In April 2023, the Renew Democracy Initiative ("RDI") launched the "Making Putin Pay" ("MPP") project—which I am leading together with the law firm Kaplan, Hecker & Fink LLP ("KHF"), where I am Of Counsel—to produce an authoritative analysis of the legal and geopolitical considerations implicated by proposals to use the approximately $300 billion in Russian sovereign assets frozen across the world to rebuild and support the continued defense of Ukraine.

As the human and financial toll of Putin’s war climbs with each passing day, there is a growing global consensus that Russia has an obligation to pay for the death and destruction that it has wrought on the Ukrainian people. Repurposing Russia’s frozen reserves—the single largest untapped source of funding for Ukraine’s reconstruction—is quickly gaining momentum among Ukraine’s allies as a bold and necessary policy action. In the United States, last month Reps. Adam Schiff and Brian Fitzpatrick led a bipartisan congressional letter calling on President Biden to invoke existing domestic legal authorities to transfer Russian assets—and just a few days ago, Treasury Secretary Janet Yellen told Congress that her department was actively considering options under current law. In Canada, the government continues to examine its new authority to repurpose Russian assets for Ukraine’s benefit. And in the European Union, leaders are hard at work examining specific transfer structures to allow Russian assets in the EU to be put to use aiding Ukraine.

I have been vocal in the ongoing effort to assess and deploy domestic and international legal authorities for repurposing Russian sovereign assets. In April 2022, I co-authored, with Jeremy Lewin, a New York Times essay explaining that the U.S. President currently possesses constitutional and statutory authority to send Russian central bank assets to Ukraine. The Schiff-Fitzpatrick letter invoked that essay as the first published proposal advocating and defending such a transfer of Russian assets under existing U.S. law, and our proposal in turn engendered a substantial literature surrounding domestic and international law authorities. It has since persuaded other prominent American commentators and policymakers to reconsider the legality and feasibility of executive action to transfer Russia’s blocked assets, a step that had previously been assumed would require the enactment of new legislation in the United States—a prospect which, while by no means impossible, could prove inordinately difficult.

Building on that foundation, KHF and I have assembled a team of leading lawyers to produce a more comprehensive and definitive analysis of the key legal and policy issues for policymakers in the United States and international community considering the transfer of Russian assets to Ukraine. The report is expected to be publicly released by the end of August 2023.

In advance of the report’s publication, our team is pleased to share a preview of the report’s scope and key findings. Our final report will explore the following four topics:

- **U.S. Law:** The report will address the legality of executive seizure and transfer to Ukraine of blocked Russian assets under existing U.S. domestic law. To that end, the report will:
Examine President Biden’s existing statutory authority to transfer blocked Russian assets and explain why he already possesses power to do so under the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq.

Demonstrate that no constitutional problems would arise from such an executive disposition of blocked Russian assets—delving deep into the history and structure of the U.S. Constitution to dispose of potential claims that an executive branch order to transfer blocked Russian assets would run afoul of the constitutional separation of powers or the Due Process or Takings Clauses.

Detail why an executive transfer of Russian assets would not implicate the immunities afforded to certain foreign assets and instrumentalities by the Foreign Sovereign Immunities Act, 28 U.S.C § 1602 et seq.

- **International Law:** The report will also explain why this type of action would comport with the principles of, and the United States’ obligations under, international law. To this end, the report will review relevant sources of international law—including treaty law, customary international law, international court decisions, and related commentary—and will extensively discuss topics including: the applicability of the doctrine of third-party countermeasures to internationally wrongful conduct, the international law principles of reparations for wrongful conduct, and international law principles of sovereign immunity. The report will also provide guidance for allied nations considering their own international and domestic law obligations.

- **Policy and Geopolitical Considerations:** The report will discuss the strategic importance of repurposing blocked Russian assets and will ultimately expose the flaws relevant policy and geopolitical objections including: claims that repurposing Russian assets risks imperiling the stability and attractiveness of major reserve currencies such as the U.S. Dollar or Euro; claims that repurposing Russian assets would harm international efforts to identify a suitable diplomatic resolution to the war; and claims that such action would trigger Russian retaliation against Ukraine or its allies. Conscious of concerns about a slippery slope, the report will also delineate a set of limiting principles, rooted in the relevant law, which should guide and constrain similar actions proposed in the future.

- **Administrative and Structural Mechanisms:** Finally, the report will propose specific direct and multilateral transfer structures and mechanisms that would be consistent with U.S. law, international law, and the policy objectives described above. These proposed structures will take full account of important unresolved questions about appropriate uses and control mechanisms for Russian assets transferred to benefit the Ukrainian people.

Although the final report is slated for public release in August 2023, our team is ready to discuss these important issues on a confidential basis with policymakers and other key stakeholders. Interested parties are welcome to reach out to me either at KHF (ltribe@kaplanhecker.com) or at Harvard Law School (tribe@law.harvard.edu) for further information.

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