

The Nord Stream Pipelines through the Lens of Law and Geopolitics

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Matter commented on: Regulation of Nord Stream Pipelines

1. Introduction

In the realm of European energy security, few topics have sparked as much debate and controversy as the Nord Stream pipelines. The two projects, consisting of Nord Stream 1 and the more recent Nord Stream 2, are known as one of Europe's most significant energy infrastructure projects. Different from other pipelines, the intention behind the parallel pipelines was to transport natural gas from Russia to Germany, only transiting maritime zones (but no land territory of other states) on its Baltic Sea route. However, it is not only the size of the overall project that will be remembered for years to come, but also the political tensions, legal challenges, heated discussions on the potential implications for regional energy security and geopolitical dynamics, including the 2022 blasts that caused severe damage to both pipelines.

Starting as a German-Russian deal in 2005 with a basic construction agreement between the energy stakeholders, Nord Stream AG was founded as a Swiss company to develop the first pipeline project, composed of the Gazprom subsidiary along with German and West-European energy companies. The rationale of Germany and other interested European parties at that time was to increase the security of supply with less climate-harmful gas. Nord Stream was designated as a project of European interest and included in the European Union (EU) list of [Trans-European Energy Network Guidelines \(TEN-E\)](#). However, a key rationale of the Russian government was to circumvent the existing land pipelines in [Ukraine](#) and Poland, which would eventually help in preparing for its invasion plans in February 2022. The recent controversy and geopolitical shifts give reason to revisit the pipelines from a legal and security viewpoint.

This post discusses the web of legal challenges surrounding these pipelines and examine what role the law, in particular international law, played in these two projects. We will also briefly consider how governments could adjust to these pressing challenges.

2. Interpretation and application of the law to the Nord Stream pipelines: Nord Stream 1

Even if there were various suggestions as to what law should be applied to the project, there was little doubt amongst those states, under whose territories the pipelines traversed.

As the pipelines were intended to traverse via the Exclusive Economic Zones (EEZ's) of Finland, Sweden and Denmark (also traversing the Danish territorial sea), important legal rights and obligations were laid down in the United Nations Convention on the Law of the Sea ([UNCLOS](#)). Most importantly, Art. 79 UNCLOS allows all states to lay pipelines on the continental shelf beyond the territorial sea, while delineation is subject to consent given by the coastal state (that also reserves the right to establish certain conditions, including the consideration of environmental concerns).

In addition to UNCLOS, another important international treaty to the process was the Convention on Environmental Impact Assessment in a Transboundary Context ([Espoo Convention](#)), as it required the origin states to evaluate the transboundary environmental impacts originating from the type of pipeline that was proposed by the Nord Stream AG. It was via this treaty that the origin states (with Russia agreeing to apply the Convention to the extent permitted by its national law, despite not being a party) designed a sensible way to evaluate the environmental impacts for the entire length of the planned pipeline. The application of the Espoo Convention also enabled the synchronization of the national Environmental Impact Assessment (EIA) procedures in such a way, that all the Baltic Sea littoral states and their civil society could participate in any national EIA procedure and comment on the environmental impacts of the planned pipeline.

On that basis, the first Nord Stream pipeline EIA and permit procedures progressed as they were designed. The company received the permits by 2009 and 2010 and the two pipelines were completed by 2011 and 2012, respectively. Much of the procedure for Nord Stream 1 developed without major challenges, with the exception of the Finnish request to the company to survey the Estonian side of the EEZ (given geological considerations and the seabed being more even in that area). However, even though the company applied for the permit with the Estonian authorities, Estonia refrained from granting consent on the grounds that the seabed survey could be perceived as marine scientific research. In our view, this is an incorrect interpretation of UNCLOS. If the Estonian reasoning was followed, there would not be any entitlement for third states to lay and operate a pipeline in the continental shelf of the coastal state as seabed surveys are a necessary part of this entitlement. The International Law Association, which is currently working on these rules, has adopted the same interpretation of UNCLOS, at least in its [interim report](#).

3. Nord Stream 2 and legal complexities

Compared to its predecessor, the Nord Stream 2 pipeline was a much more challenging legal procedure. Many of these challenges surged following the Russian illegal annexation of Crimea in 2014.

In the beginning, Nord Stream AG saw the two new additional pipelines as an extension project and commenced the international EIA procedure already in 2013, similar to the first project. Yet, when Russia illegally annexed Crimea and commenced supporting the hostilities in East Ukraine, it became uncertain whether the extension project would indeed move forward.

Eventually, a new company was founded, Nord Stream 2 AG, also headquartered in Switzerland, and the international EIA procedure resumed in 2016. Even if national EIA procedures were in progress, the project faced an increasing number of challenges. One major challenge originated from the Danish side, under whose territorial sea the Nord Stream 1 traversed. Denmark revised its [Continental Shelf Act](#), that entered into force in 2018, including the possibility of stopping pipeline projects on the basis of security reasons. Perhaps the biggest challenge to Nord Stream 2 came from the EU, which revised its [Gas Directive](#) in 2019 with the effect that pipelines originating from third states required unbundling of ownership of the pipeline operation and its supply.

Despite the various legal procedures and sanctions that challenged and delayed the project, the EIA procedures gradually came to completion in Sweden, Finland and eventually in Denmark, so that the company received the necessary permits. The first line of Nord Stream 2 was completed in 2021 and

the second line was stopped with the annexation by Russia of the Eastern provinces of Ukraine, just before the full-scale invasion.

4. Analysis of the role of law in Nord Stream 1 and 2

In our view, the law – in particular international law – was correctly interpreted and applied by the responsible officials. It was clear that in Nord Stream 2 the security concerns were reflected in an increasing number of legal processes to stop, or at least delay, Nord Stream 2. Yet, as a testimony to the strong legitimating role of law, the second project withstood the challenges and progressed almost to its completion.

Even if the secretariat of the Espoo Convention argued at the beginning of Nord Stream 1 that the EIA procedure to multi-jurisdictional complex projects (like Nord Stream) should also include an analysis of energy and geopolitical implications, the law – both international and national legal systems – does not extend beyond environmental impact considerations where another state exercises the freedom to lay pipelines.

Though we can conclude that the law was correctly interpreted and applied in these cases, the perspective on the role of law and on the entire Nord Stream projects changes when we consult the views of various security experts, including [Edward Lucas](#) (warning the German government of Russian hybrid warfare tactics in 2010) and [Robert L. Larsson](#) (Swedish Defence Research Agency; emphasizing in a 2008 briefing paper to the European Parliament that Nord Stream gives Russia an excuse to act assertively with its armed forces in the Baltic region). Since the beginning of Nord Stream 1, they have warned that the Baltic Sea gas pipelines are not only a commercial project for Russia. First off, historical evidence shows that Russia had used its gas pipelines as a way to influence policy for a long time. This should have been known at the beginning of Nord Stream 1. The project company was also constructed in such a way that it seemed to be a private undertaking, based in Switzerland, even if Russian state-owned company Gazprom has all along been the dominant party in this endeavor. It is also no secret that the Putin regime has directly influenced the way Gazprom conducts its business. Throughout the 2000s, Gazprom has repeatedly cut (or threatened to cut) supplies to the [Baltic states, Belarus, Georgia and Ukraine](#), widely seen as a way of exercising pressure over their governments. Finally, it was especially relevant that by investing in Baltic Sea gas pipelines, Russia was able to circumvent the land pipelines in Ukraine. Nord Stream 2 has been seen as a clear intent to [weaken Ukraine](#) and a centrepiece of the Russian strategy ahead of the invasion. From this viewpoint, the role of law starts to look more dubious, as it clearly was part of the enablers of the pipelines. A purely environmental perspective in energy matters thus runs the risk of effectively [contributing to conflict](#).

5. How can we react to these challenges?

While one aspect is certainly states' duties not to recognize the unlawful situation created and refrain from rendering aid or assistance to the actor (as Germany did with [the suspension of Nord Stream 2](#)), it is equally, if from a strategic viewpoint not even more important, to give greater emphasis to security considerations already at the planning stage for effective prevention.

Although the Espoo Secretariat had suggested the consideration of [geopolitical aspects](#) as part of the EIA process, this would have been legally not required and practically little viable. Russia and Germany, being economically invested in the project, would need to have a strong incentive for conducting joint governmental evaluations of geopolitical, energy and climate implications.

From the beginning, European governments had been divided on Nord Stream 2. It is imperative to develop greater cohesion on a regional level to map critical infrastructure projects that could seriously impact regional security. In a time of increasingly unconventional measures taken by autocratic, hybrid state actors, strong cooperation and information exchange is a prerequisite for the prevention and coordinated response to threats. A significant step into that direction is the [closer cooperation between NATO and EU](#) in security and defense policies, including the creation of a joint task force on resilience and critical infrastructure, as discussed in early 2023. The European Commission is also accelerating initiatives on improving the resilience of European critical infrastructure, including a [5-point plan](#), as well as new and updated legislation. Building resilience is not only crucial when it comes to energy and infrastructure projects, but also the [legal](#) domain itself that can be abused for strategic purposes (see Hadesian lawfare; the [weaponization of law](#) that distorts the fundamental principles of the international legal order).

6. Conclusions

Even though the legal processes have been correctly interpreted and applied in these cases, security concerns remained as the construction of the pipelines continued progressing. According to security experts, we should have known that Vladimir Putin, who has been in power from the year 2000 (a decade of various energy blackmailing efforts) intended to spread Russia's geopolitical influence in various ways. Long argued by the German government to be a purely [commercial project](#), Nord Stream has turned out to be an instrumentalization of economic ties for other malicious purposes. Having the Baltic Sea gas pipelines accepted would inevitably mean that Russia could increase its geopolitical influence over the Baltic Sea, Germany and the European Union, while Ukraine would lose the leverage it had over Russia through its land pipelines. Even if law, and international law in particular, was not the only enabling factor for having the Baltic Sea gas pipelines endorsed, it played an important legitimating role in channeling our focus on the environmental impacts of the pipelines – giving us the perception that everything was going by the book, when actually underlying factors were at play and posing regional security risks (as recognized early on by Estonia, even though international law did not provide a sound basis to counteract). The case of the Nord Stream projects demonstrates how liberal-democratic states are challenged by autocratic states that do not shy away from abusing law as an instrument of their policy. It is important that our awareness of using law as a means of policy, such as the discourse on lawfare, is on the increase and intergovernmental cooperation strengthened.

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