

MITU GULATI: This is-- I want to put a set of questions to them that will help us have this conversation. But I really hope it is a conversation that we can have amongst ourselves and with you about what the hell is going on and where is it going. So I'm going to pose a question to each of them. And maybe if Pierre doesn't mind, he can start. And then I'll pose more questions, and then you can pose questions to them as well.

So I'm going to start with Pierre. And I'm going to give them each the first question that I want to ask them, and then I'll give them the floor. So Pierre is an expert on sanctions, particularly financial sanctions. This I think is extremely important, because the West seems to view financial sanctions heavier than we have ever imposed before as likely to work. And my experience with financial sanctions, particularly with Iraq, for example, is that they usually fail quite gloriously. But they seem to be having some effect. So I'd love to hear Pierre's view on that.

Kirsten, if you wouldn't mind going next, I listened to your wonderful podcast with [INAUDIBLE]. It was scary, because you talked before the invasion. And you literally said, this is what's going to happen. And it feels like that is what happened.

And it was maybe a couple of weeks before. I don't when you recorded it. But I'd like, if you don't mind, talking about what is going to happen with cyber operations, because like with sanctions, it feels like this is a different world that we are going into or maybe have already gone into with cyber operations in this particular context with both Ukraine and Russia. And of course, the US is actively involved.

And for Paul, I'm hoping we can start with how we messed up our predictions so badly. Paul, for those of you who him, is just such a gentle, kind person who does not like to criticize. So I'm asking him, how did we screw things up so badly in terms of our predictions about what was going to happen? And how are we screwing things up now in terms of our predictions about what is going to happen?

So let me give it to Pierre, if you don't mind. And feel free to revise my question to be the right question that you think is worth addressing.

**PIERRE-
HUGUES
VERDIER:** Sure. Thank you very much. And I don't mind going first--

MITU GULATI: And I'm going to get to Rich last, because-- and I should have said this-- because he is on the ground. He's literally-- he started, I think, the first law firm office for a Western law firm for-- is it Coudert Brothers that you did?

You don't even know Coudert Brothers, right? You've never even heard of it. It used to be the fanciest firm in the world, with all sorts of French trappings, and very, very fancy. He must be very, very fancy. I think they went defunct.

But he is now closing the Baker and McKenzie office in Moscow. But I hear about peace talks, and maybe he's going to just open a bigger office. I'd be very interested in, how the hell is this stuff affecting what is happening on the ground for lawyers? But Pierre.

**PIERRE-
HUGUES
VERDIER:**

OK, so yes, we can start with financial sanctions. They've been a very substantial part of the Western response to the war that's going on now. Now, for those of you who are not familiar with sort of the basics of this, the legal authority for most-- not all-- of the sanctions that have been imposed by the United States, especially with respect to the Russian financial sector, is a statute called the IEEPA, the International Economic Emergency Powers Act. And this is basically a statute that gives the president of the United States very, very broad authority to impose a range of sanctions on foreign countries and persons.

Technically, the way it works is that the president has to declare something called a national emergency, which is under separate legislation. And it's not as impressive as it sounds. There are dozens of national emergencies in effect at any given time. And the formalities for declaring them are fairly light.

So there's a lot of discretion on the part of the US executive to declare those, and then that enables use of the IEEPA. That allows the president, once again, to block assets and prohibit basically all dealings with foreign persons. And that applies to two categories. That applies in two categories of circumstances.

It applies to US persons, which is basically all US nationals and companies. So if you are a US company that has been-- if you're a US company, you are prohibited from basically engaging into any kind of transaction anywhere in the world or holding assets anywhere in the world for someone or some entity that has been designated. And also, in the United States, these transactions are also prohibited to anyone, even to foreign persons in the United States, say a foreign bank in the United States.

So this is very broad. And it can be used very broadly. So Iran, for example, is the subject, broadly speaking, of a blanket IEEPA designation so that if you are a US national, basically any dealings with anyone in Iran are prima facie prohibited, subject to certain licenses that have been issued over time that carve out exceptions for things like humanitarian dealings and some travel and things like that. Cuba, although that's under older legislation. So there are countries that are subject to these kind of blanket bans.

Russia is not like that. And the approach that has been taken since 2014, since the Crimea takeover and the other events that happened around that time, has been to use the legislation a bit more flexibly. So the legislation doesn't have to be used on a sort of blanket basis. It can be used in a more tailored way to target specific individuals, specific organizations, and to narrow the range of transactions that are prohibited, not, for example, prohibiting all transactions with a specific designated person, but prohibiting only certain kinds of transactions and carving out certain exceptions.

So after Crimea happened in 2014, the United States imposed sanctions on a number of organizations and persons in Russia and in the breakaway regions and in Crimea who were involved in this, and started imposing limited sanctions on certain sectors of the Russian economy, for example, prohibiting new debt and equity issuances by certain sectors and prohibiting investment in the energy sector. And the reason I'm giving you this background is to make it clear that the approach that's been taken in the past few weeks in response to the invasion of Ukraine is basically a ramping up of the same approach. So the United States has basically used the same legal framework and used the same general approach, but notched it up in several stages.

And you really need to keep a list to keep track of all of the different kinds of sanctions that have been imposed. But focusing specifically on the financial sector, let me give you some of the main things that have happened. The first is what's called CAPTA sanctions on Sberbank.

The largest bank in Russia by some significant margin has been subject to restrictions on-- prohibition, basically, on US banks maintaining correspondent accounts and payable-through accounts for it. This essentially makes it much more difficult for that bank to process payments in the United States, because that is the way US payments are made internationally, is that they ultimately have to go through accounts at correspondent banks that foreign banks maintain in the United States to be cleared. And being shut out of that system makes the life of Sberbank much harder.

With respect to some other Russian banks, the sanctions have been more sweeping. They have been fully designated as what are called SDNs, Specially Designated Nationals. And that means that it's not just maintaining correspondent accounts in the United States for them that's prohibited, but all transactions, all dealings by US persons are prohibited, which is much more sweeping. In some cases, the CEOs, individuals associated with these banks, have also been designated. So they are now subject to blocking sanctions in the United States.

Some banks have been expelled from what is called the SWIFT system, which is a system of financial messaging between banks by which they arrange and coordinate payments. That is a system that's based in Europe, so the actual order was given by the European Union as part of this G7-led effort to coordinate sanctions.

One thing that is quite important is that the US has now, even though they're not technically SDNs, has effectively imposed something very close to full blocking sanctions on the Central Bank of Russia, the Ministry of Finance, and the National Wealth Fund, which is sort of the sovereign wealth fund that Russia has out of its, mostly its energy export revenues. That is an unprecedented move in many ways, at least for a central bank of a country of that importance. Sanctions were applied to the Iranian central bank in the past, but this is a much bigger deal.

And there are several other initiatives that have been taken, such as denying lending from international financial institutions like the IMF and the World Bank, a prohibition on export of US banknotes to Russia as well as euro banknotes, prohibition on US financial institutions to participate in transactions involving debt other than very short-term debt issued by a number of important Russian companies or banks. So a big ramp-up of financial sanctions, tailored, not completely sweeping, but much more sweeping than what was in place before.

And that is also-- one thing that is worth noting that is also unprecedented about this is that while most of these things were already in the toolbox, that they had been used, especially against Iran, they have never been used or ramped up so rapidly. Companies, banks always had quite a lot of lead time to think about how to implement these sanctions in the past. Iran is a situation that developed over a number of years, whereas in Russia, basically the government has been throwing everything at this situation in a very short period of time.

The other big difference is that there are much greater multilateral cooperation than in the past. Sanctions against Iran were coordinated for a time with the EU, although after the Joint Comprehensive Plan was adopted, the EU kind of withdrew from sanctions and did not re-adopt them. It was a somewhat coordinated effort. This is much more coordinated. Basically all of the major Western jurisdictions are adopting similar sanctions at about the same time. And so that's also a major innovation that changes the game.

So this-- I've stayed on a pretty descriptive level for the moment. I think I'll stop there for now, and then we can come back a little bit to discuss later the impact and the prospects for the future.

MITU GULATI: Can I just ask you one little follow up on this before I turn it over to Kirsten? I was reading this morning that there are already innovations in trying to get around the sanctions. And I'm wondering if you could just give us a quick and dirty answer on, is it very easy to get around it? So I was reading that India, for example, that has been much closer to Russia over the years and is cooperating with them, is setting up a ruble payment system. Is that sort of thing easy, or are these sanctions biting seriously enough?

PIERRE-HUGUES VERDIER: Well, that is the \$10,000 question, right, that's been around for a long time, which is, to the extent that the United States and other Western countries ramp up these kinds of sanctions, to what extent does it incentivize not only the targets of the sanctions to find ways around them, but third countries that want to keep dealing with them to find ways around the sanctions?

And I guess the assumption has always been that the US dollar, the euro, that the core reserve currencies are so important in terms of reserves, in terms of international transactions, that it is not very easy or that useful to create an alternative system, and that it would not be very-- if India sets up a system, for example, to process payments in rubles, well, what exactly is the benefit of that for Russia, right?

So they're exporting oil or energy, say, to India. India pays in rubles, which means that, first of all, where did they get the rubles? And if they pay Russia in rubles, what is the benefit of getting rubles in exchange for your energy exports? How does that help Russia? Russia could print its own rubles.

So you kind of have to think about, what are really the benefits of doing that? It's not just about the processing of payments. In other words, it's not just about putting infrastructure in place, but it's about whether you're going to get anything useful out of it if you are Russia.

And the second thing I would note is that there's always the possibility lurking in the background that if these efforts actually turned out to be successful, the next step for the United States, which would be a big step to take, would be to start thinking about secondary sanctions. So starting to designate third-country organizations, people who participate in these schemes, so that they themselves become subject to US sanctions. And that is something that I think people know is on the table and perhaps may serve to deter these kinds of efforts to some extent.

MITU GULATI: Thank you. Kristen, can we turn to you?

KRISTEN EICHENSEHR: Sure. So in the lead-up to the invasion, there were concerns among the cybersecurity folks about basically two big buckets of things. The first was direct attacks on Ukraine. And the second was attacks on Ukraine that would spill over into the West. And maybe there's even a third bucket of direct attacks on other countries, although I don't think people really thought that that was going to come to pass immediately.

So the concerns about the first two things-- direct attacks on Ukraine and spillover-- were because both of those things had happened before, and Russia had done them. So Russia has repeatedly engaged in cyberattacks against Ukraine. They've turned the power off to Kyiv a couple of times.

And the biggest, most expensive cyberattack in history was something called NotPetya in 2017. It looked like it was ransomware. It was a supply chain attack against Ukrainian accounting software. But it didn't stay in Ukraine. It went around the world and hit companies like FedEx, Maersk, Merck, and ended up causing about \$10 billion in damage.

So we'd sort of seen those playbooks before. And so the question was, if the invasion was going to happen, how was Russia, which is a major cyber power, going to use its cyber power in the service of a hot conflict? And so there's been a lot of headlines in the last couple of weeks about the cyber war that didn't happen, or like, where are the cyber attacks? And I think some of those raise really interesting questions. But part of what's coming out over time is that, actually, there have been cyberattacks of the kind that were expected.

So just as Russia was invading, there was an attack on a company called Viasat, which provides satellite internet service. And this attack took out-- it basically bricked or made inoperable a bunch of modems that were used in Ukraine but also in other places. It's a US company, but the modems were used in other places across Western Europe. And in taking out the functionality of these modems, it, Ukrainian officials have now said, really did harm communications in the very early days of the invasion. They also did things like take out communications to a couple thousand wind turbines in Germany.

So we saw an attack on the kind of target we would have expected, communications facilities, coincident with the invasion, and it spilled across borders. Nonetheless, that's more or less it. Not totally it. There have been distributed denial of service attacks. There's been some evidence of wiper malware showing up across Ukraine, something like NotPetya. But it hasn't been as destructive or as widespread as people feared it could be.

And so that raises interesting questions about why. Is that because Russia tried and failed? Or is it because Russia didn't try? I think either one of those things is pretty interesting.

So if Russia tried and failed, that tells you perhaps something interesting about the efficacy of defenses. So normally in cybersecurity, the sort of mantra is that offense trumps defense. It's very hard to defend against cyberattacks because there's so many vulnerabilities, and a determined, sophisticated attacker will find a way in. So it could be, eventually, that we will find out that, actually, the defenses worked pretty well. So if you know what you're trying to defend at the particular time you're trying to defend and against whom you're trying to defend, maybe that suggests the offense-defense balance shifts a little bit.

There's been some hints about what's happening. So in a congressional hearing on-- this is the annual threat assessment of the intelligence community. Congress has hearings with intelligence community officials every year when this report is released. General Nakasone, who's the director of US Cyber Command and the head-- he's the director of the NSA and the head of US Cyber Command, said that the United States has worked really, really hard with Ukraine to harden their defenses since Russia turned the power off in 2015 and 2016. And there have also been suggestions that the United States US Cyber Command has mission teams deployed across Eastern Europe. So it may be that the defenses we're talking about are pretty active defenses, and there could be skirmishing going on with Russia.

The other possibility, though, is if Russia didn't try cyber attacks, why? And what does that tell us sort of going forward? Now, of course, we've seen, with Russia's conventional forces, a lot of problems with lack of planning and just real logistics issues. Cyberattacks are not easy. They require a lot of forward planning. And so one explanation for, why did Russia not try, is they didn't engage in that forward planning that would have been necessary to actually cause significant cyber effects.

Another possibility, though, is maybe this tells us something interesting about what we should expect for cyberattacks in hot conflicts going forward. So maybe they're just not that valuable. If you're facing an adversary that's willing to bomb TV towers, bomb communications infrastructure, bomb all sorts of horrible things, then maybe cyber is just not that useful. Cyber is better when you're trying to be deniable, when you're trying to be precise, when you're trying maybe not to be escalatory.

So I think that the one question I have going forward is about, what do we learn from how this played out? And none of this, just to be very clear, none of this is to say that Ukraine or the United States or neighboring countries in Europe right now are out of the woods. There was just another incident a couple days ago where Ukrainian internet went down, when the internet service providers went down.

And last week, President Biden issued a statement basically warning US critical infrastructure to ramp up their defenses. CISA, which is part of the Department of Homeland Security, has been running an initiative for months called Shields Up, basically warning critical infrastructure to harden its defenses in the United States. Then we get this statement from Biden last week. And apparently what's behind it is that they had seen Russian government actors that had engaged in destructive attacks before doing sort of reconnaissance on US targets.

So there's these continued warnings that we are not out of the woods. This could still very much ramp up. But nonetheless, I think we learned something interesting about the fact that the Russian invasion, for as horrible as it was, Russia didn't turn to or didn't succeed in turning to cyberattacks. And so over time, we will probably find out more about the answers to why.

The Washington Post-- in the midst of all these articles recently, *The Washington Post* compiled 11 possible explanations for why we had not seen massive cyberattacks. Which one or ones are correct, we really don't know. But time will tell.

MITU GULATI: Can I follow up a little bit? So this is just from anecdote. I grew up in India. And I went to law school. Many of my friends I was growing up with went into the tech world and now run major firms. So I'm a massive failure.

But when I go home and I talk to them about the problems they face, one of the questions is, in the COVID world, where do you hire the best people to work on cyber issues? And I was really surprised last time that they said they were moving back offices to Ukraine, because Ukraine has really some of the best young people who work on these matters. And it's not Russia. Ukraine is one of the big hubs, more so than places like Bangalore.

I don't have a sense-- I think many of us don't-- and I have actually done work in Ukraine. Many of us don't really understand both the closeness of the relationship of Ukraine and Russia and what is the situation on the ground with respect to cyber in Ukraine. My sense is they're a hell of a lot more sophisticated than we are. So I'm not sure whether that's even a fair question, but I'm asking anyway.

KRISTEN EICHENSEHR: Well, let me-- it prompts some reflection. So let me maybe not directly answer your question as to which is more sophisticated, the US or Ukraine. I mean, I think you're absolutely right to say that Ukraine has some very serious cybersecurity talent.

One way we have seen this play out is that Ukrainian government officials have actually called for-- and I didn't talk about this, but it's worth mentioning-- they've called for an IT army and basically have recruited volunteers to help do stuff, both defensively and maybe kind of a little bit offensively against Russia. And so this raises fascinating international law questions about, are they now responsible for everything these people are doing? To what extent are they directing non-state actors?

But it's not just non-state actors on the Ukrainian side. On the Russian side, too-- it's probably well-known to everybody-- Russia has been alleged to be harboring pretty substantial ransomware gangs for a number of years. And so some of those ransomware gangs, in the early stages of the conflict, began sort of pledging allegiance or pledging neutrality in the conflict. And one of those, an operation called Conti, initially sort of announced that it was going to defend Russia against cyberattacks.

But it turned out Conti had Ukrainian affiliates or Ukrainian members. And so what happened in the wake of this declaration of allegiance to Russia was that, allegedly, a Ukrainian member of Conti sort of defected and started posting online the internal, basically, group chats from Conti, and so basically doxxed the ransomware group.

And so to your point, there are close ties across borders. There's a lot of cybersecurity talent of both the licit and the illicit variety. And that came back to bite at least one of these ransomware groups. But there's a lot going on in the non-governmental sphere.

MITU GULATI: Yes, we need to-- each of these-- this is just so fascinating. So Rich, if you don't mind, I'm going to turn to you, because I want Paul to tell us how it all fits together at the end. But can you tell us what the hell is happening on the ground?

This is every day. It seems incredibly stressful. And also, every day I hear, oh, they're pulling back, and we're going to have peace. And so everybody has to rush back in and build new offices and make more money. But what's happening on the ground?

RICHARD DEAN:[INAUDIBLE] Thanks.

MITU GULATI: Have you been there recently? You have?

RICHARD DEAN:No, not recently, not since COVID. But a lot before COVID. Well, so just from a law firm standpoint, there probably are not any American lawyers left on the ground. We actually, like most, I think, and maybe all, major law firms have cut loose our Russian offices. We used to have very substantial offices in Moscow and St. Petersburg. They're now operating independently.

Now, in reality, I'm working with them right now. They're just-- it's like we have local counsel instead of Baker McKenzie offices. And there's a good reason for that, because as I'll talk, I'll give you an example so you can see the complexity of it. It's very difficult on companies attempting to manage their operations in Russia these days in particular.

But for example, in our firm, we can't undertake any new work for Russian entities that are owned or controlled by the Russian government. And we, like a lot of big law firms, are sort of culling the client list, because undoubtedly, particularly in our tax and high net worth practices and things like that, we have guys who qualify as Russian oligarchs, the guys with the big yachts that DOJ is trying to seize now. And to the extent these are SDNs, this term, Specially Designated Nationals-- right, Pierre?-- you can't deal with them at all. So they just-- we just have to stop doing business with them.

But I wanted to give you, just in a few minutes, a bit of an example of a problem that we're dealing with now with respect to one particular client. So I'll give you a little bit of background. This is an American company that makes industrial products, components for assembly into bigger products. Years and years ago, a couple of decades ago, they formed a joint venture with two Russian partners. And they've operated this joint venture.

They have 51% of the venture. They own it-- I probably should sketch this for you, but they own it through a Dutch company. They each own shares in a Dutch company. The Dutch company owns the Russian company, OK? Because it's a little bit important for the example that you have some idea of the structure.

And the reason for this-- usually, these are tax driven. And there are advantages to setting up a business that way in Russia and have been for many years.

So the first issue that these guys face is the sanctions side of this. Let me try to put some, like, meat on what Pierre sketched out for you, how this now really works. So no US person, as Pierre mentioned, can deal with a Specially Designated National, what we call an SDN. So that means the company itself, our client based in Pennsylvania, and it also means any Americans involved in the business.

Now, the Russian entity can deal with SDNs. However, there are really important caveats. And this is where-- I mean, so far, the rules have been crystal clear, right? Well, now it begins to show you some of the complexity.

So yes, the joint venture can deal with all the bad guys. But that activity cannot be facilitated by a US person. I didn't tell you, but up until very recently, the general director of the joint venture, the equivalent of the CEO, was an American. So how would the Russian entity deal with SDNs without the general director's involvement? Pretty much impossible.

He's no longer the general director. You can obviously see why that would be the case. But no US person can facilitate. And in our case, remember our guys sell components to this venture. No US person can sell to the joint venture knowing, or should have known, kind of constructive knowledge, that those components were going to go to an SDN, or the products assembled would eventually go to an SDN. So this idea that, well, the Russian entity can continue to deal, is, as a practical matter, really limited.

So now, let me give you an idea how these things work with entities and individuals. So the venture, or any of the participants, can deal with an entity that's not an SDN in Russia, right? That's clear. But if, let's say, the CEO of the entity is an SDN-- so for example, Sberbank is not yet an SDN, right? But Gref, I think--

**PIERRE-
HUGUES
VERDIER:**

Gref has been designated, yes.

RICHARD DEAN: So the head of Sberbank, who's a very famous Russian business political figure, Herman Gref, has been now designated as an SDN. So while a US person could enter-- could do business with Sberbank, I think in some limited way, you could not sit opposite Herman Gref and negotiate a transaction with Sberbank. So this is how these weird things kind of work.

Now, the other thing, just to throw in here because it's relevant, is that we sell-- a company sells industrial components. And so there's an export control analysis to this, too. And although the components are sold under a general license, which effectively means no license, what has now changed in this realm for our guys is they are not allowed to sell for any military use.

So that requires them to get certifications, at a minimum, for when they sell the product to an entity that then might resell, or would resell, in the way the business works. That entity has to certify that they're not selling to a military end user. And then you try also to get the certification from the customer, ultimate customer itself, that they're not going to use for military purposes. So that's the US background.

But now the other side of this is the Russian side, because as you maybe have read, the Russians have reacted to this. And there are a series now, I think up to four decrees, that President Putin has issued that are in response to the hostilities created by people-- countries that are opposed to Russia. So for example, were our guys to try to sell their interest in the Russian joint venture, there's a specific provision of a Russian decree that prohibits a Russian national from paying for that interest.

Now you might say, well, OK, sell the shares in the Dutch entity. This used to be a way to circumvent a lot of problems in Russia. Just go up the corporate chain. But the decree specifically talks about non-Russian or non-resident entities, which would cover that. So they're stuck there.

They operate in a city in Russia called Saratov. And two days ago, they received a threat from the prosecutor's office, basically saying to them, you are not permitted to suspend your operations unless there is a legitimate business reason to do so. And if you do that, administrative and criminal sanctions will follow.

Now, out there, not yet-- I don't think yet, although day to day, it's hard for me to follow sometimes-- is the Russian parliament debating legislation that would criminalize any act to comply with US sanctions, right? So go back to our example. If our guys say, well, US persons, we can't sell to an SDN, and then Russian law kicks in, and the individual involved in that activity could end up being charged criminally for that.

And the final thing I'll say on this is-- you've probably read McDonald's has suspended operations. They're continuing to pay employees, but all these companies that have announced suspensions-- more legislation is pending on the Russia side that would put enterprises whose operations have been suspended by foreigners under administration. This is code word for, we're going to steal your business. So this is quite-- and you can see how difficult it is for companies to navigate this, both on the US and the Russian side. And it's a mess, just a mess.

MITU GULATI: Rich, my understanding is you studied-- you were an expert in Soviet studies at some point. And--

RICHARD DEAN: [INAUDIBLE]

MITU GULATI: OK, I won't hold that against you.

RICHARD DEAN:I owe it all to Paul.

MITU GULATI: But what is your gut sense, if you don't mind my asking, of what the future is? I mean, is this just a blip, and we're going to go back to things as normal? McDonald's is going to go back to selling its burgers in a few days, or Heineken will sell its beers?

Or is this-- this is the end? Baker McKenzie is going to be gone, Sullivan and Cromwell, Cleary Gottlieb, they're all-- no longer will they get those payments from-- I mean, I worked at one of these firms. I mean, Russia was a huge client. I mean, it is hard to imagine those partners having given this up very easily. Are they just waiting to go back in? Or is this a fundamental change?

RICHARD DEAN:Well, look, if it ends, if they negotiate a peace treaty in a matter of weeks, or if there's some--

MITU GULATI: In a matter of days, is it back to normal?

RICHARD DEAN:Possibly. No, it won't be-- it'll take some time to get back to normal. But at least there's the prospect of some return to normal activity.

MITU GULATI: What's your gut?

RICHARD DEAN:It's going to be a long time. Years, maybe.

**PIERRE-
HUGUES
VERDIER:** And one thing perhaps that's worth noting about just the-- more narrowly on the impact of the sanctions is that one thing that was revealed by the experience of Iran is that even during the period when the joint plan was in action, Iran was very frustrated by how difficult it was to draw in-- so the sanctions had been lifted-- how hard it was to restore these economic relations with the rest of the world. All of these things are complicated.

These correspondent accounts that were cut off, you can't just walk back into Citi and put them in place again. They have extensive checks that they're going to have to make to reestablish these financial pathways. They may be worried about reputational issues, about what's going to happen in the future. Are these sanctions going to be imposed again if Russia kind of misbehaves again next year? And maybe we should just not get back at all.

And that goes to, the ramifications exist through the whole range of economic relations that exist. Someone mentioned that with all of the stuff that's going on with respect to airlines and airplane leases, all of these planes that were seized in Russia and vice versa, the Russian planes that are frozen in place in various places in the West, insurance rates are going to-- even if we go back to normal, insurance rates for aviation operators connected to Russia or in Russia are going to skyrocket. So it's going to be very difficult to re-establish a lot of these, and this is just one example amongst many.

MITU GULATI: So Paul, I'm hoping you can tell us how we misplayed this-- if you agree with that characterization-- so badly that, to me, it seems like until days before the invasion, we still thought it couldn't happen. And when I say we, at least I mean the press accounts that I was reading. I watched the prices of Russian assets, at least bonds, and they seem to think that-- had the view that this was not going to happen, that-- how did we go wrong?

PAUL STEPHAN:So going wrong is kind of sweeping, Mitu, I think.

MITU GULATI: Did we do anything right?

PAUL STEPHAN: Well, I want to start by saying I think the Biden administration has handled this really well. From the time they took jurisdiction over it, the risk they've been taking is blowing intelligence resources by revealing what they know. But I think they did a very good job of warning people what was going to happen. And if the bond market didn't listen, shame on the bond market, it seems to me.

So I wanted to start saying that because if you want to say, when did we make mistakes, although they were understandable ones, I would start with this proposition that 2014 was objectively identical to what happened in the end of February 2022. That's to say, there was a threat of an armed invasion with respect to Crimea, and effectively, an armed invasion, although not with people wearing formal uniforms, in Eastern Ukraine. And there was an annexation under threat of force, which, from an international law perspective, that's the big deal. That's the one thing that we aren't supposed to have happen. And that happened in 2014.

And the reaction of the West was, this is Russia acting up, and we just don't take them seriously. It's too bad for Ukraine. Sanctions started at that point, so we were using those weapons. But I think it's fair to say that there was not a perception that the events of 2014 put the entire international legal order and the geopolitical order at risk.

Scholars who I admire said, if this happens again, we'll have to worry, but so far it's just the exception that proves the rule, was sort of the line. And I, Dutch Calvinist that I am, I always have a more dismal view of things. So I think that we were in trouble earlier on.

And I think what's really changed was the events of 2016, Brexit, and 2017-- well, the 2016 presidential election, which I think was a wake-up call for the West and made us feel less resilient, less confident, less sure about this international order and system of international rules that we believe in, so that when we have a rerun of 2014, now we're anxious. Now we feel threatened. And we do respond.

You asked me what I thought we might be doing wrong now. I think-- again, I think the Biden administration has handled this really well. I worry when I see press coverage of this and when I listen to people who talk for a living, people like us, their take on this, because I think there is a very understandable but unfortunate tendency to try to make sense of things that are really hard and complex.

I mean, one of my dear friends, a former colleague here, a sort of radical feminist legal scholar, asked me, who should I be rooting for here, on the assumption that usually with wars, you don't root. They're terrible. But this one seemed like one where she ought to pick a side. And I tried to say, really, this is an awful event. It's going to be awful for everybody.

And of course, armed aggression is wrong. Of course, you want to see armed aggression be punished. But my goodness, that happened in 2014. And if you really want to be tough on us, we have stories for distinguishing what we did in 2003 in Iraq and what we did in Syria. But they're stories, and the Russians have a story, too. And I happen to like our stories better than I like the Russian story, but I don't think the difference in these stories is so vast that we shouldn't be at least a little bit concerned at simply saying, armed intervention, the moral universe is clear, clear winners, clear losers.

I don't think we can look at it at moral terms. I think we have to look at the objective correlation of forces, to use Marxist terminology that I-- and so I think, as everyone has been saying, I think the cost to Russia of this is going to be very serious for a long time-- economically, the morale of their human capital. They've got smart techie kids, too. And I think they are right now unemployed and demoralized. And I think people wanting to put faith back into Russia, it's going to be a long time before that happens.

Ukraine is suffering terribly. I mean, not all the four million people who've emigrated so far are going to come back. And I think that's probably disproportionately pretty talented people. It's part of their future.

And then, how do we deal with it with our European allies? I mean, the optimistic story is that the consensus that we've been talking sticks. I didn't think it was going to happen. I've talked to friends in the administration. And I think people were surprised that the Germans would actually stand up and do what they've done so far. And we still don't know that come the fall, and things get cold, when energy becomes important, what the Germans, what the Italians, what the French will be doing and whether there'll be good diplomacy and generosity and cohesion and resilience, or whether finger-pointing will start to unfold and we squabble among ourselves.

So I don't know. There's a good story that says, this is a wake-up call, we've learned some important things, and we will approach the future better. But there also is the risk that our hopes, once the peace agreement takes form, assuming things don't spiral out of control and we actually get a peace agreement, there will be recriminations and an attempt to put it all behind us, and we won't learn the lessons we should learn. So I hope we do. But I don't think we can count on it.

MITU GULATI: Just very quickly, and then I want to ask all of you if you would just give us a sense of how you think the international legal order has, A, changed, and B, is going to change. But Paul, a couple weeks ago, on a Wednesday, Russia had its first bond payment due, roughly around \$100 million, that many of us who are supposed experts on this, myself included-- I think I went on at least 10 news shows, a lot for me--

PAUL STEPHAN:[INAUDIBLE]

MITU GULATI: [LAUGHS] No. Predicted that they would not make the payment. And even if they did make the dollar payment, that the US Treasury would not let the payment through. And I did try to read some of the sanctions orders and stuff like that, the stuff that Pierre and Rich know how to read. It's just gibberish. I couldn't make any sense of any of them.

But my prediction was, no, payment would not be made. And I went to Paul, as I often do, to say, what do you think, Paul, so that I could use it. And he said, you know, I think that things are more complicated. I'm not so sure that it's as easy. Putin's not as crazy as you think. This is a more nuanced set of events and moves that are taking place.

Paul was right. I would have made a lot of money if I had listened to him. And if anybody listened to me, they lost a lot of money. The payments were made, and the Treasury let the money through.

Paul, how did you-- how were you able to predict what was going to happen? And can you give us a sort of bigger picture about-- Putin is not crazy, I think, according to you. And these are moves that are being made that one can anticipate.

PAUL STEPHAN: So Mitu, you are characteristically too kind to me. And I love that about you. I mean--

MITU GULATI: I would have made a lot of money if I had listened to you.

PAUL STEPHAN: I'm not sure I was nearly as clear when I was talking to you as you think I was. So I risk uttering platitudes. But there was an East European scholar who was here back in the early '90s who's had a great run. He's now one of the advocates on the Luxembourg court, the Bulgarian advocate on that court.

And he did a chapter for a book I did on the transition in the early '90s in which he said-- he commented throughout the region how legal utopianism led so quickly to legal nihilism, and how many people, particularly in the law professor community that he was part, thought, OK, snap your fingers, turn around, everything's going to be perfect. And as soon as it wasn't, they were crushed, and some became incredibly corrupt or did other things. But he kept plugging along and has really had a very important, solid career.

What am I taking out of this? So I think we have to realize that we're facing a very complex situation, that the challenges have been accumulating for years, that a lot of the choices that we're going to have to make will not be easy, morally clear choices, but that there is a difference between smart and dumb and less bad and more bad. And I think that's the lens we have to take when we're confronting things like, how do we restructure economic relations? What sacrifices are we willing to make to respond to legitimate security risks?

How do we identify security risks? I don't think, referencing Kristen's talk, just because the really bad cyber stuff hasn't happened yet doesn't mean I think it won't. I think we have to be very vigilant about that. So we have to find a way to be vigilant, tough minded, pragmatic, and still have fun along the way.

MITU GULATI: All right. So I don't-- before we end-- I know we are short on time. I'm hoping each of you would be so kind as to give us a sense of the bigger picture. In a sense, this is Paul's new book.

Has the international legal order fundamentally changed, or is it going to change? I mean, maybe we'll have a peace treaty and everything will go back to normal. But I think, as Rich said, it just doesn't seem that likely. I hope so, but-- the big picture. Maybe we can go in the same order that we did, Pierre and then Kirsten and--

**PIERRE-
HUGUES
VERDIER:** So for the past, I guess, 30 or 40 years, the direction of the international economic order has been towards greater integration, greater interdependence, basically bringing all countries, even countries that we might have anticipated would have divergent strategic interests, like China and Russia, into multilateral institutions, into things like the WTO, the world trading system, and the creation of very profound links of economic interdependence. And this is, I think, very representative of the turning point that we're in.

But in the world of globalization and interdependence, if you're in Germany, it doesn't matter that all of your energy is coming from Russia. The strategic implications of that are not very clear, because we're part of a liberalized world order everyone is on the same page. And we pay for gas, and Russia sends us gas. It's not a problem.

And these links of interdependence, when a conflict arises, then kind of condition the reaction that you're able to have, right? On the one hand, it means we can sanction the Russian banks, and it has a big impact on Russia because Russia has, for the past 30 years, integrated itself in the world economic system. And they're dependent on these links, and cutting them off is costly to them.

But it also means that everyone from that point on has an interest in cutting these ties and becoming more autarchic, less interdependent. The Germans have all the incentives in the world now to try to reduce their energy dependence on Russia. And if they manage to do that-- which will take years and will be hard, but once it's done, it's done, and the world will not be the same-- there will not be the same incentives to have the kind of political, legal, economic ties as there were before.

And I think once Russia, once again, once Russia manages to figure out ways to work around sanctions and work through systems-- for example, shift some of their exports and imports from the West to China-- that also is not going to be something that can turn back on a dime. So I think this is a reorganization of the world economy that's been going on for a few years, but is being accelerated by this. And it's really going to change the world we live in unless it's reversed much quicker than I anticipate.

MITU GULATI: Kirsten.

KRISTEN I mean, I think the last few years are just a list of things that we would have previously thought were

EICHENSEHR: unthinkable. And to me, one of the lessons I'm taking away from that is that we're really not thinking hard enough or creatively enough. And we need to learn to adjust to a world where previously unthinkable things are happening with some frequency.

And so the international system better adjust, because it turns out that it's a whole lot more fragile than we thought, both internationally and, I would say, domestically in the United States. And the two are intertwined. I mean, one of-- as Paul said, I think the Biden administration has actually handled this extremely well. They were dealt a very bad hand, and they've done some interesting things with the intel disclosures, with allowing European allies to be credited with taking the lead on certain things that have been, I think, crucial in the response to this.

So the United States has a lot of work to do, I think, in thinking about its place in the world and thinking about its strategy going forward. We're also seeing international institutions begin to mobilize. I mean, we've been focusing on a lot of the economic aspects of this, on the sort of theoretical pieces. But the human toll of this is just horrific.

I mean, Paul mentioned four million refugees, and that's not counting internally displaced people in Ukraine. We also haven't really touched on war crimes, which have been absolutely rampant. So another place where the international legal system may have a chance to make a difference here is after the fact, with respect to accountability for not just the war of aggression, but for the individual perpetrators of some of these horrific war crimes.

So I think the international system is facing a tremendous amount of stress. It is more fragile than we thought. But I think it may also have a chance to shine, eventually, in the aftermath of this. So I think we need to think more creatively about how to protect the institutions and values we care about internationally and domestically.

MITU GULATI: Thank you. Rich?

RICHARD DEAN: So I think what Pierre and Kristen said are really excellent. I personally think we're headed into something like a new Cold War. Paul and I are old enough that we remember what the old Cold War was like. But in that period, I want to turn it back, Mitu, to you. India played kind of an interesting role.

MITU GULATI: And I am very surprised at India's move.

RICHARD DEAN:How do you see it going now?

MITU GULATI: I am shocked. And I do wonder whether who's in power matters, because Modi was very close to Trump and is not as close to the Biden administration. And they have chosen to move closer to Russia. My impression is that this is not viewed in India, especially among the young people, as such a good thing.

But I just-- I have no really good sense of what is going on. I suspect that at a national level, India sees significant value in being able to be there for Russia, that after-- that there will be peace talks soon, everything will settle, and then Russia will be more closely connected to India. But I don't know that. I'm just guessing.

And certainly, this is a topic of intense debate in India right now. I suspect it is a topic of intense debate in China. And we don't-- most of us don't have a good sense of-- this is a big deal for the rest of the world as well. But I mean, you have a much better sense of how these are playing out in all these different parts of the world.

RICHARD DEAN:Well, at least the Indian debate [INAUDIBLE]

MITU GULATI: Yeah. Yeah, I think it is going on. If we were watching YouTube, we would see it ongoing.

But Paul, you have the final word. I mean, your book sort of predicted this would happen. Did it? Or you were talking about, the international legal order is not as strong as we think, and the years under Donald J. Trump have maybe shown us that it is not going in the direction that Pierre mentioned we all thought we were going in. And now we have this, which seems to be accelerating a move away from the optimistic view about international legal institutions.

PAUL STEPHAN:Well, it is a Marxist move to say that these things are going on all the time. And it's just that certain events--

MITU GULATI: You've mentioned Marxist views multiple times now.

RICHARD DEAN:I don't know where he's going with this.

PAUL STEPHAN:Some events reveal what's been going on. And people think that it's the event itself, when really it is simply exposing forces that have been moving slowly but inexorably over time. And that is my perspective on these events, that we're learning things that we should have perhaps suspected all along. We have to be careful about taking away too much clarity from these events, I think, because things are still going on that we don't understand.

The one thing that we haven't really talked to, although you just touched on it at the end-- I think, at the end of the day, all this stuff going on in Europe, it's heartbreaking, it's wrenching, it's costly, it's disruptive. But I think it's a sideshow compared to what's going to be going on with China and the rest of the world. I still think that's the more important story.

And how that will play out, who knows? I mean, I kind of like our way of doing things. And I think they've been showing off some of their vulnerabilities recently. I actually think that developments under Xi have-- they've been awesome in the literal sense. They're showing the power that he can command and some of the technological prowess they've been able to harvest. But I also think they're showing some vulnerabilities as well.

We have been showing plenty of our own vulnerabilities over the last six or seven years. So how this will play out will be interesting to watch. But I don't think, at the end of the day, we should let ourselves be distracted from thinking that how China and the United States, China and Europe and the United States, occupy this planet together in what we hope is a flourishing and sustainable way is really the great challenge.

MITU GULATI: Thank you. I want to end on an optimistic note. But I'm taking a risk in asking Pierre whether this is an optimistic note. And maybe Kirsten will chime in, too.

But one of the things that-- on a day when I was very down and depressed about what was going on in our world, and I think it was gray outside, Pierre was sitting outside at a table by himself. He looked a little bit down. And anyway, I went over to him, and he said, you know, it's not so bad. There are some really good things that have come out of this.

And one of them is that the cooperation among nations in response to this invasion-- what else do you call it?-- unprovoked invasion has been remarkable. It's a kind of cooperation we haven't seen, and maybe those of us who worked in Europe recently thought was not plausible, not likely to happen. Pierre, maybe I'm misremembering our conversation, but I thought you said, look, there are good signs here.

**PIERRE-
HUGUES
VERDIER:** Yeah, I mean, I think that's true. One of the caveats to that that's come out of this conversation is that the reaction on paper, in terms of what countries are saying, is broader. Things like UN General Assembly resolutions have very broadly condemned the attack on Ukraine. If you look at what's actually being done in terms of sanctions and in terms of doing something about it, it's a more restricted world. It is the West, essentially.

But it is a response that is more coordinated and more resolute than anything we've seen in the past. And so I think it does open up new possibilities. I think it opens up the possibility of bringing the United States and Europe closer together again, which in my personal view is a good thing, and of bringing Europe itself more of a sense of cohesion, which I also think is a good thing. So if you look at developments in different parts of the world, and if you kind of restrict your point of view to the countries that historically have been more closely aligned with the United States and what we used to call the free world, I do think that there are signs that are, in my mind, somewhat-- give some ground for optimism.

And then also, what's the relationship between this and populism, and what's been happening in recent years in domestic politics in the West? I think there's a possibility-- and here I want to be very careful about making predictions, but it's going to defuse some of the internal strife that's been so instrumental in kind of dividing people within Western societies, to have this sort of one thing that most everyone agrees on. So that may be excessively optimistic, but that was my semi-optimistic take. And I'm sure-- certainly, I'm happy that it brightened your day on that--

MITU GULATI: It did. Kristen, can you be optimistic? I mean, you did mention the possibility-- I mean, Paul mentioned what a wimpy response we had in 2014. And I mean, I remember I was supposed to go to Kyiv to talk about how, in litigation, the Ukrainians could get more in terms of penalties from the Russians for what they had done. And I was disinvited.

They say, we'll pay for your plane ticket. You can come here, but you're not allowed to speak, because it might offend the Russians. I'm like, they just took Crimea. Like, what the hell? You're worried about offending them? But there was this sense of, like, let's just forget it and get back to normal and back to business as usual.

But you talked about how the global order, this time we might actually have war crimes. We might think about things a little more seriously than we did in 2014. That strikes me as you were being optimistic about the world order.

KRISTEN I mean, if talking about convictions for war crimes is optimism, I guess I can go along with that version of it. I
EICHENSEHR: mean--

MITU GULATI: You're not helping me here.

KRISTEN I'm not. I mean, look, the fact that there have been war crimes does not mean that there will be convictions for
EICHENSEHR: war crimes. I mean, this-- we have seen war crimes all over the world. These are war crimes in Europe, which for reasons that we can all speculate about might be more likely to actually produce convictions. But that is also not an optimistic take on the state of the world and the state of international crimes.

But I think-- I guess I hold out hope that the international system will react and that we will not just revert back to normal. I don't think we can afford to continue living with the delusion that we can just quickly revert back to normal after massive international shocks. And yet in instance after instance, that's what we see happen. So that's not optimism.

RICHARD DEAN: Well, let me say something on that. This is an aspect we haven't really touched on, but-- and it's maybe indicative as my career pattern. I went from commercial lawyer with a Russian practice to an expert on international corruption. I like to joke I learned it all at the feet of the masters in Russia.

And really, I think this puts on the world stage the limits of the Russian approach to governance and puts in a much better light the Western approach. And the studies haven't been done yet of what are the consequences of a profoundly corrupt society run by a cabal of former KGB types. What does that-- you guys will do the studies on this in the coming decades. But the shortcomings of it are very clear now. How's that for optimism?

MITU GULATI: [LAUGHS] OK. It's hard to drag optimism out of them. Pierre gave me a little bit, though. But I should turn things back to Rachel and Emily. Thank you so much for hosting this event and giving me an opportunity to join you. I certainly learned a lot, so thank you.

[APPLAUSE]