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Unfunding Terror - Perspectives on Unfunding Terror (Panel One)

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Commentary by Jimmy Gurulé*

Until recently, I served as Under Secretary of Enforcement at the Treasury Department. I do not know how many of you are familiar with that particular office and its responsibilities, but they are quite broad and diverse in coverage. As Under Secretary of Enforcement, I was responsible for overseeing the U.S. Custom Service; the U.S. Secret Service; the Bureau of Alcohol, Tobacco, and Firearms; the Financial Crimes Enforcement Network, which obviously does intersect quite closely and regularly with the financial community; and the Office of Foreign Assets Control.

I was sworn into office in August 2001, a month before September 11th. I assumed the responsibilities as Under Secretary of Enforcement with a very different set of objectives in mind, vis-à-vis, what I spent the last year and a half doing. I assumed my new duties believing that I would be focusing my time and attention largely on anti-money laundering because I had an interest in the area for quite an extensive period of time, going back to my days as a federal prosecutor in Los Angeles. Within the Enforcement Office, I established a section on money laundering and financial crimes. There was no such office prior to my assuming the position as Under Secretary. I was also very interested in terrorism, and I was concerned about the lack of a coordinated response within the Treasury law enforcement agencies. I established an office on Terrorism and Violent Crime that was put in place prior to September 11th.

On September 11, 2001, the President returned to Washington, D.C. from his trip to Florida to address the Nation and declare war against Al-Qaeda and terrorism. There are two points in his remarks that struck me. First, he stated that this would be an unconventional war fought on multiple fronts, beyond merely the military front. He also stated that this would be a long-term effort and undertaking. He said victory would not be declared in months but in years, and that this was an effort we would be engaged in for the foreseeable future and perhaps one that even our children would witness.

On September 24, 2001, I was at the White House when the President announced the signing of Executive Order 13224. In his remarks, he stated,

We will direct every resource at our command to win the war against terrorists, every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence. We will starve the terrorists of funding.

The President directed Treasury Secretary Paul O'Neill to lead the Nation's war against the financing of global terrorism.

In my remarks this morning, I would like to pose four very basic and fundamental questions with respect to the U.S. Government's strategy against

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terrorist financing and attempt to answer those questions. First, why have a counter-terrorist financing strategy? Why go after the money? As you know, the critics maintain that terrorist acts are cheaply financed. After all, how much money does it cost for an individual to strap explosives to his person, walk into an open market, detonate them and cause the death and destruction of dozens of innocent civilian lives? Second, what is the goal; what is the purpose of the U.S. Government's strategy; and, what is the ultimate objective? Third, what is the strategy; what are its various components? Finally, has the strategy been successful; what are the results and how do we measure success?

Let me begin with the first question, why go after the money? It is very simple. Terrorists need money to finance training, to recruit members to the Al-Qaeda cause, to support global travel, to support and sustain global communications, to purchase instruments of terror, including biochemical and other weapons of mass destruction, and to sustain and support terrorist cells. As you know, Al-Qaeda has sleeper cells in as many as sixty countries throughout the world. Further, we have to keep in mind that Al-Qaeda's ambitions are global. This terrorist organization has its sights set not only on targets in the United States but the Middle East, Southeast Asia and Eastern Europe. Specifically, I am referring to Indonesia, as we have seen most recently with the terrorist attacks in Bali, Indonesia, as well as the Philippines.

Second, with respect to the goal and the purpose of the government's terrorist financial strategy, it is preventative in nature. Clearly, after September 11th the focus changed. It is no longer enough to bring to justice the perpetrators of terrorist crimes. Instead, the goal must be to prevent terrorist attacks that kill innocent people. As you know, the terrorist attacks of September 11th resulted in the killing of approximately three thousand people. Therefore, it is not enough to merely prosecute the perpetrator of such heinous acts after the fact. The United States strategy intends to identify, disrupt, and dismantle the financial infrastructure of Al-Qaeda, to make it more difficult and more risky to raise money and to transfer money globally. Additionally, the goal is to shut off global access to financial institutions to organizations and make it impossible for Al-Qaeda sympathizers to move money through traditional banking systems.

Next, what is the strategy? It has multiple components. I want to focus principally on the blocking and designation components. On September 11th, there was no comprehensive, coordinated strategy to deprive terrorists of funds. While some efforts had been undertaken during the Clinton Administration with Executive Orders and U.N. Security Council Resolutions, I think it is fair to say that it was not a priority for the Clinton Administration. Obviously, immediately following September 11th there was a heightened sense of urgency to respond to the terrorist attacks and prevent future acts of terrorism. The President wanted action quickly and decisively. The components of this strategy were pieced together in September and October of 2001. The first major component involved signing Executive Order 13224, which authorized the blocking and freezing of terrorist bank accounts. In late September 2001, the United Nations adopted U.N. Security Council Resolution 1373, which requires member states to block

terrorist funds “without delay.” Additionally, in October 2001, the Financial Action Task Force (“FATF”) was enlisted to assist in these anti-terrorist financing efforts. Towards the end of October 2001, an extra plenary session of FATF was held in Washington D.C. to determine how to leverage the resources of this important international organization to focus on both anti-money laundering and terrorist financing. Finally, in October 2001, President Bush signed into law the USA PATRIOT Act. It is the most significant legislation dealing with money laundering since the enactment of the Money Laundering Act of 1986. So we moved quickly, decisively, and on multiple fronts to combat the funding of terror.

President Bush included in Executive Order 13224 the powers given him under the International Economic Emergency Powers Act (“IEEPA”), which authorizes blocking and freezing bank accounts of foreign nationals and foreign entities located in the United States, where there is reason to believe the funds are being used to finance terror. Acting under Executive Order 13224, the U.S. Treasury Department designated twenty-seven individuals, entities, and organizations as terrorist financiers. The Office of Foreign Assets Control (“OFAC”) published these names on their website requiring financial institutions in the United States to determine whether or not they had any accounts in the names of these twenty-seven individuals and entities. If so, the financial institutions were mandated to take action to block and freeze those accounts. These individuals were denied the ability to do business in the United States. Since September 24, 2001, the list has expanded to include over two hundred sixty names resulting in \$125 million being frozen, domestically and internationally.

Next, I would like to address the international implementation of this strategy. To be effective, the effort to deprive terrorists of funds must be global in nature. The challenge was to develop and implement a strategy of global reach. How do you cause foreign financial institutions to take actions simultaneously with the United States?

The vehicle for accomplishing this goal was U.N. Security Council Resolution 1373. This resolution mandates that member states prevent and suppress the financing of terrorist acts, prevent the provision and collection of funds for terrorist use, and block, without delay, funds and other financial assets and economic resources of terrorists and their supporters. Now that we had domestic and international authority to block terrorist funds, it was necessary to put in place a process that bridged these two important authorities.

The process developed was relatively simple. An inter-agency group was established consisting of representatives from the Treasury Department, the Department of Justice, the FBI, Customs Service, the CIA, the National Security Council, and other relevant federal law enforcement agencies. The Office of Foreign Assets Control was tasked with analyzing public-source information as well as other evidence to identify individuals that are part of the Al-Qaeda financial network. Individuals determined to be part of the Al-Qaeda network, sympathetic to the Al-Qaeda cause, or raising money to support Al-Qaeda were

added to the Treasury Department's list of assets to be blocked. The inter-agency group would meet to discuss the proposed names, review the evidence and discuss other policy considerations. For example, if the Department of Justice and the FBI had an ongoing criminal investigation, to publicly designate the name of the individual could have a disruptive effect and undermine the investigation. We were constantly working to resolve competing interests and reach unanimity on the action to be taken.

The next challenge involved developing a process to facilitate international cooperation and ensure that the international community was moving in tandem with the Treasury Department's blocking actions. We developed this process in conjunction with the U.N. Sanctions Committee, the international body responsible for implementing U.N. Security Council Resolution 1373. Under the procedures developed, the U.N. Sanctions Committee would be notified of the Treasury Department's intention to add someone to the U.S. list. The names of those individuals and entities would be forwarded to the Sanctions Committee forty-eight hours in advance of public designation. If no member of the U.N. Sanctions Committee objected, then the name or names would be added to the U.N. Sanctions Committee list. Once a name was added to the international list of financiers, all of the members of the United Nations were obligated, as a matter of international law, to take action to block the accounts and assets, without delay. Member States would then send out notices to their domestic financial institutions to block the assets of individuals on the international list. Of the \$125 million that has been blocked since September 24, 2001, approximately \$80 million have been blocked internationally.

To highlight what I consider to be unprecedented international cooperation, let me cite a couple of examples. First, with respect to the Saudis, it has been a battle, but we are making progress. On March 11, 2003, the United States and Saudi Arabia jointly designated the Somalia and the Bosnia Herzegovina branches of a Saudi based charity, Al-Harmain, because the Islamic charity was supporting Al-Qaeda. The headquarters of Al-Harmain are located in Saudi Arabia. On September 9, 2002, the United States and Saudi Arabia jointly designated Wael Hamza Julaiden, an associate of Osama bin Laden, and supporter of Al-Qaeda. Most recently, the Saudi government publicly acknowledged that they have a problem regulating the movement of money through charities. To address this problem, the Saudis have established an oversight commission to impose regulations on and enhance the transparency of Saudi charities. However, the challenge for the Saudis is to make sure that its oversight commission follows through with its stated objectives.

Another example of international cooperation involves the G-7 Nations. On April 19, 2002, the G-7 Nations took action to block ten supporters and financiers of terror. Additionally, in August 2002, the United States and Italy designated eleven individuals and fourteen entities as financiers of terror. Most recently, in response to the attacks in Bali, Indonesia, the United States and approximately fifty of its allies took action against Jamaah Islamia, a terrorist organization in Southeast Asia.

The success of the strategy has been difficult to measure. There is no way of knowing with any degree of certainty how many millions of dollars or hundreds of millions of dollars are available globally to support terror. Therefore, it is difficult to determine whether the \$125 million in terrorist assets frozen to date represents a significant percent of available assets. At the very least, it is reasonable to say that the anti-terrorist, anti-financing strategy has prevented \$125 million from going to terrorists to finance and underwrite future acts of terrorism. That is particularly significant because we know that the terrorist attacks of September 11th cost between \$300,000 and \$500,000. So the amount of money frozen to date is significant.

It must be emphasized that the terrorist financing strategy is preventative in nature. While the amount of money blocked is important, it does not tell the whole story. In some cases, the action taken has resulted in dismantling entire global financial networks. For example, U.S. action resulted in blocking over \$1 million in terror related funds from passing through Al-Barakaat, a-Hawala or alternative remittent systems. However, Al-Barakaat was believed to be funneling as much as \$60 million a year to support terror. So, the fact that we blocked \$1 million in terrorist related assets does not accurately reflect the impact of those efforts, because a financial channel moving upwards of \$60 million a year was dismantled. As the result, Al-Qaeda has been forced to find alternative means for moving money globally. Al-Qaeda is a very resilient and adaptable organization. While U.S. efforts have made it more difficult and more risky for Al-Qaeda to move money through traditional banks, it is seeking non-traditional means of moving money. Additionally, the anti-terrorist financing strategy has had a deterrent effect. Individuals are now less willing and reluctant to donate money to Al-Qaeda and other terrorist organizations for fear that their names will be added to the U.S. list of terrorist financiers, and their bank accounts will be frozen in the United States and abroad.

One last point that I would like to comment on is the USA PATRIOT Act. The USA PATRIOT Act was signed into law on October 26, 2001. The USA PATRIOT Act has had an impact on financial institutions, both domestically and internationally. Let me just touch on a couple of the key financial provisions. Section 313 prohibits U.S. banks from maintaining correspondent accounts for foreign shell banks with no physical presence in any country. Section 313 also requires financial institutions to take reasonable steps to ensure that foreign banks with correspondent accounts do not themselves maintain correspondent accounts for shell banks.

Additionally, Section 326 requires U.S. banks to issue regulations establishing minimum standards for identification of customers opening new accounts, the "Know Your Customer Rule." Moreover, Section 352 requires all financial institutions to develop an anti-money laundering program, as well as assign a person to monitor the implementation of the program. That person is also responsible for ensuring that employees are trained to identify suspicious transactions that may be suggestive of money laundering.

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Finally, Section 356 requires securities brokers and dealers to report suspicious transactions. This provision extends the suspicious activity reporting requirements to securities brokers and dealers. These are just a few of the key provisions of the USA PATRIOT Act intended to prevent money laundering and deny terrorist supporters access to the system banking system.

One of the current challenges is to maintain the sense of urgency with our international allies that existed immediately following September 11th. My fear is that this sense of urgency is waning, that our allies have become preoccupied with other issues and priorities, and therefore are less committed to supporting our anti-terrorist financing efforts. Finally, the federal government needs to do a better job of coordinating its interagency response to terrorist financing. This includes efforts to enhance information sharing between the Department of Justice, Department of Treasury, the CIA, and other agencies. Once again, thank you for the invitation and the opportunity to address this audience.