

Working Group Paper #6

Why and How to Confiscate Russia's Sovereign Assets to Help Rebuild Ukraine

The International Working Group on Russian Sanctions

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I. Introduction

[The International Working Group on Russian Sanctions](#) aims to provide expertise and experience to governments and companies around the world by assisting with the formulation of sanctions proposals that will increase the cost to Russia of invading Ukraine and that will support democratic Ukraine in the defense of its territorial integrity and national sovereignty. Our working group is comprised of independent experts from many countries, but coordinates and consults with the Government of Ukraine and those governments imposing sanctions. This consultation process helps to inform our views, but our members express independently held opinions and do not take direction from or act at the behest of the government of Ukraine or any other person or entity. This publication is a follow-up to our first [Action Plan](#) and previous working papers on [energy](#), [finance](#), [individual sanctions](#), and [designating Russia as a State Sponsor of Terrorism](#), all of which have been informed by additional memos and publications from our working group members on our website.

On February 24, 2022, Russia invaded Ukraine without any provocation or legitimate cause. With its terror bombing, Russia has brought about massive human and material losses and committed numerous war crimes – torture, rapes, and arbitrary executions of civilians.

Appropriately, U.S. President Joe Biden has [called](#) Vladimir Putin “a war criminal.” The Russian government must compensate Ukraine for these human and material losses. Ukrainian government officials and international multilateral organizations estimate that the cost of rebuilding Ukraine will approximate \$750 billion. The Russian government, not only Ukrainian, European, American, or Canadian taxpayers, should pay for this reconstruction. President Biden and other leaders of the free world can help compel Putin and his government to pay for reconstruction by confiscating the frozen Russian sovereign assets, including international currency reserves of Russia’s Central Bank currently being held in the West. They should transfer these funds to a dedicated fund for the purposes of post-war reconstruction of Ukraine.

Immediately after Russia attacked Ukraine, the Group of Seven (G-7) and the European Union (EU) [decided](#) to effectively freeze the assets of the Central Bank of Russia that are being held in Western countries. Putin [responded](#) that by “illegitimate freezing of some of the currency reserves of the Bank of Russia...the US and the EU have defaulted on their obligations to Russia.” However, this decision was taken in accordance with national laws and international law, in response to an unjustified, unprovoked Russian invasion of Ukraine.

[The funds](#) are substantial, but are held in several countries. What to do with them, therefore, must be a unified, coordinated response. These funds are also not sufficient to pay for all of Ukrainian reconstruction. The Kyiv School of Economics has estimated that damage to Ukraine’s civil infrastructure alone exceeds [\\$110 billion](#). A proper evaluation based on the cost of reconstruction, as well as other damage and harm caused to businesses, could conceivably increase that amount by an order of magnitude. At the [Ukraine Reconstruction Conference](#) in Lugano, July 4-5, 2022, the Ukrainian government presented a National Recovery Plan, calling for [a financing of \\$750 billion](#) for the next decade.

Tens of thousands of Ukrainians have been killed and many more have been injured. After Libyan officers planted a bomb on an airplane that blew up over Lockerbie in Scotland in 1998, Libya eventually [agreed](#) to pay \$2.7 billion in compensation to the 270 victims' families, that is, \$10 million per victim. If Russia, for example, has killed 50,000 Ukrainians, it would have to pay \$500 billion by the same standard.

However the final amount is calculated, the principle [is clear](#): Russia ought to pay substantial reparations to Ukraine after this horrific and senseless war. The moral and practical answer is clear. In response to Putin's gross violations of international law, these funds can and should be confiscated through an international compensation mechanism and subsequent national legislation, and then diverted towards a Compensation Fund for Ukraine, out of which the decisions of the compensation commission will be paid out. In the future, other seized assets from Russian individuals, companies, and the state might also be transferred to this fund. The Central Bank reserves, however, should be the first and most appropriate target. They and their owner are identified. They are indisputable property of the Russian Federation that is highly liquid and involve minimal administrative and legal work. It is the Russian government that ordered the invasion of Ukraine. It is the Russian government, therefore, that should pay for Ukrainian reconstruction.

It is envisaged that the multilateral international agreement is concluded on the establishment of the compensation mechanism, including the Compensation Fund between these parties and the Ukrainian government, so that an international institution to which funds can be provided is created as soon as possible.

II. The Legal Case for Confiscation

The obligation to pay reparations for a violation of international law is a well-established norm. There is ample historical precedent for war reparations in the past.

Russia's unprovoked invasion and attempted annexation of Ukraine in 2022 shares many similarities with Iraq's unprovoked invasion and attempted annexation of Kuwait in 1990. At the end of that war, Iraq was forced to pay substantial reparations to Kuwait. In February 2022, the United Nations Compensation Commission, which had been created by the United Nations Security Council to handle the restitution to Kuwait, [announced](#) that it had processed its final claim, concluding a total of \$52.4 billion. Similarly, Russia should be required and forced to pay war reparations for all the damage it has caused Ukraine.

Russia is different from Iraq in two central ways, raising doubts among some about the ability of the international community to compel the Russian government to pay reparations. First, some argue that Russia cannot be defeated militarily because of its nuclear arsenal, and only clear-cut losers in wars pay reparations. A second concern is that Russia is one of the five permanent members of the United Nations Security Council and therefore can always veto any international proposal about reparations. Both these issues can be overcome by confiscating

Russian government assets already frozen outside of Russia. The international community does not have to force Russia to send new financial resources to Ukraine, although that would be fully appropriate. The Russian Central Bank's resources already have been secured outside of Russia. They should now be confiscated and transferred to Ukraine.

The moral and legal grounds for confiscating the currency reserves of the Central Bank of Russia has been established. On March 2, 2022, the United Nations General Assembly demanded that Russia "immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders" in vote of 141 for and 5 against.

The International Court of Justice ruled that Russia "shall immediately suspend the military operations that it commenced on 24 February." Russia did nothing of the kind. The ultimate verdict of the International Court of Justice that is yet to come should provide a sufficient basis in international law for any country to confiscate Russian funds.

Since the United Nations Security Council is unable to act because of Russia's veto, the Government of Ukraine has proposed the creation of a special compensation mechanism that would be set up by a multilateral international agreement of states that respect international law and, moreover, hold Russian assets in their respective jurisdictions. This international compensation mechanism will be rooted firmly in past precedent and international law and create the international legal basis for individual states to take domestic measures to transfer these frozen funds to Ukraine.

Using a new compensation mechanism under international law, the G-7 and EU should confiscate these Russian state funds. The intention to do so must be made clear now, as the work on establishing the compensation mechanism begins. Putin and the Kremlin must now be made to understand that the Russian government will have to pay for its destruction in Ukraine. The more damage Russia inflicts on Ukraine, the larger the funds will have to be confiscated.

Canada has taken the lead in adopting a law in late June to confiscate the assets of both individuals and states that are linked to violations of international peace and security, as well as gross violations of human rights. Canadian legislation could serve as a useful model for other countries currently holding Central Bank of Russia reserves.

Other experts have argued that the laws and legal mechanisms for this asset transfer are already in place in the United States. Gary Hufbauer and Jeffrey Schott of the Peterson Institute for International Economics note that the United States has two powerful laws for seizing foreign assets: the Trading with the Enemy Act of 1917 and the International Emergency Economic Powers Act of 1977. Both these laws focus on the freezing of foreign assets. The USA Patriot Act of 2001 also gives the US government additional powers to seize assets of belligerent countries as well as to dispose of them as the president sees fit. President George W. Bush used the revised International Emergency Economic Powers Act to use Iraqi assets for humanitarian and reconstruction needs in Iraq. President Biden invoked the same law to transfer \$3.5 billion of

the central bank reserves of Afghanistan for humanitarian purposes. Harvard Law Professor Lawrence Tribe and his co-author, Jeremy Lewin, used the similar arguments but explained further that “Mr. Biden already has ample statutory authority to liquidate Russian assets under a section of the International Emergency Economic Powers Act.”

Of course, Russia has not attacked the United States, and therefore new legislation or reauthorization from the U.S. Congress might be needed. But the principle has been established. European officials also have signaled support for the legality of this idea. Speaking at the Lugano conference, President of the European Commission Ursula von der Leyen stated, “We are working on the legal framework so that the assets of Russia and partly the assets of oligarchs can be used to restore Ukraine.” The legal justification for transferring these Russian government assets to Ukrainian reconstruction is clear. What is needed next is the political will to do so in those countries now holding these frozen assets.

III. The Costs and Benefits of Central Bank Confiscation

Some officials in democratic countries fear that confiscation would scare away other countries from holding their reserves in the confiscating country. References are often made to China, Nigeria, Saudi Arabia and other Gulf states. These are legitimate concerns. But the precedent has already been set. The United States has already confiscated reserves of Iraq and Afghanistan. Second, the confiscation of these Russian assets might help deter other countries from illegitimately invading and annexing the territory of other countries. Third, the United States and other G-7 countries should not be in the business of providing banking services for rogue state governments. Signaling an intolerance for such behavior – even if it meant losing some reserves and maybe triggering a further decoupling between the U.S.-dominated financial system and the China-anchored system – might be a good development, not a bad one. Fourth, the U.S. dollar still accounts for 59 percent of all international currency reserves. The competition among reserve countries is still quite limited.

Another objection is that this action would constitute a violation of property rights. Each country has its own constitution, which protects property rights. International institutions including the European Convention on Human Rights, also advocated for similar protections. But these protections do not apply to sovereign assets. The property rights of an individual are different from the property rights of a state.

A vital issue is to whom the confiscated issues shall be transferred, as these funds are very large. According to the public statistics of the Central Bank of Russia, on January 1, 2022 they amounted to \$316 billion. Germany held \$96 billion, France \$61 billion, Japan \$57 billion, the United States \$39 billion, the United Kingdom \$31 billion, Canada \$17 billion, and Austria \$15 billion. All the countries that confiscate Russian Central Bank assets will require a transparent governance structure for these funds that is beyond any reproach. Europe has an

outstanding model of successful governance that should be repeated, the Organization for European Economic Cooperation, which was founded in 1948 to manage the Marshall Plan. A neutral name would be the Ukrainian Development Authority. It should include all the donors as well as Government of Ukraine. Its governing body should have a majority of donors, while the minority should be Ukrainian state representatives. The two dominant powers in the new Ukrainian Development Authority should be the main donors, the EU and the United States, and the next three Japan, the United Kingdom, and Canada, but all other major donors and international financial institutions should be invited to participate.

It is vital that an early agreement is concluded between these parties and the Ukrainian government so that an international institution is created as soon as possible to which funds can be provided. Unless the Western donors are convinced of the highest standards of transparency and good governance, efforts to confiscate the Russian Central Bank reserves will inevitably be held back. It is in Ukraine's national interest that donors are confident that the funds they earmark for transfer to Ukraine are being used responsibly for reconstruction to the benefit of all Ukrainian citizens. Tellingly, after bad experiences with its assistance to Afghanistan and Iraq, the United States is now disbursing its monthly contributions to the Ukrainian state budget through a World Bank trust fund, which works well and has aroused no criticism. Given the much larger funds that are being discussed here, however, it will be necessary to create a special institution for the confiscated funds, but the World Bank might contribute with its useful experience.

IV. Alternatives Sources of Funding

Alternative approaches for raising funds for Ukrainian reconstruction can and should be pursued in parallel to this proposal. For instance, ten Ukrainian company groups have brought their claims, which exceed \$10 billion, in international arbitration against Russia. Some of these cases, including the one brought by Naftogaz, are nearing conclusion. Ukraine's wealthiest citizen, Rinat Akhmetov, has sued the Russian Federation in the European Court of Human Rights in Strasbourg for compensation of \$17 billion for his two giant steelworks Azovstal and MMK Illica that were completely destroyed by the Russian army in Mariupol, as well as other loss of business. Others are pressing for the liquidation and transfers of Russian oligarch assets seized around the world, either coercively or voluntarily. These are all proper mechanisms for pursuing compensation for damages from Russia's barbaric war. We support these strategies. But the first and most valuable asset transfer should be funds of the Russian government currently frozen in banks outside of Russia. The confiscation of reserves of the Central Bank of Russia will provide greater and most immediate help to Ukraine to finance reconstruction.

If the Russian government does not help to pay for Ukrainian reconstruction, the burden will be passed on to taxpayers in Ukraine, other European democracies, Canada, and the United

States. Is that fair? Why should taxpayers in these countries have to pay for reconstruction but not the Russian government? In addition, because Putin's invasion sparked dramatic price hikes of oil, gas, and other energy sources around the world, the Russian government has amassed giant new reserves since the war started. Russia has profited handsomely from this war. We do not think that is right nor appropriate.

Putin, the head of the Russian government, made the decision to invade Ukraine again in 2022. This second invasion has produced horrific losses of innocent life and physical destruction. The Russian government must be made to help pay for Ukrainian reconstruction. It is the right thing to do, the legal thing to do, and the practical thing to do.

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