

# **Transnational Networks and Norm Compliance: Stopping Executions in Belarus**

*Volha Charnysh*

## **Introduction**

A real momentum to end the death penalty is gathering around the world. More than two-thirds of states have abolished it in law or practice, only 21 states carried out executions in 2010 (Amnesty International [AI], 2011). Europe, where the death penalty is a pressing human rights issue, has been the leader of the abolition movement. Its most notable success is in the post-Soviet region. By 2008, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Turkmenistan, Ukraine and Uzbekistan abolished the death penalty; Tajikistan, Russia, and Kazakhstan imposed moratoria on executions. The region is death penalty-free with the exception of one state – Belarus. As many as 400 people have been executed in Belarus since 1991 (AI, 2009b), with the latest execution in March 2012.

Belarus stipulated the provisional character of the punishment in the 1994 Constitution, enjoys a moderate crime rate, is ethnically homogeneous and stable, and was promised Council of Europe (CoE) membership and rapprochement with the European Union (EU) for abolishing the death penalty. Yet years of efforts by domestic and international non-governmental organizations (NGOs), human rights defenders, and the EU, the CoE, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations (UN) have not convinced Minsk to stop executions. This chapter attempts to explain why the abolition effort failed.

Understanding the Belarusian case is important because the norm compliance literature over-emphasizes successes, creating a bias in favour of norms that work and states that comply (Kowert and Legro, 1996, 485). While the death penalty norm has triumphed in Europe and the former Soviet Union (FSU), explaining the singular case of Belarus's non-compliance could help understand the limits of transnational influence in other parts of the world. Furthermore, a small economically weak Belarus offers a good test for norm socialization theories because of the salience of the norm against the death penalty in Europe and the size and strength of the transnational network pushing for abolition.

In this chapter, I first evaluate the strength of the norm pressure and the transnational abolition

effort, and then explore two potential explanations for their failure. I argue that the failure of the abolition effort in Belarus is a consequence of the weak European linkage and leverage in Belarus, and in particular of the deliberate European policy of isolation. I show that the EU's tendency to connect rewards to performance on several human rights and political issues at once increases the costs of Belarus's compliance.

### **The Strength of the Norm against the Death Penalty**

The strength of the norm against the death penalty is crucial for the success of norm socialization (Thomas, 2001). Belarus's executions contradict the norm that has taken hold in an astonishing number of states and is enshrined in several international treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR, endorsed by 72 states as of December 2010. Abolition of the death penalty is seen as a requirement for entry to the EU and the CoE, and is stipulated in the two protocols of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as well as the EU Charter of Fundamental Rights. In 2007, the European Parliament, the EU presidency, the European Commission, and the CoE signed a Joint Declaration in order to promote universal abolition.

The death penalty in Belarus arguably violates other human rights, including 'the right to be free of excessive, repressive and tortuous punishments' (Hood and Hoyle, 2008, 19). Executions in Belarus are also criticized because of their secrecy, the abusive detention system and the flawed justice mechanisms (CoE, 1999, 7; Viasna, 2006; Amnesty International, 2009a) which entail violation of the legal standards of the UN Committee against Torture, the UN Human Rights Committee (UNHRC), the UN Economic and Social Council, the CoE and Belarus's OSCE commitments.<sup>1</sup>

In the case of Belarus, the norm pressure is also strengthened by the phenomenon of regional clustering (Simmons, 2009, 18, 89, 91–6). If in the early 1990s Belarus was a typical post-Soviet state executing its criminals, by 2008 it has become the only executioner in the region, and began to face much stronger criticism.

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<sup>1</sup> See for example, UN Human Rights Committee (2003); Resolution 1989/64, adopted on 24 May 1989 by the UN Economic and Social Council, Resolution 2005/59, adopted on 20 April 2005 by the UN Human Rights Commission.

Simmons (2009) shows that an explicit public treaty commitment by the target state strengthens the norm and can be employed strategically by transnational actors. Belarus has signed two international treaties related to the death penalty: the ICCPR, seeking to limit the death penalty where it is still applied, and the Convention on the Rights of the Child, prohibiting the death penalty for juveniles and children. In addition, Belarus ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Belarus is obligated to abolish the death penalty by its own constitution (1994) and Criminal Code (1999), both of which see the penalty as temporary. At the same time, Belarus has not joined the Second Optional Protocol to the ICCPR, which explicitly prohibits the death penalty.

Warr (1995) argues that norms have more impact if they accord with the pre-existing social understanding. Indeed, leaders who retain executions refer to public opinion, even in undemocratic states like Belarus.<sup>2</sup> Nevertheless, in most states, the punishment was abolished despite its popularity among the public (Garland, 1990, 246).

In short, the norm against the death penalty in Europe is strong, which is acknowledged even by Belarusian officials, who concede the pre-eminence of the norm in Europe even as they explain why executions in Minsk continue.

**The Transnational Network Operating in Belarus**

The strength of the transnational network seeking abolition is determined by the availability of resources, support by national governments and inter-governmental institutions, and strong links to domestic civil society in the target state (Risse, 2000, 204–5). All of these factors are present in the Belarusian case. The normative pressure on Minsk comes from international and Belarusian NGOs, individual national governments, the CoE, the EU, the OSCE and the UN (see Table 11.1).

**Table 11.1 Transnational network for the abolition of the death penalty in Belarus**

<b>BELARUS</b>	
<b>Viasna Human Rights Centre (1996)</b>	Documents and publicizes executions; petitions the authorities; liaises with the UN bodies; also involved in other human rights campaigns
<b>Belarusian Helsinki Committee</b>	Publishes reports about executions; petitions the authorities; monitors

<sup>2</sup> One possible explanation for why public opinion on the death penalty seems so important for authoritarian leaders, according to Anckar (2004, 170), is that ‘In situations where authoritarian governments face the difficult task of legitimating their rule, it is difficult to see why they should confront the population in an issue which does not constitute a threat to is rule.’

(1995)	other human rights violations
<b>Belarusian PEN-center</b> (1989)	Participates in 2009 campaign against the death penalty
<b>Belarusian Association of Journalists</b> (1995)	Educates the public on the death penalty issue; launch 2009 campaign
<b>Belarusian Center for Constitutionalism</b>	Published <i>Abolishment of Death Penalty in Belarus</i>
<b>Assembly of Pro-democratic NGOs</b> (1997)	Supports Viasna's campaign by publicizing information
<b>Legal Initiative</b>	Educates the public and the officials on the issue
<b>EU STATES</b>	
<b>Horizon – against Death Penalty</b> (2010) (Poland)	Holds events in support of abolition; teaches a course for abolitionists; promoted the movie on death penalty made by Belarusian activists
<b>Belsat TV channel</b> (2007) (Poland)	Helped make and screen the movie about the death penalty
<b>Belarus Watch</b> (2004) (Lithuania)	Supports the campaign, but focuses on elections and freedom of movement
<b>Belarusian Human Rights House</b> (2006) (Lithuania)	Supports human rights defenders in Belarus, participates in the death penalty campaign
<b>International Association Civic Belarus</b> (2004) (Czech Republic)	Supports Viasna and the death penalty campaign by publicizing information
<b>German Coalition Against DP</b> (1997) (Germany)	Publicizes information about the death penalty in Belarus; mobilizes public opinion in Germany
<b>INTERNATIONAL</b>	
<b>Amnesty International</b> (1961)	Monitors executions; documents cases; examines prison conditions; appeals to the authorities
<b>Hands Off Cain</b> (1993)	Pressured Italian government to intervene; publicizes information
<b>Human Rights Watch</b> (1978)	Mobilizes public opinion; documents executions
<b>Academic Network against Capital Punishment</b>	Provides expertise on the issue; publicizes information and mobilizes public opinion
<b>Poster for Tomorrow</b> (2009)	Organized competition of posters “Death is not justice” in Belarus in 2009
<b>REGIONAL ORGANIZATIONS</b>	
<b>EU</b> (1993)	Made abolition a condition for closer relations with Belarus
<b>CoE</b> (1949)	Raises individual death penalty cases with the authorities; stripped Belarus of its special guest status in 1997 over human rights concerns
<b>OSCE</b> (1975)	Calls on Belarus to abolish the penalty; publishes case studies on retentionist states
<b>UN</b> (1945)	Addresses human rights violations in Belarus in the Universal Periodic Review; repeatedly called on Belarus to abolish the death penalty and to make information on the death penalty public; issues non-binding resolutions; criticizes Belarus' violations in its rulings

The key role is played by Amnesty International, which has campaigned against the death penalty in the region since the 1970s. AI published several reports on Belarus and initiated a capacity-building effort aimed at Belarusian civic activism on the death penalty. In 2008, AI held a seminar on campaigning against the death penalty in Ukraine (because AI and the invited NGOs were not registered in Belarus;

McGill, personal communication). AI works directly on individual cases, participates in high-level lobbying, and has developed a ‘close working relationship with the CoE’ (Jung, personal communication).

The death penalty in Belarus has also been taken up by the international NGO Hands Off Cain and by NGOs in Poland and Lithuania, which have large Belarusian diasporas and many organizations dedicated to human rights violations in Belarus, as well as in other countries.

The domestic civil society organizations in Belarus, which have more traditionally focused on freedom of expression and assembly, became actively involved in the abolition of the death penalty because they saw it ‘as a less political issue’ that could ‘unite civil society’ (McGill and Jung, personal communications<sup>3</sup>). The leading domestic organizations campaigning for abolition are Viasna and the Belarus Helsinki Committee (BHC). These organizations increase public awareness by mobilizing the media and public opinion, gather first-hand evidence in specific cases, and help appeal cases to the UN bodies.<sup>4</sup> They also send open letters to the president asking for pardons (Viasna, 2009). Human rights activists stage pickets outside the Presidential Administration in Minsk and around the country, and are often detained and fined (Viasna, 2009; Viasna, 2010). The domestic civil society organizations also appeal to public figures to petition the authorities.<sup>5</sup>

In co-operation with CoE, the Belarusian Center for Constitutionalism and the Belarusian organization Legal Initiative (Pravovaia Iniciativa) have published over thirty books on Belarus’s legal system and its human rights record, including several volumes on the abolition of the Death Penalty in Belarus (for example, Filippov and Vashkevich 2003; Filippov and Vashkevich, 2007).

In January 2009, a new Human Rights Activists against the Death Penalty campaign was launched by activists from Viasna, BHC, the Belarusian PEN-center, the Union of Belarusian Writers and the

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<sup>3</sup> Heather McGill is researcher on the Eurasia Team (interviews 11 and 12 January 2011) of AI. Aisha Jung is campaigner on the Eurasian Team of AI (interview 10 January 2011).

<sup>4</sup> Arguably, their main mission lies in informing the public and not helping the convicted. Oleg Alkaev, who headed the execution command of the Minsk Isolator for five years, said that sometimes human rights defenders have actually made matters worse by ‘putting the court in a situation where a sympathetic verdict was impossible because it would seem to be a concession to the [human rights] defender’; personal communication, 5 January 2011.

<sup>5</sup> One such petition was delivered to the Presidential Administration and Parliament in 2009, signed by more than thirty well-known cultural and civil activists, human rights defenders, lawyers and scientists. In 2010, English musician Sting announced support for the campaign.

Belarusian Association of Journalists (BAJ). In Belarus, the campaign was also supported by the Belarusian Social Democratic Party, the United Civil Party, the Young Democrats and the Civil Forum. The activists informed the people about executions in Belarus, submitted a petition to the authorities, and organized a contest of creative works on the issue.<sup>6</sup> The campaign was chosen as the civil campaign of the year by the Belarusian Assembly of Pro-democratic NGOs in December 2009.

The efforts of domestic and transnational activists definitely suffer from the ‘rigid and hostile political environment’ in Belarus (Expert Council on NGO Law of the Council of Europe, 2009). As of January 2009, there were only 0.2 officially registered NGOs per 1,000 Belarusians (the average in Europe is four; Sahm, 2009, 51). NGOs face obstacles when trying to register, and any activity on behalf of non-registered NGOs is a criminal offence under Article 193-1 of the Criminal Code. Those organizations that do pass the registration process cannot carry out their activities freely because of strict supervision by the government. Even AI was denied registration in Belarus. Viasna also operates without registration; its request has been denied three times for politically motivated reasons.<sup>7</sup> The problem is exacerbated by the fact that most organizations campaigning for abolition are also interested in the broader issues of human rights and democratic freedoms, which increases the likelihood of state persecution.

The norm against the death penalty has mobilized a vibrant transnational network that includes not only civil society actors, but also the EU, the CoE, the UN and the OSCE.

In the *Guidelines to EU Policy towards Third Countries on the Death Penalty* adopted in 1998, the EU vowed to ‘work towards the abolition of the death penalty as a strongly held policy view agreed by all EU member states’ (Council of the EU, 1998). During 1994–2007, the EU allocated more than 11 million euros for civil society projects aimed at raising public awareness, conducting studies, training lawyers and securing access to legal support for death row inmates (Europa, 2007). The last executioner in Europe, Belarus bears the brunt of the EU’s efforts, and is censured and sanctioned on a regular basis.

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<sup>6</sup> Uladzimir Shcherbau, personal communication; Scherbau is the adviser to the UN Representation in the Republic of Belarus, interviewed 23 November 2010 and 4 January 2011.

<sup>7</sup> UNHRC (2007); Valiantsin Stefanovich, personal communication; Stefanovich is Deputy Head of Viasna, interviewed 16 November 2011.

The UN Committee against Torture, the UN Human Rights Committee, and the UN Third Committee also criticize executions in Belarus. In addition to condemnation, the UN adopts non-binding resolutions, investigates human rights violations, and reviews appeals from the relatives and lawyers of people on death row. In September 2010, the UN Human Rights Council adopted the Universal Periodic Review outcome on Belarus, in which 14 states raised concerns about the death penalty in Belarus.

The Committee of Ministers of the CoE and the Parliamentary Assembly of the Council of Europe (PACE) are the strongest crusaders against the death penalty. In 1995, PACE made abolition a precondition for joining the CoE, which led to a wave of policy changes in the post-Soviet countries. Belarus was stripped of its CoE special guest status in 1997 over human rights concerns. PACE indicated readiness to restore it for the first time only in 2009, pending ‘substantive and irreversible progress towards Council of Europe standards’, particularly in regard to the electoral process, respect for political freedom and media pluralism, and the death penalty (Hurskainen, 2009). The CoE raises death penalty issues with Belarusian authorities year after year, making clear that ‘Belarus could never hope to be considered for CoE membership as long as it maintains these brutal punishments’ (CoE Secretary General Walter Shwimmer, quoted in AI, 2004). Belarusian human rights groups have identified the CoE’s influence as central (Viasna, 2002), and so have Belarusian officials, who have dubbed the death penalty ‘a CoE rule’.

The OSCE has also consistently called on Belarus to abolish the death penalty. Since 1999, the OSCE has prepared an annual background paper, *The Death Penalty in the OSCE Area*, asking the Belarusian authorities to answer a questionnaire on the issue.

### **Norm Socialization Mechanisms**

In the end, even strong norm pressure and a robust network of actors seeking to induce compliance leave the decision to comply with the target state. Most theoretical explanations on norm compliance follow either a rationalist or a constructivist logic. The former focuses on cost–benefit calculations, material reinforcement and coercion (for example, Wagner, 1998). According to rationalist logic, transnational pressure changes the cost–benefit analysis of a target state; the constructivist approach emphasizes

learning and persuasion (Adler, 1997; Ruggie, 1998), and explains compliance as a change in preferences through learning and interaction (Finnemore and Sikkink, 1998; Price, 1998).

Checkel (2005, 804) bridges the constructivist and rationalist mechanisms by distinguishing between Type I and Type II norm socialization. In Type I socialization, norms are not internalized, and actors engage in cost–benefit analysis and/or role-playing; this type is consistent with rationalist bargaining explanations and the constructivist mechanism of social protest/mobilization. Type II socialization implies norm internalization, and occurs by a more involved mechanism of ‘normative suasion’ (Checkel, 2005, 804).<sup>8</sup> Similarly, Simmons (2009, 58) divides states into sincere ratifiers, false negatives (which are committed in principle, but fail to ratify) and strategic ratifiers (which ratify for immediate rewards or to avoid criticism). Sincere ratifiers result from Type II socialization via normative suasion; strategic ratifiers result from Type I socialization that changes the costs/benefits of compliance and/or leads to compliance via exposure and communication; false negatives occur at the intersection of the two mechanisms: when the costs of norm adoption are high (for example, they involve difficult changes to legislation), but normative suasion has succeeded.

Type II socialization that results from normative suasion usually comes after Type I socialization has already occurred (Checkel, 2005). Therefore, this paper does not address Type II socialization in the case study of Belarus, where Type I socialization failed. The features of the two other norm socialization mechanisms are explained below.

#### *Strategic Calculation and Conditionality*

If a state’s leadership is not committed to the norm due to deeply held beliefs, it may engage in cost–benefit calculations when considering whether to comply. In this case, reinforcement rather than persuasion could lead to a behavioural change (Schimmelfennig, 2005b, 107). This approach is taken by the scholars of political conditionality (who tend to emphasize inter-governmental channels) and by the scholars who explore the changes in states’ utility calculations resulting from transnational norm pressure

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<sup>8</sup> Here I view the choice of a strategy as independent from the type of agency. However, some scholars see the changes in cost–benefit analysis as effected primarily by intergovernmental agents (rather than both transnational civil society and inter-governmental actors) and the transnational civil society channel as utilizing exclusively the social learning and interaction mechanisms; see, for example, Schimmelfennig (2005b), 107.



(for example, Kelley, 2004; Finnemore and Sikkink, 1998). In particular, Schimmelfennig argues that the effectiveness of conditionality depends on the size of international rewards versus domestic norm adoption costs, and the credibility of conditionality. Cost–benefit calculations can be changed by material or social reinforcement (Schimmelfennig, 2005b, 108–9). The more the norms ‘affect the security and integrity of the state, the government’s power base, and its core political practices of power preservation’, the more the costs grow (Schimmelfennig, 2005a, 3). The highest costs are those of adopting liberal norms, which ‘limit the autonomy of governments and prohibit the use of certain instruments to preserve their power’ (Schimmelfennig, 2005, 111). This is why liberal norm compliance by undemocratic states is only possible when the costs of compliance are offset by major external gains that come from NATO and EU membership (Schimmelfennig, 2005a, 6).

#### *From Role-playing to Linkage and Leverage Mechanisms*

Norm socialization often involves more than getting the incentives and disincentives right. According to Checkel (2000, 19), the very process of social interaction within international organizations can promote state compliance by means of ‘policy dialogues, jawboning, learning, persuasion’. Compliance via role-playing works through ‘prolonged exposure and communication’. The result is that the target actors adopt roles ‘because it is easier socially, as opposed to only and always acting strategically and instrumentally’ (Checkel, 2005, 810–11).

Importantly, institutional contact may be much more likely to lead to norm socialization when combined with contact in other areas and strengthened by the high leverage of the socializing agent. In particular, Way and Levitsky (2007) argue that the differences along the dimensions of linkage and leverage are crucial for explaining why democratization succeeds in some post-Communist states but not in others, and I extend their argument to explain the socialization of European norms like the norm against the death penalty in the FSU.

Way and Levitsky define Western leverage as ‘governments’ vulnerability to external democratizing pressure’ (Way and Levitsky, 2007, 50). Leverage raises the cost of building and maintaining an authoritarian regime (Way and Levitsky, 2007, 51). Leverage rarely leads to effective

democratization unless it is combined with linkage, conceptualized as ‘the density of ties (economic, geographic, political, diplomatic, social, and organizational) and cross-border flows (of capital, goods and services, people, and information)’ between a target state and the USA, the EU and Western-dominated institutions (Way and Levitsky, 2007, 53). Strong linkage makes the regime’s abuses known to the international community, increases the probability of a Western response, creates domestic actors interested in good relations with the West, and when ‘combined with leverage reshapes the domestic balance of power within authoritarian regimes’ (Way and Levitsky, 2007, 60). In contrast, weak linkage limits constraints on autocratic governments, undermines Western influence in the country, and undercuts ‘the development of a powerful domestic constituency for democracy and good relations with the West’ (Ekiert, Kubik and Vachudova, 2007, 25). Linkage encompasses contact, seen by Checkel as crucial for socialization via role-playing, and in combination with leverage, linkage seems more appropriate for explaining norm compliance in the post-Soviet region. It is notable that the states that abolished the death penalty earliest and under the least pressure were those located closest to and with the greatest economic and social ties with Western Europe (Fawn, 2001, 72).

### **Abolishing the Death Penalty in Belarus: One Step Forward, Two Steps Back**

The Criminal Code of Belarus (1999) provides for capital punishment for 12 offences during peacetime and two offences during wartime, and specifies the temporary nature of capital punishment.<sup>9</sup> A person sentenced to death has the right to appeal to the Supreme Court, and then to petition the Presidential Commission for a pardon (Article 84.19 of the Constitution). Executions take place in the Minsk Isolator by shooting, usually approximately a year after sentencing.

Reading Belarusian headlines, one gains an impression that a moratorium is just around the corner.<sup>10</sup> Indeed, since 1991, the legal system has been liberalized and the 1961 Soviet Criminal Code has

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<sup>9</sup> These are as follows: launching aggressive war (Art. 122.2), murdering a representative of a foreign state or international organization with the intention to provoke international tension or war (Art. 124.2), international terrorism (Art. 126), genocide (Art. 127), crimes against humanity (Art. 128), application of weapons of mass destruction (Art. 134), violations of the laws and customs of war (Art. 135.3), murder committed under aggravating circumstances (Art. 139.2), terrorism (Art. 289.3), treason that results in loss of life (Art. 356.2), conspiracy to seize power (Art. 357.3), terrorist acts (Art. 359), sabotage that results in a loss of life (Art. 360.2) and murder of a police officer (Art. 362).

<sup>10</sup> For example, ‘Belarus is Approaching the “Actual Moratorium” on the Death Penalty’, *BelaPAN*, 8 February 2006; Roman Rud, interview with Valentin Sukalo, *Sovetskaya Belorussiya*, 1 December 2007; ‘Kaznit Nelzia Pomilovat’, *Informational-*

been amended. In 1993, the death penalty was abolished for four types of economic crimes; in 1997, life imprisonment was introduced (but terrorism was added to the list of crimes attracting the death penalty). However, these developments cannot be attributed to transnational pressure and do not signify a serious commitment to end executions. Progress slowed in the 1990s, and the death penalty was not even mentioned in the 2010 ‘Concepts for Improving the System of Criminal Prosecution’ (Lukashenka, 2010).

Giving in to transnational pressure, the Belarusian Parliament held a hearing on the death penalty in May 2002. Although the majority opposed the abolition of the death penalty or the introduction of a moratorium, the National Assembly (2002) issued a series of recommendations on how to further the decision on the issue. Acting on the recommendations, in March 2004 the Constitutional Court reviewed the application of death penalty and concluded that the constitution allows ‘the president or the parliament’ to declare a moratorium or abolish the death penalty. The court said that the results of the 1996 referendum, in which 80.44 per cent of Belarusians voted in favour of retaining the penalty, was only of an advisory nature, and pointed out the lack of factual basis for the relationship between the crime rate and the presence of the capital punishment (Constitutional Court of the Republic of Belarus, 2004).

At the same time, the Belarusian authorities have openly resented the norm pressure. For years, Minsk denied the UN Commission on Human Rights Special Rapporteur on Belarus access to the country, refused to follow the recommendations of the UN Human Rights Committee on the treatment of convicts’ relatives, ignored AI’s requests for statistics on executions, turned down meetings, and punished activists with detentions and fines (Viasna, 2007; Viasna, 2009; Viasna, 2010). The very timing of sentences and executions is telling. In 2009, a death sentence was passed less than a week after PACE voted to restore Belarus’s special guest status, and two more death sentences were passed two days after a UN Universal Periodic Review Working Group criticized the May 2010 executions.

Belarusian officials are dismissive of the pressure from civil society, and only slightly more cognizant of the CoE’s and EU’s requests.<sup>11</sup> Although they feel the need to explain that they are not

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analytical Portal of the Union State, 10 September 2008.

<sup>11</sup> For example, Belarusian Minister Sergei Martynov answered a question about human rights violations and the continuing executions with ‘I don’t know of a country where NGOs would not like to have more from the government than they do have, the

‘cruel’ (ITAR-TASS, 11 April 1998, cited in Fawn, 2001), transnational demands often only strengthen the authorities’ desire not to give in to the West. The official line is that if the death penalty is ever abolished in Belarus, it will *not* be because of European requests, but because domestic public opinion has changed (Konstantinov, 2009). The president says that although ‘Europe insists’, he cannot ‘go against the will of the people’ who voted against abolition in a referendum.<sup>12</sup> Transnational actors are blamed for not understanding the situation, and Belarus is said to follow its own path of development. Responding to the CoE, Belarusian officials correctly point out that abolition of the death penalty is a precondition for accession rather than for special guest status, which is denied to Belarus (Foreign Ministry of the Republic of Belarus, n.d.).

Virtually all officials have cited the results of the 1996 referendum as a reason for not moving towards abolition.<sup>13</sup> Uncovering whether the ‘will of the people’ has changed is difficult, as only government-controlled organizations are allowed to conduct polls.<sup>14</sup> Notably, even in the 2009 poll conducted by the Information and Analytical Center of the Administration of the President (2009), with only 4.5 per cent of respondents opposing the death penalty, improving Belarus’s reputation in Europe was cited among the benefits of abolition.<sup>15</sup> Most officials admit that at the end of the day, the decision lies with the president, who possesses nearly absolute power,<sup>16</sup> rather than the Belarusian public.

### **Costs and Benefits of Abolishing the Death Penalty in Belarus**

Scholars agree that the abolition of the death penalty in the post-Soviet region was mainly a result of strategic considerations (Hood and Hoyle, 2008, 24). Therefore, it may be that executions persist in

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same is true for Belarus, for the United Kingdom, France, Belgium, the United States, whatever’; Foreign Minister Sergei Martynov, interview with Agence Europe, 29 July 2009, [www.mfa.gov.by/en/publications/media/d6d9c86fad8bee01.html](http://www.mfa.gov.by/en/publications/media/d6d9c86fad8bee01.html) (accessed 20 May 2013).

<sup>12</sup> Interview with President of Belarus Alexander Lukashenka with Reuters, 4 May 2010, <http://president.gov.by/press10274.html> (accessed 3 May 2013).

<sup>13</sup> In 1996, when the longest available prison sentence was 15 years, 80.44 per cent of those who took part in the referendum did not support the abolition of the death penalty and only 17.93 per cent did. All in all, 84.14 per cent or 6,181,463 people took part in the referendum, and among the questions brought up by the President of the Republic was amending the 1994 Constitution that removed the limit on the number of terms a president could serve; announcement of the Central Committee of the Republic of Belarus on elections and holding republican referenda, 1996.

<sup>14</sup> Strict rules regulate the licensing of organizations that conduct public opinion polls; see Decision of the Council of Ministers of the Republic of Belarus no. 1240, *On Some Issues of Carrying Out Public Opinion Polls Related to Republican Referenda, Elections and Socio-Political Situation in the Country and on Publication of their Results in Mass Media*, 8 November 2005.

<sup>15</sup> Interestingly, a June 2009 poll by the Independent Institute of Socio-Economic and Political Studies (IISEPS) showed different results, with 47.8 per cent voting in favour of retaining the punishment; [www.iiseps.org/06-09-06.html](http://www.iiseps.org/06-09-06.html) (accessed 20 May 2013).

<sup>16</sup> Studies show that presidential leadership was also crucial for the abolition of the death penalty in Ukraine; Bae (2007), 25–37.

Belarus because the costs of abolishing the penalty exceed the benefits.

### *Domestic Adoption Costs*

Schimmelfennig (2005b) shows that adopting liberal norms becomes too costly for authoritarian governments if it endangers their grip on power. Indeed, some researchers find an ‘indissoluble link between dictatorship and death penalty’ (Badinter, 2004, 11). Duner and Geurtsen (2002, 13) note that 70 per cent of countries categorized as ‘free’ by Freedom House have signed one of the three protocols abolishing capital punishment, whereas only 30 per cent of countries labelled ‘partly free or not free’ have done so. However, the links between regime type and the death penalty are tenuous at best in the post-Soviet region, where Belarus lags behind other authoritarian states (Turkmenistan, Kyrgyzstan, Tajikistan and Uzbekistan) (see Table 11.2).

**Table 11.2 Ending executions in the FSU**

State	Year	Details	Freedom House rankings in the year of abolition			CoE membership
			P R	CL	Status	
<b>Moldova</b>	1995	All	4	4	PF	1995
<b>Russia</b>	1996	Moratorium	3	4	PF	1996
<b>Georgia</b>	1997	All	3	4	PF	1999
<b>Estonia</b>	1998	All	1	2	F	1993
<b>Lithuania</b>	1998	All	1	2	F	1993
<b>Azerbaijan</b>	1998	All	6	4	PF	2001
<b>Latvia</b>	1999	All (since 2012)	1	2	F	1995
<b>Turkmenistan</b>	1999	All	7	7	NF	—
<b>Ukraine</b>	1999	All	3	4	PF	1995
<b>Armenia</b>	2003	All	4	4	PF	2001
<b>Tajikistan</b>	2004	Moratorium	6	5	NF	—
<b>Kyrgyzstan</b>	2007	All	5	4	PF	—
<b>Kazakhstan</b>	2008	Ordinary crimes	6	5	NF	Applied for special guest status, 1999
<b>Uzbekistan</b>	2008	All	7	7	NF	—
<b>Belarus</b>	—	—	7	6	NF	Special guest status revoked, 1997

Note: Each pair of political rights (PR) and civil liberties (CL) ratings is averaged to determine an overall status of Free (F, 1.0–2.5), Partly Free (PF, 2.51–5.5), or Not Free (NF, 5.51–7.0).

Sources: Freedom House, *Freedom in the World Annual Reports*; Center for Systemic Peace, *Memberships in Conventional Intergovernmental Organizations 1952–1997*, Armed Conflict and Intervention (ACI) Project (1997).

Abolishing the death penalty would not entail high costs for the Belarusian regime. First, although death sentences may be handed down for crimes like terrorism, treason and sabotage, which theoretically allows the use of the punishment as a political weapon,<sup>17</sup> in practice, the death penalty has been applied only for aggravated murders. When the regime needs to blackmail the opposition or intimidate human rights activists, it has a wide variety of more credible tools at hand. Moreover, extrajudicial executions remain an option even with a moratorium on the death penalty in place. Second, the nature of the legal system and the features of the ratification process further decrease the abolition costs in Belarus. Given the strength of the executive, the president could easily decree a moratorium, as happened in Ukraine, where the population opposed abolition (Bae, 2007, 39). The legal framework is also ready: the idea that Belarus will abolish the death penalty is enshrined in the constitution and the Criminal Code, and the execution rate is low (two to five people per year).<sup>18</sup>

At the same time, the costs of retaining the death penalty have grown since all other states in the region have abolished executions.

### *The Size of Rewards*

It is clear that although the Belarusian administration is not looking for EU accession, it does want to cooperate with the EU in selected areas (Rontoyanni and Korosteleva, 2005, 216–17), and Belarus has a lot to gain by stopping executions. First, abolition of the death penalty is one of the key CoE membership requirements, which was sufficient to persuade other FSU states (including Russia) to abolish executions.<sup>19</sup> The benefits of compliance start with the executive and trickle down to the Belarusian parliament, which would get a seat at PACE.<sup>20</sup> Schimmelfennig (2005a, 3) argues that the CoE has no

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<sup>17</sup> In 2006, following the presidential election, the head of the state security services was quoted by major media sources as stating that the demonstrators could be punished with measures ranging ‘up to the death penalty’; Mazaeva (2006).

<sup>18</sup> In comparison, Uzbekistan abolished the death penalty with 48 people still on death row (OSCE, 2009), and Ukraine executed 167 people on the eve of death penalty abolition in 1996 (AI, 1996).

<sup>19</sup> On 25 January 1996, PACE requested Russia to ‘ratify within three years from the time of accession Protocol No. 6 to the ECHR on the abolition of the death penalty in time of peace’. However, Russia remains the only CoE member state that has not abolished the death penalty’; PACE, *Opinion no. 193 on Russia’s Request for Membership of the Council of Europe*, January 1996, 25/1996, <http://assembly.coe.int/documents/AdoptedText/ta96/EOP1193.HTM> (accessed 20 May 2013).

<sup>20</sup> The possibility of restoring ties with the CoE seems to have motivated the Belarusian Parliament to establish a working group

‘major tangible material or political benefits to offer ... unless their criticisms and demands were taken up by the EU and NATO’. In the case of Belarus, all PACE resolutions explicitly ‘encourage’ the EU and the USA to continue sanctions. Moreover, while EU accession would result in an almost certain loss of power for the Belarusian president and his inner circle (most of whom are already *personae non gratae* in the EU), participation in the CoE and enjoying a more cordial relationship with other European structures would bring tangible benefits at a smaller cost. Of course, accession to the CoE would also put Belarus under the jurisdiction of the European Court of Human Rights – but this did not deter other FSU states.

Second, by abolishing the death penalty and addressing several other human rights issues Belarus would gain economic integration with the EU. It would become a full participant in the European Neighbourhood Policy (ENP) (on ENP conditionality, see Lavenex, 2008) and the Eastern Partnership.<sup>21</sup> Rapprochement with the EU would boost the economy and open up a huge market to Belarusian products (European Commission, 2006). If Belarus complies with the 12 EU conditions (which include abolition of the death penalty), the EU will ‘significantly increase European financial assistance’ to Belarus, making it comparable to the assistance received by Belarus’s neighbours (European Commission, 2006). Today, the greatest beneficiaries of EU funds in descending order are Ukraine (assigned 964 million euros for the period 2007–13), Moldova (482 million euros), Georgia (300 million euros), Armenia (255 million euros) and Azerbaijan (214 million euros), while Belarus receives only limited funds for technical co-operation and support for democratization (which bypasses the regime’s coffers), a total of 20 million euros, according to the Eastern Partnership (EaP) Community website.<sup>22</sup>

However, one problem with measuring the costs of and rewards for Belarus’s compliance is that the rewards for abolition are tied to improvements in other areas. The EU’s and the CoE’s conditions come in batches, and it is unclear whether an improvement on the death penalty alone would be sufficient

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to draft a proposal for the introduction of a moratorium in 2009; ‘Dialogue with Belarus Must Start Again’, PACE news item, 22 January 2008, [http://assembly.coe.int/ASP/NewsManager/EMB\\_NewsManagerView.asp?ID=3497](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=3497) (accessed 15 January 2011).

<sup>21</sup> In order for Belarus to participate in the ENP, the EU needs to ratify its Partnership and Co-operation Agreement with Belarus, which was cancelled at the same time as Belarus’s special status in the Council of Europe (1997) because of Belarus’s human rights violations; ‘European Neighbourhood and Partnership Instrument: Belarus’, *Country Strategy Papers 2007–2013 and Nation Indicative Programme 2007–2013*, [http://ec.europa.eu/world/enp/pdf/country/enpi\\_csp\\_nip\\_belarus\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/enpi_csp_nip_belarus_en.pdf) (accessed 20 May 2013).

<sup>22</sup> EaP Community, *Country Allocations*, [www.easternpartnership.org/programmes/country-allocations](http://www.easternpartnership.org/programmes/country-allocations) (accessed 20 May 2013).

for the rewards to materialize. Among the conditions are ensuring the right to elect leaders democratically and improving media freedom (European Commission, 2006). These requirements impose the highest costs on autocratic regimes (Schimmelfennig, 2005a, 3).<sup>23</sup> If Belarus abolished the death penalty but cracked down on the media the next day, the EU would withhold rewards and impose new sanctions. If Belarus fulfilled many of the EU's demands, Alyaksandr Lukashenka's regime would suffer a fatal blow. Therefore, while there is no doubt that stopping executions would remove a major source of European criticism, the actual rewards are uncertain and the total costs might be high.

### *Credibility*

According to Schimmelfennig (2005a, 2, 111), the credibility of rewards for norm compliance depends on the capabilities and costs of the socialization agency and on the consistency of norm promotion policies. The EU's financial capabilities are high while the costs of extending its ENP and EaP policies to Belarus are low. The same goes for the CoE, which has already accepted all other post-Soviet states as members. The EU has also been consistent in its demands for human rights improvements in Belarus. However, as Bosse (2009) argues, the credibility of EU's conditionality in Belarus is undermined by its 'highly contradictory' objectives in Belarus. In particular, the EU's concern for its own security explains its strict immigration and border policies that weaken European ties with the Belarusian people and its continuing co-operation with the regime on technical issues (undermining its leverage in Belarus). Anxious to provide for its energy needs, the EU sometimes contradicts its own rhetoric through its actions, as examined in more detail below.

### **Linkage and Leverage in Belarus**

As argued above, transnational pressure may also fail because of weak European linkage to Belarus, which limits the opportunities for socialization of the norm against the death penalty and results from the EU's self-interest (for example, strict visa policies) and partly from its deliberate policy of isolation (for example, keeping Belarus out of the ENP). Below, I evaluate Belarus on the six dimensions of linkage suggested by Way and Levitsky (2007, 53):

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<sup>23</sup> The EU attempted a 'step-by-step approach' to Belarus in 2002, with each step towards democratization followed by gradual resumption of dialogue and assistance, but it was cut short the same year.



1. *economic linkage* (flows of trade, investment and credit);
2. *intergovernmental linkage* (bilateral diplomatic and military ties, participation in European alliances, treaties and international organizations);
3. *social linkage* (flows of people across borders);
4. *information linkage* (information flows across borders);
5. *civil society linkage* (ties to transnational networks);
6. *geographic proximity*.<sup>24</sup>

The EU's *economic linkage* is considerable, as it is Belarus's largest export partner, with 38.9 per cent of all Belarus's exports, and its second largest import partner after Russia (DG Trade Statistics, 2010). By comparison, in 1999, when Ukraine abolished the death penalty, its exports to the EU comprised only 18.3 per cent of all goods (Sidenko, n.d., 48), and today the proportion of Ukraine's trade with the EU is similar to Belarus's, even though Minsk suffers from EU sanctions and has faced the tightest bilateral textile trade regime of all EU trade partners.

European linkage is also strengthened by Belarus's *geographic proximity*. Since 2004, the country borders three EU member states, which broadens opportunities for interaction with the EU. However, the geographical factor is undermined by the weakness of *social linkage*. While the flows of political refugees grow with each bout of repressions, the flows from tourism suffer from the EU's restrictive visa policies.<sup>25</sup> Obtaining a Schengen visa takes an immense amount of paperwork and costs one third of the average Belarusian monthly wages. With the adoption of the Schengen regime by neighbouring Poland, Lithuania and Latvia in 2007, the volume of visas issued to Belarusians by these states decreased by 73 per cent, 52 per cent and 34 per cent, respectively. The Stephan Batory Foundation (2009, 7) concludes that the EU's visa policies amount to 'a new "Iron Curtain"'.

The *information and civil society linkages* are also weak as a result of the Belarusian government's

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<sup>24</sup> Because of the nature of other norm-promoting actors, I will focus on the EU linkage here, even though the abolition of the death penalty is not just the EU norm.

<sup>25</sup> In 2010, Belarus was ranked 72nd in the 98-country Visa Restrictions Index, which means that citizens of the 71 other countries included in the list had better travelling opportunities; Henley & Partners (2010), *Visa Restrictions Index Global Ranking*, [www.henleyglobal.com/fileadmin/pdfs/content/hvri2010\\_globalRanking.pdf](http://www.henleyglobal.com/fileadmin/pdfs/content/hvri2010_globalRanking.pdf) (accessed 20 May 2013).

control over the mass media and civil society. Western media penetration remains low. In 2008, 85 per cent of newspapers and 75 per cent of electronic media in Belarus were state-owned, and the subsequent media laws only exacerbated the situation (BAJ, 2009, 7). The Internet could be a crucial for increasing the EU–Belarus information flow. In 2011, about 39.6 per cent of the population had Internet access. However, Internet use is restricted to websites registered with the Information Ministry. The only Internet service provider in Belarus is the state-owned Beltelecom, which controls access to international websites and monitors traffic.

The *civil society linkage* also suffers from the repressive situation in the country, described earlier in this chapter. However, ties to European NGOs are strong, especially in the area of human rights, where EU support is a primary lifeline.

It is along the dimension of *intergovernmental linkage* that Belarus differs most starkly from other FSU states. Limited technical co-operation notwithstanding, Minsk has been isolated for most of its history, while other FSU states have participated in regional organizations and initiatives (including the CoE, the ENP and the EaP). For example, Ukraine’s compliance would have been unlikely without the intensive contact between the EU, the CoE and Kiev in the five years between Ukraine’s CoE accession and the abolition of the death penalty. Bae (2007, 34–6) writes that the CoE ‘maintain[ed] a continuous dialogue at all levels’, holding not only ‘regular, confidential monitoring sessions’, but also ‘private meetings between council officials and the Ukrainian elites’. This approach is very different from the European approach to Belarus, where socialization efforts have been abandoned since the mid-1990s (Flockhardt, 2005a, 68).

The chances of successful norm socialization were weakened the day the CoE stripped Belarus of its special guest status in 1997. Since 1997, the EU has avoided most ministerial contacts with Belarus, and the OSCE Parliamentary Assembly has refused to accept delegations from the Belarusian Parliament (Rontoyanni and Korosteleva, 2005, 214). For several years in the 1990s, all European actors (the CoE, the OSCE and the EU) continued to recognize the Belarusian Parliament elected before 1996 as the only legitimate parliament of Belarus, which ‘meant that only the forty-two opposition (former) deputies were

admitted to European forums' (Rontoyanni and Korosteleva, 2005, 212). Inter-governmental linkages also suffer from the travel restrictions imposed by the EU and the United States on a range of senior Belarusian officials in 2006 (the list has been expanded and amended several times since then). Exacerbating the isolation, Belarus is itself eager to expel the representatives of the socializing agencies that come to Minsk (for example, the EU and US ambassadors in 1998, the OSCE mission in 2010 and Polish and EU ambassadors in 2012). Belarus's isolation conceals its violations, decreases Minsk's motivation for bringing the legal system in line with international standards, and deprives officials of the training offered through the CoE (McGill, personal communication).

Norm socialization also suffers from the insufficient European leverage in Belarus. Way and Levitsky (2007, 50–51) define leverage by three factors: the size and strength of countries' states and economies (most important), competing Western foreign policy objectives, and the existence of countervailing powers. Belarus has a small economy vulnerable to external pressures, and the EU's economic leverage is immense, its 2009 GDP of US\$14,794 billion being 122 times greater than Belarus's GDP (UNIDO, 2009). However, European leverage suffers from competing foreign policy objectives due to Belarus's role as a major transit country for Russian oil and gas, as evident in many EU official documents (for example, Commission of the European Communities, 2004). Although Russia remains in control of the energy flows across Belarusian territory, EU–Belarus energy co-operation is important enough for the EU to maintain technical co-operation with the regime regardless of its human rights violations (Commission of the European Communities, 2008, 9).

More importantly, European leverage in Belarus is weakened by Russia's influence. Moscow steps in as soon as Brussels steps out, providing Belarus with economic, military and diplomatic support. Belarus's foreign policy and economics are increasingly oriented towards Moscow, Belarus's largest trade partner,<sup>26</sup> with which Belarus also shares many cultural links (Sannikov, 2002, 222–31). Russian energy subsidies account for about 20 per cent of the country's GDP, and play a key role in the survival of authoritarian rule in Belarus (Aslund, 2002). The creation of the customs union with Russia in 1995

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<sup>26</sup> In 2009, trading with Russia (export and import) accounted for 47.3 per cent of Belarus's trade; DG Trade Statistics (2010).

buttressed the Belarusian economy, which remains the most unreformed in Europe, as the country is able to sell goods to Russia by way of barter at inflated prices (Zlotnikov, 2009, 68). Belarus was forced to rely on Russia in the economic crisis in early 2011 after the IMF refused it a loan due to the lack of reforms. This allowed Russia to gain control of several of Belarus's economic assets, including Beltransgaz, which controls the pipelines and other infrastructure on Belarusian territory. In January 2012, Belarus, Russia and Kazakhstan created a 'common economic space', which will further increase Russia's leverage.

As shown above, linkage between Belarus and Europe is weak on many dimensions. No interaction occurs outside the few areas of mutual interest, and these happen to be the very areas where norm socialization is undermined by the EU's competing objectives and Russia's interference. Intentional isolation has left European actors with virtually no channels of influence, and contributes to explaining the failure of transnational norm pressure in Belarus.

### **Conclusion**

Portrayed as an ultimate 'outsider' and Europe's last dictatorship (for example, Marples, 2005), Belarus offers an important analytical challenge to understanding transnational norm influence in the post-Soviet region. While some argue that socializing Minsk was hopeless from the start (for example, Flockhardt, 2005b, 19), I contend that Belarus's odd status among FSU states is an unintended consequence of the deliberate European policy of isolation.

The strong norm against the death penalty in Europe has mobilized an impressive network of actors pressuring Minsk to stop executions. However, strong norms, vibrant transnational networks and the low costs of compliance proved insufficient for successful norm socialization. The main conclusion of this study is that the ability of transnational actors to exploit European conditionality towards their goals suffers from weak European linkage and leverage in Belarus. Isolation can be a useful policy tool, but it has failed in Belarus, for several reasons. First, isolation is incomplete because European states need to engage the regime at least on the issues of energy security, border protection and immigration. Despite European states' democratic principles, they cannot neglect the security of their own citizens, and are

therefore forced to co-operate with Belarus on some issues. Second, the impact of isolation is negated by Russia's economic and diplomatic support for Belarus.

Transnational norm pressure could still play a role in the abolition of the death penalty in the future, provided that European linkage and/or leverage increase. Whereas increasing inter-governmental linkage by engaging the authoritarian regime may compromise the European message to other autocratic states, and little can be done to decrease the Russian influence on Belarus, European actors could accomplish a lot by strengthening their social, informational and civil society ties in Belarus. Some ways to do this would be to liberalize the EU visa regime, to step up European broadcasts into Belarus from the neighbouring countries, and to continue to support the independent media and civil society in the country. These steps may increase norm socialization opportunities in the long run.

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