





COMMENTARY


The US Unilateral Extraterritorial Sanctions: Needlessly Dividing the Transatlantic Alliance?

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Background

President Biden used his speech at the Munich Security Conference to unambiguously set the tone for his presidency. In one breath, he announced: “America is back. The Transatlantic alliance is back”.¹ As relieved as his Western allies may have been to hear it, their doubts concerning the United States’ reliability cannot be glossed over so easily. During former US President Trump’s four years in power, his administration pursued an isolationist foreign policy, an ever-shifting strategy towards Russia, and a hostile tone with European allies that sowed doubts about the United States’ commitment to the Transatlantic alliance and its position as a global guardian of democracy.

The Trump Administration considered removing the United States from NATO, unilaterally withdrew the country from the Iran Nuclear Deal, and pulled out of both the Intermediate-Range Nuclear Forces Treaty and the Open Skies Treaty, dramatically increasing the prospect of a new arms race.² Despite the United States’ new leadership, not only is Trumpism still alive and kicking, many points of contention between the two poles of the Transatlantic alliance remain.³

Washington continues to be frustrated over Europe’s low defence expenditure, Germany’s continued support of the Nord Stream 2 pipeline, and the European Union’s recent investment agreement with China.⁴ In turn, the European Union is irritated with the United States’ repeated use of unilateral extraterritorial sanctions to constrain the conduct of EU operators, whether in Iran after the US withdrawal from the JCPOA or in Germany in retaliation against the Nord Stream 2 pipeline⁵.

At a fundamental level, these disagreements reflect the fact that the United States and Europe prioritise economic interests and geopolitical concerns differently.⁶ As the EU’s relationship with Russia demonstrates, Europeans must sometimes account for economic realities that do not apply to the United States: to Europe, Russia represents an unavoidable partner sharing a common space.⁷ German Chancellor Merkel’s support for the Nord Stream 2 pipeline as contrasted to the United States’ bipartisan condemnation of the project crystallises these different dynamics.

For Merkel, the Nord Stream 2 pipeline is merely a commercial project, not a geopolitical statement.⁸ For Washington on the other hand, the pipeline has political implications which warrant its halt and justify the imposition of extraterritorial sanctions against European firms.⁹ Not only would the project make Europe more reliant on Russian gas, interrupting its construction could also send a clear message against the poisoning and imprisonment of Navalny or the SolarWinds cyberattacks.¹⁰

¹<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/19/remarks-by-president-biden-at-the-2021-virtual-munich-security-conference/>

²Oualaalou, David. *The Dynamics of Russia’s Geopolitics: Remaking the Global Order*. Springer Nature, 2020: 4.

³<https://www.lse.ac.uk/ideas/Assets/Documents/updates/LSE-IDEAS-Germany-and-the-World-of-Yesterday.pdf>

⁴<https://www.defense.gov/Newsroom/Releases/Release/Article/2506361/readout-of-defense-secretary-lloyd-j-austin-iii-remarks-at-day-one-of-the-nato/>

⁵<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0032&qid=1611728656387>

⁶<https://www.brookings.edu/blog/order-from-chaos/2021/02/09/eu-support-for-russian-democracy-is-inadequate/>

⁷<https://www.elysee.fr/emmanuel-macron/2020/02/15/conference-sur-la-securite-de-munich-faire-revivre-leurope-comme-une-puissance-politique-strategique>

⁸<https://foreignpolicy.com/2021/02/22/russian-pipeline-project-tests-bidens-relations-with-russia-germany-and-congress/>

⁹ <https://www.congress.gov/bill/116th-congress/senate-bill/1441/text>

¹⁰<https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/02/press-briefing-by-press-secretary-jen-psaki-march-2-2021/>

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Yet, the effects of a Transatlantic alliance divided over the Nord Stream 2 pipeline and a European Union scandalised¹¹ over Washington's brash use of sanctions against European operators may outweigh any benefit gained from the halt of the project, a prospect which seems unlikely anyways. Considering the urgent need for the West to show a united front to fend off Russian efforts to divide the Transatlantic alliance, shouldn't the United States stop sowing discord itself by meddling with the Nord Stream 2 pipeline? Noting more broadly that the United States' use of extraterritorial sanctions against European actors is rarely effective and always divisive, shouldn't the United States put to rest its controversial tradition of extraterritorial sanctions against Europe *tout court*?

Current State of Play

Russia's motivation for upsetting the current balance of power

The rapport between Russia and the West is at its lowest point since the Cold War. According to NATO, this relationship has been soured by Russian violations of Georgia, Moldova, and Ukraine's territorial integrity, poisonings of political opponents, interferences in election processes, and endless streams of cyberattacks and disinformation.¹² Conversely, Russia's distrust of the West is anchored, among other things, in President Putin's belief that the rose and orange revolutions in Georgia and Ukraine were instigated by the United States. These countries' subsequent pursuit of a closer relationship with NATO and the EU, and the establishment of the Deep and Comprehensive Free Trade Area (DCFTA) compounded this mistrust.¹³

The degradation of the West's relationship with Russia, combined with a weakening of the Transatlantic bond has greatly increased the level of uncertainty in the international political arena. By introducing more unpredictability to the way actors might respond to disputes, and by diminishing the authority of supranational authorities to resolve disputes in the first place, this situation has fostered an anarchic rapport between states. According to a realist reading of international affairs, Russia's increased belligerence is a rational response to this political context: a way to assert and defend its power in the face of uncertainty.¹⁴

As Former Prime Minister of Russia Primakov first argued and President Putin now upholds, weakening the West is key to introducing more stability and reshuffling the balance of power to Russia's advantage.¹⁵ A multipolar system in which the rules-based order is no longer dominant would allow Russia to have a bigger influence on international decision-making.¹⁶ Russia would also have a better shot at asserting its influence over its neighbouring countries, once the Western democratic model is discredited.¹⁷ Accordingly, Putin has consistently worked towards upsetting the international equilibrium by using hybrid warfare and disinformation to divide the Transatlantic alliance, undermine democratic institutions, and chip away at liberal norms.¹⁸

¹¹ https://www.europarl.europa.eu/doceo/document/E-9-2019-002880-ASW_EN.pdf

¹² https://www.nato.int/cps/en/natohq/topics_50090.htm

¹³ <https://www.atlanticcouncil.org/in-depth-research-reports/report/russia-in-the-world/>

¹⁴ Feinstein, Scott G., and Ellen B. Pirro. "Testing the world order: strategic realism in Russian foreign affairs." *International Politics* (2021): 1-18.

¹⁵ <https://carnegieendowment.org/2020/01/08/multipolarity-in-practice-understanding-russia-s-engagement-with-regional-institutions-pub-80717>

¹⁶ <https://www.lowyinstitute.org/the-interpreter/what-russia-wants-multipolar-world>

¹⁷ <https://www.atlanticcouncil.org/in-depth-research-reports/report/russia-in-the-world/>

¹⁸ <https://www.csce.gov/international-impact/events/scourge-russian-disinformation>

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In turn, cracks in the alliance have regularly yielded strategic advantages for Moscow. Putin chose to start a war with Georgia while NATO was infighting over the question of Georgia and Ukraine's membership and the current consolidation of the Russia-Turkey relationship is playing out in the context of a lack of a common policy towards Turkey in the Transatlantic alliance.

Against Putin's efforts to violently establish his vision of global stability by bullying Russia's neighbourhood and dividing the West, the Transatlantic alliance must work together to preserve the stability of the norms-based security order. This requires the reassertion of the Transatlantic alliance's unity which, in turn, calls for the interruption of unilateral extraterritorial sanctions from the United States.

Indeed, unilateral extraterritorial sanctions, neither approved nor examined by any international rules-making body, undermine the rules-based international order which imparts stability to the political system. The United States' secondary sanctions against firms working on the Nord Stream 2 pipeline break international law: they extend the reach of US domestic laws to European operators and violate the sovereign right of European states to exclusively enforce their own laws on their own citizens within their own borders.¹⁹ Unilateral extraterritorial sanctions are not just legally problematic, they are also less effective; the most forceful sanctions against Russia in recent years were multilaterally imposed by the United States and the EU following the illegal annexation of Crimea in 2014.²⁰

That being said, the Biden Administration seems to be taking steps to strengthen the unity of the alliance by working to establish sanctions multilaterally with the EU. On the 2nd of March 2021, the White House announced that the sanctions against Russia's handling of Navalny were intended as a "demonstration of Transatlantic unity and cooperation [...] in harmony with the EU announcement" of sanctions against Russia.²¹

Despite the recent inroads made by the United States to cooperate with the EU, Transatlantic tensions surrounding the Nord Stream 2 pipeline remain. The American sanctions legislation against firms working on the pipeline is still very much in place and continues to be denounced by the EU as a grave violation of international law.²² Even though Germany's decision to go forward with the pipeline may embolden Putin, a protracted conflict in the alliance over the project and over extraterritorial sanctions represents a greater threat to the world order yet.

A more autonomous European Union will tolerate less US interference

In addition to Russia's efforts to pit members of NATO against each other, the EU's irritation with the United States' bold application of extraterritorial sanctions is another divisive factor in the alliance. Historically, the EU and the United States have applied economic sanctions differently. While the US is usually quick to apply broad and open-ended sanctions, the EU's sanctions are habitually multilateral, focus on more specific targets, and have a clear end-date²³.

The sanctions against the Nord Stream 2 pipeline exemplify the problematic nature of unilateral extraterritorial American sanctions generally. Both the US Congress's Countering Russian Influence

¹⁹[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf): 52

²⁰ <https://www.cnas.org/publications/reports/the-future-of-transatlantic-sanctions-on-russia>

²¹ <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/02/press-briefing-by-press-secretary-jen-psaki-march-2-2021/>

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0032&qid=1611728656387>

²³ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621870/EPRS_BRI\(2018\)621870_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621870/EPRS_BRI(2018)621870_EN.pdf)

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in Europe and Eurasia Act of 2017 and the Protecting Europe's Energy Security Act of 2019 enjoined Trump to enforce sanctions against the project, which he did in December 2019 and again in January 2021²⁴. Because the pipeline, or lack thereof, has no repercussions on the American citizen and allows members of congress to denounce Russia at little cost, it is no surprise that these sanctions hold bipartisan support.²⁵

From the very start however, these moves deepened Transatlantic tensions and were condemned by the EU as an attack on European sovereignty.²⁶ And despite the United States' vocal opposition to the pipeline, Merkel's commitment to seeing it built has remained steadfast. So far, the project has survived the illegal annexation of Crimea, Russian interference in a range of elections, and various poisonings.²⁷ Given the pipeline's state of near completion and the 9.5 billion dollars investment it represents, any hope to see the project stopped now seems fanciful.²⁸

The United States is not the only actor in the Transatlantic alliance opposing the Nord Stream 2 pipeline. Within the EU, the project is strongly condemned by Eastern and Central European countries and by the European Parliament.²⁹ Despite this internal lack of consensus on this issue, there is something the whole of the EU agrees on: the necessity to improve, firstly, the implementation and enforcement of EU sanctions and, secondly, the EU's resilience to effects of unlawful extraterritorial applications of unilateral sanctions.

As a new strategy released by the European Commission on the 19th of January 2021 makes clear, the EU is determined to fight back against the United States' sanctions against European operators which undermine multilateral cooperation and threaten the effectiveness of the EU's foreign policy.³⁰ This new strategy sends a clear message from the EU to the United States concerning the way forward for the Transatlantic alliance: a more self-sufficient Europe working to strengthen its strategic autonomy will tolerate less US interference. By reinforcing its ability to enforce sanctions, it will also, however, be a more credible threat to Russia and a better ally to the United States.³¹

Internal divisions among NATO member states concerning the Nord Stream 2 pipeline obscure the Transatlantic consensus regarding the type of threat Russia represents and the overall need to sanction Russia in the first place³². This disagreement weakens NATO's reputation by highlighting a point of contention.³³ The Transatlantic alliance must change the current narrative and continue to publicly project unity, on the heels of the Munich Security Conference and the recent multilateral sanctions against Russia.

²⁴ <https://crsreports.congress.gov/product/pdf/IF/IF11138>

²⁵ <https://www.nytimes.com/2021/02/25/opinion/nord-stream-2-navalny.html>

²⁶ <https://www.atlanticcouncil.org/blogs/energysource/reconciling-transatlantic-differences-over-nord-stream-2/> and <https://www.politikaspolecnost.cz/en/analyses/can-the-biden-administration-reignite-the-transatlantic-partnership/>

²⁷ <https://www.politico.eu/article/eu-foreign-policy-rip/>

²⁸ <https://www.ft.com/content/cfeb60f6-219e-11ea-b8a1-584213ee7b2b>

²⁹ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608629/EPRS_ATA\(2017\)608629_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608629/EPRS_ATA(2017)608629_EN.pdf)

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0032&qid=1611728656387>

³¹ https://ceas.europa.eu/headquarters/headquarters-homepage/89865/why-european-strategic-autonomy-matters_en

³² <https://ecfr.eu/article/the-russia-strategy-europe-needs/>

³³ Aron, Raymond. "The anarchical order of power." *Daedalus* (1966): 496

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An American compromise: the way forward to rebuilding a united Transatlantic alliance

Considering Merkel's dogged determination in seeing the Nord Stream 2 pipeline finished and noting the political cost vis-à-vis Russia of a divided Transatlantic alliance, the Biden Administration should accept the Nord Stream 2 as a *fait accompli*. Though this will mean going against the will of the US Congress, Biden's commitment to "recalibrating" the United States' relationship with Russia already sends a strong message that he is taking the Russian threat seriously.³⁴ It is in the United States' interest to express willingness to compromise for the benefit of the alliance: the Transatlantic relation is still reeling from the mistrust sowed by the Trump Administration.

An American willingness to compromise would also set the stage for a more equal relationship with Europe, as it works towards developing its strategic autonomy. This could announce the beginning of a Transatlantic relationship in which increased European self-sufficiency will make for more deliberate coordination with, rather than greater distance from, Washington.³⁵ Without denying the validity of the United States and other European countries' concerns over the pipeline, focusing on this issue in the face of more pressing and direct threats like Russian cyberattacks and disinformation campaigns is illogical.

Policy Recommendations

Accepting the inevitability of the completion of the Nord Stream 2 pipeline needs not prevent the Transatlantic alliance from trying to mitigate some of the project's negative implications. The European Commission, Germany, and France played a key role in facilitating the negotiation of the 2019 Russia-Ukraine Gas transit deal, an agreement between Gazprom and Naftogaz Ukrainy which laid out agreed transit volumes till 2024.³⁶ In an effort to quell concerns that Russian gas will bypass Ukraine after the construction of the Nord Stream 2 pipeline, depriving the country of lucrative transit fees and political leverage, the EU could work to extend the current agreement past its 2024 expiration date.³⁷ The US could assist in this endeavour instead of alienating its allies with extraterritorial sanctions.³⁸

In turn, Germany should commit to improving the gas security of neighbouring European countries to alleviate the United States' worries concerning the vulnerability of the EU to gas shortages³⁹. To do so, Germany should enforce the EU regulation passed in 2017 concerning measures to safeguard the security of gas supply.⁴⁰ This regulation enjoins EU countries to implement a solidarity mechanism with other member states which would guarantee continued access to gas to a member state in the event of a major disruption of gas supply. The first bilateral solidarity agreement of this

³⁴<https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/02/press-briefing-by-press-secretary-jen-psaki-march-2-2021/>

³⁵<https://www.brookings.edu/blog/order-from-chaos/2021/02/09/eu-support-for-russian-democracy-is-inadequate/>

³⁶<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2020/02/The-Russia-Ukraine-gas-transit-deal-Insight-64.pdf>

³⁷<https://www.atlanticcouncil.org/blogs/energysource/reconciling-transatlantic-differences-over-nord-stream-2/>

³⁸ <https://crsreports.congress.gov/product/pdf/IF/IF11138>

³⁹<https://www.whitehouse.gov/briefing-room/press-briefings/2021/02/16/press-briefing-by-press-secretary-jen-psaki-february-16-2021/>

⁴⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1938>

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type was signed between Denmark and Germany on the 14th of December 2020 and brings hope that this will be the first of many more.⁴¹

The renewed commitment demonstrated on the 2nd of March 2021 by the United States to pursue joint sanctions opens the door to a new kind of Transatlantic relationship towards Russia. Parting with Obama's failed resets with Russia and breaking with Trump's derision for his European allies, Biden seems willing to engage in a more strategic relationship with all parties. As long as the Biden Administration does not get bogged down in petty Transatlantic divisions around issues like the Nord Stream 2 pipeline, the Transatlantic effort to punish infractions while at the same time avoiding escalation will hopefully restore stability and predictability to the political sphere.

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⁴¹ https://ec.europa.eu/energy/topics/energy-security/secure-gas-supplies_en