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Magazine

MAGAZINE

Washington and the world

Russia's frozen assets offer some leverage.

Rescuers work at the site of the National Academy of State Administration building damaged by shelling in Kharkiv, Ukraine, on March 18. | Andrew Marienko/AP Photo

Opinion by Evan Criddle

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President Joe Biden has vowed to make Russian President Vladimir Putin “pay a very heavy price” for invading Ukraine. The cost thus far has included financial sanctions and possible criminal liability for war crimes, but it should not end there. If Ukraine manages to repel Putin’s army and regain its independence, it will need a massive influx of cash to recover and rebuild. And the international community should make Russia foot the bill.

Historically speaking, the victors of war have often demanded financial reparations from vanquished aggressors. Typically, these reparations have been imposed under threat of force — as was the case for Germany, for example, at the end of the First and Second World Wars. The war in Ukraine is different. Even if Russia ultimately decides to cut its losses and withdraw, Ukraine will be in no position to compel Russia to provide restitution for the devastation it has wrought in Kharkiv, Kherson, Kyiv, Mariupol and other major cities.

There is, however, a plausible path to make Putin pay. Following Russia’s illegal invasion, the United States has worked with foreign partners to freeze sovereign assets of the Russian government, as well as the personal offshore wealth of Putin and his aides and oligarch enablers. This hoard of riches now includes Russian central bank reserves, private bank accounts, real estate and mega-yachts scattered around the world. Collectively, these frozen assets are valued at hundreds of billions of dollars — a substantial sum that could be used to assist Ukraine.

Seizing on this possibility, Oleg Ustenko, an economic adviser to Ukrainian President Volodymyr Zelenskyy, and MIT economist Simon Johnson have advocated that the United States and its partners confiscate Russia’s frozen assets and redistribute them immediately to needy Ukrainians. Other policy analysts have embraced and further fleshed out this idea. These proposals might make good sense from an economic and humanitarian perspective, but they are political and legal non-starters.

Distributing Russian assets to Ukrainians is politically untenable because it would eliminate one of the few tools the international community has to pressure Russia to call off its military offensive. Although asset freezes have done little to deter Putin so far, this does not mean that they cannot contribute to bringing about a negotiated end to the conflict in the future.

Equally important, confiscating Russian assets would violate international law. Asset freezes are what international lawyers call “countermeasures” — temporary coercive acts that are designed to compel other states to comply with their international obligations. International law permits the United States and its allies to freeze Russian assets as a countermeasure only if the assets are preserved so they can be released once Russia resumes compliance with its legal obligations. In contrast, permanently confiscating Russia’s assets, as Ustenko and Johnson propose, would constitute an illegal expropriation. If the United States and its partners want to send the message that international law is worthy of respect — including the prohibition against military aggression, which Russia has so flagrantly violated — giving away Russia’s assets is the wrong move.

Fortunately, there is another way the United States and its partners can leverage Russia's frozen wealth to deliver relief to Ukraine: They can refuse to unfreeze these assets until Putin pays reparations. Under international law, Russia is obligated to compensate Ukraine for the harm produced by its illegal war of aggression. There are a variety of ways that Russia could satisfy this obligation. It could negotiate a comprehensive lump-sum settlement. It could work with Ukraine to establish a bilateral tribunal like the Iran-U.S. Claims Tribunal. It could enlist an international organization's help to establish a claim-settlement body like the U.N. Compensation Commission, which handled civil claims arising from Iraq's unlawful invasion and occupation of Kuwait in the early 1990s. In each of these scenarios, frozen assets could be used to compensate Ukraine.

World leaders do not appear to have considered this option. Biden and his advisers have defended international sanctions solely as measures for curbing Russian aggression. But asset freezes and other sanctions haven't dissuaded Putin from laying waste to Ukrainian cities, and it is unlikely that they will convince him to withdraw from the disputed Donbas region, let alone Crimea. Moreover, as soon as Ukraine and Russia reach a deal to end hostilities and resolve their territorial disputes, the deterrence rationale for sanctions will evaporate. If sanctions disappear as soon as the war ends, Russia could evade meaningful accountability.

Shifting the focus of international sanctions to reparations would make them more powerful. The United States and its allies should send a clear message: the more damage Russia causes in Ukraine, the more they will expect Russia to pay in reparations as a precondition for lifting sanctions. Tying sanctions to reparations in this way would provide an incentive for Russia to rein in its indiscriminate missile attacks. It would establish a sound legal justification for the United States and its partners to maintain sanctions after the war ends. And it would establish a powerful mechanism to compel Russia to finance Ukraine's reconstruction.

This strategy for procuring war reparations might seem fanciful because it would require Russian cooperation. It is hard to imagine Putin agreeing to provide reparations on a scale that would wipe out the consequences of his illegal war, as required under international law. Indeed, rather than concede that his "special military operation" in Ukraine violates international law, Putin might prefer to bid farewell to his country's frozen wealth while demagogically pinning the blame on foreign enemies.

Yet patient perseverance could yield unexpected fruit. While sanctions remain in place, Russia will struggle to attract foreign capital to pay its bills, compromising its financial solvency and stunting its economy. As time passes, Russia will feel increasing pressure to negotiate for sanctions relief, improving the odds that reparations could eventually become a reality. Sooner or later, Putin might be willing to strike a deal on reparations in exchange for normalizing trade relations, lifting travel restrictions and reclaiming some of his country's frozen assets.

International sanctions have not deterred Putin's army from ravaging Ukraine. But if the international community remains patient and united in defending the rule of international law, it could eventually force Putin to pay dearly for his illegal war — by compensating Ukraine with cold, hard cash.