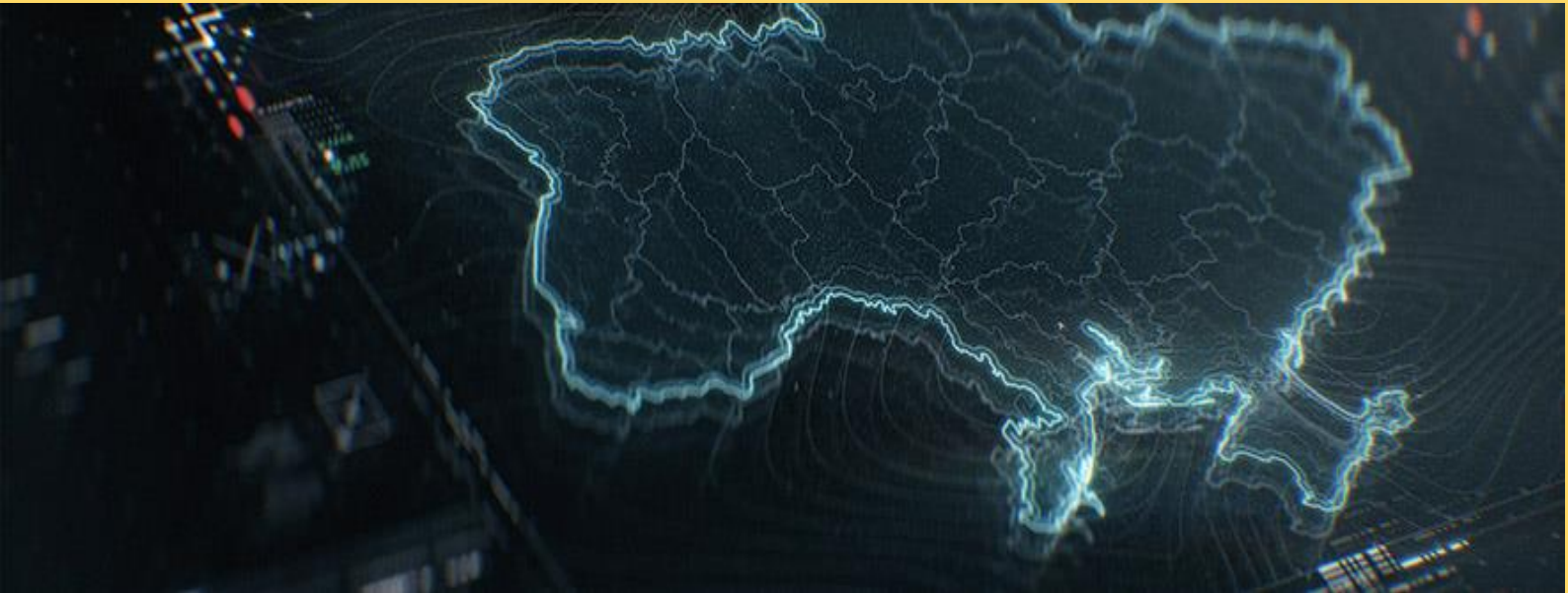




CAMBRIDGE INITIATIVE
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UKRAINE SETTLEMENT PROJECT



UKRAINE SETTLEMENT OPTIONS:
Sanctions on Private Assets & Criminal Justice
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UKRAINE SETTLEMENT OPTIONS PAPER
SANCTIONS IN THE UKRAINE–RUSSIAN WAR:
PROPOSED SOLUTIONS FOR THE PEACE PROCESS AND WAR
CRIMES PROSECUTIONS

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INTRODUCTION

Throughout history, rebuilding and reconciliation in post-conflict situations is hampered by a lack of funding for reconstruction, restitution, and reparations—leaving communities irreparably broken and victims with no redress, whether following convictions at tribunals or the signing of a peace treaty. The most recent example comes from a March 2021 award by the International Criminal Court (hereinafter “ICC”) of \$30 million to the victims of Bosco Ntaganda, a rebel leader from the Democratic Republic of the Congo convicted of 18 counts of crimes against humanity and war crimes. However, the ICC has been unable to seize or locate Ntaganda’s assets to satisfy this judgment, thus placing the burden of reparations on nations themselves. The *Bemba* case further highlights areas where ICC procedure and unsystematic cooperation with states fails to ensure the effective seizure, freezing, maintenance, and forfeiture/distribution, or return, of assets—a problem that this proposal will attempt to solve within the cadre of the Ukraine – Russia conflict and beyond through the inclusion of targeted, human rights sanctions and related asset recovery mechanisms in the peace settlement process.

Human rights and conflict-related sanctions are utilized at an exponentially increased frequency, especially following the adoption of Global Magnitsky sanctions regimes that target individual human rights abusers and entities that they own or control. Since the commencement of the Ukraine-Russia conflict, hundreds of Russian individuals and multiple corporations have been designated by countries as sanctions targets, leading to the freezing of such private assets and restriction of access to global financial and trade systems. The Russian government imposed its own set of sanctions in response. Some experts have put forward the idea that by sanctioning oligarchs and other high-ranking officials, non-military pressure will be placed on the parties to reach a peaceful settlement and end the conflict. Other rationales have included sanctioning private assets with a direct relation to criminal activity and/or war crimes in Ukraine. Such measures are taking place as both Russia and Ukraine are prosecuting and

convicting accused war criminals and the ICC has commenced an investigation into the situation in Ukraine for war crimes, crimes against humanity, and genocide.

Such human rights sanctions have a critical role to play within the process of domestic and potential ICC prosecutions as well as the claims and rebuilding process. Thus, this paper seeks to outline the relationship between sanctions, reparations, and the international criminal justice process as part of a peace settlement for the Ukraine–Russia conflict. However, the proposal set forth in this paper may serve as a model for future implementation in other post-conflict settings. Namely, whilst the below proposals apply to sanctions imposed against private individuals and private assets that may be subject to forfeiture and/or seizure, and not as to public state assets (such as central bank reserves) or trade embargoes and other broad based measures, the management of such assets and resolution of other types of sanctions will need to be addressed in future analysis to avoid asset allocation problems related to the present situation in Afghanistan.¹ Moreover, this paper will not attempt to provide an in-depth analysis of the legal basis or procedures for sanctions, asset recovery, forfeiture processes, and reparations as there are a number of excellent resources that provide extensive background and recommendations on the legal framework.²

As we look to the sanctions imposed within the context of the Ukraine – Russia war, several issues come to the forefront that will guide the subsequent proposals for a peace or settlement agreement. First, the world has seen an unprecedented level in the use of sanctions, seizures, and blocking of assets against Russian individuals and corporations – even those with no military or defense involvement, but who are seen as providing utility, financial resources, and/or support to the Russian military or Government in what is considered an unlawful invasion and interference with the sovereignty and territorial integrity of Ukraine. Sanctions have been imposed under a number of different rationales, ranging from direct relation to criminal activity and/or war crimes, to broader aspects of targeting those closest to Putin in an attempt to put pressure on Russia to halt their offensive in Ukraine.

There is also the goal of hurting the Russian economy, making it impossible to conduct normal business in Russia and thus impeding a revenue stream that could fund and support the war effort. Some measures are more of an aspect of foreign policy, including sanctions targeting Russia’s financial system, the wealth of powerful individuals, and Russian fossil fuels, and are designed to punish Putin and the oligarchs who support and depend on him. It must be noted, however, that trade embargoes, denial of access to the SWIFT banking system, and other

¹ *Fact Sheet: Executive Order to Preserve Certain Afghanistan Central Bank Assets for the People of Afghanistan*, WHITE HOUSE (Feb. 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/fact-sheet-executive-order-to-preserve-certain-afghanistan-central-bank-assets-for-the-people-of-afghanistan/>.

² See e.g., Georgios Pavlidis, *The Troubling Shortcomings of International Asset Freezes: The Hunt for Gaddafi's Lost Billions*, 29 AFR. J. INT'L & COMP. L. 644 (2021); Aaron Moss, *Asset Preservation, State Cooperation and the International Criminal Court*, 22 MELB. J. INT'L L. 57 (2021); Manuel Galvis Martinez, *Forfeiture of Assets at the International Criminal Court; The Short Arm of International Criminal Justice*, 12 J. Int'l Crim. Just. 193 (2014); C. Ferstman, *Cooperation & the ICC: The Freezing, Seizing and Transfer of Assets for the Purpose of Reparations in* (eds), OLYMPIA BEKOU & DALEY BIRKETT (EDS.), COOPERATION AND THE INTERNATIONAL CRIMINAL COURT (2016); Daley J. Birkett, *Asset Recovery at International (ised) Criminal Tribunals: Fines, Forfeiture, and Orders for Reparations in* NINA H.B. JORGENSEN (ED.), THE INTERNATIONAL CRIMINAL RESPONSIBILITY OF WAR'S FUNDERS & PROFITEERS (2020); Daley J. Birkett, *Pre-Trial "Protective Measures for the Purpose of Forfeiture at the ICC" Safeguarding and balancing competing rights and interests*, 32 LEIDEN J. INT'L L. 585 (2019); Conor McCarthy, *What Happens to the Frozen Fortune? The Libya Situation and Claims for reparation*, 4 EURO. H. R. L. REV. 318 (2011).

similar measures do not give rise to forfeitable assets that can later be repurposed for restitution or reparations measures or as part of a fine or penalty in the criminal justice process.

However, questions exist as to whether the oligarchs targeted by sanctions would ever be charged with war crimes or crimes against humanity – even from the aiding and abetting standpoint—thus calling into question the validity or usefulness of sanctions and highlighting the need to ensure due process and legitimacy in any processes, including the ability of designees to challenge such sanctions. Some of those subjected to sanctions have argued that their inclusion as a Specially Designated National (hereinafter “SDN”) is improper such that sanctions should be lifted. A number of dual Russian-EU/UK nationals have filed lawsuits to remove their designation and release their assets, or a portion thereof. As the war continues to escalate four months following Russia’s initial invasion, it appears that such measures have not had the intended impact.

The United States, United Kingdom, Canada, and other countries have indicated plans to ease the process in which the assets of sanctioned individuals may be seized and forfeited. The Biden Administration in the U.S. announced a streamlined process to forfeit property (including an expedited review procedure before the federal courts), a new criminal offense that would make it unlawful for any person to knowingly or intentionally possess proceeds directly obtained from corrupt dealings with the Russian government, as well as an expansion of the definition of racketeering to include sanctions evasion. It also includes a plan for an expedited process to transfer forfeited Russian funds to Ukraine. The US proposal also would allow for the forfeiture of property used to evade or facilitate sanctions violations.

France recently announced that it would be selling a seized Russian yacht at auction, given the exorbitant storage and maintenance costs. It is likely other nations will begin to do the same. Whilst this may result in the best preservation of liquid assets, concerns arise regarding the protection of the rights of the property owners, especially where challenges may arise as to the legality of the original imposition of sanctions and seizure of property as well as due process concerns, including issues of extra-territorial jurisdiction and access to justice. Thus, the appointment of receivers, trustees, and evaluation experts would at a minimum provide transparency and a level of competency to the process, especially when assets are being liquidated.

SUGGESTED PROVISIONS ON SANCTIONS IN A PEACE AGREEMENT

Any peace agreement or settlement between Russia and Ukraine thus needs to include provisions on existing sanctions, the easing or removal of sanctions, the imposition of future sanctions, as well as management and repurposing of assets. Ideally, a standing authoritative body would be established specifically regarding sanctions.

The development of a claims commission or other similar body to govern reparations or restitution should implement matters of sanctions and frozen assets and have provisions that take these matters into account. The Authors note the concurrently published article in the Ukraine Peace Settlement Project,³ and recommend that, in addition to inclusion in the criminal justice process, any claims commission should work with a group established to govern

³ Anonymous, *A Russia-Ukraine Claims Commission After the Armed Conflict*, https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/anon_a_russia-ukraine_claims_commission_after_the_armed_conflict_web_version.pdf.

sanctions matters – either as a subgroup to the claims commission or as an independent body that coordinates with the various sectors handling assets and the other consequences of sanctions designations.

Sections of a peace agreement related to sanctions should consider the uniqueness of ongoing investigations, evidence gathering, documentation, and even prosecutions and convictions in Ukrainian and Russian courts of soldiers for war crimes. Any agreement should also take into consideration the global impact of sanctions, including inflation resulting from restrictions on Russian oil and gas exports as well as the growing food crisis that will impact nations already struggling with famine.

An agreement should also consider the easing (or re-imposition) of sanctions based on the behavior of the parties. One option is a staggered, or carrot and stick approach. As troops withdraw, scale back their operations, cooperate with investigators, and surrender wanted persons for arrest and prosecution, sanctions can be scaled back, assets can be unfrozen for legitimate peaceful purposes, and visa bans can be lifted.

In theory, this sounds beneficial. In practice, it could potentially create a nightmare for the already overwhelmed sanctions professionals in business and banking. Sanctions elimination or de-listing should be one of the last measures taken as other possibilities exist to provide relief from sanctions (in the forms of specific licenses or judicial or regulatory granting of the unfreezing of particular assets for specified purposes). These forms of temporary relief could be afforded early in the peace process, with full de-listing occurring at a later agreed upon point. Additionally, the parties could agree as to de-listing of specified individuals or entities at the outset and a timetable of when and under what conditions additional individuals or entities will be delisted. Further, because some jurisdictions make sanctions violations a strict liability offense, aside from the legislative and governance hurdles of having a rapid response to sanctions rollbacks or re-imposition, this would also create a nightmare for those attempting to comply with the law and the broad scheme of unilateral and multilateral sanctions. However, any peace agreement could certainly contain a provision of a red line at which point new sanctions or re-designation could occur based on specified acts or omissions.

One area where sanctions could be in a stop/start phase would be on the higher state level or general broad sanctions, such as access to the SWIFT banking system, release of frozen central reserves, or lifting of bans on the importation of oil or natural gas and similar trade embargoes. These actions would not have the day-to-day complexities for sanctions compliance, and are implemented on a broader basis, without the implications to the thousands of individuals and entities that are currently the targets of specific sanctions.

Thus, the following are suggested provisions that a peace or settlement agreement should include.

First, any agreement should contain terms and ensure that all States imposing sanctions or seizing / freezing assets in this context have laws, regulations, and/or procedures that are as uniform as possible as to:

- Required links between specified crimes or unlawful behavior and the assets identified;
- Processes as to the management of assets so as to preserve their value to the greatest extent possible, either in current form or via liquidation and transfer to cash accounts;

- Procedures for the seizure and forfeiture process that meet minimum international standards of due process and rule of law; and
- Legislation and/or regulations for the implementation of court orders, either from domestic jurisdictions or the ICC regarding the seizure or release of funds, including the elimination of sanctions orders or SDN designations.

Second, involved and interested parties to the conflict should cooperate to develop the following:

- A secure digital platform in which all sanctions designations and information regarding asset seizures or freezes can be organized for the benefit of state parties and those individuals or corporations who have been subjected to sanctions;
- Appointment of national contact points, including representatives from State Financial Investigation Units (hereinafter “FIUs”) to coordinate efforts between the coalitions managing assets across borders with the home States in which assets are held and/or sanctions orders are in place;
- An agreement as to whether forfeitures will be civil, criminal, or administrative, or the ability to enter into agreements in different contexts depending on the circumstances (*see International and Domestic Legal Authority section for examples*);
- The parties must ensure that minimum standards as to burden of proof, requirements of a conviction, or other aspects operate cooperatively with the goals of the forfeiture process, and that individuals facing forfeiture of property have all the rights and remedies under internationally recognized standards of due process, including the right to challenge a forfeiture and means of appellate review of such a decision by an independent and unbiased body or court.

Third, the Parties should agree to the establishment of a sanctions review and enforcement body composed of representatives from interested states--a representative from Ukraine and Russia--and with one additional representative from a state to be nominated by Ukraine and Russia. This body could coordinate between various entities, state parties, courts (including the ICC) and other investigative and financial regulatory bodies (including FATF and INTERPOL). As the current context involves sanctions, designations, and seizures in multiple jurisdictions, the establishment of a centralized commission responsible for delisting and other determinations would circumvent the burdens of multijurisdictional litigation and/or regulatory decision—particularly regarding enforcement issues—whilst ensuring efficiency and judicial economy for designated individuals who, at present, must bring cases and claims before multiple jurisdictions. If sanctions delisting and un-freezing of assets are going to be part of the peace process, ideally there should be a uniform and central body with the authority to engage in this, with third parties agreeing to be bound by its decisions. This body could be responsible for the following:

- Monitoring implementation of sanctions and enforcement, including non-compliance or sanctions evasion enabling by states or individuals, and the creation of an ad hoc mutual legal assistance treaty (“MLAT”) for the sharing of information or transfer of evidence and/or assets;
- Coordinating multilateral designations of additional individuals based on credible information received or changes to existing sanctions;
- Considering requests for exemption, removals of designations, or limited relief or release of funds;
- Establishing further guidelines and procedures to carry out these duties;

- Facilitating the sharing of information and communication and/or negotiations between the parties and interested stakeholders;
- Coordinating any claims or restitution commission, as well as any investigative or prosecutorial bodies or entities;
- Experts to conduct valuation of assets and make recommendations as to their management and preservation;
- Appointment of receivers or trustees to manage assets, providing regular reports to the authority to ensure assets are being preserved and properly managed, with a full and transparent accounting; and
- Any jurisdiction that seized or froze assets pursuant to sanctions related to the conflict would be responsible for making regular reports as to the assets seized or frozen, preservation efforts, or requests for transfer or release of assets. Jurisdictions should have one liaison or focal point to coordinate with the authority, respond to requests for information, or facilitate cooperation and compliance with court or regulatory orders.

Any authority set up to assist in this process should also have clearly established and agreed procedures as to:

- Rights of those appearing before the authority, including access to evidence and procedures to challenge designations, freezes, seizures and/or forfeitures, as well as meaningful review;
- Decision-making authority and procedures (i.e. majority vote, aspects of the proceeding itself, evidentiary rules); and
- Enforcement and implementation of decisions at the state level, including compliance with any orders to remove designations or unfreeze assets.

Finally, the sanctions process should also be closely linked and integrated with the criminal justice systems, whether within nations or at the ICC. This provision would include:

- Forfeiture of assets in exchange for a more lenient sentence or charging decisions, or combined with cooperation / witness testimony / evidence in exchange for immunity; and
- “Investment” in rebuilding Ukraine – developing an economic scheme to use assets that were frozen but unlikely to be forfeited in conjunction with criminal proceedings and creating a temporary cash flow to provide immediate relief and rebuilding of the most necessary structures.

ROLE OF THE ICC IN THE PEACE SETTLEMENT PROPOSAL

As sanctions are being imposed amidst the commencement of investigations and prosecutions before domestic courts and the ICC, the interplay and cooperation between sanctions, asset recovery, and international criminal justice is crucial to an effective peace settlement and post-conflict justice to ensure funds are available for reparations to victims. Thus, the operation of sanctions and forfeitures at the ICC must be not only considered but also inform this process.

The principles and law supporting the above proposal for Russia and Ukraine are not new concepts. Precedents for such proposals already exist in both domestic jurisdictions as well as before the ICC. Whilst financial crimes do not fall under the ICC’s jurisdiction, financial investigations for the purpose of “tracing, freezing, seizure and recovery of stolen assets or

assets otherwise linked to the commission of international crimes or persons accused of them” is crucial to securing and providing meaningful justice and reparations to victims.⁴ Specifically, the Rome Statute targets assets linked to crimes within the Court’s jurisdiction for the purpose of (i) confiscation or forfeiture as a penalty under article 77(2)(b); (ii) confiscation for the purpose of reparations under article 75; and (iii) provisional, protective measures under article 93(1)(k).⁵

The Office of the Prosecutor (hereinafter “OTP”) undertakes financial investigations under article 54 of the Statute, aimed at identifying financial flows which may “form the basis for possible future forfeiture orders and reparations awards to victims” under article 93(1)(k).⁶ The OTP may submit requests to States “pursuant to article 93(1)(k) of the Statute for the purpose of identifying, tracing, freezing, and seizing assets.”⁷ Additionally, at the pre-trial phase, following a warrant of arrest or summons to appear, the Pre-Trial Chamber may issue requests to States “for the ‘identification, tracing, and freezing or seizure of proceeds, property, and assets and instrumentalities of crimes’ pursuant to [articles] 57(3)(e) and 93(1)(k) as protective measures for the purpose of forfeiture and for the ultimate benefit of victims.”⁸ The Registry subsequently “makes all possible efforts to obtain the tracing, identification and seizure of the assets of persons put on trial in order to secure available assets to satisfy any fines or orders for forfeiture or reparations that the Chamber may render for the ultimate benefit of victims.”⁹

Following conviction, the relevant Chamber can “make an order directly against a convicted person” for reparations pursuant to Article 75(2).¹⁰ Article 75(4) empowers the Trial Chamber to “‘determine whether . . . it is necessary’ to issue cooperation requests ‘to give effect to’ any reparations orders made.”¹¹ The Court may also order the “forfeiture of proceeds, property and assets derived directly or indirectly from that crime” as an additional penalty to imprisonment pursuant to Article 77(2)(b).¹² Pursuant to articles 86-88, State Parties are “legally required to cooperate fully with the Court throughout such financial investigations for the purpose of asset recovery including, as necessary, through adjustments to their domestic legal and institutional frameworks.”¹³

However, the process has not always gone as smoothly as the Rules would suggest. In *The Ntaganda* and *Bemba* cases, the issues were severe, illustrating the need for better asset management procedures and state cooperation.¹⁴ Such issues, however, may potentially be overcome where the ICC asset recovery regime is part and parcel of a sanctions, asset recovery, and reparations mechanism within the peace agreement between Ukraine and Russia.

⁴ International Criminal Court, *Financial Investigation and Recovery of Assets* (November 2017), https://www.icc-cpi.int/news/seminarBooks/Freezing_Assets_Eng_Web.pdf, at 4 [hereinafter ICC Asset Recovery Report]; International Criminal Court, *Workshop Forward-looking Conclusions: Report on Cooperation Challenges faced by the Court with Respect to Financial Investigations*, (26-27 October 2015), <https://www.icc-cpi.int/iccdocs/other/161027-ICC-Rep-Eng.pdf>, at 1 [hereinafter ICC Workshop Report on Cooperation].

⁵ Pavlidis, *supra* note 2, at 523-24.

⁶ ICC Asset Recovery Report, *supra* note 4, at 6; ICC Workshop Report on Cooperation, *supra* note 4, at 2.

⁷ ICC Asset Recovery Report, *supra* note 4, at 6.

⁸ *Id.*

⁹ *Id.* at 6-7.

¹⁰ Moss, *supra* note 2, at 67-8.

¹¹ ICC Asset Recovery Report, *supra* note 4, at 6.

¹² Moss, *supra* note 2, at 67-8.

¹³ ICC Asset Recovery Report, *supra* note 4, at 7.

¹⁴ See Daley J. Birkett, *Managing Frozen Assets at the International Criminal Court: The Fallout of the Bemba Acquittal*, 18 J. INT’L CRIM. JUST. 765 (2020).

INTERNATIONAL AND DOMESTIC LEGAL AUTHORITY

Similar to the ICC, national jurisdictions that have frozen private Russian assets have a myriad of mechanisms for the recovery and repurposing of assets of “individuals and organizations as a consequence of their involvement in conflict” which must be considered in line with the above proposals.¹⁵ These regimes require three elements: “(a) lawful designation and freezing of assets; (2) lawful confiscation; and (c) where relevant, lawful repurposing, balancing the rights of the designated individual or entity and due process with the rights of victims to effective reparations.”¹⁶

First, the United Nations system of asset freezing, preservation and management within UN Security Council Resolutions 1373 and 1452, dictates guidelines for the implementation of UN Member State asset freezing legislation as well as mechanisms for freezing assets internationally.¹⁷ The power to impose such freezes is based in the UN Security Council’s Chapter VII powers.¹⁸ UN Security Council resolutions which impose asset freezes “may also include provisions that directly, or by implication, limit the Member States’ ability to ‘confiscate or repurpose’ the frozen assets, or may impose conditions before such repurposing may take place.”¹⁹

EU sanctions also provide for the freezing of assets and funds.²⁰ On 25 May 2022, the European Commission proposed new rules to strengthen asset freezing and confiscation procedures, specifically focused on the assets of Russian oligarchs.²¹ The current asset recovery and confiscation legal framework in place in the EU is found across four legal instruments which outline procedures relating to inter-state cooperation, tracing, freezing, confiscating and managing criminal property: (1) the 2007 Asset Recovery Offices Council Decision; (2) the 2014 Confiscation Directive 2014/42/EU; (3) the 2005 Framework decision on confiscation 2005/212/JHA; and (4) Regulation 2018/1805 on mutual recognition of freezing orders and confiscation orders.²²

EU Member States have individual legislation that should be harmonized during any peace negotiations and decisions on sanctions and handling of frozen or seized assets. In Switzerland, for example, the Foreign Illicit Assets Act allows for the freezing, confiscation and restitution of assets “deposited in Switzerland by foreign corrupt officials and their close associates.”²³ Under the Act, “the Swiss Federal Council may order assets to be frozen” and “provides a

¹⁵ HOGAN LOVELLS & REDRESS, FINANCE FOR RESTORATIVE JUSTICE: USING SANCTIONS AND TERRORIST FINANCING LEGISLATION TO FUND REPARATIONS FOR VICTIMS OF SEXUAL VIOLENCE IN CONFLICT (2020), https://www.hoganlovells.com/-/media/hogan-lovelles/pdf/2020-pdfs/2020_01_29_rethinking-reparations-report.pdf; HOGAN LOVELLS, GLOBAL SURVIVORS FUND, REDRESS & GOLDSMITH CHAMBERS, FINANCE FOR RESTORATIVE JUSTICE: VOLUME II (2021), https://www.hoganlovells.com/-/media/hogan-lovelles/pdf/2021-pdfs/2021_06_25_finance_for_restorative_justice_-_volume_ii_stage_5.pdf.

¹⁶ HOGAN LOVELLS, GLOBAL SURVIVORS FUND, REDRESS & GOLDSMITH CHAMBERS, *supra* note 15, at 26.

¹⁷ HOGAN LOVELLS & REDRESS, *supra* note 15, at 23.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 23.

²⁰ *Id.*

²¹ *Questions and Answers: The Commission proposes rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals*, EUROPEAN COMMISSION (May 25, 2022), https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_3265.

²² *Id.*

²³ HOGAN LOVELLS & REDRESS, *supra* note 15, at 23.

procedure” for the confiscation of frozen assets followed by a procedure to “restore the assets to the country of origin for the purpose of improving *‘the living conditions of the inhabitants of the country of origin,’* and strengthening *‘the rule of law in the country of origin.’*”²⁴ France adopted provisions establishing the procedures for the seizure, confiscation, and sale of “ill-gotten gains” of convicted politically exposed persons.²⁵ The French provisions also establish procedures such that proceeds from such sales would be returned to “the populations of the countries of origins.”²⁶

In the United Kingdom, the Sanctions and Money Laundering Act 2018 (SAMLA 2018, Unexplained Wealth Orders (UWO) under the Proceeds of Crime Act 2002 (POCA) allow for the freezing and/or confiscation of proceeds of crime through civil as well as criminal mechanisms.²⁷ Under the Magnitsky clause of the SAMLA 2018, the UK can “freeze the assets of individuals responsible for” grave human rights abuses.²⁸ Under POCA, an “enforcement authority . . . can make an application to the High Court for a UWO.”²⁹ The High Court must satisfy four criteria to establish that the property in question was unlawfully obtained through criminal activity.³⁰

In the United States, the International Emergency and Economic Powers Act (the “IEEPA”) vests in the President the power to impose financial sanctions, including asset freezes and confiscations of “the property of any person, organization or country determined to be responsible for attacks against the United States or US interests”³¹ and also to repurpose such frozen and/or confiscated assets “in any way determined to be in the best interests of the country.”³²

As suggested in the proposal above, the differences in procedures, legal standards, and opportunity for relief between various countries highlight the importance of creating a uniform agreed standard and process that will be applied by the parties involved in any decisions or procedures involving sanctions, reparations, forfeitures, or the return of assets in this conflict.

CONCLUSION

Whilst sanctions and asset forfeitures may appear to be a unique and small part of the broader peace process, significant overlap exists such that their role in the peace process must be considered in line with international justice and accountability, claims for reparations or restitution, and the rebuilding process. Thus, any comprehensive peace agreement should recognize the various parts in which sanctions are a necessary consideration and ensure that provisions exist for every step of the process. For lasting peace and reconciliation to be successful, the parties involved must feel that the process was legitimate, their rights were protected, and that they did not suffer undue harm or violations of the rule of law.

²⁴ *Id.*

²⁵ HOGAN LOVELLS, GLOBAL SURVIVORS FUND, REDRESS & GOLDSMITH CHAMBERS, *supra* note 15, at 27.

²⁶ *Id.*; see also *Civil Society Submission: Draft MLA Treaty – Asset Recovery*, REDRESS (Feb. 18, 2022), <https://redress.org/wp-content/uploads/2022/02/2022.02.23-MLA-Initiative-Submission-Asset-Recovery-.pdf>.

²⁷ HOGAN LOVELLS & REDRESS, *supra* note 15, at 27.

²⁸ *Id.* at 25.

²⁹ *Id.* at 27.

³⁰ *Id.*

³¹ *Id.* at 24.

³² *Id.*