Avoiding Direct Confiscation

A Bond-lien Guarantee Mechanism to Help Ukraine

WORLD REFUGEE & MIGRATION COUNCIL

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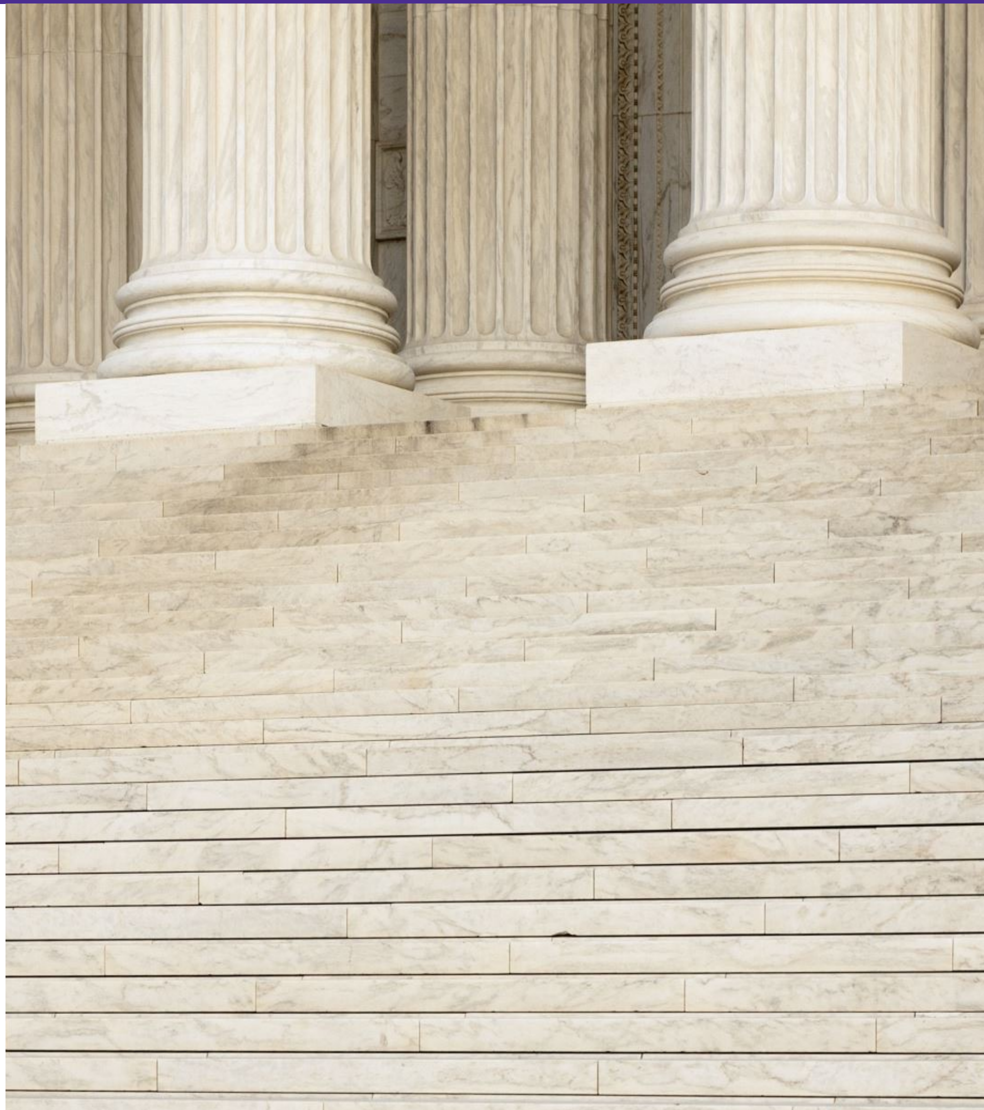
The “confiscation challenge”

- Rebuilding Ukraine is expected to cost $486 billion, 2.8 times its 2023 expected economic output (new study by the World Bank, United Nations, European Commission and the Ukrainian government).
- If Ukraine is forced to settle for peace by a new administration in Washington or the Biden administration’s inability to get Congressional approval for new funding, the country’s dire economic circumstances and reconstruction needs will be exploited by Putin to weaken the government and replace it with a political leadership friendly to Russia.
- EU’s plan to tax windfall profits of Russia’s frozen assets won’t meet all of Ukraine’s reconstruction needs.
- It will be necessary to go after the assets themselves to assist Ukraine.
- The challenge: how to design a process associated with reparations claims and the seizure or foreclosure of the assets that manages legal, credit/financial, managerial, political and systemic risks, which will also be acceptable to those countries where the majority of the assets are held, i.e., Belgium (254B USD), France (72B USD), Japan (58B USD), UK (47B USD), Austria (19B USD), Germany (11B USD), Switzerland.
- Legal risks associated with state immunity to any kind of judicial proceeding involving confiscation.

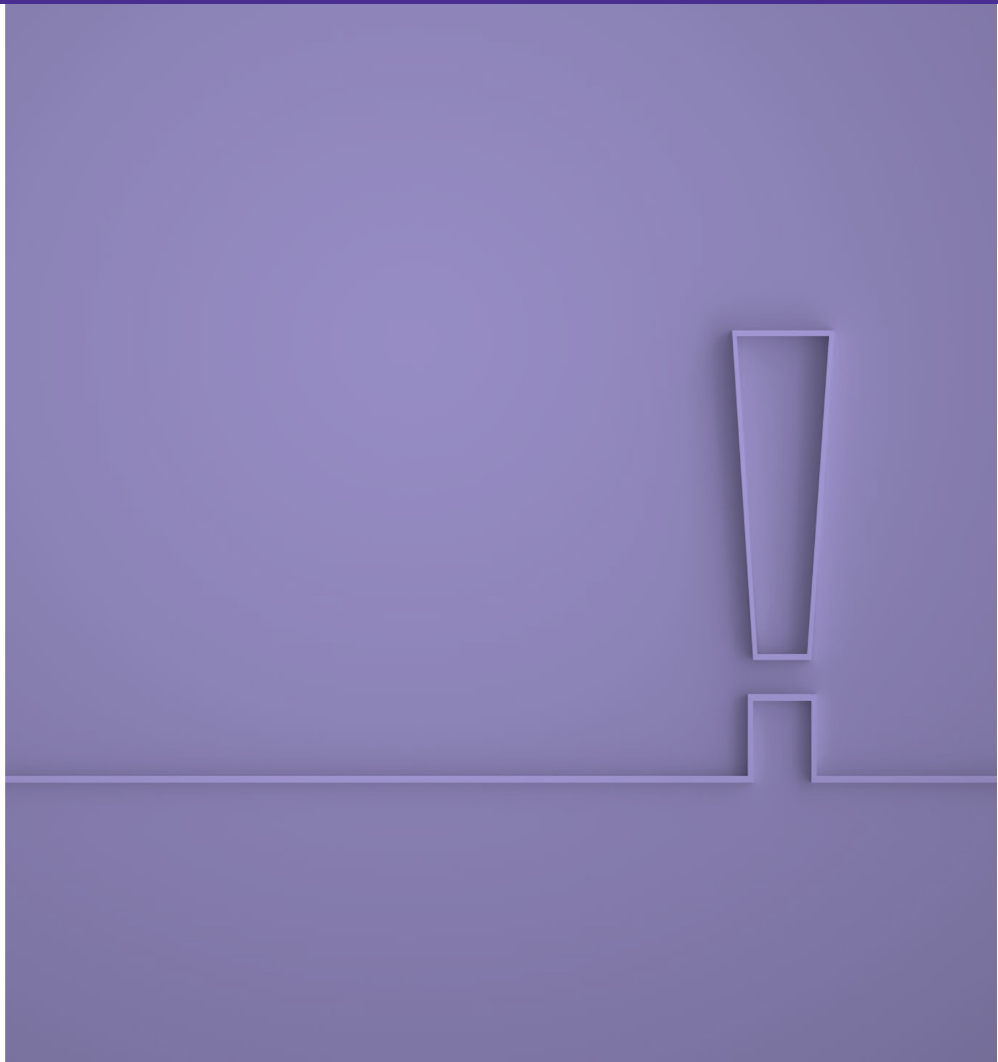
Risks of direct confiscation

- Legal risks associated with state immunity to any kind of judicial proceeding involving confiscation.
- Legal risks associated with confiscating state assets under the international legal doctrine of countermeasures, which do not meet the “reversibility” requirement.
- Seizure of Russian assets by Western countries and asset holders would be subject to retaliatory action, including confiscation, by Russia (political/systemic risk).
- Might compromise the legitimacy of the euro as a reserve currency and confidence in European financial institutions (credit/financial risk).



An alternative risk reduction strategy: lien versus confiscation

- Instead of confiscating Russian assets, Western governments leave those assets intact and use them as security for loans of equal value to be advanced immediately to Ukraine.
- Ukraine, in turn, assigns to the lenders the value of its loans and its right to eventually receive reparations from Russia for the damage caused by its aggression.
- If Russia fails or refuses to pay reparations, Western lenders could have recourse to the frozen Russian assets to satisfy their loans via a first-priority lien that would be applied to the frozen Russian funds.
- A lien is an encumbrance, but not confiscation, and would only be applied if Russia fails to fulfil its obligation.
- There are well-established international processes to deal with reparations, and Western courts are positioned to grant a lien to recognized claim holders.



How would the loans and lien(s) be structured?

01

Create a Special Purpose Vehicle (SPV) which issues special bonds purchased by governments and potentially the private sector.

02

The proceeds from the sale of those bonds go to Ukraine, which, depending on the way they are structured can be zero coupon or interest bearing.

03

Governments through legislation and/or courts grant liens to claim holders.**

04

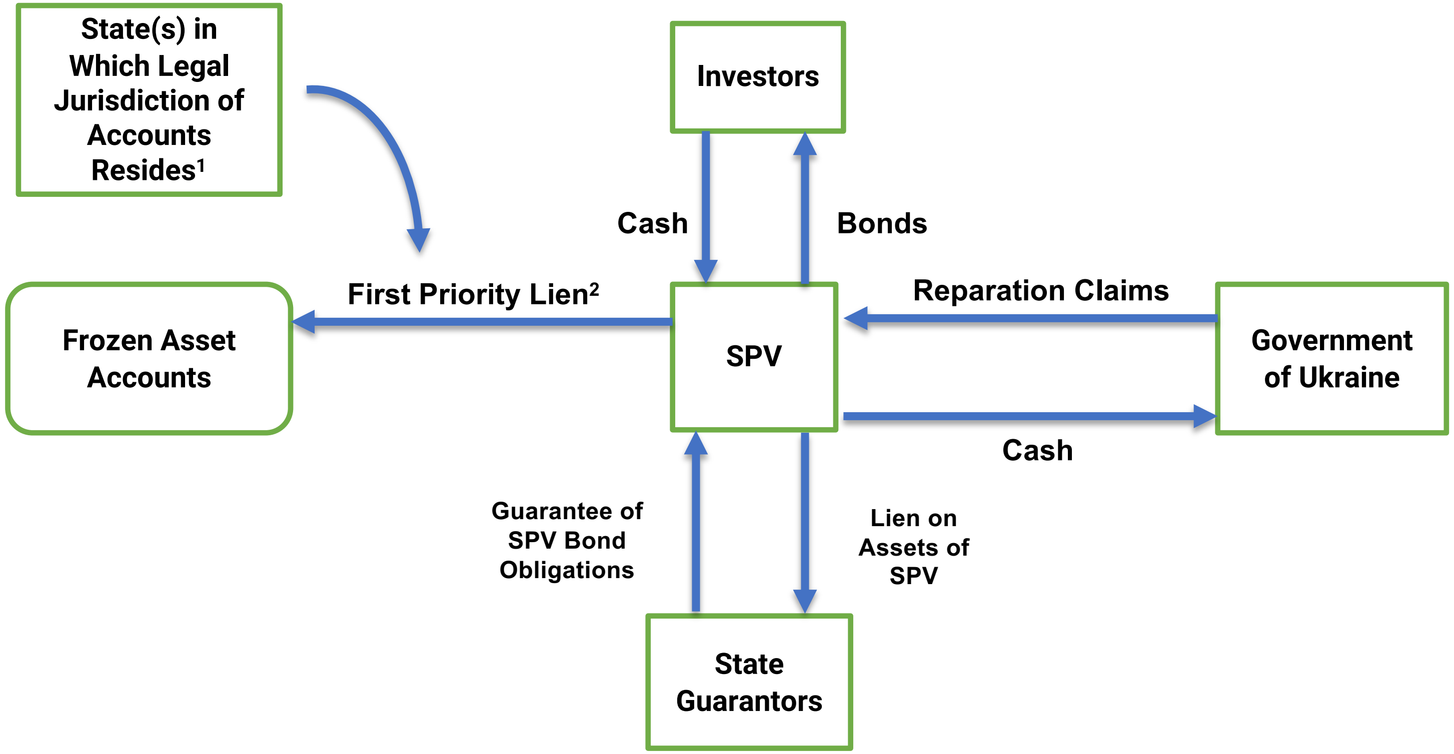
Ukraine, in turn, agrees to transfer to the SPV sufficient value of reparation claims to cover the principal and interest on the issued bonds, which could mature in 10, 20 or even 30 years.

05

If Russia doesn't pay, the SPV as the lien holder, would realize its collateral on the frozen Russian assets.

** This structure pre-supposes the important first step of legal recognition of the validity of Ukraine's reparation claims in the countries in which Russia's assets are held (see slide #7).

Lien & Reparation Bond Structure



1. Grants lien to SPV as recognized holder of reparation claims. Lien perfection might be achieved through legislation or the court system.
2. Lien enforced if Russia does not pay reparation claims on bond maturity.
3. The "investors" can, of course, be governments which purchase the bonds and private investors, nullifying the requirement for guarantees.

Key steps to build a bond-reparations-lien structure

1. The international community has to agree that Ukraine is owed reparations and $$ amount (which can be dynamic as war progresses).
2. Those claims have to be recognized by Western governments.
3. Sponsoring governments (coalition of the willing) task legal advisers to set up an SPV; then the governments can appoint an administrator of the SPV.
4. Sponsors enter into an agreement with those jurisdictions where assets are held either to get a legal opinion or pass enabling legislation to allow judicial system to adjudicate the claims held by the SPV.
5. Court(s) agree to grant a first-priority lien in favor of the claim holder (SPV).
6. Ukraine has to agree to transfer its reparation claims to the SPV and grant the SPV the priority payment on those reparation claims.
7. SPV issues debt (bonds) to the sponsoring governments and the cash then is used to acquire those claims from Ukraine. (Bonds-for-cash and cash-for-claims in which the SPV sits in the middle). (The private sector will only likely buy the bonds if there is a government guarantee.)
8. Times passes (bonds would likely have to be zero coupon bonds).
9. SPV petitions Russians for reparations claims as does Ukraine.
10. When bonds mature, if Russia does not pay reparations, SPV forecloses on its lien.

An alternative risk reduction strategy: lien versus confiscation

- The SPV and not Western governments are the direct holders of the lien, which avoids international treaty issues around using judicial means to collect monetary damage awards.
- There is no direct or immediate confiscation of Russian assets.
- Russian sovereign immunity is not engaged.
- No need to apply the doctrine of countermeasures.
- A proper process associated with reparations claims and asset seizure/foreclosure , which only takes place after Russia has had every opportunity to make good on reparations.

The bond-lien credit/financial risk advantage

- Avoids setting a precedent for confiscation which some regard as dangerous.
- Does not threaten financial markets and currency stability.
- West continues to retain its financial leverage over Russia, which is lost if Russian assets are confiscated.
- The risk of confiscatory retaliation by Russian authorities is reduced.
- SPV-bond arrangement spreads credit risk over a longer time horizon (versus direct loan); credit risk is shared among larger potential group of countries and potentially private sector.

Read more about the World Refugee & Migration Council's anticorruption work at:

https://wrmcouncil.org/anticorruption