belarus under Russian control, there would be less buffer between Russia and its former satellite states-turned EU members, such as Poland and the Baltic States.¹⁶ The takeover would also give Russia more control over oil and natural gas pipelines running through Eastern Europe, expanding its economic grasp on the region.¹⁷ In this event, the West would likely push back against any Russian aggression, but the West's sanctions against Russia during the annexation of Crimea in 2014 barely harmed the Russian economy, indicating a Western response is unlikely to deter Russia.¹⁸ This Note will examine the roles of both Russia and the West in creating an unstable Belarus ripe for Russian takeover. On the Russian side, this Note will mostly focus on the 1999 Union State Treaty that partially unified Russia and Belarus, which could provide the Russian legal justification for integrating the two states.¹⁹ It will also examine the legal justifications Russia used to annex Crimea in 2014, such as the right to protect ethnic Russians outside of its borders, to determine if they will attempt to justify aggression in Belarus on the same grounds.²⁰

Regarding Western relations with Belarus, this Note will analyze policies implemented against Belarus that pulled Belarus closer to Russia. The implementation of these sanctions, such as the Belarus Democracy Acts implemented by the United States, pushed Belarus into the hands of Russia and opens the door for possible integration as soon as Lukashenko loses control of the state.²¹ This Note will also examine the Western response to Russian aggression in Ukraine and argue that the West's failure to impose significant sanctions on Russia will fail to deter Russia from pursuing any future aggression in Belarus. This potential takeover will only further destabilize Eastern Europe and create more tension between Russia and the West.

¹⁶ *Belarus President Closes Western Borders, Puts Army on High Alert*, *supra* note 14.

¹⁷ See Nikola Mikovic, *How Russia Benefited from Belarus's Turmoil*, INTERPRETER (Sept. 7, 2020), <https://www.lowyinstitute.org/the-interpreter/how-russia-benefited-belarus-turmoil> (discussing Belarus's dependence on Russia for oil and natural gas).

¹⁸ Twardowski, *supra* note 15, at 360 & 382.

¹⁹ Preiherman, *supra* note 11.

²⁰ Twardoski, *supra* note 15, at 366.

²¹ See Claire M. Diallo, *The U.S. Empire: Is Any Sovereign Nation Safe After the Russian and Belarus Democracy Acts?*, 91 IOWA L. REV. 673, 677 (2006) (discussing the illegitimacy of the Russian and Belarus Democracy Acts).

II. BELARUS BACKGROUND

A. *Belarusian-Russian Relations Post USSR Dissolution and the 1999 Union State Treaty*

Located in Eastern Europe on the western border of Russia, Belarus gained its independence from the Soviet Union in 1991.²² Belarus held its first presidential election in 1994 and elected Alexander Lukashenko.²³ Lukashenko has served as the President ever since, and the 1994 election was allegedly the only free and fair election the state ever conducted.²⁴ During his tenure as President, Lukashenko imposed authoritarian measures, such as abolishing the Belarusian Parliament, to restrict the political and civil rights of his people.²⁵ The Belarusian people's political and civil rights have drastically decreased over Lukashenko's twenty-six year tenure in office, as Belarus has the worst human rights record in Europe.²⁶

Although Belarus gained its independence in 1991, Belarus has remained closely tied to Russia since its independence. Belarus is a young state, lacking both a national identity and the history of pre-Soviet independence enjoyed by the other Baltic States.²⁷ This lack of identity allowed Lukashenko to develop Belarus into essentially a Soviet Satellite after he took office in 1994.²⁸ For example, Lukashenko changed the Belarusian flag to resemble the Soviet-era flag.²⁹ He also made Russian an official language along with Belarusian and strongly discouraged the use of Belarusian by conducting governmental operations mostly in Russian.³⁰ This cultural integration in the 1990s caused Russia to act as Belarus's closest ally both politically and economically, which led to discussions of integration.³¹ After a series of bilateral treaties in the late 1990s, Russia and Belarus signed

²² *Belarus*, CENT. INTEL. AGENCY: THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/belarus/> (last updated Sept. 8, 2021).

²³ *Id.*

²⁴ Bureau of European and Eurasian Affairs, *U.S. Relations with Belarus: Bilateral Relations Fact Sheet*, U.S. DEP'T. OF STATE (Aug. 30, 2021), <https://www.state.gov/u-s-relations-with-belarus/>; *Belarus*, *supra* note 22 (Belarus's July 1994 election was the country's first and only direct election).

²⁵ Bureau of European and Eurasian Affairs, *supra* note 24.

²⁶ See *Freedom in the World 2020: Belarus*, FREEDOM HOUSE, <https://freedomhouse.org/country/belarus/freedom-world/2020> (last visited Sept. 16, 2021) (rating the political and civil rights of Belarus a 19 out of 100 based on multiple categories on political and civil rights, which was the worst score in Europe).

²⁷ Jeffrey Mankoff, *Will Belarus Be the Next Ukraine? Why the Brewing Conflict between Moscow and Minsk Is Bad News*, FOREIGN AFFS. (Feb. 5, 2020), <https://www.foreignaffairs.com/articles/belarus/2020-02-05/will-belarus-be-next-ukraine>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Preiherman, *supra* note 11.

the Union State Agreement in 1999.³² The Agreement established the infrastructure for a potential complete integration between the two states.

The Union State Agreement served as a promising “new stage in the process of the unification of the peoples of the two countries.”³³ However, the Agreement emphasized the importance of state sovereignty and required the consent of Belarus for adopting any future measures implemented by the Union State.³⁴ Also, the Agreement explicitly stated that the two states would retain sovereignty, independence, territorial integrity, state structure, constitutions, state flags, coats of arms, and other attributes of statehood.³⁵

The Union State Agreement sought to balance the unification interests and the sovereignty interests of Belarus and Russia by dividing the governance structure into two categories: sole responsibility powers and joint responsibility powers.³⁶ These divisions of responsibility indicated when the Union State would work unilaterally and when the member states must assist the Union State. Sole responsibility gave the exclusive power to the Union State, while joint responsibility required the member states to work with the Union State.³⁷

Most of the sole responsibility powers were economic in nature and included establishing common markets, creating a single-tax system, establishing a unified currency, and developing a common trade and customs policy in relation to other international actors.³⁸ Although most of the sole responsibility powers were economic, some sole responsibilities of the Union State were more dynamic. These dynamic sole responsibilities included some significant foreign policy powers, such as creating a unified border policy, operating regional troops, and engaging in defense contracts.³⁹

In contrast, joint responsibility mostly gave the Union State the power for future expansion by creating mechanisms that allowed other states to eventually join the Union State.⁴⁰ These powers included admitting other states into the Union State, coordinating foreign policy regarding treaties, ensuring rights for citizens throughout the Union State, and environmental protections.⁴¹ Because joint responsibilities implemented potential future

³² Yauheni Preiherman, *Treaty on the Establishment of the Union State of Belarus and Russia*, MINSK DIALOGUE (Apr. 1, 2019), <https://minkdialogue.by/en/research/memorable-notes/treaty-on-the-establishment-of-the-union-state-of-belarus-and-russia>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See generally *id.* (providing a list of the joint responsibilities of the members of the Union State).

⁴¹ *Id.*

membership and gave the Union State powers similar to the goals of larger international organizations, these provisions indicated that the signatories intended the Union State to develop into a large international organization likely consisting of former Soviet satellites.⁴²

Although the Union State Agreement protected the sovereignty of Belarus, the Agreement appeared as a way Russia could eventually reunify with Belarus. The unification of economies and many social policies and the coordination on foreign policy and bilateral defense make it difficult to determine how a state remains sovereign after losing the unilateral power to make these decisions. Also, some of the long-term goals of the Agreement included a unified parliament, one currency, and a potential constitution.⁴³

The two states never fully implemented the Agreement and by the mid-2000s Belarus and Russia ended talks of forming a Union State.⁴⁴ Russia ultimately did not fully implement the Agreement because the Union State required Belarusian approval on every policy presented before the Union State.⁴⁵ Lukashenko demanded that the Agreement include the consent provision because of his opposition to giving up state sovereignty, and a bilateral agreement of this magnitude with Russia would likely have led to Russia absorbing Belarus if there was not a consent provision.⁴⁶ Because Russia did not want to give up so much power to its significantly-smaller former satellite, it decided to hold off.⁴⁷

The states' failure to fully implement the Agreement indicates that Russia likely attempted to mask its takeover and use the Agreement to regain lost territory. The Agreement was not a fully-cooperative bilateral agreement because Russia was uncomfortable giving Belarus too much power within the Agreement. With Belarus in turmoil and thousands of protesters calling for Lukashenko's resignation, Russia could force Lukashenko into a Russia-friendly Union State Agreement in exchange for protection from a western intervention or a governmental overthrow by the Belarusian people.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ ANAIS MARIN, THE UNION STATE OF BELARUS AND RUSSIA: MYTHS AND REALITIES OF POLITICAL-MILITARY INTEGRATION, 3 (2020), <https://vilniusinstitute.lt/wp-content/uploads/2020/06/Anais-Marin-Union-State-of-Belarus-and-Russia.pdf>.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

B. Belarusian-Russian Relations Post Union State Agreement

Deal talks for the Union State dissolved shortly after they began. In 2002, Lukashenko delayed the unification as much as possible after Vladimir Putin made it clear the only way for the deal to move further was a complete unification of Belarus and Russia.⁴⁸ However, this failure to adopt the Union State did not prevent the two states from remaining close economically and politically. Presently, the two states are both members of the Eurasian Economic Union and are major trading partners, as Russia accounts for nearly forty-eight percent of Belarusian foreign trade.⁴⁹ Belarus and Russia also conduct joint military exercises every few years and have various bilateral agreements regarding military cooperation.⁵⁰

Even though the two states have remained close allies, Belarus and Russia have had multiple disagreements throughout the twenty-first century. These disputes primarily arose in two different areas: negotiation of energy prices between the two states and Russian aggression throughout Eastern Europe.⁵¹

The ongoing energy dispute between Belarus and Russia is over a decade long and remains at an impasse.⁵² Russia is a major oil exporter to Belarus, and Russia also runs a major natural gas pipeline through Belarus.⁵³ Lukashenko often requested discounts on Russian oil for the domestic price, but Russia asserted they would not discount oil for Belarus until they officially joined Russia as a Union State.⁵⁴ However, between 2005 and 2015, Russia gave Belarus discounts on energy and loans ranging from eleven to twenty-seven percent of the Belarusian GDP.⁵⁵ Russia drastically decreased its

⁴⁸ *Id.* at 3.

⁴⁹ *Belarus and Russia*, MINISTRY OF FOREIGN AFFS. OF THE REPUBLIC OF BELR., <https://www.mfa.gov.by/en/bilateral/russia/> (last visited Sept. 17, 2021).

⁵⁰ *Id.*

⁵¹ See Mikovic, *supra* note 17 (recounting attempts by Russia and Belarus to resolve disagreements concerning oil subsidies and Russian military presence in Belarus); see also Pritish Gupta, *Russia-Belarus Relations: The Future of the Union State*, OBSERVER RSCH. FOUND. (Apr. 28, 2020), <https://www.orfonline.org/expert-speak/russia-belarus-relations-future-union-state-65288/> (discussing Belarus's loss of Russian oil subsidies and their refusal to accept a Russian Air Force base).

⁵² Gupta, *supra* note 51.

⁵³ Justin Clune, *The Natural Gas Trade between the Russian Federation and the European Union: Power Dynamics, Legal Challenges, and a Country Caught in the Middle*, 35 NW. J. INT'L L. & BUS. 199, 203 (2014).

⁵⁴ ARSENY SIVITSKY, BELARUS – RUSSIA: FROM A STRATEGIC DEAL TO AN INTEGRATION ULTIMATUM, 2-3 (2019), <https://www.fpri.org/wp-content/uploads/2019/12/rfp3-sivitsky.pdf> (Minsk and Moscow had conflicting views regarding the Union State. Belarus refused to make concessions that would undermine its sovereignty. Russia was defiant that it will not make concessions on preserving integration subsidies unless Belarus gave up its independence and sovereignty).

⁵⁵ *Id.* at 6.

discounts in 2015, which severely hurt the Belarusian economy.⁵⁶ Russia took this a step further in 2018 by implementing a tax maneuver that created a mineral extraction tax on originally duty-free Russian crude oil that Russia exported to Belarus.⁵⁷ By 2025, this tax will cause losses amounting to approximately one-sixth of Belarus's GDP, and Russia's economic pressure on Belarus may force the states to integrate.⁵⁸ Because the unrest after the 2020 election significantly weakened the Belarusian economy even further, Russia's new oil taxes will exponentially hurt Belarus as the unrest continues.⁵⁹

The two states also acted adversely regarding foreign policy, especially during times of unrest within the region. Most of this unrest was in response to Russian aggression when Russia attempted to expand its influence into South Ossetia and Ukraine.⁶⁰ Violence broke out in both conflicts and the West condemned Russia's actions.⁶¹ Instead of supporting Russia, Belarus remained neutral throughout these conflicts, and Lukashenko even backed NATO rhetorically.⁶² In maintaining Belarus's neutral position, Lukashenko focused on the importance of state sovereignty, which he preserved by putting off the Union State Agreement for two decades.⁶³ This neutrality stance and pro-Western rhetoric helped Lukashenko convince the West to lift sanctions on Belarus in 2015.⁶⁴ Russian aggression throughout the region likely made Lukashenko nervous, thus, to protect Belarus from becoming Russia's next invasion target, Lukashenko outwardly supported state sovereignty instead of the Russian aggression.

From the Russian perspective, Belarus's neutral stance is a betrayal by one of Russia's closest allies.⁶⁵ Their differences in foreign policy have put Belarus's position as Russia's top ally in jeopardy, and consequentially Belarus felt the impact both economically and militarily.⁶⁶ Russia recently stopped giving Belarus discounts on weapons and aircrafts, and in some instances refused to sell Belarus weapons at all.⁶⁷ Russia's halt in weapon sales to Belarus caused Belarus's military to decay and made Belarus more

⁵⁶ *Id.*

⁵⁷ *Id.* at 12.

⁵⁸ *Id.*

⁵⁹ See Mikovic, *supra* note 17 (explaining that Belarus was supposed to receive about 24 million tonnes of Russian oil in 2020 and 2021 and that if the Kremlin did not provide a significant discount the Belarusian economy would suffer).

⁶⁰ MARIN, *supra* note 44, at 3 & 8.

⁶¹ *Id.* at 9.

⁶² *Id.* at 8.

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ *Id.* at 1 & 9.

⁶⁷ *Id.* at 11.

dependent on Russian military support.⁶⁸ As a result, Lukashenko is forced to rely on the Russian military if any future violence breaks out, and may even have to allow Russia to establish a military base in Belarus.⁶⁹ Russia is the only state backing Lukashenko during the current unrest, so Lukashenko may have no choice but to fall in line with Russia, possibly to the point of full integration between the two states.

The economic, political, and military ties between Belarus and Russia indicate the two states are vastly interconnected. However, this connection is mostly one-sided because Russia holds most of its power and resources over the head of its former state.⁷⁰ This strong connection between Belarus and Russia has made it difficult for Belarus to break free from Russian influence because Russia would often withhold preferential treatment if Belarus made attempts to expand its international network.⁷¹ The forced dependence on Russia, along with Russia's economic pressure on Belarus, could give Lukashenko no choice but to revive a Union State Agreement. Especially with his power being threatened by uprisings, Lukashenko may turn to his only ally in Russia to keep himself afloat, even at the cost of state sovereignty.

C. *Belarusian-Western Relations and Their International Agreements*

The adversarial nature of the relationship between Belarus and the West prevented Belarus from expanding its international network, making Belarus more dependent on Russia. This negative relationship with the West began almost as soon as Lukashenko took power. In 1996, shortly after Lukashenko took office, he faced Western criticism after he held a referendum that dissolved the Belarusian Parliament.⁷² Shortly after the referendum, Lukashenko suspended all U.S. and EU ambassadors from Belarus.⁷³

Between the U.S. and EU, the U.S. had a more adversarial relationship with Belarus. After the 1996 incident with Western ambassadors, the next major interaction between the U.S. and Belarus occurred in 2004

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See SIVITSKY, *supra* note 54, at 2 (explaining that the 1999 Treaty on the Creation of a Union State of Russia and Belarus was premised on a principle of equality which is yet to be realized due to conflicting interests including Russia's interests to undermine the national sovereignty and independence of Belarus).

⁷¹ See MARIN, *supra* note 44, at 1 (When Belarus refused to side with Russia in its ongoing confrontation with Ukraine and the West, Russia became dissatisfied with this failing loyalty, and consequentially has been cutting oil subsidies since 2015, making the resumption of financial support contingent upon the Belarusian leadership committing to deeper economic, political, and military integration within the Union State).

⁷² Bureau of European and Eurasian Affairs, *supra* note 24.

⁷³ *Id.*

when Congress passed the Belarus Democracy Act.⁷⁴ This Act intended to promote democracy in Belarus by providing funding to pro-democratic opposition groups within Belarus and sanctioning the Lukashenko regime.⁷⁵ Originally, the Act was supposed to last for two years, but Belarus made no progress in becoming a democracy within that time.⁷⁶

Accordingly, in 2006, President Bush issued an Executive Order that continued U.S. sanctions against Belarus.⁷⁷ Congress reauthorized the Democracy Act later that year.⁷⁸ Although the U.S. removed sanctions against Belarus in 2008, the U.S. reimposed sanctions in 2011 after Lukashenko allegedly rigged his 2010 Presidential Election.⁷⁹ The U.S. reinstated these sanctions by repassing the Democracy Act in 2011 and these sanctions are still in place today.⁸⁰

In passing the Democracy Act, the U.S. declared Belarus a threat to national security and justified funding opposition groups and freezing Belarusian assets with IEEPA and the Foreign Commerce Clause.⁸¹ Even with this legal justification, the Democracy Act created a permanent strain between the U.S. and Belarus because Belarus believed the U.S. funding opposition groups was an attempt to undermine Belarusian sovereignty.⁸² Belarus also believed that the Act breached the Budapest Memorandum of 1994, where former USSR Republics including Belarus surrendered their nuclear weapons in exchange for the U.S. promise not to coerce them politically or economically.⁸³

After initial attempts at cooperation failed, the EU, just like the U.S., sanctioned Belarus, but it subsequently removed the sanctions in 2008 and invited Belarus to join the Eastern Partnership Initiative.⁸⁴ The Eastern Partnership Initiative was an attempt to improve relations between the EU and former USSR Republics through political, economic, and societal

⁷⁴ Belarus Democracy Act of 2004, Pub. L. No. 108-347, 118 Stat. 1383.

⁷⁵ *Id.* §§ 2, 3.

⁷⁶ Ilya Zlatkin, *Opportunistic Discipline: Using Eurasian Integration to Improve Sanctions Against Belarus*, 11 RICH. J. GLOB. L. & BUS. 291, 295 (2012).

⁷⁷ Exec. Order No. 13405, 71 Fed. Reg. 35,485 (June 16, 2006).

⁷⁸ Zlatkin, *supra* note 76.

⁷⁹ *Id.* at 295-96.

⁸⁰ *Id.* at 297.

⁸¹ *Id.*

⁸² See Diallo, *supra* note 21, at 682 & 688 (In reaction to the Democracy Acts, a Belarusian interior ministry spokesman stated that the Acts deny the Belarusian people's aspiration towards a stable and sovereign state. In a warning tone, the spokesman further stated that Belarus reserves the right to retaliate in response to the U.S. passing of the Democracy Acts).

⁸³ Zlatkin, *supra* note 76, at 298.

⁸⁴ *Id.* at 295-296.

integration.⁸⁵ The EU also reimplemented sanctions after 2011, but maintained an economic relationship with Belarus through the Eastern Partnership because Belarus accounted for about one-third of EU trade.⁸⁶ Before new restrictions were imposed on Belarus after their 2020 Presidential Election, the former EU sanctions against Belarus were mostly symbolic but Lukashenko often expressed his opposition to the sanctions.⁸⁷

Since Belarus became a state, its relationship with the West has remained mostly adversarial. Although the EU and Belarus developed an economic relationship through the Eastern Partnership, Lukashenko's poor human rights record and the EU's continued sanctions on one of Belarus's major trading partners keep the two parties at odds. The sanctions, along with the U.S. funding groups that opposed the Belarusian government, made Belarus skeptical of dealing with the West and fostered Belarus's dependence on Russia even further. The West essentially pushed Belarus towards Russia with various rounds of sanctions and left Belarus exposed to possible Russian aggression.

III. THE UKRAINIAN CRISIS OF 2014 AND ITS IMPLICATIONS ON BELARUS

To determine Russia's potential strategy for expanding into Belarus, it is significant to examine the last time Russia used force to annex territory from an Eastern European neighbor, which occurred during the 2014 Ukrainian Crisis. The turmoil in Ukraine began in November 2013 after its President, Viktor Yanukovich, refused to sign an association agreement with the EU.⁸⁸ The Ukrainian people protested his refusal which led to the ouster of President Yanukovich.⁸⁹ However, not all of the protesters were pro-EU; pro-Russia groups used the unrest to help Russia increase its influence on Ukraine.⁹⁰ After the overthrow of Yanukovich in February 2014, troops resembling Russian military yet lacking identification began seizing parts of

⁸⁵ European Neighbourhood Policy and Enlargement Negotiations, *Eastern Partnership*, EUR. COMM'N, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/eastern-partnership_en (last visited Sept. 23, 2021).

⁸⁶ *20 Deliverables for 2020: Bringing Tangible Results for Citizens*, E. P'SHIP, <https://www.consilium.europa.eu/media/44362/20-deliverables-for-2020.pdf> (last visited Oct. 4, 2021).

⁸⁷ Yauheni Preiherman, *Belarus and the EU: Where Could Another Rapprochement Lead?*, JAMESTOWN FOUND. (Jan. 27, 2020, 5:49 PM), <https://jamestown.org/program/belarus-and-the-eu-where-could-another-rapprochement-lead/>.

⁸⁸ Christian Marxsen, *Die Krimkrise: Eine Völkerrechtliche Perspektive [The Crimea Crisis: An International Law Perspective]*, 74 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT [ZaöRV] 367, 368 – 369 (2014) (Ger.), https://www.mpil.de/files/pdf4/Marxsen_2014_-_The_crimea_crisis_-_an_international_law_perspective.pdf.

⁸⁹ *Id.* at 369.

⁹⁰ *Id.* at 369.

Crimea.⁹¹ By March 2014, the Russian military asserted its control over Crimea and held a referendum, where the majority of citizens chose to join Russia rather than restore the 1992 Crimean Constitution.⁹² The international community heavily criticized and deemed the referendum unfair because ninety-seven percent of votes were in favor of joining Russia.⁹³ The Ukrainian takeover is significant because it demonstrates both the potential legal justifications Russia could use if it unifies with Belarus and the potential Western response to Belarus-Russia unification. It also serves as evidence of Russia's desire to unify with Belarus because unification will help Russia protect its Ukrainian interests and solidify Russia's control of Eastern Europe.⁹⁴

A. *Russian Legal Justifications for Annexation*

By sending unmarked troops to Ukraine and using military force to annex Crimea, Russia violated the UN Charter, the 1994 Treaty of Budapest regarding Non-Proliferation, and many bilateral agreements that assured the sovereignty of Ukraine.⁹⁵ Russia attempted to justify the military action by asserting its treaties with Ukraine were no longer binding because the old government that made the treaties had been overthrown.⁹⁶ This argument had no basis in international law, so Russia asserted two alternative justifications for its military takeover.⁹⁷ The first justification was that Russia wanted to protect its nationals abroad, and the second was intervention upon invitation.⁹⁸

The first legal justification for military intervention was that Russia was entitled to use force to protect its nationals abroad.⁹⁹ Russia asserted that a significant percentage of residents in Crimea were Russian, and thus it had a right to defend them under the UN Charter or an unwritten customary exception for the use of force.¹⁰⁰ The UN Charter only provides the right to self-defense in "an ongoing armed attack against a state or the threat of

⁹¹ Steven Pifer, *Five Years After Crimea's Illegal Annexation, the Issue is No Closer to Resolution*, BROOKINGS (Mar. 18, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/03/18/five-years-after-crimeas-illegal-annexation-the-issue-is-no-closer-to-resolution/>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Mankoff, *supra* note 27 (explaining that if Russia could integrate with Belarus geopolitically, Russia can station its troops in Belarus creating military pressure on Ukraine and making it harder for NATO to defend its eastern flank).

⁹⁵ Marxsen, *supra* note 88, at 370.

⁹⁶ *Id.* at 371.

⁹⁷ *Id.*

⁹⁸ *Id.* at 372.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

imminent attack.”¹⁰¹ The customary law exception only allows for a state to rescue its own nationals.¹⁰² Since Russia was the state initiating the military attack and the Russians in Crimea were ethnic Russians rather than Russian citizens, neither of these self-defense justifications have merit.¹⁰³

The second justification Russia asserted was intervention upon invitation. Russia claimed that before President Yanukovich fled Ukraine, he invited Russia to intervene.¹⁰⁴ Russia asserted that Yanukovich still technically had the authority to invite Russia into Ukraine to prevent an unconstitutional transfer of power because the Ukrainian Parliament failed to properly remove him under the Ukrainian Constitution.¹⁰⁵ Even though Yanukovich was technically still President, his consent was improper under international law because when he asked Russia to intervene, he lacked any real control of Ukraine.¹⁰⁶ Article 29 of the International Law Commission requires that the state consent “must be attributable to the state,” and since Yanukovich lacked any real control over Ukraine, his consent was not attributable to Ukraine and was therefore invalid.¹⁰⁷ Therefore, Russia’s second legal justification failed because it was not properly invited to intervene.

B. Western Response to Russia’s Annexation of Crimea

The West quickly condemned Russia’s aggression in Ukraine. The U.S. and EU did not recognize the annexation of Crimea and imposed both visa and financial sanctions on Russia.¹⁰⁸ Specifically, the EU applied an import ban on goods from Crimea, cancelled bilateral EU-Russia summits, stopped supplying tourism services in Crimea, and imposed an export ban on certain goods.¹⁰⁹ However, these sanctions failed to deter Russia’s aggression because the EU failed to introduce broad sanctions against Russia, nor did the EU sanction any of Russia’s top officials.¹¹⁰ The EU also failed to respond to Russia’s increased aggression in 2018 when Russia attacked Ukrainian vessels in the region.¹¹¹

¹⁰¹ *Id.* (alteration in original).

¹⁰² *Id.* at 373-74.

¹⁰³ *Id.* at 374.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 374-75.

¹⁰⁶ *Id.* at 375, 376.

¹⁰⁷ *Id.* at 376.

¹⁰⁸ Pifer, *supra* note 91.

¹⁰⁹ Katya Kruk, *The Crimean Factor: How the European Union Reacted to Russia’s Annexation of Crimea*, WARSAW INST. (May 7, 2019), <https://warsawinstitute.org/crimean-factor-european-union-reacted-russias-annexation-crimea/>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

As for the United States, in 2014 the U.S. condemned Russia's annexation of Crimea and immediately imposed sanctions. The U.S. sanctioned more than 735 individuals and entities after the annexation under the authority of four executive orders.¹¹² Since 2014, the U.S. intensified their sanctions regime against Russia because of Russia's adversarial actions against the U.S. through continuing its aggression in Ukraine and supporting regimes that openly opposed the U.S.¹¹³ Like the sanctions imposed by the EU, the initial sanctions from the U.S. failed to change Russia's behavior as Russia became more aggressive in Ukraine in 2018.¹¹⁴ The sanctions also failed to deter Russia's other aggressive behavior towards the U.S., indicating that the U.S. sanctions failed to serve their purpose. Even though the U.S. imposed greater restrictions on Russia than did the EU, the American sanctions towards Russia similarly lacked the efficacy to change any Russian behavior.

IV. ANALYSIS

As the unrest in Belarus continues to escalate, Russia may use the instability within Belarus to expand its influence throughout Eastern Europe. Given that Russia did not hold back in annexing Crimea, Russia could use Belarus's current state as an opportunity to expand its territory. It is also likely that if the West imposes a punishment for Russian aggression in Belarus that is similar to the sanctions they imposed on Russia after its aggression in Ukraine, it is unlikely Russia will be deterred from action in Belarus.

Any future unification between Belarus and Russia would likely occur through the framework of the Union State Agreement. Although the Agreement ultimately failed in the mid-2000s, it failed because Lukashenko wanted to protect Belarusian sovereignty, and Russia did not want to give him equal bargaining power.¹¹⁵ Depending on the severity of the protests and how much pressure the West puts on Lukashenko to resign, the only potential way for Lukashenko to retain some power would be to enter into an agreement with Russia at the cost of state sovereignty.

The justifications Russia provided while intervening in Ukraine violated international law, so it is unlikely these same justifications would be valid during a similar Russian intervention in Belarus.¹¹⁶ The claim for self-

¹¹² DIANNE E. RENNACK & CORY WELT, CONG. RSCH. SERV., R45415, U.S. SANCTIONS ON RUSSIA: AN OVERVIEW (2021).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ MARIN, *supra* note 44.

¹¹⁶ *See* Marxsen, *supra* note 88, at 389-90 (stating that international law did not allow Russia to either intervene to rescue Russia citizens or to intervene in Crimea upon Yanukovich's invitation).

defense of its citizens is much weaker here because there are drastically fewer Russian citizens and ethnic Russians living in Belarus than in Crimea.¹¹⁷

Regarding intervention by invitation, Russia will have a stronger case if Lukashenko asks for Russia to provide military support. Unlike in Ukraine, Lukashenko remains the President of Belarus and has not yet fled the country.¹¹⁸ The people challenging the election complicate this justification because Lukashenko could no longer be the legitimate leader of Belarus. But most of Belarus's internal government, such as the military, is still backing Lukashenko as he remains in Belarus. Thus, it remains a possibility.¹¹⁹ Therefore, Russia could use intervention by invitation if Lukashenko invites Russia into Belarus while Lukashenko still holds on to presidential power. However, this justification is limited because the invitation would only give Russia the power to help Lukashenko remain in power and not the power to completely take over Belarus.¹²⁰ To complete a full unification, Russia could coerce Lukashenko into implementing a more Russian-friendly Union State Agreement in return for Russian protection. Nevertheless, Russia may not even use a justification because the previous response from the West to its failed legal justifications did not do any significant harm to Russia.

The West would likely respond to this takeover but not enough to deter Russia. The EU and U.S. already implemented massive sanctions on Russia that failed to change Russia's behavior, so it is unlikely that another round of sanctions would further deter Russian aggression.¹²¹ The West must either implement some carrot diplomacy or use force to prevent Russian intervention. However, both options seem unlikely as they refused to use force in Ukraine but likely do not want to remove sanctions against Russia. Therefore, the Western response will not keep Russia out of Belarus, giving Russia a clear path to Belarusian unification.

V. CONCLUSION

As the unrest in Belarus continues, the door for Russian aggression opens wider. After decades of treating Belarus like an enemy, the EU and U.S. could have pushed Belarus right back under Russian control. Belarus became overly dependent on Russian political and economic resources, which laid the framework for potential integration between the two states. The West's failure to respond in Ukraine gave Russia the indication that another act of aggression in Eastern Europe could pass without a significant response.

¹¹⁷ See *Belarus*, *supra* note 22 (showing an 8.3% ethnic Russian population in Belarus).

¹¹⁸ Marxsen, *supra* note 88, at 374, 375 & 379.

¹¹⁹ *Id.* at 379.

¹²⁰ *Id.*

¹²¹ CORY WELT ET AL., CONG. RSCH. SERV., R45415, U.S. SANCTIONS ON RUSSIA 1, 3 (2020), <https://crsreports.congress.gov/product/pdf/R/R45415/9>.

Any Russian intervention would harm the Belarusian people because they would likely be subjected to another authoritarian regime, like what they are currently protesting.¹²² To stop Russian aggression, the West must act before Russia has the opportunity intervene in Belarus. This act would involve taking an active role in transitioning Belarus into a democratic state, either through diplomatic negotiations with the current regime to give the people more political and civil rights, or the more radical alternative, establishing Tikhonovskaya as the President of Belarus. If the West were to leave Belarus open to any Russian intervention, then it would allow Russia to expand its influence in the region both politically and economically while continuing the oppression of the Belarusian people. This expansion would threaten former USSR Satellites, such as Poland and the Baltic States, while increasing tensions between Russia and the West.

¹²² See *Freedom in the World 2020: Belarus*, *supra* note 26 (labelling Belarus as an “authoritarian police state in which elections are openly rigged and civil liberties are curtailed.”); see also *Freedom in the World 2020: Russia*, FREEDOM HOUSE, <https://freedomhouse.org/country/russia/freedom-world/2020> (last visited Sept. 28, 2021) (rating Russia’s freedom level a 20/100, which is one higher than Belarus).