



BOOK REVIEW

COUNTER-THREAT FINANCE AND NATIONAL SECURITY: TREASURY'S INIMITABLE AND INDISPENSABLE ROLE

TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE. By Juan C. Zarate. New York, N.Y.: PublicAffairs. 2013. Pp. 488. \$29.99.

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Juan Zarate's new book, *Treasury's War: the Unleashing of a New Era of Financial Warfare*, is an insightful account of the evolution, development, implementation, and fine-tuning of the United States Department of the Treasury's ("Treasury's") tools of financial warfare in the post-9/11 world, as well as a reinvention of its role in exercising these tools. This interesting account combines Zarate's eye for meticulous detail, zeal, focus, and his powers of cogent argument as a skillful prosecutor with the incomparable expertise and research insights of a scholar, and the vision and foresight of a thinker. In this book, Zarate clearly delineates the threats to national security from rogue actors, terrorist financiers, money launderers, criminals, Weapons of Mass Destruction ("WMD") proliferators, Politically Exposed Persons ("PEPS"), or

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some combination thereof, and delves into detail on how Treasury used its authorities, powers, and its pre-eminent position as the U.S. finance ministry, to insert itself into the national security center stage, thus helping the United States leverage this newly fashioned financial power to tackle the aforementioned threats with remarkable success. At the heart of this blow-by-blow account is Zarate's unique experience garnered through his work as a federal prosecutor investigating terrorism cases at the United States Department of Justice, as a senior official first at Treasury, and later at the National Security Council, and his role in helping to fashion, devise, and use the financial tools of targeted sanctions, regulations, and financial investigations that have since become an integral part of the U.S. national security landscape.

In this book, Zarate very artfully explains the salient role of Treasury and its officials in making the economic security and financial warfare toolkit an effective weapon in the war against varied threats that have confronted and continue to endanger U.S. economic security. Zarate also details the success of Treasury in co-opting the private sector financial institutions and other countries into this war effort. Thanks to the rich factual information contained and the great insights offered into the role of a number of national security and foreign policy officials involved in designing and flexing this financial warfare toolkit, this book is a compelling read for policy makers, academics, students, and practitioners interested in the phenomenon of financial warfare and its use and relevance in today's world of asymmetric threats, stateless actors, and rogue states that imperil U.S. security. In addition, the book is a brilliant exposé of the intricacies of the workings of the national security policy formulation and implementation processes, as well as how interagency policy processes in the national security realm interact with and affect U.S. foreign policy priorities and outcomes.

Treasury's War takes the reader into the supercharged days following the tragic events of September 11, 2001, when the world was still reeling from the attacks by Al Qaeda terrorists. Identifying and designating Al Qaeda individuals, associated organizations, and institutions for assets freeze sanctions measures—especially those secretly and/or openly funding Al Qaeda activities—became a crucial

focus of Treasury's Countering the Financing of Terrorism ("CFT") efforts. This was particularly true in the days immediately following September 11, 2001, when the United States was trying to cobble together a CFT coalition, both domestically through the interagency and legislative process as well as internationally through the United Nations Al Qaeda and Taliban Sanctions Regime, and through the extension of the Anti-Money Laundering ("AML") standards instituted by the Financial Action Task Force ("FATF")¹ to cover additional CFT standards. The role of Executive Order 13224², and the passage of the USA Patriot Act Title III,³ which gave the President authority to block assets of individuals and entities associated with Al Qaeda, as well as an additional set of prosecutorial and regulatory tools to expand the AML powers to cover CFT efforts respectively, are noted by Zarate as landmark achievements in initiating financial warfare against threats to U.S. security. Given the fact that none of these measures would entail the mobilization of military assets, their impact at naming and shaming those believed to be involved in Al Qaeda funding represented the fledgling success of this new kind of warfare.

One of the striking accounts in the book relates to the way in which Treasury adapted to the migration of its enforcement divisions to the newly formed Department of Homeland Security ("DHS") in 2003. This attrition in enforcement capacity coupled with the pressing need to unleash the tools of financial warfare led Treasury to reorganize and reposition itself by establishing the Office of Terrorism and Financial Intelligence ("TFI"). TFI became the nerve

¹ The FATF is an independent inter-governmental body that "develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction." FATF, <http://www.fatf-gafi.org> (last visited Oct. 27, 2013). Its recommendations are considered as the global AML and CFT standard.

² Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (2001).

³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act), Pub. L. No. 107-56, 115 Stat. 272 (2001). Title III of the USA Patriot Act amended the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

center of all efforts to wage financial warfare against illicit actors and threats to U.S. security. Lacking resources as a result of this migration, and already in the process of spearheading the new financial wars, Treasury waged another war against the commonly held perception that it was a bit player in national security as it vied for a greater say in matters of foreign policy and economic security. Despite having fewer resources at its disposal than before, its mission was successful.

A continuous running theme in the book is the description of Treasury's actions to isolate rogue states and illicit actors from the U.S. financial system through explaining to financial institutions that adopting and implementing sound AML/CFT controls were in their best interest. In doing so, financial institutions could avoid or reduce reputational and business risk. By not doing so, they faced the wrath of Treasury and the threat of regulatory and/or enforcement action. A similar strategy of cajoling and convincing foreign jurisdictions to spruce their AML/CFT measures to conform to FATF standards was an essential part of Treasury's financial warfare arsenal.

Complementing the assets freeze designations, according to the book, was the U.S. Government's effort in successfully convincing the Society for Worldwide Interbank Financial Telecommunications ("SWIFT"), a repository for information pertaining to international bank to bank transfers, to share such data with Treasury. This enabled the United States to obtain such specific information pertaining to suspected terrorist financing activity that was instrumental in identifying the critical nodes of terrorist financing, as well as implementing assets freeze and other regulatory and investigatory actions to prevent terrorist attacks. Gaining information concerning terrorist financial activity from SWIFT was the genesis as well as the reflection of the realization that there were two important truisms relating to the financial warfare staple—first, that financial intelligence of the kind obtained from SWIFT-U.S. information sharing would be crucial for CFT efforts, and second, that banks were the ultimate vehicle to move and store funds for terrorist financiers, criminals, money launderers, PEPS, rogue regimes, and other inhabitants of the illicit financing fauna.

Zarate describes the importance of the use of cash couriers in moving terrorist funds and the role of informal value transfers like hawala⁴ in moving and laundering terrorist and criminal funds that are eventually placed and moved through banking channels. The book goes into the key role that Zarate and his colleagues at Treasury played in pushing a ninth CFT recommendation dealing with protective measures against cash couriers through FATF, and in making efforts at convincing countries to have registration requirements for hawaladars to protect them from tainted finance that may be connected to terrorists. For those unacquainted with these seemingly abstruse financing phenomena and for those vaguely familiar with them as well, the book offers a short crash-course to speed up the learning curve.

Through all this war-like effort, both against threats to U.S. security abroad and its resource attenuation within, Treasury was singularly focused on the need of the United States to isolate rogue actors, terrorists, and criminals. This effort included what Zarate calls the Bad Bank initiative.⁵ Quite innovatively and brilliantly, Treasury began to wield the power to declare institutions, jurisdictions, transactions, and accounts under the power inherent in its arsenal under Section 311 of the USA Patriot Act (“Section 311”).⁶ For once, the targets of Treasury action departed from the conventional ones, namely terrorists, terrorist organizations, PEPs, and criminals—and included banks that were found to be tainted with assets, accounts, and money flows that belonged to these illicit actors. Holding banks responsible for their tainted accounts and suspect customers including PEPs became problematic as it seemingly clashed with U.S. diplomatic objectives and methods, but it proved decisive in the war to protect the U.S. financial system from abuse by such tainted banks holding the contagion of illicit funds.

The book gives an exhaustive account of the use of Section 311 regulatory powers against financial institutions used by states and state-owned entities (including central banks) engaged in

⁴ “[H]awala is a trust-based money transfer mechanism. . . .” JUAN C. ZARATE, TREASURY’S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE 8 (2013).

⁵ *Id.* at 146.

⁶ USA Patriot Act § 311.

proliferation financing and funding terrorists and other anti-U.S. actors. The reticence of actors within the U.S. national security establishment to the use of Section 311, and those without, including intended targets of such regulatory action, feeds into an interesting dynamic in the national security process. The choice about which tool to use in its financial toolkit had confounded Treasury since it began using these tools post-9/11. The active role of the U.S. Congress in legislating sanctions against such illicit actors (including measures to sanction foreign banks that engaged in oil-related transactions with the Central Banks of such rogue states) ended up facilitating this choice.

Another notable endeavor on the part of Zarate and his Treasury colleagues, which is fleshed out in great detail in the book, was the recovery of the assets of the deposed Iraqi regime in 2003. This masterful effort entailed the robust use of financial intelligence, and the enforcement prowess of the Internal Revenue Service Criminal Investigation (“IRS-CI”) arm of Treasury.

By pointing to the threats of the future including the exploitation of new payment methods and digital currency by terrorists, criminals, and other suspect actors alike, Zarate displays a keen understanding and appreciation of the importance of U.S. vulnerabilities and the susceptibility of U.S. critical infrastructure, including banking and financial, to threats emanating from these and other threats, including but not limited to cyber espionage and breaches in the global supply chain. Based on this understanding and fine grasp of threats to national security, Zarate offers a profound definition of national economic security as “the ability of the United States to project its power and influence through economic, financial, and commercial means and defend against systemic and specific risks and threats derived from America’s economic vulnerabilities.”⁷ In coining this all-encompassing definition, Zarate exhorts the United States to ramp up its efforts to secure itself against a multitude of real and potential threats from both state and non-state actors. Zarate brings home the fact that the same globally interconnected financial system that has helped the

⁷ ZARATE, *supra* note 4, at 413-14.

United States engage in the tools of financial suasion and economic warfare, has, due to its strong potential for exploitation by our adversaries, all the portents of causing disruption to our financial, economic, and security systems.

Zarate clearly states that the tools of financial warfare are only one of a number of tools that need to be employed in the national security and foreign policy toolkit. Diplomatic measures, military intervention, and other elements of hard and soft power should accompany the financial tools of sanctions, investigations, outreach, and regulation. Moreover, Zarate argues that an application of the tools of financial warfare against illicit actors might make them more amenable to diplomatic suasion by isolating them and threatening them with the consequences of not complying with those regulations and standards of legitimate financial conduct that are expected to maintain the integrity of the United States and global financial systems.

A litmus test of sound analysis is the inclusion of three essential elements—the diagnostic, the prescriptive, and the prognostic. *Treasury's War* is replete with all three. It describes the threats the United States has faced from a whole host of illicit actors; it dwells on the measures adopted to tackle those threats; and it offers a forecast of future threats, as well as strategies and measures to deal with them.

To a student of government and governance, Zarate's delineation of key threat finance nodes and relationships, as well as corresponding counter-threat finance networks with distinct role plays for key network players, shows the success of organizational networks and the way they function. It also details how organizational networks fulfill the purpose of their existence, how they create new efficiencies in service delivery, and how well they supplant age-old Weberian top-down bureaucratic models of organizational effectiveness. Also of special interest is the way in which Treasury adapted itself to the evolving threats emanating from terrorist financiers, money launderers, etc., much as a livewire system constantly adapts itself to the changing environment.

For those in the legal profession, the success of financial warfare shows how existing laws, executive orders, and authorities in the national security arena can be used to isolate rogue actors and rogue states from the U.S. financial system; how laws can be implemented; and how regulations can be fine-tuned to address emergent national security needs and requirements. The book serves as a giant repository of numerous real-life case studies that illustrate this success. For lay readers, and policy makers, the success of financial warfare is proof of how policy tools can be honed, fine-tuned, and designed to address pressing national security concerns and achieve critical foreign policy objectives. For scholars, Zarate's discussion of the use of strategic suasion and the role that non-state actors can play in complementing state power may sound intriguing. These may be useful themes to delve into further and build on for future research.

From all accounts, *Treasury's War* is a brilliant account from one of the top scholar-practitioners in the national security arena. There are a few questions, however, that the book leaves unanswered and that would be interesting to explore further. Thus, the book does succeed in stoking much-needed intellectual and scholarly curiosity.

First, it does not appear to focus in-depth on the impact and effectiveness of the tools of financial warfare. Given the severe resource crunch that the United States and its international and private sectors face, it seems natural to make resource allocations to utilize the tools and techniques of financial warfare based on tangible impact and assessment metrics. For example, one kind of impact metric would be whether targeted assets freeze sanctions have really impaired the financing of terrorist organizations. Another effectiveness metric would be more detailed information on the nature and total amount of assets frozen.

Second, the concepts of risk-based AML/CFT and risk-based FATF assessments are neatly intertwined with the effectiveness and impact question. Zarate's definition of economic security very appropriately brings to the fore the concept of risk in the national security equation. It would be interesting to learn more about whether the financial warfare arena has witnessed any debate and

deliberations on risk-based criteria for implementation and assessment.

Third, what are the criteria that propel Treasury to decide on a Section 311 regulatory action versus an assets freeze designation? Is it political feasibility, impact, effectiveness, or some other criteria? Answers to these related questions may further inform the reader's curiosity.

Fourth, what successes have the U.S.'s international partners witnessed in the realm of financial warfare? Zarate sees, and rightly so, a threat of our adversaries and our allies using the instruments of financial warfare against us. But are other countries in the international sphere developing regulatory measures like Section 311, setting up effective dedicated sanctioning units like Treasury's Office of Foreign Assets Control, and possessing the enforcement capacity of an IRS-CI? Or, are they furnishing their own unique laws, organizational structures, and information sharing mechanisms in this respect? Are we imposing our financial warfare techniques on other countries that may not possess the resources, the technical capacity, or the political will to set up the kind of legal, organizational, prosecutorial, and information sharing capacities that we have? If not, is it the sole responsibility of the United States as the pioneer and the inventor of the discipline and the practice of financial warfare to convince and offer assistance to these other countries to establish and implement such capacity? Has U.S. technical assistance to bridge these capacity deficits in other countries really helped to improve their AML/CFT capacity?

Finally, what sort of recourse can the United States and the United Nations take to offset the regional and national court challenges to Al Qaeda designations that are based on questions of procedural due process? What implications do these challenges have for the future of the global Al Qaeda sanctions regime? Are national and supranational sanctions arising out of United Nations Security Council Resolution 1373⁸ the ultimate panacea for the problems faced by the Al Qaeda sanctions regime? While, as the book points

⁸ S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

out, the assets freeze sanctions measures may have dismantled the financial flows to Al Qaeda Central,⁹ are they an answer to the proliferation of the financing and the ever-stronger presence of Al Qaeda affiliates? Do the measures against Al Qaeda Central need to be tweaked or modified to address the unique financing models of Al Qaeda affiliates? What kind of strategies does the United States need to pursue to tackle the existential threat from Al Qaeda and Associated Movements (“AQAM”)? What about the financial and logistical relationships amongst Al Qaeda affiliates? Are the tools in the U.S. financial war chest sufficient to blunt this current threat from AQAM?

The questions posed above are neither easy, nor easily answerable, and may require further inquiry, building on Zarate’s work. Given the fact that the area of financial warfare is not understood, or, at best, misunderstood, *Treasury’s War* is a seminal work that sheds light on the vital role of Treasury’s efforts to address threat financing. Zarate’s holistic understanding of the financial tools, techniques, and strategies employed to curb the menace of terrorist financing and other threats reflects his unique experience as a participant observer in the policy development and implementation of financial warfare. As a prosecutor, policy maker, policy coordinator, and thought leader, Zarate exhibits a strong grasp of the facts and uses his centrality to the whole policy process, as well as his relationships with the key players, to successfully present a real world historical treatise of Treasury’s war against illicit actors that threaten American security. Zarate’s unique portrayal of the central theme of the book, i.e., the evolution of financial warfare and Treasury’s critical role in it, uses a method of storytelling in which incidents and facts are presented in a back and forth manner to provide context and to maintain the continuity in narrative. Zarate’s penchant for explaining complex issues in everyday terminology, and his ability to communicate and articulate the perils, strengths, and vulnerabilities tied to threat financing and corresponding countermeasures makes this book an absorbing read.

⁹ Intelligence analysts commonly refer to Al Qaeda’s core leadership as ‘Al Qaeda Central.’ See Craig Whitlock, *The New Al-Qaeda Central Far From Declining, the Network Has Rebuilt, With Fresh Faces and a Vigorous Media Arm*, WASH. POST, Sept. 9, 2007, at A1.

This book is undoubtedly the best scholarly work produced thus far in this field and should go a long way in enhancing the understanding about this nascent discipline of modern statecraft. Zarate's success in prosecuting the case for the indispensable need and utility of this aspect of national security, and Treasury's inevitable and inimitable role in it, is evident in full measure in this book. This work will hopefully encourage legal scholars and law school students to pursue cutting-edge research that builds on the analysis and rich insight provided by Zarate.

