

\$300 billion for Ukraine outweighs Putin's threats

Should the West take the risk of seizing Russia's frozen assets?

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(Editor's note: Stephen Rademaker, a senior counsel at the law firm Covington & Burling, was chief counsel to the House Committee on Foreign Affairs when it approved the Helms-Burton law in 1996.)

Momentum is building on both sides of the Atlantic to give Ukraine the approximately \$300 billion in Russian state assets frozen by Western countries after Moscow launched its full-scale invasion in 2022. German Chancellor Friedrich Merz has now endorsed the idea, removing a long-standing obstacle. But another one remains: Russian President Vladimir Putin has threatened to retaliate by confiscating the remaining Western investment in Russia.

Western countries are not defenseless against this threat. There is precedent in U.S. law for imposing crippling liability on anyone who invests in, uses or otherwise profits from illegally confiscated Western properties.

Almost since the Russian state assets were frozen in 2022, there has been talk of using them to compensate injured parties in Ukraine. Congress authorized the confiscation of the estimated \$5 billion in such assets held in the United States in 2024. But this authority has remained idle while both the Biden and Trump administrations waited for Europe to generate the will to take similar action on their much larger share of frozen Russian assets.

This logjam appears to have broken. European leaders are coalescing around the idea of converting the Russian money into a "loan" to Ukraine — which Ukraine would not have to repay unless Russia makes reparations for damages inflicted in the war. The proposal neatly dovetails with calls by U.S. Treasury Secretary Scott Bessent for collective action by the Group of Seven nations to make the Russian assets available to Ukraine.

Kremlin spokesman Dmitry Peskov has responded by warning that such action "will not go unanswered." For years, Peskov has threatened that Moscow would retaliate against confiscation of its assets by seizing Western investment in Russia. Indeed, Peskov revealed in 2023 that the Kremlin had already drawn up a list of Western investment targets, and in 2024 Putin issued a decree authorizing the retaliatory confiscation of U.S. private investment.

There is, of course, no equivalence between confiscating assets of the Russian state, which is responsible for the devastation wrought on Ukraine, and taking the assets of private Western investors, who have inflicted no harm on Russia and bear no responsibility for actions taken by Western governments.

But hostage-taking is a long-established Russian tactic. In fact, Russia is estimated to have already confiscated about \$50 billion in investment over the past three years.



Many Western investors sought to avoid outright confiscation by transferring their investments to Russian parties for token amounts, often subject to buyback provisions permitting them to reclaim them should political circumstances change. Russia is poised to enact legislation voiding these buyback clauses — effectively confiscating a valuable interest of Western investors.

Some confiscated assets have been transferred to oligarchs and other friends of the Kremlin, shoring up political support for Putin and generating revenue for the regime. And all of these confiscations have been conducted without providing fair compensation to the expropriated foreign investors, as required under international law.

The Russian confiscations — those threatened and those already carried out — are reminiscent of Fidel Castro's systematic seizure of U.S. investments after the Cuban revolution in 1959. After the Soviet subsidies that sustained his government were lost in the 1990s, Castro sought to raise cash by selling confiscated properties to a new generation of investors from Europe and Canada.

Congress responded by enacting the Libertad Act, also known as the Helms-Burton law. This law authorized the rightful owners of the properties to sue the new investors, plus others knowingly benefiting from use of the properties, for "trafficking" in illegally confiscated property. Under the law, plaintiffs could recover damages equal to three times the value of the property.

The objectives were twofold: to create a strong disincentive to trafficking in illegally confiscated American properties and to secure compensation to the U.S. investors whose property was stolen.

The same considerations apply today. To the degree that Western governments provided a Helms-Burton remedy to their investors in Russia, the incentives for Putin to confiscate Western investments would be reduced. Many Russian oligarchs, Chinese entrepreneurs and other potential investors in the properties won't want to risk triple-damage awards. That will constrict the market for the properties, reducing the amount of revenue Putin can expect to generate by confiscating them.

Further, Western investors able to gain jurisdiction over traffickers in Western courts would be able in many cases to win compensation from the traffickers, either through out-of-court settlements or damage awards.

The original Helms-Burton law was denounced in Europe and Canada because the traffickers it targeted were often their own citizens. But in Russia today, American, European and Canadian investors are victims of trafficking. Governments in all these places should aggressively deploy their own version of Helms-Burton against Russia to counter the threat to the property of their investors.



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