Russia's Roulette: *Sanctions, Strange Contracts & Sovereign Default*

LEV E. BREYDO*

TABLE OF CONTENTS

---

* © 2023 Lev E. Breydo. Visiting Assistant Professor, Villanova University Charles Widger School of Law. J.D. 2015, cum laude, University of Pennsylvania Law School (Articles Editor, University of Pennsylvania Law Review); M.B.A. 2015 (Finance), The Wharton School. The author thanks the staff of the *San Diego Law Review* for their exceptional work. All errors are my own.

I. INTRODUCTION

On February 24, 2022, the Russian Federation launched "a brutal assault on the people of Ukraine without provocation[and] without justification."[1]

The "premediated" attack has killed tens of thousands—countless civilians among them[2]—and displaced millions, including "almost two-thirds" of Ukrainian children, according to UNICEF.[3] It has also caused "severe economic dislocation," with "record" energy prices and food shortages that risk the "greatest global food security crisis of our time," Secretary of State Antony Blinken warned.[4]

In response, the United States has led a plurality of advanced economies in unleashing a sanctions regime "unprecedented" in "scale and scope" that has effectively excommunicated Russia from the world economy.[5] One linkage between Russia and the global financial system has remained,

1. Joe Biden, President of the United States, Remarks by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine (Feb. 24, 2022) (transcript available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/ [https://perma.cc/96X7-999E]).

2. NEW LINES INST. FOR STRATEGY & POL'Y & RAOUL WALLENBERG CENTRE FOR HUM. RTS., AN INDEPENDENT LEGAL ANALYSIS OF THE RUSSIAN FEDERATION'S BREACHES OF THE GENOCIDE CONVENTION IN UKRAINE AND THE DUTY TO PREVENT (May 2022), https://newlinesinstitute.org/wp-content/uploads/English-Report.pdf [https://perma.cc/F83R-6T6S]; *see also* Lorenzo Tondo, *Dozens of Bucha Civilians were Killed by Metal Darts from Russian Artillery*, GUARDIAN (Apr. 24, 2022, 11:52 AM), https://www.theguardian.com/world/2022/apr/24/dozens-bucha-civilians-killed-flechettes-metal-darts-russian-artillery [https://perma.cc/X52V-FR9U]; Yousur Al-Hlou et al., *New Evidence Shows How Russian Soldiers Executed Men in Bucha*, N.Y. TIMES (May 19, 2022), https://www.nytimes.com/2022/05/19/world/europe/russia-bucha-ukraine-executions.html [https://perma.cc/AZ6B-RSZC].

3. Pamela Falk, *Almost Two-Thirds of Ukraine's 7.5 Million Children Have Been Displaced in Six Weeks of War, U.N. Says*, CBS NEWS (Apr. 11, 2022, 7:05 PM), https://www.cbsnews.com/news/ukraine-refugees-millions-of-children-displaced-un-says/ [https://perma.cc/W2KG-ANPC].

4. Iikka Korhonen & Mika Kortelainen, *Russia's War Hits Its Economy on Many Fronts*, BANK FIN. BULL. (May 5, 2022), https://www.bofbulletin.fi/en/2022/articles/russia-s-war-hits-its-economy-on-many-fronts/ [https://perma.cc/JX5P-Q47B]; Matt Murphy, *Ukraine Invasion Could Cause Global Food Crisis, UN Warns*, BBC NEWS (May 19, 2022), https://www.bbc.com/news/world-europe-61503049 [https://perma.cc/RR52-JZJ9].

5. Alan Rappeport, *U.S. Escalates Sanctions with a Freeze on Russian Central Bank Assets.*, N.Y. TIMES (Feb. 28, 2022), https://www.nytimes.com/2022/02/28/us/politics/us-sanctions-russia-central-bank.html [https://perma.cc/265T-VE8C].

however: Its sovereign bonds—contractual payment obligations, largely to American and European investors.

Following the invasion, prices for Russia's bonds have collapsed, averaging below twenty-five cents-on-the-dollar by June 2022, down from 105 at the start of the year.[6] Over that timeline, Belarussian and Ukrainian bonds plummeted 82.8% and 54.7%, respectively, deep into distressed levels and foreshadowing both nations' defaults by July and August 2022.[7]

The situation is unique for a host of reasons—not least of which is the fact that Russia has the money and seemingly wants to pay. Yet, following the invasion, it has flirted with sovereign default monthly—with each payment featuring dramatic, down-to-the-wire legal acrobatics, due to the uniquely complex interplay between the sanction regime and Russia's bond obligations.[8] Indeed, as the invasion continued—and Russian atrocities grew[9]—the United States ratcheted up the pressure, leveraging global financial infrastructure to essentially ensure that Russia becomes an economic "pariah" that "face[s] default."[10] Reflecting this resolve, by June 2022, Russia's bondholders failed to receive payments.[11]

This Article is the first comprehensive, multi-disciplinary analysis of Russia's sovereign debt and the consequences of a potential default.

Contextualizing the current state of affairs requires a brief historical background regarding Russia's 1918 and 1998 sovereign defaults, as well as the Union of Soviet Socialist Republics (USSR) and its collapse.[12]

---

6. Lev E. Breydo, *Russia's Bond Roulette: May 25 Payment Safe Harbor Expiration Pushes Odds of 'Nightmare' $40B Sovereign Default Near 90%*, A.B.A. (May 20, 2022), https://www.americanbar.org/groups/business_law/publications/blt/2022/06/russia-bond-roulette/ [https://perma.cc/GLE3-5UCA].

7. *See infra* Section II.A.

8. *See infra* Part III.

9. *See* NEW LINES INST. FOR STRATEGY & POL'Y & RAOUL WALLENBERG CENTRE FOR HUM. RTS., *supra* note 2, at 16.

10. Harry Robertson, *The White House Says 'Pariah' Russia Is Poised to Default on Its Bonds*, BUS. INSIDER (May 27, 2022, 3:20 PM), https://www.businessinsider.in/investment/news/the-white-house-says-pariah-russia-is-poised-to-default-on-its-bonds-as-a-hefty-100-million-payment-falls-due-and-its-options-run-out/articleshow/91832998.cms [https://perma.cc/5Z5P-6CDD].

11. However, Russia has argued that it satisfied its obligations and is not in default. *See infra* Section III.B.

12. *See* Serhii Plokhy, *The Empire Returns: Russia, Ukraine and the Long Shadow of the Soviet Union*, FIN. TIMES (Jan. 28, 2022), https://www.ft.com/content/0cbbd590-8e48-4687-a302-e74b6f0c905d [https://perma.cc/L2EM-NL6E]; *see also infra* Section II.B.

Russia spent most of the 20th century deep in arrears to creditors, following a 1918 repudiation of Tsarist debts by the newly-empowered Soviet regime—the "biggest sovereign debt default of all time."[13] Shortly thereafter, Russia formed the USSR with Ukraine and Belarus[14]—the other parties to the current conflict.[15] After the USSR collapsed in 1991, Russia underwent a calamitous transition from central planning to a nominally market-oriented paradigm, which resulted in a devastating 1998 debt default, requiring significant external assistance.[16] In the 2000s, Russia rebuilt its finances—largely through fossil fuel exports—and returned to international debt markets in 2012 and 2013, raising billions in over-subscribed offerings.[17]

In 2014, Russia's foreign relations took a sharp left turn, following its de facto annexation of Crimea, a Ukrainian province.[18] The United States and the European Union (EU), rightly, saw this as an invasion, and sanctioned the aggressor.[19] Russia described the matter as "[d]ifferences of views . . . regarding events in Ukraine."[20] Reflecting this shift in geopolitical posture, after 2014, the terms of Russia's foreign-currency debt evolved dramatically.

This Article introduces a Russian debt taxonomy divided into four distinctive categories.[21] Starting with relatively standard terms in late-1990s vintage bonds, over time and as a close function of geo-political developments, the contracts grew unusual—bordering towards lawless. Highlights include "Alternative Payment Currency" provisions—purporting payment on dollar-denominated bonds in other currencies, including roubles for certain contracts—and a brazen refusal to "submit[] to the jurisdiction of any court."[22] With terms seemingly calibrated in expectation of future sanctions hindering Russia's use of foreign currencies, it is difficult to parse

13. Joe Weisenthal & Tracy Alloway, *What the Russian Revolution Can Teach Us About Bond Bubbles*, BLOOMBERG (May 13, 2019, 1:00 AM), https://www.bloomberg.com/news/articles/2019-05-13/what-the-russian-revolution-can-teach-us-about-bond-bubbles?sref=OOpRUZ8l [https://perma.cc/V26X-U8MY].

14. The other member, the Transcaucasian Republic, comprises modern-day Georgia. *See infra* notes 69–70 and accompanying text.

15. *See infra* note 69 and accompanying text.

16. *See infra* notes 72–74 and accompanying text.

17. *See infra* notes 90–96 and accompanying text.

18. *See infra* notes 100–03 and accompanying text.

19. *See infra* Section III.A.

20. *See infra* note 104 and accompanying text.

21. *See infra* Section II.C.1.

22. *See infra* Sections II.C.1, II.C.3.

the evolution of the language without inferring a significant degree of premeditation.[23] Otherwise, the provisions simply make no sense.

Yet, despite years of preparation—including building a literal $600 billion war-chest—Vladimir Putin badly underestimated Ukrainian patriotism and global condemnation.[24]

Acting with "purpose and unity found in months that [had] once taken years to accomplish,"[25] the United States led a global alliance—including the EU, United Kingdom (UK), Canada, Japan, and others—to enact a sanctions regime "unprecedented to a scale and scope that we haven't seen since the Cold War."[26] The measures span everything[27]—from terms of trade to asset ownership[28] and participation in cultural events[29]—while also explicitly targeting Russia's economic foundations, including its foreign reserves, currency, and sovereign debt.[30]

Indeed, since February 2022, Russia has been on the brink of default on a monthly basis—despite, somewhat paradoxically, having the money and

23. Professor Mitu Gulati has described the bonds as "the worst-written contracts . . . on the international markets." Harry Robertson, *Russia Is Poised for a Bond Default That Could Unleash Years of Courtroom Chaos*, BUS. INSIDER (Apr. 9, 2022, 2:00 AM), https://markets.businessinsider.com/news/bonds/russia-debt-default-what-next-lawyer-explains-bonds-sanctions-ukraine-2022-4 [perma.cc/MD9H-89X4].

24. *See* James Stavridis, *Putin Is Finding War Is Hell, and Expensive*, WASH. POST (Mar. 15, 2022, 9:59 AM), https://www.washingtonpost.com/business/putin-is-finding-war-is-hell-and-expensive/2022/03/15/b9213356-a436-11ec-8628-3da4fa8f8714story.html [https://perma.cc/ZAL9-YUUE].

25. Lara Jakes & Edward Wong, *Biden Races to Expand Coalition Against Russia but Meets Resistance*, N.Y. TIMES (June 11, 2022), https://www.nytimes.com/2022/06/11/us/politics/russia-biden-sanctions.html [https://perma.cc/P2SA-WPGR].

26. *See* Rappeport, *supra* note 5 (quoting John E. Smith, former director of the Office of Foreign Assets Control).

27. Chad P. Bown, *Russia's War on Ukraine: A Sanctions Timeline*, PETERSON INST. INT'L ECON. (Sept. 30, 2022, 4:15 PM), https://www.piie.com/blogs/realtime-economic-issues-watch/russias-war-ukraine-sanctions-timeline [perma.cc/P83N-Q39L].

28. *See* Jacob Steinberg, *Chelsea Sale in Danger of Collapse as Talks Over Roman Abramovich Loan Stall*, GUARDIAN (May 16, 2022, 2:22 PM), https://www.theguardian.com/football/2022/may/16/111helsea-sale-in-danger-of-collapse-as-talks-over-roman-abramovich-loan-stall [perma.cc/DVZ6-CTRW] (discussing impact of sanctions in requiring Roman Abramovich to sell Chelsea football club).

29. *See* Erika Solomon, *Ukraine's Eurovision Winners Don't Regret Flouting the Rules with a Plea for Mariupol.*, N.Y. TIMES (May 17, 2022), https://www.nytimes.com/2022/05/17/world/europe/ukraine-eurovision-kalush-orchestra.html [https://perma.cc/X62Z-XBF4].

30. *See infra* Section III.A.

wanting to pay.[31] Yet, as Russia's invasion continued—and vicious atrocities came to light[32]—the United States has, in something resembling a game of whack-a-mole, incrementally tightened the sanctions noose, with new measures steadily all but ensuring a Russian sovereign default.[33] Indeed, by late June 2022, Russia was, by all accounts, unable to make a required payment within the grace period specified in bond documents.[34]

A potential Russian default raises extraordinarily complex legal issues, compounded by the essentially lawless contracts, exceptionally bellicose issuer, and broader backdrop of a brutal, ongoing conflict. This Article addresses the considerations in three parts: (1) what are Russia's legal obligations; (2) what constitutes a default on those obligations; and (3) given the jurisdictionally unmoored nature of the bonds, how would the issue be decided—and by whom?[35]

The threshold matter of determining Russia's obligations is largely regarding the applicable currency of payment. While normally uncontroversial, the inquiry here is complicated by the "alternative currency" provisions noted above. Commentators have largely focused on parsing those, admittedly, strange provisions—allowing Russia to use "alternative" currencies upon the advent of "reasons beyond its control."[36] That, however, is something of a red herring.[37]

That is because Russia had a June 2022 payment on its 1990s vintage bonds that could only be satisfied with U.S. dollars (USD)—an obligation Russia could not meet even under the most issuer-friendly contractual interpretation.[38] The typically straightforward sequence after a missed payment following the contractual grace period—declaration of default followed by acceleration and cross-defaults—is much complicated here by the geopolitical and sanctions backdrop.

Given the baseline that investors did not receive the June USD payment, the analysis turns to legal provisions governing default, including: (i) non-payment; (ii) consents; and (iii) IMF membership.[39]

---

31. *See* Alina Selyukh, *What's Happening with Russia's 1st Default on Foreign Debt in a Century*, NPR (June 27, 2022, 10:35 AM), https://www.npr.org/2022/06/27/1107750231/russia-default-foreign-debt-payments-explained [https://perma.cc/M7D8-P2FC].

32. *See supra* notes 2–3 and accompanying text.

33. *See infra* Section III.B.

34. *See* Elliot Smith, *Russia Slides into Historic Debt Default as Payment Period Expires*, CNBC (June 27, 2022, 8:01 PM), https://www.cnbc.com/2022/06/27/russia-on-the-brink-of-historic-debt-default-as-payment-period-expires.html [https://perma.cc/4YU2-MDNJ].

35. *See infra* Part IV.

36. *See infra* Sections II.B, II.C.1.

37. *See infra* Section IV.A.

38. *See infra* Section IV.A.

39. *See infra* Section IV.B.

Market participants have understandably focused on non-payment, perhaps the quintessential event of default. Here, the analytical complexity comes down to mechanics—specifically, whether an obligation is satisfied upon being *paid* by the issuer or *received* by investors. For instance, Russia has indicated that it *paid* its May interest payment early; however, sanctions have prevented investors from *receiving* the funds.[40] Based on UK law, which at least nominally governs the bonds, Russia may have viable arguments that its obligations were met upon making payment.[41] Furthermore, it could assert defenses predicated on U.S. actions precluding it from making payment.

However, two additional, underappreciated contractual provisions may offer investors a clearer legal path. First, the bonds require Russia to maintain any "consent, approval, license or other authority necessary" to perform its bond-specific obligations, which investors could posit Russia failed to do given their inability to receive payment.[42] Second, Russia's older, 1990s vintage bonds require that it maintain International Monetary Fund (IMF) membership and access "to use the general resources of the IMF."[43] Russia remains an IMF member, but given that the G7 nations "are working collectively to prevent Russia from obtaining financing" from the IMF, it appears unlikely that Russia can "use" the IMF's "general resources."[44]

While declaring an event of default appears legally viable, the larger challenges, undoubtedly, will be finding an arbiter for the matter as well as exercising remedies and enforcing creditors' rights. In this respect, Russia's exceptional circumstances exacerbate the innate challenges to the traditionally untidy sovereign debt restructuring process.[45]

---

40. *See* Smith, *supra* note 34.
41. *See infra* Section IV.B.1.
42. RUSSIAN FED'N, U.S. $1,750,000,000 4.75 PER CENT. BONDS DUE 2026, at 18 (2016) [hereinafter RUSS. 2026 USD BONDS]; *see also infra* Section IV.B.2.
43. *See infra* Section IV.B.3; *See also* Articles of Agreement of the International Monetary Fund, art. XXVI, § 2(a), Dec. 27, 1945, 60 Stat. 1401 (1945) ("If a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund.").
44. *See* Articles of Agreement of the International Monetary Fund, *supra* note 43; *see also infra* notes 254–55 and accompanying text.
45. This is in large part because of the first-order challenge of sovereign debt restructuring: there is no bankruptcy court for countries. *See* Anna Gelpern, *Sovereign Debt: Now What?*, 41 YALE J. INT'L L. (ONLINE SPECIAL ISSUE) 45, 51 (2016) (noting that sovereign restructuring is ultimately "a world without statutory, court-supervised bankruptcy, robust contract enforcement, or strong shared norms").

The prospect of a Russian sovereign default also raises profound, multi-layered normative and policy implications.[46]

As a first order matter, additional sovereign defaults—including Belarus and Ukraine—have closely followed with other financially weaker regional sovereigns now at heightened insolvency risk.[47] This dovetails dangerously against the backdrop of an accelerating emerging markets debt crisis, compounding challenges including record energy and food prices, while raising new issues including strains on international financial institutions' resources.

Further, the circumstances of this default—as a geopolitical, rather than economic matter—raise significant questions regarding the future use of sanctions. Much-discussed changes to global economic infrastructure—including reduced dollar dominance and potential financial decoupling—may reduce the future efficacy of economic measures, potentially impairing policy optionality.[48]

Finally, a Russian default risks creating a dangerous conflict between investors and Ukraine. This is because, in the event of a Russian default, creditors are certain to aggressively pursue legal remedies against Russian assets. At first glance this would appear to create another front against Russia. But, in reality—given likely claims by the Ukrainian state, as well as its citizens and companies devastated by an illegal war—it is more likely to result in a zero-sum distributive conflict between sharp-elbowed western investors and a devastated Ukrainian nation.

The rest of this Article is organized in four parts. Part II provides critical background regarding Russia's sovereign debt and details key legal provisions likely implicated in the event of a default. Part III discusses how, due to the complex interplay between global sanctions and Russia's sovereign debt, policy measures have pushed Russia towards default. Part IV analyzes the unprecedented legal challenges implicated by Russian default, including determining its obligations, contractual remedies, and challenges in resolution. Part V focuses on broader implications, including with respect to future sanctions regimes and potential legal conflict between bond investors and Ukraine over Russian assets, which this Article posits imperatively necessitates legislative action to prevent a morally unacceptable outcome.

---

46. *See infra* Part V.
47. *See infra* Section V.A.
48. *See infra* notes 304–06.

II. RUSSIA'S SOVEREIGN DEBT

Following its February 2022 invasion of Ukraine, Russia has flirted with sovereign default on a monthly basis, each time coming closer to the edge as the United States tightened the screws of a comprehensive global sanction regime.[49] Unlike Russia's 1998 financial crisis—which caused widespread global financial contagion—this time around, policy makers anticipate a more limited pecuniary fallout.[50]

Yet, Russia's sovereign debt has captured headlines around the world because it represents an important dimension to the economic subplot in the background of the Ukraine war. The situation is unique for a host of reasons—not least of which is the fact that Russia has the money and wants to pay. However, global sanctions enacted in response to its invasion have all but cut off Russia from the global economy and financial infrastructure. Russia's sovereign bonds—contractual payment obligations to pay largely United States and European investors—represent a key remaining linkage, which the United States has steadily narrowed.

At the same time, the structure and evolution of Russia's debt—with defensive legal provisions unambiguously calibrated for a sanctions contingency—along with accumulation of vast, multi-currency reserves indicate unambiguous premeditation and preparation.

Part II of this Article sets the stage for the broader discussion. First, it provides an overview of Russia's sovereign debt, as well as brief historical context. Then, it details key legal provisions, emphasizing how the structure evolved as a function of geopolitical developments—with increasingly defensive provisions calibrated for a sanctions contingency—and highlighting likely points of contention in the event of litigation.

---

49. Rodrigo Campos & Davide Barbuscia, *Explainer: Russia Swerves to Avoid Default: What is Next?*, REUTERS (May 1, 2022, 9:46 PM), https://www.reuters.com/business/russia-swerves-avoid-default-what-is-next-2022-05-02/ [https://perma.cc/8FS8-AZMF].

50. The IMF has noted that "direct financial exposures to Russian debt are, by and large, manageable." *FAQ on Russia-Ukraine War*, INT'L MONETARY FUND (Mar. 15, 2022), https://www.imf.org/en/About/FAQ/russia-ukraine#Q8%20Do%20you%20continue%20to%20engage%20with%20Russia,%20and%20do%20they%20have%20access%20to%20IMF%20support [https://perma.cc/LAQ7-4W6K].

A. Overview

Russia has total sovereign debt of about $300 billion,[51] a relatively "low" level of borrowing, in the IMF's view, equal to twenty percent of Russia's $1.5 trillion GDP.[52] U.S. debt, in contrast, stands around 123.4% of GDP.[53]

Like many sovereigns, Russia has both so-called "local," domestic-currency denominated debt, and foreign debt, denominated in USD and euros.[54] All things being equal, a nation generally prefers to borrow in its own currency because, inflationary pressure aside, it can always print more. That precludes balance of payment issues which often lead to sovereign distress. Creditors, however, often prefer to lend in lower volatility "reserve" currencies, like dollars or euros, in large part because the borrower cannot print more.[55] From a sanctions perspective, local debt also poses less risk to the borrower as a nation maintains control over its domestic financial infrastructure and payment systems.

Table 1 below summarizes Russia's outstanding debt by currency, as of June 2022. The vast majority—87.4% of the total, equal to about $260 billion USD-equivalent—is rouble-denominated, commonly known as OFZs.[56] In addition, Russia has about $37.3 billion of foreign currency debt; $31.7 billion is denominated in USD and 5.25 billion is in euros ($5.6 billion USD-equivalent).[57] It has fourteen series of foreign bonds outstanding: ten are USD-denominated, maturing between 2023 and 2047, while four are euro-denominated, maturing between 2025 and 2036.[58]

---

51. RUSSIAN FED'N, EUR 750,000,000 2.875 PER CENT. BONDS DUE 2025 & U.S.$ 3,000,000,000 5.10 PER CENT. BONDS DUE 2035, at i (2019) [hereinafter RUSS. 2035 USD BONDS] ("The Ministry of Finance of the Russian Federation (the 'Ministry of Finance' or the 'Issuer') acting on behalf of the Russian Federation ('Russia' or the 'Russian Federation') is issuing an aggregate principal amount . . . .") (emphasis removed). Russia's Ministry of Finance formally serves as the issuer of its sovereign bonds, per the respective bond documentation. The total excludes about $11.25 billion of obligations, issued by Russian state-owned or controlled enterprises, but potentially formally attributable to the sovereign, based on Bloomberg data. *See Russia External Debt*, CEIC DATA, https://www.ceicdata.com/en/indicator/russia/external-debt [https://perma.cc/2A4A-8AXT].

52. INT'L MONETARY FUND, RUSSIAN FEDERATION: 2020 ARTICLE IV CONSULTATION 49 (2021) [hereinafter 2021 IMF RUSS. ARTICLE IV REP.].

53. *Federal Debt: Total Public Debt as Percent of Gross Domestic Product*, FED. RSRV. ECON. DATA: ST. LOUIS FED. (Sept. 26 2022), https://fred.stlouisfed.org/series/GFDEGDQ188S [https://perma.cc/LDG9-8YZH].

54. *See* Lev E. Breydo, *Health of Nations: Preventing a Post-Pandemic Emerging Markets Debt Crisis*, NEV. L.J. (forthcoming) (manuscript at 9–11) (on file with author).

55. *See infra* Sections II.C, IV.A.

56. Based on Bloomberg data as of June 3, 2022, *see infra* Table 1. USD-equivalent figure subject to exchange rate volatility.

57. *See* Breydo, *supra* note 6.

58. *See id.*

TABLE 1

Russian Sovereign Bond Debt: High-Level Summary (June 1, 2022)

Currency	Amount ($BN)[1]		% of Total	6/1/2022[1] Price	Yield
U.S. Dollars	$	31.74	10.7%	22.87	58.7%
Euros	$	5.59	1.9%	17.23	40.0%
Russian Roubles[2]	$	260.0	87.4%	-	-
Total / Wt. Avg	**$**	**297.33**		**21.26**	**53.4%**

[1] *Based on Bloomberg Terminal Data. 6/1/2022 exchange rates.*

[2] ***Approximate estimated figure*** *based on combination of Bloomberg and Cbonds data.*

Excludes loans and state-owned enterprise obligations totalling approximately $11.25Bn.

According to IMF estimates, about three-fourths of Russia's debt is held by domestic investors, still leaving nearly $75 billion in the hands of foreign financial institutions.[59] Foreign investors hold both local and foreign currency denominated obligations.[60]

Based on Bloomberg data, as of May 1, 2022, the single largest known holder of Russian debt was Allianz, the German insurer and asset manager, with about $3.17 billion of exposure across rouble, euro, and USD-denominated bonds.[61] The next four largest known investors in Russian bonds, also as of May 1, 2022, were U.S.-based investment complexes: Capital Group ($1.31 billion), Vanguard ($868 million), Legg Mason ($837 million), and Western Asset Management ($807 million).[62]

59. *See* 2021 IMF RUSS. ARTICLE IV REP., *supra* note 52, at 29.

60. Yinqiu Lu & Dmitry Yakovlev, *Exploring the Role of Foreign Investors in Russia's Local Currency Government Bond (OFZ) Market* 4 (Int'l Monetary Fund, WP/17/28, 2017).

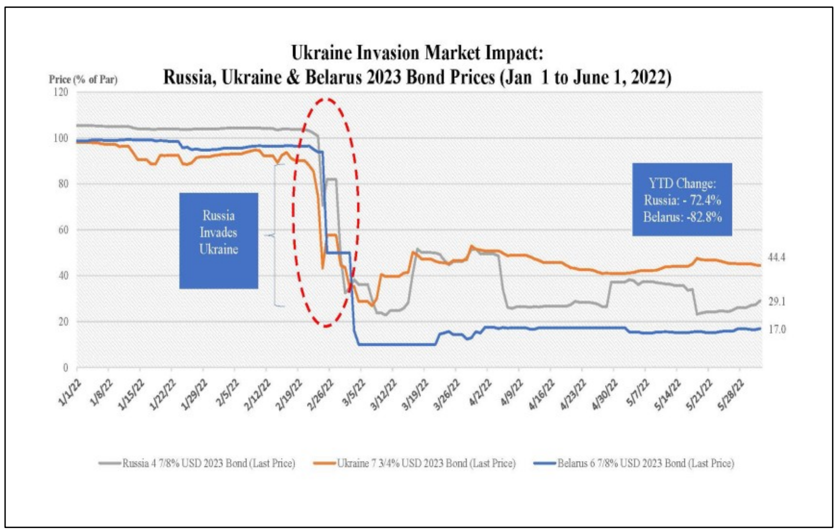
61. PIMCO, a Newport Beach-based Allianz subsidiary, was reported to have significant credit default swap exposure to Russia. *See* Laura Benitez & Loukia Gyftopoulou, *Pimco Fund Added to Russia Swap Exposure in Weeks Before War*, BLOOMBERG (May 30, 2022, 9:26 AM), https://www.bloomberg.com/news/articles/2022-05-30/pimco-fund-added-to-russia-swap-exposure-in-weeks-before-war?sref=OOpRUZ8l [https://perma.cc/NFG4-74DV].

62. Bloomberg data based on aggregate bond holder data function, as of May 1, 2022. Data compilation is on file with this Author.

Dozens of prominent European, Canadian, and Japanese investment groups—including, somewhat paradoxically, many ESG-focused vehicles—have respective exposures in the hundreds of millions.[63] Because of this, a prospective Russian default will impact investors around the world.[64]

While this Article focuses on Russian sovereign debt and the consequences of a potential default, a critical implication is that Russia's invasion is almost certainly the proximate cause of not one, but three sovereign debt restructurings.[65] Figure 1 below shows the invasion's market impact on Russian, Ukrainian, and Belarussian sovereign bonds maturing in 2023. Pricing as of June 2022 implied very high default probabilities for all three.[66]

FIGURE 1



63. *See* Ed Moisson, *ESG Investors Accused of 'Failing' over Russia*, FIN. TIMES (Mar. 11, 2022), https://www.ft.com/content/fad3e241-08fa-47fc-bdbd-32dd5b72403d [https://perma.cc/WZV7-RTUA]; *see also* Mark Weidemaier & Mitu Gulati, *Should Investors Who Care About ESG Buy Russian Sovereign Bonds?*, CREDIT SLIPS (Mar. 15, 2022), https://www.creditslips.org/creditslips/2022/03/should-investors-who-care-about-esg-buy-russian-sovereign-bonds.html [https://perma.cc/2CJ6-UB88].

64. At the same time, many of these investors are subject to different sanctions regimes, further complicating analysis around potential default. *See infra* Part III.

65. *See infra* Part VI.

66. *See infra* notes 69–72 (discussing historical connection between the three as the founding members of USSR, as well as the states responsible for its dissolution); s*ee also infra* Part VI.

Prior to the invasion, all three sets of bonds traded around par, or 100 cents on the dollar, with Russian bonds commanding a premium, reflecting generous coupons, an investment grade rating, and vast reserves.[67] On January 1, 2022, Russia's 2023 maturity closed at 105.5; by June 1, that bond was trading at 29.1, a 72.4% drop. Belarussian bonds have fared even worse, with its 2023 bond changing hands around seventeen cents on the dollar as of June 1, down 82.8% for the year. Perhaps surprisingly, given the astounding damage it is suffering, Ukrainian bonds have performed far less poorly than the others, down a relatively modest 54.7%, due to the government's almost stoic commitment to making payments and subsequent efforts to pursue an orderly restructuring.[68]

B. Historical Context

A very brief historical background regarding the USSR and its collapse, as well as Russia's 1998 default and financial crisis, is essential to contextualizing certain current events and Russia's sovereign finances.

The USSR was established in 1922 through a treaty between Russia, Ukraine, Belarus, and the now-defunct Transcaucasian Republic.[69] Shortly prior to this, following the violent Russian Revolution, the newly-created Soviet government repudiated all debts of the Tsarist government, shocking

---

67. *See infra* note 103; *see also* Lev E. Breydo, *Putin's Matryoshka. A War Reparations Facility for Rebuilding Ukraine*, COLUM. J. TRANSNAT'L L. (forthcoming) (manuscript at Section I.C), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4183023 (detailing composition of Russian foreign reserves).

68. *See supra* Figure 1; Maurice Obstfeld et al., *Life or Debt in Ukraine*, PROJECT SYNDICATE (Apr. 29, 2022), https://www.project-syndicate.org/onpoint/ukraine-debt-deferment-restructuring-by-anna-gelpern-et-al-2022-04 [https://perma.cc/M4LE-J9MQ]; *see also infra* Section VI.A.

69. The Transcaucasian Republic encompassed present-day Armenia, Azerbaijan and Georgia. *See* Nikolay Andreyevich Gvozdetsky, G. Melvyn Howe & Solomon Ilich Bruk, *Transcaucasia*, BRITANNICA (Aug. 11, 2020), https://www.britannica.com/place/Transcaucasia [https://perma.cc/3VW8-MRKW]. In 2008, Russia invaded Georgia, and has also supported certain separatist elements in the nation. *See* Peter Dickinson, *The 2008 Russo-Georgian War: Putin's Green Light*, ATL. COUNCIL (Aug. 7, 2021), https://www.atlanticcouncil.org/blogs/ukrainealert/the-2008-russo-georgian-war-putins-green-light/ [https://perma.cc/MH2K-VCSC].

international markets.[70] This led to a nearly century-long default—perhaps the longest on record—that was only formally resolved in the mid-1990s.[71]

By the late 1980's, the Soviet Union rapidly disintegrated, with former member states declaring independence.[72] In 1991, Russia, Ukraine, and Belarus, signed the Belovezh Accords, which formally extinguished the USSR.[73] Russia's current President, Vladimir Putin, has described these events as "the greatest geopolitical catastrophe of the century."[74]

In the 1990's, the newly-established Russian Federation (Russia) underwent so-called shock therapy, "transform[ing]" from a highly centralized state towards a market-based economy.[75] Things did not go smoothly.[76] Russia's first decade was characterized by vast macroeconomic instability, "mayhem" from wildly mismanaged privatizations,[77] and a collapse of already-low

---

70. Eric Toussaint, *The Russian Revolution, Debt Repudiation, War and Peace*, COMM. FOR ABOLITION ILLEGITIMATE DEBT (July 17, 2017), http://www.cadtm.org/The-Russian-Revolution-Debt [http://perma.cc/5GHP-ZBWR].

71. Uli Schmetzer, *Russia to Pay Off Old Bonds*, CHI. TRIB., Nov. 28, 1998, at 1 ("Russian President Boris Yeltsin agreed Tuesday to repay a nominal value of between $80 and $100 for each of the 4 million czarist bonds believed to remain in circulation in France or to have survived the European wallpaper fad, for a total payout of around $400 million.").

72. The USSR grew to encompass fifteen republics and served as the United States' chief ideological and geo-political rival in the post-World War II era. *See This Day in History: December 30, 1922: USSR Established*, HISTORY, https://www.history.com/this-day-in-history/ussr-established [https://perma.cc/SM4T-UU46]; *Revelations from the Russian Archives*, LIBR. OF CONG., https://www.loc.gov/exhibits/archives/sovi.html [https://perma.cc/UQ85-WARA].

73. *See* Plokhy, *supra* note 12.

74. *Putin: Soviet collapse a 'genuine tragedy,'* NBC NEWS (Apr. 25, 2005, 11:30 AM), https://www.nbcnews.com/id/wbna7632057 [https://perma.cc/J8RT-KPHF]. Though somewhat beyond the scope of this discussion, it is worth noting that in 1994, against the broader backdrop of the global Non-Proliferation Treaty, Ukraine voluntarily surrendered its inherited stock of nuclear weapons—and thus its deterrent—in exchange for multi-national assurances of its security and sovereignty, provided by the so-called Budapest Memorandum, to which Russia and the United States were both signatories. David E. Sanger, *Putin Spins a Conspiracy Theory that Ukraine Is on a Path to Nuclear Weapons*, N.Y. TIMES (Feb. 23, 2022), https://www.nytimes.com/2022/02/23/us/politics/putin-ukraine-nuclear-weapons.html [https://perma.cc/CLJ8-LKXK]; *Zelensky's Full Speech at Munich Security Conference*, KYIV INDEP. (Feb 19, 2022, 11:22 PM), https://kyivindependent.com/national/zelenskys-full-speech-at-munich-security-conference/ [https://perma.cc/5BEZ-W39Z]; *see also* Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, Dec. 5, 1994, 3007 U.N.T.S. 52241.

75. YILMAZ AKYÜZ & PAUL RAYMENT, THE RUSSIAN CRISIS 1 (1998), https://unctad.org/system/files/official-document/poirrsd002.en.pdf [https://perma.cc/59LM-3VR4].

76. In 1991, Vnesheconombank, a state lender, and one of the USSR's primary vehicles for market access, declared insolvency. *See* PETER SOCHAN, CTR. FOR SOC. & ECON. RSCH., THE BANKING SYSTEM IN UKRAINE 7 (1996).

77. *See* Greg Rosalsky, *How 'Shock Therapy' Created Russian Oligarchs and Paved the Path For Putin*, NPR (Mar. 22, 2022, 6:30 AM), https://www.npr.org/sections/money/

living standards, marked by nearly a cumulative 50% GDP drop.[78] The state borrowed heavily to fill deep fiscal gaps; by the first quarter of 1998, debt service was "fully one-third of federal spending."[79]

Despite a last-ditch international emergency financing package,[80] in August 1998, Russia declared that it would restructure its local currency debts, but not its foreign-currency obligations.[81] The default rippled out across global markets with "substantial international contagion,"[82] causing vast losses at major financial institutions worldwide as well as the infamous collapse of Long-Term Capital Management.[83]

2022/03/22/1087654279/how-shock-therapy-created-russian-oligarchs-and-paved-the-path-for-putin [https://perma.cc/G4WU-GDS3] ("President Yeltsin delivered the first big shock to the Russian economy when he lifted price controls in December 1991. As the Soviet economy collapsed, however, the policy ended up unleashing hyperinflation. By 1994, consumer prices in Russia would skyrocket to almost 2000 times what they had been in 1990. That candy bar that had cost $1 now cost $2000. Hyperinflation devastated ordinary Russians.").

78. *See* Andrei Shleifer & Robert W. Vishny, *Privatization in Russia: First Steps*, *in* 2 THE TRANSITION IN EASTERN EUROPE: RESTRUCTURING 137–64 (Olivier Blanchard, Kenneth Froot & Jeffrey Sachs eds., 1994); *see also* Michel Camdessus, Managing Director, IMF, Russia and the IMF: Meeting the Challenges of an Emerging Market and Transition Economy (Apr. 1,1998) (transcript available at IMF.org).

79. AKYÜZ & RAYMENT, *supra* note 75, at 6.

80. Michael R. Gordon & David E. Sanger, *Rescuing Russia: A Special Report*, N.Y TIMES (July 17, 1998), https://www.nytimes.com/1998/07/17/world/rescuing-russia-special-report-bailout-kremlin-us-pressed-imf.html [https://perma.cc/2UXY-A6Z9].

81. Homi Kharas, Brian Pinto & Sergei Ulatov, *An Analysis of Russia's 1998 Meltdown: Fundamentals and Market Signals*, BROOKINGS PAPERS ON ECON. ACTIVITY, no. 1, 2001, at 1, 1, 3, 43.

> Russia also said it would restructure about $40 billion in domestic treasury bills that mature before the end of 1999. And it also imposed a 90-day moratorium on the repayment of $40 billion in corporate and bank debt to foreign creditors. However, the government's foreign-currency debts, estimated at about $135 billion, weren't affected.

Mark Whitehouse et al., *Russia Allows Ruble to Fall, Delays Debt Repayment*, WALL ST. J. (Aug. 18, 1998, 3:46 AM), https://www.wsj.com/articles/SB903160455488900500 [https://perma.cc/NZ5M-E4L7]. It is worth noting that despite the prevailing conception that this did not constitute a foreign currency debt default, the relatively high haircut suggests foreign investors restructured their debts to forestall a "messier" formal default.

82. MARDI DUNGEY ET AL., COMM. ON THE GLOBAL FIN. SYS., BANK FOR INT'L SETTLEMENTS, INTERNATIONAL CONTAGION EFFECTS FROM THE RUSSIAN CRISIS AND THE LTCM NEAR-COLLAPSE 1, 1 (2022).

83. *See* ROGER LOWENSTEIN, WHEN GENIUS FAILED: THE RISE AND FALL OF LONG-TERM CAPITAL MANAGEMENT 144 (2000).

In 2000, Russia sealed a deal with its creditors, who accepted "haircuts" around 50%.[84] Two of those legacy obligations remain outstanding today:[85] (i) $2.5 billion of 12.75% 2028 USD Bonds; and (ii) $2.33 billion of 7.5% 2030 USD Step-Up Bonds, of which about $21.2 billion were initially issued but subsequently paid down.[86]

For much of the 1990s, Russia was led by Boris Yeltsin, a "drunk, corrupt and ailing" president, and principal architect of its economic transition.[87] In 1999, Yeltsin appointed as prime minister Vladimir Putin, then a little-known bureaucrat and KGB alum.[88] "[O]n the heels of Russia's 1998 default and financial crisis," Putin became president in 2000 and has been in power ever since.[89]

During the first eight years of Putin's presidency, Russia's economic fortunes seemingly shifted. "The economy galloped ahead, foreign investment poured in."[90] This was largely exogenous, attributable to a commodity bull market, particularly for the fossil fuels which Russia had in abundance. Russia's financial position improved as Europe grew economically addicted to its energy exports.[91] By 2022, Russia supplied the EU with

---

84. Juan P. Farah Yacoub, *The Legal Profile of Russian Eurobonds: Engineered Against Speed* 8 (World Bank Grp., Policy Research Working Paper No. 10030, 2022) (citing *All Friends Now*, ECONOMIST (Feb. 17, 2000), https://www.economist.com/finance-and-economics/2000/02/17/all-friends-now [https://perma.cc/L93C-54P4]).

85. *See* Gelpern, *supra* note 45, at 47 (noting that one of "two distinctive features of sovereign debt" is that "[g]overnments have no access to bankruptcy relief").

86. The outstanding 2030 bonds were issued through a March 2018 tender-exchange of earlier 2000 vintage bonds, of which about $21.2 billion were initially issued but subsequently paid down. Figures based on Bloomberg data. *See infra* Appendices I, II.

87. Mark Lawrence Schrad, *To Understand Putin, We Need to Look at 1990s Russian Democratization*, WASH. POST (Apr. 12, 2022, 6:00 AM), https://www.washingtonpost.com/outlook/2022/04/12/understand-putin-we-need-look-1990s-russian-democratization/ [https://perma.cc/GB5S-45HV].

88. *Id.*; *see also* Luke Harding, *Spies, Sleepers and Hitmen: How the Soviet Union's KGB Never Went Away*, GUARDIAN (Nov. 19, 2014, 1:51 PM), https://www.theguardian.com/world/2014/nov/19/spies-spooks-hitmen-kgb-never-went-away-russia-putin [https://perma.cc/T6EN-DTFZ].

89. Jacob Bogage & Adela Suliman, *Russia's 'Imminent' Default Will Have Harsh Ripple Effects. Here's Why.*, WASH. POST (Mar. 9, 2022, 4:52 PM), https://www.washingtonpost.com/business/2022/03/09/fitch-ratings-russia-default-ukraine-sanctions/ [https://perma.cc/DF7X-GCFY]. Formally, Vladimir Putin was prime minister during Dmitry Medvedev's presidency, however it is widely understood that Putin's influence remained largely unchanged.

90. Roger Cohen, *The Making of Vladimir Putin*, N.Y. TIMES (Mar. 26, 2022, 6:01 PM), https://www.nytimes.com/2022/03/26/world/europe/vladimir-putin-russia.html [https://perma.cc/FE23-4SP3].

91. *See infra* note 160 (discussing European reluctance to impose sanctions in 2014 following the invasion of Crimea).

30% of its oil and 40% of its gas—and fully 55% for Germany—receiving nearly $1 billion per day.[92]

For Russia, the 2000s were a period of financial rebuilding. The state paid down its restructured debts and slowly built up a domestic currency sovereign bond market.[93] In 2012, Russia allowed Euroclear and Clearstream access to its National Settlement Depository (NSD) and returned to foreign currency markets with an oversubscribed $7 billion USD-denominated Eurobond offering in three series, one of which remains outstanding.[94] In 2013, Russia issued more USD-denominated debt, of which two issues remain outstanding.[95]

Yet, as Putin's hand grew stronger domestically, Russia's sphere of influence seemed to shrink. From the mid-2000s to 2010s, a number of former USSR nations experienced peaceful pro-democracy uprisings, termed "color revolutions."[96] This culminated with the 2014 Maidan Revolution, in which Ukrainians toppled President Viktor Yanukovych, a close ally of Putin.[97] Shortly after Maidan, in early 2014, Russia annexed Crimea and began a proxy war against Ukraine's democratically elected government.[98]

---

92. Tom Wilson, *'There Is Nothing Else Out There': Why Europe Is Hooked on Russian Gas*, FIN. TIMES (Apr. 6, 2022), https://www.ft.com/content/20987a87-1b87-4f45-ab00-722f9ddcd2eb [https://perma.cc/X3J4-7B5C]; *see also infra* Part III (discussing Russia's attempt to use "reverse" of its gas payment structure in respect of sovereign debt).

93. Vasilisa Baranova & Dmitry Kulikov, *A Brief Introduction to the Russian Bond Market*, ACRA (Feb. 28, 2019), https://www.acra-ratings.ru/research/1119/?lang=en [https://perma.cc/Q6XA-GM4Q] (showing increase in Russia's rouble-denominated bond market); *see also* Lu & Yakovlev, *supra* note 60, at 6.

94. Oksana Kobzeva & Jason Bush, *Russia Sells $7 billion in Eurobonds, Meets 2012 Target*, REUTERS (Mar. 28, 2012, 7:07 AM), https://www.reuters.com/article/us-russia-eurobonds/russia-sells-7-billion-in-eurobonds-meets-2012-target-idINBRE82R0RT20120328 [https://perma.cc/VHZ5-XT9M].

95. Importantly, these two sets of 2012 and 2013 "market re-entry bonds" have significantly different provisions from securities issued following Russia's invasion of Crimea. *See infra* Part III.

96. Melinda Haring & Michael Cecire, *Why the Color Revolutions Failed*, FOREIGN POL'Y (Mar. 18, 2013, 5:04 PM), https://foreignpolicy.com/2013/03/18/why-the-color-revolutions-failed/ [https://perma.cc/ND99-3K7N].

97. *See* WINTER ON FIRE: UKRAINE'S FIGHT FOR FREEDOM (Netflix 2015).

98. *See generally* MICHAEL KOFMAN ET AL., LESSONS FROM RUSSIA'S OPERATIONS IN CRIMEA AND EASTERN UKRAINE (2017).

That invasion led to Ukraine's 2015 sovereign debt default,[99] as well as ongoing litigation regarding debts to Russia incurred by Yanukovych.[100]

The United States and the EU responded to Russia's annexation of Crimea with sanctions, marking a significant deterioration in geopolitical relations, particularly as between the United States and Russia.[101]

C. Key Contractual Provisions

Reflecting the shift in Russia's geopolitical posture, after 2014, the terms and structure of its foreign-currency debt evolved dramatically, incorporating ever-more aggressive provisions seemingly calibrated in expectation of international sanctions.[102] Indeed, it is difficult to parse the evolution of the language without inferring a significant degree of premeditation.

In the years before the 2022 invasion of Ukraine, Russia worked to "sanction proof" both its debt—adding contractual sanctions defenses, while stripping away basic creditor protections—and broader economy, leveraging energy earnings to build a $600 billion-plus reserves war chest that *The Economist* reckoned to be "more than enough to weather sanctions."[103]

1. Alternative Payment Currency

The currency-specific provisions of Russia's sovereign bonds perhaps most clearly illustrate the interplay between geopolitics and Russia's sovereign finances, as well as its steadily deteriorating relations with the

99. *See* Ilya Timtchenko, *Ukraine's Debt Problem Spells Trouble*, FOREIGN POL'Y (Feb. 26, 2021, 12:57 PM), https://foreignpolicy.com/2021/02/26/imf-review-ukraine-debt-gdp-linked-warrants-reform/#:~:text=In%202015%2C%20Ukraine's%20creditors%20agreed,nominal%20GDP%20exceeds%20%24125.4%20billion [https://perma.cc/X82V-UQSW]; *see also Ukraine Completes Debt Restructuring of Around $15 Billion*, REUTERS (Nov. 12, 2015, 11:17 AM), https://www.reuters.com/article/us-ukraine-crisis-debt/ukraine-completes-debt-restructuring-of-around-15-billion-idUSKCN0T12FT20151112 [https://perma.cc/B79M-9BLJ].

100. *See* Anna Gelpern, *Ukraine's Odious Bonds: Part I*, PETERSON INST. INT'L ECON. (Mar. 14, 2021, 6:30 AM), https://www.piie.com/blogs/realtime-economic-issues-watch/ukraines-odious-bonds-part-i [https://perma.cc/PAV3-UGF7].

101. *See infra* Part III.

102. *See supra* note 23; *see also* Mitu Gulati, *Putin's Booby-Trapped Bonds*, FIN. TIMES (Apr. 28, 2022), https://www.ft.com/content/a0b41150-78aa-490d-a3eb-4e8bd7bcf155 [https://perma.cc/YF3P-6ZZX]; Tracy Alloway, *Here's Just How Weird Some of Those Russian Bonds Really Are*, BLOOMBERG L. (Mar. 16, 2022, 9:11 AM), https://www.bloomberglaw.com/bloomberglawnews/securities-law/XEI8HCVK000000?bna_news_filter=securities-law#jcite [https://perma.cc/8RGV-D5KN].

103. *A War in Ukraine Could Have Global Consequences*, ECONOMIST (Jan. 29, 2022), https://www.economist.com/leaders/2022/01/29/a-war-in-ukraine-could-have-global-consequences [https://perma.cc/52SQ-3HXG].

United States and the EU.[104] Indeed, the relevant language has evolved in a manner that strongly illustrates premeditation and anticipation of future sanctions that hinder Russia's ability to utilize foreign reserve currencies. Otherwise, the provisions simply make no sense from a legal or commercial perspective.

For sovereign debt, the currency of denomination represents a critical legal and financial distinction, given the foundational differences between local and foreign currency.[105] Because of this, the applicable currency underlying such credits is typically unambiguous.[106] Russia's bonds, however, contain a relatively unique "Alternative Payment Currency" clause (APC Provision), purportedly allowing the sovereign to make payments to investors in a currency different from the one specified in the event of "reasons beyond its control."[107]

As summarized in Table 2 below, and detailed in Appendix I, Russia's outstanding obligations can be separated into four core categories[108]:

104. Russia's most recently issued foreign currency-denominated bond describes the situation as: "Differences of views between the Russian Federation and certain other countries (including the United States and Member States of the EU) regarding events in Ukraine." RUSSIAN FED'N, EUR 500,000,000 1.125 PER CENT. BONDS DUE 2027, at 11 (2021) [hereinafter RUSS. 2027 EUR BONDS].

105. *See* Breydo, *supra* note 54.

106. *See id.*

107. As a technical matter, the bonds introduce a concept of an Alternative Payment Currency Event, the occurrence of which allows the issuer to utilize an Alternative Payment Currency, instead of the one specified in the bonds. *See* Alloway, *supra* note 102 (quoting RUSS. 2027 EUR BONDS, *supra* note 104, at 22).

108. Based on Bloomberg data. *See infra* Appendix I.

TABLE 2

Short Name	Amount	Price % Par (6/1/22)	Description	Currency Provisions
'Legacy Bonds'	$4.85B	28.8	Legacy obligations from Russia's 1998 debt restructuring	**USD Only**
Market Re-Entry Bonds	$7.5B	27.9	2012 and 2013 USD issuances marking Russia's foreign debt market return	
'Crimea Bonds'	$12.41B	19	USD bonds issued after Russia's invasion of Crimea	APC Provision, contemplating payment in **Euros, Pounds or Swiss Francs**
Post-2018 Bonds	$7B USD; 5.25B Euro	16.5	USD and EUR bonds issued between 2018 and 2021	APC Provision, with additional fall-back to **Rouble payments**

[1] Based on Bloomberg Terminal data. See Appendix I for additional detail.

[1] Based on Bloomberg Terminal data. See Appendix I for additional detail.
[2] See supra, Part I.B.
[3] See supra, n. 47

The first two categories—encompassing all bonds issued before the 2014 Crimea invasion—uniformly do not contain an APC Provision and are clearly payable only in U.S. dollars.[109] They are separated because the Legacy Bonds, left over from Russia's 1998 restructuring, include certain additional provisions potentially valuable to creditors.[110]

The third category of bonds are also all USD-denominated and were issued between 2014 and 2018, after the invasion of Crimea. They first introduce the APC Provision concept, stating that:

> [I]f, *for reasons beyond its control*, the Russian Federation is unable to make payments . . . in U.S. dollars . . . the Russian Federation shall make such payments (in whole or in part) in *Euros, Pound sterling or Swiss francs*.[111]

The fourth category of post-2018 bonds—issued in six series, with four euro-denominated and two in U.S. dollars—goes a step further, providing an additional second "fallback" currency in the form of Russian roubles. The language is as follows:

> [I]f, for reasons beyond its control, the Russian Federation is unable to make payments of principal or interest (in whole or in part) in respect of the New Bonds in U.S. dollars, the Russian Federation shall make such payments (in whole or in part) in euros, Pound sterling or Swiss francs *or, if for reasons beyond its control the Russian Federation is unable to make payments of principal or interest (in whole or in part) in respect of the New Bonds in any of these currencies, in Russian roubles on the due date at the Alternative Payment Currency Equivalent . . . of any such U.S. dollar-denominated amount*.[112]

109. *See infra* Part III.
110. *See infra* Sections II.C.2, II.C.3 (describing additional event of default and longer prescription period to pursue claims).
111. *See* RUSS. 2026 USD BONDS, *supra* note 42, at 30 (emphasis added).
112. RUSS. 2035 USD BONDS, *supra* note 51, at 5 (emphasis added).

In substance, this "dealer's choice" clause provides that post-2018 obligations: (i) should be paid in the currency of denomination (i.e., USD or euro); unless (ii) "for reasons beyond its control" Russia cannot use USD or euros in which case USD-denominated payments will be made in "Euros, Pound sterling or Swiss francs" (and euro payments in USD);[113] unless (iii) for additional "reasons beyond its control" Russia cannot use those fallback currencies, in which case the payments will be made in Russian roubles.

Unsurprisingly, no context is provided regarding the meaning of "reasons beyond its control."

These relatively minute differences in language have already yielded multi-billion-dollar market implications. In April 2022, the Credit Derivatives Determinations Committee (CDS DC)—arbiter of credit default swap interpretation—held that bonds contemplating payment in roubles were ineligible as "deliverable obligations," potentially costing those investors billions.[114] Market prices have also adjusted accordingly; as of June 2022, the rouble fallback bonds traded at a 40%-plus discount to the contracts without APC Provisions, as shown in Table 2 above.[115]

Russia's bonds also include a "Currency Indemnity" provision,[116] which, as Professor Mitu Gulati explains, "seems to say that payment in a different currency (e.g., roubles) can constitute a 'discharge', [sic] so long

113. The euro-denominated vintages' first-order fallback allows for payment in U.S. dollars, pound sterling, or Swiss francs.

114. CREDIT DERIVATIVES DETERMINATIONS COMMS., RUSSIAN FEDERATION—PRELIMINARY LIST (2022), https://www.cdsdeterminationscommittees.org/documents/2022/04/preliminary-list-russian-federation-potential-failure-to-pay.pdf/ [https://perma.cc/Q96C-7DQZ] (detailing Russian sovereign bonds eligible for delivery at potential future CDS auction and finding bonds with rouble fallback provision not eligible); *see also* Irene García Pérez, Lucca de Paoli & Abhinav Ramnarayan, *How Sanctions Are Pushing Russia to Brink of Default*, WASH. POST (Apr. 7, 2022, 9:28 AM), https://www.washingtonpost.com/business/energy/how-sanctions-are-pushing-russia-to-brink-of-default/2022/04/06/c0eab0b2-b57a-11ec-8358-20aa16355fb4_story.html [https://perma.cc/WAR8-65PA]; *infra* Section IV.C.

115. *See supra* Table 2.

116. The language states that while the "U.S. dollar is the sole currency of account and payment" under the bonds,

> any amount received . . . in a currency other than the U.S. dollar . . . shall only constitute a discharge to the [Russian Federation] to the extent of the U.S. dollar amount which the recipient is able to purchase with the amount so received or recovered . . . ,

with the sovereign indemnifying the recipient against adverse currency shifts. RUSS. 2026 USD BONDS, *supra* note 42, at 30.

as the recipient can use those roubles to buy a sufficient number of dollars."[117] As discussed below, it would appear that Russia's latest plan to evade the sanctions regime through Russian bank accounts may be predicated on leveraging this provision.[118]

2. *Events of Default*

In broad strokes, relative to currency and enforcement dimensions, Russian bonds' provisions governing events of default (EoD)[119] are more consistent with market norms.[120] All fourteen series of outstanding bonds provide essentially the same seven events of default, as detailed in Appendix II. The two series of Legacy Bonds from the last restructuring include an additional event of default, triggered by Russia losing IMF membership or "eligib[ility] to use the general resources of the IMF."[121] This term is not uncommon, and logical here given the role of international financing institutions in Russia's last default and restructuring.[122]

For our purposes, key provisions include non-payment of principal or interest—subject to a thirty-day grace period—cross-defaults, loss of consents required for Russia to "perform its obligations under the Bonds," and IMF membership.[123]

The bonds provide that if any such enumerated event "occurs and is continuing," 25% of bond holders can accelerate the obligations, making the entirety due and payable.[124] That, in turn, would allow holders of other series of bonds to accelerate their obligations based on cross-default provisions.[125] Acceleration can be undone by notice from holders of "at least" fifty percent of the obligations.[126]

---

117. Gulati, *supra* note 102. This is notably also distinct from the typical purpose and operation of standard Currency Indemnity provisions. *See* LEE C. BUCHHEIT, HOW TO NEGOTIATE EUROCURRENCY LOAN AGREEMENTS (Euromoney Institutional Investor 2006) (1995).

118. *See infra* Section III.B.

119. Events of Default are debt document provisions that specify circumstances where the borrower has failed to meet its obligations, allowing creditors to declare a "default." If not cured in a specified time—here, thirty days—the default declaration then allows 25% of creditors to accelerate the obligations, making the entirely due and payable. RUSS. 2026 USD BONDS, *supra* note 42, at 1, 17–18.

120. *See supra* Section II.C.1; *infra* Section II.C.3.

121. *See infra* Appendix II.

122. *See supra* text accompanying notes 70–71; *infra* Part III.

123. *See infra* Appendix II.

124. The twenty-five percent threshold is measured based on "aggregate outstanding principal amount" of holdings. RUSS. 2026 USD BONDS, *supra* note 42, at 17–19.

125. The cross-default provision requires Russia to be in default on public external indebtedness exceeding $75 million. *Id.* at 18.

126. *Id.* at 19.

While respective thresholds are not unusual, application may be complicated by Russian bonds' rather unusual "Further Issues" clause. That provision gives the sovereign "liberty," without bondholder consent, to "create and issue further bonds" that "shall be consolidated" with the outstanding obligations.[127] In other words, Russia has sole and complete discretion to issue more bonds, thus diluting the voting power of its outstanding obligations.

Though the bonds have customary "disenfranchisement provisions"—excluding votes from bonds held by the issuer or "controlled" entities—nothing would legally preclude Russia from "issuing" additional bonds to a seemingly "independent" entity controlled by a close Kremlin ally.[128]

3. Enforcement of Claims

Perhaps the most brazen dimension of Russia's sovereign obligations is that "while they are nominally governed by U.K. law, they don't appear to submit to a jurisdiction."[129]

There is some innate normative tension between a nation's sovereignty and its desire to engage in essentially commercial borrowing transactions, which implicate private investors' need to protect and, at times, enforce legal rights.[130] Reflecting this, relative to corporate obligations, sovereign debt is characterized by "limited legal enforceability."[131]

In the United States, the Foreign Sovereign Immunities Act of 1976 (FSIA) establishes broad limitations against a foreign nation being sued in U.S. courts, as well as certain exceptions to that sovereign immunity,[132]

---

127. RUSS. 2026 USD BONDS, *supra* note 42, at 30; *see also* Gulati, *supra* note 102.

128. Gulati, *supra* note 102. As Professor Gulati also points out, Uruguay's 2003 bonds include express provisions against an issuer utilizing a "re-opening" to place bonds in the hands of friendly investors, artificially diluting the votes. *Id.*

129. Sydney Maki, *Hedge Fund Veteran Jay Newman Says Russia's Sovereign Debt is Worthless*, BLOOMBERG (Mar. 4, 2022, 7:44 AM), https://www.bloomberg.com/news/articles/2022-03-04/jay-newman-says-russia-s-sovereign-debt-is-completely-worthless?sref=OOpRUZ8l&leadSource=uverify%20wall [https://perma.cc/964C-ZFNY].

130. *See* Stephen Kim Park & Tim R. Samples, *Distrust, Disorder, and the New Governance of Sovereign Debt*, 62 HARV. INT'L L.J. 175, 176, 179–80 (2021).

131. *Id.* at 180 ("Sovereign debt is distinguished from corporate debt by its limited legal enforceability."); *see also* Mitu Gulati & George Triantis, *Contracts without Law: Sovereign Versus Corporate Debt*, 75 U. CIN. L. REV. 977, 986 (2007) ("[C]reditors of sovereigns have limited legal recourse.").

132. *See* 28 U.S.C. §§ 1330, 1332, 1391(f), 1441(d), and 1602–1611.

the most pertinent of which is for "commercial activity."[133] While sovereigns often waive immunity from suit, and are subject to FSIA jurisdiction in the United States, investors tend to discount the practical value of potential litigation.[134] "In short, it is relatively easy for creditors to get court judgments against a defaulting sovereign but relatively difficult for them to enforce those judgments."[135]

Along with relatively frequent express waivers of immunity in respect of debt-related claims, sovereign debt documents typically explicitly agree to jurisdiction of foreign courts—usually New York or London—on such issues.[136] For instance, bonds issued by the Lebanese Republic, which is currently in severe financial distress and default on its $31 billion of Eurobonds,[137] provide a "waiver of immunity . . . [with] the fullest scope permitted under the Foreign Sovereign Immunities Act of 1976," while "irrevocably" submitting to the non-exclusive jurisdiction of New York to "settle any disputes" arising in respect of the bonds and related agreements.[138]

In contrast, "[*t*]*he Russian Federation has not waived any of its sovereign immunity*, and has not submitted to the jurisdiction of any court, in respect of its obligations under the Bonds."[139] Further, the debt documents point out that a final judgement of a foreign court will "be recognized and enforced in the Russian Federation" only if there is a relevant treaty providing for mutual recognition and enforcement.[140] There are no such treaties "in effect today."[141] While Russian courts may recognize a judgment based on principles of reciprocity, given the broader backdrop, that appears unlikely; further, "in all events" recognition and enforcement of a foreign

133. 28 U.S.C. § 1605(a)(2).

134. *See* W. Mark C. Weidemaier, *Sovereign Immunity and Sovereign Debt*, 2014 U. ILL. L. REV. 67, 89–101, 106–07 (2014).

135. Lee Buchheit et al., *How to Restructure Sovereign Debt: Lessons from Four Decades* 3 (Peterson Inst. for Int'l Econ., Working Paper No. 19-8, 2019).

136. *See* IMF, *The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors—Recent Developments, Challenges, and Reform Options*, Policy Paper No. 043, at 15 (Sept. 2020). This is notably distinct from a full waiver of sovereign immunity, but rather is most akin to a circumscribed waiver for the particular circumstances.

137. Dana Khraiche & Irene Garcia Perez, *Lebanon's Legacy of Political Turmoil Complicates Its Debt Crisis*, BLOOMBERG (Oct. 20, 2021, 5:40 AM), https://www.bloomberg.com/news/articles/2021-10-20/legacy-of-political-turmoil-complicates-lebanon-s-debt-crisis?sref=OOpRUZ8l [https://perma.cc/3GY4-X5SZ].

138. LEBANESE REPUBLIC, U.S. $34,000,000,000 GLOBAL MEDIUM-TERM NOTE PROGRAM 136 (2018) [hereinafter LEB. GLOB. MTN PROSPECTUS]; *see also* ISLAMIC REPUBLIC OF PAK., U.S. $500,000,000 8.250 PER CENT NOTES DUE 2025, at 121–22 (2015) [hereinafter PAK. 2025 USD BOND PROSPECTUS] (discussing the choice of law and limited waiver provisions).

139. RUSS. 2026 USD BONDS, *supra* note 42, at 3, 123–24 (emphasis added).

140. *Id.* at 8.

141. *Id.* at 8–9.

judgement is subject to "exceptions and limitations," including "Russian public policy."[142]

Putting all that together, "it may be difficult or impossible for an investor to obtain a judgement against the Russian Federation in a foreign court and/or have such judgment recognized and/or enforced in any jurisdiction."[143]

Furthermore, most of Russia's bonds provide investors "an unusually short period of time—a mere [thirty-six] months" to bring claims or lose them forever.[144] Notably, Russia's Legacy Bonds offer a longer window of ten years for claims in respect of principal and five years for claims regarding interest, more consistent with market standards.[145]

Thusly, investors in Russian bonds may soon be faced with the prospect of attempting to resolve a multi-modal set of unique challenges in a uniquely short period of time.

III. SANCTIONS & BOND PAYMENT INTERPLAY

> "*We want to see Russia weakened* to the degree that it can't do the kinds of things that it has done in invading Ukraine."
>
> —Defense Secretary Lloyd Austin.[146]

Following Russia's "unprovoked and unjustified" February 24, 2022, invasion of Ukraine, the United States led a plurality of the world's advanced economies—including the EU, UK, Canada, and Japan—in enacting a comprehensive sanctions regime against the aggressor.[147]

142. *Id.*

143. *Id.* at 8.

144. Lee Buchheit & Mitu Gulati, *Forced Sovereign Debt Defaults*, FIN. TIMES (June 1, 2022, 11:00 PM), https://www.ft.com/content/75da5a01-12e6-42ae-abea-3fa7a3cc1647 [https://perma.cc/S93J-MP76]. The relevant provision is the so-called Prescription Clause. *See id.*

145. *See, e.g.*, LEB. GLOB. MTN PROSPECTUS, *supra* note 138, at 131; PAK. 2025 USD BOND PROSPECTUS, *supra* note 138, at 108.

146. Olivier Knox, *The U.S. Has A Big New Goal in Ukraine: Weaken Russia*, WASH. POST (Apr. 26, 2022), https://www.washingtonpost.com/politics/2022/04/26/us-has-big-new-goal-ukraine-weaken-russia/ [https://perma.cc/VRF3-ZTBB] (emphasis added).

147. Joe Biden, President of the United States, Remarks on Russia's Unprovoked and Unjustified Attack on Ukraine (Feb. 24, 2022, 1:43 PM), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/ [https://perma.cc/ZB59-2XDM].

The restrictions span everything[148] from terms of trade to asset ownership[149] and participation in cultural events, such as the Eurovision competition, which Ukraine won.[150] Along with the Russian state, the sanctions also target related entities, leading to financial stress at a range of companies,[151] such as steelmaker Severstal.[152]

Over time, as Russia's invasion continued—and particularly as vicious atrocities came to light[153]—the United States tightened the sanctions noose, all but pushing Russia to a sovereign debt default. The sanctions regime is "unprecedented to a scale and scope that we haven't seen since the Cold War."[154] It is also distinctive in its explicit targeting of Russia's economic foundations, including, most significantly for purposes of this Article, Russia's foreign reserves, currency, and sovereign debt.[155]

This Part of the Article is organized in two sections. First, it provides an overview of key U.S. legislative and administrative actions, as well as collaborative steps by U.S. allies, to effectuate sanctions impacting Russia's sovereign debt. Second, it analyzes the circumstances regarding each of Russia's post-invasion debt obligations, detailing how U.S. policy has incrementally brought Russia towards default.

---

148. *See* Bown, *supra* note 27.

149. *See* Elena Chachko & J. Benton Heath, *A Watershed Moment for Sanctions? Russia, Ukraine, and the Economic Battlefield*, 116 AJIL UNBOUND 135, 135–36 (2022); *see also* Richard Martin, *Sanctions Against Russia—A Timeline*, S&P GLOBAL (June 3, 2022), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/sanctions-against-russia-8212-a-timeline-69602559 [https://perma.cc/N56P-RX63].

150. Martin Belam & Monica Cvorak, *Ukraine Wins 2022 Eurovision Song Contest as UK Finishes Second in Turin*, GUARDIAN (May 14, 2022, 7:03 PM), https://www.theguardian.com/tv-and-radio/2022/may/15/ukraine-wins-2022-eurovision-song-contest-as-uk-finishes-second-in-turin [https://perma.cc/8LJD-VHPW]; *see* Solomon, *supra* note 29.

151. Kristine Aquino, *How Sanctions are Pushing Russia to Brink of Default: QuickTake*, BLOOMBERG L. (Apr. 6, 2022, 8:48 AM), https://www.bloomberglaw.com/bloomberglawnews/securities-law/BNA%200000017f2c2ed679af7f6d3e880f0003?bna_news_filter=securities-law [https://perma.cc/PQ8K-K462] (finding that Russian companies "are on the hook for about $105 billion in foreign-currency debt" and discussing implications).

152. *Severstal First Russian Firm to Run Out of Time to Pay Debt*, BLOOMBERG (Mar. 24, 2022, 5:01 AM), https://www.bloomberg.com/news/articles/2022-03-24/severstal-is-first-russian-firm-to-run-out-of-time-to-pay-coupon?sref=OOpRUZ8l [https://perma.cc/8FPP-LX9M] (describing a missed payment by Severstal due to Citigroup, as agent, blocking interest payment on foreign currency debt due to sanctions).

153. *See* YONAH DIAMOND ET AL., NEW LINES INST. FOR STRATEGY & POL'Y & RAOUL WALLENBERG CENTRE FOR HUMAN RIGHTS, AN INDEPENDENT LEGAL ANALYSIS OF THE RUSSIAN FEDERATION'S BREACHES OF THE GENOCIDE CONVENTION IN UKRAINE AND THE DUTY TO PREVENT 1 (2022).

154. Rappeport, *supra* note 5.

155. *See id.*; *see also* Lev E. Breydo, *Political Default: The Implications of 'Weaponizing' Financial Infrastructure*, 56 U.C. DAVIS L. REV. ONLINE 53, 60–64 (2023).

A. Key U.S. and International Sanctions

Contextually, it is essential to recall that Russia's aggression against Ukraine did not begin on February 24, 2022, but really started in 2014, with the de facto annexation of Crimea and support for a proxy war in Eastern Ukraine against Ukraine's democratically elected government.[156] In effect, armed conflict has been taking place for eight years, with the February 24, 2022, invasion representing a dramatic escalation, rather than a wholly new course of events.

Because of this, the United States and its European allies have had sanctions against Russia in place since 2014, though the severity of the regime was far more limited.[157] Nonetheless, reflecting the sovereign's perception of higher sanctions risk, the invasion of Crimea marked a key inflection point after which the structure and terms of Russia's sovereign debt began to change.

In 2014, then-President Barack Obama invoked the International Emergency Economic Powers Act[158] and the National Emergency Act to effectuate what ultimately became three rounds of sanctions against Russia.[159] Despite some reported reluctance,[160] the European Union ultimately largely joined the U.S.-led effort.[161] The 2014 sanctions included restrictions on energy sector technology sales, travel bans for prominent Russian leadership, and

156. *See supra* Part II and note 104 (describing Russia's formal position on this matter).

157. *See supra* Part II (discussing the evolution of Russian sovereign debt contracts).

158. 50 U.S.C. §§ 1701–1708.

159. Blocking Property of Certain Persons Contributing to the Situation in Ukraine, 79 Fed. Reg. 13493 (Mar. 6, 2014).

160. Then-Vice President Biden noted that the "world's major developed countries . . . did not want to" sanction Russia and had to be cajoled by the United States, and also stressed that the United States was enacting the measures not to damage Russia economically, but solely to disincentivize aggression. Joe Biden, Vice President of the United States, Remarks by the Vice President at the John F. Kennedy Forum (Oct. 3, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/10/03/remarks-vice-president-john-f-kennedy-forum [https://perma.cc/8224-GGN7].

161. The EU at the same time clarified that the union "remains ready to reverse its decisions and reengage with Russia when it starts contributing actively and without ambiguities to finding a solution to the Ukrainian crisis." European Council Press Statement, EUCO 158/14, Statement by President Barroso & President Van Rompuy in the Name of the European Union on the Agreed Additional Restrictive Measures Against Russia (July 29, 2014).

"a ban on mid- and long-term credit to Russian oil companies and state banks."[162]

Following a relative lull in sanctions-related actions during the 2016 to 2020 Trump administration, in 2021, President Biden enacted the next tranche of consequential measures with Executive Order 14,024 (EO 14024).[163] EO 14024 was issued most directly in response to Russian "activities" including "efforts to undermine . . . free and fair democratic elections" in the United States, though also noted violations of "well-established principles of international law, including respect for the territorial integrity of states."[164]

EO 14024 began to target Russia's sovereign debt through Directive 1, which prohibited U.S. financial institutions from "participation in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021" as well as lending to the Russian Central Bank and other core governmental entities.[165] On February 22, 2022, shortly before Russia's invasion, Directive 1A extended that prohibition to secondary market bond transactions for Russian sovereign debt issued after March 1, 2022.[166]

The velocity and ferocity of U.S. and international sanctions sharply increased following Russia's invasion of Ukraine on February 24, 2022. Table 3 below summarizes the measures most pertinent in respect of Russia's sovereign debt and default considerations.

---

162. Indra Overland & Gulaikhan Kubayeva, *Did China Bankroll Russia's Annexation of Crimea? The Role of Sino-Russian Energy Relations*, *in* RUSSIA'S TURN TO THE EAST: DOMESTIC POLICYMAKING AND REGIONAL COOPERATION 95, 98 (Helge Blakkisrud & Elana Wilson Rowe eds., 2018) ("[T]he United States and several other Western countries and allies implemented three types of sanctions: a ban on the provision of technology and equipment for deep-water, Arctic offshore and shale oil and gas exploration; a ban on mid- and long-term credit to Russian oil companies and state banks; and travel bans for prominent Russians considered to be involved in the annexation of Crimea or close to President Vladimir Putin.").

163. *See* Breydo, *supra* note 67, at 23–25.

164. Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation, 86 Fed. Reg. 20249, 20249 (Apr. 19, 2021); *see also* RUSS. 2027 EUR BONDS, *supra* note 104, at 15 ("EO of 15 April 2021 was signed to deter what the U.S. considers as 'Russia's destabilizing behaviour,' (e.g., alleged undermining the U.S. elections, alleged engaging in malicious cyber activities, etc.).").

165. OFF. OF FOREIGN ASSETS CONTROL, DEP'T OF TREASURY, DIRECTIVE 1 UNDER EXECUTIVE ORDER OF APRIL 15, 2021 BLOCKING PROPERTY WITH RESPECT TO SPECIFIED HARMFUL FOREIGN ACTIVITIES OF THE GOVERNMENT OF THE RUSSIAN FEDERATION (2022).

166. Directive 1A Under Executive Order 14024: Prohibitions Related to Certain Sovereign Debt of the Russian Federation, 87 Fed. Reg. 32304 (May 31, 2022).

TABLE 3

Key Sanctions: Russian Central Bank, Currency & Sovereign Debt
• **February 26, 2022.** The United States and EU removed Russian banks from the SWIFT system to "prevent the Russian Central Bank from deploying its international reserves in ways that undermine the . . . sanctions."[167]   • **February 28.** The United States and the EU prohibited transactions with Russia's Central Bank,[168] subject to certain energy sector-specific exclusions.[169] This in effect "froze" as much as $300 billion of Russia's foreign reserves held abroad in U.S. and European financial institutions.   • **March 2.** OFAC issued General License 9A (GL-9A),[170] providing that "U.S. persons may not buy or sell debt or equity of Russian financial institutions" included within EO 14024, thus encompassing the Russian Central bank and most large banks.[171]

167. Press Release, White House, Joint Statement on Further Restrictive Economic Measures (Feb. 26, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/26/joint-statement-on-further-restrictive-economic-measures/ [https://perma.cc/5GWH-4UE2]; *see also* Joshua Kirschenbaum & Nicolas Veron, *Financial Sanctions Have Devastated Russian Economy. The EU and Global Financial System are Absorbing the Shock.*, PETERSON INST. FOR INT'L ECON. (Mar. 7, 2022), https://www.piie.com/blogs/realtime-economic-issues-watch/financial-sanctions-have-devastated-russias-economy-eu-and [https://perma.cc/N3XP-VEJM].

168. The United States also prohibited transactions with respect of Russia's Ministry of Finance and National Wealth Fund. ANDREA M. GACKI, OFF. OF FOREIGN ASSETS CONTROL, DEP'T OF TREASURY, DIRECTIVE 4 UNDER EXECUTIVE ORDER 14024: PROHIBITIONS RELATED TO THE TRANSACTIONS INVOLVING THE CENTRAL BANK OF THE RUSSIAN FEDERATION, THE NATIONAL WEALTH FUND OF THE RUSSIAN FEDERATION, AND THE MINISTRY OF FINANCE OF THE RUSSIAN FEDERATION (2022).

169. Press Release, U.S. Dep't of the Treasury, Treasury Prohibits Transactions with Central Bank of Russia and Imposes Sanctions on Key Sources of Russia's Wealth (Feb. 28, 2022), https://home.treasury.gov/news/press-releases/jy0612 [https://perma.cc/6ZUB-UJJM]; Press Release, Council of the EU, EU Adopts New Set of Measures to Respond to Russia's Military Aggression Against Ukraine (Feb. 28, 2022), https://www.consilium.europa.eu/en/press/press-releases/2022/02/28/eu-adopts-new-set-of-measures-to-respond-to-russia-s-military-aggression-against-ukraine/ [https://perma.cc/Z85M-Q2PG].

170. ANDREA M. GACKI, OFF. OF FOREIGN ASSETS CONTROL, DEP'T OF TREASURY, GENERAL LICENSE NO. 9A: AUTHORIZING TRANSACTIONS RELATED TO DEALING IN CERTAIN DEBT OR EQUITY (2022).

171. *Frequently Asked Questions*, U.S. DEP'T OF THE TREASURY (Mar. 2, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/updated/2022-03-02 [https://perma.cc/DA9P-5Z38].

- GL 9A included a narrow carve-out authorizing "U.S. persons to receive interest, dividend, or maturity payments" on Russian sovereign "debt or equity" until May 25, 2022.[172]
- "After May 25, 2022, U.S. persons would require a specific license to continue to receive such payments," Treasury FAQ clearly provided.[173]

- **April 6.** The Biden administration issued Executive Order 14071 (EO 14071) banning "new investment in the Russian Federation by a United States person, wherever located" as well as exports of services.[174] The United States also sanctioned Sberbank, Alfa-Bank, and family members of Putin, Lavrov, and Russian Security Council members.[175]
- **May 24.** Consistent with earlier indications,[176] the U.S. Treasury formally declined to extend the provisions of GL-9C[177]—which succeeded and superseded, but in this respect did not alter GL-9A[178]—in effect "blocking Russia from paying American bondholders."[179]
- **June 7.** U.S. Treasury guidance prohibited U.S. persons from making secondary market purchases of Russian debt and allowed sales by U.S. persons exclusively to non-U.S. persons.[180]

---

172. *Id.*
173. *Id.*
174. Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression, 87 Fed. Reg. 20999 (Apr. 6, 2022).
175. Press Release, U.S. Dep't of the Treasury, U.S. Treasury Escalates Sanctions on Russia for Its Atrocities in Ukraine (Apr. 6, 2022), https://home.treasury.gov/news/press-releases/jy0705 [https://perma.cc/5J9C-HTAV].
176. On May 17, 2022, Treasury Secretary Yellen stated that "[w]e're actively involved in an evaluation of the risks and impact of not renewing the license." Alan Rappeport, *U.S. Expected to Begin Blocking Russian Bond Payments to Americans*, N.Y. TIMES (May 17, 2022), https://www.nytimes.com/2022/05/17/business/russia-bond-payments.html [https://perma.cc/TLS3-LXLC]. After the May 17 announcement, Russia's CDS curve sharply steepened, reflecting market expectations of a near-term default. Breydo, *supra* note 6.
177. *Notice on Russian Harmful Foreign Activities Sanctions General License 9C*, U.S. DEP'T OF THE TREASURY (May 24, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220524_33 [https://perma.cc/TM5J-NLEK].
178. *See* BRADLEY T. SMITH, OFF. OF FOREIGN ASSETS CONTROL, DEP'T OF THE TREASURY, GENERAL LICENSE NO. 9C: AUTHORIZING TRANSACTIONS RELATED TO DEALINGS IN CERTAIN DEBT OR EQUITY (Apr. 7, 2022). The primary change relative to GL-9A "foreclosed the possibility of debt service payments flowing directly from accounts in the name of Russian entities through U.S. financial institutions, which include the financial institutions' foreign subsidiaries, but still allows creditors to receive them." Yacoub, *supra* note 84, at 16.
179. Alan Rappeport & Eshe Nelson, *U.S. Will Start Blocking Russia's Bond Payments to American Investors.*, N.Y. TIMES (May 24, 2022), https://www.nytimes.com/2022/05/24/us/politics/russian-debt-treasury.html [https://perma.cc/R4HN-4R8M].
180. *Frequently Asked Questions*, U.S. DEP'T OF THE TREASURY (June 6, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/added/2022-06-06 [https://

Prior to the invasion of Ukraine, Russia stockpiled vast reserves totaling about $630 billion, with nearly $500 billion in foreign currencies and the balance in gold.[181] Indeed, in late January, before the invasion, *The Economist* observed that Russia's cash pile was "more than enough to weather sanctions."[182]

However, in a strategy "beyond comparison to previous sanctions regimes, particularly involving a major power like Russia,"[183] the United States and its allies deployed sanctions targeting Russia's central bank and its assets worldwide, precluding Russia from utilizing as much as half of its total reserves.[184]

The sanctions regime is largely made operable through directives to financial intermediaries,[185] in this case essentially prohibiting them from transacting on behalf of the Russian central bank.[186]

That interplay between the sanctions regime and Russia's bond payment obligations has raised unique legal and commercial considerations.[187]

---

perma.cc/4Z6Y-W346]; Alexander Saeedy & Soma Biswas, *Russian Debt Ban Leaves with Questions*, WALL ST. J. (June 9, 2022), https://www.wsj.com/articles/russian-debt-ban-leaves-investors-with-questions-11654801508 [https://perma.cc/2PNS-A9D9].

181. *International Reserves of the Russian Federation (End of Period)*, BANK OF RUSS. (Feb. 1, 2022), https://cbr.ru/eng/hd_base/mrrf/mrrf_m/ [https://perma.cc/X94C-33DJ].

182. *A War in Ukraine Could Have Global Consequences*, *supra* note 103.

183. Rappeport, *supra* note 5.

184. *See Russia's Attempt to Sanction-Proof Its Economy Has Been in Vain*, ECONOMIST (Mar. 2, 2022), https://www.economist.com/graphic-detail/2022/03/02/russias-attempt-to-sanction-proof-its-economy-has-been-in-vain [https://perma.cc/K975-RANQ].

185. Claire Jones & Joseph Cotterill, *Russia's FX Reserves Slip from Its Grasp*, FIN. TIMES (Feb. 28, 2022), https://www.ft.com/content/526ea75b-5b45-48d8-936d-dcc3cec102d8 [https://perma.cc/WCP2-9LLT].

186. *See How New Sanctions Could Cripple Russia's Economy*, ECONOMIST (Feb. 27, 2022), https://www.economist.com/finance-and-economics/2022/02/27/how-new-sanctions-could-cripple-russias-economy [https://perma.cc/MF43-GSR2].

187. *See* Matt Levine, *Russia Has Some Dollars Somewhere*, BLOOMBERG (May 31, 2022, 11:14 AM), https://www.bloomberg.com/opinion/articles/2022-05-31/russia-has-some-dollars-somewhere?sref=OOpRUZ8l [https://perma.cc/R886-VTMJ] ("The rough theoretical situation is that the government of Russia owns a lot of U.S. dollars, it owes some of those U.S. dollars to foreign bondholders, it would like to pay the bondholders their dollars, and the bondholders would like to receive them. But the U.S. government has declared that U.S. banks can't move money on behalf of the Russian government . . . .").

B. Post-Invasion Bond Payments

Following its invasion of Ukraine, Russia has been on the brink of default on a monthly basis. The situation is unique for a host of reasons—not least of which is the fact that Russia has the money. Yet, with each payment, the United States, acting largely through Treasury, steadily tightened the noose around Russia's financial system, reducing its range of motion and bringing the sovereign closer to default. Indeed, the exercise has come to resemble a game of whack-a-mole, with Russia finding a work-around, and the United States then swiftly moving to block it.

The United States has been clear regarding its objective: Making Russia a "pariah" that will "face default."[188]

Table 4 below summarizes Russia's post-invasion bond payment obligations, which have come due each month including March, April, May and June 2022. Russia did not have July or August interest payments, but faced over $300 million of payments on five series of bonds in September.

Importantly, each key date includes multiple payments in respect of different series of bonds with heterogenous currency provisions and must be assessed in respect of fast-shifting sanctions provisions, complicating the analysis significantly.[189]

Despite some down-to-the-wire legal acrobatics, Russia ultimately made the first two payments, in March and April. By June 2022, the status of the May payment remained unclear, and by September 2022, it appeared to be the case that U.S. and EU-based investors did not receive the payments.

Russia's first set of post-invasion payments was due on March 16, 2022, in respect of its 2023 and 2043 bonds, neither of which included APC Provisions, meaning they had to be paid in dollars.[190] After U.S. sanctions froze its central bank reserves, Russia threatened to pay in roubles, with a March 5, 2022, presidential decree positing rouble redenomination of foreign-currency debt payments for investors from countries deemed unfriendly to the sovereign.[191] At the time, "[r]atings agencies said paying

188. Robertson, *supra* note 10.

189. Analysis and discussion as of mid-2022 and may not incorporate subsequent changes and developments.

190. *See* Karin Strohecker, Sujata Rao & Marc Jones, *Some Russia Creditors Have Received Dollar Bond Payment—Sources*, REUTERS (Mar. 17, 2022, 5:02 PM), https://www.reuters.com/world/europe/russia-says-its-order-pay-117-mln-eurobond-interest-fulfilled-2022-03-17/ [https://perma.cc/GKJ8-3HB4].

191. Fitch Ratings, an American credit rating agency, noted this decree as "undermin[ing] Russia's willingness to service government debt." *Fitch Downgrades Russia to 'C,'* FITCH RATINGS (Mar. 8, 2022, 5:05 PM), https://www.fitchratings.com/research/sovereigns/fitch-downgrades-russia-to-c-08-03-2022 [https://perma.cc/MHG6-UP9U]; *see also* Grigory Marinichev, Alexey Chertov & Yaroslav Smorodin, *Update:*

TABLE 4

Russian Post-Invasion Sovereign Debt Payments & Applicable U.S. Sanctions (As of June 1, 2022)

Date		Amount					
Due	**Made**	**Interest**	**Principal**	**Applicable Bonds**	**Applicable U.S. Sanctions Regime**	**Source of Payments**	**Market Developments**
3/16/22	3/17/22	$ 117.2		USD 2023, 2043 and 2030	US Treasury noted Russia 'not barred' from servicing bonds	'Frozen' USD Foreign Reserves	
4/4/22	5/3/22[1]	$ 84.4	$ 2,000	USD 2022 (maturity) and 2042	US blocks Russia's access to US-based reserves	Russian domestically-held USD	CDS Credit Event (6/1/22), per $1.9M unpaid interest accrued during grace period.
5/27/22	5/20/22[2]	$ 99.5		USD 2026 and EUR 2036	5/24/2022 US declines to extend GL-9C interest payment carve-out	Russia claims 5/20 obligation pre-payment (presumably with domestically-held USD)[2]	Sharp decline in bond prices; Creditors assert that they have not *received* payment; Status remains unclear[3]
6/23/22		$ 234.9		USD 2027 and 2047	No interest payment carve-out in effect	Russia proposes payments 'workaround' through Russia-based accounts	
6/24/22		$ 159.4		USD 2028			***Bond payable only in USD***

Note: Chart and analysis current as of June 1, 2022 and will not reflect subsequent developments.

[1] 2022 bond maturity principal payment made on 5/2, per Bloomberg data.

[2] On May 20, 2022, Russia announced that it had made the May 27 payments.

[3] As of early June creditors have argued that the relevant agent has not processed Russia's payments and that they have not received the funds.

Russia Adopts Decree on Repayment in Russian Rubles of Debt to Foreign Creditors, MORGAN LEWIS (Mar. 7, 2022), https://www.morganlewis.com/pubs/2022/03/update-russia-adopts-decree-on-repayment-in-russian-rubles-of-debt-to-foreign-creditors [https://perma.cc/TFW6-SBTF].

in rubles instead of dollars would count as a default."[192] Ultimately, notwithstanding some payment mechanics drama, Russia paid the funds to bondholders from its now-frozen foreign reserves.[193]

The April 2022 set of payments, however, brought Russia within an inch of default. That date concerned payments on Russia's 2042 bond and a $2 billion maturity of the 2022 bond,[194] neither of which had APC Provisions. After the United States explicitly blocked Russia from using its frozen dollar reserves—requiring the sovereign to part with limited domestically-held U.S. dollars—Russia initially made the payments in roubles.[195]

S&P swiftly downgraded Russia to "Selective Default," despite it still being within a thirty-day grace period,[196] while the Institute of International Finance indicated that "[i]f Russia attempts to transfer payment in rubles . . . for bonds that do not have a ruble repayment clause, this will constitute default."[197]

---

192. Kevin Granville, Eshe Nelson & Lananh Nguyen, *Russia Appears to Have Avoided Default as It Makes a $117 Million Bond Payment.*, N.Y. TIMES (Mar. 18, 2022), https://www.nytimes.com/2022/03/17/world/europe/russia-bond-payment.html [https://perma.cc/RWH2-PBWB].

193. *See* Daniel Flatley, *U.S. Treasury Confirms Russia Not Barred from Servicing Bonds*, BLOOMBERG (Mar. 17, 2022, 10:54 AM), https://www.bloomberg.com/news/articles/2022-03-16/u-s-treasury-confirms-russia-not-barred-from-servicing-bonds?sref=OOpRUZ8l [https://perma.cc/J9R3-V6Q4].

194. In late March, Russia re-purchased from domestic investors 72.4% of the maturing obligation at par, in roubles to "stop discrimination against Russian bondholders, who were not able to access funds that are due to be sent to settlement system Euroclear." *Russia Says Completes Buyback of 2022 Eurobond, Holders Receive Roubles*, REUTERS (Mar. 31, 2022, 11:28 AM), https://www.reuters.com/article/russia-finmin-eurobond-buyback/update-1-russia-says-completes-buyback-of-2022-eurobond-holders-receive-roubles-idUSL2N2VY23Z [https://perma.cc/3FST-CTXS].

195. Alan Rappeport & Eshe Nelson, *U.S. Blocks Russia's Access to Dollars for Bond Payments, Heightening Risk of Default*, N.Y. TIMES (Apr. 5, 2022), https://www.nytimes.com/2022/04/05/business/russia-debt-dollars.html [https://perma.cc/6L7U-TYBZ].

196. In addition, the CDS Determination Committee, arbiter of credit event payouts on credit default swaps (CDS), found this to constitute a "Potential Failure to Pay." Laura Benitez & Irene Garcia Perez, *Russia Ruled in Potential Default Over Ruble Payment on Debt*, BLOOMBERG (Apr. 20, 2022, 11:15 AM), https://www.bloomberg.com/news/articles/2022-04-20/russia-ruled-in-potential-default-over-ruble-payment-on-bonds?sref=OOpRUZ8l [https://perma.cc/4RTE-WLRK].

197. Harry Robertson, *Russia Is Set to Default on Its Dollar Debts by Paying Bondholders in Rubles, Global Banking Body Says*, BUS. INSIDER (Apr. 8, 2022), https://www.businessinsider.in/stock-market/news/russia-is-set-to-default-on-its-dollar-debts-by-paying-bondholders-in-rubles-global-banking-body-says/articleshow/90728031.cms [https://perma.cc/V25J-3639].

Anxious to avoid a formal default, Russia made the payment in U.S. dollars deep into the grace period, with less than a day to spare.[198] Nonetheless, these acrobatics ended up triggering a Credit Event in respect of credit default swaps (CDS) referencing Russian sovereign debt due to Russia's failure to pay accrued interest on the delayed portion of owed principal.[199]

The third set of payments, in respect of the 2026 USD-denominated bonds and 2036 EUR-denominated bonds, came due on May 27, 2022, shortly after expiration of the GL-9C interest exemption.[200] To avoid running afoul of the newly-tightened U.S. sanctions structure, Russia made the requisite payments early, on May 20.[201] However, by the June 27, 2022, formal expiration of the thirty-day grace period, bondholders indicated that they had not yet received payments.[202] As a result, the broad-based market consensus has been that Russia formally entered its first foreign currency debt default since the 1918 repudiation of Tsarist debt—notwithstanding the sovereign's steadfast refusal to accept this viewpoint.[203]

Reflecting an unexpected commitment to paying bondholders, "to sidestep US sanctions" for the June payments, Russia proposed a complex and novel payment mechanism based on its newly enacted rouble payment

198. *Russia Makes Last-Minute Bond Payment to Avoid Default*, FORTUNE (Apr. 30, 2022, 9:51 AM), https://fortune.com/2022/04/30/russia-makes-last-minute-bond-payment-avoid-default/ [https://perma.cc/D5M2-EU83].

199. Alexander Saeedy, *Russia's Missed Bond Payment Triggers Default Insurance*, WALL ST. J. (June 1, 2022), https://www.wsj.com/articles/russias-missed-bond-payment-triggers-default-insurance-11654099766 [https://perma.cc/V37W-6CZY].

200. *See supra* Section III.A.

201. Syndey Maki, Libby Cherry & Laura Benitez, *Russia Faces Biggest Debt Test Yet After U.S. Ban on Payments*, BLOOMBERG (May 26, 2022, 2:00 PM), https://www.bloomberg.com/news/articles/2022-05-26/russia-faces-biggest-debt-test-yet-as-us-payment-ban-clouds-path?srnd=fixed-income&sref=OOpRUZ8l [https://perma.cc/U2AB-E8KD] ("Russia last week said it met its obligation on the bond payments by transferring the money to the National Settlement Depository, or NSD, the main central securities depository in Moscow."); *see also NSD Has Received Funds to Pay Coupons on Russia-2026 and Russia 2036 Eurobonds in Dollars and Euros*, INTERFAX (May 20, 2022, 4:15 PM), https://interfax.com/newsroom/top-stories/79366/?sphrase_id=106858 [https://perma.cc/GJE7-K6G2].

202. *See generally* Breydo, *supra* note 155.

203. *See* Caitlin Ostroff & Chelsey Dulaney, *Sanctions Push Russia to First Foreign Default Since Bolshevik Revolution*, WALL ST. J. (June 27, 2022), https://www.wsj.com/articles/sanctions-push-russia-near-first-foreign-default-since-bolshevik-revolution-11656248212?mod=article_inline [https://perma.cc/SP2N-B6EP]; Selyukh, *supra* note 31; *see also infra* Part IV.

scheme for sales of natural gas to Europe.[204] That structure arose due to Russia's insistence that European nations only purchase Russian gas using roubles. To do so, European companies have to exchange euros for Russian roubles, "credit[ing]" Russia "with foreign currency."[205] As Russia's Finance Minister, Anton Siluanov, explained: "The Eurobond settlement mechanism will operate in the same manner, only in the other direction."[206] The proposal calls for foreign investors to "open rouble and hard currency accounts at a Russian bank," with that account receiving payments from the Russian state, in roubles, followed by an exchange of the domestic currency to foreign legal tender.[207]

Putting aside the status of the May payment, at the time, in mid-2022, it was not clear whether U.S.-based investors would be allowed to participate in such a scheme, given the April 6 Executive Order 14071 banning "new investment in the Russian Federation by a United States person, wherever located."[208] Participation by EU-based investors also appears doubtful, as the EU recently extended sanctions to cover Russia's National Settlement Depository (NSD), and a predicate to the scheme was NSD avoiding sanctions and being able to legally convert roubles into the respective bond settlement currencies.[209]

---

204. *Russia Readies New Bond-Payment Plan in Bid to Avoid Default*, BLOOMBERG (May 30, 2022, 7:31 AM), https://www.bloomberg.com/news/articles/2022-05-29/russia-to-settle-eurobond-debt-in-mirror-of-eu-payments-for-gas?sref=OOpRUZ8l [https://perma.cc/SF7A-KXGC].

205. *Russia Eyes Gas-for-Roubles Template for Foreign Eurobond Payments*, REUTERS (May 30, 2022, 10:12 AM), https://www.reuters.com/world/europe/russia-service-foreign-debt-using-gas-for-roubles-type-scheme-vedomosti-2022-05-30/ [https://perma.cc/Y3Q9-ADN4]. The Russian Finance Minister clarified: "as happens with paying for gas in roubles: we are credited with foreign currency, here it is exchanged for roubles on behalf of (the gas buyer), and this is how the payment takes place." *Id.*

206. *Id.*

207. *Id.*

208. Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression, 87 Fed. Reg. 20999 (Apr. 6, 2022). The legislation does not explicitly define "investment" and because it is so distinct from purchasing securities, for instance, opening a bank account may not be immediately seen as such. However, it is important to consider that account balances are often banks' primary source of funding, providing essential support to the receiving financial institution. Thus, while perhaps somewhat ambiguous, it appears more likely than not that Executive Order 14071 would prohibit U.S. investors from opening bank accounts at a Russian financial institution, precluding participation in the structure posited by the Russian Finance Ministry. *See id.*

209. *See Russia Eyes Gas-for-Roubles Template for Foreign Eurobond Payment*, *supra* note 205; *Depository Russia Planned to Service Eurobonds Halts Euro Transactions*, REUTERS (June 3, 2022, 11:17 AM), https://www.reuters.com/markets/europe/eu-sanctions-russias-settlement-depository-which-services-eurobonds-document-2022-06-03/ [https://perma.cc/G4TB-E474].

IV. A RUSSIAN DEFAULT? LEGAL ~~NIGHTMARES~~ ISSUES

Given the tightening sanctions regime, it appears that Russian sovereign debt investors were not paid on time, or in the right currency in respect of the May and June 2022 payments. Effectuating a default will hardly be straightforward but appears legally feasible, in large part because along with the non-payment claim, Russian bondholders may have other, potentially legally cleaner arguments for asserting an event of default under the bonds.

The larger issue, however, will be finding an arbiter for the matter—as well as exercising creditors' rights. Some of the challenges are innate to sovereign debt; others are driven, or at least exacerbated, by Russia's exceptional circumstances.

Analytically, three pertinent questions in respect of the default lifecycle include: (i) what are Russia's legal obligations; (ii) what constitutes a default on those obligations; and (iii) given the jurisdictionally unmoored nature of the bonds, how would the issue be decided—and by whom?

A. What Are Russia's Legal Obligations?

The threshold matter of determining Russia's obligations is made vastly complicated by the interplay between the bonds' idiosyncratic currency provisions and global sanctions regimes. In simplest terms, the salient issue is fundamentally: What currency should be used for payments on each series of bonds? A closely related matter, discussed in Section IV.B.1, concerns payment mechanics—specifically, is Russia's obligation discharged at the point when payments are *made* by the sovereign or *received* by investors?

The challenges with respect to Russia's post-sanctions payments illuminate some critical questions concerning the sovereign's currency-specific bond obligations. The first question is whether Russia can pay in roubles bonds without any fallback provisions. The second is whether Russia can utilize the fallback provision at all—in other words, how should the "reasons beyond its control" language be interpreted?[210]

With respect to the first question, the unambiguous legal and market consensus appears to be no: Bonds without APC Provisions must be paid

210. A closely related third question is whether Russia could make rouble payments on the third category of bonds, which are USD-denominated but provide an APC Provision referencing euros, pounds, or francs. For the sake of brevity, the analysis aggregates it with the others.

in dollars.[211] Following Russia's March threat to make USD-denominated payments in roubles, and actual attempt to do so in April, influential and impartial market participants—including the rating agencies,[212] CDS DC and trade groups[213]—all unequivocally indicated that it would be a default. Indeed, given its stated objective of avoiding default, Russia appears to have shifted course based on these clear signals. This is critically important because, as discussed below, Russia had a June 2022 payment on Legacy Bonds contractually only payable in USD.[214]

The second question—what constitutes "reasons beyond [Russia's] control"—has been hotly debated by commentators and market participants.[215] It is also a red herring.

That is because—even if one accepts Russia's argument that its May obligation was indeed satisfied—the June deadline includes a payment on the 2028 Legacy Bond, which does not have an APC Provision; per the answer to the first question above, it must be paid in dollars.[216]

Thus, as a practical matter, even under the most issuer-friendly contractual interpretation—with the APC Provision acting as a "dealer's choice" option —Russia was still required to make nearly $160 million of unambiguously

---

211. *See* Harry Robertson, *Holders of Russian Dollar Bonds Say They Cannot Accept Rubles as Moscow Speeds Towards Default*, BUS. INSIDER (Apr. 14, 2022, 4:08 AM), https://markets.businessinsider.com/news/bonds/russian-debt-default-crisis-bondholders-rubles-dollars-sanctions-ukraine-war-2022-4?op=1 [https://perma.cc/9R7A-7F7A]. However, the practical implications of this market determination have some limitations. *See infra* Section IV.C.

212. *See* MOODY'S INVESTORS SERVICE, GOVERNMENT OF RUSSIA: FAQ ON SOVEREIGN DEBT SERVICE IN RUSSIA 2 (2022) ("With regard to Russia's sovereign Eurobonds denominated in foreign currencies, our understanding is that more recently issued sovereign Eurobonds allow, under certain conditions, for a conversion of payments from foreign into domestic currency in the indenture. As such, any payment in domestic currency with regard to these Eurobonds that met the contractual criteria would not be considered a default.").

213. Robertson, *supra* note 197; *see also* CREDIT DERIVATIVES DETERMINATIONS COMMS., *supra* note 114; Giulia Morpurgo, Abhinav Ramnarayan & Irene Garcia Perez, *Russia's Default Tussle with Bondholders is Only Just Starting (Repeat)*, BLOOMBERG (June 27, 2022, 1:18 AM), https://www.bloomberg.com/news/articles/2022-06-07/russia-s-default-tussle-with-bondholders-is-only-just-starting?sref=OOpRUZ8l [https://perma.cc/6P34-2YA4].

214. *See* RUSSIAN FED'N, U.S. $2,500,000,000 12.75% BONDS DUE 2028, at 6, 10 (1998).

215. For a thoughtful discussion of the substantive issues, see Yacoub, *supra* note 84, at 23–28 (discussing how the respective provision may be interpreted by UK and U.S. courts).

216. *See* RUSSIAN FED'N, *supra* note 214, at 10 ("The U.S. dollar is the sole currency of account and payment for all sums payable by the Issuer under or in connection with the Bond, including damages.").

USD interest payments on June 24, 2022 in respect to the 2028 bonds.[217] Following a thirty-day grace period, bondholders could accelerate those obligations, and subsequently investors can trigger cross-default provisions on Russia's $37.3 billion of total bonds.[218]

At the same time, even if rouble payments were allowed on the 2028 Legacy Bond, it is not clear that U.S. investors could *receive* payment. That, in turn, implicates the second step of the inquiry, regarding payment mechanics. There, the issue essentially comes down to whether an obligation is satisfied upon payment being *made* by the issuer or *received* by investors. For instance, Russia has indicated that it made its May interest payment on May 20, 2022, while investors have argued that they have not received the funds.[219]

Thus, the bigger issue, discussed below, is with respect to Russia's potential legal defenses with respect to a claim of non-payment.

B. What Constitutes Default?

As a general matter, "[i]t is surprisingly hard to define sovereign default," because "[i]n practice, neither formal contractual nor substantive economic definitions are fully satisfactory."[220] Here, given the meaningful uncertainty

217. *With Bond Deadlines Looming, Russia Days Away from Default*, AL JAZEERA (June 23, 2022), https://www.aljazeera.com/economy/2022/6/23/with-bond-deadline-looming-russia-days-away-from-default [https://perma.cc/8BBU-SWL6].

218. Alexander Saeedy & Caitlin Ostroff, *Russia Pays Bondholders despite Western Sanctions: What to Know*, WALL ST. J. (Apr. 29, 2022, 5:00 PM), https://www.wsj.com/articles/what-to-know-about-russias-possible-debt-default-11647423003 [https://perma.cc/TZD9-2852].

219. *See Russia Says It Fulfilled Obligations on Eurobond Coupons in Full*, REUTERS (May 20, 2022, 6:29 AM), https://www.reuters.com/markets/rates-bonds/russia-says-it-fulfilled-obligations-eurobond-coupon-payout-full-2022-05-20/ [https://perma.cc/4FPC-ARVS]; *Russia, Rejecting Default, Tells Investors to go to Western Financial Agents*, REUTERS (June 27, 2022, 6:20 AM), https://www.reuters.com/markets/commodities/kremlin-rejects-russian-default-says-bond-payments-executed-2022-06-27/ [https://perma.cc/FGC2-7N9Z].

220. Julianne Ams et al., *Sovereign Default*, *in* SOVEREIGN DEBTS: A GUIDE FOR ECONOMISTS AND PRACTITIONERS 275, 275, 276 (S. Ali Abbas, Alex Pienkowski & Kenneth Rogoff eds., 2020). Some scholars, in discussing the difficulty of defining sovereign debt default, have proposed a characterization distinguishing defaults as: (i) technical ("minor covenant breaches," not recognized as default by third parties); (ii) contractual (technical default that "*also* constitutes default under the same third-party definitions"); and (iii) substantive (debtor actions that "would count as default in third-party documentation and practice, but [would not constitute an EoD] in the underlying [debt] contract"). *Id.* at 277. One way of viewing the distinctions may be that substantive

regarding the nature of Russia's obligations, that determination is likely to be exceptionally intensive and legally contested. At the same time, Russia has indicated that it will "sue" and has certain legal defenses,[221] which, depending on jurisdiction, may be operable.

Contractually, declaring a default requires action by 25% of the holders of an individual series of Russian bonds.[222] If the default is not cured within thirty days, creditors can accelerate the obligation.[223] That, in turn, would likely trigger cross-default clauses on Russia's other Eurobonds, making the entire $37 billion foreign-currency debt load due and payable.[224]

While most commentators have focused squarely on the failure to pay provisions, it is important to reiterate that all of Russia's bonds provide six other events of default.[225] Further, the two series of legacy obligations include an additional clause, tied to Russia maintaining IMF membership and benefits.[226] This Article posits that creditors likely could, and probably should, assert at least two additional events of default distinct from the failure to pay—"consents" and IMF membership—for which Russia may have far more limited defenses and counterarguments.

---

and contractual defaults entail financial losses to creditors, while technical defaults may not. *See id.* at 276–77. While Russia's situation does not neatly lend itself to the categories, given a combination of financial impact on creditors and third-party default determinations, it likely falls substantially within the contractual default definition. *See id.* at 277.

221. Huileng Tan, *Russia Says it Will Sue if Forced into a Default—Which Would be the Country's First External Sovereign Debt Default in Over a Century*, BUS. INSIDER (Apr. 10, 2022, 10:47 PM), https://www.businessinsider.com/russia-sovereign-bond-debt-default-sanctions-dollar-rubles-ukraine-war-2022-4 [https://perma.cc/L634-SYL4].

222. In the hypothetical event that non-U.S. investors receive payment, but U.S.-based investors do not, the likely outcome would be that U.S. investors would move to accelerate the obligations, which would require a 25% threshold. While granular holder data is not available, it appears more likely than not that, for USD-denominated bonds, a sufficient threshold of investors are based in the United States. *See* Ken Sweet, Kelvin Chan & Stan Choe, *What's the Impact of a Russian Debt Default?*, ASSOCIATED PRESS (June 27, 2022), https://apnews.com/article/russia-ukraine-foreign-debt-sovereign-099dd329de906a0d62ccda2b9eafe085 [https://perma.cc/9NZP-339U].

223. *See supra* Section II.C.2. One additional consideration may be that the bond documents appear to permit Russia to issue additional debt that would have the effect of diluting bondholder voting rights. If an event of default occurred, Russia may seek to exercise this provision, raising additional legal considerations for bondholders. *See supra* Section II.C.2.

224. Documentation for Russia's rouble-denominated bonds is not publicly available. It is thus unclear if cross-defaults could be triggered under those obligations.

225. RUSS. 2026 USD BONDS, *supra* note 42, at 17–19.

226. *See infra* Appendix II.

1. Failure to Pay

Non-payment is perhaps the quintessential event of default.[227] For Russia's bonds, it is defined as the "fail[ure] to pay any amount of principal or interest in respect of the Bonds . . . when due and such failure continues for a period of 30 calendar days."[228] Because neither the May nor June payments have been received within their respective thirty-day grace periods, investors likely could assert this claim and move to accelerate the debt—though have not done so as of September 2022.[229]

As a practical matter, however, "[t]he precise timing of payment default is significant and can be hard to ascertain;" the critical "distinction between the debtor's payment and the ultimate creditor's receipt" can become "salient."[230] While "[c]ontracts typically say that payment is made when the debtor has transferred funds to the paying agent, trustee, or clearing system," that is not always the case or legal interpretation.[231] A variation of this issue arose with respect to Argentina in context of a long-running battle with "holdout creditors."[232] The sovereign attempted to make payments to bondholders excluding the "hold-out" group, which was ultimately deemed impermissible by a New York court, due to a combination of the circumstances and specific contractual language.[233]

227. "[A] Russian default could have a ripple effect by adding pressure on global debt markets and making investors more risk averse and less willing to advance money, which 'very well could lead to further defaults in other emerging markets.'" Sweet, Chan & Choe, *supra* note 222.

228. *See* RUSS. 2026 USD BONDS, *supra* note 42, at 17.

229. *See* Morpurgo, Ramnarayan & Garcia Perez, *supra* note 213; Jorgelina Do Rosario & Rodrigo Campos, *Faced with Russia Default, Bondholders Brace for Legal Maze*, REUTERS (June 27, 2022, 6:59 AM), https://www.reuters.com/markets/europe/faced-with-russia-default-bondholders-brace-legal-maze-2022-06-27/ [https://perma.cc/AH7R-ZPNZ].

230. Ams et al., *supra* note 220, at 4–5.

231. *Id.*

232. Daniel Bases, Richard Lough & Sarah Marsh, *Argentina, Lead Creditors Settle 14-Year Debt Battle for $4.65 Billion*, REUTERS (Feb. 29, 2016, 8:16 AM), https://www.reuters.com/article/us-argentina-debt/argentina-lead-creditors-settle-14-year-debt-battle-for-4-65-billion-idUSKCN0W2249 [https://perma.cc/DHJ6-V66T].

233. Ams et al., *supra* note 220, at 4–5, 5 n.7 ("Argentina had paid Bank of New York Mellon in violation of the court's injunction designed to compel ratable payment to holdout creditors whenever the exchange bondholders were paid."). Furthermore, the relevant bonds specified that "the Republic's obligation to make payments hereunder shall not have been satisfied until such payments are received by the Holders of this Security." *Id.* (citation omitted).

Here, Russia would have essentially three counterarguments.[234]

First, it could argue that it *made* the payment. Indeed, following a change in Russian securities law, practitioners have generally concluded that for the sovereign, "[a]s long as you have paid the clearing system, you have fulfilled your end of the bargain."[235] Under UK law, which at least nominally governs the bonds, Russia could have a credible argument that it "fulfilled its end of the bargain."[236] Further, unlike Argentina's bonds which specified that payments had to be "received," Russian bonds are silent on the issue, and the obligation being satisfied once paid is perhaps more common.[237] As Russia's finance minister has previously stated: "We have the money, we paid the payment, now the ball is on the side, first of all, of the American authorities."[238] In other words, Russia could posit that their obligations were met; creditor unwillingness or inability to receive payments is not the issuer's problem, but rather a matter for investors to address with their own governments.

Second, Russia could posit that it *tried* to make the payment, but creditors did not sufficiently work to receive it. As Russia's finance minister described it: "We've done everything we can to lead the horse to water . . . . But it's not up to us whether it wants to drink or not."[239] Specifically, Russia could point to the contemplated mechanism to facilitate foreign creditor payments through Russian bank accounts; any creditor constraints on receiving payments are a matter for their respective governments, not the issuer, it could argue.[240]

---

234. These potential arguments, Russia would likely posit, are applicable to all of its bond obligations; however, as a practical matter, the points are likely stronger in respect of bonds with APC provisions.

235. Anna Hirtenstein & Caitlin Ostroff, *Why Russia Doesn't Want to Default—Even in a Time of War*, WALL ST. J. (Apr. 7, 2022, 10:32 AM), https://www.wsj.com/articles/why-russia-doesnt-want-to-defaulteven-in-a-time-of-war-11649336269 [https://perma.cc/RHX2-PFY3].

236. Morpurgo, Ramnarayan & Garcia Perez, *supra* note 213.

237. *See* Ams et al., *supra* note 220, at 4–5 (citation omitted).

238. Caitlin Ostroff, Alexander Saeedy & Ian Talley, *Russia Blames Sanctions for Pushing It Toward First Default Since 1998*, WALL ST. J. (Mar. 16, 2022, 5:52 PM), https://www.wsj.com/articles/russia-blames-sanctions-for-pushing-it-toward-first-default-since-1998-11647440634?mod=article_inline [https://perma.cc/DS5Q-KBEN]. "'The possibility or impossibility of fulfilling our obligations in foreign currency does not depend on us,' Finance Minister Anton Siluanov said in an interview with state-owned Russia Today." *Id.*

239. *Russia Says Sanctions on Key Market Link Won't Hit Eurobond Plan*, BLOOMBERG (June 16, 2022, 4:55 AM), https://www.bloomberg.com/news/articles/2022-06-16/russia-says-sanctions-on-key-market-link-won-t-hit-eurobond-plan?sref=OOpRUZ8l [https://perma.cc/LP9F-KKKN].

240. *See supra* notes 204–09 and accompanying text.

Finally, Russia may claim that it *could not* make the payment, with arguments around the themes of *force majeure* and impossibility. Russia could argue that performing under the contract became impossible or illegal due to U.S. actions, despite its good-faith attempts, ample means, and clear desire to do so.[241] Generally, parties who have caused the difficulty in performance cannot avail themselves of the defense.[242] Thus, the question for a court would be: "[I]s the inability to pay the bonds a result of the sanctions or is it rather a result of Russia's illegal invasion that caused the sanctions?"[243]

2. *Consents*

Aside from, or in addition to, non-payment, bondholders could also argue that a "consents" event of default has occurred. That provision provides for an event of default if:

> Any regulation, decree, consent, approval, license or other authority necessary to enable the Russian Federation to enter into or perform its obligations under the Bonds or for the validity or enforceability thereof shall expire or be withheld, revoked or terminated or otherwise be void or ceases to remain in full force and effect or shall be modified in a manner which adversely affects any rights or claims of any holder of such Bonds . . . .[244]

The above language can be deconstructed into four components: (i) the existence of a "regulation, decree, consent, approval, license or other authority" (collectively, the "Consent"); the Consent being "necessary to enable" Russia to "perform its obligations under the Bonds" (such Consent, a "Necessary Consent"); (iii) the Necessary Consent "shall expire or be withheld, revoked or terminated or otherwise be void or ceases to remain in full force and effect" (the "Termination"); and (iv) Termination of the Necessary Consent "adversely affect[ing] any rights or claims of any holder of such Bonds" ("Damages").

While seldom utilized, this event of default in many ways aptly describes the precise circumstances facing Russia's bondholders. Specifically, they could argue that a number of Consents—i.e., SWIFT membership, a legally functional NSD and the ability of the Russian Central Bank and

241. *See supra* notes 204–10 and accompanying text.
242. Indeed, the premeditative evolution of Russia's bond contracts quite aptly reinforces this point. *See supra* Section II.C.
243. Buchheit & Gulati, *supra* note 144.
244. RUSS. 2026 USD BONDS, *supra* note 42, at 18.

Finance Ministry to transact with U.S. and EU-based parties—were individually, and collectively, necessary for Russia to meet its obligations under the bonds, making them "Necessary Consents," in the above parlance.[245] The Necessary Consents were "withheld, revoked or terminated" and "cease[d] to remain in full force and effect" due to sanctions.[246] Termination of those Necessary Consents resulted in Damages, in the form of missed or delayed payments, investors could claim.[247]

3. *IMF Membership*

An additional,[248] potentially operable event of default reflects a provision in the legacy bonds tied to Russia maintaining IMF membership and access "to use the general resources of the IMF." Though this event of default was not included in subsequent bond issuances, if it is triggered, that would likely implicate cross-default provisions on Russia's other bonds, allowing acceleration across the $37.3 billion foreign-currency capital structure.[249]

Taking a step back, the context regarding this provision is important. After its 1918 default—which was not resolved until the mid-1990s—Russia spent nearly a century locked out of the global financial system.[250] The 1998 default, in contrast, was far smoother, in part because of engagement with the IMF and other global institutions.[251] It makes logical sense that creditors participating in the reorganization would want assurances regarding access to emergency IMF funding in the event that Russia ran into further financial difficulty.

---

245. *See* Buchheit & Gulati, *supra* note 144.

246. *Id.* Here again, the premeditative evolution of the contracts provides a counterargument regarding this exogenously becoming impossible.

247. *Id.*

248. One could posit that President Putin's March 5, 2022, decree essentially positing redenomination of foreign-currency debt into roubles for investors in "unfriendly" countries constituted a "moratorium" on payments. *See* Marinichev, Chertov & Smorodin, *supra* note 191. Though the decree posited payment of some form, compensation in effectively economically reduced form could theoretically constitute an economic event akin to a moratorium. Indeed, Fitch noted this decree as "undermin[ing] Russia's willingness to service government debt." *See Fitch Downgrades Russia to 'C,' supra* note 191. However, the likely stronger argument against this position is that even if it "occurred" it was not "continuing" as required for an event of default.

249. *See* Appendix I; *see also* Yacoub, *supra* note 84, at 23–28; IMF, *supra* note 136, at 14 box 1 n.1 ("Bond contracts and loan agreements typically contain cross-default or cross-acceleration clauses. With respect to bond contracts, these clauses are typically only triggered upon an event of default or acceleration on other external indebtedness.").

250. Jorgelina Do Rosario, *The Bolsheviks to Putin: A History of Russian Defaults*, REUTERS (June 26, 2022, 10:09 PM), https://www.reuters.com/markets/europe/bolsheviks-putin-history-russian-defaults-2022-06-27/ [https://perma.cc/YNW6-KYSH].

251. *See id.*

Russia formally remains an IMF member, though the Fund's Moscow office is "not actively operating," and Moscow has not approached the IMF for support or consultative purposes since the start of the invasion.[252] While removing Russia from IMF membership is "under consideration" by EU officials, parties involved have privately acknowledged that "kicking Russia out entirely is probably unrealistic because of required quora."[253]

However, a firmer argument is that Russia is no longer able to "use the general resources of the IMF."[254] In fact, the G7 nations "are working collectively to prevent Russia from obtaining financing from the leading multilateral financial institutions," including the IMF.[255] Further, when asked about "restrict[ing]" Russia from using the IMF's Special Drawing Rights (SDRs), the Fund has indicated that "sanctions . . . [are] likely to complicate Russia's ability to use SDRs"[256]—a key IMF resource provided to member nations.

C. Who Decides?

"[I]t remains something of an open question who is the ultimate arbiter of a sovereign debt default."[257] The crux of this issue stems from the fact that—in night-and-day contrast to corporate restructuring—there is no centralized forum or process for adjusting the debts of a sovereign nation.[258]

---

252. *See Frequently-Asked Questions on Russia-Ukraine War*, INT'L MONETARY FUND (Mar. 15, 2022), https://www.imf.org/en/About/FAQ/russia-ukraine [https://perma.cc/45K2-GZGA].

253. Jan Strupczewski & Francesco Guarascio, *Exclusive: EU May Curb Russia's Rights in IMF*, REUTERS (Mar. 4, 2022, 9:18 AM), https://www.reuters.com/markets/europe/exclusive-eu-considering-curbing-russias-rights-imf-over-invasion-sources-2022-03-04/ [https://perma.cc/56E4-A37X].

254. *See infra* note 43 and accompanying text.

255. *Joint Statement by the G7 Announcing Further Economic Costs on Russia*, WHITE HOUSE (Mar. 11, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/11/joint-statement-by-the-g7-announcing-further-economic-costs-on-russia/ [https://perma.cc/TTG6-VNZR]; *see also* Strupczewski & Guarascio, *supra* note 253 ("European Union officials are examining curbing Russia's influence and access to finance at the International Monetary Fund following its invasion of Ukraine . . . .").

256. *Frequently-Asked Questions on Russia-Ukraine War*, *supra* note 252.

257. Alan Rappeport, *A Russian Default Is Looming. A Bitter Fight Is Likely to Follow*, N.Y. TIMES (Apr. 16, 2022), https://www.nytimes.com/2022/04/16/business/russia-debt-default.html [https://perma.cc/QVN8-RW29]. Professor Samples attributes this to the "squishiness and patchwork nature of sovereign debt markets." *Id.*

258. *See* Charles W. Mooney Jr., *A Framework for a Formal Sovereign Debt Restructuring Mechanism: The Kiss Principle (Keep It Simple, Stupid) and Other Guiding Principles*, 37 MICH. J. INT'L L. 57, 58 (2015); William W. Bratton & G. Mitu Gulati,

While most typically associated with difficulties in binding "holdout" creditors,[259] Russia's bond debacles illustrate that this critical limitation in debt infrastructure extends to otherwise more mundane matters of contract interpretation.

In assessing a sovereign default, commercial convention often looks to "influential third-parties" with a degree of what can be termed "market authority," including: (i) the rating agencies, S&P, Moody's and Fitch; (ii) the CDS Determinations Committee (CDS DC); and (iii) certain industry groups, such as the IIF.[260]

These private sector entities do not carry the force of law, and because each serves a distinctive purpose, they utilize different analyses which can come to divergent conclusions. Yet, their decisions have significant financial implications. Determinations by the CDS DC, for instance, are essentially binding on credit derivatives market participants.[261] Public statements by these "third-parties" arguably prompted Russia away from its initial decree of paying USD bonds in roubles in March and April, for instance.[262]

Complicating matters for our purposes, is that there is already something resembling a division of authority with respect to Russia.

For instance, prior to withdrawing coverage of Russia for EU regulatory reasons, the rating agencies issued divergent views regarding default.[263] On April 9, following Russia's bond payment in roubles, S&P swiftly declared it in "selective default"; the "move came as something of a surprise"

Sovereign Debt Reform and the Best Interests of Creditors, 57 VAND. L. REV. 1, 4 (2004) ("The IMF has proposed a minimal bankruptcy architecture, one that would trump [unanimous action clauses] and facilitate restructuring in a majority action framework. The United States Treasury agreed on the need for majority action, but has registered a contractarian objection to the IMF's plan for a new statutory scheme."); *see also* Lev Breydo, *The IMF's Way Forward for Sovereign Restructuring*, REGUL. REV. (Dec. 17, 2014), https://www.theregreview.org/2014/12/17/breydo-imf-restructuring/ [https://perma.cc/7AQ2-2EME] (discussing IMF proposal for a sovereign restructuring mechanism); PATRICK BOLTON ET AL., CTR. ECON. POL'Y RSCH., BORN OUT OF NECESSITY: A DEBT STANDSTILL FOR COVID-19, at 6 (2020).

259. Rohan Pitchford & Mark L.J. Wright, *Holdouts in Sovereign Debt Restructuring: A Theory of Negotiation in a Weak Contractual Environment*, 79 REV. ECON. STUD. 812, 812–13 (2012); *see also* Giulia Morpurgo, *The Twisted Tale of Russia's Sanctions-Driven Default*, WASH. POST (July 7, 2022, 9:22 AM), https://www.washingtonpost.com/business/energy/the-twisted-tale-of-russias-sanctions-driven-default/2022/07/07/8c9663ae-fdd9-11ec-b39d-71309168014b_story.html [https://perma.cc/GFH3-68BX].

260. *See* Ams et al., *supra* note 220, at 276.

261. *See* CREDIT DERIVATIVES DETERMINATIONS COMMS., https://www.cdsdeterminationscommittees.org/ [https://perma.cc/TH3V-AV5P].

262. *See supra* Section III.B.

263. The withdrawal was for EU regulatory reasons. *See Fitch Withdraws Russia's Ratings*, FITCH RATINGS (Mar. 25, 2022, 5:08 PM), https://www.fitchratings.com/research/sovereigns/fitch-withdraws-russia-ratings-25-03-2022 [https://perma.cc/Q9BB-R3LX].

given the possibility of Russia still making the payments, which it ultimately did.[264]

Moody's and Fitch, in contrast, noted their "view that a sovereign default is imminent," but held off on a formal declaration.[265] Moody's indicated that Russia would be in default only if it breached its contractual agreements though provided no indication regarding when the APC Event provisions would be legally permissible.[266]

The CDS DC, which generally operates on fairly technical grounds, has also demonstrated some dissonance regarding the matter. In April, it concluded that a credit event[267] had not occurred after Russia, at the eleventh hour, made the requisite payment—though the DC also earlier found a Potential Failure to Pay, and excluded the rouble fallback obligations from being deliverable.[268] Then, on June 1, the CDS DC found a credit event

---

264. Alex Frangos, *S&P Hits Russia with Default Rating on Foreign Debt*, WALL ST. J. (Apr. 9, 2022, 4:40 AM), https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-04-09/card/s-p-hits-russia-with-default-rating-on-foreign-debt-XdUfm2aIoehLSqlwsbgs [https://perma.cc/FME4-UQEN].

265. On March 8, Fitch downgraded Russia to 'C,' and withdrew coverage on March 25 to comply with EU sanctions. *See Fitch Downgrades Russia to 'C*,*' supra* note 191.

266. *Announcement: Moody's Says Repayment of Russia's Foreign-Currency Bond in Rubles Does Not Meet Contractual Promise*, MOODY'S (Apr. 14, 2022), https://www.moodys.com/research/Moodys-says-repayment-of-Russias-foreign-currency-bond-in-rubles—PR_465155 [https://perma.cc/4BZ4-QKGR] (discussing Moody's view that Russia's bond in roubles "may be considered a default under Moody's definition if not cured by May 4, [2022]").

267. Credit Events are assessed by so-called Determinations Committees, of which there are five—each corresponding to different parts of the world. *Will Bond Investors' Insurance Pay Out if Russia Defaults*, REUTERS (Mar. 9, 2022, 5:59 PM), https://www.reuters.com/markets/europe/explainer-will-bond-investors-insurance-pay-out-if-russia-defaults-2022-03-09/ [https://perma.cc/HHM3-G4BU]. The DC can have up to fifteen voting members which are responsible for assessing whether a Credit Event has occurred, based on analysis of the Credit Derivatives Definitions as well as DC rules. *Id.* Broadly speaking, there are about five common circumstances leading to a Credit Event: bankruptcy, failure to pay, debt restricting, cross-default and repudiation or moratorium—which refers to an issuer's effective refusal to pay. *Id.* A Credit Event also has essentially no impact on the issuer itself, as the respective derivatives are settled bilaterally between investors. *See* FABIEN CARRUZZO & DANIEL KING, CREDIT DERIVATIVES 1–2 (2021), https://www.kramerlevin.com/images/content/6/7/v2/67086/Credit-Derivatives.pdf [https://perma.cc/7W72-MCXP].

268. *See CDS Committee Closes Russia April Payments Case*, REUTERS (May 6, 2022, 10:59 AM), https://www.reuters.com/business/cds-committee-closes-russia-april-payments-case-statement-2022-05-06/ [https://perma.cc/HHM3-G4BU] (discussing CDS DC closing assessment regarding Russia's "Potential Failure to Pay" with respect to April bond payment); *Determinations Committee Says Russia in Potential Default on Sovereign*

had occurred in connection with that very same April payment, but on the rather narrow grounds of Russia having failed to pay interest on the principal payments portion that had accrued during a grace period, nonetheless triggering payouts on billions of CDS referencing the sovereign.[269] After a credit event declaration, CDS are formally settled through an auction mechanism. Because this can involve bonds physically changing hands, the mechanics risked running afoul of sanctions,[270] resulting in an extended delay and ultimately requiring a U.S. Treasury waiver to proceed. Once it did, the September 12 auction[271] surprisingly yielded a final price of 56.125 cents-on-the-dollar—the highest for a sovereign CDS auction on record.[272]

The innate challenge of jurisdiction with respect to sovereign debt is significantly complicated by the contractual lawlessness of Russia's bonds,

---

Debt, REUTERS (Apr. 20, 2022, 9:44 AM), https://www.reuters.com/article/ukraine-crisis-russia-cds/determinations-committee-says-russia-in-potential-default-on-sovereign-debt-idUSKCN2MC1FP [https://perma.cc/N2L6-V79Q] (discussing CDS DC initial determination regarding a "Potential Failure to Pay" credit event, prior to market participants' subsequent receipt of funds); *see also*, *The Russian Federation*, CREDIT DERIVATIVES DETERMINATIONS COMMS., https://www.cdsdeterminationscommittees.org/cds/the-russian-federation-2/ [https://perma.cc/LU8R-Z4P8].

269. *See* Giulia Morpurgo, Laura Benitez & Sydney Maki, *Russia Fails to Meet Bond Obligations, Triggering Swaps Payout*, BLOOMBERG (June 2, 2022, 2:23 AM), https://www.bloomberg.com/news/articles/2022-06-01/russia-in-failure-to-pay-credit-event-swaps-panel-rules [https://perma.cc/K9MN-Q39W].

270. *See* Christopher Whittall & Christoper Spink, *Stakes are High for Historic Russia CDS Auction*, IFR (Aug. 12, 2022, 8:04 AM), https://www.ifre.com/story/3473276/stakes-are-high-for-historic-russia-cds-auction-l5kypympw3 [https://perma.cc/NY4U-PBC7].

271. *Russia Credit Default Swap Auction Set for September 12*, REUTERS (Aug. 31, 2022, 2:50 AM), https://www.reuters.com/markets/europe/russia-credit-default-swap-auction-set-september-12-2022-08-31/ [https://perma.cc/3Q3P-CJ5K].

272. Karin Strohecker, *Update 3—Russia CDS Auction Values Defaulted Sovereign Bonds at 56.125 Cents*, REUTERS (Sept. 12, 2022, 8:42 AM), https://www.reuters.com/article/ukraine-crisis-russia-cds/update-3-russia-cds-auction-values-defaulted-sovereign-bonds-at-56-125-cents-idUKL8N30J23X [https://perma.cc/C7DH-DND6]. Though somewhat beyond the scope of this Article, the outcome is a reflection of interrelated technical and fundamental factors. From a fundamental perspective, the price reflects increased value for the Russian bonds driven by late summer demand from purchasers outside the United States. *See* Alexander Saeedy, *Russia's Bonds Regain Market Appeal as Trading Defrosts*, WALL ST. J. (Aug. 31, 2022, 5:30 AM), https://www.wsj.com/articles/russias-bonds-regain-market-appeal-as-trading-defrosts-11661938201 [https://perma.cc/49G9-YENA]. The auction technically increased the price further still due to a large physical buy order placed by Goldman Sachs. Robert Hogg & Christopher Whittall, *Pimco Bets on Russian Debt Recovery in CDS Auction*, IFR (Sept. 15, 2022, 3:00 AM), https://www.ifre.com/story/3516497/pimco-bets-on-russian-debt-recovery-in-cds-auction-hcnvwhhg0p [https://perma.cc/N2UV-DNBV]; *see also Final Results of the Russian Fedn CDS Auction, 12 September 2022*, CREDIT FIXINGS, https://www.creditfixings.com/CreditEventAuctions/results.jsp?ticker=RUSSIA [https://perma.cc/V3P4-84HB] (providing historical CDS data).

which explicitly do not accede to the supervision of any court.[273] Further, though a somewhat distinct inquiry, the notorious difficulties of enforcing claims against sovereigns are much exacerbated by the bonds' distinctly issuer-friendly refusal to waive sovereign immunity, as well as the uniquely bellicose dispositions of the issuer's leadership.[274] Thusly, the jurisdictionally unmoored nature of Russia's bonds will surely complicate investor efforts to locate a viable forum for pursuing their claims, in respect of both litigation and potential arbitration.[275]

V. IMPLICATIONS & POLICY CONSIDERATIONS

The prospect of a Russian sovereign default raises a number of unprecedented questions with profound normative and policy implications along global dimensions. Although, unlike the 1998 crisis, policymakers do not expect a present-day default to create financial contagion, a Russian sovereign default will undoubtedly have a vast impact well beyond Russia.[276]

As a first order matter, sovereign defaults for Belarus and Ukraine closely followed, with other weaker sovereigns in the region potentially not far behind. Beyond that, the nature of this default—as a geopolitical, rather than economic occurrence—is likely to raise significant questions regarding the future use of sanctions, and risks leading to a decoupling of the global financial infrastructure.[277]

Finally, in the event of a default, creditors are certain to aggressively pursue legal remedies, which at first glance would appear to create another front for Russia, but in reality, is far more likely to result in a zero-sum distributive conflict between sharp-elbowed western investors and a devastated Ukrainian sovereign.

---

273. *See supra* Section II.C.3.
274. *See supra* Section II.C.3.
275. *See* Morpurgo, Ramnarayan & Garcia Perez, *supra* note 213.
276. *Frequently-Asked Questions on Russia-Ukraine War*, *supra* note 252 ("Regarding the global economy, direct financial exposures to Russian debt are, by and large, manageable, but ongoing events can only increase the probability of a risk-off episode that could pressure emerging markets.").
277. *See infra* notes 303–04.

A. Not One, But Three Sovereign Defaults

Russia's invasion of Ukraine has "caused severe economic dislocation" across markets, while physically and economically devastating the region.[278]

From a global perspective, a world economy just starting to heal from the Covid-19 pandemic has been forced to grapple with record energy prices and devastating shortages that risk the "greatest global food security crisis of our time."[279] Making things worse is the backdrop of highly fragile emerging markets, already at increasing risk of an accelerating sovereign debt pandemic.[280] The IMF has found that 60% of low-income sovereigns are in or near distress, illustrated by Sri Lanka's recent default.[281] These financial challenges may strain international financing institutions, like the IMF and World Bank, hindering their ability to help Ukraine, while reducing investor appetite for supporting a large-scale reconstruction.[282]

The regional impact may prove even more brutal. Russia's invasion effectively caused not one, but three sovereign debt defaults. By early summer of 2022, markets were pricing in a high likelihood of Russia, Ukraine, and Belarus all being unable to meet their debt obligations, which came to fruition over the subsequent months, with Russia experiencing—

---

278. Korhonen & Kortelainen, *supra* note 4.

279. Murphy, *supra* note 4; *see also* Jennifer Calfas, *Gas Prices Hit New Highs Again With All 50 States Above $4 A Gallon*, WALL ST. J., (Mar. 19, 2022), https://www.wsj.com/articles/gas-prices-hit-new-highs-again-with-all-50-states-above-4-a-gallon-11652987776 [https://perma.cc/35RD-UQKC]; Nastassia Astrasheuskaya et al., *European Gas Prices Soar After Gazprom Halts Supplies to Poland and Bulgaria*, FIN. TIMES (Apr. 27, 2022), https://www.ft.com/content/a2eea1a1-f72a-43c4-aa93-4e5477b5ead4 [https://perma.cc/6CM6-V6PW].

280. *See* Breydo, *supra* note 54, at 9–11; Jeremy Bulow et al., *The Debt Pandemic*, FIN. & DEV., Sept. 2020, at 12.

281. Pierre-Olivier Gourinchas*, Global Economic Growth Slows Amid Gloomy and More Uncertain Outlook*, IMF: Blog (July 26, 2022), https://www.imf.org/en/Blogs/Articles/2022/07/26/blog-weo-update-july-2022 [https://perma.cc/GRQ8-U2EY]; *see also Debt Dynamics*, IMF, https://www.imf.org/external/pubs/ft/ar/2022/in-focus/debt-dynamics/#:~:text=About%2060%20percent%20of%20low,be%20critical%20for%20these%20countries [https://perma.cc/GRQ8-U2EY] ("About 60 percent of low-income developing countries are already at high risk of or in debt distress. The economic shocks from the war in Ukraine only add to their challenges."); Lilian Karunungan & Amelia Pollard, *Sri Lanka Falls into Default for the First Time Ever*, BLOOMBERG (May 18, 2022, 11:41 PM), https://www.bloomberg.com/news/articles/2022-05-19/sri-lanka-enters-default-and-warns-inflation-may-surge-to-40?sref=OOpRUZ8l&leadSource=uverify%20wall [https://perma.cc/TLQ7-YEX3] ("Sri Lanka fell into default for the first time in its history as the government struggles to halt an economic meltdown that prompted mass protests and a political crisis.").

282. Selcuk Gokoluk & Sydney Maki, *Russia's War Lifts Default Risk for Distressed Economies*, BLOOMBERG (Mar. 21, 2022, 1:34 AM), https://www.bloomberg.com/news/articles/2022-03-21/russia-s-war-lifts-default-risk-for-world-s-distressed-economies?sref=OopRUZ8l [https://perma.cc/AZ93-PPDY].

in the very least—a technical default by late June, Belarus declared in default by July,[283] and Ukraine restructuring its debts in August.[284] Each default occurred for very different reasons, which implicates distinct considerations, and will take meaningfully different paths to resolution.[285]

For Russia, the uniquely geopolitical, rather than macroeconomic, default is likely to have a rather dissonant impact.[286] On the one hand, the practical implications are limited; the sovereign is effectively cut-off from the global financial system and unable to issue debt due to "cosmic" borrowing costs.[287] Yet, the default will further strain Russia's reeling corporate sector, while vastly degrading living standard for ordinary Russian citizens already starting to experience the economic fallout.[288]

Of the three, a potential Belarussian default would most closely resemble the typical reasons for sovereign distress: not having the money.[289]

---

283. Sydney Maki, *Belarus Debt Snafu Declared a Default by Fitch, Echoing Moody's*, BLOOMBERG (July 18, 2022, 2:41 PM), https://www.bloomberg.com/news/articles/2022-07-18/belarus-declared-in-default-by-fitch-following-moody-s?sref=OopRUZ8l [https://perma.cc/473H-R67N].

284. *See* Jorgelina do Rosario, Rodrigo Campos & Karin Strohecker, *Ukraine's Creditors Agree 2-Year Freeze on $20 Billion Overseas Debt*, REUTERS (Aug. 12, 2022, 8:12 AM), https://www.reuters.com/markets/europe/ukraines-creditors-agree-two-year-payment-freeze-almost-20-billion-international-2022-08-10/#:~:text=Ukraine%20completed%20a%20%2415%20billion,to%20international%20markets%20in%202017 [https://perma.cc/Z99E-E6H7]; *Ukraine's Sovereign Debt Freeze to Trigger CDS Payments*, REUTERS (Aug. 19, 2022, 8:18 AM), https://www.reuters.com/markets/europe/ukraines-sovereign-debt-freeze-trigger-cds-payments-2022-08-19/ [https://perma.cc/5UQ3-QBKG].

285. For deeper discussion, see generally Lev E. Breydo, Three Cities. Moscow, Minsk and Kiev's Divergent Journeys to and from Distress (unpublished manuscript) (on file with author).

286. *Cf. Russia to Halt Bond Sales, Threatens Legal Action Over Default*, BLOOMBERG (Apr. 11, 2022, 12:10 AM), https://www.bloomberg.com/news/articles/2022-04-10/russia-to-halt-bond-issuance-for-rest-of-2022-siluanov-says [https://perma.cc/PDS8-GTKX] ("Ratings firms are abandoning Russia because of a European Union ban.").

287. *Id.*

288. Polina Ivanova, *Russia's Fraying Economy: Consumers Start to Feel the Pinch of Sanctions*, FIN. TIMES (May 31, 2022), https://www.ft.com/content/7df9b453-509b-41c4-8957-ac170aca61aa [https://perma.cc/V6GL-G7DP]; The *Consequences of a Russian Default*, FIN. TIMES (Mar. 16, 2022), https://www.ft.com/content/6cfb5fef-4b61-4432-a5de-4486c95f1d19 [https://perma.cc/GX86-TKGQ]; Bogage & Suliman, *supra* note 89.

289. *See Fitch Downgrades Belarus to 'RD,'* FITCH RATINGS (July 18, 2022, 5:09 PM), https://www.fitchratings.com/research/sovereigns/fitch-downgrades-belarus-to-rd-18-07-2022 [https://perma.cc/R9T7-XJQS]; *Belarus Foreign Currency Ratings Lowered to 'SD/SD' On Ruble Payment of Coupon on Dollar-Denominated Eurobond*, S&P GLOB. RATINGS (Aug. 3, 2022, 4:04 PM), https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/2875134 [https://perma.cc/S8KG-TDXG].

Though sanctions have certainly not helped, the deeper issue is that Belarus is fiscally and macroeconomically frail, with limited resources and high dependance of Russian largesse, which may flow less freely in the future.[290] Perhaps because of this, investors appear most dour on its prospects with its bonds trading around seventeen cents-on-the-dollar in June 2022, down over 80% for the year.[291]

Finally, for Ukraine, this would be the second restructuring caused by Russian invasion, sadly bringing into vivid focus what many viewed as a long-gone era of policy through warfare, and debts not being met because of destruction.[292] Yet, the silver lining may be that both public and private sector creditors appear sympathetic to Ukraine's circumstances—with the private sector in particular encouraged by the sovereign's candid and constructive posture.[293] Reflecting this, shortly after completion of its restructuring, the rating agencies upgraded Ukraine "citing a reduction in the government debt service requirements and an expectation of steady international financial support."[294]

---

290. *See Rating Action: Moody's Downgrades Belarus's Ratings to Ca from B3; Maintains Negative Outlook*, MOODY'S INVS. SERV. (Mar. 10, 2022), https://www.moodys.com/research/Moodys-downgrades-Belaruss-ratings-to-Ca-from-B3-maintains-negative—PR 463472 [https://perma.cc/86KJ-D4KL] ("[A] default by Belarus has become increasingly likely given concerns around the government's willingness to repay its debt obligations and expectations that any potential financial support coming from Russia will unlikely be used for that purpose.").

291. *See supra* Figure 1.

292. *See* Nell Mackenzie, *Ukrainian Debt Holders Brace for Restructure*, RISK.NET (June 3, 2022), https://www.risk.net/investing/7949631/ukrainian-debt-holders-brace-for-restructure [https://perma.cc/U6UD-P5K8].

293. Jonathan Wheatley & Guy Chazan, *Ukraine Secures Preliminary Deal to Suspend Debt Repayments*, FIN. TIMES (July 20, 2022), https://www.ft.com/content/22b32749-c723-4cdc-ad89-0264fadc505a [https://perma.cc/V48F-3HUM].

294. Maria Elena Vizcaino, *S&P Lifts Ukraine Rating from Default After Debt Restructuring*, BLOOMBERG (Aug. 19, 2022, 1:51 PM), https://www.bloomberg.com/news/articles/2022-08-19/s-p-lifts-ukraine-rating-from-default-after-restructuring?sref=OOpRUZ8l [https://perma.cc/9LKR-P2TU]; *see also Ukraine Foreign Currency Ratings Raised To 'CCC+' from 'SD' on Completed Debt Restructuring; Outlook Stable*, S&P GLOB. RATINGS (Aug. 19, 2022, 4:15 PM), https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/2882484 [https://perma.cc/J6PG-ETNY]; *Fitch Upgrades Ukraine to 'CC,'* FITCH RATINGS (Aug. 17, 2022, 5:02 PM), https://www.fitchratings.com/research/sovereigns/fitch-upgrades-ukraine-to-cc-17-08-2022 [https://perma.cc/F7P3-HPZL]. *But see Research Update: Ukraine FC Rating Lowered to 'SD' on Approved Debt Restructuring; LC Rating Lowered To 'CCC+' with Negative Outlook*, S&P GLOB. RATINGS (Aug. 12, 2022, 4:15 PM), https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/sourceId/12471290 [https://perma.cc/GL2J-8HAW]; *Fitch Downgrades Ukraine to 'RD,'* FITCH RATINGS (Aug. 12, 2022, 5:03 PM), https://www.fitchratings.com/research/sovereigns/fitch-downgrades-ukraine-to-rd-12-08-2022 [https://perma.cc/RT7K-TPJ7].

B. Sanctions as a "Weapon"

Political dimensions have surely influenced prior sovereign distress, with Iran and Venezuela featuring prominently.[295] Yet, a Russian default would be the most consequential in this respect, marking the "first time a major emerging market economy is pushed into a bond default by geopolitics, rather than empty coffers."[296]

Indeed, former Treasury officials have commented that "[w]e've never done this to an economy like this before."[297] While the specific sanctions tools utilized against Russia are not wholly new in and of themselves, the nature of the target—a large emerging economy and critical commodity supplier—has meant that "today's sanctions have global economic effects far greater than anything seen before."[298]

While punishing Russia for a "brutal" act of unprovoked aggression is unambiguously correct—as a matter of both policy and morality—the approach is not without risks. Some have posited that the United States miscalculated by effectively forcing Russia to default.[299] That is because continuing to make payments out of a limited pool of non-frozen U.S. dollars would have depleted Russia's holdings of liquid tender.[300] Furthermore, all but precluding Russia from making payments may have

295. *See generally Iran Sanctions*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/iran-sanctions [https://perma.cc/XGX7-S6LT] (outlining the legal framework for current U.S. sanctions on Iran); *Venezuela-Related Sanctions*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions [https://perma.cc/5976-LSJY] (outlining the legal framework for current U.S. sanctions relating to Iran).

296. Davide Barbuscia & Sujata Rao, *Russia's 'Political' Debt Default Sets Emerging Market Precedent*, REUTERS (May 27, 2022), https://www.reuters.com/article/ukraine-crisis-russia-default-idTRNIKCN2ND0NU [https://perma.cc/799J-WQXF].

297. Jeff Stein, *U.S. Pushes Russia Toward Default by Blocking Debt Payments*, WASH. POST (May 24, 2022, 3:00 PM), https://www.washingtonpost.com/us-policy/2022/05/24/treasury-russia-debt-default/ [https://perma.cc/YCT4-UTJU].

298. Nicholas Mulder, *The Sanctions Weapon: Economic Sanctions Deliver Bigger Global Shocks than Ever Before and are Easier to Evade*, FIN. & DEV., June 2022, at 20, 20.

299. *Cf.* Megan Davies & Alexandra Alper, *U.S. Stops Russia Bond Payments, Raising Risk of Default*, REUTERS (Apr. 5, 2022, 3:35 AM), https://www.reuters.com/business/us-cracks-down-russian-debt-payments-latest-sovereign-payments-halted-2022-04-05/ [https://perma.cc/6GNR-CUBH] ("Russia must choose between draining remaining valuable dollar reserves or new revenue coming in, or default.").

300. *See Russia to Halt Bond Sales, Threatens Legal Action over Default*, *supra* note 286.

strengthened its legal defenses.[301] Russia's finance minister has plainly stated that, in the event of a default: "Of course, we will sue, because we have taken all the necessary steps to ensure that investors receive their payments . . . . It will not be an easy process. We will have to very actively prove our case, despite all the difficulties."[302]

The potentially larger, longer-term risk may be that the forcefulness of U.S. and EU actions may have been *too* effective, with the paradoxical effect of weakening their ability to exercise such levers in the future.[303] For instance, the IMF has warned that "[t]he unprecedented financial sanctions imposed on Russia . . . threaten to gradually dilute the dominance of the U.S. dollar and result in a more fragmented international monetary system."[304] That could limit the future effectiveness of economic tools, constraining policy options—and perhaps even increasing the risk of armed confrontation.

C. An Additional Front—Or a New Conflict?

Following Russia's failure to meet its contractual obligations, creditors will surely pursue legal remedies—indeed, given the nature of the borrower, they may do so "with greater alacrity than we normally see following a sovereign bond default."[305]

Some scholars have posited that the U.S. Treasury may desire a Russian default to "conscript the commercial investor community into applying pressure on Russia to cease its aggression in Ukraine."[306] This would not be without precedent. In 1979, the United States froze Iranian deposits in U.S. banks, rendering it unable to service USD-debts and resulting in a default; "[s]et-offs, litigation and seizure of Iranian assets soon followed."[307]

The prospect of complex litigation against well-resourced adversaries may well further constrain Russia's ability to operate around sanctions. For opportunistic investors who purchased bonds at steep discounts, there is plenty of incentive, given the ample wealth accumulated by the state

---

301. *See* Buchheit & Gulati, *supra* note 144.
302. *Russia to Halt Bond Sales, Threatens Legal Action over Default*, *supra* note 286.
303. *See generally*, Breydo, *supra* note 155.
304. Jonathan Wheatley & Colby Smith, *Russia Sanctions Threaten to Erode Dominance of US Dollar, Says IMF*, FIN. TIMES (Mar. 30, 2022), https://www.ft.com/content/3e0760d4-8127-41db-9546-e62b6f8f5773 [https://perma.cc/SV36-WY8A].
305. Sydney Maki, Eliza Ronalds-Hannon & Selcuk Gokoluk, *Russia Is Spiraling Toward a $150 Billion Default Nightmare*, BLOOMBERG (Mar. 15, 2022, 9:01 PM), https://www.bloomberg.com/news/features/2022-03-15/what-if-russia-defaults-on-its-debt-ukraine-war-sanctions-risk-150-billion?sref=OOpRUZ8l [https://perma.cc/6W5R-AWZ6].
306. Buchheit & Gulati, *supra* note 144.
307. *Id.*

and those close to it.[308] Along with vast practical hurdles—including the bonds' contractual deficits and potentially viable Russian legal defenses —pursuing this will necessitate extraordinarily complex and contentious global litigation along with a scramble for recoverable assets.[309] That scramble is likely to zero in around Russian assets held in U.S. and European jurisdictions, including nearly $300 billion of reserves frozen by U.S. and European governments.[310]

Therein lies the risk of potentially enlisting such modern-day privateers. Investor success in surmounting the hurdles to treasure may raise one of the most significant issues yet: a potential zero-sum conflict regarding distributive priority, pitting investors against the victims of Russia's violence.[311]

Many scholars and commentators in the United States and the EU have argued that Russia's frozen reserves should be used to help support and rebuild Ukraine;[312] others have raised significant doubt against the legal permissibility of that approach.[313] One point, however, appears unambiguous: assets seized by creditors cannot also be used to aid Ukraine.[314]

Thus, a Russian sovereign debt default risks putting investors in direct conflict with the most critical stakeholders: the Ukrainian sovereign, and

308. Matt Wirz, *Investors Start Buying Ukraine, Russia Bonds; Distressed-Debt Funds Swoop in as War Pushes Bond Prices Down*, WALL ST. J. (Mar. 6, 2022), https://www.wsj.com/articles/investors-start-buying-ukraine-russia-bonds-11646568002 [https://perma.cc/F57H-XY24]. Perhaps reflecting this potential, Russian bonds have recovered significant value by August 2022, trading up into the 50s. *See* Hogg & Whittall, *supra* note 272; Saeedy, *supra* note 272.

309. *See* Morpurgo, Ramnarayan & Garcia Perez, *supra* note 213.

310. Lee Buchheit & Mitu Gulati, *Alphaville's Guide to Seizing Russian Assets*, FIN. TIMES (Mar. 29, 2022), https://www.ft.com/content/50aae1a2-088a-47f9-b936-30fa02cf03de [https://perma.cc/4E5G-HJVU].

311. *See id.*

312. Laurence H. Tribe & Jeremy Lewin, *$100 Billion. Russia's Treasure in the U.S. Should be Turned Against Putin*, N.Y. TIMES (Apr. 15, 2022), https://www.nytimes.com/2022/04/15/opinion/russia-war-currency-reserves.html [https://perma.cc/9UHR-YHC3]; Robert Litan, *Russia Can be Made to Pay for Ukraine Damage Now*, BLOOMBERG (Mar. 16, 2022), https://www.bloomberg.com/opinion/articles/2022-03-16/russia-can-be-made-to-pay-for-ukraine-damage-now#xj4y7vzkg [https://perma.cc/RC5W-RUZ9].

313. David Lawder, *Yellen: Not Legal for U.S. to Seize Russian Official Assets*, REUTERS (May 18, 2022, 12:22 PM), https://www.reuters.com/world/yellen-not-legal-us-government-seize-russian-central-bank-assets-2022-05-18/ [https://perma.cc/B9B2-9EAL]; Paul Stephan, *Giving Russian Assets to Ukraine—Freezing Is Not Seizing*, LAWFARE (Apr. 26, 2022, 10:48 AM), https://www.lawfareblog.com/giving-russian-assets-ukraine-freezing-not-seizing [https://perma.cc/QA53-JJ7P].

314. *See id.*

millions of people whose lives have been savaged by Putin's war. Eliminating the risk that sharp-elbowed investors jump the line ahead of the Ukrainian people imperatively requires and unambiguously warrants legislative, presidential and—perhaps most importantly—coordinated international action.[315]

VI. CONCLUSION

The Russian Federation stands on the edge of financial abyss, facing a likely sovereign default and long-term excommunication from the global economy following its barbaric invasion of Ukraine.

Before the invasion, most assessed that Russia would overrun its target, while easily outlasting sanctions.[316] Indeed, Russia had been preparing for years, inserting ever-stronger sanction defenses into its bond agreements, while stockpiling a literal war chest with over $600 billion in foreign reserves.[317]

The aggressor vastly underestimated Ukrainian heroism and western nerve. The United States has led a broad global alliance in enacting an unprecedented sanctions regime, and effectively forcing a sovereign default by incrementally precluding Russia from making payments. While the idiosyncrasy of its bond contracts—and defenses predicated on U.S. actions—may strengthen Russia's legal arguments against non-payment, it has more likely than not breached other provisions, giving creditors multiple shots on the goal. The far bigger challenges, undoubtedly, will be enforcement of the claims and, ultimately, resolution of the matter.

Beyond the legal issues, a potential Russian default raises profound normative and policy implications. First, Russia's invasion is likely to cause multiple sovereign defaults—including both Ukraine and Belarus, as well as potentially other financially-weaker regional sovereigns. Second, the mass mobilization of economic sanctions against Russia has raised questions regarding the future efficacy of such measures, as nations consider preemptively reducing their reliance on U.S. dollars and traditional financial infrastructure.

---

315. I discuss these considerations in depth in an additional article in this series. *See* Breydo, *supra* note 67, at 50 n.330 ("Ukraine is fighting for its survival and is desperate for cash, but that isn't deterring London hedge-fund manager Richard Deitz from demanding money back from an ill-fated investment there." (quoting Anna Hirtenstein, *A London Hedge Fund Wants Its Money Back from Ukraine*, WALL ST. J. (July 28, 2022), https://www.wsj.com/articles/a-london-hedge-fund-wants-its-money-back-from-ukraine-11658956817 [https://perma.cc/4C8K-4QLL])).

316. *Id.* at 16–17.

317. *Id.* at 16 n.106 (citing *International Reserves of the Russian Federation (End of Period)*, BANK OF RUSS. (Jan. 2, 2022), https://cbr.ru/eng/hd_base/mrrf/mrrf_m/ [https://perma.cc/HAH7-46VW]).

Finally, a potential Russia default risks the prospect of a conflict over Russian assets between sharp-elbowed investors angling for a payday, and a devastated Ukrainian nation desperate for restitution to rebuild. Hedge funds jumping the line ahead of Ukrainian victims would be a morally unacceptable outcome, necessitating immediate action.

VII. APPENDIX I. RUSSIAN BONDS: DETAILED FINANCIAL & CONTRACTUAL SUMMARY

Russian Bonds: Summary by Currency Provision Category (June 2022)*

Bond (Short Name)	Amount (Bn)	Issue Date	Coupon: Rate (%)	Coupon: Next Due	Coupon: Amount ($MM)	Maturity	5/17/22:[1] Price	5/17/22:[1] Yield[2]	6/1/2022:[1] Price	6/1/2022:[1] Yield[2]	Alternative Currency Provision[2]	IMF EoD[2,3]	Prescription Period[2]
I. Legacy Bonds (1998 Restructuring Exchange Bonds)													
12.75% 2028 USD Bonds	2.5	6/24/98	12.75	6/24/22	159.4	6/24/28	33.4	46.1%	28.9	52.2%	N/A; Only payable in U.S. Dollars	Yes	10 years (principal) and 5 years (interest)
7.5% 2030 USD Bonds[4]	2.33	3/31/00	7.5	9/30/22	87.4	3/31/30	33.1	105.0%	28.8	134.2%			
Total / Avg	**4.83**						**33.2**	**75.5%**	**28.8**	**93.2%**			
II. Market Re-Entry Bonds (Pre-Crimea Invasion Bonds, No Alternative Currency Provision)													
4.5% 2022 USD Bonds (Matured)	2	3/28/12	4.5	Matured	N/A	4/4/22	-	-	-	-		N/A	3 Years (both principal and interest): *Claims against the Russian Federation in respect of principal and interest shall become* ***void unless made within a period of three years*** *from the date following the Maturity Date or a relevant Interest Payment Date, as applicable.*
5.625% 2042 USD Bonds	3	4/4/12	5.625	10/4/22	84.4	4/4/42	26.5	22.2%	27.2	21.8%			
4.875% 2023 USD Bonds	3	9/16/13	4.875	9/16/22	73.1	9/16/23	34.0	110.9%	29.1	135.0%			
5.875% 2043 USD Bonds	1.5	9/16/13	5.875	9/16/22	44.1	9/16/43	25.6	23.6%	27.5	22.1%			
Total / Avg	**7.5**						**28.7**	**52.2%**	**27.9**	**59.6%**			
III. 'Crimea Bonds' ('First Fall-Back' with Euro, Pound and Swiss Franc Alternative Currency Provisions)													
4.75% 2026 USD Bonds	3	5/27/16	4.75	5/27/22	71.3	5/27/26	24.6	50.0%	18.1	62.9%	[I]f, for reasons beyond its control, the Russian Federation is unable to make payments of principal or interest (in whole or in part) in respect of the Bonds in U.S. dollars (an "Alternative Payment Currency Event"), the Russian Federation shall make such payments (in whole or in part) in **Euros, Pound sterling or Swiss francs (the "Alternative Payment Currency")** (emphasis added)		
4.25% 2027 USD Bonds	2.41	6/23/17	4.25	6/23/22	51.1	6/23/27	25.7	38.7%	19.6	48.1%			
5.25% 2047 USD Bonds	7	6/23/17	5.25	6/23/22	183.8	6/23/47	23.7	22.6%	19.2	27.8%			
Total / Avg	**12.41**						**24.7**	**37.1%**	**19.0**	**46.3%**			
IV. Post-2018 Bonds ('Second Fall-Back' with Rouble Alternative Currency Provision)													
4.375% 2029 USD Bonds	3	3/21/18	4.375	9/21/22	65.6	3/21/29	23.7	22.6%	15.2	45.9%	"[I]f for reasons beyond its control, the Russian Federation is unable to make payments of principal or interest (in whole or in part) in respect of the New Bonds in U.S. dollars, the Russian Federation shall make such payments (in whole or in part) in **euros, Pound sterling or Swiss francs or, if for reasons beyond its control the Russian Federation is unable to make payments of principal or interest (in whole or in part) in respect of the New Bonds in any of these currencies, <u>in Russian roubles</u> . . . of any such U.S. dollar-denominated amount.** (emphasis added)		
2.875% 2025 EUR Bonds	1.75	12/4/18	2.875	12/4/22	53.6	12/4/25	20.3	65.7%	18.9	70.2%			
5.1% 2035 USD Bonds	4	3/28/19	5.1	9/28/22	102.0	3/28/35	21.4	27.8%	15.2	37.0%			
1.125% 2027 EUR Bonds	1.25	11/20/20	1.125	######	15.0	11/20/27	17.4	41.2%	17.4	41.6%			
1.85% 2032 EUR Bonds	1.25	11/20/20	1.85	######	24.6	11/20/32	17.1	24.3%	16.1	25.3%			
2.65% 2036 EUR Bonds	1	5/27/21	2.65	5/27/22	28.2	5/27/36	16.7	22.9%	16.5	23.1%			
Total (USD-Equiv) / Avg	**12.48**						**19.4**	**34.1%**	**16.5**	**40.5%**			
All Bonds Total / Avg	**37.21**						**24.5**	**44.5%**	**21.3**	**53.4%**			

***Note: Chart and analysis as of June 1, 2022 and will not reflect subsequent developments.**

[1] *Based on Bloomberg Terminal data. Yields computed as mid market yield-to-maturity.*

[2] *Based on review of bond documents.*

[3] *Provision provides for Event of Default, in the event that "The Issuer ceases to be a member of the IMF or eligible to use the general resources of the IMF pursuant to Article 26 of the IMF Articles of Agreement."*

[4] *Issued in exchange of earlier, 2000 vintage bonds, pursuant to March 2018 tender offer.*

VIII. APPENDIX II. EVENT OF DEFAULT PROVISIONS

Russian Federation Sovereign Bonds: Event of Default Provisions Summary

Potentially applicable provisions highlighted. Payment-specific events in bright yellow; other provisions light yellow.

Provision	Description / Text Excerpt	Applicable Bonds
Non-Payment.	Failure to pay any amount of principal or interest in respect of the Bonds when due and such failure continues for a period of 30 calendar days	All 14 outstanding series
Breach of Other Obligation or Undertakings.	Failure to perform or comply with any obligation in respect of the Bonds, which default (if capable of remedy) is not remedied within 60 days after written notice from any Bondholder	
Cross-Acceleration.	In respect of any Public External Indebtedness exceeding $75 million;	
Moratorium.	The Issuer declares a moratorium on the payment of principal of or interest on any part of its Public External Indebtedness	
Unlawfulness or Invalidity.	"The Russian Federation or any agency or entity acting on behalf of the Russian Federation contests the validity of the relevant Bonds . . ."	
Consents	"Any regulation, decree, consent, approval, license or other authority necessary to enable the Russian Federation to enter into or perform its obligations under the Bonds or for the validity or enforceability thereof expires or is withheld, revoked or terminated or otherwise is void or ceases to remain in full force and effect or is modified in a manner which adversely affects any rights or claims of any holder of such Bonds."	
Pari Passu	The Bonds do not rank pari passu without any preference among themselves or pari passu with any other unsecured and unsubordinated obligations of the Russian Federation.	
IMF Membership	The Issuer ceases to be a member of the IMF or eligible to use the general resources of the IMF pursuant to Article 26 of the IMF Articles of Agreement	Only 2028 and 2030 maturities

Source: 2026 USD Eurobonds, at 1-2, 17-19.

IX. ADDENDUM

As this Article (which was largely written in mid-2022) goes to print in early 2023, the broader situation with respect to the Russia-Ukraine conflict remains highly fluid and uncertain, with a brutal war still raging. Consequently, many aspects of the legal, policy, legislative, and financial questions regarding Russia's sovereign obligations remain unresolved, in part due to sanctions regimes across the United States, Europe, and other jurisdictions.

While this Article tries to clearly delineate such matters and any associated points of uncertainty, the reader should bear in mind that most information, data, and figures provided herein are accurate as of approximately mid-2022, unless stated otherwise. Thus, certain discussion may be impacted by subsequent developments or new information not available at the time of publication.