Designing Sanctions

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Maximilian Strobel



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When European leaders met at the European Council in December 2025, one topic was high on the agenda: how frozen Russian assets could be used to finance Ukraine without formally transferring ownership or violating international law. These assets, which are held primarily by the Belgian financial services provider "Euroclear," have been frozen since 2022.

This debate around Russian assets does not arise in isolation. It is part of an unprecedented sanctions regime that the EU adopted against Russia. These sanctions included asset freezes, trade restrictions, and airspace closures. Particularly impactful were measures targeting financial infrastructure, including the exclusion of Russian banks from SWIFT and the withdrawal of services by major payment providers. Similarly, key service providers such as Visa and Mastercard retreated from the Russian market.

Among these measures, the freezing of Russian central bank reserves stands out. These sanctions are directed against assets that constitute an

essential element of a State's monetary sovereignty, enabling the State to stabilise its currency and perform international transactions. Given its core functions for the State, these assets are, to some extent, protected under international law. While these legal questions were already raised when freezing Russian central bank reserves, these issues became much more prominent in recent discussions on how these assets could be used without formally transferring ownership. It was, in fact, these legal concerns, rather than practical limitations, that led to the creation and abandonment of the Commission's Reparation Loan scheme. This paper argues that the European Union's (EU) ability to act on the Russian central bank reserves is severely restricted by international law and that these constraints explain both the design and the limits of the EU's approach. In particular, it shows that the EU's approach is characterised by attempts to preserve the formal legal status of the assets while nevertheless extracting economic value from them.

To showcase the critical impact that these legal considerations had on the policy choices of the European Council, it is appropriate to provide a clearer picture of the legal challenges that the EU faced. This is not only helpful to explain the December 2025 Council decisions but also serves as an illustration of the legal limits of EU action in the future.

In essence, the legal controversy can be traced back to a clash of two legal ideas: On one hand, under the law of sovereign immunity, central bank assets are protected from interference of third countries. On the other hand, the law of State responsibility allows countermeasures in response to another State's breach of international law, such as, for example, Russia's invasion of Ukraine. This paper aims to provide some insights into this controversy in order to determine its implications for the EU's past and future action.

This paper will be divided into two parts. **Part I** will focus on the framework that governs central bank reserves under international law by first analysing the types of protection afforded to central bank reserves and secondly examining whether an unlawful interference with these protections could be justified as countermeasures. **Part II** will then apply these concepts to the case of the EU's handling of frozen Russian central bank reserves. It will analyse how the EU structured its response to avoid the legal risks associated with outright seizure and why it nevertheless abandoned its Reparation Loan scheme.

When it comes to the seizure of Central Bank Reserves (CBR), most political discussions are underpinned by legal considerations. The legal discussions on the seizure of CBR can be reduced to two key concepts in international law: immunity and countermeasures. These legal concepts are not merely theoretical but determine which forms of action are realistically available to the EU in practice. This chapter will analyse the two concepts in the abstract, and the next chapter will analyse the EU's conundrum in detail.

In this context, sovereign immunity, in simple terms, means that one State is restricted in what action it can undertake regarding the property or persons of another State located in its territory. Conceptually speaking, there are two strands of immunity. Personal immunity refers to the immunity enjoyed, for example, by heads of State or other foreign officials. Material immunity protects State property located in another State. This covers, for example, CBRs, which are, to some extent, protected against seizure under the material aspect of the law of sovereign immunity. This is a simplified, conceptual description of sovereign immunity, and the precise content of this norm under international law will be discussed in greater depth below.

Material sovereign immunity is based on several sources of international law. First, several regional treaties and the UN Convention on Jurisdictional Immunities of States and their Property address the question of immunities. However, the limited membership of the former and the fact that the latter convention has not yet entered into force render this source of law less relevant for most cases. Secondly, most aspects of the UN Convention are considered to reflect customary international law. Customary international law is a source of international law that is binding for all States and, put simply, is created through continuous State practice under the belief that a legal obligation exists to behave that way. These customary norms form the legal background to most discussions of central bank immunities.

Because customary international law is created by State behaviour and is not codified in treaties, it is often difficult to establish the exact content of obligations under customary international law. When trying to identify what exactly States are allowed and not allowed to do under the law of sovereign immunity, one must look at two concrete aspects: (1) what assets are protected, and (2) against which acts these assets are protected.

First, regarding which acts and assets are covered by sovereign immunity, one must distinguish between two approaches. Following the absolute immunity approach, all activities of the sovereign are covered by immunity. Under this approach, all Russian State assets located abroad would be protected, even if they are used in purely commercial transactions. This actor-focused approach has largely been rejected under international law. Instead, a more restrictive, functional approach is adopted, which considers the nature of the activity in question. Here, it distinguishes between *acta iure imperii*, referring to acts of a State in its sovereign capacity, and *acta iure gestionis*, referring to acts of a State of a commercial nature. The former are subject to sovereign immunity, whereas the latter are not. The UN Convention follows that approach, and most scholars and States agree that the functional approach is reflective of customary international law. Translated into practical effects, this more restricted approach means that where Russian assets are merely used for commercial transactions, for example, to contract workers for repainting the Russian embassy in Berlin, these transactions and assets would not be covered by sovereign immunity. However,

CBR assets are directly linked to the exercise of sovereign capacity, namely, to influence and direct the Russian State's monetary policy. These assets would be protected by sovereign immunity.

Secondly, a question arises regarding the acts against which these acts and assets are protected. The UN Convention and most scholars refer to "jurisdictional" immunities, meaning that the assets are protected from the other State's adjudicatory and enforcement jurisdiction. The latter protects, for example, against so-called attachment or execution procedures whereby assets of the foreign State are "blocked" or seized to ensure the availability of compensation *in the process of court proceedings* against the foreign State. Some commentators have pointed out that, in the absence of a link to court proceedings, the seizure or freezing of CBRs would not trigger the rules of State immunity. This approach is supported by the Convention, the International Law Commission's Draft Articles, and, to some extent, State practice. Thus, a determining factor is whether the acts of the home State against property of the foreign State took place within the context of judicial proceedings. The internal law of the home State determines this question. However, it is important to note that some States and scholars are critical of this approach. In *Timor-Leste v Australia*, the applicant State argued that adopting such a narrow understanding of immunity would allow States to disregard their obligations under the law of immunity simply by issuing executive rather than judicial orders, creating a paradoxical and undesirable situation.

Applying these norms to the case of CBRs, it is clear that under a restrictive approach to immunity, central banks are acting in sovereign capacity of the State, meaning their acts are *acta iure imperii* and thus protected by sovereign immunity. If a broader understanding of immunity is followed, under which executive, administrative, and legislative acts are covered, seizure of CBRs would implicate sovereign immunity. However, if one follows the approach of the UN Convention and the International Law Commission, the question of whether CBRs are protected against seizure under sovereign immunity depends entirely on whether the seizure took place within the context of judicial proceedings.

In sum, although doctrinally unclear, there are strong arguments that suggest that CBRs are among the most strongly protected categories of State property. Despite the uncertainty, the possibility of being held liable for breaches of sovereign immunity significantly restricts any interference by the EU or its Member States (MS).

Assuming, for the sake of argument, that the seizure of CBRs implicates and breaches the customary international law norms of sovereign immunity, this would implicate the international responsibility of the home State or international organisation. It would give Russia a claim for reparations, creating significant financial risks. This risk is particularly acute for MS such as Belgium, where large volumes of these assets are held.

When a State or an international organisation has breached their obligations under international law, they, in principle, incur so-called international responsibility for this breach. Such responsibility creates several new obligations, such as the obligation to cease the wrongful act and to pay reparations to the injured State. In this case, if Belgium were to seize Russian CBR assets in violation of sovereign immunity, Belgium would incur international responsibility and would be obliged to pay reparation to Russia. However, under the law of State responsibility, the legal regime that governs this "procedure", there are several circumstances that can preclude the wrongfulness of an act. Put simply, there are ways to justify a breach of Russia's sovereign immunity. These circumstances are listed in Chapter V of the International Law Commission's Articles on State Responsibility (ARSIWA). These Articles reflect the status of customary international law and thus are helpful to understand these circumstances that preclude wrongfulness.

In the context of freezing or seizing CBRs, the most important circumstance is the concept of countermeasures found in Article 22. This concept, its limits, and its implications for the freezing or seizing of CBRs will be discussed below.

Countermeasures refer to non-forcible measures taken by a State in response to an international wrongful act of another State, aimed at achieving cessation or reparation. Simplified, this argument goes as follows: Because Russia has invaded Ukraine and thus violated its obligation not to use force against another State, Belgium and the EU are allowed to freeze and seize Russian CBR assets as a sanction to bring Russia to stop its invasion. However, international law is (unfortunately) not this straightforward. It places strict limits on the use of countermeasures, in particular on who is allowed to enact countermeasures and what conditions these measures must fulfil.

The question of who can impose countermeasures is the source of a major discussion in international law scholarship. One generally distinguishes between countermeasures imposed by an injured State and countermeasures imposed by a third party. In the case of Russia, Ukraine is the injured State, while Belgium would be a third party. While the rights of injured States are fully recognised as customary international law, the right of third States to impose countermeasures is controversial. A detailed discussion on the issue of third State countermeasures would go beyond the scope of this paper, but it is important to understand that, as the law stands right now, the existence of the right to take countermeasures as a non-injured third State is highly disputed at best.

Assuming, for the sake of the argument, that both injured and non-injured States may take countermeasures, they must comply with important requirements listed in ARSIWA. Firstly, as mentioned above, a prerequisite for the imposition of countermeasures is the existence of a prior international wrongful act by the other State. Secondly, the State taking the

countermeasure must have first called upon the wrongdoing State to cease its wrongful act and make reparations. Thirdly, once countermeasures are adopted, they must be proportionate, reversible, and they must be terminated as soon as the wrongdoing State resumes compliance with its international obligations.

Applying these conditions to the case of CBRs, the first and second conditions generally do not raise issues. First, Russia did breach its obligation not to use force against another State by invading Ukraine in 2014 and 2022 and second, the EU and Belgium have at multiple international fora called upon Russia to stop its invasion. However, a noticeable issue arises under the third requirement with regard to the reversibility of the countermeasure. Seizure or a permanent transfer of CBRs is difficult to reconcile with the requirement of reversibility, as it entails a permanent transfer of title that cannot easily be undone once the assets are used.

Thus, while countermeasures offer a potential legal escape for the EU and Belgium, their strict conditions, in particular reversibility and the uncertainty of third State countermeasures, severely restrict the EU's and Belgium's ability to rely on them to justify a seizure of Russian central bank assets. Once again, even though a clear legal answer is absent, the legal ambiguity creates financial risks for Belgium, potentially requiring it to repay the seized assets and pay compensation.

The EU's proposal focused on achieving a reversible mechanism, which is a central requirement under the law of countermeasures, while nevertheless allowing it to use Russian frozen assets to finance Ukraine's war effort. Under the EU's proposal, the EU would borrow the money from the financial service providers that held the Russian CBRs. The EU would then provide this money as a zero-interest loan to Ukraine. If Russia were to pay Ukraine war reparations, which the EU and the G7 insist on, Ukraine would use these reparations to repay the loan to the EU, which in turn would repay its loan from the financial service providers. These providers can then reimburse Russia. This proposal would prevent outright seizure of the assets, which, as shown above, is legally problematic, while achieving the goal of financing Ukraine. Thus, from an international law perspective, this proposal is legally defensible, albeit contested, as it preserves reversibility and avoids a direct transfer of ownership, even if it remains dependent on contested aspects of international law. Importantly, the underlying assets remain formally Russian property throughout this structure.

Nevertheless, this Reparation Loan scheme was ultimately rejected, in particular, due to remaining legal concerns. Although the Commission's proposal is legally defensible, it nevertheless rests on legal ambiguities, which expose Belgium to a significant financial risk if Russia were to prevail in potential legal proceedings.

The present analysis provides some crucial insights into the future of EU sanction regimes. The debate around using Russian central bank assets for Ukraine has shown that legal ceilings continue to constrain EU action, in

particular where a potential illegality puts individual MS at a severe financial risk. Besides legal problems, the case of Russian central bank assets shows that the EU is aware of the potential implications of crossing the Rubicon and seizing foreign central bank reserves. This could set a dangerous legal and political precedent for future actions by other States and put EU and MS assets in danger.

Three takeaways are key from this discussion. First, international law might be under pressure in the current geopolitical climate, but it nevertheless continues to place significant constraints on States' actions, in particular in the economic and financial arena. Navigating these legal constraints while achieving the desired objectives requires legal creativity and flexibility. The Commission's original Reparation Loan scheme must be applauded for this creativity. Its ultimate failure, however, shows how acutely aware Member States are of the financial risks involved in interfering with foreign central bank reserves. Second, actions against foreign central bank reserves are integrated within a broader set of financial sanctions. Many of these revolve around restricting Russia's access to financial infrastructure and trade. These measures raise fewer issues under international law. If combined effectively, the lawful freezing of central bank reserves can be sufficient to achieve the desired effect without needing to outright seize these assets. Finally, the case of Russian central bank reserves demonstrates that international law does not merely limit State action, but it actively shapes the architecture of financial sanctions.