

## Open letter by international lawyers and practitioners

To Whom It May Concern:

We are experienced public international lawyers and practitioners from Belgium, France, Germany, Japan, the Netherlands, the United Kingdom, and the United States. Having given our most serious consideration to this issue, we have concluded that it would be lawful, under international law, for States which have frozen Russian State assets to take additional countermeasures against Russia, given its ongoing breach of the most fundamental rules of international law, in the form of transfers of Russian State assets as compensation for the damage that has resulted directly from Russia's unlawful conduct.

We have shared a detailed analysis of this issue with interested governments. Dapo Akande, Chichele Professor of Public International Law at Oxford, also joined in that work and its conclusions. In coming to these conclusions, none of us are acting on behalf of sponsors or clients, although one of us, Harold Hongju Koh, does represent Ukraine before certain international tribunals.

Only Russian State assets would be affected. No new measures would be imposed on assets that are genuinely privately owned. We recommend that the compensation be provided through an international mechanism, to which the States concerned would transfer the Russian State assets currently under their jurisdiction. Their jurisdiction may extend, depending on the circumstances, to offshore currency holdings intermediated through their country's correspondent banks.

As an aspect of compensation, this international mechanism could allocate escrowed assets to support urgent programs to efficiently and effectively mitigate further damages and aid Ukraine's recovery. The mechanism could also be given the authority and capacity to receive and review claims from Ukraine and other injured parties – public and private – and be allocated assets to distribute appropriate compensation for such claims in line with internationally-agreed standards and procedures.

The total amount of compensation would not exceed the amount owed by Russia for the damage it has caused. In the unlikely event that the Russian State assets transferred to the mechanism are found to exceed the amount of damage suffered by Ukraine and other injured States and entities, the excess would be returned to the escrowed accounts from which the assets were transferred. Should Russia eventually sign a peace agreement and address its obligations, any assets transferred to Ukraine or other injured parties would be credited to Russia as an offset against its total liability.

There is no doubt about the illegality of Russia's invasion of Ukraine, occupation of Ukrainian territory or annexation of large parts of it. By these actions, Russia has violated the most fundamental rules of international law. These rules are a cornerstone of the post-World War II international legal order; indeed, they are indispensable to the foundation upon which the entire rules-based order is built.

In the face of such a blatant violation of a State's international legal obligations, international law permits other States to respond with "countermeasures". Lawful countermeasures are measures that would be unlawful if imposed against an innocent State, that is, one that has not violated its international obligations, but are permitted if they are taken against an

offending State and are intended to persuade the offending State to cease its unlawful conduct and comply with its obligation to compensate those injured, or – if persuasion fails – effectuate that compensation with the offending State’s assets.

Third States, that is, States that have not been directly injured by the offending State’s conduct, are permitted by international law to take collective countermeasures against the offending State, in this case Russia, for grave breaches of its obligations under peremptory norms of international law that affect every State in the international system, as here.

Moreover, States that have been specially affected by Russia's unlawful acts, or damaged indirectly by the threats, costs or disruptions these acts have caused, can join in countermeasures employed by other States on these grounds, as well.

As an early response to Russia’s unlawful invasion of Ukraine, several States where Russian State assets are located took action to freeze those assets so that they would not be available to finance Russia’s war of aggression, and these assets remain frozen today. Whether labelled as such or not, these were lawful countermeasures under international law. And they remain so, since Russia’s unlawful conduct, to which they were a response, has not ceased. Absent Russia’s offending conduct, it would have been unlawful for any State to freeze its assets.

Russia has responded to the lawful freezing of its assets by declaring, in a presidential decree, that all States participating in such asset freezes are "unfriendly" and that private property owned by people or firms domiciled in such States can be confiscated by Russia. Russia has begun these confiscations, which are unlawful. Should Russia retaliate further, with more unlawful confiscations, those harmed would join the ranks of the States, companies, and individuals entitled to seek compensation for their damages from Russia’s conduct.

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