

**Testimony of Yuliya M. Ziskina
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“Making Russia Pay: Sovereign Asset Confiscation for Ukrainian Victory”

Chairman Wilson, Co-Chair Cardin, distinguished Members of the Commission, it is an honor to share this testimony with you on the topic of confiscating and transferring Russian state assets. Thank you for the opportunity to contribute to the vital and timely work of the U.S. Helsinki Commission.

I am Yuliya Ziskina, a Senior Legal Fellow at Razom for Ukraine, a 501(c)(3) nonprofit organization whose mission is to help foster a democratic and prosperous Ukraine. I am here as a Ukrainian-American myself, and in my capacity as a representative of a Ukrainian-American humanitarian organization that, through its direct work with the Ukrainian community in the U.S. and abroad, is intensely aware of the realities on the ground. I am grateful for the opportunity to be a voice for the Ukrainian community devastated by Russia’s brutality and to speak about the very real and urgent needs for Ukrainian victory.

These Russian state funds should be deployed as soon as possible to help bring the war to an end and to finance Ukraine’s reconstruction and reparations to victims of Russia’s war crimes.

Russian sovereign assets are necessary funds to support Ukraine’s victory and are required without delay. Congress should include provisions, specifically the REPO Act, to address frozen Russian state assets in the upcoming supplemental aid package for Ukraine.

I. About Razom for Ukraine

Razom for Ukraine (Razom) is a leading U.S.-based nonprofit organization dedicated to the mission of supporting a democratic and prosperous Ukraine. With a robust international network of volunteers and partners, Razom, which means “together” in Ukrainian, provides humanitarian aid, and administers programs and services focused on health, civil society, advocacy and culture.

Razom advances its mission by creating spaces where people meet, partner, and do, while maintaining a focus on the needs on the ground in Ukraine. With a hub in Kyiv, we also operate

in Ukraine, where we partner with local organizations and individuals to deliver the most meaningful and sustainable impact.

Following the full-scale Russian invasion in February 2022, Razom leveraged its yearslong partnership-building with NGOs and allies to quickly mobilize an emergency response to save lives with an eye toward victory and continued building and rebuilding. At this time, our advocacy program expanded and continues to be a major force for Ukraine in the government affairs space in Washington, D.C.

Founded in 2014 as a grassroots, volunteer organization in response to a historical imperative, Ukraine's Revolution of Dignity, Razom has since raised over \$100,000,000. In 2022, the organization experienced unprecedented growth and now includes over 200,000 donors and volunteers and more than 140 grantee partners.

Razom advances its mission within these five critical program areas:

- Razom Advocacy: forges bipartisan policy and engages constituents and community leaders in the U.S. in support of a secure and democratic Ukraine.
- Razom Heroes: delivers life-saving aid and supplies to first responders and front-line medics in Ukraine.
- Razom Health: supports the development of Ukraine's healthcare system by providing supplies and training to medical professionals to serve Ukrainians now and after victory.
- Razom Relief: invests in vetted grass-roots NGO organizations in Ukraine that supply aid to vulnerable communities.
- Razom Culture and Connections: amplifies voices from Ukraine in the U.S. and around the world through educational programs, volunteer opportunities, and the arts.

The vast majority of our funding goes towards life-saving Ukrainian needs on the ground, including medical supplies (57.9%), communication devices, vehicles, and generators (28.4%), and food and shelter (8%).

II. The Toll of Russia's Aggression on Ukraine

On February 24, 2022, Russia waged a full-scale war on Ukrainian soil with the express goal that Ukraine should not exist as a separate country. Russian aggression has inflicted catastrophic destruction and suffering in Ukraine.

With its military action, occupation activities, and terror bombing, Russia has caused massive human and material losses. Thousands of Ukrainians have been killed, many as victims of the 109,000 recorded Russian war crimes.¹

a. *Financial Consequences and Destruction of Infrastructure*

The dollars-and-cents damage caused by Russia's aggression against Ukraine cannot easily be overestimated. Russia's destruction has already erased 15 years of economic growth in Ukraine and huge swaths of Ukraine's infrastructure. Ukraine lost over 30 percent of its GDP since Russia's full-scale invasion.² This war is being fought on the battlefield with military means just as much as it is an economic war. Ukraine must win them both. Ukraine's military may continue to win back territory, but if Ukraine's economy collapses or the government runs out of money, Putin will still win.

In March 2023, a joint assessment by the World Bank, the Government of Ukraine, the European Commission and the United Nations estimated the cost of reconstruction and recovery in Ukraine at \$411 billion, an amount that is several times greater than the entire value of Ukraine's pre-war gross domestic product,³ and does not include the costs of rebuilding the Russian-occupied territories that Ukraine hopes to recover. As of September 2023, Russia has caused:

- \$151.2 billion in damages to infrastructure alone;⁴
- 3,500 damaged or destroyed educational facilities, including over 1,700 secondary schools, over 1,000 preschools, and 586 higher education institutions;⁵
- 1,223 destroyed or damaged healthcare facilities, including 384 hospitals;⁶
- 1,689 damaged or destroyed cultural heritage sites, including monuments, places of worship, and libraries and archives, and;⁷

¹ Olena Bohdanyok & Vlada Prizov, *How many war crimes of the Russian Federation were recorded in Ukraine. What do the OGPU and the Register of Russian War Criminals say?*, SUSPILNE MEDIA (Nov. 13, 2023), <https://suspilne.media/615955-skilki-voennih-zlociniv-rf-zafiksuvali-v-ukraini-so-kazut-v-ogpu-i-reestri-rosijskih-voennih-zlocinciv/>

² Mark Volynski, *The Road to Recovery: Ukraine's Economic Challenges and Opportunities*, CENTER FOR STRATEGIC INT'L STUDIES (September 11, 2023), <https://www.csis.org/blogs/development-dispatch/road-recovery-ukraines-economic-challenges-and-opportunities/>.

³ Patricia Cohen, *The World Bank estimated the cost of rebuilding Ukraine at \$411 billion. Support is growing to use Russian funds for it.*, THE N.Y. TIMES (Mar. 27, 2023), <https://www.nytimes.com/2023/03/27/world/europe/the-world-bank-estimated-the-cost-of-rebuilding-ukraine-at-411-billion-support-is-growing-to-use-russian-funds-for-it.html/>.

⁴ *The total amount of damage caused to the infrastructure of Ukraine due to the war reaches \$151.2 billion — estimate as of September 1, 2023*, KYIV SCHOOL OF ECONOMICS (September 1, 2023), <https://kse.ua/about-the-school/news/the-total-amount-of-damage-caused-to-the-infrastructure-of-ukraine-due-to-the-war-reaches-151-2-billion-estimate-as-of-september-1-2023/>.

⁵ *Id.*

⁶ *Id.*

⁷ *Potential Damage to Ukrainian Cultural Heritage Sites*, UKRAINE CONFLICT OBSERVATORY (July 31, 2023), <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/heritage-1>.

- \$14 billion worth of damages and losses due to the destruction of Ukraine’s Kakhovka dam and subsequent flooding of Ukraine’s south.⁸

These numbers only continue to grow exponentially day by day, and experts provide estimates that the sum will multiply into the trillions.⁹ In the meantime, Ukrainians are fighting for the survival of their country against one of the largest militaries in the world. As eight-year-old Ukrainian girl Lyuda writes in a Christmas letter, “Dear Santa! Please present to me a new school as russians have burned down mine. If that’s not possible, then send many sweets to the soldiers.”¹⁰

It may help to put these sums into perspective. The EU and the US have given Ukraine more than \$5 billion *per month* of their own taxpayers’ funds—which runs at about \$100 million per day—so that nearly 100 percent of Ukraine's tax revenue can be spent on the war effort and solely to keep it from economic collapse. To put these sums into further perspective, the recent transfer of \$5.4 million seized oligarch funds¹¹ would thus offset the costs for only a matter of hours.

The financial needs are real and urgent. The recently-passed Ukrainian state budget for 2024 estimates a \$41 billion budget deficit for the country’s bare minimum survival needs.¹² The primary item on the list of expenditures was funding for the military and veterans' services (\$59 billion), including \$1 billion funding for prosthetics.¹³ Prioritizing military needs, the 2024 budget significantly reduces spending on rebuilding efforts such as construction, infrastructure, and demining.¹⁴

Russia’s full-scale invasion has made Ukraine the most heavily-mined country in the world, surpassing Afghanistan and Syria.¹⁵ One third of Ukraine’s territory is potentially littered with millions of explosives. The vast minefields have not only bogged down Ukraine’s military counteroffensive, but they have also endangered six million civilians and rendered parts of the nation’s most valuable farmland unusable, impacting both Ukraine’s economy and the global food supply. Without demining, Ukraine will not be able to fully launch its economy.

⁸ *Kakhovka Dam destruction inflicted US\$14 billion damage and loss on Ukraine: Government of Ukraine–UN report*, UNITED NATIONS (October 17, 2023), <https://ukraine.un.org/en/249742-kakhovka-dam-destruction-inflicted-us-14-billion-damage-and-loss-ukraine-government-ukraine/>.

⁹ Adam Taylor, Anastacia Galouchka & Kostiantyn Khudov, *Ukraine Dreams of Rebuilding But Russia’s Destruction Continues*, WASH. POST (June 21, 2023), <https://www.washingtonpost.com/world/2023/06/21/ukraine-recovery-reconstruction-economy-kharkiv/>.

¹⁰ <https://twitter.com/oksenlisovyi/status/1725809839547338903>

¹¹ *Kremlin decries US plan to give seized Russian money to Ukraine*, REUTERS (September 7, 2023), <https://www.reuters.com/world/kremlin-decries-us-plan-give-seized-russian-money-ukraine-2023-09-07/>.

¹² Olga Srybna, *Roksolana Pidlasa [head of the budget committee of the Verkhovna Rada] states there will be problems with the budget for 2024*, VOICE OF UKRAINE (Nov. 13, 2023), <http://www.golos.com.ua/news/189202>.

¹³ Nate Ostiller, *Zelensky signs 2024 state budget*, KYIV INDEPENDENT (Nov. 28, 2023), <https://kyivindependent.com/zelensky-signs-2024-state-budget/>.

¹⁴ Srybna, *supra* note 12.

¹⁵ Vera Bergengruen, *Ukraine Is Using AI to Help Clear Millions of Russian Landmines*, TIME (Nov. 2, 2023), <https://time.com/6330445/demining-ukraine/>.

As of November 1, 2023, at least 264 civilians had been killed by mines, and more than 830 have been maimed or injured, numbers that do not account for territories still under Russian occupation or experiencing heavy fighting.¹⁶ The number of landmine victims could reach 9,000 by 2030 if the problem is not effectively addressed.¹⁷ Using conventional methods and its current rate, demining Ukraine may take about 757 years. Instead, Ukraine intends to leverage all the tech tools at its disposal—from sophisticated AI-driven impact assessments to mine-detecting drones—to accelerate the clearing process. Demining Ukraine will be a massive undertaking that will unfold over years. The World Bank estimates the cost could exceed \$37 billion.¹⁸ Demining officials and international experts say that the demining processes being pioneered in Ukraine are likely to forever change the speed, efficiency, and safety of clearing war zones in the aftermath of global conflicts. But Ukraine cannot solve such a problem alone.

Several days ago, doctors removed a fragment of a mine from the heart of a four-year-old girl named Mia in Kherson.¹⁹ Mia was wounded as a result of the explosion of a Russian mine in liberated Kherson—in addition to the shrapnel in her heart, doctors diagnosed head injuries and a lung contusion. Mia represents only one such story among hundreds like this—and potentially thousands more if the West delays mobilizing Russian state assets to assist with demining.

Moreover, the effects of the damage to Ukraine’s environment as a result of Russian aggression resonates globally at unprecedented levels. According to the government of Ukraine:²⁰

- Russia’s armed aggression has caused 150 million metric tons of emissions of greenhouse gasses, a sum that increases daily.
- Since February 2022, Russia has launched more than 10,000 missiles and attack drones over Ukraine, resulting in the spread of chemicals over thousands of kilometers, affecting neighboring countries.
- Active fighting is taking place in approximately 30,000 square meters of Ukrainian forest, causing extensive forest fires and resulting in pollution and a loss of the forests’ capacity to absorb CO₂.
- Because of pollution to Ukraine’s bodies of water, there is a risk of deepening the food crisis.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Demining Ukraine: Bringing Lifesaving Expertise Back Home*, UN NEWS (July 8, 2023), <https://news.un.org/en/story/2023/07/1138477/>.

¹⁹ *Four-year-old girl from Kherson, who was wounded as a result of Russian shelling on November 19, is being discharged from hospital after heart surgery*, CENSOR.NET (Nov. 28, 2023), <https://censor.net/en/n3458365/>.

²⁰ *Ministry of Environmental Protection and Natural Resources of Ukraine*, UKRAINE.UA (Nov. 28, 2023), <https://www.kmu.gov.ua/en/news/zbytky-dovkilliu-ukrainy-vnaslidok-rosiiskoi-viiny-bezpretsedentni-ta-hlobalni-ruslan-strilets/>.

In sum, environmental damage is estimated at \$62 billion.

b. *The Human Toll and Reparations for Victims*

These sums and figures cannot come close to portraying the millions of Ukrainian victims who have suffered indescribable war crimes, and neither can this testimony. Vast violations of international human rights law and international humanitarian law including forced displacement, torture, sexual and gender-based violence, enforced disappearances and arbitrary detention, have been reported in the context of Russia's invasion.²¹ The full-scale invasion has seen an unprecedented response from the national authorities in Ukraine and the international community to pursue justice for victims. But beyond accountability measures like criminal convictions and sanctions, reparations will be needed to address the harm caused to victims, and to restore their dignity and rebuild their lives.

Russia's war has killed hundreds of thousands of Ukrainians, many of whom were civilians.²² As of June 2023, the vast majority of Ukrainians—78 percent—have loved ones who were injured or killed. And among this 78 percent, each person has, on average, *seven* close relatives or friends who were injured or killed.²³ This number has undoubtedly increased in the past six months of Russia's continued brutality. Hundreds of thousands more Ukrainians have lost their homes, suffered rape and torture, and other unspeakable violence. Upwards of eight million Ukrainians have been forced to flee their country as refugees, millions are internally displaced,²⁴ and more millions have been pushed into abject poverty.²⁵ At least a third of Ukrainians lost their jobs, and residents of the eastern regions suffered the greatest losses, with more than half fleeing their homes.²⁶

²¹ "Current Migration flows from Ukraine," *Centre for Research and Analysis for Migration*, UNHCR, Operational Data Portal; IOM *Ukraine Internal Displacement Report: General Population Survey - Round 12* (January 12, 2023); *Ukraine: Russian Torture Center in Kherson: Unlawful Detention, Torture of Civilians During 8-Month Occupation*, HUMAN RIGHTS WATCH (Apr. 13, 2023); *Fear Still Remains: Ukraine Finds Sexual Crimes Where Russian Troops Ruled*, N.Y. TIMES (January 5, 2023); *Human rights in Ukraine still 'dire' amid wide-ranging violations*, OHCHR (Mar. 24, 2023).

²² Guy Faulconbridge, *Ukraine war, already with up to 354,000 casualties, likely to last past 2023 - U.S. documents*, REUTERS (Apr. 12, 2023), <https://www.reuters.com/world/europe/ukraine-war-already-with-up-354000-casualties-likely-drag-us-documents-2023-04-12/>.

²³ *How Many Ukrainians Have Close Relatives and Friends Who Were Injured/Killed Due to the Russian Invasion: Results of a Telephone Survey Conducted May 26 - June 5, 2023*, KYIV INTERNATIONAL INSTITUTE OF SOCIOLOGY (June 29, 2023), <https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1254&page=1/>.

²⁴ Alisa Sopova & Anastasia Taylor-Lind, *Ukraine refugees face uncertainty and precarity as displacement persists*, NPR (Apr. 20, 2023), <https://www.npr.org/sections/pictureshow/2023/04/20/1160074401/ukraine-russia-war-refugees-displaced-people/>.

²⁵ Mark A. Green, *Ukraine Reconstruction Costs "Hopefully" to Rise*, WILSON CENTER (June 27, 2023), <https://www.wilsoncenter.org/blog-post/ukraine-reconstruction-costs-hopefully-rise/>.

²⁶ *Comprehensive Research: How the War Changed Me and the Country, Summary of the Year*, RATING GROUP UKRAINE (Feb. 2, 2023), https://ratinggroup.ua/en/research/ukraine/kompleksne_dosl_dzhennya_yak_v_yna_zm_nila_mene_ta_kra_nu_p_ds_umki_roku.html/.

Russian attacks are indiscriminate. On August 13, 2023, Russian shelling killed Sofia—a 23 day-old baby who was so little that her parents had not yet even registered her—and her 12 year-old brother who refused to leave her side during the attack.²⁷ Earlier last month, Ukrainian defender Yuriy Glodan died at the front lines, a year after his entire family, including his wife and three month-old daughter, were killed by a Russian missile in Odessa.²⁸ On October 5, 2023, Russia launched a missile attack on the small city of Hroza, killing 59 people, including children.²⁹ The attack targeted a cafe where a wake was being held for a soldier who had been killed during the Russian invasion. In a single strike, Russia wiped out over 15 percent of the 330-person population of Hroza.

These stories and countless others represent the millions of victims to whom Russia owes reparations. From the perspective of rehabilitative justice, it is essential that Russia foot the bill for reparations to its victims. While it is true that under international law, the delivery of reparations does not fall only on those responsible for the violations, most Ukrainian victims of Russian war crimes do not simply want compensation from any source—in order to receive some measure of justice, they want compensation *from Russia*. Repurposing frozen Russian sovereign assets is the clearest way to deliver urgently-needed reparations and justice to victims of Russia’s aggression.

Survivors in Ukraine cannot wait for reparations, and the international community must step in. Urgent action is needed to address the harms victims have suffered and help them to rebuild their lives. Survivors cannot wait for Russia’s cooperation or willingness to provide reparation or until the end of the invasion, and the only way to expediently deliver reparations is for the international community to act and repurpose the frozen Russian reserves that they are holding onto.

But perhaps the worst crime of all is the premeditated kidnapping of thousands of children. In the summer of 2022, Russia began a coordinated program to bring Ukrainian children—particularly those living in orphanages and foster homes—from across the occupied areas of Ukraine to Russia, hundreds of miles away. Ukraine has identified 19,546 cases of deportation or forcible transfer of children in occupied territories since the full-scale invasion,³⁰ but the real numbers are much higher

²⁷ Kostan Nechyporenko, *Newborn among those killed in attacks on Kherson region, Ukrainian official says*, CNN (Aug. 13, 2023), <https://www.cnn.com/europe/live-news/russia-ukraine-war-news-08-13-24/index.html/>.

²⁸ *A man died at the front, whose family died after a Russian rocket hit a residential building in Odessa*, RACURS.UA (Nov. 5, 2023), <https://racurs.ua/ua/n189041-netanyagu-vidstoronyv-ministra-yakyy-prypustyv-yadernyy-udar-po-gazi.html/>.

²⁹ *UN rights office says Russia behind deadly Hroza strike*, REUTERS (October 31, 2023), <https://www.reuters.com/world/europe/un-rights-office-links-russia-deadly-hroza-strike-2023-10-31/>.

³⁰ *Children of War*, OFFICE OF THE PRESIDENT OF UKRAINE (last visited Dec. 2, 2023), <https://childrenofwar.gov.ua/en/>.

and could reach, by the estimates of Ukrainian officials, 200,000 children. Russia itself claims that it has taken 700,000 children from Ukraine since its full-scale invasion.³¹

The abducted children are subject to forcible Russification: they are forbidden from speaking Ukrainian, taught history through a Russian worldview, and are forced to go to the Russian Orthodox church. The Yale Humanitarian Research Lab has identified 43 reeducation camps for Ukrainian children—a number that researchers have called “the tip of the iceberg.”³² Ukrainian children are subject to paramilitary training in organizations like the Youth Army, with a subsequent draft into the Russian army. Russian families are financially incentivized to adopt Ukrainian children, even those who have parents. Once adopted, they change the children's names, making them impossible to track.

Ukraine has managed to return only 387 children—a drop in the ocean—due to the complexity of the process of finding and returning the kids.³³ Because parents and civil society execute the vast majority of these returns on an individual basis, at this rate it will take 50 years to return all the abducted children that we know of.³⁴ Any mechanism of large-scale repatriation of children requires Russia's cooperation. Abducted children, unlike POWs, cannot be negotiated and exchanged—Russia does not demand any ransom because its goal is the cultural genocide of Ukrainians. The only way to return children is to pressure Russia to cooperate, including economically and financially.

The International Criminal Court issued arrest warrants for Putin and his Commissioner on Children's Rights, Maria Lvova-Belova for these crimes.³⁵ But the responsibility for these crimes does not fall solely on Putin and Lvova-Belova—acts of deportation and forcible transfer are an expansive mechanism that involves the cooperation of thousands of people. The responsibility lies with the Russian state regime. Its state assets must be used to hold it accountable and to facilitate Ukraine's swift victory and reclaiming of its territories. This is the only way to save future children from Russia's ongoing abduction.

Although it is more palatable to quantify pain into numbers, we cannot distance ourselves from the very real suffering behind each of these figures. These numbers are not merely statistics and this is not merely an academic debate—Russia is killing Ukraine's best and brightest. It is easy to

³¹ Current Time, *More Than 700,000 Ukrainian Children Taken To Russia Since Full-Scale War Started, Official Says*, RADIOFREEEUROPE/RADIOLIBERTY (July 31, 2023), <https://www.rferl.org/a/russia-children-taken-ukraine/32527298.html/>.

³² *Russia's Systematic Program for the Re-education and Adoption of Ukraine's Children*, YALE SCHOOL OF PUBLIC HEALTH (Feb. 14, 2023), <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data/>.

³³ *Children of War*, *supra* note 30.

³⁴ *Id.*

³⁵ *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, ICC (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and/>.

talk about numbers and geopolitics and be a smart analyst when sitting in a comfortable office thousands of miles away from the frontline. It is much harder to remember that this war is about real people whose mothers, wives, and children wait for them at home. The longer the West delays tapping into Russian reserves for crucial funding, the more lives are lost. Not only from Russia's weapons, but from every hospital unable to be rebuilt, every energy station that loses power, every damaged train unable to deliver medicine, and every child stolen from their country.

III. Urgency of Funds: Reconstruction Cannot Wait Until the End of the War

Reconstruction is an ongoing process, not solely something that occurs when the war is over. The compensation obligation can and must be enforced immediately. Critical infrastructure that Russia targets—particularly in the winter months—such as power stations and hospitals, must be continually repaired during the war to keep Ukraine's literal lights on.

Russia's full-scale invasion left the Kharkiv and Kherson regions, including villages like Prudianka, Tsypivka, Brazhkyvka, and Mala Komyshuvakha, along with the city of Iziium, deeply scarred. With winter approaching, damaged roofs leave homes vulnerable to the elements. Over the past six months, these communities bore the brunt of extensive damage: 90 percent of buildings destroyed. Basic necessities became a luxury, with villages located up to 30 kilometers away from major roads, rendering them practically inaccessible. With shops, pharmacies, schools, and hospitals non-operational, the challenges were immense.

Despite these adversities, the resilient spirit of the people prevailed, and many chose to return to their villages post-de-occupation. However, the issue of housing reconstruction remained unaddressed, leaving damaged houses vulnerable to the harsh winter conditions. Mold, deteriorating ceilings, and cracked walls served as poignant reminders of the pressing need for immediate action.

Recognizing the urgent need for shelter before winter, Razom with its partners has begun repairing roofs and installing windows, with a clear goal: to secure homes before the unforgiving winter sets in. This ongoing project, now one and a half months underway, extends its reach to both the rural villages and the city of Iziium, where over 100 private houses suffered significant damage.³⁶ So far, together we have restored 30 houses and helped 151 individuals, with many more left to help. The project is advancing steadily. Purchasing materials and completing repairs will span the next three months, ensuring the job is done thoroughly. Rebuilding does not only mean reconstructing roofs; it means restoring hope and resilience to the heart of Kharkiv and Kherson. Funding from Russian state assets will allow projects like this to continue.

³⁶ *Rebuilding Together: Sturdy Roofs for Winter*, RAZOM FOR UKRAINE (Nov. 16, 2023), <https://www.razomforukraine.org/rebuilding-together-sturdy-roofs-for-winter/>.

Air raids and Russian artillery are continuously destroying Ukraine's healthcare infrastructure. Hospitals and medical facilities throughout the country are constantly in need of basic medical equipment, supplies, and medicines to ensure life-saving patient care. Delivering this essential medical aid to Ukraine is especially challenging during wartime. Since the beginning of 2023, Razom Health and its partners have provided crucial medical supplies to Ukrainian medical institutions, delivering aid to 149 hospitals, benefitting 15,000 patients, and providing 300 hospitals with generators.³⁷ In addition to short-term immediate health resource needs, Razom's focus is on creating sustainable, long-term development in medical care in Ukraine. For instance, the Co-Pilot Project addresses the significant deficit in high-quality neurosurgical, spine, reconstructive, and plastic surgery training in Ukraine through training programs for Ukrainian surgeons and the provision of critical equipment.³⁸

Beyond physical healthcare, the psychological healthcare needs within Ukraine are immense. The World Health Organization estimates that some 10 million people will likely experience depression, anxiety, post-traumatic stress disorder, bipolar disorder, or schizophrenia.³⁹ Ukraine's government estimates that more than 60 percent of its soldiers are suffering from post-traumatic stress disorder and about half of the population needs psychological help to cope with the war. Presently, it only has the resources to care for one-third of them.⁴⁰

The "Razom with You" program was established to provide mental health support to children and adults who have been affected by war, and since the start of the full-scale invasion, has provided more than 7,100 individual and 650 group therapy sessions.⁴¹ Nearly one-third of these participants are children, who have their own way of telling war stories that offer a glimpse into the devastating consequences of Russian aggression, especially if they do not receive the support they need. Ivan, a 13-year-old boy from Nikopol, said that he was afraid of holes. His drawing revealed that the holes he was afraid of were holes in a human. We later learned that Ivan was a witness to a deadly shooting.⁴²

³⁷ *Razom Mid-Year Impact Report: January 1-June 30, 2023*, Razom for Ukraine,

<https://player.flipsnack.com/?hash=ODZEqz4REQ3NUUraHAWdjVpcGQxag==/>

³⁸ *The Co-Pilot Project: Medical Missions and Doctor Training*, RAZOM FOR UKRAINE (last visited Dec. 2, 2023), <https://www.razomforukraine.org/projects/cpp/>.

³⁹ *Amid a year of relentless war, WHO Regional Director for Europe strengthens commitment for mental health services during visit to Ukraine*, WHO (Feb. 16, 2023), <https://www.who.int/europe/news/item/16-02-2023-amid-a-year-of-relentless-war--who-regional-director-for-europe-strengthens-commitment-for-mental-health-services-during-visit-to-ukraine/>.

⁴⁰ *War in Ukraine having a devastating impact on people's mental health*, EURONEWS (Feb. 20, 2023), <https://www.euronews.com/2023/02/20/war-in-ukraine-having-a-devastating-impact-on-peoples-mental-health>.

⁴¹ *Razom with You*, RAZOM FOR UKRAINE, <https://www.razomforukraine.org/razom-with-you/> (last visited Dec. 2, 2023).

⁴² *Id.*



Ivan's drawing. Source: Razom with You

However, the funding for mental health programs mainly comes from donations, as the Ukrainian government does not have adequate funds to support much beyond the country's immediate needs, such as the military and basic government operations. The pool of Russian state assets could help provide the government with funding for critical health initiatives.

Ukraine's railway system serves as another example of funding necessary for reconstruction during the war itself. Given that all flights in Ukraine remain canceled, the railway system is vital for Ukraine's survival. Since Russia's full-scale invasion, Ukrainian Railways has successfully transported four million citizens, including one million children, and 2,500 wounded.⁴³ In 2022, Ukrainian Railways also transported 120,000 animals, including a crocodile, as well as 11,000 tons of humanitarian aid. As of early 2023, Ukraine's railway has transported more than 270 foreign delegations. Even amidst war, Ukrainian Railways is dedicated to serving: in May 2023, the Kherson-Lviv train came under fire by Russian troops at the Kherson railway station, one of the train cars catching on fire. However, the train crew quickly detached the burning car, boarded the passengers, departed with only a 14-minute delay, and arrived on time in Lviv to a round of applause.

Russian attacks have caused extensive damage to the railway infrastructure: 507 kilometers of rail tracks were affected, as well as 126 damaged railway stations. The direct financial losses are estimated at \$4.3 billion.⁴⁴

⁴³ Luke Harding, *Iron People: Ukraine's railway network in a time of war*, GUARDIAN (April 20, 2023), <https://www.theguardian.com/artanddesign/2023/apr/20/iron-people-ukraines-railway-network-in-a-time-of-war-photo-essay/>.

⁴⁴ *Report on Damages to Infrastructure Caused by Russia's War against Ukraine One Year after the Start of the Full-Scale Invasion*, GOVERNMENT OF UKRAINE & KYIV SCHOOL OF ECONOMICS (March 2023), https://kse.ua/wp-content/uploads/2023/03/ENG_FINAL_Damages-Report_.pdf/.

Nova Poshta, the Ukrainian postal service, is a frequent target of Russian attacks, which must also be continually rebuilt in order to sustain deliveries in and outside of Ukraine. On October 22, 2023, a Russian missile hit a post office in Kharkiv, killing six employees, all who were under 31 years old.⁴⁵ Nova Poshta published a video of the last seconds before the missile hit, writing that: “Our colleagues spent the last seconds of their lives helping – they were sorting parcels with medicines and humanitarian aid for civilians affected by the war.”⁴⁶ While the lives that are lost can never be replaced, post offices must be rebuilt in order to continue delivering life-saving supplies throughout Ukraine.

Given the scale and gravity of these harms and Ukraine’s urgent need for financial assistance, it is imperative that the U.S. and its allies cooperate to ensure Russia’s compliance with the just and legal international obligation of compensation to Ukraine.

Russia’s goal is not only Ukraine’s physical destruction, but to erode the country’s hope and resolve. Ukraine’s economy is at risk of collapse, and governments must mobilize to counter Russia’s strategy of attrition. A joint effort led by the U.S. on a global scale can accomplish that, one that displays a positive objective to combat the destructive motivation underlying Russia’s war.

IV. The U.S. Must Use Russian State Assets to Make Russia Pay

While support for Ukraine remains strong in the U.S. and in Europe, there are also indicators that taxpayers and policymakers will not indefinitely support funding at the levels Ukraine needs. There is one clear source of additional funds for Ukraine: the sovereign Russian assets frozen in the U.S. and other western countries.

In February 2022, we saw the world act swiftly and decisively in condemning Russia’s unlawful full-scale invasion of Ukraine by blocking approximately \$300 billion of its sovereign assets, which include Russian Central Bank reserves, located in primarily western countries. The U.S. has not disclosed how much Russian sovereign assets it is holding in its financial institutions.⁴⁷ It is difficult to understand why the U.S. keeps its holdings of Russian sovereign assets—which they are supposedly to have “immobilized”—secret. The only beneficiary of this secrecy is the Kremlin. The U.S. and other jurisdictions must publicize this information.

⁴⁵ Maria Starkova & Ronald Popeski, *Six killed in Russia's missile attack on Kharkiv postal centre, Ukraine says*, REUTERS (October 22, 2023), <https://www.reuters.com/world/europe/russian-missile-attack-kills-six-distribution-centre-kharkiv-governor-2023-10-21/>.

⁴⁶ *Id.*

⁴⁷ Penny Pritzker has indicated that this sum is approximately \$8 billion, although this has not been officially confirmed. See Henry Foy & Laura Dubois, *Russian frozen assets 'ought to' be used to rebuild Ukraine, says US special envoy*, FINANCIAL TIMES (Sep. 27, 2023), <https://www.ft.com/content/ebf425de-87be-4612-8a94-a7a66fe8351a/>.

Nonetheless, these countries speak with one voice when they assert that Russia must pay for the damage it has caused to Ukraine. Yet, for almost two years since the start of the full-scale invasion, they have largely avoided discussing in public the fate of the immobilized Russian state reserves, which continue languishing—and even growing—in banks. Almost two years after blocking Russia’s access to its central bank reserves and the promises to “make Russia pay,” western powers have stalled on delivery of that promise.

At the same time that Russia has pillaged Ukraine in violation of nearly every basic tenet of international law and human morality, Russia has benefitted from (and indeed strategically exploited) the protection of countries that, unlike Russia, respect the rule of law. Holding on to its state assets is a gift for Russia and the Putin regime. We are, in effect, Putin’s best bankers. We are safeguarding his money—letting it grow, even—while he commits acts of genocide against the Ukrainian people. It would be a cruel irony to deny Ukraine the lifesaving benefit that these assets can provide by invoking precedence for Russia’s “sovereignty” and “property rights” when Russia has violated the sovereignty and property rights of the Ukrainian people with guns and missiles.

a. *Ukraine’s Survival Cannot Wait for a Russian Agreement to Compensate*

Some argue⁴⁸ that the U.S. and its allies should continue holding frozen Russian reserves until Russia agrees to end the war and pay reparations. The idea is that this would give Ukraine a “bargaining chip” to use in peace negotiations, and in the meantime, states can tax the profits generated by the frozen assets to support Ukraine. These arguments are deeply flawed for several reasons.

First, if the western world decides it will wait for Russia’s agreement to pay, the hundreds of billions of dollars of frozen reserves will most likely be frozen for years after the war ends, in indefinite limbo and useless to all. Ukraine cannot wait for this funding. Funds to repair ongoing damage must be found now, before the damage to Ukraine’s economy and its people becomes irreversible—meaning that Russia wins even if it loses the war. Instead of hoping for an outcome where Russia eventually signs an agreement to compensate (optimistically assuming it abides by such an agreement), the U.S. can start using Russia’s reserves without further delay. Doing so would signal that the U.S. will not provide a safe haven for the reserves, and that this money will be put towards paying Russia’s debt. It can and should be used as part of a strategy for supporting Ukraine both during the war and beyond. Withholding them until an agreement can be reached at the end of the war is akin to withholding a vaccine and then just giving it to the survivors of a plague.

⁴⁸ Michael McFaul, Oona A. Hathaway, Maggie Mills and Thomas Poston, *Should we seize Russian funds to pay for the war in Ukraine? Commentators weigh in.*, WASH. POST (Nov. 16, 2023), <https://www.washingtonpost.com/opinions/2023/11/16/russia-ukraine-assets-seizure-sovereign-immunity/>.

Second, the idea that the Russian government under the leadership of Putin will ever voluntarily agree to compensate Ukraine or pay reparations is a fallacy. Russia consistently denies any wrongdoing. 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,”⁴⁹ Russia continues to escalate its brutal aggression in Ukraine for a year and a half since the order. Russia shows no indication that it will pay its obligations. In fact, its strategy for victory is increasingly a strategy of economic and social ruin.

Russia shows no signs of stopping its genocidal aggression, even perhaps reveling in its cruelty. On November 25, 2023, the night of the 90th Anniversary of the Holodomor, Russia launched a record number of Shahed drones over Ukraine since the beginning of the full-scale invasion.⁵⁰ With the help of Western aid for its air defense, the Ukrainian Armed Forces shot down 71 of the 75 attack drones—but not before one of them destroyed a preschool (named “Sunny”) in Kyiv.⁵¹

To this day, Russia still denies the Holodomor. The Holodomor, which means “death by starvation” in Ukrainian, was the genocide of the Ukrainian people from 1932 to 1933 by the Soviet Union through a man-made famine that killed between 4-7 million Ukrainians (with some estimates going higher), or one-third the population of Ukraine at the time.⁵² One of the aims of the Soviet regime was to “humble” Ukrainians into submission to Soviet policies and to eliminate Ukrainian resistance to Soviet occupation.

Just like today, Russia has largely faced no accountability. In 2022, Russian invaders dismantled monuments to the victims of the Holodomor in Mariupol (a city in which those killed by Russia are likely vastly undercounted) and other parts of occupied Ukraine, calling it a “symbol of disinformation.”⁵³ If, for the past 90 years, the Russian state has denied any wrongdoing for its genocide of Ukrainians nearly a century ago, it is delusional to expect it to now have a change of heart.

⁴⁹ Ukr. v. Russ. Fed’n, 2022 I.C.J. at 86.

⁵⁰ *On Holodomor Remembrance Day, Russia Unleashes Largest Drone Attack On Ukraine*, RFE/RL UKRAINIAN SERVICE (November 25, 2023), <https://www.rferl.org/a/ukraine-drone-strikes-holodomor-day/32699366.html/>.

⁵¹ *Id.*

⁵² *Holodomor*, U. MINNESOTA, HOLOCAUST AND GENOCIDE STUDIES (last visited Dec. 3, 2023), <https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/holodomor>; see also Holodomor Research and Education Consortium Canadian Institute of Ukrainian Studies at the University of Alberta (HREC), <https://holodomor.ca/>.

⁵³ Iryna Balachuk, *Occupiers dismantle monument to victims of Holodomor in Mariupol*, UKRAINSKA PRAVDA (October 19, 2022), <https://www.pravda.com.ua/eng/news/2022/10/19/7372573/>; *Casualty count in Mariupol could be ten times higher than reported*, ESPRESO TV (November 3, 2023), <https://global.espreso.tv/casualty-count-in-mariupol-could-be-ten-times-higher-than-reported-official/>.

In fact, the Russian war machine is steadily growing. Just last week, Russia approved its 2024 budget, which increases military spending by 70 percent compared to its budget in 2023.⁵⁴ Moscow is diverting ever more resources towards waging its war in Ukraine. Spending on defense and security combined is set to reach around 40 percent of the total Russian budget expenditure next year, reflecting Russia's unwavering commitment to its war in Ukraine.

Neither does it make moral or practical sense to use the frozen Russian reserves as a “bargaining chip” in negotiations. 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. 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. By entertaining this idea, we are simply broadcasting to the Kremlin our own uncertainty and lack of resolve. The argument that confiscation will undermine efforts to secure a diplomatic solution is also baseless, given this Russian regime's clear disavowal of diplomacy in favor of brute force.

History instructs that peace negotiations themselves would likely be ineffective to curb future Russian aggression. For instance, in 1994, Russia invaded Chechnya in order to crush its independence movement.⁵⁵ The war continued for 20 months and killed up to 100,000 soldiers and civilians, but ultimately Russia suffered economic ruin and failed in its attempt to conquer Chechnya. The Russian government signed a peace treaty in 1997 with Chechnya and agreed to abide by international law. By the autumn of 1999, Russian troops were back in Chechnya. Stronger after receiving grants from the IMF and World Bank, Russia—under the command of Putin—broke the peace treaty and again invaded. This time it murdered another 100,000 Chechens, including many of the individuals who were present at the table for the signing of the 1997 peace treaty.⁵⁶ There is a staggeringly long record of the instances that Russia has broken its promises throughout history, and it cannot be counted on to keep them now. Since just 2014, Russia has violated about 400 different international treaties.⁵⁷ Trusting Russia to keep its promises is a deadly losing gamble.

Further, while the proposal to tax the profits generated by the frozen assets may at first glance appear as a tempting compromise to full seizure, it is simply inadequate to provide Ukraine with the funds it needs to survive, and much less that what is required to rebuild or deliver reparations

⁵⁴ *Putin approves big military spending hikes for Russia's budget*, REUTERS (Nov. 27, 2023),

<https://www.reuters.com/world/europe/putin-approves-big-military-spending-hikes-russias-budget-2023-11-27/>.

⁵⁵ Greg Myre, *Russia's wars in Chechnya offer a grim warning of what could be in Ukraine*, NPR (Mar. 12, 2022), <https://www.npr.org/2022/03/12/1085861999/russias-wars-in-chechnya-offer-a-grim-warning-of-what-could-be-in-ukraine/>.

⁵⁶ Salome Asatiani, *Chechnya: Why Did 1997 Peace Agreement Fail?*, RADIOFREEEUROPE/RADIODLIBERTY (May 11, 2007), <https://www.rferl.org/a/1076426.html/>.

⁵⁷ *The Russian Federation has violated about 400 international treaties since 2014*, UKRINFORM (June 10, 2022), <https://www.ukrinform.net/rubric-politics/3503924-president-zelensky-russia-violated-about-400-international-treaties-since-2014.html/>.

to victims of the war. It is estimated that the profits generated will be approximately \$3 billion per year. Given that the E.U. and the U.S. have given Ukraine more than \$5 billion per month of their own taxpayers' funds solely to keep it from economic collapse, transferring to Ukraine \$3 billion per year worth of profits earned from the blocked Russian assets is not a viable strategy for its victory or recovery.

While transferring the profits from the frozen reserves to Ukraine would certainly be better than nothing at all and a welcome intermittent step, it would take at least 124 years—by the most generous estimate—to help rebuild Ukraine if the proceeds on the frozen assets were the only funding source.⁵⁸ In short, these proposals would make only a small fraction of the resources available to Ukraine that full seizure could deliver. Those profits will not come anywhere near the sums that are immediately required by Ukraine and owed to it under international law.

To truly help Ukraine and hold Russia accountable, the West cannot default to the most conservative approach possible—the one that makes it seem as though seizing Russia's state assets is legally impossible. It is not.

Fair compensation is necessary for long term victory and global stability. There can be no peace without accountability, which includes full compensation from Russia—whether voluntarily or not. Unless a nation is bold enough to act, Russia's state assets will remain frozen and of no use to anyone long after the war is over.

V. The Legal Case for Seizing Russian Sovereign Assets

The legality for seizing and transferring Russian sovereign assets has, by now, been well-established by numerous legal scholars,⁵⁹ including my fellow witness. As such, my testimony will only provide a broad overview of the legal foundations.

a. *International Law*

⁵⁸ Huileng Tan, *The EU wants to skim \$3 billion a year in interest from frozen Russian assets and give it to Ukraine*, BUSINESS INSIDER (June 30, 2023), <https://www.businessinsider.com/ukraine-reconstruction-war-eu-consider-interest-frozen-russian-assets-rebuild-2023-6?inline-endstory-related-recommendations=/>.

⁵⁹ See, e.g., Yuliya Ziskina, et al, *Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine*, NEW LINES INSTITUTE (June 14, 2023), <https://newlinesinstitute.org/rules-based-international-order/multilateral-asset-transfer-a-proposal-for-ensuring-reparations-for-ukraine/>; Lawrence H. Tribe, et al., *The Legal, Practical, and Moral Case for Transferring Russian Sovereign Assets to Ukraine*, RENEW DEMOCRACY INITIATIVE (September 17, 2023), <https://rdi.org/wp-content/uploads/2023/09/2023.09.17-MPP-Report.pdf>; Robert J. Currie, et al., *Leading by Example: Canada's Approach to Seizing Frozen Assets and Holding Corrupt Leaders to Account*, WORLD REFUGEE AND MIGRATION COUNCIL (June 2023), <https://wrmcouncil.org/wp-content/uploads/2023/06/Leading-By-Example-Canada-Frozen-Assets-Final.pdf>; Jamison Firestone, et al., *Leading by Example: Proposed Amendments to the Special Economic Measures Act to Enable the Seizure of Russian State Assets*, SENATOR RATNA OMIDVAR, CANADA (Oct. 17, 2023), <https://www.ratnaomidvar.ca/leading-by-example-proposed-amendments-to-the-special-economic-measures-act-to-enable-the-seizure-of-russian-state-assets/>.

Some argue that customary international law safeguards state assets through the principle of sovereign immunity, but this misconstrues the doctrine of sovereign immunity. Sovereign immunity applies principally to the adjudicative actions of national courts.⁶⁰ In other words, the doctrine of sovereign immunity bars the national court of one state from adjudicating in proceedings involving another state.

Foreign state property is protected from interference by another state's executive authority not by sovereign immunity, but by principles and norms that govern the relations between foreign countries—including the interrelated principles of reciprocity, comity, and fair compensation for expropriation.⁶¹ However, these principles and norms are not absolute, particularly where Russia's brazen and continual violations of international law justify their suspension under state countermeasures.

In the absence of a centralized enforcement authority or a universal mechanism for dispute resolution, countermeasures provide a permitted form of "self-help" for ensuring compliance with international law.⁶² The doctrine of countermeasures is delineated in the UN International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which codify the customary international law in relation to countermeasures.⁶³

A state may take countermeasures in response to the internationally wrongful act of another state, which is intended to bring the offending state back into compliance with its international legal obligations. Countermeasures are, by definition, state acts that would ordinarily be wrongful, but the wrongfulness of the act is "precluded" because the action is taken against another state for its violation of international law (ARSIWA art. 22).

If the violation is of a legal obligation owed to the international community as a whole—that is, obligations *erga omnes*—any state can invoke Russia's responsibility as if it were the primary injured state (ARSIWA arts. 42, 48). Thus, any state may insist that Russia perform its obligation to cease its war of aggression and compensate Ukraine or other beneficiaries (ARSIWA art. 48(2)(b)).

In effect, the countermeasure would lawfully suspend a state's obligation of non-interference with respect to Russian state property, because Russia's prior breach of preemptory norms of

⁶⁰ Jurisdictional Immunities of the State (Ger. v. It.: Greece Intervening), Application Instituting Procedures, 2012 I.C.J. 143 (Dec. 23, 2008), <https://www.icj-cij.org/case/143/>.

⁶¹ See, e.g., RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 205, 402 cmt. c (Am. L. Inst. 1987), <http://www.kentlaw.edu/faculty/bbrown/classes/IntlLawFall2008/CourseDocs/RestatementSources.pdf/>

⁶² JAMES CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART (2013), https://assets.cambridge.org/97805218/22664/frontmatter/9780521822664_frontmatter.pdf

⁶³ Int'l L. Comm'n, Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10 (2001), available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf/.

international law created a duty for it to compensate. The transfer of Russian sovereign assets to Ukraine operates as a temporary and narrow derecognition of the obligations concerning Russia's property that the U.S. ordinarily owes Russia. The obligation can be resumed once Russia has returned to compliance, which means satisfying its debt to make full reparations to Ukraine (whether voluntarily or via "involuntarily" confiscation and transfer of its assets).

Because the transfer of Russian sovereign funds operates as a satisfaction of its debt toward Ukraine, Russia would be entitled to a return of its assets from transferring states only if the transferred funds exceeded its total liability for reparations. In practice, that will almost certainly not be the case, since even conservatively estimated damage that Russia caused to Ukraine (and the international community as a whole) far exceeds the known quantity of its frozen sovereign assets.⁶⁴ Neither Ukraine nor the international community can afford to wait until Russia agrees to pay reparations, an outcome that at this stage seems highly unlikely.

b. *The Unsubstantiated Issue of Due Process*

Some critics express common misgivings that confiscating Russian state assets triggers constitutional obstacles presented by the Fifth Amendment's Due Process and Takings Clauses. However, the confiscation of Russian state funds, particularly as envisioned by the REPO Act,⁶⁵ is consistent with the Constitution and does not run afoul of the Due Process or Takings Clauses.

The Russian government and its state property have no due process rights under U.S. law. On its face, the Russian Federation is not a "person" under the plain language of the Fifth Amendment, and, unlike private persons, Russia's relations with the United States are generally not governed by the courts, but by diplomatic commitments and treaties negotiated among sovereign states.

The Supreme Court has adopted a similar view of the Due Process Clause with respect to the sovereignty of U.S. states, holding that states cannot claim due process protections. In the 1966 landmark case of *South Carolina v. Katzenbach*, the Court rejected the idea that U.S. states themselves have due process rights, explaining that "[t]he word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union."⁶⁶ The Court also explained in *Will v. Mich. Dep't of State Police* that "in common usage, the term 'person' does not include the sovereign."⁶⁷

⁶⁴ *Updated Ukraine Recovery and Reconstruction Needs Assessment*, WORLD BANK (Mar. 23, 2023), <https://www.worldbank.org/en/news/press-release/2023/03/23/updated-ukraine-recovery-and-reconstruction-needs-assessment/>.

⁶⁵ H.R.4175 Repo for Ukrainians Act, 118th Congress (2023-2024).

⁶⁶ *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

⁶⁷ *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989).

Although the Supreme Court has not directly considered whether a foreign sovereign is a “person” for purposes of the Due Process Clause, it has implied that it is not. In *Republic of Argentina v. Weltover, Inc.*, the Court cited *Katzenbach*’s recognition that U.S. states do not have such rights while discussing the question.⁶⁸ The Court’s reference to *Katzenbach* has largely been taken by courts to indicate that—for due process jurisdictional purposes—foreign states can and should be analogized to states of the Union and treated similarly. Indeed, the U.S. Court of Appeals for the Second Circuit in *Frontera Res. Azer. Corp. v. State Oil Co. of Azer. Republic* explained that, in *Weltover*, the “implication [of the Supreme Court] was plain: If the ‘States of the Union’ have no rights under the Due Process Clause, why should foreign states?”⁶⁹

Additionally, there is no circuit split on this question. Holdings of the Second⁷⁰ and District of Columbia circuits,⁷¹ the two most relevant in this domain, overwhelmingly support the proposition that foreign states are not “persons” for due process clause purposes. As the D.C. Circuit wrote, “[I]t is not to the due process clause but to international law and to the comity among nations, as codified in part by the FSIA [Foreign Sovereign Immunities Act], that a foreign state must look for protection in the American legal system.”⁷²

Even (for the sake of argument) if this matter were litigated, it is exceedingly unlikely that a reviewing court would create a circuit split, or that the Supreme Court would overturn nearly three decades of precedent and unanimous lower court tradition, particularly in the context of Russian atrocities against Ukraine.

To be sure, most of the targeted assets at issue are technically held not by the Russian Federation itself, but by the Central Bank of Russia (CBR). But this makes no practical difference. It would be inconsistent for a state-owned entity that is indistinguishable from the state itself to possess constitutional rights that the state itself does not enjoy. Granted, in the context of the FSIA, the Supreme Court in *First Nat’l City Bank v. Banco Nacional de Cuba* treated foreign instrumentalities differently from foreign sovereigns, but it did so only for purposes of liability.⁷³ It did not extend this treatment to the due process rights of foreign instrumentalities.

The DC Circuit⁷⁴ and Second Circuit⁷⁵ have suggested, for the purposes of the FSIA, that a foreign entity will be regarded as a separate entity if it is sufficiently independent from the state, but if it is in form or practice an “agent” or arm of the state, then it will be treated as the sovereign itself

⁶⁸ *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992).

⁶⁹ *Frontera Resources Azerbaijan Corporation v. State Oil Company of the Azerbaijan Republic*, 582 F.3d 393 (2d Cir. 2009).

⁷⁰ *Id.*

⁷¹ *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82 (D.C. Cir. 2002).

⁷² *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411 F.3d 296 (D.C. Cir. 2005)

⁷³ *First Nat’l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759 (1972).

⁷⁴ *TMR Energy*, 411 F.3d at 767.

⁷⁵ *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42 (2d Cir. 2021).

for the purposes of due process (notably, both of these cases involved a challenge to the exercise of jurisdiction under the FSIA, which is not at issue here because the confiscation of state assets would be carried out through the executive branch, and not judicial measures—which would ordinarily give rise to jurisdiction and foreign sovereign immunity questions).

The CBR cannot be viewed as independent given how closely integrated it is with the Russian state. As Russia’s central bank, its responsibilities and powers are enumerated in the Russian constitution.⁷⁶ It is exclusively responsible for regulating the state’s monetary system “in collaboration with the Government of the Russian Federation,” and its primary function is to develop the financial market of the Russian Federation and ensure its stability.⁷⁷ The capital and other property of the CBR is owned by the state.⁷⁸ Russian President Vladimir Putin personally appoints the head of the CBR, exercises significant influence over the CBR’s head, and maintains plenary removal power.⁷⁹ Out of the 12 members of the committee that directs the CBR’s monetary policy and financial regulation, only one is a member of the CBR itself—the rest are representatives from various state agencies, including from the Ministry of Finance, the presidential administration, and the legislature.⁸⁰ It cannot be said with a straight face that the CBR is independent enough of the Russian state for it to receive due process protections.

VI. Speculation About Russian Retaliation Should Not Stop Needed Action

A common concern associated with seizing Russia’s frozen assets is that it could “provoke” Russia to retaliate, either in kind by seizing assets belonging to the U.S. and its allies, or by escalating its military operations.

a. Retaliation Through Expropriation

At the outset, because Russia is not a financial center and the ruble is not a reserve currency, Russia does not hold other countries’ (including U.S.) sovereign funds. Instead, Russia would have to settle for seizing assets belonging to American private individuals and companies. But many of those companies already fled from Russia following its full-scale invasion of Ukraine.⁸¹ For the

⁷⁶ RUS. CONST., available at <http://www.constitution.ru/en/10003000-04.htm/>.

⁷⁷ *On the Central Bank of the Russian Federation (Bank of Russia)*, Rus. Fed. Law No. 86-FZ, available at https://www.cbr.ru/Content/Document/File/37343/law_cb_e.pdf.

⁷⁸ *Id.*

⁷⁹ *Russia Central Banker Wanted Out Over Ukraine, Putin Said No*, BLOOMBERG (Mar. 23, 2022), <https://www.bloomberg.com/news/articles/2022-03-23/russia-central-banker-wanted-out-over-ukraine-but-putin-said-no>.

⁸⁰ *National Financial Board*, BANK OF RUSSIA, https://www.cbr.ru/eng/about_br/nfs/ (last updated Nov. 11, 2021).

⁸¹ *Companies Are Getting Out of Russia, Sometimes at a Cost*, N.Y. TIMES (Oct. 14, 2022), <https://www.nytimes.com/article/russia-invasion-companies.html>; Jonathan Yerushalmy, *Bean counters: how Russia’s wealthy profited from exit of western brands*, GUARDIAN (June 14, 2023), <https://www.theguardian.com/world/2023/jun/14/sale-how-russia-wealthy-profited-from-exit-of-westernbrands-starbucks-operations/>.

foreign companies that remain in Russia, either by choice or by necessity, 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.⁸²

In April 2023, for example, Russia seized power plants owned by Finnish and German companies.⁸³ And in July 2023, Russia placed two of the largest consumer-goods companies in the world, Carlsberg and Danone, under state control.⁸⁴ 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 affect his decision to expropriate further. That moment has already arrived.

b. *Retaliation Through Military Escalation*

There is speculation that if the U.S. and its allies seize Russia’s frozen assets, Russia might announce an intent to retaliate through military means in Ukraine or further. However, escalation appears unlikely given the measures that the G7 has already imposed upon Russia. Already, the U.S. and other countries have imposed a long list of sanctions on Russia, have provided Ukraine with military intelligence and military equipment, frozen billions of dollars of assets belonging to the Russian state and its nationals, and seized millions belonging to its oligarchs.⁸⁵ The U.S. has also supplied Ukraine with a number of offensive military weapons, from cluster munitions to tanks to F-16 fighters, despite clear warnings from Russia that such weapons would cause it to escalate and retaliate. If these actions did not prompt Russia to retaliate, it is difficult to see why the transfer of Russia’s assets (which have already been frozen for more than a year) would.

VII. Transferring Assets to Ukraine Will Not Set an Unfavorable Precedent

A frequent objection to transferring Russia’s frozen assets to Ukraine is that doing so would set a dangerous precedent, in that such an action could be invoked in the future to expropriate states’ sovereign assets. If exceptions to fundamental principles like reciprocal regard for sovereign property are invoked too often, objectors say, the principle could eventually be eroded altogether. Such concerns are fundamentally misplaced.

⁸² Lawrence Summers, Philip Zelikow and Robert Zoellick on why Russian reserves should be used to help Ukraine, *ECONOMIST* (Jul. 27, 2023), <https://www.economist.com/by-invitation/2023/07/27/lawrencesummers-philip-zelikow-and-robert-zoellick-on-why-russian-reserves-should-be-used-to-help-ukraine/>.

⁸³ Alexander Morrow, Gleb Stolyarov & Anne Kauranen, *Kremlin warns of more asset seizures after move against Fortum and Uniper*, *REUTERS* (Apr. 26, 2023), <https://www.reuters.com/business/energy/fortum-saysinvestigating-news-russian-asset-seizure-2023-04-26/>.

⁸⁴ Georgi Kantehev & Saabira Chaudhuri, *Russia Steps Up Economic War With West, Seizing Assets of Big Conglomerates*, *WALL ST. J.* (July 17, 2023), <https://www.wsj.com/articles/russia-steps-up-economic-war-with-west-seizing-assets-of-big-conglomerates-e592f137?ns=prod/accounts-wsj/>.

⁸⁵ Alona Mazurenko, *US to give Ukraine money confiscated from Russian oligarchs for first time*, *UKRAINSKA PRAVDA* (Sept. 7, 2023), <https://www.pravda.com.ua/eng/news/2023/09/7/7418771/>.

First, if the U.S. or any other country were to hold Russia accountable for this egregious behavior by transferring its assets to victims of its aggression, it would not be doing so arbitrarily. Russia's conduct is fortunately exceedingly rare, if not unique, in the modern international system (arguably since World War II). There is already ample and substantial evidence that Russia's actions have violated international law, resulting in decisions by formal bodies like the UN General Assembly, the International Court of Justice, and the European Court of Human Rights.⁸⁶ Yet, there is no viable mechanism by which to hold Russia accountable given its veto as a permanent member of the UN Security Council, the very body which 192 member states to the UN Charter tasked with the responsibility for taking prompt and effective action for the maintenance of international peace and security.

Second, to the extent that this proposal sets a precedent, it sets a positive one. The norms against aggression, war crimes, and genocide are currently being tested to a degree the world has not seen since WWII. If states, considering similar acts of aggression, see that this conduct would be met with swift and severe consequences—such as the seizure of sovereign assets and their transfer to victims—then they are far more likely to make the rational decision to comply with their international obligations.⁸⁷ Adopting lawful international measures aimed at preserving peace and restoring justice to victims can only be a good thing.

In addition, as the proposed measure is limited to confiscation in the case of flagrant aggression, foreign actors would be assured that their funds and investments are secure in the U.S. financial system so long as they do not commit the crime of aggression. We should not be safeguarding the right for criminals to do their banking in the democratic world.

In short, if the U.S. and other western states want to face fewer crises like that in Ukraine, they should send the unmistakable message to the international community that Russia's conduct will not be tolerated, and should avoid sending the aggression-encouraging signal that such conduct will be met with hesitation and appeasement.

Military aggression is more than a crime or a breach of international law; it is an attack on the very foundation of the international order. If aggression is permitted to continue without adequate response and becomes the norm, there will be no international rules to guide future security predictability, multilateralism, and trade. When facing such a clear, urgent, and present threat to the international system itself, states should prioritize preventing its collapse over a misplaced faith that authoritarian regimes will comply with the rules.

⁸⁶ See Appendix, attached.

⁸⁷ See generally Michael J. Glennon, *How International Rules Die*, 93 GEO. L.J. 939 (2005); Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397 (1999); ANDREW T. GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008).

Finally, if the U.S. or other countries are concerned about the precedent they may set and are dissatisfied with the limitations already written into law, the solution is to narrow the effect of the precedent, not to abstain from action altogether.

Recommendations:

- **The U.S. should seize Russia's frozen sovereign assets** in order to use them to perform Russia's existing duty to compensate. In the circumstances of this war, Russia left the means to compensate in the jurisdictions of law-abiding states. Those states, such as the U.S. and Ukraine's other allies, must now prepare the legal foundation for using the entirety of the frozen funds to fund Ukrainian victory and reconstruction.
- **Congress should include the REPO Act in the upcoming supplemental aid package for Ukraine** in order to most effectively and expeditiously provide Ukraine with the vital resources that it needs. The REPO Act sets an example for our G7 allies and establishes American leadership on this question. US action on this front does not break unity, but rather creates it, showing a clear direction and goal for the transatlantic community.
- **These measures must be enacted now.** Simply enacting these measures will increase the pressure on Russia. It will also enable the U.S. to act in concert with its allies to do what economics, justice, and morality demand. It would remove Russia's ability to block the payment of billions of dollars in reparations when they are most needed, and it would deliver aid when needed most—all while reducing the amounts that Russia will owe once this devastating war ends.
- **The U.S. should cooperate with its international allies**, who are also holding frozen Russian state funds, to establish a common international compensation mechanism for victims of the Russian war (the need for which was internationally acknowledged by the UN General Assembly resolution ES-11/5 of November 14, 2022).

I appreciate the opportunity to appear before this Commission and thank you for your support for Ukraine. I look forward to answering any questions you may have.

Biography:

Yuliya Ziskina is an attorney at Quinn Emanuel Urquhart & Sullivan, and Senior Legal Fellow at Razom, a U.S.-based nonprofit organization that supports fostering a democratic and prosperous Ukraine. A public policy lawyer focused on international law, open access information policy, and ethics, she was previously a fellow at the World Bank Integrity Vice Presidency and the U.S. Department of Justice, and a prosecutor at the New York City Conflicts of Interest Board and King County Prosecuting Attorney's Office. She was born in Kyiv and immigrated with her family as refugees from the former USSR.

Appendix

International Orders and Resolutions

February 24, 2022: Russia launches a large-scale invasion against Ukraine.

United Nations

February 25, 2022: a draft resolution deploring the invasion and calling for the withdrawal of Russian troops from Ukraine was introduced in the United Nations Security Council⁸⁸ but vetoed by Russia.⁸⁹ This prompted the Security Council to convene an emergency special session on the subject of Ukraine.

February 27, 2023: the Security Council convened an emergency special session on the subject of Ukraine with the United Nations Council Resolution 2623.⁹⁰ An emergency special session is an unscheduled meeting of the United Nations General Assembly (“UNGA”) to make urgent recommendations for the maintenance of international peace and security in any instance where the Security Council fails to act owing to the veto of a permanent member. The mechanism for calling such an emergency special session was introduced in 1950 with the “Uniting for Peace” resolution of the UN General Assembly 377 which declares that “... *if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore. ...*” Resolution 2623 was the 13th time the Uniting for Peace resolution has been invoked to call an emergency session of the General Assembly, including the 8th such invocation by the Security Council.⁹¹

February 28, 2022: the Eleventh Emergency Special Session of the UN General assembly opened to address the Russian invasion of Ukraine. This session was adjourned on 2 March 2022 with the passing of the UNGA Resolution ES-11/1, and had since been reconvened a further five times resulting in the following resolutions:

⁸⁸ See full text of the resolution here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/07/PDF/N2227107.pdf?OpenElement>.

⁸⁹ See the meeting record here: <https://documents-dds-ny.un.org/doc/UNDOC/PRO/N22/269/25/PDF/N2226925.pdf?OpenElement>.

⁹⁰ See: <https://www.reuters.com/world/un-security-council-calls-rare-general-assembly-session-ukraine-2022-02-27/> (the vote for this resolution was procedural so Russia could not veto it).

⁹¹ Resolution 377 A (V) of 3 November 1950. See, e.g. B Simma (ed), *The Charter of the United Nations: A commentary* (Oxford University Press, 1995), pp 231-232. 235-236. See a brief overview of the invocation of the “Uniting for Peace” resolution at https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_377#Invocation_of_General_Assembly_Resolution_377.

- **United Nations General Assembly Resolution ES-11/1 (adopted on 2 March 2022)** 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 a reversal of Russia’s decision to recognise the self-declared People's Republics of Donetsk and Luhansk.⁹² (**Voting record:** 141 votes in favour; 5 against (Russia, Belarus, Syria, North Korea and Eritrea), 35 abstaining, and 12 absent).
- **United Nations General Assembly Resolution ES-11/2 (adopted on 24 March 2022)**⁹³ reaffirmed the UN's former commitments and obligations under its Charter, and reiterated its demand that Russia withdraws from Ukraine's recognized sovereign territory; it also deplored, expressed grave concern over and condemned attacks on civilian populations and infrastructure. This resolution also affirmed 14 principles “of humanity, neutrality, impartiality and independence in the provision of humanitarian assistance.” (**Voting record:** 140 votes in favour; 5 against (Russia, Belarus, Syria, North Korea and Eritrea); 38 abstaining, and 10 absent).
- **United Nations General Assembly Resolution ES-11/3 (adopted on 7 April 2022)**⁹⁴ suspended Russia’s membership in the United Nations Human Rights Council over "grave concern at the ongoing human rights and humanitarian crisis in Ukraine [...] including gross and systematic violations and abuses of human rights" committed by Russia. (**Voting record:** 93 votes in favour, 24 against, 58 abstaining, 18 absent).
- **United Nations General Assembly Resolution ES-11/4 (adopted on 12 October 2022)**⁹⁵ declared that the referendums held in the Donetsk, Kherson, Lugansk and Zaporizhzhia Oblast, as well as their subsequent annexation by Russia, are invalid and illegal under international law and calls upon all states to not recognize these territories as part of Russia. Furthermore, it demands that Russia "immediately, completely and unconditionally withdraw" from Ukraine as it is violating its territorial integrity and sovereignty. This resolution reiterates principles that have been recognized in international law for decades, especially the principle that illegal use of force under the UN Charter cannot lead to legally recognizable annexations. (**Voting record:** 143 votes in favor, 5 against (Russia, Belarus, Syria, North Korea and Nicaragua), 35 abstaining and 10 absent). This resolution achieved more votes in favor of condemning Russia's actions than Resolution ES-11/1, the initial resolution on the Russian invasion of Ukraine.

⁹² See full text of the resolution, as adopted, here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement>

⁹³ See full text of the resolution, as adopted, here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/301/67/PDF/N2230167.pdf?OpenElement>

⁹⁴ See full text of the resolution, as adopted, here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/312/47/PDF/N2231247.pdf?OpenElement>

⁹⁵ See full text of the resolution, as adopted, here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/630/66/PDF/N2263066.pdf?OpenElement>.

- **United Nations General Assembly Resolution ES-11/5 (adopted on 14 November 2022)**⁹⁶ recognizing that under international law Russia will owe Ukraine reparations in respect of the damage caused by the war and stating that the UN General Assembly “Recognizes that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it 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.” (**Voting record:** 94 votes in favor, 14 against (Russia, Belarus, Syria, North Korea, Eritrea, Nicaragua, China, Cuba, Central African Republic, Zimbabwe, Ethiopia, Iran, Mali, Bahamas), 73 abstaining and 12 absent).
- **United Nations General Assembly Resolution ES-11/6 (adopted on 23 February 2023)**⁹⁷ called for called for "a comprehensive, just and lasting peace in Ukraine" based on the principles of the Charter of the United Nations. (**Voting record:** 141 votes in favor, 7 against (Russia, Belarus, Syria, North Korea, Eritrea, Mali, Nicaragua), 32 abstaining and 13 absent).

International Court of Justice (ICJ): principal court of the UN⁹⁸

February 26, 2022: Ukraine filed an application instituting proceedings against the Russian Federation before the ICJ⁹⁹, the principal judicial organ of the United Nations, concerning “a dispute . . . relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide” (the “Genocide Convention”). In its Application, Ukraine contends, inter alia, that “the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognized the so-called ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’, and then declared and implemented a ‘special military operation’ against Ukraine”. Ukraine “emphatically denies” that such genocide has occurred and states that it submitted the Application “to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide”. In the Application, Ukraine also accuses the Russian Federation of “planning acts of genocide in Ukraine” and contends that Russia “is intentionally killing and inflicting serious injury on members of the Ukrainian nationality”.¹⁰⁰

⁹⁶ See full text of the resolution, as passed, here <https://www.justsecurity.org/wp-content/uploads/2022/11/N2267912.pdf>; full transcript of the session is here: <https://press.un.org/en/2022/ga12470.doc.htm>

⁹⁷ See full text of the resolution, as passed, here: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_es_11_6.pdf/.

⁹⁸ The ICJ is the principal judicial organ of the United Nations. Notably, however, the court has no enforcement mechanism. It can refer countries who refuse to heed its rulings to the UN Security Council, where Russia has a permanent seat and would almost certainly veto any action against it.

⁹⁹ See: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-PRE-01-00-EN.pdf> (the ICJ press release states the application was filed on 26 February 2022, whilst Ukraine’s own application for provisional measures states that the application was filed on 25 February 2022: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-WRI-01-00-EN.pdf>).

¹⁰⁰ The full text of the application by Ukraine is here: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-APP-01-00-EN.pdf>.

March 17, 2022: the ICJ issued its ruling containing the following provisional measures: “(1) By thirteen votes to two,¹⁰¹ The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine; ... (2) By thirteen votes to two, The Russian Federation shall ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations referred to in point (1) above; ... (3) Unanimously, Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve...”¹⁰²

Council of Europe

March 15, 2022:

- The Parliamentary Assembly unanimously adopted an Opinion¹⁰³ which considered that the Russian Federation can no longer be a member State of the Organisation.
- The Government of the Russian Federation informed the Secretary General of its withdrawal from the Council of Europe in accordance with the Statute of the Council of Europe and of its intention to denounce the European Convention on Human Rights.

March 16, 2022: As from this date, after 26 years of membership, Russia is expelled from the Council of Europe by an unprecedented decision of the Committee of Ministers under Article 8 of the Statute of the Council of Europe.¹⁰⁴

September 16, 2022: Russia ceases to be a party to the European Convention on Human Rights.¹⁰⁵

European Court of Human Rights (ECtHR)¹⁰⁶

February 28, 2022: Ukraine filed an application against Russia on grounds of “massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign territory of Ukraine.” Ukraine requested the court to take interim measures, which means “urgent measures which apply only where there is an imminent risk of irreparable harm,” according to the ECHR practice.

¹⁰¹ The Russian and Chinese members of the ICJ voted against the first two provisional measures.

¹⁰² See full text of the ICJ’s decision here: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220316-SUM-01-00-EN.pdf>.

¹⁰³ See text here: <https://pace.coe.int/en/files/29885/html>.

¹⁰⁴ See text of the decision here: https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5d7d9. See also press report here: <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>.

¹⁰⁵ See Council of Europe’s press release: <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022#:~:text=Following%20its%20expulsion%20from%20the,by%20the%20Committee%20of%20Ministers>.

¹⁰⁶ This is the court adjudicating on the obligations of each state which is party to the European Convention on Human Rights. Pursuant to the resolution of the ECtHR of 22 March 2022, the Court will deal with applications directed against Russia in relation to alleged violations of the Convention that occurred until 16 September 2022.

March 1, 2022: The ECtHR granted urgent interim measures by calling on the Russian government to “refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops.”¹⁰⁷

March 22, 2022: ECtHR resolves to deal with applications directed against Russia in relation to the alleged violations of the Convention that occurred until 16 September 2022.

April 1, 2022: ECtHR expanded its interim measures, including by ordering Russia to ensure the existence of evacuation routes which should allow civilians to seek refuge in safer regions of Ukraine, as opposed to forcing all civilians to evacuate to Russia only. This appears to be the first time in international jurisprudence that a court is effectively ordering a belligerent state to open specific evacuation routes, which must include the safer territory of the state on which a war is being fought.¹⁰⁸

¹⁰⁷ See the ECtHR’s press release regarding its decision to grant urgent interim measures here: https://jusmundi.com/en/document/decision/en-ukraine-v-russia-x-decision-granting-urgent-interim-measures-concerning-russian-military-operations-on-ukrainian-territory-tuesday-1st-march-2022#decision_20704.

¹⁰⁸ See the ECtHR press release here: <file:///C:/Users/tyn/Downloads/Expansion%20of%20interim%20measures%20in%20relation%20to%20Russian%20military%20action%20in%20Ukraine.pdf>.