Make Russia Pay: The Case for Seizing Russia’s Sovereign Assets

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Background
The United States, the European Union, and their international partners acted swiftly in the aftermath of Russia’s invasion of Ukraine, imposing sanctions on more than $300 billion of Russian sovereign assets.

As the war enters its third year, more individuals and organizations are calling on the US and its partners to confiscate these frozen funds and repurpose them for Ukraine’s assistance and reconstruction needs. The cost of Ukraine’s reconstruction is currently estimated at around $400 billion, though this number increases daily with every new act of Russian destruction.

After initial hesitation within the Biden administration and among its G7 partners, support for this proposal is reportedly growing—especially as further assistance for Ukraine encounters headwinds in the divided US Congress.¹

Below are some key takeaways from a recent Hudson Institute discussion with Senator Jim Risch (R-ID), ranking member of the Senate Committee on Foreign Relations, on making Russia pay for its crimes against Ukraine.²

Making Russia Pay Is Necessary
It cannot be seriously disputed that Russia bears direct responsibility for the economic and financial consequences of its illegal aggression in Ukraine. As Senator Risch observed, “This is a straightforward matter. Russia broke it. They ought to pay for it.”

But the legal mechanisms that could compel Russia to provide compensation often run through international institutions in which the Kremlin either wields a veto or can use political pressure to block accountability measures. Without new legal pathways that enable Ukraine’s partners to outmaneuver the Kremlin, the financial burden of reconstruction will continue to
fall on Ukrainians and the international donors and lenders who support them.

The West’s reluctance to seize Russian assets for this purpose not only adds insult to injury for Ukrainians; it almost certainly influences Vladimir Putin’s calculations about how long he can afford to prolong the war. Moscow is watching Kyiv sink deeper into debt while its own economy weathered sanctions better than anticipated. And the Kremlin is eying the possibility that it could use legal challenges to unlock at least a portion of the $330 billion in Russian reserves currently frozen overseas.

A decisive shift from freezing Russia’s sovereign assets to seizing them would dash Putin’s hopes by putting much of his precious war chest on a one-way flight to Kyiv. As Hudson Senior Fellow Rebeccah Heinrichs observed, the seizure of assets would also signal that the Biden administration has shifted from a strategically incoherent commitment to support Ukraine’s defense for “as long as it takes” to a strategy that can help Ukraine seize the momentum and force a favorable conclusion.3

The United States Has to Lead
Western countries have been strangely reluctant to disclose the value of Russian sovereign assets blocked within their financial institutions. However, it is clear that the bulk of these frozen funds, some $200 billion, is currently located in EU countries—most significantly by far in Belgium, where $194 billion in matured Russian treasury bills sit in the Euroclear clearing house facility.

The US and other non-EU countries have not publicly confirmed how much they hold, though analysts estimated that just $38 billion of Russian assets were stored in US banks in 2021.5

Although the EU holds more Russian assets than the US, Washington is the world’s economic superpower and overseer of the global currency. It therefore possesses a unique leadership role and an unmatched capability to exercise financial power against adversaries. Given continued tensions between EU members over their collective approach to Russia, American leadership, as Senator Risch observed, “is absolutely essential.”

How Would the US Seize Russia’s Sovereign Assets?
The president routinely exercises sweeping powers to freeze the assets of adversaries with sanctions, and US law enforcement possesses well-honed legal tools for seizing the assets of terrorists, drug cartels, and other sub-state adversaries through civil and criminal forfeiture.

But the legal authorities for confiscating another state’s sovereign assets outside of wartime are not so clearly defined. Scholars including Laurence Tribe have argued that existing US law confers such authority.5 Philip Zelikow argues that this authority further or alternatively arises through the international law of countermeasures (whereby third-party states can take proportionate, temporary action to compel others to comply with their legal obligations).6

Others such as Paul Stephan have urged caution.7 Respect for property rights, including those of sovereign states, is a bedrock of the Western legal system. “However,” noted Senator Risch, “like most legal precedents, there are rare and extreme cases where exceptions are necessary—as long as there are appropriate guardrails.”8

To avoid the kind of legal challenges that would almost certainly obstruct confiscation efforts for months, if not years (a respite that Putin would undoubtedly welcome), it would be beneficial for Congress to establish a clear standalone legal authority under which the US can seize Russian assets.

The bipartisan and bicameral Rebuilding Economic Prosperity and Opportunity for Ukrainians (REPO) Act, of which Senator
Risch is a leading cosponsor, includes four key measures. These would

- provide the president with clear legal authority to confiscate frozen Russian assets and transfer them for Ukraine reconstruction;
- deny Russia the ability to endlessly challenge the seizures in US courts;
- prohibit the release of frozen sovereign assets until Russia withdraws its forces from Ukraine and meaningfully commits to providing compensation; and
- direct the president to engage with like-minded partners to establish an international compensation mechanism.

US leadership is essential, but European reciprocation would ultimately be most impactful given the location of most of Russia’s frozen assets. As Senator Risch said, it is “collective action that will send the strongest message to Putin.”

Possible Concerns
An immediate concern is that the Kremlin would retaliate by accelerating its seizure of Western sovereign assets in Russia. In April 2023, Putin responded to Western sanctions by signing a decree that effectively expropriated two utilities companies, one Finnish and one German. Putin has threatened further such seizures. (The Kremlin decree differs from Western sanctions on Russian companies in that it does not freeze their assets but places their operations directly under Russian management.) However, the geopolitical necessity of punishing Russia now outweighs the financial concerns of companies that took the risk of doing business with a rogue regime.

A longer-term concern is that other countries will become reluctant to invest in the United States if they believe that their assets can be arbitrarily seized. However, the REPO Act does not provide blanket authority, but is carefully worded to apply only to the specific circumstances of Russia’s war against Ukraine. It may not be a bad thing if Washington’s ability and willingness to seize sovereign wealth prompts other belligerent regimes to think twice before invading their neighbors.

Finally, critics have suggested that the REPO Act could interfere with the president’s discretion in future negotiations with Russia. This criticism misunderstands the purpose of the bill, which does not require the president to confiscate Russian assets but merely authorizes him to do so. This authorization only serves to strengthen the White House’s leverage over Russia.

New Tools for a New Era
China, Iran, and other US adversaries are watching America’s response to Russian aggression carefully. Seizing Russia’s sovereign assets would be a powerful demonstration of US capabilities, adaptability, and resolve.

As Senator Risch concluded:

- We are entering a new phase of strategic competition that is growing more fierce with each passing day.
- We need to develop and use new and more creative tools to not only seek justice for those who are wronged, but deter bad actors from doing things like Russia has done in Ukraine.
- The countries that want to undermine and change the international system—Russia, China, Iran, and North Korea—don’t care about the rule of law and never have. . . . We must be willing to put them on notice that they will not be allowed to act with impunity. They will be made to pay.
Endnotes


About the Author

Nate Sibley is a research fellow with Hudson Institute’s Kleptocracy Initiative. His research explores the relationship between authoritarianism, corruption and other illicit finance, and national security.

Mr. Sibley works closely with the US government and its allies to advance innovative policies in the fields of anti-money laundering, economic statecraft, and democracy promotion. His work is credited with helping to elevate transnational corruption as a core US national security concern.

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