



# Foreign Affairs Committee

## Oral evidence: Recovery in Ukraine, HC 1381

Tuesday 23 May 2023

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Members present: Alicia Kearns (Chair); Saqib Bhatti; Liam Byrne; Neil Coyle; Drew Hendry; Bob Seely; Henry Smith; Royston Smith; Graham Stringer.

Questions 1 - 55

### Witnesses

I: Simon Smith, former UK Ambassador to Ukraine, and Chair, Steering Committee, Ukraine Forum, Russia and Eurasia Programme, Chatham House; Natalie Jaresko, former Minister of Finance of Ukraine, and finance and restructuring expert; Dr Vlad Mykhnenko, Associate Professor of Sustainable Urban Development, St Peter's College, University of Oxford.

II: Olena Bilan, Chief Economist at Dragon Capital, and Co-Chair of the Board of Directors, Kyiv School of Economics; Olena Halushka, Board Member, Anticorruption Action Center, and Co-Founder, International Center for Ukrainian Victory; Anna Myroniuk, Head of Investigations, *Kyiv Independent*.

III: Andriy Kostin, Prosecutor General, Office of the Prosecutor General of Ukraine; Professor Antonios Tzanakopoulos, Professor of Public International Law, St Anne's College, University of Oxford.



## Examination of witnesses

Witnesses: Simon Smith, Natalie Jaresko and Dr Vlad Mykhnenko.

**Q1 Chair:** Welcome to this session of the Foreign Affairs Committee. Today will be a one-off session looking at priorities for the Ukraine Recovery Conference and wider international support to Ukraine ahead of the conference being held next month in the UK. Thank you ever so much to our guests for joining us. Vlad, can I ask you to introduce yourself?

**Dr Mykhnenko:** I am Dr Vlad Mykhnenko. I am associate professor of sustainable urban development and research fellow at St Peter's College, Oxford.

**Simon Smith:** I am Simon Smith. I retired from Her Majesty's Diplomatic Service at the beginning of last year, and I was ambassador to Ukraine from 2012 until 2015.

**Natalie Jaresko:** My name is Natalie Jaresko. I am the former Minister of Finance of Ukraine, having served from 2014 to 2016 and resided in Ukraine from 1992 through to 2017.

**Q2 Chair:** Thank you ever so much. Simon, can you set the context for why this conference is happening now? What are the priorities and why is it so crucial to focus on rebuilding at this point?

**Simon Smith:** The really important thing is that rebuilding cannot wait until the war is over. That is the simplest answer to the question. As a lot of members will know, this is not the first such conference, but the sixth. It started off being called the Ukraine Reform Conference and it is now called the Ukraine Recovery Conference. It has not been invented from nowhere, as it were, but the focus on recovery underlines the fact that some of the recovery and rebuilding needs to start now. Even if rebuilding itself does not start now, the thinking about what needs to be rebuilt and what it is going to take to make that recovery and rebuilding successful also has to be going on now.

**Q3 Chair:** Do you think it is odd that this is not a pledging conference?

**Simon Smith:** In some respects it is understandable. The evidence from the last couple of years has shown us that Governments and other institutions do not need the stimulus of a pledging conference itself to make pledges and commitments to support Ukraine.

The figures that are out there in the background at the moment, in my view, are not terribly precise. It is not a very precise science, estimating what it is going to take to rebuild Ukraine and enable its successful recovery, but there have been figures over \$400 billion. At last year's recovery conference, the Ukrainian Prime Minister's headline figure was \$750 billion. The figures out there are very well known, and minds will be concentrated on the dimensions of the task.

**Q4 Chair:** Natalie, to draw you on the exact point Simon has just made, the World Bank has estimated the recovery cost at £330 billion; the Ukrainian



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Government have said £600 billion. Given this discrepancy, what proportion of those costs can Ukraine realistically finance itself? Where is it currently looking like the cost will land?

**Natalie Jaresko:** Thank you very much for this opportunity to talk about what I believe is going to be the largest single rebuilding in our lifetimes. It is hard to price simply because we are talking about a rebuilding that is technologically advanced, is green and matches European Union accession at the same time.

When the Ukrainians outlined their \$750 billion number in their proposals, that was taking into account all the different elements they wished to incorporate. The numbers from the World Bank are in one sense partial. In a sense, it is the very basics of rebuilding what has been damaged, including more than 25,000 kilometres of road and over 3,000 educational institutions.

The challenge for rebuilding is, as you said, to identify how much the Ukrainian economy can produce and deliver in terms of recovery, how much the international private sector can contribute, how much will be taken from frozen Russian assets across the globe, as well as how much our bilateral Governments, taxpayers and international financial institutions will contribute.

Q5 **Liam Byrne:** Very quickly, these are big numbers. What clarity is there about what is going to need to go in as grant and what as concessional finance—in other words, debt?

**Natalie Jaresko:** There has not been a great deal of detail provided on that, but I can tell you that Ukraine, given the 30% to 35% drop in GDP in 2022 alone, is heading towards reaching a 100% debt-to-GDP ratio right now. As much as possible needs to be investment and grant, and as little as possible in the form of loans. Ukraine will be facing a wall in terms of potentially needing debt reprofiling or debt restructuring, if a great deal of it comes in as debt.

With that said, in that ratio the real number we need to focus on is growing GDP, not just limiting the debt. As much as we can, we need to focus on how to return people home to Ukraine. Of the 6 million refugees who have left to the West, how many can we attract home? What do they need in order to come home in terms of housing, schools and jobs? How much can we revitalise that economy to spur it to be more efficient?

Q6 **Chair:** Vlad, what are the greatest shortfalls when it comes to international co-operation on financial assistance to Ukraine?

**Dr Mykhnenko:** In terms of the figures, probably the best assessment is what you were referring to, the “Rapid Damage and Needs Assessment 2” paper published by the World Bank, the Ukrainian Government, the EU and the United Nations.

I would like to drill into those figures slightly. The \$411 billion total consists of two parts. One, at \$135 billion, is the direct damage to buildings and infrastructure. Those need to be rebuilt if we want to have



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houses and hospitals. The rest is the losses: economic output loss, increased operation costs, et cetera.

The \$411 billion figure has those two distinct parts. I have been playing with the \$135 billion figure itself and looking at the multiplier effect it will produce. If that money were pumped into the Ukrainian construction sector, we are looking at a figure of almost \$500 billion of extra output. That is probably three years of Ukraine's GDP.

It is an enormous amount of investment needed, but we also need to look at institutional absorption capacity and the ability of private sector firms to absorb this enormous amount of money to help reconstruction. This is probably where the discussion is moving. We do not know where this money is coming from, but, when it arrives, how will it be spent? That is now an important part of it.

**Q7 Chair:** Natalie, what are we defining as a successful recovery? Is it a return to pre-shock levels of economy within five years? Is it going back to the trend line of GDP? How are we defining this? Has anyone attempted to define what a successful recovery would be for Ukraine?

**Natalie Jaresko:** There have been a variety of reports, but a minimum of 5% to 7% GDP growth per year is a goal. The rationale behind that is that this economy has taken a hit and a decline not just since the fully fledged invasion but since the beginning of this war in 2014. This requires rapid growth and the rapid restarting of the economy. As I said, that is going to require an enormous amount of capacity rebuilding to put that money to work in order to be able to renew and recover.

**Q8 Royston Smith:** Simon, how much progress has Ukraine made on its governance reforms since 2014? How well-placed do these leave governance institutions to deliver on the national recovery plan?

**Simon Smith:** There has been progress since 2014. Personally, having followed where it has gone in those years, I feel slightly disappointed that it has not been quicker. On the other hand, when you compare it to the situation, across the board I think, institutions of Government in Ukraine being dysfunctional and eminently corruptible, I think that considerable progress has been made away from that position.<sup>1</sup>

You put your finger on a really important factor of what constitutes a successful recovery for Ukraine? If Ukraine has its infrastructure put back in place but the software of governance—the culture of effective, transparent and credible governance—is not improved, in my view it will not be a totally successful recovery.

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<sup>1</sup> Note by witness: When saying "On the other hand, when you compare it to the situation, across the board I think, institutions of Government in Ukraine being dysfunctional and eminently corruptible, I think that considerable progress has been made away from that position" I misspoke. What I meant to say was: "At the time when I was Ambassador there the institutions of Government in Ukraine were, across the board, dysfunctional and eminently corruptible. Compared to that, considerable progress has been made away from that position."



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There is progress. Looking at the members of the Ukrainian Rada who have come in since the parliamentary election in 2014, a lot of those people would not stand for the institutions of Government simply staying where they were. They had a great deal of momentum behind them because they were also able to say, "This is what millions of people went on the streets for in Ukraine in 2013 and 2014."

They wanted governance that delivered for the Ukrainian people on the basis of accountability and transparency, in which the institutions, particularly the judicial institutions, were there to deliver justice and not simply to shore up the position of the Government, as so often had been the case before that. Progress is being made towards that kind of Ukraine, but it is vital that those institutional aspects of rebuilding Ukraine are included in the overall concept for recovery.

**Q9** **Royston Smith:** It sounds like you might be saying that some support could or should be conditional on further reform in Ukraine.

**Simon Smith:** I am not sure I would put it that way. I am sure that will be the case. There will be institutions co-operating with Ukraine. There will be the European Union. As I understand it, Governments are talking about investment guarantees as they are supporting and encouraging the private sector to get involved in rebuilding Ukraine. I am sure there will be conditionalities all over those relationships.

It is not so much that, before we spend any money, we should draw up a great list of conditions that must be met and say, "Your noses have to be absolutely clean before we do that". In my view, that is unrealistic. We should be making sure we are not focused too much on infrastructure recovery at the expense of the institutional rebuilding and reform that still needs to go on.

**Q10** **Royston Smith:** Presumably, reform would need to take place if Ukraine were to start making progress towards EU membership. Support from external players and its desire to be in the EU, optimistically, should help it reform more quickly, in the way that other people might like to see.

**Simon Smith:** That is a realistic expectation. We have seen in the past the way in which the European Union has interacted with candidate countries. It will present what looks like quite a formidable set of requirements while saying, "Look, these are the standards you have to meet for European Union membership."

I can see very logically and very simply how that will apply in Ukraine and how, in some respects, the standards set for European Union membership can become some sort of vade mecum, as a guide and incentive for the institutional reforms that need to be made.

**Q11** **Graham Stringer:** You said there have been institutional improvements. Where would we look for evidence of that?

**Simon Smith:** I would start by looking for evidence that some fairly high-profile corruption incidents have been uncovered and pursued. We



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have seen one of those quite recently in the investigation into Supreme Court justices.

I would also point to the way in which there is now a real grip on the enormous gas supply and distribution firm Naftogaz. In my time in Ukraine, Naftogaz was an absolute den of thieves. It was a rabbit warren of opportunities for corruption, diversion of funds, embezzlement and that sort of thing.

That is a good example of one of these very difficult parastatal targets in Ukraine having been got a grip on and turned at least in the direction of being a company whose accounts are more transparent, that is doing its job for the people of Ukraine and that is showing that it is doing its job, rather than simply being an opportunity for people to filch money and stick it in their pockets.

**Q12 Henry Smith:** Vlad, in your opening remarks you touched on the role of the private sector in the recovery of Ukraine. That is very much the focus of the upcoming conference next month. Is that focus the right one?

**Dr Mykhnenko:** On the one hand, the private sector contributes 60% to 70% of Ukrainian GDP. We have seen the remarkable resilience of the Ukrainian economy, which eventually declined by only 29.1% on the final account. That is very different from the estimated 45% decline we heard about in February and April 2022. The private sector has been remarkably resilient in this war. However, the magnitude of the challenge is immense.

What I would like to add to this question, and to the overall discussion, is that probably the best ally in ensuring a recovery from which people will benefit most is domestic citizens. Civil society has been remarkable in pushing Ukraine to what it is now from 2014 onwards.

I hear quite a lot of concern from civil society now that it is not involved as much in the Ukrainian Recovery Conference. Trade unions, labour unions and various other civil society organisations have been slightly side-lined by Government and the private sector. That part of the equation needs to shift, especially because they are the best allies. However much conditionality is spelled out, correctly, people on the ground know how money is spent and whether it is spent on the right priorities. I wanted to mention that.

On the other side of things, the private sector needs support. At the same time, there is a feeling in Ukraine that we need to ensure a post-Second World War recovery, not a post-First World War recovery. We do not want to have double and triple-amputee veterans begging on the streets. We want to have a modern Ukrainian economy that is inclusive to all. To some extent, Ukrainian wealth creators, the richest people before the war, did not establish a very good reputation for inclusive growth, to be frank with you.

The current proposals that have been floated by the Ukrainian Government of a flat 10% on personal income tax, corporate income tax



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and VAT is quite a controversial point. When the international community, donors and civil society are pulling all their resources into fighting the war effort, one might say that the largest corporations in Ukraine are not paying their fair share of tax and are perhaps not helping enough.

This is the underlying feeling in society, as far as I can gather. The richest individuals and the conglomerates are perhaps not adding as much as they could. That is why the private sector also needs to do a little bit of self-reflection.

**Q13 Henry Smith:** What role do international private sector partners have to play in securing investment, in what parts of Ukraine and in what sectors?

**Dr Mykhnenko:** I have been doing some calculations for this event. We are delighted to note that the construction sector has the second-highest multiplier effect in the whole of the Ukrainian economy. The \$135 billion that hopefully will be pulled into that sector will create an enormous effect across all sectors of the economy.

The private sector needs public sector help in ensuring that we are building back better so the new economy is greener, cleaner and more sustainable. It is not the coal, steel and iron of 19th century production. For example, we are now involved in a small project to decarbonise grey and green steel.

When it comes to rebuilding Mariupol, we do not want to rebuild two 7 million tonne steel mills with 19th century technology. We want to have them built anew using the iron ore resources Ukraine has and the renewable energy Ukraine can build. That will be a very different steel industry, which everybody will admire and perhaps replicate. This is an area where private sector loans probably will not have enough understanding of where things should be going.

**Q14 Henry Smith:** Part of the national recovery plan envisages large-scale privatisation of state-owned assets. What is your view on that? In response to the point you made about some of the already quite wealthy owners of industry perhaps not playing their full part, what are the dangers and lessons we can learn from that, if there is to be large-scale privatisation as part of the national recovery plan?

**Dr Mykhnenko:** I would find it quite difficult to imagine a situation after the war in which those assets will be valued at their correct value. The post-war situation of destruction and massive damage is probably not the best way of ensuring that proper value is paid.

We have the very unfortunate example of the 20th century privatisations across eastern Europe, in which some assets were taken at really no value at all by some powerful individuals. Hence that is a very difficult conversation that needs to be had. The answer is not simply that we can sell everything now and it will be somebody else's problem.



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In Ukrainian society, foreign owners will be even more favourably looked at than Ukrainian owners because of the heritage of the 1990s and the conversations about oligarchs that people have at home. Foreign companies look a bit better as buyers of those assets. Now is not yet the time to discuss those things. We need to ensure the economy is back on track. Afterwards the value will be even higher, which will be better for the public purse.

Q15 **Henry Smith:** Do you agree that this will also be important for accession to the European Union?

**Dr Mykhnenko:** Absolutely, yes. The recovery plan and all the plans we are discussing, as far as I can see, will be over the 10-year period to 2032 or 2033. Within that time, I have no doubt that Ukraine will enter the EU. Of course, conditionality will come in through the EU accession process. The regional funds, the cohesion funds and the rest of the institutional reforms will come in as conditionality for entry.

I am not entirely worried about that. I am worried about the internal domestic market and the internal domestic firms that could be squeezed out by the big players when the recovery starts.

**Natalie Jaresko:** I would just like to clarify the governance issue, if I may. There have been a series of things that you can look to that show serious progress in the anti-corruption area starting in 2015. One of them is in procurement. A system called ProZorro, built on an open-source platform, eliminated a great deal of the everyday state procurement corruption. Not only was money saved in the process, but small business and other non-preferred partners were able to start bidding, which enabled competition and better delivery. ProZorro is part of that.

The second, I would argue, is e-budget. The budget of the Government of Ukraine is completely transparent and provided in a form that allows civil society to engage with that budget and question it at every level of Government.

Thirdly, a decentralisation of the fiscal system was completed across the entire country. This not only devolved money down to governors and mayors so they would have sources of revenue; it also made them responsible to their citizenry for the spending of that money. It was no longer Kyiv giving them money or local government officials begging for money. That decentralisation has empowered local government. You see that today during the war, with an incredible amount of local government standing up and responding to this war without getting instructions from Kyiv.

Lastly and more recently, a mobile app called Diia has been introduced. To a great extent, that has eliminated from the everyday activities of Ukrainians, such as getting birth or death certificates, the need to go physically to a bureaucrat. Whatever happened in those meetings, you can now do it online. That app is so successful that the application is now being sold to Germany. It is an example of Ukraine having digitised





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Government more quickly than some countries in Europe. On governance, that is one set of very specific things that have happened.

It is also important to note that the IMF has tied almost every programme since 2014 to the creation and operation of a series of anti-corruption institutions. They are all in existence, they are staffed, and they are doing the work the ambassador mentioned with the recent arrests. There have been many arrests. There is an anti-corruption prosecutor, an anti-corruption court and an anti-corruption agency.

All of them are working to create more transparency in the finances of Government officials, civil servants. In parallel to the judicial system, which still needs a great deal of reform, they are providing for independent anti-corruption prosecution. There are things to look at that are very helpful.

On the role of private investors, Ukraine has been underinvested for 30-some years. It has not been able to market itself as being attractive enough for foreign investors, and this is the opportunity to turn that around. For example, President Zelensky met with JP Morgan, Goldman Sachs and BlackRock. He asked them to try to bring together institutional financial investors—large infrastructure funds and social impact investment funds—which have not been, to a large degree, a part of Ukraine's development, and bring them to the forefront, so they can see the opportunity and the changes that have occurred, and align with this renewal and recovery.

At this conference there is an enormous opportunity to outline both how the private sector can be instrumental and what our Governments need to do to enable foreign private investment. Perhaps that is war insurance; perhaps it is first loss funds; perhaps it is export credit guarantees in a bigger amount. It does not matter. There are many options, but we really need to develop all those tools long before this war comes to an end.

**Henry Smith:** Thanks. That is very helpful.

Q16 **Bob Seely:** I have a couple of quick questions. Vlad, when you say tax is too low, is that because you think, given the amount of international aid, tax should be higher because these big corporations should be paying more? Is there an argument to say that, because Ukraine was an unreformed post-Soviet society until quite recently, a very low rate of tax might at least encourage people to pay tax in the first place? That is the first question.

The second is to Natalie. I have the Diia app. Unfortunately, because I do not have a Ukrainian passport or documents, I have not been able to go further than just a basic download. To play devil's advocate, is that decentralisation quite the success you claim? Reform has been slow. By decentralising, you get pockets of rotteness in various oblasts. Oblasts effectively make progress at different rates, and in a way it becomes more difficult to drive reform from the centre, although in the long term decentralisation is a very good way forward.



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**Dr Mykhnenko:** You are right, in the sense that there is a massive theoretical discussion on the level of tax and the tax base, and how low or high it could or should go. There is a sentiment—in a democratic society, we have to work with sentiment—that big business is not paying enough tax in Ukraine.

We have heard that agricultural producers are being helped by the grain corridor scheme, but the agricultural producers in Ukraine, especially the big conglomerates, are paying something like 5% tax. It is difficult to say whether they are paying enough or not.

Given that we need so much—we were discussing a figure of \$411 billion—not all of it can come from foreign donors or Russian assets. Some of it will be domestic. Hence you have to share that burden with the people who have the broadest shoulders.

As a theoretical discussion, yes, it could be 10%, 15% or 20%. That is a discussion we need to have. The Ministry of Economy and the Government already have a nice round figure. It sounds good for PR, but I am not sure whether it is “budget clever” and whether it will be enough to support Ukraine’s economy, given that we can hardly support the war effort itself.

**Natalie Jaresko:** I just want to say that I am grateful. When I was Minister of Finance, the British Government supported me in doing a major tax reform. With the help of the UK Government, we wrote an entirely new tax code. It was based on lower rates, not 10% but 15%, but it was a very clean tax code, meaning it was very transparent, with very few exceptions and very few credits. It was applied evenly and could be administered more easily so there were fewer exceptions.

In some ways, I believe the number is less relevant than the system that stands behind the number. How many credits, deductions and exceptions are made? That is how individual businesses and conglomerates, as Vlad said, take advantage of the system. It is not only in taxes but in tariffs. You have monopolists who pay very low tariffs—they are not taxes but tariffs—for, for example, the transmission of ammonia through a pipeline or for other particular areas. It is not simply the tax system.

Ukraine did collect 39% of its GDP in taxes last year despite the war. That is why the IMF programme went forward: it was impressed with Ukraine’s ability to collect and administer taxes even during war.

Decentralisation has not been a failure. The fact you see perhaps less exceptional mayors and governors is a good thing. Creating that competition and being able to show success and failure at a local level is necessary for businesses to be attracted. It is necessary for people to be attracted to live in a certain area. You will never have an equivalent level of success across all local government, but this at least makes them accountable for the revenues they are collecting and accountable to their citizenry for investing them.



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Civil society—we have not underlined this enough—is the absolute key to progress in Ukraine. It was the key to the revolutions we lived through in 2004 and 2014, but it has also been the key to reforms and to holding Government accountable. The extent to which we can enable civil society at a local level to hold local leadership accountable is the only way to expect a recovery that will be successful. You cannot do it all from the top down. It cannot be Kyiv rebuilding a country of this size with this amount of damage.

**Q17** **Bob Seely:** As someone who has lived in Ukraine and who has visited often, what you say about the importance of civil society is absolutely profound. It is fundamentally the difference between Ukraine and Russia. Ukraine went one way towards civil society. That was its direction of travel and, despite its flaws, it has been going in that direction for a good couple of decades now. Russia, very sadly, has gone the other way.

Is the development of civil society, as vital as it is, even throughout the country? Where is civil society strongest and weakest? Do we assume it is strongest in a city like Kyiv or do you see enough of a powerful civil society in the eastern and southern parts of Ukraine—Odessa, Dnipro, Kharkiv and those sorts of places?

**Natalie Jaresko:** You do see it in major cities. Where you are going to see serious unevenness is in the territories that have been under occupation since 2014 and 2015. They have had no freedom of the press, no freedom of the internet and no freedom to communicate.

We also need to take into account that we are under martial law right now, and there are certain limitations. Those will all have to be put aside when the war is over and when security is available. We have to ensure the continued development of freedom of the press, freedom of assembly and freedom of the internet.

When that happens, I do not doubt that the major cities will have an equivalent level of civil society, but many of the policies we are talking about are really happening in Kyiv at the Parliament level. That is where you are seeing all of the response, whether it is on tax reform or antitrust. When I was a Minister, on every issue, groups were formed for and against, and they all had their own ideas. You had to meet with each and every one of them.

Even when we were promoting this tax code, supported by the UK Government, we went from city to city meeting with the local citizenry to explain the tax code, to bring in their concerns and to hear them out. Even then, in 2015, you could not ignore civil society throughout the country, not just in Kyiv.

**Q18** **Liam Byrne:** Can I just follow that up? Ukraine's ability to collect tax has been remarkable. I think 99.6% of budgeted taxes came in last year. At the moment, the tax base is only about 20% of GDP. That is much lower than the tax base in a lot of European countries. Ukraine is having to bring in something like \$411 billion of investment, either in loans or in debt. It is likely that a significant amount of that money will be in debt,



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and therefore the tax base is going to have to expand in order to help pay for that. Do you have a sense of how much pressure Ukraine will be under to move the tax base up? At what point will that become really quite difficult?

**Natalie Jaresko:** There is pressure even now from the IMF not to implement that 10-10-10 proposal and to return to the tax laws prior to the war. The challenge we all have is the inability to forecast. To forecast revenues, you would need to have a better sense of how many of our labour force who have left the country, 6 million people, will return. You would have to have a sense of what the financial flows will be back into the country from outside. That is practically impossible to forecast.

The pressure on the Ministry of Finance to collect taxes and to administer a better tax system, I have absolutely no doubt, will be there from day one. The question is how much you can eke out of an economy.

I am sitting in Kyiv right now. If I walk through the streets today, there is a dichotomy between small businesses that are open, coffee shops, restaurants and others that have an active business, and a series of shut storefronts, the stores that have shut down and left. That is Kyiv. Other cities in the east are worse off; other cities in the west may be better off, also benefiting from the 4 million internally displaced people who have shifted from the east to the centre and the west.

The challenge for us is forecasting, because we have no sense right now of how many people will come home and where they are going to settle when they do.

Q19 **Liam Byrne:** But you think the key question is how many people will come home, how many people will then go back to work and, in effect, what the tax base will look like.

**Natalie Jaresko:** I do. As much as we talk about reconstruction in bricks and mortar, we also need to talk about building the labour capacity and the skills capacity of that labour pool. That is an area where we need to spend a little more time because skills and training need to be a part of this reconstruction.

When surveys have been done of Ukrainian refugees in Europe, typically women, they say they need a job, housing and schools for their children. It is critically important to focus on getting them the skillset so they can come back and have jobs. I will just mention that Diia, the app, this past week expanded to education and skills training so that everyone can achieve skills training on the app from wherever they are sitting in Europe, the United States or elsewhere.

Q20 **Graham Stringer:** Just following up on Bob's question, Ukraine is a huge country. We have been talking really in macro terms, whether it is \$400 billion or \$700 billion going into the country. How much agreement is there, thinking about a geographical or a need basis, on where that money would be spent and invested? There are parts of the country that are much more damaged by the war than others, and parts of the



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country that start off poorer than others. One can go through all the normal tensions there are in a democratic society. How much coherence is there on priorities?

**Dr Mykhnenko:** It is a brilliant question. The most damaged areas are the ones that border Russia. The seven or eight provinces that border Russia have all been damaged. Most of the damage—we have been talking about that \$411 billion—has been done there.

There is an expectation, as you would imagine, especially among internally displaced people and refugees, that towns and cities will be rebuilt. That conversation has not yet been held with the international community, locally or nationally. It is a very difficult conversation to have. As we already mentioned, some of the production sites were in obsolete industries with very inefficient technologies. If they were rebuilt anew, they would probably not require as much labour as they used to. Different shapes and sizes of cities will be required, and perhaps some cities may not be rebuilt at all, given that priorities have to be managed.

Unfortunately, we cannot speculate on what will happen to Russia after the war is over, but you could imagine very tense relations and probably not much economic trade or commerce flowing through the Ukraine-Russia border. All the big cities on the Ukraine-Russia border, such as Kharkiv, Luhansk, Donetsk or Mariupol, will have to find a new function in this modern, post-war Ukraine. That is a very difficult question that people are still shying away from.

The time has not yet come, but we have to discuss the space. I totally agree that we have to discuss the geographical aspects of reconstruction, not just the macro.

**Simon Smith:** This put me in mind of one thing we have not talked about. It is a credit to members of the Committee that this question has not arisen. There is the potential obstacle of people saying, “We need to know how the war is going to end before we know how to reconstruct.” That would be one of the most unwise ways of going about it.

We will not know the whole story. In my view, it is very likely that the war is going to go on. It is going to go on into next year, possibly the year beyond and so on. It is very difficult to construct a vision of recovery that says, “Okay, our starting point needs to be the end of the war. What kind of end does the war have?”

To come back on a couple of things, ensuring Ukraine’s resilience and continuing resistance to Russian aggression is massively important. In a sense, that is an area where some of the expenditure on what looks like the rebuilding of infrastructure is not just recovery; it is rebuilding of infrastructure that is vital to sustain Ukraine’s resilience.

Secondly, looking a little further ahead, we know—because President Zelensky has told us—that while a situation of war and martial law continues in Ukraine, there will be no elections. He is on the record as saying that. Once again, this is the time to be looking ahead. Under what



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conditions would it be best for those elections to happen? How strong do the institutions need to be? Even post-2014, we have seen shenanigans with the Central Election Commission. That has been used and politically exploited by Governments and parties.

This comes back to the question of ensuring that civil society in Ukraine is rewarded for its efforts to get out there and make a better Ukraine and that, looking ahead, those elections deliver the politicians, the leadership and the governance that the citizens of Ukraine deserve.

**Q21** **Graham Stringer:** May I put a question—with a brief answer—to all our witnesses? One of the objectives of the recovery conference must be to build or rebuild international support for Ukraine. How much is recovery work and how much is just improving and enhancing international support? Where is international support at the moment, in your estimate?

**Dr Mykhnenko:** The fact we have such detailed plans for recovery is a sign of good international support. The Marshall plan was established in 1948, three years after the Second World War. We are still in the war and already have fairly detailed plans. The World Bank's document is 137 pages, oblast by oblast and industry by industry, which is quite remarkable and quite impressive.

We have evidence of international support in terms of technical assistance, advice and knowledge. We are hopeful that the money will turn up when needed. That is probably one of the bottlenecks here: finding the funds.

**Simon Smith:** At the moment, international support is holding up pretty well. Clearly, there will be questions on everyone's minds about the extent to which populations and publics will be able to grit their teeth and hang in for the long haul. I have no doubt that the Governments around the world that are supporting Ukraine are going to be keenly sensitive to the messages they are getting from their populations to say, "Yes, we understand why you are doing this and why it is important."

The recovery conference can absolutely underline that this is not just an effort to say how we can keep the Russians from eating more Ukrainian territory, and it is not just a matter of how we help Ukraine win the war; it is a longer-term vision than that. It is achieving the objective of helping Ukraine turn into a success story. Ukraine was on that path in 2014, and there was a deliberate and partially successful Russian effort to knock it off track.

Is Ukraine going to be a success and is the Russian recipe going to be finally seen as the failure it is? That is a very big question for all countries in Europe and in the Euro-Atlantic community.

**Natalie Jaresko:** I will just say that the financial support over the past two years has been extraordinary. If you think about it, the first thing that had to be supported was the budget of Ukraine. In order to maintain governance, to pay civil servants, teachers and medical workers, there was a \$3 billion monthly budget deficit, which was financed by the G7



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and its partners. In 2022, it was about \$32 billion. In 2023, \$18 billion has already been transferred to Ukraine. The commitment from the G7 this year is about \$44 billion.

It is important to note that this is not only for the budget deficit. There is an amount that has been identified by the World Bank for recovery this year. When you liberate a territory, you need to put basic roads and bridges back into function. When the Russians are consistently bombing civilian infrastructure for energy and electricity, you need to repair it. That \$14.1 billion this year is for rebuilding and renewal. It is basic infrastructure. It is not building green steel; that is the future. Of that \$14 billion, \$7 billion has already been committed.

You say that this conference is to shore up support, but to some extent it is to say thank you to the West, which has supported Ukraine with this substantial amount of money to date, and to look forward to how to do the rest of it. It is not only taxpayer funding. We very much need to focus on those Russian assets and on getting private sector investment.

**Chair:** I am afraid I have to wrap up the questioning there in order to move on to the next panel. Thank you ever so much to all of you for giving evidence. Could the next panel please step forward? We will now look at perspectives on recovery from within Ukraine.

### Examination of witnesses

Witnesses: Olena Bilan, Olena Halushka and Anna Myroniuk.

Q22 **Chair:** I would be very grateful if our witnesses could introduce themselves, and then we will go into questions. Do not feel the need to answer every question because we want to make sure we hear from your voices.

**Anna Myroniuk:** Hello, everybody. My name is Anna Myroniuk. I am a Ukrainian journalist. I am the head of investigations at the Ukrainian English-language publication the *Kyiv Independent*.

**Olena Halushka:** Hello, my name is Olena Halushka. I am the co-founder of the International Center for Ukrainian Victory and a board member at the Anticorruption Action Center in Kyiv.

**Olena Bilan:** Hello. My name is Olena Bilan. I am the head of research and chief economist of Dragon Capital, a private investment company in Ukraine. I am also co-chair of the board of the Kyiv School of Economics.

Q23 **Chair:** Thank you all ever so much for joining us today. I am interested to know what would constitute a successful recovery of Ukraine for civil society and for Ukrainian citizens. Do you believe that the Ukrainian people and the representatives of civil society are being sufficiently engaged within the recovery process, particularly the conference that is coming up?



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**Anna Myroniuk:** To answer the first part of your question, Ukrainian society will perceive the reconstruction efforts as successful if every single hryvnia, dollar or pound is spent as it is designed to be spent, if the reconstruction is transparent and if it happens under the international supervision of the donor organisations that are dedicating this money to Ukraine.

As for the level of engagement of local communities, at the moment it is hard to say whether they are engaged to a great extent. I would highlight that civil society was represented, in the form of RISE, which is a coalition of Ukrainian non-governmental organisations, in the effort to create software infrastructure that shows the sites that need to be rebuilt. There will be some sort of coherent map of Ukraine where you can see all the reconstruction sites and all the companies that are bidding to win the tenders and reconstruct these facilities.

That is also a good sign, in my opinion. You can see that civil society is taking part in the governmental effort to reconstruct Ukraine and that its opinion is also taken into account. For me as a journalist, transparency is key. For a journalistic society, it is necessary to have access to data and to be able to see all the checks and balances. Is the documentation placed there for you to scrutinise? Can you look at the prices for concrete or any other construction material, compare them to the market prices and see whether they are inflated or not? Once again, transparency is key.

The level of civil society representation is decent since civil society was invited to participate in the creation of DREAM. That is what they call the system where you can see all the reconstruction sites.

Q24 **Chair:** Olena Bilan, the previous Ukrainian Foreign Minister told us that success in terms of recovery would look like 5% to 7% of GDP growth a year. What would be a successful recovery from your perspective?

**Olena Bilan:** I agree that we should really look at economic growth as one of the key measures of a successful recovery. Whether that is 5%, 7% or maybe even more, the more important topic is whether this growth is sustainable. It could be only 5%, which after a 29% decline is easy to do, but we should make sure that the financing for this recovery comes from sources that do not add to Ukraine's imbalances.

We should make sure there is no money printed for the recovery. The best way is for as much of it as possible to be grants. Given the constraints our partners face, we will probably count on loans as well, but these loans should not inflate Ukraine's debt-to-GDP ratio so that Ukraine remains a bankable country.

Q25 **Saqib Bhatti:** To Olena Halushka and Anna, how much progress has there been in tackling corruption and reducing the influence of oligarchs in Ukraine?

**Olena Halushka:** If you compare it to where Ukraine stood during the presidency of Viktor Yanukovich in 2010 and 2013, the tremendous





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progress that has been achieved ever since is obvious. Ukraine was endemically corrupt back then. That was one of the reasons that Ukraine society took to the streets to say, "Enough is enough. We have had enough impunity and cronyism. We are standing for what we call European values: zero tolerance for corruption, the rule of law, respect for human rights and other values."

Since that time, we have been fighting against corruption along two main tracks. The first track was to build the system for accountability. These are institutions that are tackling high-profile corruption, like the National Anti-Corruption Bureau, the Specialized Anti-Corruption Prosecutor's Office, the High Anti-Corruption Court and the National Agency on Corruption Prevention.

On the 15th month of this big genocidal war, these agencies are performing their core functions effectively. Just a few days ago they caught red-handed the head of the Supreme Court taking a bribe, which is a very high-level case. That is clear evidence that institution building, which is very boring and nitty-gritty, has worked very well.

We invested in the selection processes. We invested in training the best detectives and prosecutors to make sure they can properly perform their functions. They received decent salaries, which were secured in the budget, and there were guarantees of independence for the leadership of those institutions. All those safeguards mattered.

The second important track was transparency, which right now is a little rolled back because of martial law and wartime. Between 2014 and 2022 we had the most advanced system of electronic asset declaration. All public officials, starting with the President and ending with the village councillors, had to disclose information about their incomes and assets.

Most of the registries were openly published on the internet, such as the land cadastre, the beneficial ownership register and the vehicles registry, which were excellent sources of information for investigative journalists. Unfortunately, this information is not public right now because of wartime.

We also had the electronic system ProZorro. At a certain point, when we had all those transparency measures in place but we did not have accountability because it lagged behind, we were joking that Ukraine was the most transparent corrupt country in Europe. It no longer is, because the accountability is there.

Does that mean everything is fixed? No. We still have to work on the judicial reform, and not only that, but we have made very big progress in fighting against corruption, particularly at a high level. Petty corruption has been fought via digitalisation and a lot of the transparency measures for the provision of public services. There is still some work to be done, but progress has been made, and it has to be recognised.



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**Anna Myroniuk:** I would just add to what Olena has said. Deoligarchisation, or the efforts to fight Ukrainian oligarchs, was discussed the most pre-big war, so before the full-scale Russian invasion. That is when the law on deoligarchisation was passed, creating a registry of oligarchs. People perceived as oligarchs can be put on the register and then there will be limitations on them, for example in terms of their support for political parties.

The full-scale Russian invasion disrupted some of the deoligarchisation efforts. However, as Olena said, it is also important to understand that, despite the war, while missile attacks and hostilities are happening every day, Ukraine's anti-corruption infrastructure—the law enforcement agencies created before the full-scale Russian invasion—has been shown to work very well. That was proven by the case Olena highlighted involving the head of the Supreme Court.

That is not the only case. There are also other oligarchs, such as Ihor Kolomoyskyi, one of the richest people in Ukraine, whose apartment in Dnipro was searched, and other cases like that. The relationship that some oligarchs had with the state has turned sour. Their houses are searched; some of their assets have been seized by the state; some of their companies have been sanctioned. The old oligarchic system that was there in Ukraine does not enjoy all the luxuries it used to enjoy before the full-scale Russian invasion.

On another note, some of the richest people in Ukraine, the oligarchs, have also suffered from the war itself because some of their businesses either were in Russian-occupied territory or were destroyed, such as Azovstal in Mariupol, which was controlled by Rinat Akhmetov. The oligarchs do not really play a major role in Ukraine's statehood at the moment.

The fact that the media is, to an extent, controlled at the moment also plays a role. For example, one of the major assets of any Ukrainian oligarch before the full-scale Russian invasion was the TV channels or the media businesses they owned. They used them for their political purposes or to protect their businesses. That is practically not possible right now because all these TV channels are now united in a joint marathon, which is run by the state. In rotation, they do news about what is happening in the country.

To an extent that is good, but to an extent it is also bad. On the one hand, the joint marathon allows the state to control information and to control the oligarchs' efforts to spread the information they want to spread and protect their business or political interests. At the very same time, it oppresses some freedoms of speech and puts the control over the media sector in state hands.

That moves us to the discussion of the creation of a new era of oligarchs in the future. That should be closely watched. The concentration of powers in the hands of the President's office is of concern to civil society. There is no strong evidence at the moment to suggest significant abuses



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of power. However, the fact that the powers are concentrated in one spot is of concern to civil society.

**Q26** **Royston Smith:** Olena Bilan, what are the biggest concerns of private sector investors and businesses in Ukraine at the moment?

**Olena Bilan:** If you are talking about local businesses, they really do not think much about the future recovery or reconstruction; they try to deal with the challenges they face now. According to surveys, the challenges are logistical bottlenecks, a shortage of qualified labour and the security situation. That differs from region to region, but on average it is still one of the major obstacles to doing business in Ukraine. Alongside low demand and rising input costs, those are the major concerns that businesses have.

You might be surprised, but very few companies mention corruption as an impediment. Based on different surveys, between 4% and 7% of companies say it is an important impediment to their operations. This is because other challenges have become so acute that corruption, which, to be honest, many local businesses are used to, is no longer the big problem.

The rule of law and widespread corruption will still be a challenge to attracting foreign investors. My company, together with the largest business association, ran an annual survey of foreign investors before the war. We did this regularly each year. Each year, starting from 2016, the lack of rule of law and widespread corruption were the No. 1 and No. 2 obstacles for foreign investors into Ukraine. This ranking was the same for strategic investors, regardless of whether it was a new investor who had not invested in Ukraine before or an existing company that had already operated in Ukraine at the time.

Helping Ukraine's authorities to improve the rule of law would be a very important component of the future large reconstruction. It could be difficult to attract a substantial amount of foreign investors if trust in the judicial system is not restored.

There is one other point I would like to mention. When we are talking about private sector involvement, which this conference is about, we are mostly talking about attracting foreign investors to Ukraine either now or after the war. It will be very important to have a war insurance programme.

To be honest, it is a very difficult and non-trivial task to have an accessible and simple insurance package, but it would greatly reduce the security risk for local companies and international players in particular. Local companies do mention security risks as one of the major obstacles, but they are used to it. We see it on the street; we see it in people's attitude to sirens—not many people go to the shelter when there is an alarm. For foreign companies, that would be a huge component of their investment decision.

**Q27** **Royston Smith:** It makes sense that you say there should be some sort



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of insurance. How do they get insurance currently?

**Olena Bilan:** There is a pilot project, but actually they do not get any, to be honest. There is no such thing as war insurance. There is a pilot project initiated by MIGA, which is a sister company of the World Bank. One of Dragon Capital's strategic investment projects was selected to be a part of this pilot war insurance project. It has been very difficult to get things done quickly. This pilot project started half a year ago and it is still not done. There is still a lot of communication with exchanges of documents and different agreements.

The fact it is a pilot project is maybe why it has run for so long, but my colleagues who are engaged in it say that the insurance product at the end needs to be simple. For this to work well, it should be offered by international and local insurance companies as a structured product that each company could get along with any standard insurance it has.

Q28 **Saqib Bhatti:** This is really fascinating about the war insurance. During the reconstruction process, are there opportunities to address other barriers that may also help spur on private sector investment and Ukrainian growth?

**Olena Bilan:** I mentioned the two major issues, the judicial system and war insurance. As for the other barriers, foreign investors may face a lack of skilled labour. This is what Ukraine's local companies are already facing now, because of either mobilisation—that issue will be resolved after the war—or the huge outflow of refugees.

On refugees, the question is still open as to how many people will return. According to our survey, about 60% of refugees want to return, but over time this ratio has declined. It was around 70% several months ago. People are getting used to their new environment; their kids are going to school. It will be an important challenge for Ukraine to get those people back to the country.

That is where the support of the international community will be needed. The return of these refugees would contradict the interests of the recipient countries. The labour market in the EU requires fresh blood; it requires new workers. Many countries are benefiting from Ukraine's refugees. It will be important to find a balance between the interests of recipient countries and of Ukraine because there is a shortage of labour. That is a big problem. It is closely related to the long-term demographic problems of the country.

**Olena Halushka:** I would like to jump in here very briefly, although I am not a representative of business. Over the last year, through our very active advocacy activities for Ukrainian victory, we had a number of conversations with businesses.

Indeed, I would like to confirm what Olena said: the rule of law issues and the fight against corruption are very important things that they raise. We are cautiously optimistic here because we have the EU integration process. EU candidate status, which was linked to seven reforms or



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conditionalities, was a very powerful push. It gave a second breath to our fight against corruption during wartime.

Right now, we are advocating for the fixing of the last issue, the reform of the constitutional court. Hopefully afterwards the accession negotiations will open, which will give us additional leverage in putting pressure on the Ukrainian Government for even more reforms. EU accession is also a strategic anchor, where it is considered by private investments as Ukraine's geopolitical goal and movement is seen towards the West.

Besides the rule of law and anti-corruption, many of them raise the question of medium-term and long-term security guarantees. Here it is incredibly important to say that Ukraine's NATO membership is the most sustainable security guarantee. In 2015 we saw the Minsk agreement. That basically ended up with full-scale genocide being restored seven years later. Ukrainians, Ukrainian society, Ukrainian businesses and foreign businesses know very well the modus operandi of Russia.

We have to be very frank: NATO membership is the only solution to prevent a new phase or new round of this fighting. That is why this is something we are expecting from the Vilnius summit, to start this process, have the political invitation and start further accession talks.

**Q29 Saqib Bhatti:** Is there anything the UK and its partners can do to support more private investment in Ukraine, NATO succession or anything else?

**Olena Halushka:** UK partners, at least in Ukraine, have a very powerful instrument, which is the G7 working group. Since 2014, this has proved to be one of the drivers of systemic changes. When the G7, the European Union and the IMF are speaking with one voice on very clear reform conditionalities that have to be implemented, that truly matters.

If we manage to ensure one pillar, rule of law, so that the property rights of businesses will be protected, and the second pillar, security and NATO membership, I assume that Ukraine's reconstruction market would be very attractive to foreign businesses. We obviously want to see businesses of those countries that are helping us right now on our way towards victory.

**Olena Bilan:** I do second Olena in this thought that actually there should be a co-ordinated effort by the major global powers. The UK was really outstanding in taking leadership in various areas, such as providing Ukraine with military support that maybe even several months ago was unthinkable for many countries and partners. Taking leadership in one of those areas to facilitate private investment in Ukraine would be of great help, such that, for instance, war insurance would be led by the UK Government. It does not mean that the Government need to insure companies against missile attack, but creating some kind of a fund, creating a product, helping to co-ordinate other countries in this respect, would be of great help.



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Q30 **Drew Hendry:** I would like to ask Anna and Olena Halushka about the societal impact of the invasion. Are there any areas of social need that are especially urgent to answer?

**Anna Myroniuk:** Normally, when we are talking about investment and how Ukraine can successfully implement decentralisation reform, we would turn to local communities to ask them what their needs are and what they prioritise as something that needs to be rebuilt urgently. That is to say that we should take into account that there are no elections happening in the foreseeable future. That is because of the ongoing war and martial law.

When we talk about turning to communities for advice on where to invest, it is very important to take into account that the closer to the frontline, the more buildings are absolutely demolished, which means that more investment is required, as well as more supervision. Given that there are no elections in the foreseeable future, that could potentially create some room for corruption, abuse of power or embezzlement. That is to be kept in mind.

Together with the investment there should be supervision, audit and presence of foreign donors who would, just by being there and being present, put some necessary pressure on the local authorities and communities, and make them reconsider mismanagement, if they had ever considered it. That is very important.

**Olena Halushka:** I would like to add another angle to this important question and speak about the energy sector, because that is a fundamental issue. There is now a perception that the worst winter is already behind us. Unfortunately, this is not true. The previous winter was very complicated but we managed to survive and to go through it thanks to, first of all, the very heroic efforts of Ukrainian energy forces engineers, but also because we had enough spare parts in the stocks of our energy companies collected over the previous decades in the modernisation of our energy system.

Unfortunately, that is almost out. Russians have targeted our thermal and hydrogeneration facilities. They cut, out of greed, Zaporizhzhia nuclear power plant, which itself is one of the biggest generating facilities, and, over the winter, they have been targeting the substations of other nuclear power plants.

Also, the weather the previous winter was very mild and the Russians false-started their attack—they started missile shelling in early October and, by the time the frost came, they did not have enough missiles to be able to attack us twice per week, as they had from the very beginning. Unfortunately, they are learning very quickly and they are inventing new, very dangerous things, for example glide-guided bombs, which they are firing from their fighter jets without even entering our airspace.

The energy system is fundamental to keep our economy running. We saw how each and every power outage directly affects how businesses and



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companies are operating and the quality of life of people, particularly those living in multi-storey apartments. If Russia succeeds in throwing Ukraine into blackout next winter, this will be a huge attack on the war-torn economy.

It is incredibly important to think about how to secure our energy sector, to make sure that Ukraine sustainably goes through the next winter.

Q31 **Drew Hendry:** Anna, given the situation, how optimistic are you about Ukrainians who have gone abroad returning home to Ukraine in the coming years?

**Anna Myroniuk:** That is hard to forecast but, overall, I am positive that many people will return, although not all of them, for the reasons that were highlighted before me, by previous speakers. People tend to send kids to schools and assimilate, to an extent, building their new lives in the cities where they are. In terms of reconstruction, it is important also to think of where those people willing to return will return to. They will not necessarily return to the places of their birth or origin.

For example, I am originally from Donetsk. Donetsk has been occupied since 2014. If now it is liberated, it is highly unlikely that I am going to return to Donetsk. I live in Kyiv now. That is just to illustrate that there are people who might want to return to another place such as Lviv, because now they consider Lviv a safer space for them in comparison to, say, Kharkiv. That will have a huge impact on reconstruction, because it will require lots of planning and analysis to see where the streams of people will go and where we will have to inject more funds for reconstruction and construction of new buildings.

As somebody highlighted earlier, some places might not be reconstructed at all. For example, after thorough analysis, the Government might draw the conclusion that there is no sense in reconstructing this particular city, so the people could return to another place. That is just to highlight that some places would potentially require more funding, because more streams of people would go there.

There is another thing that I wanted to add, if I may, to something that Olena said. When we talk about reconstruction, it is important to apply the principles that are applied when Ukraine receives funds from, for example, the IMF, meaning conditionalities. It is important to trust one another. However, it would be great if we can not only rebuild Ukraine but simultaneously invest in reforms in Ukraine. You could connect funds provided for reconstruction to some conditionalities on reform and in the area of reconstruction, if necessary—for example, aligning Ukrainian construction standards to those of the EU or the collective West.

You also asked about the investment and the engagement of local communities. It is very important to also invest in the free press, because that is your best ally in Ukraine at the moment. When there is martial law, there are three pillars to the success of reconstruction and security of Western investment. First is strong law enforcement; second is



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infrastructure and judiciary; and third is freedom of the press. If there is no regional press freedom, with no local press there to investigate cases of potential mismanagement with foreign reconstruction funds, there will not be any success in that.

It is highly important right now to invest in freedom of the press. I will take this opportunity to say that Ukrainian journalists have been working around the clock to deliver news on the Russian war to the entire world. It is also important to know that many journalists, as well as people who are serving in anti-corruption law enforcement agencies and the judiciary, were conscripted to the military. That also affected the abilities of Ukrainian newsrooms, as well as Ukrainian law enforcement agencies, to do their work thoroughly. Some additional investment and support in that area would be vital and will deliver results.

**Q32** **Drew Hendry:** Let me ask you both another question on societal impact. Mental health can obviously suffer very severely during times of war. Are organisations, society, Government, set up to be able to cope in any way with the pressures of that just now?

**Olena Halushka:** That is, indeed, a very important challenge. I do not have specific information to answer, but this is definitely something the Ukrainian Government are looking into and thinking about how to cope with. This is not only about those people who will return from the frontline. It is basically about the entire society, who also have this trauma as witnesses.

**Anna Myroniuk:** Yes, indeed. Also, to once again remind everybody, the war has been ongoing since 2014. Issues like that have been on Ukraine's plate since then. Since then there have been Government-supported services in psychological and mental health support for soldiers, to address issues such as PTSD. Right now, the challenge is even greater because the war is on a larger scale. There is a necessity to provide free mental health services to civilians and people affected all across the country.

As Olena said, it is not only people living close to the frontline; it is actually people all across the country, because there is also secondary trauma that might be there. Relatives of those who suffered from Russia's war directly might also be affected on another level.

**Q33** **Bob Seely:** Anna, are you saying there are going to be more Prip'yats, the town abandoned after Chernobyl, in Ukraine? Are you saying that the Government will not bother to rebuild Mariupol, for example?

**Anna Myroniuk:** I am not saying that. Of course that is for the Government to decide, but the local authorities, jointly with the central Government, might assess everything, calculate, draw some conclusions and decide that maybe there is no point in rebuilding particular places. I do not think that is the fate of Mariupol, for many reasons. Mariupol used to have some facilities, metallurgical plants, ports and access to the sea, which means that it will be rebuilt, but there are other places, though I am not ready to name specific villages or sites.





Q34 **Bob Seely:** This conversation is ongoing.

**Anna Myroniuk:** Yes, this conversation is ongoing. For example, you can hear right now President Zelensky speaking about Bakhmut. He says that the city is demolished. There is nothing there. I do not know. I have no answer right now to this question of whether a specific city will be rebuilt or not, but I can envision a situation where we have a specific limit of funding, and priorities for where to go first will be decided.

That leads us to the question of where to get the money. I just wanted to take this opportunity to say that confiscating Russian assets is vital. Nobody is very keen to pay Russia for reconstructing Ukraine. Russia demolished Ukrainian cities, so it must be held to account and be the one financing the reconstruction of Ukraine. For that, sanctions must be in place and the confiscation process must be finalised for the money for reconstruction to be transferred to Ukraine and spent accordingly.

Q35 **Bob Seely:** Olena, you talked about EU and NATO membership. I am a bit more cynical about this than Ukrainians are. When the EU continues to keep fobbing you off about membership and putting it back, when NATO gets you up to NATO standards but is uncomfortable about admitting you, what damage do you think that is going to do to Ukrainian civil society, considering that you want very much to be part of these institutions? Some of these institutions, especially the European Union, may be very nervous about taking you in.

**Olena Halushka:** You are absolutely right that this EU integration is basically our Challenger 2 tank with regards to advocacy on reforms. These are really heavy weapons that we, as civil society, are using very actively and proactively. We realise that there are some traps—the so-called western Balkans trap, for example, were there were initial steps made with absolutely no progress—but we also have to understand that Ukraine's case is unique. Consideration of our candidacy was fast-tracked. Right now, the ball is on Ukraine's side and here I can say that we, as civil society, are acting as advocates on both sides.

First, when the EU was reluctant to grant us EU candidate status, we made an active campaign to convince. We were going not only to Germany and France, for example, but even to Sweden, Denmark and the Netherlands, countries that were very much supporting Ukraine and Ukrainian reforms but were sceptical about the sincerity of those reforms. We tried to convey the message that, if you give us EU candidate status and the list of seven reforms afterwards—not before the potential candidate status, but afterwards—you will give us the most effective tool.

It happened. It has brought very fruitful results and everybody is happy. Right now we are advocating on the side of Ukraine to make sure that Ukraine fully implements 120% of all the reforms. At the moment that we have the entire list implemented from our side, I assume that we will restart our advocacy activities with the EU to make sure that the European Union is not dragging its feet to start the accession process.

Q36 **Bob Seely:** What happens if it does? You could say, "What happens when



it does," not "if it does."

**Olena Halushka:** On the one hand, we as civil society and all Ukrainian actors are committed to make everything possible and ensuring that it happens. On the other side, we are also doing the educational work with Ukrainian society to make sure that we manage expectations. If somebody says that Ukraine will be a member of the European Union in two years, everybody understands that is unrealistic. We still have a long list. We have to reform the anti-monopoly committee. There is media reform, judicial reform and reform of the prosecutor's office. There are still some jobs to be done but, for example, seven years is pretty realistic, from our assessment.

**Chair:** Thank you all ever so much. We are very grateful to you. We are going to move straight into the next session. Can I just say thank you for the bravery of civil society and journalists, and for all you have been doing to make sure that the truth is known around the world? We here are very grateful for the fact that you fight for our freedoms and you make sure that the world knows exactly what is happening in Ukraine. Thank you so much. Slava Ukraini.

## Examination of witnesses

Witnesses: Andriy Kostin and Professor Antonios Tzanakopoulos.

Q37 **Chair:** Welcome. Thank you for joining us. I am going to ask you to introduce yourselves very briefly and then we will move to questions. We may not come to you both for every question, but that is because we want to make sure we hear as much from you as possible.

**Andriy Kostin:** Honourable members of the Foreign Affairs Committee, I am delighted to have the opportunity to participate in the hearing dedicated to Ukraine. My name is Andriy Kostin and I am the Prosecutor General of Ukraine.

**Professor Tzanakopoulos:** Thank you very much for the invitation. My name is Antonios Tzanakopoulos and I am a professor of public international law at the University of Oxford.

Q38 **Chair:** In this session, we will be looking at promoting legal accountability for Russia's war crimes in Ukraine. Andriy, we know that you have had tens of thousands of suspected war crimes take place across your country. What are the challenges that you are facing in prosecuting these and what progress are you making in terms of getting those prosecutions that are so needed?

**Andriy Kostin:** Of course, our work is not without obstacles. The war is still ongoing. We have an overwhelming number of registered crimes and, sadly, they are continuing. However, for the first time in the history of international justice, concrete steps towards justice are being taken in parallel with the ongoing fighting in the theatres of war. I am convinced



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that success in our quest for accountability rests upon the shoulders of the investigators, prosecutors and security services of Ukraine.

However, the obstacles are many. First, Russia's attacks on our urban centres are directly affecting us. Seven prosecutors' offices have been demolished and 47 partially damaged, depriving us of the physical space and vital technical equipment necessary to proceed with investigative activities.

Secondly, of course our prosecutors and investigators are facing serious security concerns while visiting crime scenes in the vicinity of the active phase of hostilities and while trying to gather evidence for future trials.

Thirdly, the lack of access to occupied territories, and consequently to relevant evidence, in a timely manner requires us to be creative, including using secure data from alternative and open sources.

Fourthly, there is an urgent need to bolster in-house knowledge on investigating complex international crimes, often necessitating forensic and technical expertise, to ensure survivor-oriented approaches and those that place the best interests of the child or vulnerable survivors at the centre.

Fifthly and finally, unfortunately the ongoing armed conflict has created an environment conducive to organised crime, generating opportunities for traffickers and smugglers. Therefore, we need to redouble our efforts to address these reverberating effects, including the fight against organised and ordinary crime.

As I have noted, the work is ongoing and we are determined. We have taken many positive steps including, first, strengthening and expanding the scope of the war crimes department in my office—this is our lead unit for addressing widespread and systematic atrocity crimes—as well as setting up a conflict-related sexual violence unit and nine war crimes sub-units in our war-torn areas.

Secondly, we are designing a prosecutorial war crimes strategy. Thirdly, we are introducing survivor-oriented approaches through a new victims and witnesses co-ordination centre. Just one hour ago I signed an order to appoint the chair of this new victims and witnesses co-ordination centre in the Office of the Prosecutor General.

Fourthly, we are prioritising the rights and interests of vulnerable groups, such as women and children, by building specialisation in cases of conflict-related sexual violence and forced deportation of children. Frankly speaking, the last 15 months have been a real learning and adapting experience for us.

**Q39 Chair:** First of all, I am horrified to hear of the active targeting of your teams and of centres working for accountability and justice. We know there can be no prolonged, stable peace in future without accountability. That is horrifying to hear. It is not a surprise, unfortunately, that Russia would choose to target centres of accountability and justice—that is



entirely in line with the sort of war crimes it perpetrates globally.

How many prosecutions you have been able to pursue as yet? How are you prioritising cases? Is it based on type of case or the amount of evidence and how quickly you believe you can bring cases to court?

**Andriy Kostin:** First of all, at the moment we have about 84,000 incidents of war crimes registered. Every day brings us more and more cases. We are prioritising our job and first, of course, the cases where civilians are killed and wounded are our priority. For the last several months, these have usually been cases of missile and drone attacks on civilian objects and residential buildings. This is our priority.

The second priority cases are where Ukrainian civilians were tortured, sexually humiliated or forcibly deported, and where they are victims of filtration camps and illegal detention. One of the most important priorities is cases of forced deportation of Ukrainian children and Ukrainian people in general, although of course children are our priority. I already mentioned conflict-related sexual violence. We are also at the moment prioritising cases of environmental crime, including potential cases of ecocide.

Of course, we cannot do everything immediately. That is why we have prepared this strategy for the investigation of war crimes. Our main aim is to make accountable perpetrators in any case where we can identify them and can find enough evidence. The other cases we have are related to looting on a massive scale which, usually, we have found after the de-occupation of our land. This was the case in the Kyiv region, Chernihiv and Sumy, and later Kharkiv, Mykolaiv and Kherson.

A lot of cases are registered as a matter of damage to or destruction of the private property of Ukrainian civilians. Cities close to the front line, such as Kherson, are not only attacked by missiles or drones. They are attacked by mines, sent from the other bank of the river in Kherson. Usually, these attacks cause huge damage, not only to private property but, let us not forget, to critical, civil infrastructure and other objects of property. The number of cases relates to all these crimes.

Q40 **Chair:** How could the UK help you more with securing prosecutions? I would also be interested in your view on how well the British assistance for judge training has been going. We have heard this afternoon from a number of people who, without being asked, give evidence that they still have concerns about the way in which the judiciary operates. Are we doing enough to support you? Do you believe judicial reform is going far enough and what else can we do to support you on prosecutions?

**Andriy Kostin:** First of all, you have already mentioned the leading role of our British partners and friends with regard to the training of Ukrainian judges, who are trying the cases of war crimes. For this, we are extremely grateful to the UK Government. A group of judges have already been trained and more groups will go through training.



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It is also not only about judges, because we are also training defence attorneys. For this, we combine efforts not only from the UK but from our US friends and partners. Training of defence attorneys who can defend the alleged perpetrators of war crimes from Russia is also important to ensure a fair trial. This is a complete difference from Russia, because we respect the rule of law.

At the outset, I would like to extend my sincere gratitude to the UK for the unwavering and continued support to Ukraine and to my office, including through the multilateral accountability initiative. First of all, we are talking about the Atrocity Crimes Advisory Group, or ACA, along with the United States and the European Union. We deeply value the financial contribution in the amount of £2.5 million to ACA and the implementing entity, Global Rights Compliance, which has been providing strategic legal advice and technical assistance in Kyiv, as well as in the regions through mobile justice teams.

I am really proud to work with your leading expert, Wayne Jordash. Yesterday, we were at our very important third United for Justice conference, which was related to conflict-related sexual violence crimes. Wayne was very vocal and impressive in his commands and suggestions on how to address one of the most sensitive and difficult categories of crimes. Global Rights Compliance has been particularly, as I mentioned, instrumental in relation to CRSV, assisting us in drafting the strategy to investigate cases and securing survivor-oriented approaches.

Just recently, the British embassy in Warsaw hosted the ACA leadership forum that allowed us to streamline our priorities and future working modalities. It was very kind of the UK to host it in the premises of the British embassy in Warsaw and have a very good conversation and discussion at the residence of Her Excellency the Ambassador of the UK to Poland.

I would also like to use this opportunity to stress my gratitude to the right honourable Victoria Prentis for her personal engagement in all efforts related to our quest for justice and accountability. Apart from securing co-operation with our British counterparts, the Attorney General participated in the United for Justice conference in Lviv in March and followed up on important issues by hosting the Justice Ministers' conference in London, also in March, to facilitate discussions with representatives of the global south.

We also value the advice provided by Sir Howard Morrison. You mentioned already our training of judges and we are proud to work with him. I am really proud of his commitment to train our judges. We hope that the United Kingdom will continue this assistance, allowing us to continue to progress our fight on the legal front.

**Chair:** I can reassure you that, for this Committee's part, we remain resolute in determination to continue to support you on that.

Q41 **Bob Seely:** I was in Bucha last April, where I saw your teams with their



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war crimes gear on, digging up people's gardens to look for bodies and evidence of war crimes. Even back then, they were doing an incredibly good job. What progress has your office made in gathering evidence specifically on the international crime of aggression?

**Andriy Kostin:** Of course, the investigation and prosecution of the crime of aggression is one of our priorities. We are dealing with this in three directions. First is the crime of aggression. Second is the crime of genocide, for which we have two big structural cases and two groups of specialised prosecutors. All others are related to other war crimes.

For the crime of aggression, we have opened a structural investigation. So far, we have identified 208 persons who we have evidence were involved in starting the war of aggression. Most of them are Deputies of the State Duma of the Russian Federation. Some of the top-level commanders of the Russian army have also already been indicted by us. Of course, the trials against some of them are ongoing in Ukraine. Unfortunately, all of them are done in absentia, but we will proceed with this work, identifying and collecting evidence for all those who initiated the war of aggression and are proceeding to commit this crime.

We understand that aggression is a leadership crime. If aggression had not occurred, there would not be another 84,000 war crimes committed by Russians in Ukraine and against Ukrainians. Most important for us is to make accountable the top leaders who started this war, the so-called troika—President Putin, the Prime Minister and Minister of Foreign Affairs—together with the high-level officials on the military and political side of the Russian Federation.

Of course, for this, international instruments would be most appropriate to fill the gap in the international accountability system. We all understand that the International Criminal Court could not prosecute the crime of aggression in the case of Russian aggression against Ukraine due to legal constraints. That is why we are calling on the special tribunal for the crime of aggression in order to make accountable the senior political and military leadership, starting from incumbent President Putin, for the crime of aggression.

We are grateful to the UK for its active work in the core group of more than 35 countries, which combined their efforts to create this special tribunal for the crime of aggression. The discussion of legal modalities is still ongoing and I am ready to give you more details upon your request.

Q42 **Bob Seely:** On that, you have probably been asked this quite a few times but, just so that we understand clearly, why does Ukraine favour an international tribunal for addressing Russian aggression rather than a hybrid model that the UK and other states have advising as the path to go down?

**Andriy Kostin:** First of all, we all understand that international law gives us opportunities to create any model of tribunal built by countries who believe that an act of aggression was committed. We have a lot of models in history and we all understand that our main aim is to fill the gap in the



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system of international law. When we are advised to fill the gap in international law based on Ukrainian criminal law, it looks strange. This is the first suggestion.

Second, on the international level, taking into account, for instance, the case of Sierra Leone, we believe that we can prosecute the incumbent President Putin and the two other members of the troika. We all understand that we have enough evidence at the moment. These people were absolutely open and documented themselves publicly. It is not a matter of evidence, but of political commitment. If we are talking about filling the gaps in the international system of accountability, the response should also be international.

I would prefer not to use the word "hybrid." We have real crimes, for which we believe that there could be no hybrid responsibility. The word "hybrid" is not very well accepted by Ukrainians. It looks a little strange. The wording is one thing. The content, of course, is different. The idea now proposed to us with regards to, as you mentioned, the so-called "hybrid" or "internationalised" tribunal, based on Ukrainian criminal law, has a lot of problems in itself.

According to the Ukrainian constitution, you cannot sit in a Ukrainian-based court together with international judges. It is important to change the constitution in several places. Everyone who has already examined this issue understands that the Ukrainian constitution cannot be changed within martial law. It is banned to change the constitution under martial law.

**Q43 Bob Seely:** For war crimes committed by individual soldiers and relatively low-level commanders in Ukraine, in and around Kyiv and in the east, you are already putting a relatively small number, who have been captured and for whom you can get evidence relatively quickly, through the Ukrainian criminal system, are you not? You are trying them under your own system.

**Andriy Kostin:** Yes, absolutely. We all understand that over 99% of all cases of war crimes will be prosecuted and tried in Ukrainian courts. We have already under formal suspicion 326 perpetrators, of whom 184 have been indicted. We have already convicted 48 of them, some in person and some in absentia, but this is for war crimes. We are talking about the crime of aggression.

I would like to mention, very importantly, that the crime of aggression is the only element of justice for Ukrainian servicemen and soldiers. Ukrainian servicemen are not protected by international humanitarian law. Ukraine did not start this war. Ukraine is a victim, I am sorry to say, of aggression from another country. The only possible crime for which perpetrators could be accountable, which is a matter of justice for our killed and wounded servicemen, is the crime of aggression.

We already have the case in Ukraine and we are going ahead. We cannot just reach the three personalities of the incumbent President, Prime



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Minister and Minister of Foreign Affairs. All Ukrainians understand that President Putin was one of the leaders who started this war of aggression and he is personally accountable. The idea of the internationalised tribunal also includes the suggestion that Putin could be tried only after he is out of office.

Q44 **Bob Seely:** War crimes by individuals is one issue. For the crime of Russian aggression, this is effectively putting the leaders of the state on trial. This is for relatively small numbers, but this is something that you believe the Ukrainians want because this answers, in a Nuremberg trial kind of way, to put it crudely, the magnitude of what has happened.

**Andriy Kostin:** I absolutely agree with you. Our first idea, actually, was based on the Nuremberg model. Our second idea was to use the possibility of the UN General Assembly. We all understand the Security Council will never refer this case to the ICC or to any tribunal because Russia still has a veto right in the Security Council. The idea was to use the previous models of the agreement with the Secretary General of the UN, based on a resolution of the General Assembly of the United Nations.

We are ready for any discussion and any legal model that could ensure that this tribunal will be international. Russians and any potential other aggressors are looking at all of us. If we cannot find an international mechanism to prosecute the crime of aggression, any aggressor in any other country, in any other part of the world, including Russia, may come again. It is also a matter of deterrence.

Q45 **Bob Seely:** You are talking not about war crimes, but about punishing state-on-state aggression by putting the leaders of that aggressor state on trial, hence the need to internationalise. Why do your British friends not agree that that is the correct approach and what are you hearing from them?

**Andriy Kostin:** I would like to give a real, very open and honest answer. In different discussions, we have been told about the potential risks of opening a Pandora's box if a tribunal was to be set up in a really international way. It could be used against someone who is part of this tribunal. This argument is not relevant to the Ukrainian people. They will not understand this. If we all agree that the crime of aggression, an international crime, was committed, we need to have a real international response.

We are ready to discuss any potential risks with every country, but we need very open dialogue. I am not criticising anyone, because, on our way to get support, not only for the case of tribunal, we have had long communication with everyone and this communication, in all of its dimensions, was successful. Eight months ago, there was no country that officially supported the idea of creating a special tribunal for the crime of aggression. Now we are discussing legal modalities.

My position is very simple. First, we must have a political solution and then lawyers will do their job, because international law gives us all opportunities to create any type of tribunal. Some of our partners and





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friends are first preparing legal solutions. It should be the other way around. First should be the political commitment and the legal solution will follow.

To discuss legal restrictions, we are in a substantial legal discussion as to whether it is possible to prosecute the incumbent President of a state at the international level. We have different cases in history and we have cases that say that this is possible, so it is about the political commitment of all of us. We are ready.

Q46 **Royston Smith:** Antonios, what are the legal obstacles to using seized Russian state and individuals' assets to fund the economic recovery of Ukraine?

**Professor Tzanakopoulos:** First of all, let us clarify that we are talking about frozen assets rather than, in any way, shape or form, confiscated assets or anything like that, because that is where we want to go. We have to distinguish between personal assets of particular individuals and Russian state assets—so sovereign assets of the Russian Federation that have been frozen. These are two distinct types of frozen assets that we are talking about here.

When it comes to Russian state assets, these are protected generally, as are the assets of any sovereign state, by what we call sovereign immunity. State bank assets and so forth are protected because they are effectively an embodiment of the state. Any freezing of those assets in and of itself is a temporary violation of the rule of immunity, which says that UK assets, for example, are not subject to German jurisdiction, even when they are kept in Germany for whatever reason.

This can be justified in the first instance because it is a response to a Russian violation of international law. This is what we call a countermeasure. The United Kingdom, by freezing a Russian sovereign asset in its territory, is effectively violating the law against Russia in response to Russia's violation of the law against Ukraine. This is generally allowed in international law. It is called a countermeasure, but it comes with conditions.

One of the basic conditions of countermeasures is that they have to be temporary and reversible. That is because the essence of a countermeasure is to induce the wrongdoing state to comply with the law. For that reason, the moment it does comply with the law, it needs to be possible to take the countermeasure back. That is why we freeze the assets rather than try to confiscate them. Should we try to confiscate them, we would have a problem, especially when it comes to Russian state assets, because, effectively, that would make the countermeasure no longer reversible. That would be a problem, so that is the main obstacle that we are facing here.

When it comes to personal assets of Russian nationals who have been designated as oligarchs, or whatever other name you want to give to them, the problem is that, in this country, we have certain human rights



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that we respect, including the right to property. This means that, while property can be frozen as a temporary measure, it cannot be confiscated or finally disposed of unless there is some sort of judicial proceeding and a provision in the law that says, "If you commit X, Y or Z crime, you are liable to lose your property in that instance."

If we were to be finally seizing and forfeiting a Russian individual's property, we would have to have some justification in UK law, including some justification acceptable under the European convention on human rights. We would also have to grant the relevant individuals access to a court, so that they could challenge their designation and the forfeiture of their property. These are, in headline terms, the legal obstacles.

**Royston Smith:** It is interesting. I have asked this question before, not because I have any sympathy for anyone whose assets have been frozen.

**Professor Tzanakopoulos:** Neither do I, frankly.

**Royston Smith:** You head down a road and where does that end for the individual? Abramovich is an example, which is why I asked the question about Chelsea Football Club and the rest. Surely, just from natural justice—although, as I say, I have no dog in the race—you would expect there to be a procedure there. How does that happen if, as you are saying, the assets can only be frozen, not confiscated? There was no process there, as far as I am aware.

**Professor Tzanakopoulos:** The question is how this happened in the—

Q47 **Royston Smith:** There are some assets that have been frozen and/or—Chelsea football club has now been sold—seized, essentially, or confiscated. How did that happen? Where is the legal precedent for that, if there is one?

**Professor Tzanakopoulos:** For freezing, we have provisions in the law in general, because this is technically a temporary measure, so the freezing can go ahead. When it comes to individuals, you would have to look at each and every case and try to figure out on what basis the asset has been disposed of. We know on what basis it can be frozen.

**Royston Smith:** It is reversible.

**Professor Tzanakopoulos:** Yes, but you are absolutely right when you say that you go down a dangerous path in both of these cases. We need to keep that in mind because, while there may be no sympathy about Russian state assets or the assets of Russian oligarchs in London, once you open the door this can become particularly problematic. Other states will turn around and say, "We consider that the UK has violated X, Y and Z obligation in international law and, for that reason, we will not only freeze its assets but also dispose of them as a countermeasure."

Q48 **Royston Smith:** Trying to avoid opening that can of worms, which makes perfect sense, is there anything that can be done? If you are saying that it always has to be a countermeasure and reversible, it



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sounds like there is not. Is there any way that those assets can go from frozen to seized and confiscated and used for reconstruction?

**Professor Tzanakopoulos:** In orthodox international law, there would not be. You would have to stretch the law quite a bit in order to come up with an argument, which would be quite strained and would involve things like, "We are using those assets now for the reconstruction but, in the final analysis, this was because there is no doubt about Russian responsibility for the war." Once Russia complies, we could pay for the value of these assets but Russia would have to pay that value to Ukraine in compensation for damage caused. The whole thing cancels out in a triangle or something like that.

It would be quite a strained thing to try to argue. There are possibilities to make arguments, but the door would still be opened. The next situation will be that another state will do that to UK assets abroad and then they will say it cancels out, with the potential compensation that the UK has to give Iraq, for example. Take your pick.

**Royston Smith:** Yes, exactly, or anything. If you lower the bar, the bar continues to be lowered, does it not?

Q49 **Chair:** What about using it as leverage? Could you say, "We have frozen all your state assets, and we are not going to give them back to you until you pay for the rebuilding of Ukraine," and do it that way? Secondly, it looks like in international law we have only ever considered rehabilitation or measures that course correct behaviours. We have not considered punitive action, which is what we are looking for, or just action. Do you think that was purposeful in the designing of international law?

**Professor Tzanakopoulos:** Let me take the first question first. Yes, you are absolutely right. That is exactly what we can do. We can freeze the assets as leverage because, effectively, that is what international law defines as a countermeasure. The idea is that you breach the law, causing pain to the wrongdoing state until it complies. You can keep those measures in place, as long as they are proportionate and respect the prohibition of the use of force and various other things, until it complies. That is absolutely right.

Secondly, yes, it was absolutely intentional on the part of states and international law to prohibit punitive action. In fact, there are explicit provisions in the law of state responsibility regarding countermeasures to ensure that countermeasures will not be punitive. The idea is that you cannot punish a state. The thinking of this goes all the way back to the Nuremburg tribunal.

**Chair:** I am not sure I entirely agree with their premise.

Q50 **Drew Hendry:** Antonios, I wanted to pursue that a wee bit. We know that Canada has introduced domestic legislation to allow the seizure of Russian assets to support Ukraine's recovery. Are you saying that will have problems in international law?



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**Professor Tzanakopoulos:** The UK could do the same. You would need some sort of domestic legal basis for forfeiting or seizing assets that you are freezing, just like you need a domestic legal basis for freezing them. The UK has passed domestic legislation that introduces sanctions against Russia, including the freezing of assets. It can pass further domestic legislation to seize the assets. That is not a problem as far as UK law is concerned. This has to do with UK domestic law.

It is the same thing with Canada. Canada can pass whatever law it wants. If that law is not in line with the international obligations of the state, that exposes the state to responsibility. That exposes Canada to the possibility of somebody coming to Canada and saying, "You cannot actually seize the assets." If Canada says, "Yes, but my domestic laws says that we can," the other state will say, "I do not care what your domestic law says. Your domestic law can say whatever it wants. The question is whether your domestic law is in compliance with your international obligation and here it is not."

That is what is happening there. Every state could pass that law. The question is whether that law can be justified at the international level, with respect to that state's obligations in international law. The UK Parliament is sovereign. It can make whatever law it wants.

Q51 **Drew Hendry:** Let us ask a slightly different variation on that question. Are there international partners out there who are doing more to use the seizure of Russian assets to help Ukraine? Is there any more that the UK can do, in your view?

**Professor Tzanakopoulos:** That would come down to properly applying the freezing of assets. The freezing of assets can be a devastating and absolutely effective measure for forcing a change in international behaviour, especially when it takes place in a number of states. It is not just the UK that is doing this. It is also the United States, the European Union, et cetera, taking action.

First of all, there is nothing prohibiting co-operation on that level with other entities that are freezing assets. Secondly, the targeted freezing of assets can be, as I said, devastating and super effective. The question is whether we have the intelligence required to track the assets that need to be frozen.

Q52 **Drew Hendry:** Could the UK be doing more to freeze assets?

**Professor Tzanakopoulos:** I would imagine that the UK could be doing more to freeze assets, given the amount of Russian assets currently present in this neighbourhood alone.

Q53 **Chair:** Andriy, how do you assess the way different countries have approached the freezing and seizing of assets? Who has done the most? Who is lagging? What is your view on the register of damages that was agreed at the Council of Europe summit last week?

**Andriy Kostin:** I wanted to add a little bit. First of all, my point is that it was our joint decision to create the register of damages, the first step of



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the compensation mechanism. The sense of this mechanism is for the purpose of compensation of damage and harm of Ukrainian people who suffer from this war and of the Ukrainian state at large. For me, the priority of all the assets that will be seized and then included in the compensation mechanism is recovery to compensate the damages, starting from the physical persons, civilians, who were killed, wounded or lost their health and property.

Secondly, if we all, together, have signed the enlarged partial agreement to host the register of damages, we all understand that this register will fulfil its purpose only when there are compensation funds above it with compensation mechanisms. We need to include something in this compensation fund to use this register of damages. That is why the issue of seizure of Russian assets is critically important. Of course, we have two issues: the sovereign funds of the Russian Federation and private funds.

For private assets, from my point of view, the US and Canada have already made several steps. They have introduced and adopted their domestic legislation. The US has already introduced first confiscation. It is \$5 million, but it is the first case. Canada is awaiting finalisation of the judicial trial with one of the oligarchs with regards to the assets that will be seized.

The European Union is on the way to approving the regulation for the potential responsibility for circumvention of sanctions by many of the oligarchs. We understand that there could be cases, and definitely will be cases, and there will be an instrument there to confiscate their assets as a matter of circumvention of sanctions. Still, discussions are ongoing. I hardly believe that our European Union friends will adopt this legislation by the end of the year.

For the sovereign funds, I cannot say that we have any substantial progress. From my point of view, I fully agree with my colleague that it is a matter of political will. Of course, with regard to risks, which every country will need to face, I would like to simplify this issue. For many of the jurisdictions that have already frozen Russian sovereign assets, it could be a matter not only of international law or the relation between international and domestic law, but of mathematics.

If, for instance, hundreds of billions of Russian sovereign assets are under arrest, Russia could, as a matter of reciprocity, take the same action against the country. The difference in the assets of these jurisdictions could be several billions. Then it is not only a legal issue, but an issue of mathematics. On the other side, it is an issue of justice, because Russia has started this war, which has caused tremendous damage to Ukrainians and to Ukraine, and Russia should pay for it.

The idea to keep them frozen until Russia will compensate Ukraine will be only an idea. I do not want this idea to be so-called protection for not going ahead or not being brave from the point of view of taking action



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and enacting specific domestic legislation to make it possible to confiscate Russian sovereign assets.

Putin is already an alleged war criminal. The deportation of children would not have been committed if he had not started this aggressive war. On the political level, it is not very difficult. Maybe it is important to take into account all the risks and talk less about immunity in international law and more about justice.

Q54 **Henry Smith:** Antonios, hypothetically, if the UK and its partners were to seize Russian assets and transfer those to Ukraine, what would be the international ramifications, in your view?

**Professor Tzanakopoulos:** The important thing is to consider what the ramifications might be down the line, in terms of the responsibility of the United Kingdom for acting in a way that other states might see as violating international law in the moment or in the immediate future. The other thing we need to think about in those situations is what that means for the development of international law.

In the final analysis, it is states that make international law and that change international law. They can do so through their practice, but whenever we are considering something like this, and, as my colleague said, thinking about justice over immunity, we have to think about that, not only with a specific case in mind but also in the long term. We have to understand that the justifications that states made 10 or 15 years ago for use of force in the public interest, for the protection of human rights and whatnot, have been used more recently by other states whose ideas about the protection of human rights you could question.

A similar thing could happen here. Yes, of course, there is a mathematical aspect. You could freeze \$100 billion of Russian assets and not care because there is only a small amount in Russia that belongs to the UK. The point is the door you are opening to other states in the future to do similar things without respecting the fact that countermeasures have to be reversible.

There is both the short-term consequences by those states that might seek to hold the UK responsible for that particular violation of international law, but there is also the long-term idea. Even if that changes the law, because states agree with it and they go along with it, is that a change that the UK would want in the law in general? That is the general idea behind thinking about acting in those circumstances.

Q55 **Henry Smith:** As you will be well aware, almost two years ago China introduced an anti-sanctions law. Do you foresee that sort of action being taken by Russia or states aligned to it, such as China, Iran or others? Might they take that course of action in response to the potential of seizing assets?

**Professor Tzanakopoulos:** This is slightly different. This is a blocking statute that has been adopted by China. It has not been put in force yet. This is in response not so much to the freezing of assets, but to what we



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call secondary boycotts or secondary sanctions. There are sanctions that can be imposed by the UN—not in this case, of course, because Russia is a permanent member of the Security Council and can block everything. Those sanctions are binding on all members of the UN and can be absolutely devastating in terms of the effect they have.

When you cannot use the Security Council, states apply unilateral sanctions. They go through this process of countermeasures. This is something that you can do. Of course, it is nowhere near as effective as having 193 member states of the United Nations taking the same sanctions. There can be some co-operation, but these sanctions will not be as effective.

For that reason, especially the United States has in the past pushed the envelope of those sanctions by adopting secondary sanctions or secondary boycotts. This means effectively targeting states other than the responsible state. It would be something like the United States telling the UK, "You cannot sell cars to Cuba, because Cuba is under sanctions," and the UK saying, "You cannot tell UK companies what to do in UK territory."

The EU also has a blocking statute in particular response to this action and other actions by the United States. What China has done is adopt a blocking statute to say, "You, the US, you, the UK, you, the EU, you, Singapore can impose sanctions on Russia if you think that Russia is violating the law. What you cannot do is try to extend the application of those sanctions to non-nationals abroad. You cannot affect Chinese companies in China." It is a reaction to what a state sees as a wrongful sanction.

A similar reaction could exist if states perceive the final confiscation and forfeiture of assets as a wrongful action. It would not be a blocking statute, but it could be a similar sort of reaction.

**Chair:** With that, I am afraid, as the bell tolls, we have to conclude. Can I thank you both ever so much for taking the time to give evidence today? Those are two issues that matter enormously to the Committee. Andriy, I would just conclude by expressing again my heartfelt sympathies to all your staff who are out on the ground, trying to secure accountability and justice for your people. We are horrified by the war crimes that are taking place by the war criminal Putin, and I, for one, hope that he sees justice, along with all those perpetrating war crimes on his behalf. May victory come to Ukraine soon. Slava Ukraini. Thank you ever so much, both of you.