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GUEST ESSAY

$100 Billion. Russia's Treasure in the U.S. Should Be Turned Against Putin.

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As Vladimir Putin vows to continue his genocidal invasion of Ukraine, investigators at the Treasury Department and Justice Department are scrambling to seize Russian yachts, mansions and the other spoils of his despotic regime. Meanwhile, in Washington, Representatives Tom Malinowski of New Jersey and Joe Wilson of South Carolina have advanced a bipartisan measure to clarify exactly how much power the executive branch has to liquidate those assets.

These efforts are laudable and important. But they are neither bold enough nor swift enough to provide what Ukraine needs.

Even if the Justice Department were able to sell every yacht and mansion it seizes over the coming months, earmarking the profits for military and humanitarian aid, the process would be too slow, and the proceeds too insignificant, to meet Ukraine's growing and urgent needs: for tanks, antiaircraft missiles, food and medicine. And as the war enters its eighth week and its costs balloon, the American people may not be willing to foot the bill much longer.

An obvious solution is staring us in the face: President Biden could liquidate the tens of billions of dollars the Russian central bank has parked in the United States as part of its foreign exchange reserves; by some estimates, those funds may total as much as $100 billion. These assets are already frozen at the Federal Reserve and other banks thanks to Treasury sanctions banning transactions with the Russian central bank. With new details of Russian atrocities making the prospect of lifting those sanctions increasingly untenable, those funds have, in effect, been seized indefinitely. Liquidating them now would not only be likely the fastest way to increase American aid to Ukraine without further burdening and fatiguing American taxpayers. It would also send a potent signal that the United States is committed to making even the world's most powerful states pay for their war crimes.

The seemingly radical character of this step explains why it has not been taken already, but, contrary to recent misapprehensions, it would be anything but "unprecedented." The United States has occasionally made hostile foreign government funds available for various humanitarian and remedial purposes.

In 2003, President George W. Bush seized approximately $1.7 billion in Iraqi funds sitting in American banks, allocating the proceeds to aid the Iraqi people and to compensate victims of terrorism. In 2012, Congress made frozen Iranian central bank assets available to settle lawsuits with the families of those who had died in Iranian terror attacks. In 2019, the Trump administration made some frozen Venezuelan central bank assets available to the exiled opposition leader Juan Guaidó.

And just this February, the Biden administration began the process of liquidating around $7 billion in assets of the defunct Afghan central bank rather than hand them over to the Taliban, reserving half for Afghan humanitarian efforts and half to satisfy court judgments in suits filed by the relatives of those killed or wounded in the Sept. 11 attacks. That move has been controversial, owing mostly to unsettled questions regarding court attachment of assets and allocating claims among dueling plaintiffs, but those questions would fall away if Russian assets were transferred directly to assist humanitarian organizations and the Ukrainian government.

While Congress should certainly consider new legislation refining the tools with which it has armed the executive, Mr. Biden already has ample statutory authority to liquidate Russian assets under a section of the International Emergency Economic Powers Act, enacted in 1977 to clarify the previously overbroad and tangled mess of presidential emergency economic powers. As the Supreme Court affirmed in a landmark case about the Iran hostage crisis, the act gives the president "broad authority" to act in times of national emergency and the power to "nullify, void, prevent or prohibit" any foreign country from "holding" or "exercising any right, power, or privilege" over property in which it has "any interest." It also authorizes the president to "direct and compel" the "transfer, withdrawal" or "exportation" of such property.

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Since the reserves in question are Russian state property — unlike the assets of oligarchs — they are not shielded by the usual protections our legal system affords private property. The Fifth Amendment's guarantee against government seizure of property "without due process of law" applies only to "persons" — not foreign governments — as the Supreme Court suggested in 1992 and multiple federal courts have since held. Protections against the "taking" of property without "just compensation" likewise apply only to "*private* property," a category that clearly excludes Russia's sovereign reserves, even if they are conveniently parked within the United States and in dollars.

The Russian government would no doubt complain bitterly that liquidating its currency reserves was "thievery," just as it did with the existing sanctions. But Russia's continued violation of the most basic principles of international law and human rights — and the Ukrainian people's dire needs — must count for more than its self-serving rhetoric.

To challenge the seizure and liquidation of its assets, the Russian government would have to look not to the Constitution but to a more obscure body of law that shields governments from liability in certain circumstances: "sovereign immunity." But that immunity protects foreign assets only from *judicial process* — not from liquidation by the combined action of Congress and the executive branch. And as a mere creation of Congress, as the Supreme Court emphasized as recently as 2016, such immunity cannot survive a congressional enactment like the International Emergency Economic Powers Act.

Congressional Republicans might push back, claiming that any such seizure would constitute a grand expansion of presidential power at Mr. Biden's behest. But the act's clear grant of authority should alleviate any genuine concerns. So too should the clear precedent of similar moves by presidents of both parties who have seized the central bank assets of human rights violators like Venezuela, Iran and Iraq.

Mr. Putin's genocidal regime belongs in that dastardly category — and by treating Russia as such, Mr. Biden can do a lot to smoke out the Trump wing of the Republican Party, which, like its leader, has been reluctant to acknowledge the extent of Mr. Putin's atrocities and the threat he poses to the United States.

Mr. Putin's Russia knows no rule of law — only brute force. He views our legal protections as "obsolete" sources of weakness, part of his broader boast that free societies cannot stand up to him and other despots around the world. He's wrong. As Harold Hongju Koh, a professor at Yale, has persuasively argued, our adherence to the rule of law, far from serving as a straitjacket, "frees us and empowers us to do things we could never do without law's legitimacy." To meet Mr. Putin's challenge, we needn't sacrifice our historic principles or confirm his nihilistic vision of governance. By deploying the powers our legal system affords, we have the tools we need to help the courageous people of Ukraine survive and defeat him. It will be poetic justice under law for us to do so by turning his own treasure against him.

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