

No more excuses: Debunking arguments against seizing Russian state assets for Ukraine

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Executive Summary

This Discussion Paper analyses the arguments against seizing Russian state assets for Ukraine. Indeed, the authors highlight that the immediate rebuilding of critical infrastructure is crucial to keeping Ukraine's economy running and for its defence, as the country will not be able to rebuild if it no longer exists.

Some of the arguments debunked in this Paper include:

- ▶ Delaying the seizure of Russian state assets until Russia agrees to pay reparations to Ukraine is illogical, costly, and harmful to the internationally recognised rights of victims of Russia's war.
- ▶ Seizing and transferring Russia's frozen reserves is lawful under international law.

- ▶ There is precedent for seizing and transferring sovereign reserves.
- ▶ The EU's proposal to seize the profits generated by the frozen assets will not provide sufficient funds to compensate Ukraine and is not a substitute for full confiscation.

With all the arguments debunked, the authors conclude that Russia is already seizing assets from G7 investors and is likely to continue even in the absence of the West seizing Russia's frozen assets. Furthermore, the companies that continue to operate in Russia make the business decision to do so with full knowledge of the risks. Thus contributing to the Russian war machine with their taxes.

I. Delaying the seizure of Russian state assets until they agree to pay reparations to Ukraine is illogical, costly, and harmful to the internationally recognised rights of victims of Russia's.

1. THE FROZEN RESERVES ARE ALREADY OWED TO UKRAINE, AND THE G7 HAS ALREADY RESOLVED TO FREEZE RUSSIA'S SOVEREIGN ASSETS UNTIL RUSSIA PAYS FOR THE DAMAGE IT CAUSED TO UKRAINE.¹

Russia is required to pay reparations to Ukraine. This is inarguable under international law.²

The amount in reparations that Russia owes Ukraine already exceeds the sum total of its frozen central bank reserves. The amount frozen is between \$300 and \$350 billion, while the amount needed for the reconstruction of Ukraine (not including the occupied territories) is, as of December 2023, conservatively estimated at \$486 billion.³ This figure includes only direct physical damage to housing, transport, energy, commerce and industry, and does not include physical and psychological harm suffered by civilian victims of the war, many of whom have been displaced.

The G7 has stated that the reserves will be held until Russia pays full reparations or agrees to allow the frozen reserves to be used as payment towards Russia's reparations.⁴ In effect, this is a decision to compel payment by holding the funds immobilised until Russia "voluntarily" agrees to compensate Ukraine. It is a seizure in all but name.

While the G7 has endorsed the principle of "Russia must pay" and "Russia will pay," they have yet to devise a mechanism of forcing a payment, if Russia were not to pay voluntarily. This means that Ukraine (and the rest of the world) has to wait indefinitely for Russia's voluntary consent to pay for damage its illegal actions in Ukraine continue to cause.

The continuation of the status quo is costly to the Western taxpayers, who so far have single-handedly funded humanitarian aid to Ukraine and victims of the war. It is also detrimental to the victims of the war, whose ability to rebuild their lives is harmed by lack of financial compensation. The decision to hold the Russian funds indefinitely immobilised benefits only the financial institutions that have reported extraordinary profits as a result of holding those funds.⁵

It would be a cruel irony to deny Ukrainians the lifesaving benefit of these assets by invoking precedence for Russia's property rights when Russia is violating Ukraine's basic right to exist.

2. THE AGGRESSOR'S RIGHTS MUST NOT TAKE PRECEDENCE OVER THE RIGHTS OF ITS VICTIMS.⁶

The payment of reparations for victims should not be determined by the country that injured them. Invoking the precedence of Russia's apparent property rights over the rights of its victims to compensation would undermine international law, not respect it.

It would be a cruel irony to deny Ukrainians the lifesaving benefit of these assets by invoking precedence for Russia's property rights when Russia is violating Ukraine's basic right to exist.⁷

When an individual commits a tort—an act that harms another person—they are obligated to provide compensation. Often, individuals' assets are seized to ensure they fulfil this obligation. The same principle applies to countries.⁸

Transferring Russia's reserves to Ukraine would signal to would-be aggressors that if they attack their neighbours, they will have to pay for it, and it will remind aggressors of the financial cost of any illegal war. Their assets will end up funding reparations for the victims of their crimes, whether or not they agree to it.⁹

3. USING RUSSIAN STATE ASSETS TO SUPPORT UKRAINE CANNOT WAIT UNTIL THE END OF THE WAR.

The G7's current policy of freezing Russia's reserves until Russia agrees to pay "voluntarily" guarantees that, in the best-case scenario, the reserves will be frozen for years after the war. This threatens the survival of Ukraine as well as the stability of Europe.

The idea that the Russian government will ever voluntarily agree to compensate Ukraine or pay reparations is a fallacy. Russia consistently denies any wrongdoing in Ukraine. Rather than complying with the March 16, 2022, order of the International Court of Justice to "immediately suspend the military operations that it commenced on February 24,"¹⁰ Russia continues to escalate its aggression towards Ukraine. For the last ten years, Russia has shown no indication that it intends to comply with any of its international law obligations arising out of its unlawful actions in Ukraine. Its strategy for victory is one of economic and social ruin of Ukraine and the erasure of Ukraine's existence as a nation. The G7 tactic of immobilising Russian assets indefinitely plays into Russia's strategy in Ukraine.

Reconstruction is an ongoing process. Infrastructure must be rebuilt as it is destroyed. Otherwise, the number of deaths will multiply exponentially, and while Ukrainian civilians flee overseas for safety and basic comforts; Ukraine will not be able to continue to defend itself or to keep its economy alive. Ukraine will not be able to rebuild if it no longer exists.

If Russia's money is not tapped soon to meet reconstruction and reparation costs, then the G7 must either fund these costs now, or Ukraine loses the war and becomes a failed state. The costs of a failed state in Europe will be much higher than the sum of Russia's frozen reserves. Much of the costs would fall

on Ukraine's neighbours, the citizens of the EU. It is unreasonable to expect taxpayers in Europe, the US, and Asia to bear the cost of Ukraine's reconstruction and recovery when Russia can make a significant (albeit involuntary) contribution.^{6,11}

The countries holding Russia's frozen assets could defer this problem for months or years as Ukraine's economy fails. But such a delay would only encourage Russia to continue its war of wreckage and test Ukraine's staying power.⁶

The timing of when the funds are paid to Ukraine is critical to Ukraine's survival.

II. Seizing and transferring Russia's frozen reserves is lawful under international law.

INTERNATIONAL LAW SUPPORTS TRANSFERRING THE RESERVES FOR REPARATIONS AND RECONSTRUCTION UNDER THE DOCTRINE OF COUNTERMEASURES.

On November 14, 2022, the United Nations General Assembly formally recognised that Russia must "bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts."¹² The UN called for member states, in cooperation with Ukraine, to establish an international mechanism for reparations for damage, loss, or injury arising from the internationally wrongful acts of the Russian Federation. Further, on April 16, 2024, the Parliamentary Assembly of the Council of Europe (PACE) unanimously passed Resolution 2539 (2024) concerning Support for Reconstruction of Ukraine and called for the seizure of Russian state assets as a countermeasure against Russia's unlawful behaviour and transfer of those assets to an international compensation mechanism.¹⁵

Numerous legal scholars, practitioners, and experts have established the legality of seizing and transferring Russian sovereign assets under international law doctrine of state countermeasures. This argument has been published in many papers by some of the world's leading legal experts, including those led by Harvard Law School professor emeritus Laurence Tribe¹⁴; Cambridge University's Tom Grant¹⁵; Razom for Ukraine's Yuliya Ziskina¹⁶; Professor Philippa Webb¹⁷; multiple pieces by former 9/11 Commission executive director Philip Zelikow¹⁸; and a group of the leading international law attorneys from various countries, including the UK, Germany, Japan, and the Netherlands.¹⁹

The argument for countermeasures was also recognised by PACE in Resolution 2539 (2024), stating that "under international law, states possess the authority to enact countermeasures against a state that has seriously

breached international law. Now is the time for Council of Europe member states to move from sanctions to countermeasures. The Assembly further notes that countermeasures are intended to induce the offending state to cease its unlawful behaviour or to comply with its obligations arising from that conduct, such as paying compensation for damages caused. The Assembly emphasises that the legitimacy of the recommended countermeasures remain unassailable within the framework of sovereign immunity."²⁰

Countermeasures are delineated in the UN International Law Commission's Articles on the Responsibility of states, which reflect long-standing customary international law. They are a "self-help" tool to enforce international obligations in situations exactly like this where institutions— such as the UN Security Council or the International Court of Justice (whose March 17, 2022 order to suspend military operations in Ukraine was ignored by Russia)—have failed.

By definition, countermeasures are state acts that would ordinarily be unlawful (such as interfering with sovereign property). However, the unlawfulness of the act is precluded because the action is taken against another state for its serious violation of international law. The countermeasures are intended to stop the wrongful conduct or to compel the payment of reparations.

In this case, the countermeasure would lawfully suspend a country's obligation of non-interference concerning Russian state property, because Russia's prior breach of peremptory norms of international law created a duty for Russia to pay compensation for damage caused—a duty which it is not fulfilling. The transfer of Russian sovereign assets to a compensation fund for victims of Russia's war in Ukraine operates as a temporary and narrow suspension of the obligations of non-interference concerning Russia's property.

The obligation can be resumed once Russia has complied with its duty to make full reparations to Ukraine (whether voluntarily or via “involuntary” confiscation and transfer of its assets).

When a state’s misconduct is so egregious that it violates the very core norms of international law, such as acts of aggression or genocide, it is considered to affect the entire global community. Any state has the right, and possibly even the duty, to take countermeasures against it.²¹

Seizing and transferring reserves to Ukraine for reconstruction and reparations would not be taking money from Russia as a penalty or a sanction. It would

be restoring the rightful norm by compelling Russia to honour its existing obligation to pay reparations. If an employer deducts money from your salary and transfers it to the treasury to pay your tax debt, it has not confiscated or stolen any money from you. The money was used to settle your debt, which is reduced by the amount paid. It is that simple.

In this case, far from acting in breach of the rule of law, by confiscating Russian assets for use to compensate victims of Russia’s war, third-party states would be complying with their obligations to uphold the rule of law and international order in accordance with the norms in the UN Charter and the Genocide Convention voluntarily subscribed to by all nations, including Russia.

III. There is precedent for seizing and transferring sovereign reserves.

CONFISCATING ASSETS OF FOREIGN STATES IN RESPONSE TO AN UNJUST WAR HAS BEEN A NORMAL PRACTICE THROUGHOUT HISTORY. THE TRANSFER OF IRAQI RESERVES FOR REPARATIONS FOR KUWAIT IS A GOOD EXAMPLE.

During World War I, the US passed the Trading with the Enemy Act, which allowed for the confiscation of enemy property. During World War II, Japanese and German assets were frozen and later offset against each nation’s claims for reparations.

After Iraq’s 1990 invasion of Kuwait, States adopted countermeasures against Iraq to compensate the victims of Iraq’s aggression. It is widely accepted that Iraq had breached fundamental peremptory norms of international law and was liable for the direct consequences of those wrongful acts.²² This corresponded to the duty to make reparations under international law. Thus, the US, UK, and France led the way in transferring frozen Iraqi state funds to an international escrow account to provide compensation without Iraq’s voluntary consent. The “immunity” of Iraq’s state assets was suspended in order to transfer and use them for compensation to its victims.

Similarly, Russia should be induced to do its duty and compensate its victims, either voluntarily or involuntarily.²³

Although one could argue that these examples are not identical to the circumstances at hand, this overlooks the fact that there are well-established legal doctrines meant to address such circumstances. It also overlooks the fact that the circumstances themselves are unprecedented: an outright war of aggression and the availability of hundreds of billions of the aggressor’s frozen assets that remain untouched as Ukraine’s taxpayers and Western taxpayers continue to shoulder the burden. Under these unique and historic conditions, we are forced to reinforce precedent, either by action or inaction.

An outright war of aggression and the availability of hundreds of billions of the aggressor’s frozen assets that remain untouched as Ukraine’s taxpayers and Western taxpayers continue to shoulder the burden.

IV. To the extent that seizing immobilised Russian sovereign assets would set a precedent, it would be a positive one of deterrence and protection of the international rules-based order against crimes of aggression.

1. ANY PRECEDENT SET IN THIS SITUATION WILL BE LIMITED TO THE CIRCUMSTANCES AT HAND: NAMELY, RUSSIA'S OBLIGATION TO PAY REPARATIONS FOR DAMAGE CAUSED BY ITS ILLEGAL WAR IN UKRAINE.

Among the most frequently voiced objections to transferring Russia's immobilised state assets to Ukraine is that doing so would set a dangerous precedent in the future. Objectors argue that if exceptions to fundamental principles such as reciprocal regard for the sovereign property is invoked too often, those principles could eventually be eroded altogether.

However, such concerns are fundamentally misplaced. Russia's invasion of Ukraine, a clear violation of international law in itself, is accompanied by war aims of an extremity not seen since World War II. Russia's stated war aims include the destruction of Ukraine as a state and Ukrainians as a people or ethnic group,²⁴ and Russia's ancillary war aims, also stated, include the "restoration" of territorial and maritime boundaries of the Russian Empire from 1721 to 1971, whose modern-day countries within the territory included Ukraine, Belarus, Lithuania, Estonia, Finland, Poland, and Georgia.²⁵

Russia's conduct is fortunately exceedingly rare, if not unique, in the modern international world order.

Russia's conduct is fortunately exceedingly rare, if not unique, in the modern international world order. There is already ample and substantial evidence that Russia's actions have violated international law, resulting in decisions by recognised international bodies, of which Russia was (and, in the case of the UN, remains) a member, such as the UN General Assembly, the Council of Europe, the International Court of Justice, and the European Court of Human Rights. Yet, there is no viable mechanism by which to hold Russia accountable, given the lack of enforcement powers by any international courts, Russia's sovereign immunity in national courts, and its veto as a permanent member of the UN Security Council. In this instance, the aggressor's place on the Security Council has neutralised the very body that is tasked with the responsibility for taking prompt and effective action for the maintenance of international

peace and security. If any countries were to hold Russia accountable for this egregious behaviour by transferring its assets to victims of its aggression, they would not be doing so arbitrarily.

Moreover, the resulting precedent may be narrowed by limiting any national or international legislation to these unique circumstances facing the international community right now.²⁶ To compensate Ukraine, the case is more than adequately proved—Russia breached the central international obligation prohibiting aggression against sovereign integrity of another state, and it owes reparations to Ukraine for this breach, as confirmed by two resolutions of the UN General Assembly.²⁷ In any event, this is a question of drafting rather than one of principle: each state is free to decide in which circumstances future seizures of state assets can take place. It would not be difficult to limit the seizure and transfer of central bank assets to circumstances of a particularly clear-cut, widespread, and egregious breach of international law. While Russia's aggression qualifies under this standard, there remains scope for debate as to what precise circumstances will justify such a response in the future.

2. TRANSFERRING THE RESERVES ACTS AS A DETERRENT AGAINST FUTURE CRIMES OF AGGRESSION.

Far from setting a negative precedent, a transfer of Russian state assets to Ukraine would act as a deterrent against further crimes of aggression in violation of the cornerstone provision of the UN Charter (Article 2(4)) prohibiting the use of force against the territorial integrity of any state. It would set a good and lasting precedent: one that protects the international rules-based order against unprovoked aggression by one state against another, uses international law to hold the aggressor accountable for its actions, and supports victims. On the other hand, continued delay in seizing those funds encourages further crimes of aggression and undermines the geopolitical order.

A central objective of the international response to Russia's aggression is to deter and prevent Russia or any other state from launching a future act of aggression of this kind. Transferring the aggressor's reserves to its victims would act as a powerful warning to other countries considering wars of aggression. It would be a demonstration of how costly it is to assault global norms in a world that is so deeply interconnected.

Conversely, failure to seize the reserves encourages further crimes of aggression and undermines the geopolitical order.

Failing to implement full reparations for Ukraine would impose the costs of Russia's egregious violations of international order on Ukraine—the target of those violations—and would correspondingly relieve Russia of the costs of its unlawful actions. Just as making territorial concessions to Russia or accepting Russia's war aims would create an incentive for future aggression and allow a wrongdoer to profit from its actions, so would a failure to implement full reparations. Neither

a rules-based order nor geopolitical order will survive if Russia's practice of territorial aggression becomes entrenched in that way.²⁸

By not seizing these funds, Western countries would signal to potential aggressors that they can not only escape the consequences of waging brutal wars of aggression and violating international law, but also simultaneously benefit from doing so. Instead, G7 leaders should send a clear message: no country can have it both ways. By deterring other bad actors from violating international law, such seizures could act as a peace-building measure.²⁹

V. It is possible to create a legal mechanism to confiscate Russian assets in countries where one does not already exist. Some countries have already enacted legislation allowing them to seize assets in response to grave breaches of international law.

AT LEAST TWO NATIONS HAVE ALREADY INTRODUCED LAWS WHICH ALLOW THE SEIZURE OF STATE ASSETS TO COMPENSATE VICTIMS OF BREACHES OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAWS.

On November 14, 2022, Canada introduced an amendment, initially introduced by Senator Ratna Omidvar, to the Special Economic Measures Act of 1992 (SEMA). The amendment enables the government to seize state and individual assets frozen in Canada in cases of grave breaches of international peace and security that have resulted or are likely to result in a serious international crisis or gross and systematic human rights violations committed by a foreign state.³⁰ Payments out of the forfeited funds under SEMA may be made for the purpose of (a) the reconstruction of a foreign state adversely affected by a grave breach of international peace and security; (b) the restoration of international peace and security; and (c) the compensation of victims of a grave breach of international peace and security, gross and systematic human rights violations, or acts of significant corruption.

In the US, the Emergency International Emergency Economic Powers Act gives the US President broad authority, allowing for the seizure and transfer of sovereign state assets.³¹ Even so, on April 25, 2024, the US passed the Rebuilding Economic Prosperity and Opportunity for Ukrainians (REPO) Act, a law that allows the seizure and transfer of frozen Russian assets held in the US to Ukraine.³² The REPO Act is narrowly tailored and limited to the situation involving Russia's

unprecedented war in Ukraine; it provides for the President's authority to seize Russian sovereign reserves in response to these particular circumstances. Thus, there is no possibility it can be invoked outside of its enumerated scope.

These legislative developments expose the weakness of opponents' arguments. They continue to resist asset confiscation on the grounds that there are no legal mechanisms for doing so that it would violate international law or that precedent cannot be narrowly tailored to the circumstances at hand.

The passage of the SEMA amendment and the REPO Act demonstrate that international law is not "handed down on stone tablets from on high,"³³ but is instead formed by what a state chooses to do. To the extent that legal mechanisms for asset confiscation in Europe do not yet exist, lawmakers can follow the example of the US and Canada in legislating those mechanisms. These legal developments show that the law clearly can—and is—evolving in favour of confiscating Russian sovereign assets.

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VI. Using the frozen reserves as a bargaining chip for negotiations with Russia is unjust, impractical, and an unrealistic approach to ending the war or compelling Russia's voluntary payment of reparations.

THE ARGUMENT THAT THE FROZEN RESERVES CAN BE USED AS LEVERAGE ARISES IN EITHER OF TWO INTENDED OUTCOMES: TO PRESSURE RUSSIA TO PAY REPARATIONS, OR TO INCENTIVISE RUSSIA INTO CEASING ITS HOSTILITIES WHILE FOREGOING REPARATIONS. NEITHER ARE PRACTICAL OR REALISTIC.

First, since the reparations Russia owes exceed the sum of reserves frozen, the frozen funds do not create leverage to pay reparations. Leverage must be worth *more* than the value of what the other side seeks to lose.

Second, using the frozen reserves as a bargaining chip to incentivise Russia to cease hostilities (and as a result foregoing reparations) is neither plausible nor desirable.

The freezing of Russia's sovereign assets in an attempt to persuade it to abandon its war has run its course—after two years, there is absolutely no indication that the frozen reserves even factor into Putin's war calculus. Russia has been operating under the stated objective of destroying Ukraine and Ukrainian sovereignty, and spending billions of dollars on this goal.

The Russian war machine is steadily growing. Russia's 2024 budget increases military spending by 70 percent compared to its budget in 2023.³⁴ Spending on defence and security combined is set to reach around 40 percent of the total Russian budget expenditure in 2024—some \$391.2 billion a year³⁵ (more than the amount of its reserves reportedly immobilised by Western states)—reflecting Russia's unwavering commitment to its war in Ukraine. It is irrational to assume Russia will reverse

course to potentially receive back some of its money—a sum that pales in comparison to what it has spent and plans to spend on this war.

The argument that confiscation will undermine efforts to secure a diplomatic solution is also baseless, given the Russian regime's clear disavowal of diplomacy in favour of brute force.

There cannot be a scenario in which Russia gets its money back while its victims do not receive full compensation to which they are entitled.

Third, there cannot be a scenario in which Russia gets its money back while its victims do not receive full compensation to which they are entitled. It would be unjust and counterproductive to deter further acts of aggression. Equally unjust is a situation where the West holds hundreds of billions of Russian funds while Russia refuses to pay what it owes, and Ukrainians continue to suffer. If we wish to speak of using the reserves as a bargaining chip, then let us openly speak of asking G7 taxpayers to spend \$300 billion extra for Ukraine's reconstruction rather than taking it from the Russian money we hold in our financial institutions. It is unlikely that taxpayers would agree to support that policy.

VII. The EU's agreement to seize the profits generated by the frozen assets will not provide sufficient funds to compensate Ukraine and is not a substitute for full confiscation.

On February 12, 2024, the EU introduced Council Regulation (EU) 2024/576, requires all central securities depositories that hold immobilised Russian reserves to account separately for all windfall profits generated by such reserves.³⁶ The Regulation also declares that all unexpected and extraordinary revenues on the immobilised Russian reserves are not legally owned by Russia.³⁷ The Regulation also prohibits all central securities depositories from disposing of its net profits from frozen Russian funds until the EU Council decides on the use of those assets “to support Ukraine and its recovery and reconstruction.”

While better than doing nothing, the EU agreement nonetheless unjustly withholds hundreds of billions of dollars that Ukraine is already owed. Although the investment profit agreement is a positive step forward, the G7 must not default to the most conservative approach possible. This approach, whilst seemingly relying on the doctrine of countermeasures, wrongly declares seizing state assets is impossible.

1. THE NET INVESTMENT INCOME PROFITS WILL NOT BE ANYWHERE NEAR THE SUMS THAT RUSSIA IS IMMEDIATELY REQUIRED TO PAY AND OWES UNDER INTERNATIONAL LAW.

The proposal is not an acceptable compromise and is inadequate to provide Ukraine with the funds it needs to survive, and much less than what is required to rebuild or deliver reparations to war victims. It is estimated that the profits earned on the frozen assets are approximately €3 billion per year. By contrast, the EU and the US have given Ukraine more than \$5 billion per month of their own taxpayers' funds solely to keep its economy running.

In light of the ongoing costs of war and reconstruction, transferring to Ukraine a sum of less than €3 billion *per year* worth of profits earned from the blocked Russian assets is not a viable strategy for its victory or recovery. The investment income profits will not come near the sums immediately required by Ukraine and already owed to it under international law. Thus, the proposal is a good first step, but it is no substitute for full confiscation.

Further, the proposal only concerns future profits and does not apply retroactively to profits accumulated in 2022-2023. In 2022-2023, Euroclear earned approximately €5 billion in net corporate profits from the reinvestment of Russian assets (after fees and after Belgian taxes).³⁸ Given that the only reason those profits accumulated at Euroclear is the immobilisation of Russian state funds as a direct response to Russia's unlawful war in Ukraine, there is very little moral or economic justification for the retention of the past profits by Euroclear's shareholders when victims of the war are in dire need of funds to rebuild their lives.

Euroclear's CEO, Lieve Mostrey, has justified retaining these profits by stating that Euroclear requires the funds as a "buffer" to counter the 50 and 100 lawsuits

in Russian courts over the immobilised assets, with the number of cases likely to increase.³⁹ However, €5 billion is arguably a grossly excessive buffer against Russian court judgements that are not enforceable—and likely never will be—in the West.

Under the current EU proposal, either Euroclear becomes Western Europe's largest war profiteer, or Belgium and the EU must join in collective countermeasures under international law.

2. LIMITING THE TRANSFER OF ASSETS TO UKRAINE TO ONLY THE PROFITS ACCUMULATED FROM THE FROZEN RUSSIAN ASSETS CAN POTENTIALLY SET A NEGATIVE PRECEDENT REGARDING THE FALSE INVIOABILITY OF PROPERTY RIGHTS.

The fundamental question of victims' rights to reparations versus the inviolability of sovereign property is one that must be decided, and the direction in which it is decided will influence how international law evolves. Will we place the aggressor's alleged property rights above the unquestionable rights of the victims it has injured, killed, and abducted? The answer to this question will determine our collective values going forward. There is no way of avoiding the fact that the money is already owed to Ukraine and failure to provide it now will strengthen the aggressor and weaken the victim.

Going to such extreme lengths to avoid confiscating the totality of the frozen Russian assets (rather than just the investment proceeds) unwittingly strengthens the view that it is legally impossible to confiscate the assets. And under international law, that is simply untrue. The G7 must not default to the most conservative approach possible. This approach ignores the doctrine of countermeasures and wrongly declares seizing state assets is impossible.

VIII. Using Russian state assets, or the profits accumulated on them, as collateral for a syndicated loan or a variant of "war bonds" is not a viable substitute for full confiscation.

There are no legal or practical advantages to collateralising the frozen Russian assets as opposed to directly confiscating them. These proposals either avoid confiscation (but at the cost of providing Ukraine with a fraction of the total frozen assets), or they merely delay having to make the decision to confiscate. Furthermore, these proposals would raise a significantly smaller amount of funds that would be available to Ukraine via direct seizure.

As of spring 2024, the G7's discussions have shifted towards issuing loans or bonds backed by frozen Russian state assets for Ukraine's benefit.⁴⁰ In one of the proposed scenarios, the promise to implement countermeasures and seize the assets if Russia does not pay reparations would be the ultimate "collateral" for the "reparation loans" to Ukraine by G7 members. Under another proposal that the US has offered as a compromise to the EU's reluctance towards seizing the assets, bonds would be issued and backed by profits from the frozen Russian assets.⁴¹ However, none of these alternative proposals are a workable substitute for fully confiscating frozen Russian funds.

1. COLLATERALISING THE FROZEN RUSSIAN ASSETS OR THE INCOME GENERATED ON THEM HAS NO LEGAL OR PRACTICAL ADVANTAGE OVER DIRECTLY CONFISCATING THE ASSETS THEMSELVES.

Russia's sovereign assets cannot be used as "collateral" to guarantee Ukraine's obligation to repay lenders or investors without first being confiscated for such use.⁴² If the G7 states directly pledged Russian state property as collateral, that would be practically and legally equivalent to confiscating it. Even Euroclear shares this view.⁴³

To circumvent this problem, it has been suggested that Ukraine could transfer its right to reparations to the G7, and the G7 would then raise debt finance against Russia's obligation to pay. This would be coupled with a commitment to keep the assets frozen until the obligation is discharged. If not discharged by the maturity of the bonds, then the assets would be seized to its satisfaction.⁴⁴ One of the aims of this option is to make seizing Russia's assets a last resort, which would be done only if Russia fails to pay reparations.

The second aim is to transfer the rights to reparation from Ukraine to the G7. In theory, this would make it easier for the G7 to seize Russia's assets should they not pay, as it would now be doing so to collect a debt that it is owed to itself, rather than to collect a debt on behalf of a third party, Ukraine. However, this option ultimately relies on collateralising the assets and seizing them, as Russia is highly unlikely to pay reparations. It does not overcome the fact that the EU still lacks the political will to seize the reserves—instead, the proposal just assumes that the willingness to seize will simply materialise at a later date.

The EU still lacks the political will to seize the reserves—instead, the proposal just assumes that the willingness to seize will simply materialise at a later date.

This proposal, like any proposal that Russia's funds will be used to guarantee loans made to Ukraine, is ultimately premised upon seizing Russia's assets should Russia fails to pay voluntarily. Adopting any proposal premised on the future collateralisation of the assets would be an admission that the assets can legally be confiscated, but that a political decision has been made not to do so now. The problem is that this scheme assumes that the G7 will seize the \$300 billion from Russia in the future, while those same governments have failed to do that over the past two years.⁴⁵ If governments are willing to accept today the use of countermeasures at the end of this complex lending process, it would be much more advantageous

to use countermeasures now and avoid the risks, legal novelties, and possibly contentious negotiations, and political approvals of this scheme.

As demonstrated by its passage of the REPO Act, the US position is that outright seizure of Russian assets is possible and justifiable under international law. Despite this, the US, in an attempt to compromise with the EU and at least generate some funds now, has introduced a proposal to collateralise the profits on the reserves, which avoids having to ever confiscate the assets.⁴⁶ While the proposal avoids collateralising or confiscating the assets themselves, it is not offered to avoid any valid legal prohibitions on seizing the funds—it has simply been offered as a possible compromise with the EU's intractability.⁴⁷

Under the US "compromise" proposal, approximately \$50 billion of bonds would be issued against ten years worth of future profits generated by the frozen assets. While this is a welcome means of delivering the necessary funds to Ukraine for critical budget, reconstruction, and defence, it is not a substitute for full confiscation. While \$50 billion can sustain Ukraine for a year of war, it cannot cover the \$486 billion compensation owed to Ukraine and reparations to the victims. Therefore, the proposal should be viewed as an interim solution to finance Ukraine's critical budget needs arising from Russian aggression and, as a result, the structure should account for the possibility to transferring underlying assets.

Moreover, the US proposal to issue bonds backed by future profits alone does not "make Russia pay" because it does not, strictly speaking, use the Russian assets themselves. The proposal is designed to avoid confiscating the assets to abide by the political red lines that Europe has currently drawn. While any measure to provide funds to Ukraine is a desirable one, this measure is not to be confused with accountability or responsibility for Russia.

In the long-term, this proposal falls short of the rhetoric to "make Russia pay" and "unlock the value" of Russia's frozen assets that often surrounds the idea. Unlocking the real value of the assets and really making Russia pay would be to confiscate the full \$300 billion. Thus, the US proposal could be implemented as an appropriate interim step, but \$300 billion cannot be ultimately left on the table. Russia must be held accountable for the full extent of the damage to Ukraine.

2. ANY AMOUNTS RAISED VIA LOANS OR BONDS WOULD BE LESS (AND PROBABLY MUCH LESS) THAN THE AMOUNTS AVAILABLE TO UKRAINE VIA A SIMPLE TRANSFER OF RUSSIA'S FROZEN STATE FUNDS, WHILE ALSO SIMULTANEOUSLY INTRODUCING NEW AND UNNECESSARY COMPLICATIONS.

Any complex debt instruments or loans, especially risky ones, presuppose that a lender or investor makes profits in return for the risk. Thus, any amounts raised against a

promise to collateralise the funds now or at a future date will necessarily be lower than the amounts of Russian state funds.⁴⁸ It is also unclear whether investors will sign up for this scheme at all, or how long it would take to raise funds through issuing bonds. If countries are unwilling to seize the reserves today, why should investors believe they will seize them in the future? As there is no guarantee under the bond proposals that the political will to seize the assets will ever be present, lenders are likely to discount the amounts they are willing to lend against the collateral and demand high interest. As a result, Ukraine would receive potentially hundreds of billions of dollars less than the sum total of the frozen reserves.

Collateralising the profits instead of the principal generates \$50 billion instead of \$300 billion. The \$250 billion difference would be the price of the lack of political will to confiscate the assets themselves.

This reduction of hundreds of billions of dollars of much-needed funding, all of which is already owed to Ukraine, would be the real price of resorting to any type of collateralising instead of seizing. In other words, collateralisation solutions are all incredibly costly and, therefore, poor substitutes for seizing the assets themselves.

In addition to the financial inefficiencies of collateralisation proposals, numerous vague aspects and unanswered questions remain. At this point, it is unclear who is putting up the money—the governments or investors. Who would ultimately pay the bonds or repay the loans if Russia never pays reparations, and the assets are never seized? Would the bondholders lose their investment, or would they be repaid from the treasuries of the G7

nations? If the G7 lends Ukraine the money, would it write it off and transfer the burden to their taxpayers, or would it saddle Ukraine with crippling debt it could never repay, thereby bankrupting Ukraine whilst never being repaid? Neither outcome is desirable.

Who would ultimately pay the bonds or repay the loans if Russia never pays reparations, and the assets are never seized?

The only way a collateralisation against the assets proposal would be workable and raise adequate funds is if the G7 seized the assets first and then collateralised them. Although this would still present complications, the lenders' risk would be neutralised. There would be no remaining question of the G7's willingness or ability to seize the assets, and as a result, the assets would become good collateral. However, if the assets are to be seized, there is no benefit to collateralising instead of using them directly.

In the case of the US proposal to issue bonds backed by future profits on the frozen assets, it is imperative to leave open the possibility to restructure in order to preserve the ability to seize the entire \$300 billion, satisfy the original bondholders, and still raise an additional \$250 billion for Ukraine.

IX. Confiscating and transferring Russian state assets will not undermine the international financial system, devalue currencies, or cause capital flight.

The argument that seizing the reserves will cause flight from G7 currencies has been proven false. The event that could trigger capital flight was the immobilisation of Russian state assets imposed by the G7 in early 2022, and the effects were minimal. Whatever the long-term effects will be, they will result from the initial freezing, and there will be minimal additional effects from the seizing, which is now priced. The G7, by freezing the reserves and stating that they will remain frozen until Russia pays a sum greater than it is holding, has already made it clear that aggressors' reserves are not safe in the G7 (nor should they be). If the G7 nations wish to further minimise long-term risks to the status of their currencies as reserve currencies, they may act in concert when seizing the reserves as they did when freezing them.

1. A TRANSFER OF RUSSIA'S RESERVES WOULD NOT CAUSE ANY SIGNIFICANT EFFECT ON THE DOLLAR, EURO, OR THE POUND THAT THE FREEZING OF THE RESERVES HAS NOT ALREADY TRIGGERED.

If the supposed negative effect of seizing Russian assets on other countries' willingness to deposit funds in the US and Europe were real, it would have become apparent when these funds were frozen in early 2022. Notably, there has been no capital flight from the US or Europe. This is because heightened political risk is now largely priced into the asset allocations of banks around the world.⁴⁹

In 2020, the share of dollar and euro assets in central bank reserves was 59% and just over 20%, respectively.⁵⁰ In the second quarter of 2023 and after Russia's reserves were frozen, these allocations have not significantly changed. 89.2% of all reserves were held in dollars, euros, yen, and pounds. The share of dollar and euro assets in central bank reserves was 59.17% and 19.58%.⁵¹

The reality of the G7's announcements that the reserves will be held until Russia pays full reparations means that Russia's ability to dispose of the reserves is gone. It is illogical that the announcement to pay them to Ukraine now instead of later would precipitate any dramatic consequences that the original freezing has failed to usher in.⁵²

UK's Foreign Minister, Lord Cameron, denied there would be a "chilling effect" on inward investment, insisting that those investors likely to feel perturbed would already "be pretty chilled by the fact we have frozen" the assets.⁵³

De-dollarisation fears have also been shown to be unfounded by numerous prominent economists.⁵⁴

2. THERE ARE FEW SAFE ALTERNATIVES TO THE ESTABLISHED FINANCIAL SYSTEM.

The G7 would be acting in concert to transfer the frozen Russian reserves within their jurisdictions. Together, the dollar, euro, pound sterling, and yen amount to 89.2% of the world's reserve currencies.⁵⁵ There are simply no other viable reserve currencies in which countries can invest their reserves.

For instance, Brazil and China, among other countries, have tried to move their trade finance out of US dollars. But this shift has had little effect on the value of the dollar, which is still involved in nearly 90 percent of global foreign exchange transactions.⁵⁶ The Chinese

renminbi carries risks of its own, including China's opaque and unpredictable governance and lack of the independent rule of law.

As former President of the World Bank Robert Zoellick points out, "Countries hold reserves for protection against macroeconomic risks, not so that they can overrun their neighbours. If the G7, including the EU, act together, other countries will not find good alternatives for investing their reserves [...] China and other economies do not hold dollars or euros because they are friends with Europe and the US."⁵⁷

Additional detailed arguments for why China, India, and Russia's currencies cannot function as significant reserve currencies can be found in the report by the International Centre for Ukrainian Victory.⁵⁸

3. THE PREDICTIONS FOR DIRE CONSEQUENCES FOR INTERNATIONAL FINANCE ARE NOT BACKED UP BY ANY COGENT EXPLANATION OF THEIR ASSUMPTIONS OR LOGIC.

The argument that transferring Russia's frozen reserves to Ukraine will undermine the financial system is premised on the absolutist view that foreign reserves must be safe from seizure no matter what.⁵⁹ In this simplistic view, waging a war of aggression, committing war crimes, or owing hundreds of billions of dollars in reparations are simply irrelevant.

This is like suggesting that real estate in London or New York would only remain valuable if the government could never, ever confiscate it, even if it derives from the proceeds of crime.⁶⁰

Simply put, seizing Russia's frozen assets would not affect other countries' assets or change the investment mindset of governments not planning to attack their neighbours.

X. Seizing and transferring frozen Russian reserves will not change Russia's incentives to "retaliate" by seizing sovereign and private G7 assets.

Russia does not hold significant sovereign assets from the G7 as the rouble is not a reserve currency. Russia is already seizing assets from G7 investors, and this is likely to continue even in the absence of seizing the reserves. Companies that continue to operate in Russia make the business decision to do so at their own risk.

1. SOVEREIGN FUNDS ARE NOT AT RISK OF SEIZURE BY RUSSIA BECAUSE RUSSIA IS NOT A FINANCIAL CENTRE, AND THE ROUBLE IS NOT A RESERVE CURRENCY; THUS, RUSSIA DOES NOT HOLD OTHER COUNTRIES' SOVEREIGN FUNDS.

G7 nations do not hold roubles as reserves and have very few assets in Russia. Much of what they do have is likely in real estate, such as their embassies and consulates.

2. RUSSIA IS ALREADY SEIZING ASSETS FROM G7 INVESTORS AND THERE IS GREAT PRESSURE FOR THIS TO CONTINUE EVEN IN THE ABSENCE OF SEIZING THE RESERVES.

The Russian government began the process of confiscating Western companies' assets in the early days of the full-scale invasion with restrictions on dividend payments from securities and ultimately progressed to gaining full control over market exits and asset sales

pricing.⁶¹ Russia has already used “countermeasures” of its own to justify the seizure of private property from countries that it deems “unfriendly” (i.e., any country that has levied sanctions against it), even though no valid case for countermeasures exists.⁶²

In April 2023, for example, Russia seized power plants owned by Finnish and German companies, Fortum and Uniper. And in July 2023, Russia placed two of the largest consumer-goods companies in the world, Carlsberg, and Danone, under state control.⁶⁵

Many of the assets seized have been put under the control of Putin’s loyal elite. In fact, the expropriation of Western companies has proven to be a boon for those close to Putin, resulting in infighting over who gets what, and great pressure from Russia’s elite that the expropriations continue.⁶⁴

Western companies that have announced departures have declared more than \$103 billion in losses since the start of the war.⁶⁵ Putin has squeezed companies for as much of that wealth as possible by dictating the terms of their departure.⁶⁶

Given this rapid pace of expropriation and Putin’s own motivation to continue it, there is little reason to believe that the decision to seize Russia’s frozen assets would amount to anything more than continuing the confiscations that are already inevitable.

A partial list of confiscations by country is found in Appendix A.

3. THE COMPANIES THAT CONTINUE TO OPERATE IN RUSSIA MAKE THE BUSINESS DECISION TO DO SO AT THEIR OWN RISK.

Many US and European companies have already left, or are in the process of leaving Russia following its full-scale invasion of Ukraine. As of June 3, 2024, 1,675 foreign companies continue their operations in Russia, while 2,140 are in different stages of withdrawing from the Russian market, including 396, which have exited completely.⁶⁷ Many companies have already written off their Russian investments.

The companies that decide to stay in Russia, such as Raiffeisen Bank, which was reported to be expanding its operations in Russia in 2024,⁶⁸ do so at their own risk and with full knowledge of potential consequences.

4. WESTERN BUSINESSES HAVE RECOURSE TO AVOID OR TO CHALLENGE ANY RUSSIAN SEIZURE OF THEIR ASSETS.

Realistically, there is no viable path for companies remaining in Russia to conduct normal business activities based on the rule of law. Regardless of whether the G7 confiscates Russian state assets, the private assets of foreign companies still operating in Russia are susceptible to expropriation, much like Fortum, Uniper, Carlberg, Danone, and numerous others.

Substantial ethical considerations compound the decision to continue operating in Russia. The companies that continue doing business in Russia contribute to the aggression and destruction of Ukraine, either willingly or not, by contributing their taxes to the Russian war machine. US, German, and Swiss-based businesses have paid approximately \$66 billion in taxes to the Russian treasury since the start of the full-scale invasion in 2022.⁶⁹ European banks paid €800 million in taxes to the Russian state in 2023 alone, a huge increase on the pre-war €200 million taxes paid in 2021.⁷⁰ The only practical and ethical way forward for such companies is to completely exit from the Russian market as soon as possible.

If Western companies took a calculated risk to continue operations in Russia and lose their assets, they will be able to challenge illegal expropriation through investment treaty arbitration. Russia currently has 64 bilateral investment treaties (BITs) in force. Challenging illegal Russian expropriation through ICSID arbitration under the relevant BIT is much more likely to be successful than seeking to appease Russian leadership via attempts to leave its frozen state funds intact.

Other options may be for national governments to offer special programs to support such businesses leaving Russia, or the establishment of compensation funds for those whose assets have been expropriated.

In short, the retaliation argument does not hold up in numerous ways. But most importantly, most Western investments in Russia are insignificant compared to the reserves the G7 has frozen. Are we to deprive Ukraine of the \$300+ billion it is owed and desperately needs in an attempt to protect a few remaining foreign investors who did not leave Russia after its latest invasion and continue to make their profits in Russia?

Appendix A - A partial list of confiscations by country

AUSTRIA/UK:

Mondi, a British-Austrian paper company, found a buyer for one of Russia's largest mills and sought government approval to sell. As the deal came together, one of Putin's old K.G.B. buddies, Sergei V. Chemezov, appeared. He wrote a letter asking that the president steer the mill toward a group of investors, including the state-owned firm he runs. Chemezov's deal never happened, but neither did Mondi's original agreement. The subcommission put the mill in the hands of a Moscow property developer for significantly less than the original price.⁷¹

Under presidential decrees published on Dec. 19, **Austrian oil and gas company OMV's** stakes in the Yuzhno-Russkoye field and in the gas extraction Achimov projects are to [revert](#) to newly created Russian companies and offered for sale to Gazovyye Tekhnologii. OMV's assets will then be sold to joint stock company SOGAZ.^{72, 73}

DENMARK:

Last summer, Putin seized the Russian arm of the **Danish brewer Carlsberg**, along with roughly half a billion dollars in cash, and put them under the temporary control of one of his friends [Yakub Zakriev, the nephew of Chechen leader Ramzan Kadyrov.] In July, Putin blindsided Carlsberg executives by seizing the company and placing it in the hands of his longtime associate and judo friend, Taimuraz Bolloev. Carlsberg was an attractive target. The company controlled the iconic Russian beer brand Baltika and had recently valued its Russian operation at about \$3 billion. Its sales application had revealed that it was sitting on a half-billion dollars in cash. Bolloev, pressured them to sign over the company permanently.

"It would require that we did a deal with Putin and his administration, creating a legitimate transaction where they could take over our business for basically close to nothing," Jacob Aarup-Andersen, the Carlsberg chief executive, said in an interview last month. "We just couldn't do that." Within weeks, the Russian authorities had arrested two company employees and raided their homes. This month, Russian news outlets reported that Bolloev had asked the authorities to nationalise the company.

Medvedev taunted Carlsberg, thanking them for padding the Russian budget. "A strong budget means help for the front," he wrote last month. "In this regard, the senseless Danes also contribute to modern Russian weapons."⁷⁴

FINLAND:

When the **Finnish elevator giant Kone** tried to sell to its employees, the authorities rejected the deal. S8 Capital, a firm controlled by Armen M. Sarkisyan, who had made a fortune running the Russian lottery, in part, thanks to government connections. The holding company, became the buyer.⁷⁵

On April 25, Putin signed a decree that [established](#) control over the Russian subsidiary of the **Finnish utility company Fortum**, which operates power plants in Russia. The CEO was replaced and the unit was put under temporary asset management.⁷⁶

FRANCE:

The Russian state [took control](#) of the French yoghurt maker **Danone's** Russian subsidiary Danone Russia on July 16, according to a decree signed by Putin, and brought it under temporary control of the government property agency.⁷⁷

GERMANY:

OBI, a German hardware store chain, went a step further, saying that it would close all 27 stores in Russia until it found a buyer. OBI struck a deal that spring, ultimately selling for the symbolic price of a few dollars. In less than a year, OBI's Russia operation changed owners four times, ultimately landing with associates of the Russian senator Arsen B. Kanokov, who is under US Treasury sanctions. At one point, [an ally of the Chechen strongman Ramzan Kadyrov](#) appeared in the ownership register.⁷⁸

S8 Capital, a firm controlled by Armen M. Sarkisyan, who had made a fortune running the Russian lottery in part thanks to government connections moved into the tyre business, snapped up the Russian operation of the **German company Continental**, before buying the top Russian tyre maker, Cordiant.⁷⁹

The Kremlin on April 25 [took action](#) against Unipro, the Russian division of the **German utility, which has five power plants in Russia**, and introduced external management and a new CEO.⁸⁰

Under presidential decrees published on Dec. 19, Wintershall Dea's stakes in the Yuzhno-Russkoye field and the Achimov projects are to [revert](#) to the newly created Russian companies and offered for sale to Gazovyye Tekhnologii, formalising the loss of control that **BASF and Wintershall Dea** have flagged since January

2023. Wintershall Dea is a joint venture between BASF and Russian billionaire Mikhail Fridman's investment firm LetterOne.⁸¹

Putin signed a decree on Dec. 1 [that put](#) St Petersburg's Pulkovo Airport under the temporary management of a Russian holding company, taking control from **German airport operator Fraport**, Qatar's sovereign wealth fund Qatar Investment Authority and investors from other Gulf states.⁸²

NETHERLANDS:

The Dutch beer company **Heineken**, for example, found a buyer this spring and set a price. But the Russian government unilaterally rejected the deal, people close to the negotiations said, and put the company's Russian holdings in the hands of an aerosol-packaging titan married to a former Russian senator. According to the people close to the negotiations, the authorities steered the business toward Arnest — The deal went through for a single euro and the promise to repay \$100 million in debt.⁸³

NORWAY:

Norwegian publisher Amedia left full control of its wholly owned Russian printing houses to Nobel Peace Prize-winning Russian journalist Dmitry Muratov in April 2022, saying that Russia's actions in Ukraine had made it impossible for Amedia to continue the printing business in Russia. Putin [signed](#) a decree transferring Amedia's former assets to state management on Sept. 18.⁸⁴

CANADA:

The **Canadian gold mining company Kinross** did the same and within days, announced a deal for \$680 million to sell its Russian operation to a local buyer. In June, the Kremlin demonstrated what companies could expect: Moscow approved the Kinross gold mine sale, but with a stunning alteration. The sale price had been cut in half, to \$340 million. The buyer, Highland Gold, would later be blacklisted by British officials who said that gold provided a "significant income stream for Russia's war effort."⁸⁵

USA:

Connecticut-based Otis Worldwide plan now belongs to a firm controlled by Armen M. Sarkisyan, who had made a fortune running the Russian lottery in part thanks to government connections. The Russian minister of industry and trade, Denis V. Manturov, [bragged](#) that Moscow had brokered special arrangements for the sale.⁸⁶

American electronics company Honeywell wasn't permitted to sell its factories until an assessment proved that the Russian buyer was getting a 50 percent discount.⁸⁷

- ¹ [G7 Leaders' Statement on Ukraine](#) (May 19, 2023).
- ² See [United Nations General Assembly Resolution ES11/5](#) (adopted on 14 November 2022) recognizing that under international law Russia will owe Ukraine reparations in respect of the damage caused by the war.
- ³ [World Bank updated assessment](#) (February 15, 2024).
- ⁴ [EU press release](#) (July 12, 2023); [G7 Finance Ministers and Central Banks' Governors Statement](#) (Oct. 12, 2023).
- ⁵ "Euroclear delivers strong performance in 2023," Euroclear Annual Report (Feb. 1, 2024) (Euroclear earned EUR 4.4 billion in 2023 by reinvesting cash balances resulting from immobilised Russian state assets).
- ⁶ Lawrence H. Summers (President Emeritus and Charles W. Eliot University Professor of Economics at Harvard University. US Secretary of the Treasury from 1999 to 2001 and Director of the National Economic Council from 2009 to 2010), Philip Zelikow (Professor of History at the University of Virginia and Distinguished Visiting Fellow at Stanford University's Hoover Institution. A former US diplomat and Executive Director of the 9/11 Commission, he has worked for five presidential administrations) and Robert B. Zoellick (US Trade Representative from 2001 to 2005 and President of the World Bank from 2007 to 2012), "The Other Counteroffensive to Save Ukraine," Foreign Affairs (June 15, 2023).
- ⁷ Laurence H. Tribe, Carl M. Loeb University Professor of Constitutional Law Emeritus at Harvard University, "Making Putin Pay," RDI (Sept. 17, 2023).
- ⁸ Joseph E. Stiglitz, Nobel laureate in economics, former chief economist of the World Bank (1997-2000), "Opinion: Seizing Russia's Frozen Assets is the Right Move," Kyiv Independent (Jan. 8, 2024).
- ⁹ Timothy Ash: Senior Emerging Markets Sovereign Strategist at RBC BlueBay Asset Management. Associate Fellow at Chatham House on their Russia and Eurasian program, "Putin's \$300bn Belongs to Ukraine" CEPA (Jan. 3, 2024).
- ¹⁰ *Ukr. v. Russ. Fed'n*, 2022 I.C.J. at 86. See also [Order of the European Court of Human Rights](#) to "refrain from military attacks against civilians and civilian objects" (Mar. 1, 2022).
- ¹¹ See Stiglitz, fn 8.
- ¹² [United Nations General Assembly Resolution ES-11/5](#) (14 November 2022).
- ¹³ [Resolution 2539 \(2024\) of the Parliamentary Assembly of the Council of Europe](#).
- ¹⁴ See Tribe, [Making Putin Pay](#), fn. 7.
- ¹⁵ See [New Lines Institute for Strategy and Policy report](#) by Dr. Azeem Ibrahim OBE Chair, Reparations Study Group, Dr. Thomas Grant Principal Author and Lead Counsel, Reparations Study Group, Dr. Alan Riley Principal Adviser, Reparations Study Group, Hon. Irwin Cotler, Amb. Kelley Currie, Yonah Diamond, Brooks Newmark, Prof. John Packer, Amb. Allan Rock, Erin Farrell Rosenberg, Amb. David Scheffer, Olena Sotnyk, Robert Tyler.
- ¹⁶ See Yuliya Ziskina & Philip Zelikow, et al., "Multilateral Asset Transfer Proposal for Ensuring Reparations for Ukraine," New Lines Institute (June 14, 2023).
- ¹⁷ European Parliament, [Legal Options for Confiscation of Russian State Assets to Support the Reconstruction of Ukraine](#) (Feb. 2024).
- ¹⁸ See, e.g., Philip Zelikow, "A Legal Approach to the Transfer of Russian Assets to Rebuild Ukraine," Lawfare (May 12, 2022).
- ¹⁹ Philip Zelikow & Paul Reichler, et al., [Legal Memorandum on Proposed Countermeasures Against Russia](#), endorsed by preeminent international law attorneys from numerous countries (Nov. 20, 2023).
- ²⁰ [Resolution 2539 \(2024\) of the Parliamentary Assembly of the Council of Europe](#), paragraph 6.
- ²¹ See Martin Dawidowicz, [Third Party Countermeasures in International Law](#) (Cambridge Uni. Press, June 2017).
- ²² See Summers, et al., fn. 6.
- ²³ *Id.*
- ²⁴ See Parliamentary Assembly of the Council of Europe [resolution 2482](#), paragraph 12 (2023) (noting "mounting evidence that the official Russian rhetoric used to justify the full-scale invasion and aggression against Ukraine, the so-called "de-Ukrainianisation" process, carries characteristics of public incitement to genocide or reveals a genocidal intent to destroy the Ukrainian national group as such or at least part of it").
- ²⁵ See, e.g., "Russian State TV Lays Out Plans for New Empire," Newsweek (Oct. 1, 2023).
- ²⁶ See [New Lines Institute for Strategy and Policy report](#), fn. 15.
- ²⁷ [United Nations General Assembly Resolution ES-11/1](#) (adopted on 2 March 2022) which deplored "in the strongest terms the aggression by the Russian Federation against Ukraine in violation of art. 2(4) of the Charter" and demanded a full withdrawal of the Russian forces and [United Nations General Assembly Resolution ES-11/5](#) (adopted on 14 November 2022) which recognised that under international law Russia will owe Ukraine reparations in respect of the damage caused by the war.
- ²⁸ See [New Lines Institute for Strategy and Policy report](#), fn. 15.
- ²⁹ See Stiglitz, fn. 8.
- ³⁰ [Section 4\(1.1\)](#) of SEMA.
- ³¹ See Tribe, fn. 7.
- ³² [H.R.815](#) - 118th Congress (2023-2024), which became Public Law No: 118-50, see Division F for REPO Act.
- ³³ Martin Sandbu, "The screws are turning on Russia's state assets," Financial Times (April 25, 2024).
- ³⁴ "Putin approves big military spending hikes for Russia's budget" Reuters (Nov. 27, 2023).
- ³⁵ *Id.*
- ³⁶ [Council Regulation \(EU\) 2024/576](#).
- ³⁷ The legal basis for this conclusion is unclear because, as a matter of private law, any profits made from an asset typically belong to the owner of that asset. See generally John G. Sprankling, [The International Law of Property](#) (2014).
- ³⁸ Timothy Ash, "Ukraine – How is Belgium Allowed to Get Away With This?" Kyiv Post (April 27, 2024).
- ³⁹ "Euroclear warns against G7 plan to backstop Ukraine debt with Russian assets," Financial Times (Feb. 15, 2024).
- ⁴⁰ "G7 draws up plans to backstop debt-raising for Ukraine with Russian assets," Financial Times, Feb 3, 2024 (According to a quoted source: "One of the things that this would do is put off the question of what happens to the Russian sovereign assets, even though they would be used as collateral").
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- ⁴² Tetyana Nesterchuk, "Unlocking the use of Russian central bank assets: is collateralisation the answer?" in the Butterworths Journal of International Banking and Financial Law (May 2024).
- ⁴³ See Financial Times, fn. 39.
- ⁴⁴ Martin Sandbu, "Can financial engineering solve the dilemma over Russia's blocked reserves?" Financial Times (Nov. 30, 2023).
- ⁴⁵ Anton Moiseienko, "Collateralising Russia's Frozen Currency Reserves: A Creative Solution, Playing for Time, or Both?" *EJIL:Talk!* (Feb. 13, 2024); see also Nesterchuk, fn. 42.
- ⁴⁶ "US proposes debt to fund Ukraine using profits from frozen Russian assets," Financial Times (April 11, 2024).
- ⁴⁷ "US proposal to tap frozen Russian asset revenues for Ukraine gains ground, G7 officials say," Reuters (April 25, 2024) ("Yellen said Washington remained convinced that outright seizure of the Russian assets was justifiable under international law, but said other approaches would likely be more acceptable to some of its G7 partners").
- ⁴⁸ Nesterchuk, fn. 42.
- ⁴⁹ Summers, et al., fn 6.
- ⁵⁰ [IMF report](#) (May 5, 2021).
- ⁵¹ [Currency Composition of Official Foreign Exchange Reserves](#), IMF (last updated Mar. 29, 2024).
- ⁵² Anton Moiseienko, "Freeze to Seize or to Appease? Why Russian Assets are not a Bargaining Chip," RUSI (Jan. 11, 2024).
- ⁵³ Lord David Cameron in [English Parliament](#) on December 14, 2023 at 15:54:30. See also articles in the [Financial Times](#), the [Independent](#) and the [Guardian](#) (last accessed June 3, 2024).
- ⁵⁴ E.g., [Robert Zoellick](#) (former World Bank President); [Lawrence H. Summers](#) (former US Treasury Secretary); [Joseph E. Stiglitz](#) (Nobel laureate in economics); [Mark Sobel](#) (US chairman at the OMFIF, former US chair at IMF, and former Treasury official); among others.
- ⁵⁵ IMF, fn. 51.

- ⁵⁶ Robert B. Zoellick, "[Transferring Frozen Russian Reserves to Ukraine is Elegant Justice](#)," Financial Times (Jan. 20, 2024).
- ⁵⁷ *Id.*
- ⁵⁸ "[Confiscation of Russian Sovereign Assets: Mission Possible and Overdue](#)," ICUV.
- ⁵⁹ Moiseienko, fn. 52.
- ⁶⁰ *Id.*
- ⁶¹ "[The Business of Leaving: How multinationals can responsibly exit Russia](#)," B4Ukraine, annex 1.
- ⁶² "[Kremlin warns of more asset seizures after move against Fortum and Uniper](#)," Reuters (Apr. 26, 2023).
- ⁶³ *Id.*
- ⁶⁴ "[How Putin Turned a Western Boycott Into a Bonanza](#)," NY Times (Dec. 17, 2023).
- ⁶⁵ "[Companies Are Getting Out of Russia, Sometimes at a Cost](#)," NY Times (Oct. 14, 2022).
- ⁶⁶ NY Times, fn. 64.
- ⁶⁷ [Leave-Russia.org](#), a research site by the Kyiv School of Economics (last accessed June 3, 2024).
- ⁶⁸ "[Raiffeisen Bank trumpets Russia growth plans in dozens of job ads](#)," Financial Times (April 16, 2024).
- ⁶⁹ "[2024 Is the Year to Defund Russia's War: The West Holds the Key](#)," B4Ukraine (2024).
- ⁷⁰ "[Western banks in Russia paid €800mn in taxes to Kremlin last year](#)," Financial Times, April 29, 2024.
- ⁷¹ "[How Putin Turned a Western Boycott Into a Bonanza](#)," NY Times (Dec. 17, 2023).
- ⁷² "[Putin orders transfer of OMV, Wintershall Dea stakes in Russian ventures](#)," Reuters (Dec. 20, 2023).
- ⁷³ "[Moscow takes control over assets of Western companies](#)," Reuters (Dec. 20, 2023).
- ⁷⁴ NY Times, fn. 71.
- ⁷⁵ *Id.*
- ⁷⁶ *Id.*
- ⁷⁷ Reuters, fn. 73.
- ⁷⁸ NY Times, fn. 71.
- ⁷⁹ *Id.*
- ⁸⁰ Reuters, fn. 73.
- ⁸¹ *Id.*
- ⁸² *Id.*
- ⁸³ NY Times, fn. 71.
- ⁸⁴ Reuters, fn. 73.
- ⁸⁵ NY Times, fn. 71.
- ⁸⁶ Reuters, fn. 73.
- ⁸⁷ *Id.*

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