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Legislative Summary

BILL S-214: AN ACT TO AMEND THE SPECIAL ECONOMIC MEASURES ACT (DISPOSAL OF FOREIGN STATE ASSETS)

45-1-S214-E

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CONTENTS

1 BACKGROUND 1

2 DESCRIPTION AND ANALYSIS 2

2.1 Exception (Clause 3) 2

2.2 Forfeiture of Foreign State Assets (Clause 4) 3

3 COMMENTARY 3

3.1 Purpose 3

3.2 Sovereign Immunity and the Countermeasures Doctrine 4

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LEGISLATIVE SUMMARY OF BILL S-214: AN ACT TO AMEND THE SPECIAL ECONOMIC MEASURES ACT (DISPOSAL OF FOREIGN STATE ASSETS)

1 BACKGROUND

Bill S-214, An Act to amend the Special Economic Measures Act (disposal of foreign state assets) (Bill S-214), was introduced in the Senate by Senator Donna Dasko on 28 May 2025.[1] It passed second reading and was referred to the Standing Senate Committee on Foreign Affairs and International Trade on 26 March 2026. The bill was reported to the Senate without amendment on 7 May 2026 and passed third reading on 26 May 2026.[2]

Bill S-214 replicates Bill S-278, An Act to amend the Special Economic Measures Act (disposal of foreign state assets) (Bill S-278).[3] Bill S-278 was introduced in the Senate by Senator Ratna Omidvar on 4 October 2023 but did not complete second reading prior to the dissolution of the 44th Parliament in early 2025.

The bill amends the *Special Economic Measures Act* (SEMA or the Act) to establish a framework for the disposal of foreign state assets that is consistent with the principle of sovereign immunity and Canada's *State Immunity Act*. To this end, the bill establishes an executive process for the federal government to dispose of foreign state assets seized under SEMA without a judicial order. The bill would preserve the existing judicial process under SEMA for the disposal of private assets.

SEMA is one of Canada's two core pieces of autonomous sanctions legislation,[4] the other one being the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. Enacted in 1992, SEMA allows Canada to impose sanctions against entities and states, as well as individual foreign nationals, in the following situations:

- where an international organization or association of which Canada is a member has called for economic measures to be taken against a foreign state;
- where a grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis;
- where gross and systematic human rights violations have been committed in a foreign state; or
- where acts of significant corruption have been committed by public officials or their associates.[5]

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SEMA has been amended on several occasions, including through the *Budget Implementation Act, 2022, No. 1*.[6] That bill amended SEMA to allow the Minister of Foreign Affairs to apply to a superior court judge for the forfeiture of property subject to a seizure or restraint order made under the Act. The 2022 amendments to SEMA also specified the conditions governing the disposal of forfeited property, as well as the possible recipients of the proceeds. Specifically, section 5.6 of SEMA authorizes the Minister to pay out the net proceeds of forfeited property for the purpose of: (1) reconstructing a foreign state; (2) compensating victims affected by a grave breach of international peace and security; or (3) restoring international peace and security.

2 DESCRIPTION AND ANALYSIS

Bill S-214 contains six clauses. The two key clauses of the bill are discussed below.

2.1 EXCEPTION (CLAUSE 3)

Clause 3 amends SEMA to create an exception to section 5.4(1) which deals with asset forfeiture. Presently, section 5.4(1) enables the Minister of Foreign Affairs to apply to a superior court judge requesting that property subject to a seizure or restraint order made under section 4(1)(b) of SEMA be forfeited to the Crown. Section 4(1)(b) of SEMA provides the Governor in Council with the authority to order the seizure or restraint of property owned, or controlled or held directly or indirectly, by a foreign state or a person sanctioned under the Act.

The existing process for enabling the forfeiture of property under section 5.4(1) of SEMA requires a court order. This requirement could create a potential obstacle in situations where the property belongs to a foreign state, since the foreign state may invoke state immunity in court proceedings. State immunity is a principle of international law under which one state is generally immune from the jurisdiction of the courts of another state, subject to certain exceptions.

Clause 3 introduces new language after section 5.4(1) to provide that a forfeiture order made under that section "cannot relate to property that is owned, held or controlled, directly or indirectly, by a foreign state." In effect, this amendment prevents forfeiture orders under section 5.4(1) from applying to sovereign assets, while preserving the existing approach for private assets.

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2.2 FORFEITURE OF FOREIGN STATE ASSETS (CLAUSE 4)

Clause 4 of the bill introduces new section 5.41, entitled "Forfeiture of foreign state assets." The new section enables the Governor in Council, by order, to have property that has been seized or restrained under section 4(1)(b) and that is owned, or controlled or held directly or indirectly, by a foreign state forfeited to the Crown.

The purpose of this amendment is to enable to Governor in Council to directly order the forfeiture of sovereign assets that are the subject of a seizure or restraint order made under section 4(1)(b) of SEMA without the need to seek a court order. Testifying before the Standing Senate Committee on Foreign Affairs and International Trade on 6 May 2026, Robert Brookfield, Director General, Sanctions Bureau, Global Affairs Canada, explained this amendment by noting that Bill S-214 would

> modify the approach for sovereign assets to skip the step of applying to court for forfeiture of assets once seized and allow the Minister of Foreign Affairs to make a recommendation to the Governor-in-Council for a decision directly to forfeit.[7]

Another witness who appeared before this committee, Preston Jordan Lim, Assistant Professor, Villanova University, Charles Widger School of Law, reiterated that this amendment would provide the Governor in Council with "the power to authorize directly the seizure and confiscation of [state] assets without the participation of the Canadian judiciary."[8]

3 COMMENTARY

3.1 PURPOSE

In her comments at second reading, Senator Dasko said that the purpose of Bill S-214 was to create a "legal pathway" for the forfeiture of state assets.[9] While acknowledging that SEMA already provides for the seizure of state assets, she described the mechanism for initiating the process of asset forfeiture under the Act as "flawed." According to Senator Dasko, the principle of sovereign immunity effectively prevents the Government of Canada from applying to a court for the forfeiture of state assets seized under SEMA.

By contrast, Senator Dasko argued that the reach of the *State Immunity Act* (discussed below) "does not extend to executive actions such as cabinet orders." She stated that the bill would establish two paths in relation to asset forfeiture: "one through the courts

for individual assets and another through executive action by the Governor-in-Council. We can think of it as two highways with different routes but the same destination."

While Bill S-214 does not specifically refer to Russia, it is connected to broader international efforts to hold Russia accountable for its aggression against Ukraine. Senator Dasko highlighted this connection in her speech at second reading:

> Colleagues, why are we contemplating such extraordinary actions as seizing the state assets of a foreign country? We are contemplating extraordinary actions because we are faced with extraordinary circumstances, in particular the illegal and immoral invasion by Russia of the free, independent and democratic nation of Ukraine. As a matter of justice and based on our values and our interests, we must continue to take action. The funds seized under this act and similar actions by other Western nations can assist Ukraine in rebuilding after the devastation of war.[10]

Senator Dasko added:

> Bill S-214 provides a clear domestic legal framework permitting the seizure of state assets. It's a framework that allows us to act with allies or independently if multilateral arrangements falter or are delayed. It is another mechanism to hold Russia to account for its actions. Canada can, if needed, repurpose frozen assets directly for Ukrainian support or reparations without waiting for unanimous international agreement. And it's there to hold other nations – not just Russia – to account for their illegal actions. It is country-agnostic. It is not specifically intended for Russia. It can be used for other related situations as well.[11]

3.2 SOVEREIGN IMMUNITY AND THE COUNTERMEASURES DOCTRINE

As noted earlier, the *State Immunity Act* governs the circumstances in which claims may be brought against foreign states and their property in Canadian courts. The *State Immunity Act* establishes a general presumption that foreign states are immune from the jurisdiction of Canadian courts, subject to limited statutory exceptions.[12] According to the New Lines Institute, a U.S.-based think tank, given the provisions of the *State Immunity Act*,

> if the Canadian government were to commence judicial proceedings to forfeit Russian state assets as envisioned

> under SEMA, Russia would likely claim its immunity to the proceeding, which it may do without [submitting] to the jurisdiction of the Canadian court.[13]

Some observers have characterized Bill S-214 as an innovative approach to targeting Russian state assets and advancing accountability for Ukraine. For example, a summary of the bill by the Global Initiative Against Impunity, a coalition of international civil society organizations, describes it as an attempt "to establish distinct mechanisms for the repurposing of sovereign assets, rather than private assets."[14] By establishing a separate track for sovereign assets, the organization argues that "Bill S-214 reflects that sovereign property requires a tailored approach distinct from the forfeiture mechanisms more straightforwardly applicable to private assets." Michael Cholod, Executive Director of The Peace Coalition, a non-profit coordinating international efforts to rebuild Ukraine, and Geoffrey Goodell, a lecturer at University College London, similarly argue that Bill S-214 provides a "gold-standard legislative solution to the state-immunity conundrum."[15]

Professor Jordan Lim told the Standing Senate Committee on Foreign Affairs and International Trade that Bill S-214 represents "a creative and successful attempt to cure a domestic legal inconsistency" between SEMA and the *State Immunity Act*. He nevertheless argued that the bill leaves unresolved a broader question concerning SEMA's compatibility with international law.[16] In Professor Lim's view, SEMA's provisions relating to the confiscation or seizure of foreign public assets likely contravene international legal rules on sovereign immunity and cannot be justified under the doctrine on countermeasures.

Under customary international law, an "injured State" may, subject to certain conditions, take countermeasures that would otherwise be inconsistent with its international obligations for the purpose of inducing the responsible State to comply with its international obligations.[17] The principle is reflected in Articles 49 to 53 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission in 2001, which set out the object, limits and conditions governing countermeasures.[18]

In the case of Ukraine, some commentators have argued that Russia's violation of Ukraine's sovereignty and territorial integrity entitles other states to impose countermeasures, including confiscating Russian central bank asserts.[19] Acting under the countermeasures doctrine, Robert Currie, Professor of Law at Dalhousie University, said that Canada could "suspend state immunity over any Russian sovereign assets which Canada controls as a means of pressuring Russia to stop its illegal war."[20]

While Professor Lim agreed that the *freezing* of Russian public assets could be justified under the countermeasures doctrine, he argued that the same justification would not apply to the *confiscation* or *seizure* of those assets. In written commentary, he explained that the countermeasures doctrine "involves requirements that can, in practice, be difficult to fulfil. Counter-measures must be reversible, temporal, proportionate, and designed to induce compliance."[21] In his view, proposals to seize state assets may not satisfy these requirements because it is "difficult to see how seizures can be reversible or temporary." Once a government has seized state funds and diverted them for a specific purpose (e.g., Ukrainian reconstruction), he argues, there would be no practical way of returning the funds to the original owner.

Addressing this view during his appearance before the Standing Senate Committee on Foreign Affairs and International Trade, Professor Currie argued that the countermeasures doctrine requires only that the "breach of obligation itself be reversible, not that all of its consequences be reversible." In his view, Canada could act under the doctrine to "lift immunity over Russian assets" and, once Russia's aggression ends, "reimpose immunity." Professor Currie further argued that, once the countermeasures end, Canada would not be required to return the funds.[22]

NOTES

1. Bill S-214, An Act to amend the Special Economic Measures Act (disposal of foreign state assets), 45th Parliament, 1st Session. The Honourable Donna Dasko retired from the Senate on 19 August 2026.
2. For the current status of Bill S-214, see: Bill S-214, An Act to amend the Special Economic Measures Act (disposal of foreign state assets), 45th Parliament, 1st Session.
3. Bill S-278, An Act to amend the Special Economic Measures Act (disposal of foreign state assets), 44th Parliament, 1st Session. The Honourable Ratna Omidvar retired from the Senate on 5 November 2024.
4. Autonomous sanctions refer to sanctions imposed without a United Nations (UN) Security Council mandate. Canada may also impose sanctions under the *United Nations Act*, which is the legal mechanism by which the federal government implements decisions of the UN Security Council. For more information on Canadian sanctions legislation, see Government of Canada, *Canadian sanctions legislation*.
5. *Special Economic Measures Act*, S.C. 1992, c. 17, s. 4(1.1).
6. Bill C-19, Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures, 44th Parliament, 1st Session (S.C. 2022, c. 10).
7. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 6 May 2026 (Robert Brookfield, Director General, Sanctions Bureau, Global Affairs Canada).
8. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 30 April 2026 (Preston Jordan Lim, Assistant Professor, Villanova University Charles Widger School of Law, as an individual).
9. Senate, *Debates*, 12 March 2026, 2050 (Hon. Donna Dasko).
10. Ibid.
11. Ibid., 2100.
12. *State Immunity Act*, R.S.C. 1985, c. S-18.

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13. New Lines Institute, *Multilateral Asset Transfer: A Proposal for Ensuring Reparations for Ukraine*, June 2023, p. 38.

14. REDRESS, Global Initiative Against Impunity, *Reparation Today, Not Tomorrow – Guidelines for Repurposing Russia-linked Assets to Finance Reparation for Victims of the War in Ukraine*, March 2026, p. 20.

15. Michael Cholod and Geoffrey Goodell, "Canada has the legislative tool to break through seizing Russian assets – it's time to use it," *The Hill Times*, 10 September 2025.

16. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 30 April 2026 (Preston Jordan Lim, Assistant Professor, Villanova University, Charles Widger School of Law).

17. For more information on countermeasures and the rules of state immunity under customary international law, see United Kingdom, Patrick Butchard, *Sanctions, international law and seizing Russian assets*, Research Briefing, House of Commons Library, 7 November 2024; and Ingrid (Wuerth) Brunk, *Countermeasures and the Confiscation of Russian Central Bank Assets*, Lawfare, 3 May 2023.

18. International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, United Nations, 2001.

19. Robert J. Currie, Fen Osler Hampson, and Allan Rock, *Leading by Example: Canada's Approach to Seizing Frozen Assets and Holding Corrupt Leaders to Account*, Working paper, Canadian Task Force Against Global Corruption, World Refugee and Migration Council, June 2023.

20. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 30 April 2026 (Robert Currie, Viscount Bennett Professor of Law, Dalhousie University, as an individual).

21. Preston Lim, *Canada's Special Economic Measures Act Under International Law*, Just Security, 27 February 2024.

22. Senate, Standing Committee on Foreign Affairs and International Trade, *Evidence*, 30 April 2026 (Robert Currie, Viscount Bennett Professor of Law, Dalhousie University, as an individual).