

The \$300 Billion Question – How to get Russia to Pay for Ukraine's Reconstruction

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Summary

As the scale of Russia's destruction of Ukrainian infrastructure increases by the day, the issue on how reconstruction is going to be paid for rises ominously on the EU and G7's agenda. While preparations are underway on how to organise and fund reconstruction, there is a huge disproportion between the needs, to be counted in many hundreds of billions of dollars or euro, and the plausible financial capacities of the EU and other G7 states which seem to be counted only in the tens of billions. In this situation, the Russian Central Bank assets of around \$300 billion that are currently frozen in the hands of the EU and other G7 states have become a glaringly obvious solution, subject only to the possibility to derogate from the immunity in international law of sovereign assets held in foreign jurisdictions. This paper addresses precisely this issue, and shows that legal grounds for such a derogation exist, based on Russia's unprovoked choice of, and conduct of, the war. Encouragingly, in recent days the President of the European Commission has spoken up over this issue. Her proposal is however too moderate in the light of Russia's 'weaponisation of winter', with the threat of millions of Ukrainian citizens, especially the aged, vulnerable and less mobile, being frozen to death. This would become 'Putin's Holodomor', and warrants outright confiscation of the \$300 billion.

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The question is now posed with urgency. Who is going to pay for reconstruction and recovery in Ukraine? With the cost of Russian damages already reaching hundreds of billions of dollars or euro, and still mounting every day, the political capacity of the EU and US to fund reconstruction is at best counted in tens of billions. Ukraine itself is financially devastated. Even adding in also the World Bank and other multilateral sources, the gap between needs and probably available funds is huge, unless the widely quoted \$300 billion of assets of the Russian central bank frozen by G7 countries are mobilised.

Sources for the widely quoted \$300 billion of frozen assets tend not to be cited or detailed. However it seems that one primary source may be the published management report of the Russian central bank itself, which gives the breakdown of its \$585 billion foreign exchange and gold reserves by currency, by holder of the assets, and by type of assets as of 30 June 2021² (see data in the table below). The cited \$300 billion would seem to relate roughly to the \$322 billion of euro and other G7-currency denominated assets, and/or the \$257 billion by euro and other G7 country holders of the assets. The President of the European Commission, Ursula von der Leyen, stated on 30 November 2022 that 'we have blocked 300 billion euros of the Russian central bank reserves and we have frozen 19 billion euros of Russian oligarchs' money³.

As regards damages caused by the Russian aggression, a report dated August 2022 by the World Bank, the European Commission and Government of Ukraine estimated the costs of reconstruction of damaged assets to amount so far to \$350 billion, with a further \$250 billion of other economic losses⁴. These estimates predate the most recent Russian tactic of destroying civilian electricity generating assets with massive missile and drone attacks, so the amounts are still increasing substantially. The European Commission's new estimates of war damages so far amount to €600 billion (or \$630 billion)⁵.

Current financial contributions by the West are modest by comparison. The single biggest contribution by the US sees €22.9 billion of 'lethal aid' to Ukraine since February 2022, vital for military success, and €25 billion in financial and humanitarian support⁶. By way of [comparison](#), the EU institutions and Member States combined are said to have pledged around €10 billion in lethal aid and €42 billion in humanitarian and financial support. The

2 Central Bank of Russia, https://www.cbr.ru/Collection/Collection/File/39685/2022-01_res_en.pdf

3 European Commission, 'Statement by President von der Leyen on Russian accountability and the use of Russian frozen assets', STATEMENT/22/7307, 30 November 2022, available at https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7307. It is understood that the 'we' referred to in the cited text refers to frozen assets held by all G7 states, including the EU and its Member States. New figures for privately owned Russian frozen assets (of persons and companies) reveal the top holders of these assets to be Belgium (€3.5bn), Luxembourg (almost €2.5bn), Italy (€2.3bn), Germany (€2.2bn), Austria and Ireland (€1.8bn each), France (€1.3bn), and Spain (more than €1bn). Together these amount to about 90% of the €17.73 billion of assets that have been frozen across the EU. There is a vast discrepancy between the amounts frozen by different Member States, with Hungary, by contrast, having frozen just €3,000 in assets. The assets belong to 1,239 sanctioned individuals and 116 sanctioned companies named in the EU's sanctions list due to their links to Russia's invasion of Ukraine, according to data shared with The Irish Times: 'EU ready-to-push-legislation-which-will-criminalise-evaders-of-russian-sanctions', 22 November 2022. The Commission does not, at present, know how much of the €300 bn are frozen within the EU, according to Nils Behrndt, Deputy Director-General, DG JUST, at an EP seminar on 'Make Russia Pay: Legal ways to seize and use frozen Russian assets for the reconstruction of Ukraine', 7 December 2022. However the table at the end of this paper contributes some relevant data.

4 World Bank, Government of Ukraine, European Commission, 'Ukraine recovery and reconstruction needs', August 2022. <https://www.worldbank.org/en/news/press-release/2022/09/09/ukraine-recovery-and-reconstruction-needs-estimated-349-billion>

5 European Commission, op. cit.

6 See the Kiel Institute's 'Ukraine Support Tracker', available at <https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker/> (updated 7 December 2022).

latter sum includes the pledge of €18 billion in financial assistance throughout 2023 to cover the budgetary needs of the war-torn country and to repair damaged infrastructure. The disbursement of this last package had been vetoed by Hungary as a way of pressuring the other Member States into approving the country's share of the EU's post-Covid Resilience and Recovery Fund. But Budapest's hostage-taking tactics led senior figures of the Czech Presidency of the Council and the European Commission to suggest an alternative albeit more cumbersome way could be found to send the financial aid to Kyiv in January⁷.

Of the other G7 states, the UK has contributed \$4.3 billion in lethal aid and \$3.1 billion in humanitarian and financial assistance; Canada has pledged about \$4 billion of humanitarian and military assistance, and Japan has only committed \$0.6 billion in financial support since February 24, 2022⁸. Many other states are also contributing but the amounts are believed to be small. An alliance of many possible funders have agreed principles for their actions in the 'Lugano Declaration and Principles'⁹, but so far this does not deliver financial commitments.

On present form, Ukraine may win the military war but remain subject to a disastrous economic and social fate stretching indefinitely into the future. The political consequences of this scenario would surely be dire and, inter alia, ruin any chances for Ukraine to quickly progress as a candidate for accession to the EU.

What could be done about this? An obvious solution beckons in the \$300 billion of frozen Russian central bank assets held by Western financial institutions. Seizure of these assets is widely debated, and on 30 November 2022 the President of the European Commission, Ursula von der Leyen, became the first EU leader to endorse the idea (see further below).

The legal justification

The main constraint cited is the principle in international law of immunity from confiscation by domestic court order of sovereign state assets held in foreign jurisdictions¹⁰. In contrast, the expropriation of foreigners' privately owned property is generally possible, but only if it serves a public interest and is conducted in accordance with due process and adequate compensation¹¹. Criminal prosecution obviates the latter requirement.

The temporary freezing of sovereign and privately owned assets by executive order has a lower threshold to pass in international law, as evidenced in the EU's sanctions policy based on Article 215 TFEU. In its rich body of jurisprudence on the legality of asset freezes and

7 E. Zalan, 'EU delays Hungary funds decision, as Budapest vetoes Ukraine aid', 6 December 2022: '(A)n alternative solution to the financing of the Ukraine aid could be to have borrowing by the Commission backed by national guarantees' of the 26 Member States which do support the plan. "It is a slower and more cumbersome procedure than having the EU budget providing the guarantee, which requires unanimous backing from EU governments.' On 10 December, the Council reached agreement on the matter. See https://www.consilium.europa.eu/en/press/press-releases/2022/12/10/council-adopts-18-billion-assistance-to-ukraine/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Council+adopts+%u20ac18+billion+assistance+to+Ukraine.

8 Kiel Institute, op. cit.

9 Lugano Declaration - Outcome Document of the Ukraine Recovery Conference, Lugano, 4–5 July, 2022, available at <https://www.urc2022.com/>.

10 Art. 5 of the UN Convention on Jurisdictional Immunities of States and Their Property. See also ILC Draft Articles on the same topic, with commentaries in YILC, 1991, Vol. II, Part 2.

11 See the seminal Case concerning the Factory at Chorzów (Claim for Indemnity), Publications of the Permanent Court of International Justice, Series A, No. 9, 1927.

other restrictive measures challenged by, inter alia, Russian oligarchs and state-owned or -controlled companies like Rosneft¹², the European Court of Justice has held that an asset freeze that is in place for almost a decade can still be deemed preventative, but acknowledged that such a restrictive measure might at some further point in time lose its temporary quality¹³.

Generally speaking, the justification for an executive order to freeze assets is construed as a legitimate countermeasure¹⁴ to a state's violations of international law or as an act of collective self-defense emanating from the principles of the UN Charter (see the criteria below)¹⁵. Absent codified international law, convincing arguments have been advanced to extend the legal doctrine on temporary freezes to the seizure of assets that can be proved to derive from international criminal activity. A contribution by the International Lawyers Project¹⁶ is notably thorough. Their conclusion is that a legal justification for executive action (provided for by domestic/EU law) exceptionally derogating from the principle of immunity of sovereign assets could be based on meeting several criteria:

- ❖ An unprovoked, unjustified armed aggression breaching another state's territorial integrity (Article 2(4) UN Charter),
- ❖ Absence of authorisation of the aggression by the UN (Chapter VII UN Charter, UNGA Res. 377),
- ❖ War crimes, and breaches of international humanitarian law, and international human rights law (ICC Rome Statute; 1949 Geneva Conventions and two Additional Protocols of 1977; 1899 and 1907 Hague Conventions),
- ❖ Proportionality in relation to the damages (Articles 49(3) and 51 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts).

Russia's aggression against Ukraine meets the three first-mentioned criteria to justifiably derogate from a principle which should not be perceived to constitute an absolute right under international law¹⁷.

As for the first and second conditions, not only did more than a two-thirds majority of the UN membership bypass vetoes in the Security Council to 'unite for peace' in the General Assembly (cf. UNGA Res. 377) and condemn Russia's full-scale invasion of Ukraine as a

12 See, e.g., C-72/15, Rosneft, ECLI:EU:C:2017:236, Judgment 28 March 2017. In a national expression of 'seizing' Rosneft's assets, Berlin placed Rosneft Germany, which owns the problematic Schwedt oil refinery on the border with Poland, under the trusteeship of the German grid regulator out of concerns for the country's energy security. While such crisis response measures are normally of limited duration, the prevention from attempted liquidation of Gazprom Germania in early 2022 indicates that full nationalisation may be on the cards. See N. Kurmayr, 'Rosneft subsidiary in Germany placed under state trusteeship', Euractiv, 16 September 2022.

13 See, e.g. T-85/09, Kadi v Commission, ECLI:EU:T:2010:418, Judgment 30 September 2010.

14 ILC Articles on Responsibility of States for Internationally Wrongful Acts.

15 See M. Goldmann, 'Hot Water and Cold Freezes', Verfassungsblog, 28 February 2022.

16 See A. Moiseienko, International Lawyers Project, et al., *Frozen Russian Assets and the Reconstruction of Ukraine: Legal Options*, June 2022, World Refugee and Migration Council, available at <https://www.wrmcouncil.org/wp-content/uploads/2022/07/Frozen-Russian-Assets-Ukraine-Legal-Options-Report-WRMC-July2022.pdf>

17 International law on privileges and immunities has evolved over time. See, for instance, the case of Slobodan Milosevic before the ICTY, where a sitting head of state was charged (and later prosecuted) for international crimes. This was previously unthinkable. There is nothing that prevents this body of international law from developing further.

blatant violation of the principles of the UN Charter¹⁸; Russia has also been ordered by the International Court of Justice to immediately suspend its military aggression¹⁹. Instead, the Russian invaders have resorted to systematic and indiscriminate missile strikes and the shelling of civilian areas all around the country. This leads into the third condition, with the chief prosecutor of the International Criminal Court having opened investigations into alleged war crimes and crimes against humanity; proof of which has (literally) been piling up following the discoveries of massacres in Bucha and atrocities committed in other places under effective Russian control, and thus subject to the international law of occupation. The EU, for its part, supports all measures to ensure accountability for violations of international humanitarian law and human rights law. This includes support to the ICC prosecutor's investigation, as well as the work of the OHCHR Commission of Inquiry and the Ukrainian Prosecutor General's collection and preservation of the evidence of war crimes.

While the Russian invasion did not start with clear genocidal intent²⁰, it has evolved into one²¹. Following months of indiscriminate missile attacks on Ukrainian cities, with the onset of winter Russia has intensified its destruction of Ukrainian electricity infrastructure. The '[weaponisation of winter](#)' now threatens millions of Ukrainian civilian citizens with either freezing to death for the most vulnerable and immobile elderly, or driving a new wave of mass emigration (effectively deportation) for the younger and more mobile. This would become Putin's Holodomor²².

As for the fourth condition, in such exceptional circumstances, executive action to confiscate state assets would still have to meet certain safeguards. Firstly, the affected parties should be able to challenge the confiscation. Following the Lugano principles and inspired by past precedent (e.g. US-Iran Claims Tribunal, Ethiopia-Eritrea Claims Commission), a register should be opened to enter individual claims and a commission or tribunal should be established to examine the evidence and decide on the size and scope of claims²³. Ultimately, a financial mechanism should be created to pay out the damages (see below). Secondly, confiscated assets should only be used for narrowly defined purposes, proportional to the

18 UN General Assembly Resolution ES-11/1, 2 March 2022. Five countries - Belarus, DPRK, Eritrea, Russia and Syria - voted against it, while 35 (incl. China) abstained.

19 See ICJ Order delivered on the request for the indication of provisional measures submitted by Ukraine in the case concerning 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)', 16 March 2022.

20 In his televised address marking the launch of the invasion, President Putin invoked the objectives of demilitarisation and 'de-Nazification' of Ukraine, which he holds responsible for genocidal attacks on the Russian people in Eastern Ukraine. A transcript of the speech is available on the website of Bloomberg: www.bloomberg.com/news/articles/2022-02-24/full-transcript-vladimir-putin-s-televised-address-to-russia-on-ukraine-feb-24. See further V. Putin, 'On the Historical Unity of Russians and Ukrainians', 12 July 2021, available at en.kremlin.ru/events/president/news/66181.

21 Ria Novosti, 'Что Россия должна сделать с Украиной' (What Russia should do with Ukraine?), 3 Apr 2022. An English translation of the despicable text is available at ccl.org.ua/en/news/ria-novosti-has-clarified-russias-plans-vis-a-vis-ukraine-and-the-rest-of-the-free-world-in-a-program-like-article-what-russia-should-do-with-ukraine-2/. For an authoritative analysis, see T. Snyder, 'Russia's Genocide Handbook: The evidence of atrocity and intent mounts', 8 Apr 2022, available at snyder.substack.com/p/russias-genocide-handbook?s=r. For further indications of genocidal 'intent', the deportation of Ukrainian children for assimilation in Russian families and institutions was 'legalised' by President Putin in May 2022 with a decree simplifying the procedure for obtaining Russian citizenship for Ukrainian orphans and children left without parental care. See https://t.me/rian_ru/165351, 30 May 2022. Despite the patriotic fanfare about Russia's humanitarian mission in Ukraine, the forced displacement, which has also been recorded by the OHCHR, amounts to a violation of Article 2 Section E of the 1948 Genocide Convention. According to its own figures, Russia has seized some 200,000 Ukrainian children in the first two months of this war. Report by Interfax, <https://www.interfax.ru/world/839058>. See also OHCHR, 'Human rights concerns related to forced displacement in Ukraine', 7 September 2022.

22 For Ukrainians there is the inescapable analogue with Stalin's Holodomor in 1932-33, under which between 3.5 and 5 million Ukrainians were starved to death.

23 This may also lead entities (western banks, oil companies) whose assets have been seized by Russia to claim compensation.

damages, e.g. compensation for victims, reconstruction of damaged infrastructure or the ongoing provision of essential services²⁴. In this respect, a further aspect of the exceptional circumstances is that Russia has introduced a legal provision into its constitution annexing four Ukrainian oblasts, which means inter alia appropriating to itself all state assets in these territories. The proportionality of the \$300 billion is therefore without doubt. Following UN General Assembly's adoption of a resolution on 14 November 2022 calling for Russia to pay reparations for the damages it has caused²⁵, the fourth criterion might also be satisfied if the war would be ended with a peace treaty that includes an agreement by Russia to pay reparations and a provision to cede the \$300 billion of confiscated assets to this end.

If common sense rationality were ever to enter into the calculus of the Kremlin, then these quasi-reparations could be part of a least-costly resolution of the war for Russia. Unlike the notoriously excessive and ultimately counter-productive burdens of reparations imposed on Germany after the first world war, confiscation of the frozen central bank assets would have no immediate impact on the Russian economy, requiring just a book-keeping entry at the central bank.

While a theoretical possibility, the plausibility of this scenario unfolding with Russia's agreement would seem to be so remote and inconsistent with the urgency of Ukraine's needs that it may be excluded for practical purposes.

On the other hand, action by the G7 (which includes the EU as a non-enumerated member) to derogate from the immunity principle could be said to represent unilaterally determined reparations which are not contingent on Russia's willingness to cooperate. According to international customary law, these states could be said to be 'specially affected²⁶', since their security is tangibly and adversely impacted by Russia's war against Ukraine, and because they hold frozen assets.

The European Commission takes the lead

Given the comprehensive case outlined above for using Russia's frozen assets to pay for reconstruction, it is highly welcome that Ursula von der Leyen, President of the European Commission, broke the official silence on the issue on 30 November 2022 with a short but vital statement on the use of Russian frozen assets²⁷. Building on ideas promoted by Estonia, Romania and other Member States, von der Leyen makes two proposals:

- ❖ to establish a specialised court, backed by the United Nations, to investigate and prosecute Russia's 'crime of aggression'. Such a tribunal would complement the ICC in its prosecution of war crimes²⁸;
- ❖ to work on an international agreement 'with our partners' to make it possible to use the €300 billion of frozen assets to pay for rebuilding Ukraine – 'and together we can find legal ways to get to it'.

24 Moiseienko, 25-6.

25 United Nations, *General Assembly adopts resolution on Russian reparations for Ukraine*. <https://news.un.org/en/story/2022/11/1130587>

26 *North Sea Continental Shelf Cases*, Judgment, 1969 ICJ Rep. 3, para. 73; and ILC, Draft Conclusions on Identification of Customary International Law, with commentaries, UN Doc. A/73/10, 2018, 136-7.

27 Statement by President Von Der Leven, op.cit.

28 By now, Ukraine has assembled a register of 49,000 such alleged crimes: <https://war.ukraine.ua/russia-war-crimes/>

The latter proposal is not simple and would come in two stages.

In the short-run, the income earned on the 'active management' (i.e. investment) of assets frozen since Russia's first invasion in 2014 would be made available for Ukraine to repair and rebuild.

In the longer run, 'once the sanctions are lifted', the full €300 billion should be used for compensation for damages. This formula could be linked to a hypothetical peace agreement (mentioned above) that would stipulate war reparations. Implicit, there would be an assessment of the expected impact of sanctions' lifting and a process of consultation and negotiation, first of all with G7 partners to set up a financial mechanism to receive and take title to the frozen assets, and then organise their disbursement in collaboration with the government of Ukraine in line with the principles of the Lugano Declaration. There are different conceivable possibilities for doing this. The EBRD, which has 'Reconstruction' in its name and mandate, could be entrusted with this task. Russia's membership of the EBRD has not prevented the 71-member organisation (which includes G7 countries) from stopping of new investments in Russia. A second idea could be to create a European [or International] Agency for Reconstruction in Ukraine, analogous to what the EU did in the Balkans in 2000²⁹. The agency would handle contributions from the EU, its Member States, other G7 states, and multilateral organisations (World Bank, EIB etc.). Another idea is that such an agency should also invite contributions from private sector sources and work to leverage private sector investors in Ukraine³⁰.

Under EU law, a Council decision adopted under the Common Foreign and Security Policy (Article 29 TEU) might be considered to serve as the basis for a sanctions regulation (Article 215 TFEU) obliging banks in Member States that hold Russian frozen assets to transfer them to the above-mentioned fund/mechanism. But to avoid the amendment of existing sanctions decisions, or the adoption of new ones, from being vetoed by a recalcitrant Member State, the draft Directive on Asset Recovery and Confiscation, which builds on two existing EU acts³¹, and is currently before the European Parliament, would offer a more attractive legal pathway to seize Russian money and use it for war reparations in Ukraine. Based on Articles 82(2), 83(1-2) and 87(2) TFEU on judicial cooperation in criminal matters, the minimum rules on asset tracing, identification and management, as well as rules on freezing and confiscation could be adopted by way of the ordinary legislative procedure (requiring only Qualified Majority Voting - QMV – and not unanimity in the Council) and then be applied to the violation of EU sanctions, where such conduct constitutes a criminal offence as defined³².

29 Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction, OJEU, L 306, 7 December 2000, at 7.

30 Timothy Ash, 'Ukraine – how to fund reconstruction!'. https://open.substack.com/pub/timothyash/p/ukraine-how-to-fund-reconstruction?utm_source=direct&r=ynli4&utm_campaign=post&utm_medium=web.

31 Council Decision 2007/845/JHA concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJEU L 332, 18 December 2007, at 103; and Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJEU L 127, 29 April 2014, at 39.

32 See COM(2022) 245 final, 25 May 2022. To further counter the risk of violation of such measures, the Commission adopted that same day a proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union, COM(2022) 247 final, 25 May 2022, together with a Communication towards a Directive on criminal penalties for the violation of Union restrictive measures, COM(2022) 249 final, 25 May 2022, to identify the violation of Union law on restrictive measures (violation of Union restrictive measures) as an area of particularly serious crime with a cross-border dimension.

However, the reference in von der Leyen's statement to a lifting of sanctions raises further big questions. Presumably the sanctions would be lifted only after an end to the war that returned the occupied territories to Ukraine and saw a profound change in Russia's leadership and/or policies to the point that it was credibly no longer a threat to the peace. These qualifications at best push back the use of the principal assets subject to conditions that may be highly improbable or stretch the time horizon long into the future. Meanwhile Putin's Holodomor is already unfolding.

In these circumstances von der Leyen's proposal needs strengthening. Two alternative formulations might be considered. A first variant might hypothecate a condition put to Putin, that unless he desists now from 'weaponising winter', the frozen assets would be expropriated. A second variant would be to proceed now with expropriation without further conditions or delay. The first variant is more conciliatory and could in theory contribute to a negotiated peace. However, it suffers from the weakness that if Putin accepted this condition and stopped the weaponisation of winter he would claim an unfreezing of the assets, whereas the damages are already incurred and their repair would still have to be funded. Given also the genocidal dimensions to the Russia aggression, which are growing by the day with life-threatening impacts on millions of Ukrainian civilians, and the legal and moral/political justifications for expropriation, the case for the second variant is robust.

Conclusion

Since the immunity of sovereign assets in foreign jurisdictions is a solidly entrenched element of international law, it needs a rigorous and imperative set of conditions to justify derogating from this principle.

In the case in point, Russia's aggression in Ukraine, the conditions laid out in this paper are observed from the perspective of the normative principles of just war theory³³, and now, in the extreme circumstances of genocidal war, also of international law. While the latter may be considered controversial, the European Commission assesses it to be a political imperative to use the €300 billion of frozen Russian central bank assets to rebuild Ukraine, and proposes to prepare with its international partners (in the first place with the G7) an international legal agreement to make this possible.

President von der Leyen's initiative in breaking the silence over the use of the Russian frozen assets to compensate for its war damages (reparations) is to be greatly welcomed. EU Member States and civil society should be the first to support this proposal and seek the solidarity of other G7 and like-minded states. However, the circumstances are more urgent and dramatic than can adequately be met by the Commission President's preliminary proposal. Putin's Holodomor is now underway as the winter sets in, coming on top of the evidence of war crimes, and violations of international humanitarian law and human rights law already recorded. Executive and legal action should now be undertaken without further delay to confiscate the €300 billion Russian frozen assets, and to use them to compensate Ukraine as reparations for war damages.

33 The normative principles of 'just war', both for its initiation and conduct (*ad bellum and in bello*), have a long lineage. Putin's current war against Ukraine is such a flagrant breach of all these principles that an enumeration of them is superfluous. Sources are abundantly available, for example the Internet Dictionary of Philosophy, 'Just War Theory'; <https://iep.utm.edu/justwar/>

Recommendations

The EU and G7 now have to confront the huge mismatch between the growing costs of Ukraine's needs for reconstruction and the amounts of funds they feel able to mobilise. They should seize the outstanding opportunity that exists in the \$300 billion of Russian central bank assets currently frozen in their hands, to make these funds available for Ukraine's reconstruction.

- The EU and G7 should recognise that a robust legal justification exists in Russia's unprovoked choice of and conduct of the war to derogate from the customary immunity of sovereign assets held in foreign jurisdictions.
- EU Member States should welcome the initiative of the President of the Commission, Ursula von der Leyen, to open up this issue for deliberation by the EU Council and other G7 states.
- Given the ominous 'weaponisation of winter' by Russia, threatening civilian deaths in Ukraine of genocidal proportions, the EU and G7 should build on this proposal with the outright confiscation of the \$300 billion of assets.
- The forthcoming Swedish Presidency of the EU Council should, as a matter of the highest priority, facilitate debate in the Council on this proposal at the beginning of 2023 with a view to a decision and appropriate action taken before the end of the first half of the year.

Table: Extracts from the Bank of Russia, Foreign Exchange and Gold Assets Management Report, 2022

30 June 2021	% of total	US\$ billions
Total Foreign Exchange plus gold reserves	100	585
<i>By currency</i>		
Euro	32.3	189
Gold	21.7	127
US\$	16.4	96
Yuan	13.1	76
UK£	6.5	38
Other	10.0	58
Total euro + G7	55.2	322
<i>By foreign entity</i>		
Gold	21.7	127
China	13.8	81
France/euro/G7	12.2	71
Japan/G7	10.0	58
Germany/euro/G7	9.5	55
US	6.6	39
International financial institutions	5.0	32
UK/G7	4.5	26
Austria/euro	3.0	17
Canada/G7	2.8	16
Other	10.4	61
Total euro	24.7	144
Total euro + G7	44.1	257
<i>By type of asset</i>		
Government securities of foreign issuers	38.0	223
Deposit and account balances with foreign counterparties	24.1	141
Gold	21.7	127
Non-government securities of foreign issuers	10.3	60.5
International organisation securities	4.1	24.2
Reverse repo operations with foreign counterparties	0.7	4.2
Net position with the IMF	0.7	4.2
Other	0.1	1.0
Total	100	585

Source, Central Bank of Russia, https://www.cbr.ru/Collection/Collection/File/39685/2022-01_res_en.pdf



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