

The REPO for Ukrainians Act Is Unnecessary, Costly, and Risky

THE ISSUE

The proposed Rebuilding Economic Prosperity and Opportunity (REPO) for Ukrainians Act (H.R. 4175) correctly seeks to hold Russia accountable for its illegal invasion of Ukraine. It would, however, do so in a counterproductive and long-term problematic manner.

The bill would give unprecedented legal authorities to an Administration that has demonstrated its disregard for its constitutional obligations, it would fund future reconstruction when current military assistance is a more pressing need, it would likely fail to achieve the desired strategic advantage, it would undermine the dollar-denominated global finance system, and it would expose an already fragile economy to unintended consequences and risks for which the United States is unprepared.

THE PROBLEMS WITH THE REPO FOR UKRAINIANS ACT

The Heritage Foundation has already provided a framework for supplemental appropriations that meets the moment by securing America's border, providing military assistance to Israel to defeat Hamas and walling off funds from nongovernmental organizations that are complicit in terrorism, providing the critical military assistance to Ukraine that it needs to defeat Russia while requiring more from North Atlantic Treaty Organization (NATO) allies, and taking major steps to deter China and strengthen Taiwan.

The amount of frozen Russian assets under U.S. jurisdiction is estimated to be \$4.95 billion of the projected \$279.86 billion in total assets in

question. The bulk of Russian assets, some \$226 billion, reside under European Union jurisdiction, with \$205.59 billion in Belgian banks. The REPO for Ukrainians Act would therefore only affect the small fraction of the exposed assets in the U.S. Furthermore, both the EU and the U.S. Administration have explicitly stated that the risks of seizure outweigh the benefits.

The REPO for Ukrainians Act is also not central to the key security challenges that America faces, and its inclusion in any future supplemental should not be seen as such. The United States must not do more to secure Ukraine's border than it does to secure its own, nor should the United States continue to merely pay lip service to confronting China. Congress needs to be reminded that the massive increase in federal deficit spending over the past few years has exacerbated America's long-standing debt and inflation crisis, significantly devalued and undermined the dollar, and brought the United States to the brink of economic calamity. Congress can no longer put off concerns about spending as a problem for tomorrow—and the REPO for Ukrainians Act may place greater stress on America's already fragile financial system.

SIX PRINCIPLES FOR CONGRESS TO CONSIDER

Principle 1: The Assets that Would Be Exposed to U.S. Jurisdiction Under the REPO for Ukrainians Act Are Smaller than the Risks to the Financial System. While the REPO for Ukrainians Act purports to make the seizure of Russian assets occur quickly and

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to use those funds for non-military support of Ukraine immediately, it is more likely that the bill will have all the negative consequences with no benefit. Nearly all assets in question (more than 95 percent) are in European banks. The REPO for Ukrainians Act merely suggests a sense of Congress for Europe to seize these funds while authorizing President Joe Biden to seize roughly \$5 billion in funding in U.S. banks. It is possible that any seized funds will be subject to litigation, including litigation over assets frozen or seized by the International Court of Justice (ICJ), which has partially ruled against the United States.

- The bill does, however, include a provision precluding judicial review in the lower courts. Such a provision is, in and of itself, unprecedented in terms of precluding foreign governments from having access to U.S. courts. If this provision is upheld, it might well invite retaliation by having foreign courts limit the access of the U.S. government, American companies, or individuals to foreign courts.
- Most Russian assets are in Europe, and the EU member states need to decide what, if anything, to do with those assets.
- American-held Russian assets are relatively small (\$5 billion), and any benefit from seizure should be weighed against the risk to America's financial reputation since:
- America is home to the world's largest, deepest, and most secure capital markets in large measure due to its sanctity for the rule of law, protection of property rights, allowance for due process, faithful adherence to contractual obligations, and recognition of the sovereignty of independent nations.
- With nearly \$35 trillion of its own sovereign obligations, the United States is by far the world's largest debtor nation. The U.S. Constitution holds the government duty bound to respect and vigilantly manage this tremendous responsibility such that the validity of the public debt shall not be questioned.
- The prolific fiscal and monetary irresponsibility of the U.S. government has already weakened the dollar to an unprecedented level. Over the past three decades, the dollar has been used less, had less demand, and is serving as less of a feature in global affairs—roughly 85 percent of dollars have been created since 2008. The reckless assault on the dollar-denominated system that is envisioned by the REPO for Ukrainians Act could disastrously exacerbate this trend—making American taxpayers shoulder the burden.
- Invesco's 2023 [Global Sovereign Asset Management Study](#) showed that a “substantial percentage” of central bankers expressed serious concerns about the U.S. and the EU freezing about half of Russia's foreign exchange reserves and gold, prompting explorations of financial alternatives. The Federal Reserve has neither confirmed nor denied reports that other nations have been withdrawing financial assets, including gold, from the United States. Most recently, the U.S. central bank was able to dodge a Freedom of Information Act request about this potential asset drain by invoking the private status of the Federal Reserve Bank of New York. The fallout from freezing Russian assets may already be underway, with the U.S. unaware of the scope of the problem. Attempts to “transfer ownership” of these assets could violently accelerate symptoms, which are not yet fully known.
- Frozen assets could be a “carrot” to get Russia to stop further bloodshed, come to the negotiating table, and resolve the Ukraine war to the benefit of Ukraine.

Principle 2: Unprecedented Legal Authority Risks Unintended Consequences.

The REPO for Ukrainians Act will hand President Biden unfettered and unprecedented power to seize Russian assets, which is notable because the U.S. is not at war with Russia, nor has the U.S. Congress (yet), or any U.S. or foreign court, found Russia liable for damages. This act could have unforeseen repercussions in the world financial markets regarding the validity of U.S. debt and the power of the United States to seize another country's assets. The act could result in Russian retaliatory actions against the U.S. and its allies greater than the scale of the seizure. Actions taken under these powers will be difficult if not impossible for a future President to reverse.

- The REPO for Ukrainians Act also references the International Court of Justice (ICJ), which is part of the United Nations. To accept the ICJ's judgment on Russia may imply support for the ICJ's rulings against Israel or the United States.
- The ICJ has ruled routinely against Israel. Most recently, the ICJ ruled in January in the case of South Africa versus Israel about the war in Gaza, directing Israel on how to conduct its offensive against the invaders, rapists, kidnappers, and murderers of October 7.
- The United States has withdrawn from both the general (compulsory) and consular (optional) jurisdiction of the ICJ. The ICJ ruled in 1986 that the United States owed reparations to Nicaragua for allegedly supporting the Contras. In 2005, the United States withdrew from optional jurisdiction after the ICJ ruled against the U.S. in a death penalty case involving a particularly horrific murder-rape by a Mexican citizen in the U.S.
- However, the U.S. *may* remain subject to some residual jurisdiction of the ICJ depending on the interpretation of certain treaties.

- In 2023, the ICJ in a mixed ruling said that the U.S. illegally froze some Iranian assets, despite the fact that the U.S. Congress had authorized the freezing and the U.S. Supreme Court had found it lawful. The U.S. said it was not subject to the ICJ in this case.
- In 2018, the ICJ received arguments from the Palestinian Authority that President Donald Trump's decision to move the U.S. embassy in Israel from Tel Aviv to Jerusalem was illegal. The ICJ appears to not have ruled on this case.

Principle 3: The Bulk of Russia's Exposed Assets—and the Responsibility for Them—Resides in Europe.

The European nations in which the preponderance of frozen Russian assets resides possess the jurisdiction to seize exposed funds but have been reluctant to do so fearing reciprocal action and a potentially dangerous precedent. European nations also have the greater interest in funding both Ukraine's defense and collective security in the face of an increasingly aggressive Russia.

- The REPO for Ukrainians Act will theoretically use seized Russian funds in Europe for humanitarian assistance and other governmental assistance to Ukraine. Heritage's position is that Europe should provide any and all humanitarian assistance as well as any governmental financial assistance to Ukraine, at least in the near term and in the case of an emergency supplemental act being debated in Congress this month.
- The bill declares that a U.N. General Assembly vote is sufficient to find Russia guilty of damages, and therefore suffices to give U.N. member states the authority to seize Russian assets. If a nation can be found guilty of damages by a simple majority vote in the U.N. General Assembly, then the U.S. and Israel will be subject to being guilty of damages.

- Just six months ago, 187 countries in the U.N. General Assembly, including every member of NATO, voted against America’s embargo on Cuba by a vote of 187 to 2. (Ukraine, the recipient of more than \$100 billion of U.S. taxpayer money, abstained.)
- In December 2023, the U.N. General Assembly voted for an immediate ceasefire in Gaza by a vote of 153 to 10, with 23 abstentions.
- Russia should bear the costs for reconstruction in Ukraine.
- Seizing Russian assets now to pay for an eventual rebuilding of Ukraine is complicated: \$5 billion is a drop in the bucket, and any benefit must be weighed against potential market impacts and reputational risk of investing in the United States.
- An alternative to asset seizure could be purchasing the frozen assets from Russia at a steeply negotiated discount—a value that reflects the recognition that these funds will otherwise remain indefinitely frozen and likely never be returned. The profits of this transaction could be applied to Ukraine’s future reconstruction. Further, the profits could potentially provide a return of funds to the American people for their tremendous amounts expended to date, which America itself has borrowed and will otherwise remain an inter-generational financial liability.

Principle 4: The U.S. Should Encourage European Partners to Provide All Non-Military Aid. Because of their geographic proximity, financial capacity, and plans to integrate Ukraine formally into the European Union, its member states and their multi-lateral institutions should take full financial responsibility for Ukraine’s direct budgetary, developmental, humanitarian, and other non-military needs.

Principle 5: The United States Should Provide Military Aid to Ukraine on a Strictly Conditional Basis. U.S. military aid to Ukraine ranges from operational support to authorizations for future Presidential Draw-down Authority (PDA) and replenishment funding. The exact amount required will depend on the strategy to bring the war to an end. Given its global security responsibilities, it is critical that the United States carefully conserve its existing resources, from munitions to intelligence, surveillance, and reconnaissance. EU member states must substantially ramp up production of the weapons required for Ukraine’s defense. Continued U.S. military aid for Ukraine should be contingent on:

- A credible strategy for achieving a desired end state in Ukraine that is approved by Congress.
- Accountability for all U.S. aid to Ukraine, including an independent Special Inspector General that is not under the control or authority of the Department of Defense, the Department of State, or the U.S. Agency for International Development.
- A prohibition on (a) the use of authorized or appropriated funds to send weapons to Ukraine that are required by the U.S. and its partners and allies to deter China, and (b) the depletion of U.S. stockpiles to satisfy those requirements without short-term replacement.
- A requirement that European military assistance comprise the majority of such assistance to Ukraine. Specifically, at any time, no U.S. military assistance should cause the total amount of U.S. contributions to exceed 49 percent of the total amount of military assistance contributed to Ukraine from all sources. Congress should not appropriate any authorized military assistance until non-U.S. military assistance exceeds the U.S. level of military assistance as reported by allied governments and verified by NATO.

Principle 6: The U.S. Should Tighten Sanctions on Russia. In coordination with allies, the U.S. should prohibit Russian banks or third-party proxies from using the U.S. banking system to process payment transactions for sales of Russian oil and gas. Despite multiple rounds of allied sanctions, Russia continues to earn substantial revenue from its oil and gas exports and still obtains goods and services to support its military aggression.

The U.S. should place sanctions on all companies, including financial institutions, that import Russian oil and gas, or that export to Russia proscribed goods and services.