

Hostile State Asset Denial and Settlement Act

Restructuring options for confiscation and use

Legal frameworks available to move the Act from reversible custody to confiscation and wartime or operational use; proposed three-tier restructure (v3).

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DRAFTING MEMORANDUM

Hostile State Asset Denial and Settlement Act: Restructuring Options for Confiscation and Use

TO Collin B. George, Sanctir LLC

DATE October 2, 2026

RE Legal frameworks available to move the Act from reversible custody to confiscation and wartime or operational use; proposed three-tier restructure (v3)

The September 22, 2026 draft (v2) rests on one legal basis, the countermeasures doctrine of the law of State responsibility, which requires that the measure remain reversible and therefore forbids any use of principal. A second basis exists that permits confiscation and use, and the Act should stand on both. This memorandum sets out that basis, a three-tier restructure, four existing statutory channels for wartime and operational use, an asset-class matrix matching each class to the authority that supports it, two levers to note but not lead with, and the constraints that cannot be drafted around.

1. Stand on the Captures Clause, not on countermeasures

Domestically, confiscation of enemy state property in wartime is settled law and needs no international-law justification. *Brown v. United States*, 12 U.S. (8 Cranch) 110 (1814), holds that the power belongs to Congress. *Miller v. United States*, 78 U.S. (11 Wall.) 268 (1871), upheld the Civil War Confiscation Acts. *Stoehr v. Wallace*, 255 U.S. 239 (1921), *Cummings v. Deutsche Bank*, 300 U.S. 115 (1937), and *Silesian-American Corp. v. Clark*, 332 U.S. 469 (1947), upheld vesting under the Trading with the Enemy Act without compensation. *Juragua Iron Co. v. United States*, 212 U.S. 297 (1909), holds that enemy property receives no Takings Clause protection.

Congress has done exactly this twice at scale. The Alien Property Custodian vested German and Japanese assets in both World Wars, and the War Claims Act of 1948 (now 50 U.S.C. 4101 et seq.) liquidated vested assets into the War Claims Fund (50 U.S.C. 4110) to pay United States claimants. That is the precedent for seize-and-pay. It is a statute, not a theory.

Countermeasures doctrine (Articles on Responsibility of States for Internationally Wrongful Acts, arts. 49–53) then does one job only: it governs the category where belligerent rights are weakest, the central bank reserves of a state Congress has not named as an enemy. Reversibility should be kept there and dropped everywhere else.

2. Reorganize into three tiers with a conversion trigger

- **Tier 1, custody (current Sec. 8).** Earnings held; principal preserved. Applies from designation of the hostile state.

- **Tier 2, confiscation.** Principal vests in the United States on a second congressional act: a joint resolution considered under Sec. 15A finding that the hostile state has committed an armed attack or act of aggression against the United States and has not ceased or made reparation within [12] months. That finding is the legislative act *Brown* requires. It mirrors the certification step Congress has already enacted for Russia in the REPO for Ukrainians Act (Pub. L. 118–50, div. F, § 104(b)). The resolution, not the President, converts custody to title.
- **Tier 3, use.** Vested funds flow to enumerated purposes under a permanent appropriation written into the Act. Without that appropriation the money sits in the Treasury. The Appropriations Clause cannot be drafted around.

3. Four existing channels for wartime and operational use

Defense Cooperation Account, 10 U.S.C. 2608. Established for the 1991 Gulf War, when allied contributions of approximately \$54 billion were deposited there and appropriated to the Department of Defense. The Act can deem vested hostile-state funds to be contributions to the Defense Cooperation Account and appropriate them for the operation named in Sec. 4. The channel exists; the Act supplies the inflow and the appropriation.

Captured enemy funds in theater, the 2003 model. The Commander's Emergency Response Program began with seized Iraqi regime cash before Congress funded it in section 1110 of the National Defense Authorization Act for Fiscal Year 2004. Separately, Executive Order 13290 (March 20, 2003) used 50 U.S.C. 1702(a)(1)(C) to vest approximately \$1.7 billion of Iraqi government funds held in United States banks for use to assist the Iraqi people. Both show that the executive branch will act in any event. The Act should give that action a statutory channel with reporting rather than leave it to an executive order.

War Claims Fund model for the claims track. Replace the adjudicate-then-wait structure of Secs. 8 and 8A with the 1948 design: vested assets liquidated into the Account; the Foreign Claims Settlement Commission adjudicates; the Treasury pays certified awards from the Account under a permanent appropriation. No later Act is needed. This also resolves the Sec. 10(c) problem. Add a provision modeled on 22 U.S.C. 8772 designating specific vested assets as available to satisfy FCSC awards and existing judgments under TRIA § 201 and 28 U.S.C. 1610(g), which *Bank Markazi v. Peterson*, 578 U.S. 212 (2016), holds Congress may do. The terrorism-victims bar becomes an ally rather than an opponent.

Reparations levy on licensed future trade, the UN Compensation Commission model. Security Council Resolutions 687 (1991) and 705 (1991) funded the Commission with 30 percent (later reduced to 5 percent) of Iraqi oil export proceeds. The Act can require that any OFAC license authorizing petroleum or commodity sales by the hostile state or its state enterprises condition a fixed percentage of proceeds into the Account. This is the one mechanism that reaches real money: Iranian and Venezuelan revenue is in future oil flows, not in United States bank balances. It is live now, with the United States controlling Venezuelan oil revenue under the April 2026 general licenses and the Treasury asserting oversight of the Iranian funds held in Qatar.

4. Match the asset class to the legal basis

ASSET CLASS	LEGAL BASIS	TREATMENT
Warships, military aircraft, military property	Booty of war; Hague Regulations art. 53	Vests on capture without process (current Sec. 6(a))
State-owned merchant vessels, cargo, blockade runners	Prize, 10 U.S.C. chapter 883	Condemnation; proceeds to the Account. The 2026 blockade of Iranian ports is the use case
State enterprises, sovereign wealth funds, commercial holdings	Captures Clause; TWEA and War Claims Act line of authority	Tier 2 confiscation on joint resolution
Central bank reserves	Countermeasures only, unless a Tier 2 finding of aggression is made	Custody; earnings held; principal vests only on the Tier 2 resolution
Future export revenue	Licensing power; UN Compensation Commission precedent (UNSCR 687, 705)	Fixed-percentage levy into the Account as a license condition

Keeping central bank principal under custody until Congress makes an aggression finding is also the hedge against the reserve-asset cost argued in “Discipline and Denial.” The Act should state that this is why the line is drawn there.

5. Two levers to note and not lead with

Letters of marque (art. I, § 8, cl. 11) against hostile-state-owned shadow-fleet tankers are constitutionally available and were proposed in the 117th Congress for Russian assets. They are a political liability. **Civil forfeiture of sanctioned oil cargoes** under 18 U.S.C. 981 with IEEPA predicates is already in use by the Department of Justice against Iranian tankers; proceeds flow to the United States Victims of State Sponsored Terrorism Fund under 34 U.S.C. 20144(e)(2), and redirecting them to the Account would start a dispute with the same plaintiffs’ bar. Both belong in a drafter’s note as options.

6. What cannot be drafted around

- An appropriation for every dollar spent.
- Due process and an innocent-owner defense for any third-party interest. *Cummings* protects seizures of enemy property, not neutral property. If forfeiture rests on IEEPA or TWEA predicates, 18 U.S.C. 983(d) must be applied expressly, because 18 U.S.C. 983(i) otherwise excludes those forfeitures.
- Reciprocal seizure of United States assets abroad. The sense-of-Congress clause in Sec. 2(c) does nothing to prevent it.

- International-law exposure on central bank assets after *Jurisdictional Immunities of the State* (*Germany v. Italy*), I.C.J. Reports 2012. That is why the class stays in Tier 1 until Congress itself makes the finding.

7. Proposed v3 structure

Title I, Designation and Custody (current Secs. 4, 5, 8, 8A, 13). Title II, Confiscation (new: conversion resolution under Sec. 15A; vesting; Alien Property Custodian-style administration within the Treasury; express displacement of 50 U.S.C. 1702(a)(1)(C) and 50 U.S.C. 4305(b) as to covered sovereign assets). Title III, Use (new: Defense Cooperation Account deeming and appropriation; in-theater captured-funds authority with reporting; War Claims Fund payment mechanism with a § 8772-type execution clause replacing Sec. 10(c); export-revenue levy; override of 31 U.S.C. 3302(b) and 34 U.S.C. 20144(e)(2)(A) for Account deposits). Title IV, Capture and Prize (current Secs. 6, 7, 14, with the 10 U.S.C. 8852(a)(2) and 8851(c) corrections). Title V, Procedure and General Provisions (current Secs. 12, 15, 15A, 16, 17, 18).

The restructure should be built on the corrected v2, after the citation fixes identified in the October 2, 2026 verification report are applied: 28 U.S.C. 1605(b); 10 U.S.C. 8881 and 8852(a)(2); the REPO Act codification at 22 U.S.C. 9521 note; attribution of the \$5 billion figure to the REPO findings and the Congressional Budget Office; the characterizations of *Learning Resources, Inc. v. Trump* (Feb. 20, 2026) and *Bank Markazi*; and the citation of 31 C.F.R. part 505 and OMB Memorandum M-26-11 for the \$377,700 civil penalty figure.

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