



Re-Establishing Deterrence with Moscow Through Energy Sanctions

By Richard Nephew

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The U.S. House of Representatives is considering a bill (S.722¹) that – in addition to imposing new sanctions on Iran – would seek to impose new mandatory sanctions against Russia as well as authorize the president to impose measures at his own discretion. This bill passed the Senate in mid-June by a vote of 98-2, underscoring its strong, bipartisan support in the upper chamber of the U.S. Congress.

Some of the sanctions measures to be imposed are fairly non-controversial, at least from a U.S. perspective. Prohibiting U.S. companies from engaging in transactions with the Russian military and intelligence services, for example, could adversely affect a few companies in the United States, but they are also hard to argue against considering the totality of Russian malfeasance over the past few years. Yet other measures in the bill have prompted a more aggressive push-back from U.S. companies and European governments alike, particularly those that would limit investment in and cooperation with the Russian energy sector.

Taken in combination with the broader political drama in Washington that centers on allegations of Trump campaign collusion with the Russian government in the 2016 election, it is unclear what the future of this legislation will be. Press reports suggest that Republicans in the House are reluctant to pass the bill, in no small part because the White House has expressed concerns about the limitations such legislation would impose on the Executive Branch's ability to negotiate with Russia.

Notwithstanding those concerns, the House should pass S.722 or something close like it in order to begin re-establishing deterrence with Russia over the broader foreign policy agenda, even if taking such actions imposes a cost on the United States as well.

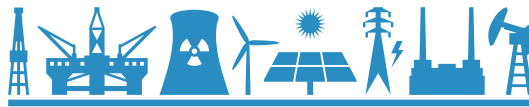
S.722 in a nutshell

Passing S.722 will not in and of itself restore deterrence with Russia or create a situation in which the Russian government reverts to internationally accepted norms. Three additional challenges must also be overcome, some of which may prove more problematic than the rest. The first lies with the actual content of the sanctions and our relationships abroad. The second lies with the Trump Administration itself. And, the third lies with the nature of the Russian government.

The sanctions in S.722 will present a challenge to Russian energy firms and the Russian government, though they are unlikely to do so by any determinative degree. Broadly speaking, these sanctions would:

1. Codify the existing U.S. sanctions against Russia over Ukraine and cybersecurity concerns;
2. Expand those sanctions somewhat, by broadening the prohibition on U.S. energy sector cooperation with Russia to include any Russian energy firm operating world-wide but only on projects that involve deepwater, arctic or shale exploration or production; and,

¹ <https://www.congress.gov/bill/115th-congress/senate-bill/722>



3. Permit sanctions on those who construct pipelines and other means of extracting energy resources from Russia.

The sanctions in S.722 were designed to pinch Russia but not to declare economic war. In fact, one can see the distinction in the original bill (S.94²) tabled by Senator Ben Cardin with bipartisan co-sponsors in January. As two colleagues and I noted³ at the time, the sanctions described in S.94 would have marked a major escalation in pressure on Russia and in tensions between the United States, Russia, and Europe. The sanctions in S.94 were probably too much, too fast, given the international environment at the time. As such, it was always a given that any future Russian sanctions legislation that had a chance of passage would be more restrained than S.94, as S.722 demonstrates.

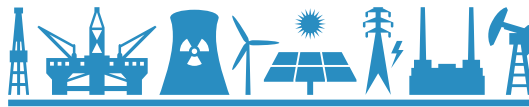
With S.722 in place, U.S.-Russian energy cooperation would be made far more difficult and foreign companies would have to consider carefully their own position in the United States, for fear of retribution for backfilling abandoned U.S. commitments or working with Russia on pipelines. Still, there would be a real risk of competitive advantage being granted to non-U.S. firms, which would present foreign countries and companies with fewer problems in designing consortia and joint ventures for oil and gas projects. Moreover, some U.S. oil and gas experts have noted that S.722 could be used as leverage by foreign countries and companies to keep U.S. firms out of lucrative projects. Moreover, foreign firms could strategically bring Russian energy firms into the mix after a project has begun to force U.S. firms to withdraw.

There are solutions to such problems beyond simply relaxing the sanctions proposed in S.722. For example, S.722 could be amended to include a permissive sanctions authority for the president to use if he were to determine that a foreign country or company intentionally backfilled for a U.S. firm that withdrew from a project as a result of Russian involvement. S.722 could also be amended to expand the definition of what is sanctionable, permitting the president to impose sanctions against any firm that engages in cooperation with Russian energy firms in deepwater, arctic, or shale projects. This would solve the problem of the “backfilling” concern and the sense of unequal treatment between American and foreign firms, while manifestly reducing Russian energy investment options to those projects willing to do without the sorts of support and services provided by U.S. and other major firms.

Of course, with this solution would come a significant problem internationally, as states around the world could be expected to react negatively to such proposals, particularly if not given an opportunity to work with the United States in developing them. There is risk that to push forward with such sanctions now would be to prompt a crisis within the international partnership working together to respond to Russian activities today and, beyond that, to undermine the cohesion of international sanctions more generally. For this reason, S.722 (and especially an expanded version) would also benefit from a delayed implementation period – perhaps 180 days, as has been Congressional practice in recent years when imposing sanctions – to allow the U.S. Administration time to work with partners to define an approach to sanctions implementation that avoids backfilling and evasion of U.S. sanctions in such a way as to permit the use of sanctions waivers and executive discretion. After all, the U.S. objective to push forward with S.722 would not be to impose penalties on partner energy companies, but instead to ensure that U.S. companies are not subject to unfair treatment as a result of good faith attempts by the U.S. government to respond to aggressive Russian behavior in Europe and beyond. This can be achieved via sanctions and coercion; it also could be achieved through persuasion and cooperation.

² <https://www.congress.gov/bill/115th-congress/senate-bill/94>

³ <http://energypolicy.columbia.edu/publications/commentary/assessing-counterering-russian-aggression-act-2017>



Herein lies the rub: the Trump Administration appears loath to apply such pressure against Russia and already has a fragile – if not fractious – relationship with Europe. Under the Obama Administration, extensive diplomatic effort was necessary to keep U.S. and EU sanctions harmonized and to keep the relationship free from acrimony. There is no indication that the Trump Administration will be willing – much less capable – of sustaining such a diplomatic endeavor over the time period necessary. This would need to change.

Furthermore, Russia's natural reaction to S.722 as it stands (not to mention an expanded version) would be decidedly negative. Russia has already cancelled⁴ a scheduled meeting with Under Secretary of State Tom Shannon in response to a modestly expanded sanctions slate in June 2017, despite the fact that this meeting was intended to deal with bilateral irritants and could have proved beneficial to discuss opportunities and options for a future without U.S. sanctions and U.S.-Russian tensions. Doubtless, Russia would use S.722 in any form to further test the Trump Administration and its resolve in confronting Russian bad behavior. Though the State Department – to its credit – responded assertively⁵ to Russia's decision to cancel Shannon's meeting, thus far, this appears to be an aberration from the norm in the Trump Administration.

Not an easy call to make...

Faced with these challenges, a reasonable person could very well ask: why bother? If sanctions against Russia are likely to upset the Russians, irk the Europeans, and not be enforced aggressively, then are they worthwhile? Are sanctions, in this case, simply a means of blowing off steam while undermining real chances for cooperation with and economic benefit from Russia in the long term?

There is a compelling case to be argued about the risks of the legislation in question. By targeting the Russian energy market and particularly the interest of European countries with pipelines from Russia, Trans-Atlantic tensions are sure to rise if this legislation were to become law. Moreover, as representatives of the U.S. oil and gas industry have noted, if left as is, this legislation could potentially damage the interest of U.S. companies operating abroad, granting a competitive edge to foreign companies and doing little to harm Russia itself. Additionally, an argument can be made – even by opponents of the Trump Administration – that escalation with the Russians now only guarantees a bigger problem in the future and that, notwithstanding how he got there, Donald Trump does have a responsibility to seek a better relationship with a profoundly insecure, nuclear-armed country in a position to play a spoiler for U.S. interests the world over.

Moreover, there are good policy reasons and good faith arguments in support of the concept that presidents ought to have room and flexibility to conduct foreign policy on behalf of the United States, including the use of sanctions. Such centralized authority grants strength and leverage to U.S. diplomats in their negotiations and also avoids the competing interests and needs of individual legislators or special interest groups. This has been a bipartisan executive branch perspective, regardless of which party is in the White House and which in control of Congress for at least the last 15 years. Moreover, when dealing with as complex a situation as Russia sanctions, it is a perspective that ensures the most coherent and effective foreign policy possible.

...But a necessary call nonetheless.

However, each of these arguments ignores a more fundamental U.S. interest that needs attention: re-establishing a deterrence relationship with Russia in which it believes that there are costs to its actions and

⁴ <http://www.cnn.com/2017/06/21/politics/us-russia-meeting-canceled-sanctions/index.html>

⁵ <http://www.businessinsider.com/state-department-russia-sanctions-trump-2017-6>



risks to its behavior. Without such a relationship, there are risks of escalation in a conflict and, in normal conditions, a steady erosion of the norms and rules that theoretically underlie state-to-state relations. Without such a relationship, economic benefits in the short-term may be compromised by the risks and threats that could become worse in the long-term.

More specifically, there are three reasons why S.722 – or something much like it – should pass the House and be presented to the president for signature.

First, it is more than evident that the Russian government no longer respects the risks of its behavior insofar as the international community is concerned. To be fair to the current administration, this has been the result of a slow build-up of transgressions over the past ten years as Russia has taken steps that directly contravene international norms and standards of behavior. Many different starting points could be cited, but the Russian intervention into Georgia in 2008 is a reasonable one, particularly since the conflict may have fallen off of the newspaper pages but remains a real problem⁶. It also mirrors the present conflict in Ukraine to a significant degree. However, Russian misdeeds are not just confined to territorial issues in Eastern Europe: Russia's development of missile systems that exceed the terms of the Intermediate-Range Nuclear Forces (INF) Treaty, nuclear saber-rattling, and – of course – intervention in foreign elections all speak to a country that has a very different understanding of how the world ought to work and the definition of responsible Russian behavior.

Though dangerous on its face, Russia's inability to understand and perceive boundaries can also contribute to a steadily worsening crisis between it and the rest of the world. It is uncertain whether the international community can take too much more of Russia's inherently destabilizing activities. After all, instability and insecurity tends to beget more instability and insecurity concerns. Russia's actions in Eastern Europe may have addressed a near-term Russian objective, but, they have also prompted NATO members to increase their defense spending and to step up their own posturing as a means of demonstrating to Russia that there are limits to NATO tolerance. Russia no doubt in turn seeks to respond, helping to start and perpetuate an escalation pattern that is profoundly dangerous.

Moreover, recent analysis of Russian doctrine has discerned an undeniable drive on the part of Russia to establish “escalation dominance,” which can be defined loosely as the ability to escalate so dramatically that you ‘win’ a future conflict (somewhat similar to the ‘madman’ theory that Richard Nixon and Donald Trump both have espoused for handling crises). In fact, Russian strategic doctrine apparently includes a concept of “escalate to de-escalate,”⁷ even in nuclear affairs, creating the possibility that – in a crisis – Russia will seek to dominate opponents rather than find a mutually amicable solution. Beyond the intrinsic dangers of such an approach, a Russia that believes this is the right way to handle crises is one that may be prepared to take otherwise unacceptable risks, confident that it is in control.

Russia requires reminding that an escalation posture carries with it risks from a variety of angles, not the least that Russia may not be nearly as in control of crises as it hopes. New sanctions from the United States will not change Russia's overall posture, at least not at first, but they can serve as a reminder of the complexities of U.S. and global politics with which it must contend.

Second, it is imprudent to seek the re-establishment of deterrence all in one go and even small steps can be part of an overall strategy to restore deterrence. The United States could respond to each Russian misdeed

⁶ https://www.nytimes.com/2016/10/24/world/europe/in-russias-frozen-zone-a-creeping-border-with-georgia.html?_r=0

⁷ <https://www.usni.org/magazines/proceedings/2017-02/escalate-de-escalate>



with an aggressive show of force of its own, but it is very difficult to see how such a response re-establishes patterns of good behavior with Russia rather than becomes an immediate crisis. Predictability in state behavior is an important component of stable international relations and, for better or worse, Russia has grown used to being able to operate in a certain way. The United States and its partners therefore need to find a way of signaling to Russia the extent of permissible conduct and to begin moving that line back to a more acceptable status quo. To some degree, military maneuvers can be helpful in this regard. The decision to deploy U.S. forces on rotation to Eastern European NATO members is an example of such maneuvering, as was the U.S. Senate's decision to ratify Montenegro's accession to NATO in March 2017, but deterrence need not only rely on military force and the threat of physical violence. Other measures can be useful in this regard.

This takes me to the third point: that sanctions pressure can be an element of re-establishing deterrence with Russia, just as sanctions pressure may have played a role in convincing Russia to accept the Minsk I and Minsk II cease-fire arrangements in September 2014 and February 2015. As I have written about previously⁸, sanctions were not the only factor of merit: Russia may also have been influenced by a combination of political pressure, diplomatic messaging, and domestic reasoning. However, the collapse of the ruble in 2014, which followed a steep downturn in oil prices and application of sanctions that would restrict Russia's ability to obtain exterior financing and capital, may have been the most important element in convincing Russia that a reduction in tensions was in its best interest. Russia needs more examples of the same resolve on the part of the international community to confront its destabilizing conduct, particularly where Russia bears some real cost. New sanctions, particularly ones that target Russia's energy sector – still Russia's most important economic asset – would send a strong signal to the Russian government that its challenging policies and activities will not go unmet. Moreover, even if the Russian government is convinced that the Trump Administration will offer concessions, Congressional action now will remind the Russian government that even a pliant Executive Branch has limitations at home.

This holds true – and may even be a stronger point – if there are costs to the United States and U.S. companies from taking this approach. Beyond signaling U.S. readiness to absorb pain of its own in order to inflict some on Russia, new sanctions would underscore to Russia that U.S. interests go well beyond the economic performance of its companies. Moreover, though such business costs may be unwelcome and damaging, in hindsight, they could be modest compared to the business costs that might result in the long-term from a Russia that feels emboldened and invulnerable to the consequences of its actions.

Conclusion

Over the past decade, a combination of events and developments have taken place that – in their totality – suggest that the United States is no longer deterring the Russian government from taking a range of actions prejudicial to U.S. security. The list is long and extends far beyond the issue of Ukrainian sovereignty. A continued posture of trying to get along with Russia at any cost will not convince the Russian government to become more reasonable; rather, it seems likely that the Russian government calculus has increasingly become simplified, based on the precept that other states are sufficiently interested in business with Russia or avoiding conflict that they will make concessions to obtain both. It is in the U.S. – and arguably the broader global – interest to begin changing Russia's strategic calculus. S.722 is a start.

⁸ <http://energypolicy.columbia.edu/publications/report/revisiting-oil-sanctions-russia>



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