Taking Treasury to War: Two Decades of Using Financial Measures as National Security Statecraft

Featuring Jennifer Fowler, Daniel Glaser, and Juan Zarate
Moderated by Jamil Jaffer

JAFFER: Over 100 people here so thank you everybody for joining us today. My name is Jamil Jaffer and I'm the founder and executive director of the National Security Institute at George Mason University's Antonin Scalia Law School. I'm excited today to be co-hosting this event with the Foundation for Defense of Democracies, the Center for a New American Security, and the Center for Strategic International Studies. All terrific partners. And today we will be talking about revisiting Treasury's war, the history and future of the Treasury Department's role in national security. We're going to have two panels on this topic. One today, obviously, for the next hour called *Taking Treasury to War: Two Decades of Using Financial Measures For National Security Statecraft*. And then we'll have another one in December after the elections have gotten past us and we've gotten through all that conversation and talk about the ways in which the Treasury Department's authorities and capabilities might be applied.

So, I'm excited today to have an amazing panel with us. Let me start right at the top with Jennifer Fowler. Jen is a director of Brunswick Group's Washington D.C. office. She's an expert in illicit finance and economic sanctions-related issues having served in senior positions at Treasury for nearly two decades. In her roles at Treasury, Jen developed and led the innovation of counter illicit finance strategies and policies. Most recently, she was the Acting Assistant Secretary for Terrorist Financing and Financial Crimes as well as the Deputy Assistant Secretary and served as VP of the Financial Action Task Force, the global standard setter for anti-money laundering and countering the finance of terrorism. Jen has deep expertise in the U.S. and international regulatory frameworks for anti-money laundering, counter terrorist financing, and counter proliferation financing, as well as a range of illicit finance and sanctions risks that companies face today. She has extensive experience working with foreign governments and financial institutions to prevent, mitigate, and respond to illicit finance threats. So, Jen, thanks for being with us today.

Danny Glaser is a principal with the Financial Integrity Network and a senior advisor to the Center on Economic and Financial Power at the Foundation for Defense of Democracies. From 2011 to 2017, Danny served as Assistant Secretary for Terrorist Financing and Financial Crimes in the Treasury Department's Office of Terrorism and Financial Intelligence. As Assistant Secretary, Danny was responsible for helping formulate and coordinate counter terrorist financing, AML, sanctions, and other illicit financing policies and strategies within Treasury and the U.S. government and globally. Among his responsibilities of serving as the U.S. co-chair of the illicit finance track of the Global Counter ISIL Coalition and U.S. chair of illicit finance track of the U.S.-China Strategic and Economic Dialogue. Danny also led U.S. efforts to combat illicit financing through the establishment of the U.S.-Mexico public-private partnership and the U.S.-GCC public-private partnership. Previously, Danny served as Treasury's Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, headed the U.S. delegation to the FATF, and co-chair of FATF's international cooperation review group. So, Danny, awesome to have you with us.

And last but certainly not least is my good friend and mentor, Juan Zarate. Juan is the chairman and co-founder of the Financial Integrity Network and global co-managing partner and chief strategy officer for the combined firm of K2 Intelligence and FIN. Juan is the chairman of the Center for Economic and Financial Power at FDD, senior advisor at CSIS, and a senior fellow at West Point's Combating Terrorism Center, as well as a member of NSI's advisory board. Juan served as Deputy Assistant to the President and Deputy National Security Advisor for Combating Terrorism, the Counterterrorism SAR from '05 to '09 when I had a chance to briefly work with him at the White House, and in that job, Juan was responsible for developing and implementing U.S. counter terrorism strategy and policies related to transnational terrorist financing and transnational security threats.

Juan was also the first ever Assistant Secretary of Treasury for Terrorist Financing and Financial Crimes where he led the post 9/11 money laundering and sanctions regime in the United States, supervised FINCEN, OFAC, as well as the Treasury Executive Office for Asset Forfeiture. He drove the innovative use of Treasury's national security-related powers and ultimately the establishment of TFI. Prior to 9/11, Juan was a federal terrorism prosecutor serving on prosecution teams for the attacks on the U.S. embassies in East Africa including where my family is from in Tanzania and the USS Cole. So, Juan, awesome to have you with us and of course Juan is the author of *Treasury's War*, a book that gave our panel and our series of panels its name base. So, Juan, awesome to have with us.

For those in the audience, we're going to engage in a back and forth dialogue. I'm going to ask some questions, our awesome panel is going to talk to some of those questions but this is the opportunity for you all in the audience, the over 100 of you that are out there to ask questions of our panel too. So please throw your questions in the Q&A box there. We'll try and get to as many of them as possible and we'll just roll with it. So, thanks everybody for attending, thanks to the panel for being here and let's just jump right in if we might.

So, I'd like to start right at the top. Juan, in your book, *Treasury's War: Unleashing A New Era of Financial Warfare* came out a few years ago. You argued that since the 9/11 attacks, Treasury has become critical in addressing vital geopolitical challenges across the United States including terrorism, nuclear proliferation and the, frankly, illicit regimes in Iran, North Korea and Syria. Is that still your view today? When you wrote this book a few years ago and what is Treasury's role today when you think about the modern U.S. national security complex?

ZARATE: Jamil, thank you and thank you for inviting me to be on with Jen and Danny who are two of the great pros from whom I've learned throughout my career and certainly through you Jamil and the NSI, very proud to be a part of this panel and your organization. I think that the striking thing about where we are in Treasury's role is how obvious it is now, right? Back in the post-2001 period, it wasn't as obvious what Treasury's role in national security was. Back then you had the old Office of Enforcement, the Secret Service, Customs, Federal Law Enforcement Trading Center, ATF. All the elements that gave Treasury the guns and badges and in some ways, the weight to be at the table with the big boys and girls of national security.

When DHS was created, Jamil, there was a fundamental question as to what Treasury's role would be and there were significant existential questions as to whether or not there was any real role and I think something that Danny, Jen, Chip Poncy, and I and others did was to at least try to drive as aggressively this idea that Treasury does have a central role to play in trying to undermine the ability of America's enemies to use the financial system to their benefit to raise and move money around the world. To do everything possible to disrupt and dismantle the networks, be they terrorists, be they proliferation finance, be they rogue regime-related that threatened American interests. And so fast forward to 2020, Jamil, I think the questions actually that are being posed legitimately are, are we using these authorities too much? Are we relying too heavily on the Treasury toolkit in the absence of other strategies, are we thinking creatively enough about how these tools mesh with other tools?

But I do think the one lesson learned in this period is that Treasury's tools are unique, their information and financial information is incredibly valuable, and at a minimum, it's a powerful complement to other elements of national power, be it law enforcement, be it diplomatic, be it intelligence, be it military which now calls this the world of threat finance. So, all of that is still in play and it's now a fundamental part of how we think about national security. And maybe just a final point. I think moving forward, the question is going to continue to be, how does Treasury organize around economic and financial campaigns that are much broader than just sanctions? We see what's emerging with China. This is an issue of not just sanctions and money laundering but also CFIUS and export controls and the use of positive economic tools like the EXIM Bank or the Development Finance Corp. So, this is a broad spectrum and I think the next administration is going to have to deal with, what's Treasury's role broadly speaking in a broader economic competition?

JAFFER: Yeah. So, Jen, on the point that Juan just made, there is this discussion going on, right? Have we overutilized Treasury's tools in particular, have we overutilized the sanctions tool as a tool of foreign policy? It almost seems today with two successive administrations being, sort of, resistant to using the military element of power or perhaps more resistant than perhaps the Bush administration that Juan and I served in to use the military element of power. Sanctions have become a critically central tool of effectuating U.S. foreign policy, getting our adversaries to do what we want alongside, in this administration, tariffs and other financial measures. Are you concerned? What do you think about that claim that sanctions play too big a role in our foreign policy alongside these other financial measures? Is that a fair criticism and either way, what do you think about it and do about it going forward?

FOWLER: Well I think what Juan has said, I think the first thing to keep in mind is that sanctions don't exist in a vacuum. There are so many other Treasury tools and authorities that are really important and so let's talk about sanctions but let's not forget the other tools and I know we'll get to those. I think clearly sanctions are here to stay. They are the authority, the tool of first choice I think for many national security challenges. I believe that sanctions are most often used first, though, when the U.S. doesn't really have financial skin in the game and when you look at the really more challenging issues that we're facing, China, Russia where there's real financial skin here, real issues for the U.S. financial system. It becomes a lot more challenging. So, I think we can continue to use sanctions but there have to be some parameters around how they're used and I think of three main things that are really important there.

The first is we have to use them with a lot of work that we do multilaterally. Designing and implementing sanctions on our own I think we know that does not work very well. And then the second is thinking about them in the context of other tools and this is particularly important when you're thinking about a China or a Russia where the use of sanctions alone is going to be really challenging. And thinking creatively, how do we use sanctions creatively in conjunction with a lot of different strategies?

And then the last issue is the thing that you touched on. We need to use them judiciously. Let's use them not in every instance that we can, let's use them when they make sense. And part of this has to do with real engagement with the private sector and understanding what does make sense, what's going to have the intended impact that we want and let's protect that authority and make sure that we don't create an approach to it in the private sector that they start to be taking sanctions less seriously. And we begin to really, as we see now I think with China, real emerging conflict of law issues that are going to be very, very challenging to overcome.

JAFFER: Yeah, no, I think that's really important, that caution about how to utilize them and I think it's really interesting to talk about the role the private sector plays and the consultants of mechanisms that we need to have to really figure out how to use these tools most effectively. It's not something the government's used to or typically does, right? Let's figure out what the private sector thinks makes the most sense in this space but to your point, it seems like a really important thing to consider in the use of sanctions. So, Danny, at the beginning of what Jen said, she talked about some of these other tools that we might utilize. In your mind, what are the other tools that Treasury has at its disposal that might be used to effectuate American foreign policy other than the sanctions tool?

GLASER: Thanks Jamil and thanks for inviting me and thanks for putting this panel together. It's such a pleasure for me to be here with my friends Jen and Juan and we worked so hard on these things together when we were in government and now to get a chance to continue to work with them outside of government has really been such a joy for me. With respect to your question, I think it's important to think about, because it gets right to the role of the Treasury Department which is one of the reasons why you assembled us and why the Treasury Department, as Juan pointed out, has such a central role which is relatively new. But the Treasury Department is perhaps the only agency that has its foot in all the different elements of what is required to have an effective strategy for applying financial and economic tools to advance U.S. foreign policy and U.S. national security policy.

It has a quasi-diplomatic role, it has a law enforcement function, it has a regulatory function, it has a policy function. It has very, very close ties with the private sector and an understanding of the private sector perhaps beyond what other agencies have. It has an understanding of how the international financial system works and is charged, it sees itself very much as being charged with protecting the international financial system from abuse. Both in terms of what we're talking about now, abuse by illicit actors but abuse of all kinds and protection of all kinds. Bob Kimmitt, he was the Deputy Secretary of the Treasury in the Bush administration, used to talk about protecting the safety, soundness and security of the international financial system as one of the central functions of the Treasury Department.

So, we would approach it from that perspective and that gave us this really unique perspective, this really unique way of viewing problems. And one of the reasons why I think a lot of the Treasury actions are confusing to people when they look at them, whether it's respect to Iran, whether it's respect to North Korea, whether it's respect to whatever the issue is, is because people who focus on North Korea are focusing on it, understandably, generally from the perspective of North Korea policy. But they don't come to it from the perspective of the international financial system and how does North Korea plug into the international financial system. But that's how we came at it and that gave us a new perspective and that gave us a new set of tools.

So, the way we thought about it and you can think about it sort of like offense and defense. So, on the defense side, or we would call it the systemic side, we talked about identifying vulnerabilities in the international and domestic financial systems that made it subject vulnerable to abuse by "fill in the blanks," whoever we don't like. So, narcotics trafficking organizations, terrorist organizations, organized crime groups, rogue regimes. It's not hard to figure out who the United States doesn't like. So how is the international and domestic financial system vulnerable to abuse by those individuals, entities, and jurisdictions, and how can we close those? You could think of that as defense. And then on offense, identify the financial networks that support "fill in the blank," same groups. And how do we target those, identify, disrupt, and dismantle those financial networks? And you could think of that as offense. And then where it really gets cool and where it really gets fun is the interplay between the offense and the defense because they're intimately related.

And so, what the Treasury Department can do is it could devise these strategies that brings all of that together, that brings our regulatory authority together with our law enforcement tools, together with our sanctions tools, together with our connectivity with the private sector, together with the networks that we have as a finance administration and as finance experts. Brings that all together to implement a strategy and then you see that play out in something like Iran when we started with Iran in 2006 when Secretary Paulson launched basically our offensive against the Iranian financial system and then I spent the next seven years listening to people tell me that our sanctions against Iran could never work. But it was never sanctions against Iran. It was our whole effort against the Iranian financial system and economy. And now today, the only thing everybody agrees upon with respect to Iran is that they came to the table for sanctions relief. Even the Iranians agree with that.

JAFFER: Right, right.

GLASER: It's the only point of agreement that the entire international community has is that sanctions worked, and that's because it was not just sanctions but it was that whole suite of expertise and strategizing. 'Strategery' if you will, that really made it work. And we've seen it across the board whether we're talking about Syria or Russia or terrorist organizations or whatever the case may be. It's that sort of strategic perspective that Treasury brings to bear that's made it really special and important.

JAFFER: I think it's a great point and to your point about offense and defense, Jen, one of the couple questions in the chat box that I want to run past you. Nancy Boswell asks, do we worry and how do you think about whether other countries will find ways to avoid U.S. sanctions? We start imposing all these measures, right? One of the concerns is the U.S. goes on offense too aggressively, people are just going to circumvent, right? China will create a system outside of ours and people will utilize that. Do we worry about that, do we worry about mechanisms we might even create when we engage in sanctions relief that might be used as that? And then Richard Berger asks on a related note to Juan's point, are there effective carrots or incentives you might use rather than using disincentives and maybe creating paths for evasion. Might it be better to create incentives or other incentives that we might use. So, a set of two combo questions for you Jen. Thoughts on either of those?

FOWLER: Sure. I think that first question, it's a big question. I think sure, countries are always going to try to find a way to avoid complying with sanctions whether we use sanctions judiciously or we really go overboard and use them more than maybe we should. The question is can they really in the end, fully evade sanctions that when you are dealing with the U.S. financial system and its global reach and the U.S. dollar, there are obviously concerns about that. So, are we willing to work our way out of our center of gravity in the global financial system? Honestly, I don't know the answer to that. There are a lot of different points of view on this but I do think it's really, really hard, in the end, to successfully and completely evade U.S. sanctions. I think our enforcement has been pretty impressive. I think it's really hard to conduct a financial transaction, even a single financial transaction that doesn't somehow cross-border end up touching the U.S. financial system.

So, it's challenging to do on a large scale. It's possible and people will try to do it but it's challenging to do. So, I think we have to continue to do the things that we think make sense in terms of sanctions to look at what the possible effects are and do our best there and then we'll come behind and enforce it. But we know that's always going to be part of the risk-benefit calculation.

JAFFER: Yeah. So, follow-up on that and I'm interested in your thoughts on incentives, but as a follow-up, that's true today, right? It's almost impossible to avoid the U.S. financial system, you can't avoid it today. Do we worry that there is the potential for the creation of alternative systems particularly with the expansion of digital currencies and Bitcoin and Libra, you name it, right? There's a lot of people saying or suggesting, I don't mean to use a Trumpism but "a lot of people say." But there's a lot of discussion about this idea about there might be major alternatives. Do we worry that that edge that we have, the ability to use the reliance on the international financial system and the reliance on the U.S. financial system as a crutch? Do we worry that's going away? Is that going to happen anytime soon or do you not worry about that? Jen.

FOWLER: That's right. Look, I don't worry about it in the short term. I think the question about digital currencies is a great one. For me, I think that it's a long way we have to go before you can completely use a digital currency and you never come back to the traditional financial system. If we get there one day, I have full confidence that Treasury will figure out a way to enforce sanctions even in that kind of environment. I think that's the genius of the way that we're setup, and the people that work there will figure out a way to do that. For now, I'm not worried about that in the short term though.

JAFFER: Yeah. So, I've actually got a couple of questions on crypto and I'll come back to that but Juan, over to you on the question about incentives. So, you mentioned them in your earlier part. What are you thinking about when you think about ways we might be more productive going forward than just using the stick, right? What does a carrot look like and how might we effectively utilize it?

ZARATE: Jamil, that's a great question and I think it goes to the baseline of the powers that we have. I think we have all the powers that Danny discussed. At the core, it's the attractiveness, the openness, the fluidity of our financial system and frankly, the stability of our political system as well, to be honest, that is such a powerful feature of American financial and economic power across the world. It's not just the role of the dollar as the chief reserve currency, it's not just the role of the dollar as a chief trade currency. Talk about oil and other commodities in which the prices are earmarked in dollars and have to clear through New York banks, et cetera. It's really that the strength and power and transparency of that system.

And so that really is at the core of it and so in some ways, the strategies ultimately have to be about reinforcing those baseline pillars of power and part of that is the ability to exclude actors from the financial system which is really what much of the focus in terms of sanctions campaigns and these strangulation and constriction campaigns as we talked about them. That's really about excluding bad actors, bad capital rogue networks from the legitimate financial system, and we are great at that. I think Jen described it, I think Danny performed artwork with it when it came to ISIL in that regard. So, we're really good at that. Where we need to get better is reinforcing those fundamentals of our power and figuring out where financial inclusion becomes an element of power.

So, I'll give you two examples Jamil. One is we have gone around the world trying to explain to everybody how Huawei is a risk to security, right? And they are, and it's a legitimate argument. What we haven't done is to create the alternatives for investment in alternatives to 5G and so we're scrambling now with our allies, with the private sector to figure out, how do you replace a Huawei in environments where Huawei is the cheapest solution, the best solution, and is embedded already in places like Germany or Mexico? So, what's the replacement? We have to have a strategy that is actually proactive and positive in terms of what the elements, and we don't have structures, frankly that allow us to do that nimbly or easily in part because it has us tugging at the private sector in ways that are very uncomfortable for our system. Likewise, on the CFIUS side, Jamil. This is something I've argued for, for a long time and you would appreciate this Jamil given your deep background and experience. We should've long ago established a CFIUS process for the Five Eyes which is to say –

JAFFER: Yes!

ZARATE: Why aren't we creating both the positive and negative elements of what investment security looks like for purposes of broader alliance national and international security. And so, there should be a collective sense and it's starting to evolve, of how we think about risks of Chinese, Russian, other kinds of investment in high end technologies. 5G, Quantum, robotics, et cetera. But also, Jamil, what's the positive side? Where are the funds that are preferred, for example, that have gateways into and preferences to investing in exquisite US technologies and into Silicon Valley. We haven't figured out what that consortium or alliance of positive investment looks like, and maybe I'll give you a third example.

China in part, what they're trying to do is challenge within the system and create alternatives. They're clearly doing that through the BRI, One Belt One Road program, and the reliance on the renminbi and the yuan. We have to think, and I think the administration has tried this, how do we think about investment in places that matter to us that replaces

Chinese investment for infrastructure and other projects that will matter from a strategic perspective? DoD thinks about this, Treasury and Commerce think about this, the Trade Rep thinks about this, but we don't cohesively think about what's our positive strategy for investment? Maybe not just from the US but from our allies in these key parts of the world and projects. So that's what I'm talking about and it has to be a holistic sense of national economic security.

JAFFER: Yeah. It's a great point and clearly the Chinese are thinking about this strategically. They have a plan, right? They have an agenda for investing overseas and creating markets and the like. And they because of one party control of the government, have this ability to setup preferences and incentives for investment. In fact, they do it offensively when it comes to foreign governments, right? With Japan and rare earths back in 2010. And so, we've seen that, you're exactly right. Danny, I want to come back to you, though, on this question that Jen and I talk about of cryptocurrencies and the like. Brian Smith, one of our visiting fellows asks, shat is the potential for the future of digital currencies in circumventing U.S. sanctions? What other things might undermine U.S. sanctions? And another attendee asks, is crypto the next frontier and is it going to be a real challenge, or are we going to be able to deal with it effectively? Jen seems to think that, and I think probably correctly, that Treasury will find a way. What's your thinking on this and how do you see crypto playing into this larger dynamic of potential ways that U.S. sanctions and our U.S. tool regime, U.S. toolkit might be undermined?

GLASER: Well first of all, I think it becomes too easy to lump everything together under the rubric of sanctions or Treasury's financial tools. You have to look at who the targets are. So, your approach and your toolkit and your goals with respect to using tools of financial pressure are going to be different when you're talking about targeting an individual versus targeting a group or organization versus targeting a jurisdiction. When you're targeting a jurisdiction, of course the Iranians are really smart, the North Koreans are really smart. They're going to figure out ways to do individual transactions when they need to do an individual transaction and all the sanctions regimes in the world aren't going to stop them from conducting a transaction when they need to conduct a transaction. But that's not the goal of the sanctions. The goal of the sanctions is to create broad financial and economic pressure on them to gain diplomatic advantage, to put them in a position where it's hard for them to accomplish, broadly, the goals, it's hard for them to manage their economy and you're not going to manage your economy using cryptocurrency. You're not going to do it.

So, is the IRGC going to be able to figure out how to do a particular transaction with cryptocurrency? I don't know, maybe they will. Probably won't be that huge a transaction to be honest with you. And there's the law enforcement agencies and the intelligence agencies and working with the law enforcement and intelligence agencies, our partners, we'll try to target that. If you're talking about criminal organizations or terrorist organizations, or actually individuals, then you're getting more into the cat and mouse game, and then of course cryptocurrency becomes more of a concern. Now the fact of the matter is cryptocurrency and maybe the people who are supporting cryptocurrency should come up with a better name for it than cryptocurrency because it immediately makes it sound –

JAFFER: Shady.

GLASER: Quite insidious. But it's not necessarily insidious at all and in fact, a lot of these digital currencies and cryptocurrencies are setup in a way that can make them more transparent frankly. Certainly than dealing in cash, certainly than dealing in precious metals and even certainly dealing with the financial system when the full array of AML/CFT compliance protections are not in place. So, it really depends on whether you're regulating appropriately the cryptocurrency service providers. And there's all sorts of ways of doing it and that's one of the cutting-edge discussions that's going on right now in the AML/CFT world. But I think certainly the AML/CFT regime, the global regime, the global standards can be applied to the cryptocurrency space in a way that allows it to continue to provide the innovations that it's providing and also not only ensure that there's transparency, but even more transparency.

And really at the end of the day, the whole purpose, the entire purpose of the AML/CFT regulatory supervisory regime is to create financial transparency so that criminals and terrorists and others can't hide in the international financial system and so that legitimate law enforcement efforts can occur within the international financial system and there's nothing inherent with cryptocurrency that prohibits that.

JAFFER: Yeah, no. That's really helpful and I think it's really interesting to think about crypto as being an opportunity to actually create transparency relative to cash. The whole idea of having this distributed blockchain ledger where you can see what's happening. We may not know who the transactors are but you see the transactions. That's interesting how that may actually be able to bring some measure of transparency. Jen, I want to ask you about, Danny mentioned cutting-edge things that are happening in this space and one of our questioners, Terry Gilligan asks about ransomware and this recent announcement by Treasury that payment of ransoms relative to ransomware may run afoul of sanctions laws and so we know that some of the most sanctioned countries in the world, North Korea jumps to mind, use ransomware aggressively. WannaCry as one example of that. We have the potential for ransomware attacks to take place in the lead up to the next week before this election and maybe in the aftermath of that as people try and get information about elections whether it's voting, voter rolls, or results.

Do we worry that this use of, or this claim, that the sanctions you might apply to payments for ransomware could create problems and actually make it harder to remediate these situations and how do we deal with these cutting-edge issues? Is Treasury taking the right approach, is there a different approach that might be advisable here?

FOWLER: Look, the ransomware issue, it is really, really on the increase in the last six months and this is a real issue that companies really struggle with. If you can imagine that you have data locked up and you're not able to determine how to unlock it, you have a very difficult choice to make. You may have a choice that leads you only to a decision that you've got to pay. I think what Treasury did is very helpful in a way because it gives some clear guidance around how they're thinking about those kinds of payments. So, if it involves a sanctioned entity, if you're able to determine that, Treasury has now said this is something that you've got to be coming to us about and I think companies really do need to do that. The thing that I found was helpful about that advisory is that it gives companies a very clear sense that if they come to Treasury, into OFAC at the outset, if they communicate to law enforcement and to Treasury in the appropriate way at the outset of an incident, they're going to get credit for that later on.

And I think that it's going to be a challenging situation to deal with and coming to Treasury is a big deal. But the way I read that was inviting companies to do that and they can work through the situation together and I think that could be helpful. I actually think that's really important for Treasury too, because I don't know how much real-time experience Treasury has in seeing how ransomware really plays out for companies and how challenging it can be. So, it's a good thing. I will say that OFAC advisory came out the same day that a FINCEN advisory came out, and FINCEN's advisory dealt with some of the firms that are involved in negotiating and dealing with some of these issues. That was a helpful advisory as well.

I would love to see Treasury get to a place and I know Danny is going to love this but I would love Treasury to get to a place where we're sending out one advisory, one piece of guidance that really captures all of the issues on something like ransomware because you really need to read them together to see exactly what Treasury is advising and I would love to see a Treasury advisory capability come into play.

JAFFER: Juan, did you have something to add?

ZARATE: Jamil. Yeah, Jamil I just want to weigh in on a couple points and Jen's last point reminds me of former Deputy Secretary Sam Bodman who recently passed away. So, condolences to him and his family. But he once said at the moment when DHS was being created, we were creating TFI. He asked the question, why aren't we just merging FINCEN and OFAC? Why do we have two different cultures, why do we have different voices going out to the regulatory system? And he wasn't wrong in the sense that Jen just described which is the U.S. Treasury and the government has to present more consistent regulatory voice to concerns and guidance and it's also the fact that in the marketplace, and this goes to the origins of Treasury in this space and what Danny was saying, the sanctions world is really now part of the world of risk, right? And anti-money laundering controls and questions are blended with sanctions risk and in fact, it was one of the most important things that we pushed from Treasury which was to say, people need to adhere to these things not just because OFAC's telling them to or not just because FINCEN's issued an advisory but because it's fundamental to their financial risks and integrity. It's fundamental to the protection of the financial system, to Danny's earlier point, and what makes these tools so powerful, ultimately, is that these issues are embedded as fundamental questions of risk for the private sector and Jamil, this helps explain why and there was a lot of frustration post-JCPOA that you didn't have a flood of private sector actors going back into Iran. And it wasn't just that you had the sword of Damocles over people's head because you had potential snapback or a new U.S. administration.

It was the fact that we had overtime embedded the idea that doing business in and with Iran was risky. It was risky because there wasn't transparency and accountability to Danny's point. And the sanctions were just one layer of that risk and there were other layers of risk to include corruption, human rights abuses, and other things.

And I would just say on the ransomware point, what's fascinating to me is you have a maturation of Treasury blending and dovetailing with the cyber issues that we're talking about. And so, this is a great example of Treasury catching up to the realities of ransomware. The way the FBI overtime in some ways caught up to the realities of hostage payments, right? In the kidnap for ransom context. And I had the hostage portfolio for four years at the White House in addition to the CT. So, you watched this over and over again in the angst the families that were being affected by these cases and the US government not able to provide clarity. So, in some ways we're maturing there. And Treasury has also, even in the sanctions domain with the 2015 executive order from President Obama, set forth sanctions that have to deal with cyber malicious activity which the European Union now has a similar sanctions regime for. So interestingly Jamil, your world, the cyber world, and the Treasury world are really beginning to blend in some fundamental ways precisely because of the risks in the digital economy.

JAFFER: Yeah. No, that's a great point Juan. So, Jen, one of the things I was thinking about and as I look at this question from Paula Doyle is one of our visiting fellows at NSI. She asks about movements of money into hedge funds and I'd expand it to private equity and other sources of financing between China and Iran and investments in those spaces. One of the things you mentioned was talking about this idea of working with the private sector. Juan mentioned it just now too, the importance of the role the private sector plays in this space. Paula asked about how we can strengthen attribution and timely monitoring of these large movements of funds between these countries and into and out of these countries like threat actors like China and Iran. I'd add Russia and North Korea to the list. Obviously not a lot of money moving into North Korea because of our own sanctions regime but how can we identify those?

Is there a way to work more effectively with the private sector to really understand these financing mechanisms and in particular, these alternative financing vehicles? Whether it's PE or hedge funds. Is there a space for Treasury to do more work? It's not necessarily regulatory but that creates these kinds of relationships of the kind that you described?

FOWLER: Yeah. I think public-private sector partnerships are the holy grail of AML/CFT. They're really hard to do in practice. We have to do more of them, we have to set them up in a way that allows for really good relationship building. And relationship building sounds like a broad term but people really need to feel comfortable that they can share their expertise and knowledge without feeling they're walking into an enforcement action. And that's the problem. Treasury would love to have better insights into how everything works. I think Treasury professionals understand that they don't work in a financial institution every day, they don't know everything about how financing mechanisms work. They're very expert. But they would love to have better insight. The problem is that it's very nerve wracking for the private sector to come into a government conversation without feeling like they, like I said, they're setting themselves up for some kind of enforcement action.

JAFFER: Right.

FOWLER: So, the big challenge is how do you create an environment, relationships where people can do that? Now Treasury is doing that in I think a lot of really wonderful ways right now. They have set up an office of innovation at FINCEN. I think that should be expanded, I think we should do even more of that. My understanding is that the discussion on crypto assets and the travel rule and how to implement that has been an extremely productive public-private sector discussion and that's something that's really being developed in real time. So those things are really important and they're really hard to do. We need to do more of them and not just in the United States but globally.

JAFFER: Yeah. So, Danny, you and Juan do this day to day as does Jen in her job at Brunswick and you guys at FIN. Is your sense that this relationship with the private sector is getting better? That there is a more comfortable zone in which the private sector can come into Treasury and say, look, we want to understand better how to navigate this. We have some concerns, what we don't want is enforcement action. Is there such a thing as a safe zone and the ability to have that conversation, or is that still a challenge and do we need legislative authority or policy changes to make that happen and build those relationship?

GLASER: Well I think yes and no. I think everything that you said is true. I think we're getting better at it, I think that it's hard and I think that the private sector is cautious in its relationship with the government sometimes for good reasons, sometimes for reasons that I don't think are quite as plausible. The fact of the matter is that the private sector did not take AML/CFT seriously enough until really until about 10 years ago when there began a series of very aggressive regulatory and, in particular, DOJ, Department of Justice-led actions against some of the largest banks in the world, including banks in the United States. And you had a situation in which you had virtually every major global financial institution in the world was operating under a deferred prosecution agreement from the U.S. Justice Department. And the question you had to ask yourself at the time is because these are entities that are spending literally billions of dollars on compliance and they still can't avoid these enforcement actions.

So, where's the breakdown? Is there some problem with the law that makes it impossible to follow? Is there some problem with the way it's being enforced or they're being supervised? Or is there some fundamental problem with the way financial institutions are going about this? And I think frankly, that whole very cathartic moment for everybody involved in the AML/CFT world for that period of time about 10 years ago and really extending until today has been trying to work through those questions and there's a lot of ways to work through those questions. And I think that there's a lot of truth in all aspects of it. I think that the laws and the rules themselves could be improved in a variety of ways. But at the end of the day, the reason why this is taken seriously in the private sector is because they know that the Justice Department and the Fed and the SEC take this stuff quite seriously.

So yeah, I do think that we need to draw everyone together and I also think, and Jen alluded to this in her response. One of the ways we're going to get through this is through technology because right now, and when I talk about how the laws need to change and evolve, right now we're dealing with a 20th century AML/CFT regulatory regime and we're almost a quarter of the way through the 21st century and there's been a lot of technological developments over this past quarter century and we're still dealing with a system that relies on written out –

JAFFER: SARs.

GLASER: Narratives based on what somebody sees. And then you think about the tremendous opportunities that technology provides us right now in terms of improving that, in terms of making it more efficient for financial institutions to comply with these rules, for them to be better at it, for them to do it more cheaply. For them to provide more useful information and for then the authorities to actually be able to take advantage and use that information. This is all stuff that's on the table now and it's a really exciting time. And that's where I see this whole discussion leading. Rather than looking back at what happened at a particular financial institution in 2009, and wondering why this person did this thing, it's an interesting question but I think that the real interesting part of this discussion is where is this going and the answer – and you don't have to be a magician to see this. The answer is that the technology is going to be at the end of the day what transforms this system and it's already starting to do that.

JAFFER: Yeah. Jen, to Danny's point about getting ahead of new trends that are taking place and maybe utilizing technology and the like. Sergio Rodriguera from the audience asks the question, served in the Bush Administration, about whether fraud is overtaking AML as a potential problem for the financial system. He notes that obviously a lot has happened just in recent months and weeks and months with COVID and the increase in fraud. Do we think that it still remains a write-off for financial institutions or has it reached that catastrophic risk versus attritional risk when it comes to fraud versus AML in this space. And if the answer is yes, should we expect to see, to Danny's point, more potential regulatory action in this space and if so, what do we do about that?

FOWLER: Well I think COVID is ushering in a whole new scale of fraud and it remains to be seen. I think this is where again, to go back to Treasury and what value Treasury and TFI offer. TFI has been doing national risk assessments, and we did one and then we did another and then another in rapid succession. They're accelerating how frequently they do these risk assessments and I think they're incredibly useful for getting at questions like this and that's part of the great thing about having TFI setup the way it is. It also speaks to the importance of having a center of gravity in the U.S. government so that it's not just Treasury's point of view, but they're bringing together law enforcement and all of the data to try to determine really where we are with risk. And that's not just important for fraud versus money laundering, it's important for all of the emerging risks that we're looking at.

And getting at questions that you posed I think at the beginning here. What is the real risk for something like cryptocurrency? How large of a risk is that compared to frankly, large U.S. financial institutions that are doing global payments? That's where our risk assessment comes in and it's really information for everything. And again, speaks to the importance of maintaining that capability at Treasury and the beauty of having Treasury setup that way.

JAFFER: Yeah, no. I think that makes a lot of sense.

GLASER: Can I jump in on that question that Sergio asked? And shout out to Sergio. Sergio is another proud member of the Treasury alumni fraternity. But look, I don't think it's a question of whether fraud is overtaking AML as a risk. Fraud has always been an enormous risk to financial institutions. The difference has been that fraud affects the bottom line of a financial institution in a much more fundamental way that AML/CFT did. So financial institutions have always dealt with the risk of fraud differently from the risks that AML/CFT presents because it approaches from a very bottom line perspective which actually has caused financial institutions over the years to be incredibly forward leaning and incredibly creative in fighting fraud and in availing themselves of technology. Anybody who has a credit card who gets calls from their credit card company about potential fraud alerts knows. It's actually unbelievable how they're able to figure this stuff out.

I think that one of the challenges is how do we get the financial community to think about and to apply technology in the case of AML in the same way that they've always applied it in the case of fraud, and how do they manage the risk of AML/CFT in the same way that they've always incorporated thinking about managing the risk of fraud into the fundamental way that they approach their businesses.

JAFFER: Yeah, no. I think that's a great point. Speaking of this issue of how you think about risk and how you integrate it in. Ian Talley asked a question about sanctions and how they operate and Juan, I want to direct this to you but I'd welcome Jen and Danny's thoughts on this too. Ian raises the questions of is it really about sanctions working? Is it really that black and white, right? Is there an argument in a lot of ways, the way that we've implemented sanctions for example, in the Trump administration against Iran or Venezuela or North Korea that it's going to serve a future administration whether that's Biden or a second Trump administration? That's serving their financial goals, right? Is there a way to think about the creation of the political pressure even if the sanctions aren't fully effective that it still serves overall foreign policy goals? Are we thinking about this or perhaps are my questions thinking about this in too binary a way?

ZARATE: Absolutely, yes Jamil. I think it's a great question and a great framing that you gave because I think we often think about sanctions and related financial measures in far too binary a way and by that, I mean three things. One, sanctions can be implemented to try to achieve a variety of goals, right? It's not just maximalist regime change, it's not just strategic behavioral change, it's not just interrupting flows of funds, right? It can be a whole range of things that you're trying to achieve, and we would often say in Treasury, and this almost became our mantra, was we are trying to make it harder, costlier, and riskier for America's enemies to raise and move money around the world. That was the bottom line. And if you affect them strategically in concert with other tools and pressure and incentives and you change their behavior, then that's a home run.

But sanctions can achieve lots of things that aren't the maximalist goal in a policy debate or strategy and very often can't on their own anyway. So that's one layer of this which is we've got to be clear as to what we're trying to achieve, we've got to be humble about what sanctions can do on their own and we've got to measure it the right way. The second point is a great one that you've made, Jamil, which is sanctions often form part of a broader strategy that's not just about the measure taken today but it's about the diplomatic messaging, it's about the norm setting, it's about a whole range of things that are triggered from that action. And for those, I'd often say, look, sanctions don't work, what are they useful for, or whatever. The targets of sanctions care a whole lot about being sanctioned and so you may, look, they don't really matter, or they don't have money in the US or you can't measure the results. The reality is, as Danny said in the Iran context, it becomes the singular issue that they want to talk about.

In the North Korean context when we use section 311 against Banco Delta Asia and you saw the collapse of that bank, the freezing of $25 million of North Korean assets. All they wanted to talk to Danny Glaser about was getting that $25 million back and getting access to the financial system. All they wanted to talk about, in the context of the nuclear talks. So, we can say, look, they don't matter, they're symbolic, whatever. But they matter to the targets and they actually have impact.

Final point, Jamil, and this is one that I've been writing about more and I think it's really important, is that the targets of these tools, especially those that apply asymmetric strategies around the world like Russia with their hybrid warfare strategies or the North Koreans or even terrorist groups, see our sanctions and our tools fundamentally as an element of warfare.

So, there was a reason why the title, *Treasury's War*, I think was apt. Not so much because we view it as warfare but because the targets view it as warfare, and I think the further we move into these asymmetric domains and conflict, the more that this domain is going to be seen as a form of warfare. It already is by countries like Russia and China. The Russians themselves when congress threatened to de-SWIFT the Russian banks, the Russians themselves said twice, "We will consider this an act of war if you do it." So, we're already in that mode.

JAFFER: Yeah, no. It's right to think about this that way because that's how that's perceived in the world. If we're going to utilize these tools and the economy is so critical to a nations' functioning, right? We have to recognize that some nations will see that as exactly just that, a tool of warfare. So, Jen, I think you're going to get the last question. It's actually a combined question from our audience. From Daniel Flaherty and Michael Skol. It's a question about our approach to sanctions. Obviously one of the theories about why the Iran sanctions were so effective was, it was really that combined multilateral approach that we bought to bear. The combined UN Security Council sanctions that really put pressure on and frankly it included our adversaries in Russia and China bringing to bear pressure. And then, so a related question was, the Biden-Harris team has indicated they're more likely to return a more multilateral approach. They've also indicated that we might move towards our prior policies on Iran and China. Do we worry that sanctions might be cut back prematurely for example, on Venezuela and the like? So, two questions combined to you Jen and last word to you on this issue.

FOWLER: Jamil, sorry. Tell me again what is the question.

JAFFER: The two questions, one from Daniel Flaherty are do we see us moving in more of a multilateral direction and is that the right thing to do? Is that what was really effective on Iran? And then do we worry that as we move to a more multilateral approach for places where there's not consensus, Venezuela, Iran, China, might we see a weakening of our policy there?

FOWLER: Yeah. I think that again, it feels like kind of a binary choice that is not truly binary. As I said at the outset, I think it's fundamental to the success of sanctions that we take a multilateral approach and that requires a lot of work. A lot of groundwork and a lot of the willingness to really strategize with other countries and understand where they're coming from and how they're coming to the table, what their issues are and work through things. I don't mean to sound trite, it's really hard to do that and come out of a place where you can have a combined approach, a multilateral approach but it's fundamental.

I think as long as the U.S. is able to go to countries with, and I'm going to sound really old school about this, really conduct-based approaches. So, we're not just going and saying, we need sanctions on Venezuela, we need sanctions on X country, or whatever. We have a rationale that resonates, that makes sense. You can build support for that. Not just with other governments but you build support for that in the private sector and you increase the chance that these sanctions are going to be well implemented. So, I don't think it's a binary choice, I think it's really about how do you come to a specific problem, what are U.S. interests and what is the case that we're making? Are we making the right case, are we making a case that resonates and that we can get support for?

JAFFER: Yeah. Jen, great points and I think a great way to end this terrific conversation. Thank you to you Jen, Juan, Danny for your leadership on these issues. Thanks for being here today. To the audience, thanks for joining us. We have over 160 people with us today. A lot of folks from NSI, a lot of other folks. Really appreciate it. For those of you who are interested in following up with us and hearing more about this issue, we will have another session probably in early December. Please keep an eye on the websites. Our website, NationalSecurity.gmu.edu but also our partners' websites at CNAS.org, CSIS.org, and FDD.org. Really appreciate everybody being here, thanks to our partners for joining with us and thanks again to the panel. Awesome conversation. Have a great afternoon ya'll.