Frozen Russian State Assets

The Key to Enforcing the Largest Financial Debt of Our Times

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In February 2022, a coalition of states including all G7 economies froze approximately US$300 billion in Russian state assets. Those consist of foreign currency reserves accumulated by the Central Bank of Russia (CBR). Over the past three years, debates have been unfolding as to how these funds can be used to enforce Russia's obligation to pay reparations to Ukraine. With the prospect of EU sanctions unravelling in July 2025, legal debates over countermeasures and state immunities appear to be ceding stage – temporarily at least – to concerns over whether CBR assets ought to be ring-fenced in a separate fund to keep it out of Russia's reach and preserve the options for future action.

What and where

It is useful to begin with the amounts of Russian state holdings involved. Most official assessments are published in the aggregate, i.e. with no breakdown on a jurisdiction-by-jurisdiction basis. However, estimates coalesce around the total figure of US$300 billion frozen across jurisdictions. €200 billion is held via Euroclear, a securities clearinghouse in Belgium.

Frozen state assets are distinct from frozen private wealth. There are approximately 2,000 Russian individuals and companies who have been subjected to sanctions in the EU, US, Australia, Canada and other members of the informal sanctioning coalition. The total amount of private property frozen was reported to amount to US$58 billion as of early 2023.

This is far smaller amount than that of state assets. This is one reason why private property now features less in the discussions of confiscating Russian wealth – in contrast to the months immediately after Russia's full-scale invasion when politicians could not resist the temptation of promising, in vain, to go after oligarch mansions and yachts. The other reason is that, unless private property constitutes proceeds or instrumentalities of crime, there is no legal basis for confiscation. In some cases, though, impatient oligarchs have rendered their property liable to confiscation by seeking to remove it from the jurisdiction – including, in one instance, a mega-yacht – and thereby implicating it in sanctions evasion.

Freeze to seize

The "freezing" of Russian state assets means that Russia cannot use them, including by selling them, but remains their owner. In official communications, the EU and the US describe frozen Russian assets as "immobilised". There is no real difference between those two terms, as explained later.

The discussion of whether frozen Russian assets should be used for Ukraine's benefit has come to be known as the "freeze to seize" debate. In essence, it refers to whether the entire amount of those frozen assets, including the principal and the interest, can be spent on Ukraine. If this happened, this would most likely entail the establishment of an international compensation fund, although various modalities of distribution are possible.

Like with freezing, there is some variability in the terminology one might encounter. "Seizing", "confiscation", "transfer" and "repurposing" are all used interchangeably. As a matter of international law, the choice of one of these terms over the others makes no difference. Politically, though, they may have different connotations. While terms such as "seizure" and "confiscation" foreground the taking of assets, "transfer" and "repurposing" focus on making them available to Ukraine.

Reparations, not theft

The reason for making those assets available to Ukraine has to do with Russia's obligation to pay reparations. Under international law, Russia must make full reparation for the damage caused by its war of aggression. This has been recognised, among others, by the UN General Assembly. No comprehensive accounting of such damage is possible while the war goes on, but by most estimates it already far exceeds the amount of frozen assets.

In other words, Russia owes Ukraine a financial debt that it is unwilling to discharge. This is a crucial, and occasionally overlooked, part of the background to the "freeze to seize" debate. One of the Kremlin's habitual narratives is that Western nations are contemplating a "theft" of its reserves. In reality, what is at stake is developing a mechanism to enforce the largest inter-state financial obligation of modern times.

Legal objections

Generally speaking, state immunities preclude seizure of state property. This is the principal legal objection to the proposed transfer. Whether it holds water depends on the proper application of the law of state responsibility, as well as its relationship with the law of state immunities.

The law of state responsibility allows states to take countermeasures, i.e. engage in acts that would otherwise be contrary to international law in order to respond to another state's breach of international law. Countermeasures must aim to restore the state of compliance with international law between the parties and be proportionate and non-punitive. Some argue, therefore, that they could be used to transfer the aggressor state's property to the victim of its aggression.

There are three main counterarguments. The first one stems from the wording of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). The ARSIWA posit that countermeasures must aim to "induce" the state in breach to comply with its obligations. Some contend that this allows for the freezing of another state's property until it agrees to pay its debt, but not for its transfer in satisfaction of the debt. I have argued that this reads far too much into a single word in the ARSIWA in a way more suitable to the interpretation of a domestic statute than of a document reflecting customary international law.

The second counterargument has to do with the ARSIWA's following requirement: "Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question." This is often referred to as the reversibility requirement. The disagreement boils down to whether a transfer of financial assets is irreversible. Some argue that it is, in contradistinction to their freezing; others point out that such a transfer can always be unwound – unlike, say, the destruction of a physical asset.

The third counterargument pertains to the long-standing disagreement over the lawfulness of "third-party" countermeasures, i.e. countermeasures taken by a state other than the directly aggrieved state. Their legality determines whether states other than Ukraine can lawfully rely on countermeasures to seize, or transfer, Russian state assets. This particular debate has been well traversed over the decades but continues to command no consensus.

This controversy can have repercussions for freezing as well as seizing. Since state immunities preclude attachment of state property, if third-party countermeasures are not available, then one might query the lawfulness of the ongoing freezing of Russian state assets. This is where the notion of "immobilisation" comes in. The argument is that "immobilising" assets only entails directing Western financial intermediaries to avoid any transactions with them – therefore rendering such assets, effectively, untouchable – without formally interfering with the owner's property rights at all. This distinction is, in my view, artificial: there is no way of disposing of one's financial assets other than through financial intermediaries. Therefore, states would be on firmer ground if they explicitly invoked third-party countermeasures.

State of the debate

Views continue to differ on the issues outlined above. Leading international law scholars and practitioners from all G7 jurisdictions, including Dapo Akande, Harold Koh, Philippe Sands, Nico Schrijver, Christian Tams and others argue in favour of the lawfulness of the seizure in a memorandum coordinated by Philip Zelikow. So does Philippa Webb in a study commissioned by the European Parliament. Dissenters include the Dutch Advisory Committee on Public International Law, coordinated by Cedric Ryngaert, Ingrid Brunk and several others scholars.

With the weight of authority balanced but tilting towards the legality of seizure, it is difficult to escape the conclusion that, if G7 governments mustered the political will to act, no plausible challenge could be mounted against the international legality of a potential transfer. This is true conceptually as well as practically. Since Russia does not recognise the jurisdiction of the International Court of Justice under the Optional Clause, and the CBR as a state agency is unlikely to qualify for protection under applicable investment treaties, there is no obvious forum for Russia to contest the validity of such measures – although some are still wary of the prospect of investment disputes.

Economic and political objections

The considerations that are likely to weigh most heavily on governments' minds are economic and political, not legal. They include, first and foremost, the potential impact of confiscatory measures on foreign investors' confidence in the European financial system. The issue can also be framed in terms of the precedent that such a step would set, namely whether it would presage the seizure of central bank reserves for other breaches of international law. Some governments, such as that of Saudi Arabia, are reported to have threatened the EU with withdrawal of their funds should Russian assets be taken.

There are several layers to this discussion. As a matter of principle, a precedent for accountability and the payment of reparations is a wholly positive one. However, this answer alone will not assuage the concerns of risk-averse Western governments. More practically, they have to think about in which circumstances they might seize a foreign central bank's assets to force the payment of reparations. Russia's full-scale invasion of Ukraine, with accompanying international crimes, is sufficiently egregious to satisfy the most demanding threshold. What other cases, if any, might rise to the same level is a vital issue for the future. Furthermore, any threats of mass withdrawal of foreign assets from the EU beg the question of where exactly they might be placed instead: can jurisdictions such as China really be a safe and attractive alternative?

Using the interest

So far, the EU has confined itself to going after the interest generated on Russian assets held via Euroclear. When the idea first emerged, it was greeted with widespread scepticism. Sceptics said that, if Russian state assets benefit from immunity, it covers both the principal and the interest. If immunity no longer applies, for example because of third-party countermeasures, then it covers neither the principal nor the interest. The EU's compromise seemed to be a legally unprincipled "slicing and dicing" calculated to provide a modicum of support to Ukraine without aggravating Russia too much.

It has turned out that the EU's legal position has more substance than was initially appreciated. Originally, Euroclear was contractually bound to manage the CBR's assets on its behalf. Once sanctions were put in place, those contracts either became invalid or expired with time. Therefore, Euroclear found itself in the position of holding approximately €200 billion in CBR assets. These assets – bank accounts and securities – continue to generate interest (€4.4 billion in 2023 as per Euroclear's latest annual report). Euroclear has neither any obligation nor even the legal ability to remit it to Russia, and therefore the interest accrues to Euroclear itself in what the EU describes as "extraordinary" or "windfall" profits.

Euroclear has argued that this money, or a substantial part of it, should remain in its hands as a

strategic reserve for litigation costs should Russia sue it. In 2024, the EU adopted rules requiring Euroclear to segregate extraordinary profits in its financial reporting and abstain from distributing them to Euroclear's shareholders (who, curiously, include China's sovereign wealth fund). Meanwhile, Belgium has been levying a corporate income tax of 25% on these profits. Belgium has shared some, but not all, of these tax revenues with Ukraine.

The EU has achieved consensus that the interest on frozen Russian assets should be used for Ukraine's benefit. Some of the funds generated have already been transferred to Ukraine. However, the amounts involved – €1.5 billion via the first tranche – are small in the grand scheme of what Ukraine requires or the damage that Russia has caused. Therefore, in 2024 the G7 agreed to issue a $50 billion loan for Ukraine's benefit backed by recourse to the stream of revenue generated from frozen Russian assets over the next 10 years. This converts future earnings into a lump sum available here and now, as reflected in the name of the initiative: Extraordinary Revenue Acceleration (ERA).

However, the loan has not yet been issued. One of the main impediments to it is that, for the scheme to work, Russian state assets need to remain frozen long-term. This cannot be guaranteed because EU sanctions against Russia need to be extended by unanimous agreement of all Member States every six months. The next extension is due to take place on or before 31 July 2025, with a serious risk that Hungary or Slovakia will block it, especially in light of the Trump-Putin rapprochement.

Way forward

A failure to extend EU sanctions would result in a return of now-frozen state assets to Russia and would be a catastrophic setback to European foreign policy and credibility. Even if EU sanctions survive the July deadline, the status quo is too fragile to be sustainable in the long term. This raises questions about the next steps.

One proposal is to place frozen Russian state assets into a distinct, purpose-made entity – in essence, a Ukraine compensation fund. This would put them beyond the reach of Russia's repayment demands even if EU sanctions lapsed. In terms of future disposal of funds, three options are possible.

One would involve their disbursal for Ukraine's benefit, consistent with the original "freeze to seize" proposals. The second option would preserve the principal but seek to invest and manage it more actively to generate a greater stream of revenues for Ukraine's benefit, endowment-style. As Tom Keatinge and Kinga Redlowska observe, this would have the effect of alleviating any concerns about the reversibility of countermeasures because the principal could be returned to Russia should it comply with its obligation to pay reparations. The least ambitious of the three pathways would involve generating the same returns as before and keeping the assets in place to facilitate the ERA loan.

There is also room for developments outside the EU, which is often overlooked. Of the €200 billion held by Euroclear, a significant proportion comprises bank accounts and securities held by Euroclear in foreign currencies, e.g. C$21.8 billion in Canadian dollars and A$5.8 billion in Australian dollars. It appears likely that these funds are held by Euroclear for the CBR's benefit in respective countries' banks. This is in addition to much smaller amounts that Russia holds in those jurisdictions directly, without Euroclear's involvement.

States like Australia and Canada do not appear to treat Euroclear-held funds as frozen Russian property. For instance, the Australian Sanctions Office estimates the entirety of Russian assets frozen in Australia, public and private, at less than A$100 million. This suggests these states do not yet consider CBR-related Euroclear holdings as owned or controlled by Russia, with the result that they could be withdrawn if EU sanctions lapsed. Imposing separate Australian and Canadian freezes on those assets would eliminate this risk and maintain a "double lock" of EU and Australian/Canadian sanctions. The position is likely the same in other jurisdictions outside Europe.

Overall, three years on, the saga of frozen Russan assets is still ongoing, with many a thing to watch over the coming months.

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