

U.S. ECONOMIC SANCTIONS AGAINST NORD  
STREAM 2 UNDER INTERNATIONAL  
JURISDICTION PRINCIPLES

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I. INTRODUCTION .....	1017
II. ECONOMIC SANCTIONS AND PRESCRIPTIVE JURISDICTION .....	1021
A. <i>The Principles of Prescriptive Jurisdiction</i> .....	1021
B. <i>Primary and Secondary Sanctions</i> .....	1022
III. “PROTECTING EUROPE’S ENERGY SECURITY” AND “COUNTERING AMERICA’S ADVERSARIES THROUGH SANCTIONS ACT”: A BRIEF SURVEY OF U.S. ECONOMIC SANCTIONS ON NORD STREAM 2 .....	1024
A. <i>Countering America’s Adversaries Through Sanctions (CAATS) Act</i> .....	1024
B. <i>Protecting Europe’s Energy Security Act</i> .....	1025
IV. CONCLUSION .....	1030

I. INTRODUCTION

Pipelines are often fascinating and controversial objects. After all, they present all the ingredients of a good storyline. First, they are generally international, which means they crystallize the very divergent interests of the countries they cross. Second, they involve strong economic considerations—both because they are incredibly expensive to build and because they transport valuable merchandise. Third, they are often opposed by civil society for environmental or cultural reasons. It is thus no wonder that they have captured Hollywood’s imagination and provided the pitch for a handful of blockbusters (notably James Bond film, *The World Is Not Enough*).

As is often the case, reality far surpasses fiction regarding the Nord Stream 2 pipeline. Nord Stream 2 is a projected gas pipeline between Russia and Germany. This pipe, mostly set at the bottom of the Baltic Sea, would roughly mirror the already functional Nord Stream 1 pipeline and double the transport

capacity (from 55 billion m<sup>3</sup> to 110 billion m<sup>3</sup> per year).<sup>1</sup> As of today, the pipeline is about 95% finished (roughly a hundred miles to go, out of 1530) for an estimated investment of \$11 billion.<sup>2</sup> However, its completion still hangs in limbo due to the ever-increasing political tension surrounding it.

According to its proponents, that is to say mostly Russia and Germany, the Nord Stream 2 project is of a purely economic nature. For now, most of the gas reaching Western Europe transits through Ukraine, which subjects it to high tariffs (estimated at \$3 billion per year).<sup>3</sup> Bypassing Ukraine through the Baltic seabed could thus significantly lower the gas price. It could also, according to Germany, provide Europe with the energetic security it requires. For the same reasons, Russia is also engaged in the so-called Turkstream pipeline, that would cross the Black Sea from Russia to Turkey and, from there, make gas flow through the Balkans.

From the perspective of its opponents, the Nord Stream 2 pipeline barely conceals grimmer political motives. First, it would increase Europe's dependence on Russian gas. Second, and more fundamentally, it would also have the potential to fracture Europe by enhancing Russia's ability to aggressively pursue its political agenda in Ukraine (which is not in the European Union) and in several E.U. Member States (Poland and the Baltic countries). Having enough pipelines bypassing Eastern European countries could indeed permit Russia to cut or limit gas supply in Eastern Europe without hindering its supply to the wealthier and more powerful countries of Western Europe. Considering that Russia is actively supporting the separatists in the Eastern Ukraine, and that it used to control Poland and the Baltic states, it is no wonder that this possibility

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1. Ryan Jacobsen, U.S. *Sanctions on Nord Stream 2*, INSTITUTE FOR POLITICS AND SOCIETY: POLICY BRIEF 1, 3 (Jan. 2021), <https://www.politika.spolocnost.cz/wp-content/uploads/2021/01/US-Sanctions-on-Nord-Stream-2-IPPS.pdf>.

2. Brett Forrest, *Biden Administration Reviews Nord Stream 2 Gas Pipeline*, WALL STREET J. (Feb. 16, 2021), <https://www.wsj.com/articles/biden-administration-reviews-nord-stream-2-gas-pipeline-11613476815>.

3. Jacobsen, *supra* note 1, at 3.

is taken quite seriously.<sup>4</sup> In Europe, those concerns are shared by the European Parliament and the European Commission.<sup>5</sup>

Those concerns have also crossed the Atlantic, as the United States has been an extremely vocal opponent of the project since its beginning and shares most of Ukraine's concerns.<sup>6</sup> So vocal indeed that it has resorted to economic sanctions against companies and individuals participating in the project. U.S. extraterritorial economic sanctions are nothing new. Confident in the centrality of its economy in global exchanges, the United States has often resorted to a wide range of sanctions to advance its political agenda. However, those economic sanctions had so far mostly been used against rogue states (or those deemed to be so by the United States: Iran, Sudan, Cuba, North Korea, etc.) or terrorist organizations. Imposing such sanctions on a facially economic project between European and Russian companies is thus a testimony to the importance of the question to the United States.

Quite expectedly, those sanctions have been met with outrage in Russia, Germany and also, as a matter of principle, at the European level. The European Commission, for instance, stated that “[t]he E.U. does not recognise the extraterritorial application of U.S. sanctions, which it considers to be contrary to international law . . . . As a principle, the E.U. opposes the imposition of sanctions against E.U. companies conducting legitimate business in accordance with E.U. law.”<sup>7</sup> But is this out-

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4. The project also raises environmental concerns but I do not elaborate on them as they play no part in the U.S. sanctions' motivation.

5. The E.U. Commission even prompted an amendment to the E.U. Directive 2009/73/EC on common rules for the internal market in natural gas to make it applicable to pipelines between member and non-member states, thus imposing extra obligations on the operator of the pipeline. *See* Directive 1009/73, of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, 2009 O.J. (L 211) 94. The amendment is drafted in such a way that Nord Stream 2 would be the only pipeline ineligible for a waiver. A suit brought by the operator to the European Tribunal has recently been rejected. *See* Nord Stream 2 AG v. Parliament and Council, Case T-526-19, ECLI:EU:T:2020:210 (May, 20, 2020). An investment arbitration proceeding against the E.U. under the 1994 Energy Charter Treaty is currently underway.

6. The U.S. position also probably has less palatable motives, namely favoring its fracking gas exports towards Europe.

7. European Commission, Answer given by Vice-President on behalf of the European Commission, E-002880/2019 (February 4, 2020), <https://>

rage legally justified, or is it mostly attributable to political calculations?

The jurisprudence has indeed shown that the question of the legality of U.S. economic sanctions usually requires a nuanced response as sanctions of very different natures may cohabitate in a single legislative framework. Furthermore, this legality should also be assessed in regard to two types of international provisions: customary provisions—applicable to the relations of the United States with any states—and treaty provisions—which usually only govern the relations of the United States with some states.

As assessing the legality of the Nord Stream 2 sanctions in regard to every possible treaty provision exceeds the scope of this contribution, I will focus my analysis on the legality of the sanctions in regard to international jurisdiction rules. As will soon become apparent, the United States notably relies, for its most controversial sanctions, on the doctrine of “protective jurisdiction,” which allows a state to “govern . . . conduct that threatens its security or essential government functions.”<sup>8</sup> That doctrine is of particular significance as various treaties that would forbid the United States to impose such sanctions also provide for some kind of “security” exception.<sup>9</sup> Analyzing the validity of this justification regarding Nord Stream 2 kills two birds with one stone, so to speak (or at least concerning treaties that allow such an exception). In the end, the various U.S. sanctions will prove to have very different standing under international jurisdiction rules. The so-called “primary” sanctions and certain types of secondary sanctions (access restrictions and assets freezing) will prove legal, while the civil and criminal penalties will prove to have extremely thin legal ground.

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[www.europarl.europa.eu/doceo/document/E-9-2019-002880-ASW\\_EN.pdf](http://www.europarl.europa.eu/doceo/document/E-9-2019-002880-ASW_EN.pdf). See also Patrick Terry, *Enforcing U.S. Foreign Policy by Imposing Unilateral Secondary Sanctions: is Might Right in Public International Law?*, 30 WASH. INT'L L.J. 1, 18-19 (2020).

8. Jeffrey Meyer, *Symposium Article: Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 906, 937 (2020).

9. Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, U.S. Secondary Sanctions*, 0 BRITISH Y.B. OF INT'L L. 25-27 (2020).

## II. ECONOMIC SANCTIONS AND PRESCRIPTIVE JURISDICTION

U.S. economic sanctions are often opposed because of their extraterritorial effects, which are deemed to constitute a massive overreach in a world of equal nations. Under international law, states are only justified in regulating conduct (“prescriptive jurisdiction”) under a definite set of circumstances (Section A). As a matter of principle, the legality of the various sanctions thus depends on whether they fall under the jurisdictional power of states. An overarching distinction between primary and secondary sanctions proves helpful to narrow down the issue of the legality of economic sanctions (Section B).

### A. *The Principles of Prescriptive Jurisdiction*

Setting aside the specific crimes that grant universal jurisdiction (genocide, slave trade, etc.),<sup>10</sup> the principle of prescriptive jurisdiction only gives states the authority to regulate conducts following four factors deemed to create a sufficient nexus between conduct and the state:<sup>11</sup>

The “territorial” principle allows states to exercise jurisdiction over their own territory. That principle can be coupled with the “effect” principle that allows states to have civil jurisdiction over “conduct outside [their] territory that has or is intended to have a substantial effect inside [their] territory;”<sup>12</sup>

The “active nationality principle” allows states to exercise jurisdictions over their own nationals even when they are abroad;<sup>13</sup>

10. Meyer, *supra* note 8, at 937.

11. Menno Kamminga, *Extraterritoriality*, MAX PLANCK ENCYCLOPEDIAS OF INT’L LAW (Sept. 2020), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1040>; Meyer, *supra* note 8, at 937-938; Katherine Florey, *Resituating Territoriality*, 27 GEO. MASON L. REV. 141, 146sq (2019); Susan Emmenegger, *Extraterritorial Economic Sanctions and Their Foundation in International Law*, 33 ARIZ. J. INT’L & COMP. LAW 631, 645sq (2016).

12. Meyer, *supra* note 8, at 936. This principle is recognized under U.S. law and has been used by several European jurisdictions too. See Kamminga, *supra* note 11. Its exact boundaries are however still controversial.

13. It should be noted that the United States follows the “control theory,” according to which foreign incorporated corporations that are controlled by U.S. persons are considered to be “U.S. persons.” This position has been critiqued as inconsistent with international law, which favors the place of incorporation over the nationality of the controlling shareholders. See Meyer, *supra* note 8, at 966; Ruys, *supra* note 9, at 18-19.

The “passive nationality principle” allows states to exercise jurisdiction over extraterritorial conduct that injure their own nationals;

The “protective principle” gives states jurisdiction over conduct that “threatens [their] security or essential government functions.”<sup>14</sup>

### B. *Primary and Secondary Sanctions*

As already underlined, economic sanctions may take various forms. The first distinction that should be made is between primary and secondary economic sanctions.<sup>15</sup> Primary sanctions only regulate economic relations between U.S. government, citizens, and companies and the states or entities that the sanctions target, for example, the interdiction to engage in business with the government of Sudan due to its implication in genocide.<sup>16</sup> Particular treaties’ provisions notwithstanding, primary sanctions do not present any specific problem under international law. Under the territorial and active nationality principles, a state is indeed free to regulate its own conduct, the conduct happening on its soil, and the conduct of its citizens in the way it pleases.

Secondary sanctions are “any form of economic restriction imposed by a sanctioning . . . state . . . that is intended to deter a third-party country or its citizen and companies . . . from transaction with a sanction target (e.g. a rogue regime, its high government officials, or a non-state terrorist entity).”<sup>17</sup> Famous examples of secondary sanctions originating from the United States are the 1996 Helms-Burton Act targeting Cuba and the 1996 Iran and Libya Sanctions Act. As we will see, a significant portion of the Nord Stream 2 sanctions are also of a secondary nature. From a political perspective, secondary sanctions accompany primary sanctions and are usually enacted when primary sanctions are insufficient to provoke a modification of the targeted state or entity’s<sup>18</sup> behavior, and multilat-

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14. Meyer, *supra* note 8, at 937.

15. Ruys, *supra* note 9, at 4.

16. Meyer, *supra* note 8, at 906.

17. Meyer, *supra* note 8, at 925 (emphasis added).

18. Commentators have noted a decline in the efficacy of unilateral U.S. sanctions, notably due to the shrinking of U.S. economy in regard to the world economy. See Gary Hufbauer & Barbara Oegg, *Economic Sanctions: Pub-*

eral sanctions (*e.g.* from the U.N. Security Council)<sup>19</sup> are impracticable due to the resistance of other major powers.<sup>20</sup> Furthermore, primary and unilateral sanctions also hamper the U.S. economy and may provide new economic opportunities to other countries, which may incentivize the use of secondary sanctions instead.<sup>21</sup>

Unlike primary sanctions, secondary sanctions are highly controversial under international law as they sometimes regulate conduct from non-nationals and outside of the state's territory, thus making irrelevant the two most common grounds for a state jurisdiction (territoriality and active nationality). Facially, they appear as a massive extraterritorial overreach that violates international law and the principle of sovereign equality by creating undue interference in the business of third-party states.<sup>22</sup> However, as often in law, the devil is in the details and the generic concept of "secondary sanctions" actually encompasses very distinct policies, some of which prove more amenable than others to international law.

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*lic Goals and Private Compensation*, 4 CHI. J. INT'L L. 305, 308 (2003); Meyer, *supra* note 8, at 918.

19. Articles 39 and 41 of the U.N. Charter empower the Security Council to enact measures that may include "complete or partial interruption of economic relations" (art. 41) when it determines the "existence of any threat to the peace, reach of the peace, or act of aggression" (art. 39). *See* Charter of the United Nations, June 26, 1945, 19 U.S.T. 5450, T.S. No. 993. Needless to say, those putative measures are often vetoed by one or several of the permanent members of the Security Council. Furthermore, the U.N. has switched to a more targeted approach, pinpointing individuals and entities from a state rather than the state as a whole to try and mitigate humanitarian impact on often already oppressed populations. *See* Meyer, *supra* note 8, at 922.

20. *See* Meyer, *supra* note 8, at 906, 910.

21. *Id.*, at 917, n. 33; Joanmarie M. Dowling & Mark P. Popiel, *War by Sanctions: Are We Targeting Ourselves?*, 11 CURRENTS: INT'L TRADE L.J. 8, 9-12 (2002).

22. Meyer, *supra* note 8, at 933. It should be noted that due to the very peculiar articulation of domestic and international law in the U.S., sanctions violating international law would still be upheld in U.S. courts: federal statutes are deemed on par with treaties or customary international law and, as such, any subsequent statute can trump a previous treaty. *See* Meyer, *supra* note 8, at 934, n. 93.

III. “PROTECTING EUROPE’S ENERGY SECURITY” AND  
“COUNTERING AMERICA’S ADVERSARIES THROUGH  
SANCTIONS ACT”: A BRIEF SURVEY OF U.S.  
ECONOMIC SANCTIONS ON NORD  
STREAM 2

The U.S. Congress set sanctions against Nord Stream 2 in two different acts: the 2017 Countering America’s Adversaries Through Sanctions Act and the 2019 Protecting Europe’s Energy Security Act. This comment will now describe and assess legality under the principle of prescriptive jurisdiction of the sanctions they edict.

A. *Countering America’s Adversaries Through Sanctions (CAATS) Act*

In 2017, Congress passed the *Countering America’s Adversaries Through Sanctions Act*, 115 P.L. 44 (codified in scattered sections of 22 U.S.C.). This sweeping act, which targets not only Russia but also Iran and North Korea, notably contains sanctions provisions<sup>23</sup> against anyone who invests in “energy export pipelines” or “sells, leases, or provides to the Russian Federation, for the construction of Russian energy export pipelines, goods, services, technology, information or support.” Those sanctions are limited to projects initiated on or after August 2, 2017 and the U.S. Bureau of Energy Resources has recently changed its guidelines to specifically target Nord Stream 2 and Turkstream (both were exempted under previous guidelines).<sup>24</sup> Under 22 U.S.C. § 9526, the President may impose “five or more” sanctions out of a list of eleven sanctions enumerated under 22 U.S.C. § 9529.<sup>25</sup> Those sanctions can be divided in two groups:

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23. See 22 U.S.C. § 9526.

24. *CAATSA/CRIEEA Section 232 Public Guidance*, U.S. DEP’T OF STATE: BUREAU OF ENERGY RESOURCES (Oct. 31, 2017), <https://www.state.gov/key-topics-bureau-of-energy-resources/caatsa-crieea-section-232-public-guidance/>; Peter Jeydel & Cherie Tremaine, *Congress Clarifies Secondary Sanctions on Nord Stream 2*, STEPTOE (July 20, 2020), <https://www.steptoelinternationalcomplianceblog.com/2020/07/us-clarifies-secondary-sanctions-on-nord-stream-2/>; Updated CAATSA Section 232 Guidance, U.S. DEP’T OF STATE (July 15, 2020), <https://www.state.gov/wp-content/uploads/2020/07/Updated-CAATSA-Section-232-Guidance-July-15-2020.pdf>.

25. See 19 U.S.C. §§ 9526, 9529.



Various primary sanctions forbidding U.S. government, U.S. financial institutions or U.S. persons to interact in determined ways (exporting goods, granting loans, etc.) with the sanctioned entities) that do not raise jurisdictional concerns; and

Access restrictions sanctions, such as visa denial or restrictions from accessing the foreign exchange market or the financial system under U.S. jurisdiction.

### B. *Protecting Europe's Energy Security Act*

Congress also passed the Protecting Europe's Energy Security Act of 2019<sup>26</sup> to lay down three types of economic sanctions against any person who somehow provided vessels for the pipes of Nord Stream 2, or facilitated deceptive or structured transaction to provide such vessels:

- a) Restrictions from entering the U.S. territory, including inadmissibility to the U.S., ineligibility to receive a visa (or revocation thereof), and ineligibility to receive any benefit under the INA (§ 7503(b)(1)(A)-(B)).
- b) Freezing of assets that “are in the United States, come within the United States, or are or come within the possession or control of a United States person” (§ 7503(c)).
- c) Heavy civil and criminal penalties:
- d) A person that violates, attempts to violate, conspires to violate, or causes a violation of this section or any regulation, license, or order issued to carry out this section shall be subject to the penalties set forth in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.<sup>27</sup>

Civil penalties can amount to \$250,000 or twice the amount of the prohibited transactions and criminal penalties can go up to \$1,000,000 and up to 20 years of imprisonment.<sup>28</sup> Then, Congress broadened the range of persons susceptible of

26. National Authorization Act for Fiscal Year 2020, §§ 7501-7503, Pub. L. No. 116-92, 133 Stat. 1198.

27. *Id.* § 7503(g)(2).

28. 50 U.S.C. § 1705.

falling under sanctions to include not only people involved in the procurement of vessels for the laying of pipes, but also people providing insurance, technological support, inspection or certification required for the completion or operation of the Nord Stream 2 pipeline.<sup>29</sup>

Restrictions from entering the United States can be conceptualized as “access restriction sanctions.”<sup>30</sup> Access restrictions encompass sanctions like the restriction of entrance to the United States or visa denial, but also restrictions on access to U.S. capital markets as provided for in the CAATS Act. Those sanctions do not raise significant jurisdictional concerns under international law. States always have great discretion to control their borders under the territoriality principle. Thus, there is no international principle entitling foreign people or entities to access U.S. territory or economic facilities.<sup>31</sup> Those sanctions can thus be analyzed as the withdrawal of a *privilege* and not the deprivation of a *right*.<sup>32</sup> This first group of sanctions thus appears to be consistent with international jurisdiction law.

The freezing of assets is tied to traditional jurisdictional hooks, as it only targets assets in the United States (territorial principle) or possessed by a U.S. national.<sup>33</sup> That provision thus encompasses both primary sanctions (regulating the conducts of U.S. citizens) and secondary sanctions (regulating the conducts of non-U.S. persons that possess assets in the United States). As a primary sanction, its legality under international jurisdiction law is obvious, with a caveat regarding the fact that the U.S. follows the “control theory” regarding companies.<sup>34</sup> As secondary sanctions, its legality seems reasonable too as it is firmly grounded in the territoriality principle.

Civil and criminal penalties that target non-U.S. persons out of the United States are immediately more problematic under international law. The only jurisdictional hook that can ground those sanctions in international law is the “protective

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29. National Authorization Act for Fiscal Year 2021, § 1242, Pub. L. 116-283.

30. Ruys, *supra* note 9, at 11.

31. *Id.* at 12-13.

32. *Id.* at 14.

33. *Cf.* Meyer, *supra* note 8, at 965.

34. *See supra*, note 13.

principle.”<sup>35</sup> As already suggested, this “protective principle” is significant not only in regard to prescriptive jurisdiction but also in regard to various treaties.<sup>36</sup>

The protective principle is grounded in the right of self-defense of every nation.<sup>37</sup> It thus requires a direct threat to national security.<sup>38</sup> However, its application and limits are highly controversial, as there is always a risk of state overreach (for instance, scholars have repeatedly questioned whether Cuba presented enough of a security threat to justify U.S. sanctions).<sup>39</sup> For that reason, jurisprudence emphasizes that the protective principle can better justify sanctions that directly target, and are tailored to, the source of the national security issue (e.g. sanctions against actors who directly support Iran’s nuclear program, and not a blanket ban on Cuban cigars).<sup>40</sup> In various germane cases regarding a treaty-based “security exception,” the International Court of Justice (ICJ) has also emphasized that measures enacted for security reasons must be “necessary” and objectively grounded.<sup>41</sup>

The United States has relied on this protective principle in most of its sanction acts. For instance, the 1996 Iran and

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35. Ruys, *supra* note 9, at 25. See John Elsinger, *Script Kiddies Beware: The Long Arm of U.S. Jurisdiction to Prescribe*, 59 WASH & LEE L. REV. 1507, 1524-7 for the history of this principle and some examples of its application by U.S. and European courts.

36. See e.g. Ruys, *supra* note 9, at 57 (“Assuming that secondary sanctions may entail violations of the WTO Agreements, and/or various bilateral FCN treaties or BITs concluded between the U.S. and E.U. Member States, it must be acknowledged that, at first sight, virtually all of these treaties contain a so-called ‘security exception’, or a broader clause listing so-called ‘non-precluded measures.’”).

37. See Paul Stockton & Michele Golabek-Goldman, *Symposium: War in the Digital Age: Prosecuting Cyberterrorists: Applying Traditional Jurisdictional Frameworks to a Modern Threat*, 25 STAN. L. & POL’Y REV. 211, 250 (2014).

38. See Emmenegger, *supra* note 11, at 658. Cf. also Meyer, *supra* note 8, at 938, n. 104. The commentary to section 402 of Restatement 3d of the Foreign Relations Law of the U.S. gives examples such as “offenses directed against the security of the state or other offenses threatening the integrity of governmental functions that are generally recognized as crimes by developed legal systems, e.g., espionage, counterfeiting of the state’s seal or currency, falsification of official documents, as well as perjury before consular officials, and conspiracy to violate the immigration or customs laws.”

39. See e.g. Ruys, *supra* note 9, at 27.

40. Emmenegger, note 11 at 658-659.

41. Ruys, *supra* note 9, at 56.

Libya Sanctions Act is predicated on the efforts of Iran “to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism”, which “endanger the national security and foreign policy interests of the United States.”<sup>42</sup> Assessing the legality of the civil and criminal penalties of the Nord Stream 2 thus requires analysis of the alleged security threat. In that regard, the congressional findings underlying the Protecting Europe’s Energy Security Act seem pretextual at best (especially when read in conjunction with the findings of the CAATS Act):

(1) the relationships between the United States and Europe and the United States and Germany are critical to the national security interests of the United States as well as to global prosperity and peace, and Germany in particular is a crucial partner for the United States in multilateral efforts aimed at promoting global prosperity and peace;

(2) the United States should stand against any effort designed to weaken those relationships; and

(3) Germany has demonstrated leadership within the European Union and in international fora to ensure that sanctions imposed with respect to the Russian Federation for its malign activities are maintained.

The findings seem to ground the extraterritorial sanctions in the (implied) fact that Nord Stream 2 could “weaken” the relationship between the United States and Germany. But, at the same time, the U.S. Congress praises Germany for its ability to keep Russia in check. The United States has decided that threatening to sanction German companies is the best (albeit, very unique) way of “strengthening” the U.S.-Germany relationship. All of this nearly amounts to a complete paradox and is certainly too weak of a justification for such strong measures. Things might be different if the sanctions were meant to back European or German sanctions—both the European Union and the United States have, for instance, enacted economic sanctions against Russia because of its invasion of Crimea<sup>43</sup>—but these sanctions do not back other European or German

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42. Iran and Libya Sanctions Act of 1996, § 2.1, Pub. L. 104-172, 110 Stat. 1541.

43. Council Regulation 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, 2014 O.J. (L 229) 1. The economic sanctions enacted by the United States,

sanctions. Does the United States know better that Europe and Germany how to protect the latter?

The findings and policy declarations underlying the CAATS Act are equally troubling. On the one hand, Congress opposes Nord Stream 2 because of its “detrimental impacts on the European Union’s energy security, gas market development in Central and Eastern Europe, and energy reforms in Ukraine,” as Russia uses its natural energy resources as “a weapon to coerce, intimidate, and influence other countries.”<sup>44</sup> This is a peculiar justification as it seems to mostly allege an “indirect” threat against national security, a threat against the security of other countries, several of them that have made perfectly clear they did not welcome U.S. sanctions. On the other hand, the CAATS Act underlines the purely economic motivation of the United States, that is to “prioritize the export of United States energy resources in order to create American jobs, help United States allies and partners, and strengthen United States foreign policy,”<sup>45</sup> which prompted particular outrage and Germany<sup>46</sup> and recently led to quid pro quo allegations.<sup>47</sup> The bulk of this justification is blatantly irrelevant and illegal as economic considerations are outside of the scope of the protective principle. The amorphous reference to the strengthening of the U.S. foreign policy does not fare much better. Foreign policy is much broader than the security threat the protective principle requires for a legitimate use of state jurisdiction.

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first through various Executive Orders, were later codified in scattered sections of 22 U.S.C. pursuant to section 222 of the CAATS Act.

44. 22 U.S.C. § 9546(a)(7), (9).

45. 22 U.S.C. § 9546(a)(10).

46. “The draft bill of the U.S. is surprisingly candid about what is actually at stake, namely selling American liquefied natural gas and ending the supply of Russian natural gas to the European market. The bill aims to protect U.S. jobs in the natural gas and petroleum industries.” German Foreign Office, *Foreign Minister Gabriel and Austrian Federal Chancellor Kern on the imposition of Russia sanctions by the U.S. Senate*, (June 15, 2020), <https://www.auswaertiges-amt.de/en/newsroom/news/170615-kern-russland/290666>.

47. Anonymous, *Germany Offered U.S. ‘Dirty Deal’ to Drop Nord Stream 2 Sanctions*, DEUTSCHE WELLE (Feb.10, 2021), <https://www.dw.com/en/germany-offered-us-dirty-deal-to-drop-nord-stream-2-sanctions/a-56517249>.

#### IV. CONCLUSION

In 2017, 2019, and 2020 the U.S. Congress has enacted sweeping sanctions, both primary and secondary, to derail the Nord Stream 2 project. An analysis of those sanctions through the prism of international jurisdiction law leads to mixed conclusions. First, the general European condemnation of the “extraterritorial” effect of those sanctions proves too broad in regard to international jurisdictional law (any relevant treaty provision notwithstanding), which allows the United States to regulate conduct in its territory or conduct of its nationals abroad. Second, some secondary sanctions that go beyond mere access restrictions clearly rest on shaky legal grounds. Criminalizing the participation of foreigners abroad in a facially commercial and domestically lawful project that, at most, creates an indirect security threat, is clearly a novel objective, even according to U.S. standards.