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Between law and politics: Reflections on the nord stream gas pipeline

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Abstract
With US economic sanctions against Russia in recent years, the Nord Stream Gas Pipeline project in Europe that links Russia and Germany via the Baltic Sea came under considerable global attention. Russia's ongoing invasion of Ukraine has only increased uncertainties around the Project, arguably one of the world's most consequential submarine pipeline projects. While legal instruments and contractual arrangements provide the foundational basis for beneficial cooperation among the States on transnational pipeline projects, the functional environment of these large-scale projects are also impacted due to the 'strategic' calculations and other 'extra-legal' factors brought into the picture by powerful actors. This paper seeks to identify and understand the legal and extra-legal factors that impact the making and 'unmaking' of large, submarine pipelines through a case study of the Nord Stream pipeline project. The study illustrates the ways in which the silences of legal instruments give rise to varied interpretations of applicable norms vis-a-vis submarine pipelines today. Part I contains a brief description of the Nord Stream Project against the backdrop of the many functions of submarine pipelines today. Part II provides an overview of the Law of the Sea framework relevant for the construction and operation of submarine pipelines. Part III contains a case study of the Project, examining the extend of regulatory powers of coastal states vis-a-vis marine surveys and other related aspects of the construction permits of submarine pipelines and also a review of the unilateral sanctions imposed on the project by the United States in recent years. Part IV contains some final reflections on the interface between law and politics in the construction and operation of large pipelines such as the Nord Stream Project.

Keywords: law and politics, nord stream gas pipeline, US economic

Introduction
The oceans are a vital part of the ecosystem that sustains life on earth. Almost 97% of the planet's water is held by the oceans. The vast ocean has very important roles to play in facilitating human life, including through its vital role vis-a-vis the atmosphere, the formation of clouds and the terrestrial climate. The sea/ ocean contributes to the well-being of humanity in several, different ways, including as an extraordinary means of transport- from ancient times, humans relied on the sea as the means to travel from one country or place to another [1]. Likewise, the huge potential for channelling energy from wave, tidal and offshore wind is also gaining considerable traction in recent years. It is widely acknowledged that offshore wind energy generation could make a significant contribution to meet electricity demand in the coming decades [2].
Along with navigation and fishing, the carriage of goods is also a vital use of the sea. The sea is especially convenient for the transportation of heavier raw materials. Intercontinental petroleum transportation through ocean tankers accounts for close to one-third of global maritime trade. Estimates show that liquefied natural gas (LNG) shipments have grown impressively over the last decade, and the LNG shipments, at 485 BCM, account for almost half of all global gas trade in 2019. Indeed, maritime shipping directly contributes to the energy security of import-dependent, non-producing nations; for, they are not solely reliant on pipeline imports.
The sea is also an important source for hydrocarbon resources. With land-based oil producing basins maturing, petroleum exploration and production companies are increasingly turning for new energy reserves in challenging deep-water environments to maintain their production levels and commercial profits. Being a rich depository of hydrocarbon resources, and with the advancement of new technologies for commercial extraction and exploitation of such resources under the seabed; the oceans are increasing in economic importance, and is being described as the "new economic frontier [3]."

A. The Question of Submarine Pipelines
Submarine pipelines perform a vital function: primarily, facilitating energy production in the sea [4]. Submarine pipelines are also being used to supply fresh water to small islands close to continents or larger islands where the natural water supplies of the islands are insufficient for their needs. The submarine pipeline supplying water to Singapore from Malaysia is an important international example. Countries such as China, Fiji, Malaysia, the Seychelles and Hong Kong also have domestic submarine water pipelines linking their small Islands with the

mainland. However, there is little doubt that most of the submarine pipelines are meant to enable the transportation of natural gas from petroleum fields to refineries, petrochemical plants and even to our homes and businesses for use.

The first experiment at creating a submarine pipeline was in 1942, against the backdrop of the Second World War [5] As part of its military strategy for ensuring adequate fuel supplies other than through maritime shipping of oil- which was vulnerable to war-time uncertainties, Britain decided upon creating a subsea pipeline across the English Channel for transporting fuel. So, the military engineers designed an under-sea pipeline across the Channel for transporting fuel to the allied forces in France [6]. From military uses, the technology travelled to civilian and commercial energy operations in about a decade, with the establishment of a submarine pipeline in the Gulf of Mexico in 1954. Today, there are different kinds of subsea pipelines. Roggenkamp classifies submarine pipelines into three categories: intra-field, inter-field, and transportation pipelines [7]. The first category of offshore pipelines helps to bring the oil or gas from well-heads to a point within the operating field for collection, processing and onward transport- *intra-field* pipelines. The second category of pipelines allows transportation of the gas and oil from the field to land. A third category of pipelines transport gas or oil between two places on land. Such transport pipelines may not be linked to the development areas.

For the transport of gas from the production centres in the ocean, numerous submarine transport pipelines have been established and many networks are also coming up in different regions around the world. As David Langlet notes [8], many of these pipelines connect production facilities on one State's continental shelf with the oil and gas markets of other States. There also those that connects land-based production facilities or grids to markets in other States. They are located predominantly around the Mediterranean, and also in Western Europe. The North Sea and the Baltic Sea also have several undersea pipelines linking nations in the region. In Asian region, South East Asia has several submarine pipelines. Many have been created in the last three decades.

B. The Nord Stream Gas Pipeline Project

The Nord Stream Gas Pipeline project is one of the largest submarine pipeline projects in the world, aiming to transport petroleum resources from the Russian Arctic to eventual customers in Germany and in other parts of Europe. The mega project involves the construction of two separate but parallel pipelines under the Baltic Sea-crossing the territorial waters of Russia, Denmark and Germany, but also the Exclusive Economic Zones' of Finland and Sweden. As the pipelines are designed to transport 27.5 billion cubic metres of natural gas a year; the Project, when fully completed, is expected to increase the amount of natural gas supply to Europe substantially [9]. The Project may contribute significantly to the region's efforts to shift from coal-based power generation in the quest for a low carbon future. While the Nord Stream 1 (first Project) is already commissioned by 2011, the Nord Stream 2 (second Project) is yet to be completed and commissioned [10]. Despite the Projects' impressive credentials in seeking to transport natural gas from Russia to Germany for the wider European energy market, the transnational pipeline has attracted much controversy in recent times, even long before the outbreak of the ongoing war between Russia and Ukraine.

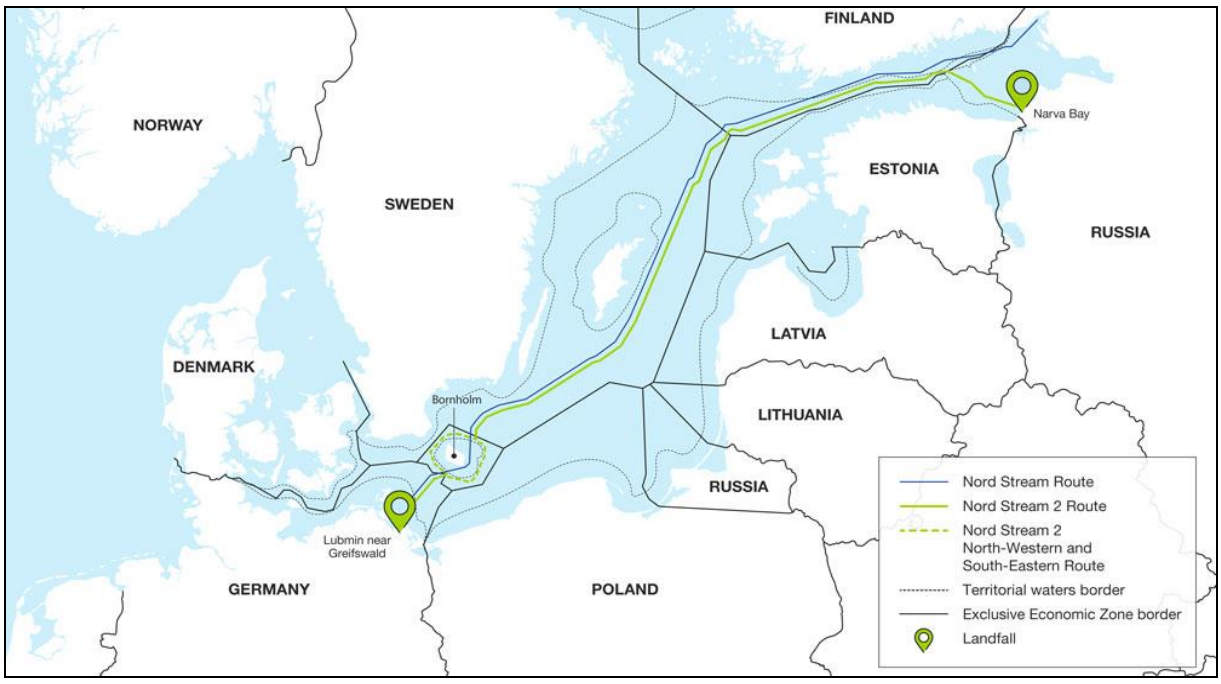

Fig 1: Nord Stream Pipeline Map [11]

International legal Framework for Submarine Pipelines

The UN Convention on the Law of the Sea, 1982 [12] is universally seen as the virtual "Constitution of the Oceans" today [13]. It establishes the basic framework for the governance of the oceans, addressing a wide range of issues of special concern for the areas beyond national jurisdiction [14]. The Convention brings in much clarity to the applicable principles of territorial sovereignty for the purpose of claims and counter-claims by the States, and provides a functional dispute settlement mechanism for the purpose of interpreting and applying the rules and principles of the Convention. Along with European Union, 167 States- including India, are Parties to the 1982 Convention [15].

International law functions on the basis of the principle of sovereign equality of States. Every State has an obligation to respect the Law of the Sea that recognizes the State's equal interest in, and right to the lawful uses of the sea, subject to certain limitations and protections [16]. Every State has a duty to act in good faith in its relations with other States, while remaining within the bounds of its territories over which it may lawfully exercise its jurisdictional control. Every State has also the duty to respect the reciprocal privileges and specific rights conferred by international law to other States in certain contexts, including maritime spaces [17]. It is within the larger framework of general international law that we can discuss the constitutive norms of ocean governance. Indeed, the legal order of the Oceans is firmly embedded within the rules and principles of public international law [18].

Under International law, a State's sovereignty extends over its territory, including its land and the territorial sea. The rights of a coastal State over the territorial sea do not differ in nature from the rights of sovereignty which the State exercises over other parts of its territory. A State's territory necessarily includes the sea, the seabed and the subsoil with regard to which the State exercises sovereign rights and jurisdiction [19] The UNCLOS provides for allocation of competence in maritime spaces which are important in the context of the various activities of States, and divides the maritime space into different zones: territorial sea, continental shelf, exclusive economic zone (EEZ) and the High Seas. According to the 1982 Convention, different regulatory regimes apply with respect to different maritime zones. The legal regime on maritime zones seeks to balance the rights of coastal States with the interests of other States as well as their conferred rights. Coastal states enjoy sovereign rights over the resources of the continental shelf and EEZ whereas other states can engage in internationally lawful uses of the sea.

To lay, maintain or operate a submarine pipeline in a multi-jurisdictional environment, public international law principles are important guideposts. As a result of the international Law of the Sea regime applicable to objects located or entities conducting activities in areas outside sovereign coastal State territories, particular challenges arise with the laying and operation of submarine pipelines.

The 1982 UNCLOS now contains the general framework for the jurisdictional regulation of offshore pipelines. The UNCLOS provisions delineate the respective rights of the States in the different maritime zones as well as the freedoms common to all States. It is widely known that coastal States enjoy sovereignty over their internal waters, territorial sea and archipelagic waters [20] Hence, the Convention states:

"The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:.. (c) the protection of cables and pipelines;..(f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof; (g) marine scientific research and hydrographic surveys [21] "

In short, pipelines located solely in internal waters, territorial seas and archipelagic waters are governed by national law. Coastal State jurisdiction over pipelines in these areas does not fundamentally deviate from the rules applicable to pipelines located on the land territory of a sovereign State. Hence, the laying of pipelines in the territorial sea is subject to the consent of the state to which the territorial sea belongs. This means, by default, coastal states enjoy a significant degree of discretion with respect to granting permissions for pipelines to be laid in their territorial sea.

A. Pipelines in the EEZ and on the Continental Shelf

The UNCLOS has a number of provisions that specifically deal with submarine pipelines. Articles 58, 79, 86 and 87 of the Convention define the legal regime of underwater pipelines in the context of that Convention as a whole. The nature and scope of jurisdiction is set out in the Convention's provisions on the exclusive economic zone and the continental shelf [22]. The Convention retains the freedom of all States to lay submarine pipelines in the EEZ [23]. At the same time, this freedom is practically balanced through a number of regulatory powers that are reserved to the coastal State [24]. For instance, the coastal State is entitled to prescribe the conditions applicable to all stages of pipelines construction and functioning. However, it is instructive to note that the laid down conditions by the coastal State should only facilitate the construction. While a coastal cannot impede the laying or maintenance of pipelines, the delineation of the course for the laying of such pipelines is subject to its consent and jurisdiction.

Article 79 of that Convention is at the core of the existing regime covering pipelines on the continental shelf. In particular, the Article clearly indicates the following points:

a. All States have the right to lay submarine pipelines and cables on the continental shelf of another State [25]. (i.e., beyond the usually 12-mile territorial sea limit);

b. The coastal State is entitled to prescribe "reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines [26]."
c. A coastal State may not impede the laying or maintenance of pipelines on the continental shelf. The Convention makes it clear that "the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention [27]."
d. Consent of the coastal state is required for the delineation of the course for the laying of such pipelines on the continental shelf [28].
e. Coastal State retains the right to prescribe conditions of access for pipelines entering in its sovereign territory or territorial sea. Likewise, it will also continue to have jurisdiction over pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction [29].
f. In laying new pipelines, due regard need to be shown for existing pipelines in the area, including for purposes of repair [30].

Though the coastal State may not impede the laying or maintenance of pipelines considering the right of other States to carry out such activities, it also has the right to authorize and regulate drilling on the sea bed through prescribing reasonable measures. Ambiguities, however, surround the scope of the prescribed "reasonable measures" which may include the route that the proposed submarine pipeline must follow, keeping in view the routes of the existing cables and pipelines on the continental shelf.
Article 112 states that a State is entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf. Article 113 states that any injury or obstruction of installations done wilfully, through culpable negligence, or intentionally are to be treated as punishable offenses unless the act was done in a distress situation. Article 115 provides that owners of ships who can prove that they have sacrificed an anchor, a net, or any fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline. Article 116 protects the right of nationals to engage in fishing on the high seas subject to conditions.
From the principles enshrined in the 1982 Convention as discussed above, it is clear that the coastal states have important regulatory powers and yet, these powers cannot be exercised in such a way as to obstruct the freedom of other States to lay submarine pipelines. Indeed, based on obligations of good faith and cooperation, the coastal states have a duty to facilitate such projects on most occasions.

Nord Stream Project: Politics and the Law
The Nord Stream projects became commercially attractive due to a number of reasons. Europe is an import-dependent region when it comes to hydro-carbon resources, and has experienced the after-effects of energy insecurity in the past as a consequence of political turmoil in the Middle East [31]. Moreover, the energy transit disputes involving Russia and Ukraine in the last decade also created anxious moments in the extended region. Against the backdrop of transit disputes between Ukraine and Russia in the last decade that disrupted the gas supply to several European nations and that too in the crucial, bitter cold winter months leading to much anxiety and concern among the European people, it is all the more necessary that alternative energy routes and infrastructure projects are pursued. The consortium building the pipeline includes not only the Russian energy giant Gazprom, but also pan-European entities at every stage of the mega project, and it is expected that the gas supply situation will demonstrably improve with the new and convenient route for the energy consumers in Europe.
Yet, the Project is politically controversial for other reasons. For long, much of the gas supply to Europe from Russia transit through Ukraine, Belarus and Poland [32]. However, the Nord Stream submarine pipeline project has the potential to affect and alter this energy transit route, as it offers an alternative, direct route for energy transportation from Russia to Europe. Hence, the economic interests of the aforesaid transit states are under a cloud of uncertainty. For instance, it was anticipated that with the commissioning of the new routes for Russian energy, the prominence and transit- related fee and other advantages available to the two transit states would possibly decline in the fullness of time. Likewise, the political and strategic calculations of influential players in the region also heated up the debate around the Project. It may be recalled that the US was very much 'concerned' that Ukraine would lose out millions of dollars in transit fee if the Russian gas resources are being diverted through the Nord Stream project, and in opposing the Project, the US has also been vocal about the interests of its allies in the region. Russia being freely able to transport more and more natural gas resources directly to Europe also upsets the United States, which is, thus, deploying its own domestic law to sanction and punish the Project stakeholders. Moreover, the US also calculates that by seeking to limit Russian access to European gas market, it will be able to promote its own energy export interest in Europe. Such deep material interests, and self-serving political calculations and expediency are at the heart of the US perspective on Russian transnational pipelines to Europe.

A. Debates over Pipeline Route

While strategic calculations were certainly behind the political efforts to contain and prevent Russia's energy supply advantage in Europe, there were, however, other apparently serious concerns which aggravated the resistance to the Project in some circles [33]. As the Pipeline was to traverse the territorial waters or the EEZ of some States, the regulatory jurisdiction over the pipeline by these States in the different maritime zones- including on the question of the protection of the marine environment [34]- also raised complex legal questions leading to tough debates putting into sharp focus the scope and ambit of the coastal state's regulatory powers vis-a-vis the submarine pipelines [35]. There is little doubt that the submarine pipelines regime under the UNCLOS is inadequate to deal with the contemporary concerns vis-a-vis the development of submarine pipelines. The Convention is only indicative of the directions, and the framework needs to be fleshed out with corollary, supplementary obligations. Likewise, it a widely known that issues not regulated by the Convention continued to be governed by the rules and principles of general international law [36].

Among the European political controversies surrounding the pipeline project, one of the principal issues was the apparent lack of jurisdiction of the regional community over import pipelines to and from third countries. Considering that the Project is to reach Germany, the legal and regulatory status and control over the Nord Stream project under the European community law became a focus of attention [37]. In general, transnational pipeline projects are necessarily designed, linking different national jurisdictions and they hence invariably engage with both national and international law, including where required, regional community law as well. For instance, the ongoing Nord Stream-2 pipeline has a composite legal framework comprising of elements of national, EU and international law. Indeed, for the Nord Stream Projects, the permission for the laying of the pipeline was obtained by the Consortium from the competent authorities of different countries through whose waters the pipeline passes. In shaping their permission process for the Project, the member States of the EU also took into consideration the relevant Community directives as well [38]. Since Baltic Sea is a 'semi-enclosed sea' within the meaning of the UNCLOS [39], the States bordering the Sea, are legally required to cooperate closely in securing their rights and executing their duties. The Convention obliges the States to cooperate and coordinate their activities in such a way as to prevent pollution and to preserve the marine environment [40]. It is interesting to note that the Nord Stream authorities preferred a community approach and prepared a single study to cover all jurisdictions for environmental impact assessment. The assessment process involved the identification of common elements and special factors such as landfall impact in Germany and Russia. It is also noteworthy that in shaping the ecological assessment of the Project, the 1991 Convention on Environmental Impact Assessment in a Transboundary Context or the 'Espoo Convention [41]' played an important role. The Convention requires parties, individually or jointly, to take all appropriate and effective measures to prevent, reduce, and control significant adverse transboundary environmental impact from activities subject to decision by a competent authority of the state party in accordance with national procedures [42].

B. Marine Surveys: Estonia's Position

One of the legal questions that arise in the context of the construction and operation of submarine pipelines is the need for conducting marine surveys of the continental shelf so as to assess the feasibility of the routes chosen for the laying of the pipeline. Clearly, several factors are important in this context- possible impact on already existing pipelines; prospects of future pipelines that may be laid; on other lawful uses of the sea-bed, potential environmental harm, etc. Concerning the necessity and significance of marine surveys before the laying of pipelines and cables, it is noted:

"The delineation of the course for the laying of a submarine cable or pipeline makes a careful investigation of the relevant sea-bed conditions in the envisaged area necessary. This investigation is to avoid risks for the future cable or pipeline and minimize potential conflicts with other uses of the sea. On the other hand, cables and pipelines already in position on the sea-bed have to be controlled in place on a routine basis or *ad hoc*, for example in order to ascertain their route in the event of damage or when another cable or pipeline needs to be laid across them. The necessary *surveys*, as these investigations are generally called, are conducted at sea for the cable or pipeline owner or for a hydro graphic office by specially equipped ships of survey enterprises [43]."

The coastal State has the right to grant permission in this regard with regard to the activities in the territorial sea. The question regarding permission for such surveys in the Continental Shelf has created divergent State Practice. Many States claim jurisdictional competence in subjecting such surveys to their own national legislative authority, prescribing procedures in this regard asserting national sovereignty and regulatory control over it. The legal ambiguity surrounding the right of a coastal state to prevent the marine survey for the laying of pipeline in the continental shelf seems to continue as no State has so far invoked the inter-state dispute settlement proceedings under UNCLOS.

In the case of the Nord Stream project, Estonia refused to grant permission to conduct the required marine surveys. An alternative route without impacting Estonian jurisdictional area was, thus, pursued by the pipeline consortium. However, the fact remains that the discretion to refuse permission to surveying and pipeline laying activities in the CS/EEZ is very limited- to prevent, reduce or control pollution. For instance, interpreting Article 58(1) and 79(1) of the UNCLOS, the European Court of Justice held that:

"the sovereignty of the coastal State over the exclusive economic zone and the continental shelf is merely functional and, as such, is limited to the right to exercise the activities of exploration and exploitation laid down in Articles 56 and 77 of the Convention on the Law of the Sea. To the extent that the supply and laying of an

undersea cable is not included in the activities listed in those articles, that part of the operation carried out in those two zones is not within the sovereignty of the coastal State [44].”

C. Sweden's Permission Process

On 07 June 2018, Sweden granted permission for the delineation of the course proposed by Nord Stream consortium for the laying of two pipelines on the continental shelf in the Swedish Exclusive Economic zone in the Baltic Sea [45]. Sweden recognized that while the delineation of the course for the laying of a pipeline is subject to the consent of the coastal State; as a coastal state, it cannot impede the laying of pipelines in the exclusive economic zone as the zone is international waters. Sweden conducted the examination of the permit application in accordance with the applicable Swedish Continental Shelf Act and the UNCLOS, and came to the conclusion that as all States are entitled to lay pipelines, through the 'exclusive economic zone' of the coastal State, “international law do not give the Government scope to reject the application [46].” The official press release communicating the approval decision also noted:

“According to the Government's decision, the permit includes a consultation condition aimed at safeguarding the possibility of using and repairing existing underwater cables and pipelines. The company must, in good time before laying the pipelines, consult with owners of existing cables and pipelines on the continental shelf on technical aspects that arise where the pipelines cross each cable and pipeline. In addition to this, the company has made a number of commitments on precautionary measures and safety precautions that mainly target the sensitive environment of the Baltic Sea, shipping, maritime safety and fisheries [47].”

In many ways, the decision concerning the Nordstream Pipeline 2 essentially follows the earlier approval for the Nordstream-1 pipeline project [48].

C. Denmark’s Permission Process

Some of the States in the Baltic Sea region initially hesitated to grant permission for the laying of the Nord Stream pipelines in their territorial waters. For instance, while Germany and Russia granted such permissions, Nord Stream 2’s application seeking permission to lay the pipeline through the Danish territorial sea just south of Bornholm did not come through for a period of time. As per the domestic law of Denmark, ‘any permission to lay pipelines in the Danish territorial sea is subject to a recommendation of the Danish Minister of Foreign Affairs’. Later, the pipeline’s route was tweaked to avoid the Danish territorial waters, and to ensure that the pipeline would only pass through the Danish EEZ. As a coastal state’s rights in the EEZ are limited, the new route eventually found approval [49].

D. Dispute over EU Regulatory Overreach

It is instructive to note that the pipeline consortium that is building the Nordstream 2 is officially registered in Switzerland in July 2015. Switzerland is a member of the Energy Charter Treaty. Although the consortium building the pipeline is constituted by companies led by the Russian petroleum giant Gasprom and Russia is not a member of the ECT framework, the consortium will be able to institute Investor-State arbitration proceedings under the ECT by virtue of its being an entity registered under the law of Switzerland [50]. In September 2019, the Nord Stream 2 Pipeline Consortium instituted Investor- Contracting Party arbitration proceedings under Article 26 (4) (b) of the Energy Charter Treaty [51] against the European Union, challenging the legal validity of its recent internal gas market regulation concerning new gas transmission lines from third countries [52]. Whereas existing pipelines will enjoy exemptions from the application of the law, the Nord Stream pipeline faces potential negative consequences. Considering that the consortium has already invested billions of dollars into the ongoing construction of the submarine infrastructure project, the sudden shift in regulatory environment will entail unanticipated challenges for the very survival of the consortium as a business entity.

E. The US Sanctions on the Nord Stream Project

The United States of America passed a legislation titled, *Countering America's Adversaries Through Sanctions Act* in 2017 [53]. Two years later, on 20 December 2019, the United States passed another legislation titled the *National Defense Authorization Act* for Fiscal Year 2020. These legislations authorize the US government to impose sanctions against persons involved in two major transnational pipeline projects involving Russia- the Nord Stream 2 and the Turkstream pipeline projects. These sanctions seek to punish all those who are associated with the targeted projects. While the non-US persons identified and designated under the reports would be ineligible to enter the US with immediate effect, their access to the US financial system would be blocked and their transactions concerning property and interests in property would also be prohibited. As a ‘political’ tool, the blacklisting of the sanctions law is to serve selectively- with a lot of discretion on the executive on whom to punish and when to punish- even as the threat of the law looms over everyone outside of the United States jurisdiction [54].

In July 2020, claiming that Russian energy export pipelines- Nord Stream 2 and the second line of the Turk Stream – threatens US national security and foreign policy objectives, the United States invoked Section 232 of the CAATSA, 2017 [55]. The impugned Section authorizes the State Department, “in coordination with allies of the United States”, to impose discretionary sanctions on persons who enhances the ability of Russia to construct energy export pipeline projects [56].

In its guidance, the State Department clarified that the sanctions would essentially target energy export pipelines that both originate in Russia, and transport hydrocarbons across a border for delivery to another country. Pipelines that originate in other countries and are only transiting through Russian territory would not be targeted under the law. When the law was enacted in 2017, the executive policy was to exempt investments and loan agreements made prior to August 2, 2017. Likewise, those investments or other activities related to the standard repair and maintenance of pipelines in existence on, and capable of transporting commercial quantities of hydrocarbons, as of August 2, 2017 were also treated as exempt from the sanctions. In July 2020, with the updated policy on implementation, it is now clarified that all investments and financial agreements involving the Russian energy export pipelines would be liable to be subject to the sanctions regime.

Defending its decision to impose expanded range of sanctions on Russia, the United States put out the following statement:

"Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies and leverages these dependencies to expand its political, economic, and military influence and undermine U.S. national security and foreign policy interests.

In this context, Nord Stream 2 and the second line of Turk Stream—both of which are under construction—could undermine Europe's energy security by maintaining Russia's dominant share in Europe's gas markets for decades, discouraging investment in critical diversification projects, and limiting the ability of European countries to gain leverage over Russia on issues of price, commercial transparency, and the environment. These projects could destabilize the Ukrainian economy and government severely limiting gas transit through Ukraine, thereby depriving the Ukrainian government of significant transit revenues and reducing a large deterrent against further Russian aggression against Ukraine. The development of these projects also provides Russia with vehicles to further spread its malign influence in Europe [57]."

Conclusion

Submarine energy pipeline projects will have to negotiate multiple fault-lines in the international system in order to ensure that the Project actually materializes in full measure; the case study on Nord Stream pipeline project graphically illustrates the difficulties in dehyphenating energy pipelines from power politics [58]. It is no accident, then, that in recent years, several instances of large international infrastructure projects have been abandoned, or delayed at the altar of power politics [59].

The United States of America has a long history of economically targeting other nations through the weaponization of its pre-eminence in the global financial system. Starting from the very early phase of the Cold War rivalry with the FSU, the United States has been imposing unilateral sanctions as a major tool of its foreign policy in order to browbeat and over-awe foreign companies from pursuing commercial opportunities and conducting business transactions with the country. It is widely known that in the 1980's, the US sought to dissuade the European corporations from participating in Russian energy sector projects by threatening economic sanctions on such entities, including those in relation to a gas pipeline from the former Soviet Union to Europe [60]. In the 1990's, countries such as Libya and Iran were specifically targetted by the Unites States of America for the imposition of economic sanctions on their energy sectors [58]. While these foreign policy strategies are generally recognized by the domestic legal framework of the United States by virtue of their legislative character, the validity of such unilateral measures are highly contested and fiercely opposed by other states. It is a foundational principle of international law that no State can cite its domestic policy or law as a valid justification for its failings in abiding by its international legal obligations.

Whereas a large international infrastructure project such as the construction of under-sea pipeline involving possibly several States can be a great avenue for beneficial cooperation, often political and other extra-legal considerations are raised by status-quo powers as their 'special interests' could be affected by the change such Projects entail. It is all the more important under such circumstances to have a clear view of the applicable international legal principles and a specific framework of resource management in relation to transboundary development, so as to facilitate the planning and execution of subsequent infrastructure projects.

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8. David Langlet. "Transboundary Transit Pipelines: Reflections on the Balance of Rights and Interests in Light of the Nord Stream Project", International and Comparative Law Quarterly, 2014(63:4):977-995.
9. It is estimated that close to forty per cent of the gas supplies to Europe comes from Russia. For details on technical parameters and special features of the Nord Stream pipelines, the official website of the project can be accessed as available at URL: https://bit.ly/3o1Dupm (accessed on 01 May 2022). See generally, Roland Gotz "The Nord Stream Pipeline: The Energy Policy Background," *German Yearbook of International Law*, vol. 52, pp.233-240. See also Nichola Cho; Fausta Geelhoed (2009), "The Nord Stream Pipeline Project - A Brief Overview of Its Legal and European Relevance for Supply Security," *European Energy Law Report*, vol. 6, pp. 227-248; Romanova, T. (2014), "Russian Energy in the EU market: Bolstered institutions and their effects," *Energy Policy*, vol. 74, pp. 44-53; Thane Gustafson (2020), *The Bridge: Natural Gas in a Redivided Europe*, Cambridge, Massachusetts: Harvard University Press, 2009.
10. According to field reports on the ongoing construction of the Nordstream pipeline segments, almost 2,300km (1,430 miles) of the entire 2,460km stretch have already been laid. See Alan Riley, "Nord Stream 2: A Legal and Policy Analysis," CEPS Special Report No. 151 / November 2016, Brussels, Belgium: Centre for European Policy Studies, 2016.
11. Source: Cited from URL: https://energyindustryreview.com/analysis/nord-stream-a-roadmap-for-secure-and-safe-gas-for-europe-or-a-continental-power-play/ (Accessed on 07 March 2022).
12. The United Nations Convention on the Law of the Sea, 21 I.L.M. 1261. was adopted at Montego Bay, Jamaica on 10 December 1982 and entered into force on 16 November 1994. For the text of the Convention, 1982. see URL: https://bit.ly/3nAhQbC (accessed on 24 December 2021).
13. See Tommy Koh: "A Constitution for the Oceans", Remarks by Tommy T.B. Koh of Singapore, President of the Third United Nations Conference on the Law of the Sea, Montego Bay, Jamaica, 1982. available at URL: https://bit.ly/3nnbAUu (accessed on 24 December 2021). See also Tommy Koh (2020), *Building a New Legal Order for the Oceans*, Singapore: National University of Singapore Press.
14. UNCLOS contains provisions governing, *inter alia,* the limits of national jurisdiction over ocean space; access to the seas; navigation; protection of the environment; exploitation of its resources, including seabed mining, and other exploitation of non-living resources.
15. See UN Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea, *Chronological lists of ratifications, accessions and successions to the Convention and the related Agreements,* available at URL: https://bit.ly/3o0qZe0 (accessed on 24 December 2021).
16. The High Seas Convention is substantially superseded by the United Nations Convention on the Law of the Sea, although it is still in force for those nations that are not signatories to the latter Convention. See Lawrence, Juda International Law and Ocean Use Management: The Evolution of Ocean Governance, London: Routledge, 1996.
17. United Nations The Law of the Sea: Obligations of States Parties under the UN Convention on the Law of the Sea and Complementary Instruments, New York: UN Office of Legal Affairs, 2004.
18. See generally Bateman, Sam "UNCLOS and the Modern Law of the Sea" in *The Sea in History - The Modern World*, (ed. Rodger N.A.M and Buchet Christian), pp. 70-80. Rochester, NY, USA: Boydell & Brewer; Catherine Redgwell (2014), "Mind the Gap in GAIRS: The Role of Other Instruments in LOSC Regime Implementation in the Offshore Energy Sector", *International Journal of Marine & Coastal Law*,2017(29:4):600-621.
19. For instance, Article 1 (10) the Energy Charter Treaty defines "Area" as follows: "Area" means with respect to a state that is a Contracting Party: (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.
20. Article 2 of the UNCLOS titled as "Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil" reads as follows: "(1) The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea; (2) This sovereignty extends to the air space over the territorial

sea as well as to its bed and subsoil; (3) The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law, 1982.

21. See Article 21 ("Laws and regulations of the coastal State relating to innocent passage") of the UNCLOS, 1982.
22. United Nations The Law of the Sea: Obligations of States Parties under the UN Convention on the Law of the Sea and Complementary Instruments, New York: UN Office of Legal Affairs, 2004.
23. Article 58 (1) of the UNCLOS states: "in the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention".
24. Article 58 (3) states: "In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part".
25. Article 79(1) of UNCLOS states: 'All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article'.
26. See Article 79 (2) of the UNCLOS, 1982.
27. See Article 78(2) of the UNCLOS, 1982.
28. See Article 79 (3) of the UNCLOS, 1982.
29. See Article 79 (4) of the UNCLOS, 1982.
30. See Article 79(5) of the UNCLOS, 1982.
31. Shihata I. "Destination Embargo of Arab Oil: Its Legality under International Law," American Journal of International Law,1974(68:4):591-627.
32. For a perspective from Poland on the Nord Stream pipeline project, see I. Gawlowicz& P. Laski (2006), "Russian- German North Gas Pipeline in view of Public International Law," Polish Yearbook of International Law,(2006-2008):28:149-162.
33. See the Symposium on "Challenges of Nord Stream: Streamlining International Legal Frameworks and Regimes for Submarine Pipelines," *German Year Book of International Law*, vol.52, pp. 231-366; Hans Corell (2008), "Baltic Sea Gas Pipeline: International Law for Geostrategic Issues," presentation at the FNI conference on 'The World Ocean in Globalization: Challenges for Marine Regions,' Oslo, Norway: 21–23 August 2008; Ellen Karm (2008), "Environment and Energy: The Baltic Sea Gas Pipeline," Journal of Baltic Studies,2009(39:2):99-121.
34. Koivurova T, Polonen I. "Transboundary Environmental Impact Assessment in the Case of the Baltic Sea Gas Pipeline", The International Journal of Marine and Coastal Law, 151; Kim Talus (2017), "Application of EU energy and certain national laws of Baltic Sea countries to Nord Stream 2 pipeline project", Journal of World Energy Law & Business,2010(10:1):30-42.
35. See David Langlet. "Transboundary Transit Pipelines: Reflections on the Balancing of Rights and Interests in Light of the Nord Stream Project," International and Comparative Law Quarterly, (63:4), pp. 977- 995; Alexander, L. (2011), "Marine Environmental Protection and Transboundary Pipeline Projects: A Case Study of the Nord Stream Pipeline", *Merkourios*,2014(27:73):55-67.
36. Pipeline projects could be subject to special agreements, which may or may not make provisions identical with international law.
37. See Valentin Jeutner. "Amendments, Annexations, Alternatives: Nord Stream 2's Contemporary Status under EU and International Law," The Journal of World Energy Law & Business,2019(12:6):502-512.
38. The consultation process for the pipeline project involved nine-countries, including the littoral states of the Baltic Sea for environmental assessment, see Alexander, L. "Marine Environmental Protection and Transboundary Pipeline Projects: A Case Study of the Nord Stream Pipeline", *Merkourios*,2011(27:73):55-67.
39. Article 122 of the 1982 Convention defines "enclosed or semi-enclosed sea" as 'a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States'.
40. Article 123 of the 1982 Convention is titled, "Cooperation of States bordering enclosed or semi-enclosed seas", and it reads: 'States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article'.
41. The text of the Convention is available at URL: www.unece.org/more-convention (Accessed on 01 September 2021). See also UNECE (2006), *Guidance on Public Participation under the Espoo Convention*, ECE/MP.EIA/7.

42. See Article 2 of the Espoo Convention. It is interesting to note that the 1992 Rio Declaration on Environment and Development also mirrors the concept of environmental impact assessment in its principle 19: 'States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith'.
43. See Rainer Lagoni (2012), "Cable and Pipeline Survey at Sea," p. 933 in HP Hestermeyer and others (eds.), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum*, Vol. 1, Leiden: Brill Nijhoff.
44. *Aktiebolaget v Skatteverket*, Case C-111/05 [2007] ECR I-02697:
45. See Government of Sweden, Ministry of Enterprise and Innovation Press Release, *Decision on Application from Nord Stream 2 AG*, 7 June 2018, available at URL: https://bit.ly/2KCmYi1 (accessed 01 May 2022). See generally, Rolf Lidskog & Ingemar Elander (2012), "Sweden and the Baltic Sea Pipeline: Between Ecology and Economy," *Marine Policy*,2012(36:2):333-338.
46. See Government of Sweden, Ministry of Enterprise and Innovation Press Release, Decision on Application from Nord Stream,2018:2:7. available at URL: https://bit.ly/2KCmYi1 (accessed 01 May 2022).
47. Ibid.
48. Rolf Lidskog & Ingemar Elander. "Sweden and the Baltic Sea Pipeline: Between Ecology and Economy*," Marine Policy*, March,2012:(36: 2):333-338.
49. See Government of Denmark (30 October 2019), "Permit for the Nord Stream 2 project is granted by the Danish Energy Agency," available at URL: https://bit.ly/2KCNpnT (Accessed on 01 September 2021).
50. Article 1 (7) (a) (ii) of the ECT defines "Investor" as "a company or other organization organized in accordance with the law applicable in that Contracting Party".
51. The aforesaid provision allows for submitting disputes to "a sole arbitrator or an adhoc arbitration tribunal established under the Arbitration Rules of the UNCITRAL".
52. See *Nord Stream 2 AG v. The European Union*, Case No. 2020-07, The Hague: Permanent Court of Arbitration, available at URL: https://pca-cpa.org/en/cases/239/ (Accessed on 07 March 2022).
53. Hereafter, "CAATSA".
54. For a recent assessment of the international legal issues surrounding the US imposition of unilateral, secondary sanctions on foreign individuals and entities, see Tom Ruys, Cedric Ryngaert (2020), "Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions," *British Yearbook of International Law*, pp.1-116; available at URL: https://bit.ly/2Y08zPO (accessed on 01 December 2021).
55. See Notice of Department of State Update to the Public Guidance for Section 232 of the Countering America's Adversaries through Sanctions Act of 2017(CAATSA), 85 Fed. Reg. 44561 (July 23, 2020).
56. Section 232 of the CAATSA, 2017 reads: "SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PIPELINES IN THE RUSSIAN FEDERATION.
    (a) IN GENERAL.—The President, in coordination with allies of the United States, may impose five or more of the sanctions described in section 235 with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of this Act, makes an investment described in subsection (b) or sells, leases, or provides to the Russian Federation, for the construction of Russian energy export pipelines, goods, services, technology, information, or support described in subsection
    (c)—(1) any of which has a fair market value of $1,000,000 or more; or (2) that, during a 12-month period, have an aggregate fair market value of $5,000,000 or more.
    (b) INVESTMENT DESCRIBED.—An investment described in this subsection is an investment that directly and significantly contributes to the enhancement of the ability of the Russian Federation to construct energy export pipelines.
    (c) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subsection are goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy export pipelines by the Russian Federation". See the full text available at URL: https://bit.ly/3pY7ELR (accessed on 01 September 2021).
57. See note 55.
58. Geranmayeh E, Lafont Rapnouil M. 'Meeting the Challenge of Secondary Sanctions' in M Leonard and J Shapiro (eds), Strategic Sovereignty: How Europe Can Regain the Capacity to Act Berlin: European Council on Foreign Relations, 2019, 61-84.
59. In a thoughtful article challenging the legality of unilateral, extraterritorial secondary sanctions, Tom Ruys and Cedric Ryngaert argue that the recent US measures are non-justiciable under customary international law as well as international trade law, and alludes to the context of power politics behind the sanctions policy: "The US is increasingly weaponizing economic sanctions to push through its foreign policy agenda. Making use of the centrality of the US in the global economy, it has imposed 'secondary sanctions' on foreign firms, which are forced to choose between trading with US sanctions targets or forfeiting access to the lucrative US market. In addition, the US has penalized foreign firms for breaching US sanctions legislation." See Tom Ruys, Cedric Ryngaert (2020), "Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions," *The British Yearbook of International Law* 2020, (90:1), pp.1-116. See also Waelde, Thomas W. (2001), "Managing the Risk of

Sanctions in the Global Oil and Gas Industry: Corporate Response under Political, Legal and Commercial Pressures," Texas International Law Journal, Winter,2001:(36:1):183-230.
60. See generally, Patrick J. DeSouza. "The Soviet Gas Pipeline Incident: Extension of Collective Security Responsibilities to Peacetime Commercial Trade," Yale Journal of International Law,1984:10:92-117.
61. See United States Legislation: Iran and Libya Sanctions Act of 1996.