RISA GOLUBOFF: Good afternoon everyone, and welcome. I am Risa Goluboff, dean of the law school. I want to thank Ellen Walker and everyone at the Law School Foundation who has organized this event. This is the foundation's second webinar geared toward alumni, highlighting some of the remarkable important and very relevant work that is being done by our faculty.

This is a new format for us. It's, I think, a silver or maybe a bronze lining of the pandemic, that we are using this technology for new purposes and adding value to you all, to our alumni. I am so glad that you have made time to join us today because this conversation will definitely add much value to you all. This is a conversation between Professor Mitu Gulati and Lee Buchheit on sovereign debt restructuring. And it is such a pleasure for me to introduce our two discussants today. So let me get into that.

Mitu Gulati is the John V. Ray Research Professor of Law here at UVA. He joined the law school in 2021, so very recently. We are thrilled to have him. He previously served on the faculties of Duke, UCLA, and Georgetown law schools. He is a graduate of the University of Chicago, Yale University, and Harvard Law School.

And Mitu is a prolific scholar with wide ranging interests. He has written close to 200 articles and he has authored or edited 11 books, including *A Modern Legal History of Sovereign Debt* with Anna Gelpern and *Odious Debts and State Corruption* with David Skeel.

Mitu is a public intellectual in the absolute best sense of that word. He hosts his own podcast, *Clauses and Controversies.* He's a contributor to the *CreditSlips.org* blog. He is a frequent writer in outlets such as the *Wall Street Journal, Bloomberg,* the *Financial Times,* and the *Washington Post.* Mitu is also a stellar teacher. In his short time in the law school, already he has found himself a beloved teacher and as mentor to many of our students.

Joining Mitu today is Lee Buchheit. Lee retired in 2019 after a 43-year career with Cleary Gottlieb Steen and Hamilton, where his practice focused on international and corporate transactions, including eurocurrency, financial transactions, sovereign debt management, privatization, and project finance. He led teams advising Greece in the 2012 restructuring of government bonds, totaling more than 206 billion euros.

He also advised the Republic of Iraq in 2004 to 2008, restructuring of $140 billion accumulated by the Saddam Hussein regime. A graduate of Middlebury College and University of Pennsylvania Law School, Lee also received a diploma in international law from Cambridge University. He has served as a lecturer or an adjunct professor at Yale, Duke, NYU, and Harvard law schools, among many other institutions. And he is the author of two books in the field of international law and more than 40 articles.

Of those, Lee and Mitu together have co-authored more than 30 over the years, and many on the topic that they will be discussing today. I am so delighted to have both of these experts here today. And without further ado, I turn things over to you, Mitu and Lee.

MITU GULATI: Thank you so much for that very kind introduction, Risa. I'm so thrilled to get to do this. So thrilled also that I get to do this with Lee. I started working for Lee-- I think it's something like 27 years ago-- when my first task-- my memory is getting vauge at this stage. My first task was doing the Mexican financial crisis, literally my first job, when I think Lee asked me, "Can you read those documents and figure out whether or not if the US gives Mexico money to get it out of its crisis, they can pledge their future oil receivables as collateral?"

And there were so many big words in that question that I did not understand, but I knew I had to try and pretend to actually understand those words. I did not succeed in giving them an answer. I think they concluded that maybe they couldn't figure out the answer because the contract documents were just so convoluted. And that has been the story of my life ever since-- confused about contract documents, going to ask Lee what they really mean, and then maybe an article or a restructuring it, or two.

But the way we're going to do this today is hopefully involve you as well. Many of you have a deep knowledge of this market, and even if you don't, have very good questions. So I'm going to ask Lee the questions, as I have done all through my career. And he's going to answer them wisely. And I'm going to write down the answers and hopefully that's my work for the year that will satisfy Risa that I'm actually doing something.

These questions come both from my students who are studying international debt transactions-- where we can't help, but talk about Russia and Ukraine every day and the implications for the world-- but also from a set of financial journalists who thought the opportunity to ask questions of Lee was too good to let go of. So without further ado, I will start asking Lee these questions. And then maybe some of you will add your questions to the list that we already have.

So Lee, many of us, including me, thought that Russia would default on its external debt last week. I perhaps should be embarrassed that I said this to a couple of news outlets. And the reasons were that, one, Russia has scarce foreign currency reserves, now that the Western world has imposed strong sanctions on it.

And second, it seemed like the money that would have to be used to pay creditors last week would have to get permission from the US government. And it seemed unlikely that the US government would give Russia permission to use these scarce resources to pay creditors. After all, why put creditors at the front of the line? Now, I was wrong.

On Wednesday, Russia appears to have both authorized the use of its dollar resources to pay over $100 million through Citibank. And the US government said OK to that. Lee, does this mean that the risk of a Russian default has disappeared? The market certainly seems to think that the risk of a Russian default is significantly lower now. That seems very strange to me.

LEE BUCHHEIT: Thank you, Mitu. And friends, wonderful to be with you. No, I don't think the risk of a Russian default has evaporated. What happened last week was something of a mystery. First, I would quibble with your phrase, "scarce foreign exchange reserves." Russia boasted that it began this enterprise with a war chest of $640 billion of international reserves.

The sanctions imposed by the United States and the European Union appear to have caught about $300 billion of that. So there's more than $300 billion still out there. And that could hardly warrant the word, "scarcely" or "scarce foreign exchang reserves."

The mystery of last week-- well, there are two mysteries. One was, would Russia, confronted with those pretty savage sanctions imposed on it by the Western countries, really want to pay those Western countries on external debt? So that was a classic willingness-to-pay problem.

The other mystery was, from which pool did Russia source those payments? Logically, the EU and US authorities that implement these sanctions should have said, "you're perfectly free, Russia, to source non-frozen accounts in order to make these payments." Because that just bleeds more FX out of the Russian Treasury and amplifies the effect of the sanctions.

But if they allowed them to debit a frozen account, that, to my mind, doesn't make much sense. And I don't know from which accounts they were sourcing those payments. The US regulators, the Office of Foreign Asset Control-- OFAC-- a division of the US Treasury, has said that bondholders may receive payments from Russia until May the 25th, after which they may only receive them if they have a license from OFAC.

It is not at all clear to me what the policy is behind this. Logically, they should have said, "you may receive payments from Russia sourced from the accounts that were not covered by the sanctions at any time." Because that amplifies the effect of the sanctions. If they're saying that Russia may not use the international payment system after May 25 to effect those payments even if they're sourced from unfrozen accounts, that simply hands Russia a defense.

In a bondholder lawsuit, Russia will say it was impossible, or impracticable, or illegal, to make the payments as called for by the contract. So there is a bit of a mystery about what happened last week. And I'm not aware that anyone has clarified.

MITU GULATI: So Lee, if you might be willing to draw on your experience, one of my students who has read a lot of sovereign debt history had a question about why these sorts of mysteries occur, and posed the following hypothetical that, I have to say, has some echoes, in at least my memory, of situations that might have happened with, for example, Venezuela, though.

His hypothetical was, do you think it is possible that some powerful Russian interests had very big stakes that they had purchased when the prices of the bonds went down to $0.20 on the dollar? Then when Russia paid, those holders would have made tens of millions, if not more, because the prices shot up to about $0.50 on the dollar. Is that a completely outlandish scenario in this strange world of sovereign debt?

LEE BUCHHEIT: No, it isn't outlandish. At the end of last year, the assessment was that Russians held just shy of 50% of the Russian Federation's external bonds. So there was already a large Russian holding of those bonds. Conceivably, people bought more in. And conceivably, they could have influenced the government to make the payment.

The assumption of the market seems to have been that the Russians made the payment in order to preserve what the government likes to portray as their unblemished external debt record since 1917, that that is itself an overstatement. They had defaulted on their commercial bank debt in the 1990s.

The historical precedent you're referring to is Venezuela. In the period, about 2017 to 2019, Venezuela's economy was collapsing. It obviously needed a debt restructuring, but it continued to pay its external bonds against all logic and economic advice. There were those who argued that they were doing that because Maduro insiders had very large positions in those bonds. And so they were, in effect, paying their friends. I'm as much of a grassy knoll man as anyone, so I would give some credence perhaps to that theory.

MITU GULATI: All right. You're encouraging the conspiracy theorists among my students, but I think I'm going to have to join them because of these strange events. But Lee, assuming that the default is coming soon-- and surely we're going to see something along those lines by about May, unless there's unexpected peace talks that are successful-- what will this look like?

So my experience, largely learned with the work that I've done with you, is that when a country is in distress, it goes to the international authorities, primarily the International Monetary Fund. And the IMF does debt sustainability analysis. It tries to figure out how much can the country pay while putting it on a path to growth so that it can start paying its creditors again. And then once that's done, there are negotiations that happen, in a relatively peaceable fashion, about what the precise contours of this restructuring will be.

Here, as you nicely articulated at the start, it's not so much that Russia doesn't have the money. It has lots of money currently. Although, I think that there are a lot of Ukrainians whose country has been completely destroyed might think that they are entitled to a large portion of that money that Russia has. Nevertheless, this is not a situation where I see the IMF going and doing a debt sustainability analysis of the Russian ability to pay, and what austerity measures need to be put in place. How is this going to play out, Lee?

LEE BUCHHEIT: Well, I don't think it will play out in the traditional way that you've sketched, where the country goes to the IMF, and there's an IMF program with fiscal adjustment and a debt restructuring as part of that. Russia, since the Crimean invasion in 2014, has assiduously been reducing the size of its external debt stock. So measured against the country's GDP, at least last year, it was very modest-- about 20%-- enviably modest if you're an American politician or a European politician.

So it isn't that the country has a crushing level of external debt and, therefore, no particular need to restructure that debt, if they have $340 billion of liberated foreign exchange reserves. The alternative path, if this thing isn't settled in some way or another, is Russia becomes an international pariah diplomatically, financially, economically. And that path, in terms of the debt, looks probably more like Cuba, or North Korea, or other countries that have gone into the deep freeze.

MITU GULATI: Lee, we've talked already a couple of times now about the relatively small size of the Russian sovereign debt, close to $40 billion. But as things develop, Russia is taking over more and more of Ukrainian territory. Does this, at some point, turn into a situation where Russia has taken over enough of the Ukrainian territory that Ukrainian sovereign debt becomes Russian sovereign debt? And if that is the case, what is the point-- how much territory do you have to take over-- 10%, 20%, 30%-- and then do you get 30% of the debt that becomes yours as Russia?

And then do the holders of the Ukrainian debt then sue Mr. Putin for their payments? That stock, if I remember correctly, the Ukrainian debt is in the region of $100 billion. They were already in a precarious financial position before this invasion, partly thanks to the last invasion. What happens to that debt?

LEE BUCHHEIT: This, Mitu, is a fascinating subject. Under public international law, when one state annexes the territory of another state, it is supposed to be taking responsibility for the debts of that annexed territory. In situations where there isn't a total annexation, but rather a partition, a secession, of a province, there's supposed to be an allocation among the constituent provinces of the formerly united country to allocate responsibility for the debt.

This is, however, a particularly murky area of international law, and one where the doctrine rarely has been reflected in the actual practice of states. We have a number of examples of annexation-- Texas in 1846 becoming part of the United States, in 1900 the British won the Boer War and the Transvaal and Orange Free State were annexed by Great Britain.

In those cases, the annexing country-- the United States and Great Britain-- accepted responsibility for most of the debt of the areas that they took over. But they fiercely resisted the idea that they were doing that as a legal obligation. They said they were doing it as a matter of grace. We have more recent examples of countries that have broken up. The USSR itself, in the early '90s, disintegrated. There was initially talk about allocating the debts of the former USSR among the constituent republics of the USSR.

In the end, the G10 persuaded Russia, as the largest of those republics, to take responsibility for the entirety of the Soviet debt in return for getting title to the external assets of the USSR-- the embassies, the consulates, the gold, that sort of thing. But Yugoslavia broke up, and there was a prolonged and, frankly, rather messy quarrel about who was responsible for what debts.

So we have more recent examples of situations where countries are breaking up or there's been a partition. You remember a few years ago, the British gave Scotland a referendum as to whether it wanted to stay part of the United Kingdom. The Scots decided that they did. But had they decided to leave, it would have raised a question. What portion of the debt of the previously united United Kingdom was allocable to Scotland? But we never reached that in that scenario.

So it's an area where public international law doctrine suggests that there ought to be-- in this case, if Russia were to take over the entirety of the Ukraine, annex it outright, as Mr. Putin has threatened to do, or perhaps even put a puppet regime that answers to Moscow-- under public international law, there would be an expectation that Russia would be responsible for the Ukrainian debt. But I can assure you it would be a subject that would be very contentious.

MITU GULATI: So Lee, if you don't mind, let me complicate this question a little bit more. And again, this is a question from one of my students, who are thinking about what they can do. And we have heard rumors-- I think they are more than rumors-- that Ukraine is going to be trying to raise money on the international markets to try and fund its defense. There is money that is probably being lent to it by international financial institutions. I've seen some reports in the press.

So what if I were to buy some Ukrainian bonds because I want to support their efforts in defending themselves. Would Russia pay me back? Would Russia be obliged to pay me back if it won?

LEE BUCHHEIT: Well, this is a muddy area of a murky subject. What I described a moment ago falls under the heading of "state succession." States succeed to the inherent rights and obligations of the territories that they take over or that are ceded to them. But there is an exception to that rule.

First articulated in these terms at the end of the Boer War, Great Britain said it would, as a matter of grace, be responsible for the debts of the Transvaal and the Orange Free State. But they said the belligerency that we call the Boer War commenced at 5:00 PM on October 11, 1899. And the British said any extensions of credit to Transvaal and Orange Free State after that date were presumed to be assistance to one of the belligerents. And the investors were presumed to have taken the risk that they backed the wrong horse.

And the British said it was just a matter of common sense that the victor in such a struggle would not be responsible for paying debts incurred by the vanquished in order to resist the victor. And that, I think, has been recognized by many commentators as kind of a common sense outcome.

In this case, the Ukraine is receiving a great deal of financial assistance from multilateral partners, like the IMF and the World Bank, and bilateral partners, and is in the process of issuing what they call war bonds. So just to stretch the hypothetical, if Russia were to succeed in this invasion, and if Mr. Putin were to feel himself under some responsibility for taking over the Ukrainian debt, he would almost certainly try to argue that extensions of credit after February 24th of this year, when the belligerency commenced, were-- to use the taxonomy of public international law-- war debts, and therefore are an exception to the rule that an annexing state must be responsible for the debts of the territory it conquers.

MITU GULATI: Lee, this sounds just upside down and terrible. It means that anybody who's thinking about the prospects of getting repaid is going to be reluctant to lend to the Ukrainians who are, I think, by most accounts-- except the Russian accounts-- of fighting a rather just war. And now you're saying that international law actually creates a disincentive to fund them.

Surely that cannot be the case. Is international law so antiquated that we follow the doctrines of the colonial era? I mean, these sound like legal doctrines that are put in place by people who conquer and then make up the rules afterwards.

LEE BUCHHEIT: Mitu, I can't stress enough the word "murky," nor can I stress enough just how inconsistent state practice is from these doctrines. I think the only thing you can derive from state practice, looking over the last 150 years, is that states will embrace an interpretation of public international law that is in their financial interest at the time.

And so for example, just to go back in the history, the British in the Boer War took the position that I described that there was no legal obligation for Great Britain-- no legal obligation-- for them to take over the responsibility of the Transvaal and Orange Free State. Fast forward 38 years, Germany annexes Austria and the Anschluss, and Great Britain says, "Aha-- you have a legal responsibility to make good on Austria's debts."

So the practice is completely inconsistent. You would have to go through an analysis in which first, Mr. Putin wins this, second-- and this is a big stretch-- Mr. Putin says, "Oh, gosh, I've read all of those dusty textbooks of public international law and realize I'm now responsible for the $95 billion of Ukraine's debt," and then said, "but I flipped the page and came to this war debts exception, and I want to argue that."

I think it's pretty remote. The multilateral lenders, and some of the bilateral lenders who are lending for humanitarian purposes, and will be lending for reconstruction purposes, they could at least paper their credits by saying, "this is only for humanitarian-- it is not for military purposes." And indeed, the multilateral institutions like the World Bank and the IMF, by their charters, prohibit them from lending for military purposes.

They will, in this scenario-- which is pretty remote, Mitu-- they would conceivably confront an argument that money is fungible, and that by lending for humanitarian and reconstruction purposes, they liberated funds of the Ukraine government that could be used for military purposes. But it's all pretty remote. Please don't put too fine a point upon it.

MITU GULATI: Oh, well, all of this-- this whole scenario seems remarkably remote. I did not-- while we were going through COVID, and worrying about the global financial system, and the large amounts of debt stocks that countries had acquired that already put us in a precarious situation-- the last thing I expected was we would have this full-scale invasion of another country to add to all of the woes that the market has been having to deal with.

But let me move to maybe a more plausible scenario, although I think that some of these questions will have to be answered, and do need to be answered if Ukraine has to raise capital on the markets. Certainly, investors are going to ask these questions.

But let us say that, hypothetically, I were someone who holds Russian assets, who can purchase Russian bonds, and I want to cause some interference with what Mr. Putin is doing by using litigation. And since you told me there is no renegotiation happening with the IMF, I'm going to get judgments against the Russians quite soon. My impression is that these Russian bonds have some rather strange contract clauses that perhaps investors have not focused on.

And here, I'll throw out a few of them. But they seem to make litigation quite difficult. There is something called the "alternative payments clause," which seems to allow Russia to pay in rubles if it feels like. So it can just print rubles and pay its foreign creditors. And then they're stuck with those worthless rubles. It does not seem to have a waiver of sovereign immunity that I'm used to seeing in every international bond I've ever looked at.

Russia doesn't seem to have consented to jurisdiction anywhere on the planet. But there are strange prescription provisions. I think the last time I saw prescription even mentioned was when I was a 1L in property class. And I didn't understand it then, and I don't understand it now. Lee, can you tell us a little bit about how the litigation is going to proceed? Are private creditors going to be able to bring actions and try and get at Russian assets? Or has Russia so cleverly written these bonds that there is no recourse?

LEE BUCHHEIT: I think that overstates it. Russia can be sued on these bonds, will certainly be sued on these bonds. It will take a bit longer than normal, and they'll be skirmishing over immunity and jurisdiction issues. But I don't think it'll affect the ultimate outcome. Let me address a couple of those.

After the Crimea invasion and the sanctions imposed on Russia at that point in 2014, Russia switched its borrowing practices to include a clause which says that if, for reasons beyond the control of the Russian Federation, Russia is unable-- that's the word used in the contract-- to make payments in dollars, or pounds sterling, or a couple of other enumerated currencies, then Russia may pay the bondholder by crediting a ruble account in Russia for the equivalent at the then current exchange rate.

And that provision appears in about six, I think, series of Russian bonds issued more recently. The first of them, I think, has a coupon payment due on May the 27th. So we may not understand long to find out what's going to happen. If Russia attempted to invoke that clause and pay in rubles, there still may be litigation. And indeed, I would expect it. Some bondholders would say, "now wait a minute-- Is the inability of Russia to make this payment in dollars or euros really beyond the control of Russia?"

After all, the only reason the sanctions are there is that Russia invaded another country. Second issue-- is Russia truly unable to make the payment? It is not unable in a financial sense, not with 340 billion of liberated FX reserves. The argument would have to be that the sanctions authorities in the EU and the United States are preventing Russia from using the international payment system to make those payments. And this goes back to my original comment.

It, to my mind, doesn't make any sense for the US and EU authorities to attempt to restrict Russia's ability to access its unfrozen accounts to make these payments. I don't see the logic of it. And were they to do so, they could perhaps give Russia an excuse to use these ruble discharge clauses in their bonds.

Some of the other points you raise-- when Russia restructured the Soviet debt back in the mid-'90s, it took the position that nobody in Russia had signed a waiver of sovereign immunity, or submission to jurisdiction, certainly not since 1917. And nobody wanted to do it. It therefore became a practice of Russia's external borrowing that it would not give an express submission to jurisdiction and an express waiver of sovereign immunity, clauses that, as you correctly say, are standard to the point of being nearly ubiquitous in sovereign lending.

Russia does, however, choose English law to govern those instruments. Now, I think if Russia defaulted on these bonds, I don't think it would detain an English judge very long to conclude that English courts had jurisdiction. English law says that if the contract falls to be performed in whole or in part in Great Britain, that that is a basis for jurisdiction, even in the absence of an express waiver.

And bondholders, by the express provisions of these instruments, may elect to receive their payments in the UK or in the US. And I think there are enough contacts between those transactions and the UK that it would support jurisdiction. And UK law says-- English law says very clearly that the borrowing of money is a commercial activity, and even in the absence of an express waiver of sovereign immunity, conducting a commercial activity in the international marketplace is a circumstance in which a state is not entitled to immunity.

So what I'm trying to say is they'll be skirmishing about those issues in a litigation that we don't normally see, but I don't think will change the ultimate outcome of the litigation. We've, really since the financial crisis of 2008, been operating in a world where borrowers have had a considerable amount of leverage. And in the corporate world, they've been able to command so-called "covenant-lite" credit documentation-- credit documentation that omits many of the protections that lenders were accustomed to in earlier eras.

I think what you're seeing with these Russian bonds is an example of that in the sovereign world, where investors weren't prepared to buy instruments that do not contain the kind of legal protections that investors had typically insisted upon.

MITU GULATI: If folks in the audience-- you've been so kind to listen to this conversation-- if you have questions that you would like to ask, please submit them with the Q&A button. I have a lot of questions already stacked up from students and financial journalists. But I would be happy to try and include your questions, especially since you have suffered through hearing us.

Now, Lee, if you don't mind us changing topic a little bit-- well, same topic, but going broader-- there have been a number of statements made recently, including some from the head of the IMF-- and I may be misinterpreting them somewhat-- to the effect that the Russian debt is not so large. We don't really have to worry about how precarious the banking system will be as a result of a Russian default. I wonder what your view about this is? What is the likely impact on the global system?

And as we mentioned at the very start, this is a global system that already has, as a result of COVID-19, enormously large debt stock. So I am thinking about countries like Sri Lanka that were precariously positioned already with high commodity prices and lack of reserves. Now with the situation in Russia, costs are increasing. Sri Lanka was quite dependent, or at least a portion of its tourism industry counted on Russian tourists. They sell tea to Russia. I imagine that there are many countries around the world that will be negatively affected by the current situation, or are already negatively affected. Could we see something like the Latin American debt crisis occur again, the dominoes falling?

LEE BUCHHEIT: Well, I interpreted the managing director of the IMF's comments to say that a Russian debt crisis, even a Russian debt crisis to which the Ukraine's debt is potentially added, would not be "systemic," that was her word. Meaning, that it is not sufficiently large that it would threaten the solvency of major financial institutions, as the Latin American debt crisis did in the early 1980s. It was a potentially existential threat to the large international banks.

And that strikes me as surely true, that it just isn't that much money. Individual institutions may be heavily exposed and that will be painful. Will it bring down any of them? I don't know that. But I don't think that alone is a threat to the international financial system.

The problem is not, to my mind, financial in that sense-- how much money does Russia owe? It is rather that this entire situation has accelerated the rise in commodity prices, particularly fuel, particularly agricultural products-- fertilizer, and that sort of thing. We already entered this year with pretty significant inflation in this country and elsewhere in the world, inflation at a level that it has become a political problem.

And therefore, the central banks of the world are having to use their monetary policy to try to dampen that inflation. They've begun that. They began it last week in this country. The chairman of the Federal Reserve is in the newspapers today, saying that he may hit the brakes even harder if he has to. So you have a world, coming into 2022, a world of emerging markets, certainly, in which, as you correctly say, the debt stocks are at an all time high.

They were high after the financial crisis of 2008. They became, in many countries, extraordinarily high after the pandemic, because those countries had to borrow money unexpectedly to deal with the effects of the pandemic, both on their health systems, and on their social safety net systems.

We had extraordinarily high debt stocks that had not threatened too many countries-- a handful, but not too many-- largely by virtue of the fact that for the prior 10 years, we had had a policy of zero interest rates by the world's large central banks and, more importantly, a policy of enormous injections of liquidity into the market by central banks, a process called "quantitative easing," in which central banks had stuffed financial institutions with liquidity in the hope that that would bleed out into the real economy and avoid a major recession.

So it hadn't been a threat to many of these countries. But now they come out of the pandemic, large debt stocks, confronted with a change in monetary policy that is going to restrict the amount of quantitative easing, eventually eliminate it, and increased interest rates. And now, on top of that-- if we were having this conversation a month ago, I would have stopped the sentence there-- on top of that, the Ukraine situation has put enormous pressure on commodities like fuel, agriculture, fertilizer, and so forth. And that will significantly hit a number of countries.

There'll be some who will benefit-- you know, in Ecuador-- an oil exporter will benefit when oil goes to $100 a barrel. But there are a lot of other countries that import oil, and import grain, a large portion of which normally would have come from Russia and the Ukraine. And so I think, on balance, more countries will be negatively affected.

So your final question is, are we on the cusp of a situation like 1982, when the Latin American debt crisis began? I think probably not because the proximate cause of that was a massive rise in interest rates. I don't think we're likely to see that kind of monetary policy-- extraordinarily tight monetary policy-- in response to the current inflation.

But will a number of countries face what the IMF euphemistically calls "debt distress"? Yes, they will. And will we have the need for more debt workouts in the next couple of years than we've had in the past couple of years? Yes, I think we will.

MITU GULATI: So Lee, we're almost at the end of our time. Let me ask a couple of questions from our friends who have joined us. They're related, and so I think I can combine them. One question is, "Given that litigation is going to happen, do you prefer litigation? From your experience in New York or London, in these kinds of debt situations, which legal system is friendlier, from the creditor perspective, in terms of allowing both the claims, resolving these complicated jurisdictional issues, and allowing, most importantly, the attachment of assets?

And second question, "Given that English law seems to have been chosen-- I don't think I've seen any of the Russian debt instruments that has New York law, I think they've never consented to governing law being that of New York, or any US jurisdiction-- could a US court still take jurisdiction of this case, and then purport to apply English law?"

Since, after all, the relevant law is the law of contracts. And they're very, very similar laws. Assuming you bought your dollar instrument out of an institution in New York, I would think a New York judge could take jurisdiction of this matter.

LEE BUCHHEIT: I think that is certainly a possibility. Under US law, a state would lose its entitlement to jurisdictional immunity if it conducted a commercial activity abroad that had a direct effect in this country. And we have now a string of cases saying that if the sovereign is obliged to make payments in dollars into the US financial system, that that has a direct effect.

And as I mentioned a moment ago, these bonds contain an express provision that permits investors to designate where they want to receive payments. And that, I think, would be sufficient. And there is nothing that prevents a US judge from adjudicating a case in which the underlying contract is governed by a foreign law, such as English law. That said, my expectation would be that the lawsuits would probably be in England, in London courts.

You ask, is one of the jurisdictions more creditor-friendly than another? I'm not sure of that. One of the gifts of our Argentine friends of the last 20 years has been probably more sovereign debt litigation in the federal courts in this country. So we have perhaps a larger body of precedents than the British do, but i don't think one is particularly more favorable than another.

There is a technical issue in this country if the sovereign has not waived its immunity for attachment of its assets. It is somewhat harder to get an attachment of assets in this country. But I wouldn't think that that's terribly material. So my expectation is the lawsuits will be mostly in England, but they could be in New York. And as I say, there'll be some preliminary skirmishing on issues that we don't normally have to fight about in sovereign debt litigation.

MITU GULATI: So Lee, just a last couple of questions. And you can decide which of them you want to address. One is-- we talked about the strange provisions in these Russian debt contracts-- do any of these provisions allow Russia to pass laws that it could argue are perfectly acceptable for it to do under the contract, that basically prohibit it from paying its external debt? So this is a question, a very good question, from someone in the audience.

But it also relates to these weird prescription clauses that I have seen and that, as I mentioned, I last saw in my property class. I thought it was an antiquated doctrine. My understanding is that those are both unusual and change the game quite a bit for somebody thinking about litigation. So feel free to address, which of those you want. I think we're almost at our time. So we'll give you the last word.

LEE BUCHHEIT: Let me take the first one. There is a provision in all of these Russian bonds which says that all payments are in all cases subject to any applicable fiscal laws or other laws or regulations, full stop. Now, normally, that clause, when it appears-- and it doesn't really appear in New York law bonds, it's an English law provision-- normally, the clause says, "all physical laws in the place of payment."

It was intended to pick up situations in which in the place of payment-- London, Luxembourg, New York, wherever it is-- there's some sort of fiscal law that restricts or impairs the payment in some way to have dropped those words in the place of payment. On the face of it, means that Russia could pass a fiscal law saying that in light of the dreadful sanctions being imposed on them, all payments are to be made into the Russian central bank, and they will keep custody of them until the Western powers come to their senses, or something like that.

It is extraordinary, almost breathtaking, that a drafter of a bond, supposedly looking out for the interests of the bondholders, a sovereign bond, could have given the sovereign, the very lawgiver, the power to change the law to effect its own obligations.

Now, you ask me, would an English judge read it literally like that? I don't know. But there is a chance of it. And I think that's an excellent example of what I was saying, this tendency over the last 10 or 15 years toward enormous relaxation of debt contracts, including sovereign debt contracts.

MITU GULATI: Lee, thank you so very much for answering all of my questions. Now, I have to go to class and pretend that I came up with those answers. Although, unfortunately, I told many of my students to join this session, and I think they did. So they will now that I am just parroting your answers.

And thank you, also, to all of those who joined, and for your excellent questions, made me sound better to use your questions. And hopefully the next time we all meet, it will be in cheerier circumstances to talk about how the markets have boomed and growth is back. But thank you very much. And goodbye to everybody.