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Assembling Space/Time in Financial Warfare

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Abstract

This chapter examines the ways in which so-called 'financial warfare' positions banks and financial institutions on the frontline of security practice, amounting to what I call a finance-security assemblage. In the pursuit of terrorism financing, money comes to be considered as a 'tool of combat.' This chapter examines the interconnections between finance and security in the post-9/11 context, and analyses the novel spatial configurations that have accompanied the pursuit of terrorist monies. It focuses on the case of banking conglomerate HSBC, which incurred a record fine for circumventing US OFAC sanctions and prohibition. Unpacking this case shows how jurisdiction in this domain is articulated as transactional rather than territorial. It demonstrates how financial warfare profoundly impacts financial practices, shifting banks' risk calculations and client profiling, and rerouting global financial flows.

Keywords

Terrorism financing; financial security; assemblage; derisking; HSBC

"Money is always and everywhere the sinews of war: terrorists need vital funds to buy weapons, vehicles and arsenals. International action to counter terrorist financing is a bastion of peace and security in the world"

Michel Sapin, French Minister of Finance, in the wake of the Charlie Hebdo attacks, January 2015.[1]

Introduction: Banks on the Frontline

In February 2015, Paris-based Financial Action Task Force (FATF) released a report on the funding of Islamic State in Iraq and the Levant (ISIL). Created in the 1990s as an inter-state forum to tackle money laundering, the FATF was given a new life when it was charged with pursuing terrorism financing after 9/11. Formally, compliance with FATF recommendations is voluntary and best-practice-based. However, in practice, FATF members work hard to achieve positive scores and reports on their activities from this increasingly important forum (Heng and McDonagh 2008; Huelsse and Kerwer 2007). FATF has incorporated extensive terrorism financing recommendations among its money laundering guidance to states, and the aim of the report about ISIL was to design further strategies for "disrupting and dismantling" ISIL financing (FATF 2015, p. 32). The report advocates active use of financial sanctions against (suspected) foreign fighters and disrupting financial flows to ISIL territories. Banks and financial institutions are required to monitor and report funds potentially linked to ISIL and to the travel of foreign fighters.

Geographical markers play an important role in the FATF document: while the report does not formally propose monitoring or reducing transactions to Syria and Iraq as territorial entities, banks are warned especially of transactions to and from "conflict zones or areas where ISIL operates" (FAFT 2015, p. 19). All 17 anonymised 'case study' examples in the report discuss examples of money transfers, travel and cash carrying to Syria, Saudi-Arabia and Turkish border regions. Case examples in the report place special emphasis on the dangers of funds being diverted from charitable collections (in, for example, Italy and Canada) to "aid terrorists and their families" in the Syria-Iraq-Turkey border regions (FATF 2015, p. 20). The report concludes by noting the "diverse geographic scope of the terrorist financing risk" associated with ISIL, and the need to develop further strategies to "stop, restrain and enable confiscation of cash when reasonable grounds for suspicion exist of terrorist financing" (FATF 2015, p. 40).

Two elements of the FATF report frame the more general concerns of this chapter. First, the report positions banks and financial institutions on the frontline in the fight against ISIL. Banks have to detect and disrupt transactions possibly related to ISIL oil and antiques smuggling, as well to financial support from family and friends to individuals in contested territories in Syria and Iraq. This gives banks new complex responsibilities to freeze and report funds. Second, the spatial imaginaries in the report grapple with what is thought of as a dispersed and diffuse threat. While notions of danger in the war on terrorism are certainly territorial (Elden 2007) – focusing explicitly on Iraq, Syria, Turkey – they are also constitutive of new, networked, understandings of danger (Coward 2009; 2013). The FATF report presents a complex geography in which charitable donations in Canada are thought to support violence in Syria; and ATM withdrawals at the Turkish-Syria border indicate potential travel of (what are now commonly called) foreign fighters. The FATF report on ISIL funding seeks to outline a strategy to filter and interrupt potentially suspicious transactions to a diffusely defined border region and along specific travel routes. What's left implicit in the report, however, is its equally important objective of continued facilitation of financial flows to other parts – and with other parties – of Syria and adjacent territories. In this sense, the politics of the FATF report is one of defining 'good' and 'bad' circulation, which is how Foucault typified the practice of *security*. Instead of a strategy focused on "fixing and demarcating the territories," the strategy of the FATF is one "of allowing circulations to take place, ... controlling them, sifting the good and the bad, ensuring that things are always in movement … but in such a way, that the inherent dangers of this circulation are cancelled out" (Foucault 2007, p. 65; also Amoore and de Goede 2008).

The 2015 FATF report follows a longer but relatively invisible intensification of what has been called "financial warfare" (Zarate 2013) or the "weaponisation of finance" (Holodny 2015). Juan Zarate, former US Assistant Secretary of the Treasury, calls countering terrorist and illicit financial flows a "new form of warfare," whereby private-sector interests and the banking sector are leveraged to "uncover the financial footprints and relationships of the terrorist network" (2013, p. 29). For Zarate, it is a way to harness the power of US financial institutions in the service of security interests and the global war on terror. Financial warfare positions banks and financial institutions on the frontline of security practice and fighting terrorism. It carves out a new role for money and finance in security, whereby money comes to be considered as a "tool of combat" (Gilbert 2015a, p. 205; also Gilbert 2015b). At the same time, financial warfare profoundly impacts financial practices, and has the capacity to shift banks' risk calculations and reroute international money flows.

This chapter examines the interconnections between finance and security in the post-9/11 context, and analyses the novel spatial configurations that have accompanied the pursuit of terrorist monies. I develop the term finance/security *assemblage* to analyse the uneasy alliances between banks and financial institutions on the one hand, and security authorities including intelligence agencies and police on the other, that are emerging here (also de Goede 2012). Countering terrorism financing does not so much erect new national borders within the global juggernaut of financialisation – as it has sometimes been understood (Biersteker 2004) – but enacts reconfigurations of regulatory space/time, that impact financial practices and enable security decisions in particular ways.

This chapter focuses on the spatiality of financial warfare, and analyses the way in which US authorities have rearticulated their jurisdictional reach in recent investigations to encompass *all* dollar-denominated transactions globally. Luiza Bialasiewicz and colleagues have suggested that security spaces can be understood as "imaginative geographies," articulated, carved out and performed "by a variety of security advisers and popular academic commenters" (Bialasiewicz et al 2007, p. 409). The production of space, in this analysis, functions through "citational practices" whereby state-based geographical imaginaries resonate with popular culture and academic commentary (Bialasiewicz et al 2007, p. 409). Space, in this sense, involves the work of *spacing*: it is "an effect of practices of representation, valorization and articulation" (Gregory 2004, p. 19; also Gregory and Pred 2007). This chapter hones in on the recent investigation of British banking conglomerate HSBC by the US Senate and the US Department of Justice, and interrogates the performativity of space in this case. The new geographies of financial warfare do not just have an impact on banks' compliance practices, but also influence banks' risk calculations concerning un/viable transactions, clients and business lines. The chapter starts with an analysis of post-9/11 financial warfare as the development of new spatio-temporal modes of security intervention, and puts forward the notion of 'assemblage' as a helpful analytical starting point. It then goes on to analyse the configurations of risk at work in new pre-crime modes of suspicious transactions detection, and focuses on recent debates concerning preemptive account closures in the UK.

Finance/Security Assemblage

Though the political urgency of pursuing suspect money flows and potential financing of terrorism has increased significantly since September 2001, its juridical history predates the 9/11 attacks. In 1999, the United Nations adopted the Convention on the Suppression of the Financing of Terrorism, which obliges member states to criminalise the act of 'terrorist financing', defined in a broad sense as the wilful provision or collection of funds or assets ("of every kind")

> with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out … Any … act intended to cause death or serious bodily injury to a civilian … when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.[2]

In this manner, the Convention developed a *de facto* definition of terrorism –which had been controversial at the UN level throughout the 1970s and 1980s. The UN Convention is said to have created a veritable "paradigm shift" in its redefinition of terrorism *beyond* violent acts, enabling a broad criminalisation of financing and facilitating acts (Lehto 2008). Financial institutions and intermediaries were newly charged with identifying transactions potentially linked to terrorism, policing remittances and judging the legitimacy of wire transfers or ATM transactions. If the pursuit of money laundering focused on big cash amounts and post-crime transactions, the new responsibilities for banks and other financial institutions in the context of pursuing terrorism financing focus on identifying small, mundane transactions *potentially* linked to future crimes (Malkin and Elizur 2002). In other words, the focus of banks and regulators is increasingly on relatively small transactions, understood to be "pre-crime" (Zedner 2007).

When, in the immediate aftermath of 9/11, transnational money laundering and counter-terrorism financing regulation were propelled to the top of policy agendas, some observers celebrated a renewed state sovereignty in the globalising market place. Thomas Biersteker (2004, p. 73), for example, welcomed the "sea change in the tolerance of financial re-regulation across the globe," while William Vlcek (2008) declared a 'Leviathan Rejuvenated.' However, a focus on the reassertion of sovereign statehood underplays the spatio-temporal complexities of the war on terrorism financing. Instead of an unequivocal resurgence of state sovereignty in the regulatory landscape, we observe new 'assemblages', through which administrative governmental power is allied with private companies. This includes, for example, placing banks and other private money transfer companies like Western Union and SWIFT on the frontline of security practice. These companies are both newly empowered to deem transactions suspicious and to block them, and uneasily positioned to perform as quasi-official security agencies.

Elsewhere, I argue that countering terrorism financing is perhaps less about cutting off financial flows to terrorists, and more about enabling new spatio-temporal strategies of security intervention (de Goede 2012). The effectiveness of countering terrorism financing is disputed and difficult to measure (e.g. Deloitte 2011, p. 95; Levi 2010). Records on disrupted plots and monies seized are usually not public. Very recently, FATF has started to use successful court convictions as a measure of effectiveness when evaluating member states. However, despite its contested efficacy, very real power mechanisms are at work in the name of countering terrorism financing and financial warfare more broadly. For the UK Treasury (2007, p. 10), for example, "Financial information has a key intelligence role," because it allows law enforcement to

- *look sideways*, by identifying or confirming association between individuals and activities linked to conspiracies, even if overseas – often opening up new avenues of inquiry; and
- *look forward*, by identifying the warning signs of criminal or terrorist activity in preparation (emphasis in original).

The effect of this logic is to extend the security apparatus into the domain of everyday life by broadening the *space* of security (looking sideways) and extending the *time* of security (looking forward). The war on terrorism financing broadens the space of security because it can criminalise associations, links, or relations. It moves the "lines of sight" of security practices toward the support networks of potential terrorists (Amoore 2009), including a persistent and controversial focus on charitable organisations and donations thought to hold propensity of supporting violence and radicalisation (Howell and Lind 2009). In addition, pursuing terrorist monies extends security across *time* because it enables preemptive action on the basis irregular risk profiles and suspect networks. For example, FATF (2015, p. 40) calls on its member states to create "legal and operational frameworks to stop, restrain and enable confiscation" of financial flows "when reasonable grounds for suspicion exist of terrorist financing." The notion of reasonable suspicion here functions to enable the identification and disruption of transactions that inscribed with the intention to support potential future violence.

If the pursuit of terrorist monies creates new spaces and new time horizons for security intervention, what does this mean for our understanding of financial geography and power? Emily Gilbert (2013, p. 56) has raised the question of the spatial dimension of the pursuit of terrorist monies: "Are the geographies that emerge simply reinforcing predictable characterizations of risky geographies? ... Are all countries equally interested and capable of exerting extra-territoriality? How are other countries caught up in the regulatory net of [the] US [or the] EU?" Gilbert raises poignant questions about how financial warfare influences, shapes and reorients financial geographies of profit, risk and regulation. Conventionally, the geography of power in this domain is thought to emanate from the US. American initiatives concerning asset freezes, confiscations and regulations have been incredibly important in global counter-terrorism financing agendas (e.g. Biersteker and Eckert 2007; Warde 2007). However, this chapter proposes a shift in perspective, for at least two reasons. First, though we can safely say that the power of financial warfare overwhelmingly emanates from the US (but also the EU), this still says little about the configurations of power *inside* the US. As a focus on the HSBC case below shows, jurisdictional reach is not simply exercised, but is reworked and reconfigured in the name of countering terrorism financing. In a sense, we may say that the "US" is itself a mobile configuration – elements of which become (dis)empowered (Allen and Cochrane 2007; 2010). In this context, the power of the US Senate and the relatively little-known US Treasury Office of Foreign Assets Control (OFAC) are critically interrogated. Secondly, the power of financial warfare is enacted through complex alliances with the private sector, as has been noted above. This has important implications for how we understand geographies of power: freezing, reporting and confiscating are ultimately done by mid-level financial bureaucrats and within the private, commercial spaces of banks and financial institutions. These private actors do not simply *implement* policies, but enact them in ways that foster new directions and graft on novel (commercial) goals (Amicelle and Jakobsen 2016).

To start addressing the complex geographies of power in financial warfare, we can draw upon a rich literature that theorises financial practices as specific forms of time/space "imaginaries" (Pryke and Allen 2000). For Pryke and Allen, financial instruments such as derivatives should be understood as "monetized time/space" because they commercialise temporal uncertainties and geographical differences, allowing companies to hedge them (or speculators to bet on them) (2000, p. 282). Put simply, derivatives render the uncertain future tradeable in the present: their rationale is to "help make the future both profitable and secure" (Pryke and Allen 2000, p. 276). Financial instruments render liquid the potential price fluctuations of certain referenced securities or currencies across time and space. Derivatives make present possible futures: their objective is not to *predict* the future, but to generate a multiplicity of possible futures that are rendered liquid (and thus tradeable) in the present (Amoore 2011; Arnoldi 2004; Cooper 2010). As one of the 'fathers' of option pricing theory explains the reasoning behind his models for derivative valuation: "[T]he future is uncertain…and in an uncertain environment, having the flexibility to decide what to do after some of that uncertainty is resolved definitely has value. Option-pricing theory provides the means for assessing that value" (Merton 1998, p. 339). Thus, derivatives grant financial investors flexibility in the face of uncertainties (Tellmann 2014). For Pryke and Allen (2000, p. 282) this involves a "recoding of time-space" that amounts to a "new monetary imaginary."

These literatures problematise notions of 'global finance' as a coherent and hierarchically superior locus of power. There are complex ties between everyday, local monies and globally elongated networks of financialisation. These are not reducible to a separation of global financial macro-structures on the one hand, and intimate local monies on the other (also Leyshon and Thrift 2007). As Tickell points out, there is "something of a paradox" at work when, on one hand, the literature draws attention to the ways in which derivatives "flatten differences" and foster processes of financial market convergence, while, on the other hand, the same literatures draw attention to the enduring fact that "people inscribe money with values and meanings that vary over time and space" (2003, p. 118-119; also Leyshon 1997). For example, the intimate monies of remittance transfers tying diaspora families to their countries of origin, support a profitable and globe-encircling wire transfer industry, including companies like Western Union. According to World Bank estimates, recorded remittances to the developing world reached over US $400 billion in 2010, constituting "a vital source of financial support that directly increases the income of migrants' families."[3] As Viviana Zelizer (2005) has convincingly argued, understanding the "complex economic web" of remittance flows requires attention to the physical and social earmarking of monies, as well as moral boundaries drawn around budgets in everyday lives. In other words, the familial obligations of remittance-sending migrants cannot just be reduced to the 'micro'-element of a macro-economic aggregate, but are an important part of this economic configuration. Similarly, Langley (2008, p. 24) emphasises that researchers should resist "the temptation to simply explain developments within 'small' everyday networks in terms of an apparently 'bigger picture' of 'the financial system.'" Instead, what matters is whether and how financial practices are connected to longer or shorter financial networks "that continually have to be worked upon" (Leyshon 1997, p. 389).

In addition, a large body of literature problematises the assumption that offshore financial centers are geographically distant from the financial centers of London, New York or Tokyo. Though territorially distant and inscribed with cultural difference, the practice of 'offshore' is intimately connected to centers of global finance and the ways in which financial instruments are structured, negotiated and traded. As Susan Roberts (1994, p. 111) puts it succinctly, "Offshore financial centers are at once at the margins and at the centre of global capitalism's displacement of crisis" (see also Aitken 2006; Tellmann and Opitz 2011). In short, there are elongations, approximations and accelerations at work in capitalist financial geographies – and these are insufficiently captured through contrasting micro and macro 'scales' (Allen and Cochrane 2007, p. 1167). Offshore finance illustrates the problems posed by thinking about finance by pitting center *versus* margin.

I propose the notion of 'assemblage' as a way of conceptualising and critiquing the uneven geographies of combating terrorism financing, and unpacking its power effects across geographical distances and policy scales (e.g. Bennett, 2005; Anderson and MacFarlane 2011; Acuto and Curtin 2013). According Giorgio Agamben (2009, p. 3), an assemblage is defined through its heterogeneity, its strategic functionality, and its operation at the intersection of power and knowledge (1990, p. 3). An assemblage, then, is understood as "heterogeneous…political formation," that is mobile, emergent and dispersed – but that nevertheless excises considerable power in the name of its strategic functionality (Allen 2011, p. 154). Conceptually, it helps explain how the interplay of a heterogeneity of elements, including, for example "regulatory decisions, laws, administrative measures…[and] moral and philanthropic propositions," enables a certain strategic functionality and outcome (Foucault, quoted in Agamben 2009, p. 2). This interplay may at times lead to relatively stable formations and "well-ordered coherent wholes" (Bueger 2013, p. 62). However, such stability and order can never be assumed or taken for granted, but needs to be itself explained. Thus, in my analysis of the strategic outcomes of the pursuit of terrorism financing, I am not necessarily arguing that policies have hidden agendas that deviate from their stated objective. On the contrary, it is the cumulative effect of the finance-security assemblage doing "exactly what it says on the cover" that, taken together, produce these effects (Christophers 2012). This is what Jane Bennett (2005, p. 447) calls *the agency of assemblages*: "the distinctive efficacy of a working whole made up, variously, of somatic, technological, cultural, and atmospheric elements. Because each member-actant maintains an energetic pulse slightly 'off' from that exuded by the assemblage, such assemblages are never fixed blocks but open-ended wholes." Put differently, outcomes are conceived as "unstable cascade" rather than as causal effects (Bennett 2005, p. 457; also De Goede 2012: chapter 2).

The transnational landscape of laws, institutions, treaties and private initiatives that play a role in fighting terrorism financing, is complex, not necessarily transparent, and pulling in different directions. Considerable tensions, gaps and disjunctures persist within it, problematizing (too) coherent and powerful renditions of US hegemonic power or homogenous neoliberalism (e.g. Bennett 2010). In the war on terrorism financing, these tensions are important and long-standing. For example, within this regulatory complex a struggle persists over whether efforts should concentrate on *freezing* monies (with all its attendant juridical problems) or on *following* monies (deploying sophisticated financial data analysis to rendering visible suspect networks). A related tension – explored below – concerns the contingency of commercial opportunities made possible with fighting terrorism financing. Cleary, a strong transnational policy agenda to reregulate transnational banks and impose substantial compliance duties and fines is broadly understood as restricting the power of capital (rather than fostering it). At the same time however, important opportunities are emerging for (US-based) firms and financial data mining software companies.

The HSBC Settlement

In 2012, British-headquartered bank HSBC (Hong Kong and Shanghai Banking Corporation) concluded a settlement with US authorities, including the Department of Justice and the Office of Foreign Assets Control (OFAC), for 1.9 billion US$. The agreement followed a protracted investigation by the US Senate Committee on Homeland Security and Governmental Affairs into alleged money laundering and terrorist finance abuses at HSBC, and settled claims that the bank deliberately evaded US controls and sanctions. Under the terms of the settlement, HSBC acknowledges violations of the Bank Secrecy Act, the International Emergency Economic Powers Act and the Trading With the Enemy Act. The Senate Committee released a 300-page report, discussed at a public hearing in July 2012. It was announced as a landmark case for the US Department of Justice. As Assistant Attorney General Breuer said at the press conference: "Today represents the unit's largest case to date … We intend to continue ensuring that financial institutions do their part to protect the U.S. financial system against the threat of money laundering."[4]

I use the HSBC settlement as a starting point, an "individual [point] of leverage," to render visible a part of the complex and modulating finance/security assemblage that takes shape in the name of counter-terrorism financing (French et al. 2011, p. 812). The settlement is part of a general trend in which OFAC has asserted itself as an aggressive overseer of US sanctions policies (in particular in relation to the Iran sanctions), leading to truly massive fines for (mostly) European-based banks: ING paid US$619 million in 2012; Barclays, US$298 million in 2010; ABN Amro, US$500 million in 2010 and Credit Suisse, US$ 536 million in 2009. In 2014, BNP Paribas settled for an unprecedented US$8.9 billion over alleged evasion of sanctions against Iran.[5] I focus on the HSBC settlement as one lens on the geographies of contemporary financial regulation. By investigating the associations, analysing the debates, and uncovering the rationale of the settlement, we can bring into view the larger finance/security assemblage – not as a pre-existing structure, but as a modulating regulatory complex that itself requires explanation. When understood as part of a wider assemblage that fuses finance and security in the name of countering terrorism, we can see how the OFAC enforcement actions restrict and redirect global financial flows and structure financial risk practices.

I argue that the HSBC settlement and hearing develops and enacts an important and relatively novel spatial imaginary, that understands the reach of OFAC to be defined through what comes to be called 'US currency space.' The senators leading the investigation stressed the importance of US law in the context of anti-money laundering and terrorist financing, and the obligation of globally-operating financial institutions to obey US standards and sanctions. But, interestingly, the senators' notion of US law and proscription appeared *not* bound by US territory or conventional conceptions of territorial jurisdiction. Instead, they emphasized the application of US standards and sanctions to *all transactions denominated in US currency*. As Levin rightly points out, many financial transactions – in trade, investment and speculation – are dollar-denominated, through habit and calculative standardisation. A trade transaction between Singapore and Germany, or between Turkey and Japan, might be denominated in US currency. As Senator Levin (D-Michigan) said in his opening statement: "Global banks want access to US dollars because they are accepted internationally, they are the leading trade currency, and they hold their value better than any other currency" (US Senate 2012a, p. 1).

Jurisdictional space, in the formulation of the senators leading the HSBC hearing, is not territorial but transactional: it is defined through the flows and circulations of US-dollar denominated transactions. Here, US national jurisdictional boundaries are elongated and rendered flexible. The new geography of counter-terrorism financing regulations becomes the space of dollar-denominated transactions. It operates a form of power that (Foucault 2007, p. 65) calls *security*; and "that is no longer that of fixing and demarcating the territory, but of allowing circulations to take place, of controlling them, sifting the good and the bad, ensuring that things are always in movement."

In the Subcommittee's approach, a bank's use of US dollar-denominated transactions becomes a point of leverage to enforce US terrorist financing rules, even for banks that are not primarily US-based. In his opening statement Levin warned that a US-based bank office "can become a sinkhole of [terrorist finance] risk for an entire network of bank affiliates and their clients around the world playing fast and loose with US rules" (US Senate 2012a, p. 2). In this manner, he suggests that such banking affiliates, however small in relation to the wider banking conglomerate, should function as point of leverage for OFAC and DoJ to enforce US standards (for example with regard to sanctions). As became apparent during the Senate hearing, HSBC functions not as a single corporate unit, but as a global confederation of banks, a disjointed network of local affiliates created by its policy of buying up national banking networks. According to David Bagley (2012, p. 2), head of compliance at HSBC, the bank's corporate structure is like "an international federation of affiliates around the globe, many of [which] began as relatively small independent banks that HSBC acquired over the years." Some of these national affiliates and local branches functioned quite independently, with so-called 'know-your-customer' procedures based less on global compliance practices, and more on personal contact and local knowledge. Part of the problem with Mexican branches of HSBC, for example, which allegedly served as conduits for drug money, appeared to be that local branches functioned independently of the Mexican head office, and had incentives to bring in business. As noted during the hearings, the Mexican local branches operated with "a performance management system … inherited from the former Bital bank that was heavily focused on business growth rather than control … In addition … Mexico was a data-poor environment, making it difficult to verify the identities of customers" (US Senate 2012a, p. 23). The local Mexican branches functioned with models of trust and personal contact in assessing money laundering risks that in most countries have been superseded by electronic systems for detecting suspicious or abnormal transactions (Leyshon and Thrift, 1999; Maurer 2005).

The point here is not to dispute the money laundering concerns regarding Mexican transactions, but to render visible the workings of an assemblage in which local Mexican bank branches are disciplined into operating with particular modes of assessing money laundering risk and into complying with US sanctions lists. One of the concrete outcomes of the hearings was HSBC's pledge to "adopt and enforce the adherence to a single standard globally that is determined by the highest standard that we must apply anywhere" (US Senate 2012a, p. 51). It was also acknowledged, that often, "this will mean adhering globally to US regulatory standards" – meaning that, effectively, US standards and sanctions become enforced in local Mexican banks, through private sector decisions at the HSBC London head office (Larner and Laurie 2010).

The extra-territorial enforcement of US standards is of particular interest in relation to the OFAC sanctions lists that interdict financial transactions with listed persons and entities, and complement other terrorism blacklists, including the UN Security Council al Qaeda targeted sanctions lists and the EU terrorism blacklist (de Goede 2011; de Goede and Sullivan 2016). OFAC, established in 1950 to block Chinese and North Korean assets held within US jurisdiction, has come to play an important yet largely invisible role in the war on terror. Pursuant to Executive Order 13224 of September 2001, OFAC delivers targeted sanctions against named individuals and entities that are not always related to national sanctions programmes against so-called 'rogue states' like Iran and North Korea. The OFAC Specially Designated Nationals List plays an important role in the US wars on drugs and terror, and includes "individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific."[6] What was novel about sanctions lists after 9/11, including OFAC, but also UN and EU lists, is their focus on individuals and groups not tied to particular territories, but connected to al Qaeda and diffuse terrorist networks (Sullivan 2015). Nevertheless, significant differences remain in the precise composition of sanctions lists in different regions and, in particular, on the two sides of the Atlantic. There has been significant resistance from the European Court of Justice in recent years on the legitimacy of sanctions measures, for example in the case of Iran. In 2013, the ECJ annulled the sanctions against a number of Iranian companies and banks, partly because the European Council (which formally takes the sanctions decision in the EU) "has not proved the facts of which it accuses those four companies."[7]

The HSBC investigation by the US Senate includes detailed documentation of alleged circumvention of OFAC prohibitions by HSBC affiliates in Europe and the Middle East in transactions with Iran, Burma, Cuba, North Korea and the Sudan. For example, and as acknowledged in the settlement, HSBC cleared US dollar-denominated transactions for Iranian Bank Melli through a complex construction that made the transactions appear legitimate. It appeared that European-based affiliates of HSBC discussed with Bank Melli exactly how to fill in the required money transfer forms so that the transactions would not be subject to an OFAC filter check in the US. The complex details of the allegations are not relevant to our discussion. Rather, what is important are the differences in interpretation between the US senators and the HSBC representatives. While the Senate Committee interpreted this process as a deliberate attempt by the European affiliates to circumvent US standards and misinform the US-based HSBC affiliate, the HSBC head office claimed it was "ensuring that the payments were ... compliant [with US regulation] before they got to the United States" (US Senate 2012a, p. 36). The point of drawing out these interpretive differences is not to take sides between OFAC and HSBC, but to render visible the complex interpretive practices at work in securing financial circulations.

The geography of the finance/security assemblage thus is clearly one in which US power is exerted extraterritorially, as analyses of US power over capital markets would lead us to expect (e.g. Helleiner 1994; Germain 1997). However, rather than endorsing a generalised notion of US hegemony, I have drawn attention to the specific nature of this assemblage, which involves the little-known administrative office of OFAC (housed in the US Treasury), and operates not through state-to-state pressure but through fines and investigations of private commercial institutions operating within a broadly defined 'US-currency area.' The specific nature of this assemblage – working through administrative rules and the private sector – is important to its functioning: it involves the operation of power which is not strictly territorial but which is circulatory. This power, importantly, works through the decisions of private sector institutions, where security objectives become grafted onto business concerns. Indeed, it works intentionally to *circumvent* negotiation and bargaining at the nation-state level, especially regarding sensitive political decisions to blacklist institutions and sanction individuals.

Consider the example of transactions with Bank al-Rahji, which played an important role in the allegations that HSBC circumvented OFAC prohibitions (US Senate 2012b, p. Chapter IV). Al-Rahji is one of the largest private Saudi Arabian banks, and according to the Senate, a key founder of the bank "was an early financial benefactor of al-Qaeda and … provided accounts for suspect clients" (US Senate Hearing 2012a, p. 5). The Senate investigative report develops this claim with reference to the so-called 'Golden Chain' list of alleged financial backers of al Qa'ida. This list was found in 2002 in the offices of a Bosnian charity, the Benevolence International Foundation (BIF), itself accused of being a front for an al Qaeda financing network (US Senate 2012b, p. 194-5). The Report details a host of allegations against al-Rahji, based on information from the CIA and *The Wall Street Journal*, including its alleged support of extremists in Indonesia and Afghanistan (US Senate 2012b, p. 196-198; Simpson 2007). Al-Rahji became a client of HSBC when the conglomerate bought

Republic Bank of New York, where al-Rahji banked since the 1970s (US Senate 2012b, p. 203). Though HSBC classified al-Rahji as a high risk client, the relationship continued.

What is important to establish for my argument concerning the way in which the finance-security assemblage operates is not whether the accusations against al-Rahji are true or false, but first, that al-Rahji bank is not included in European, nor on the UK Treasury sanctions lists, where the HSBC transactions took place; and, second, that the accusations of terrorism financing by and through al-Rahji were not established before a court of law. Al-Rahji contested the allegations made in the *Wall Street Journal* and based on the Golden Chain in a 2003 libel case in the UK. The case came before the British High Court, which found in favour of al-Rahji and wrote in its judgement that, "The Golden Chain … is *said* to be a list of donors to Al Qaeda … [But it does not] emerge clearly what the meaning of the document is – whether, for example, it purports to be a list of donors or a list of those who might be approached for funding. Nor is it clear who created the document or when it came into existence" (High Court 2003, §23, emphasis in original). The *Wall Street Journal* was ordered to amend its article and published a letter by the al-Rahji Chief Executive Director in 2004.[8] The Senate investigative report does acknowledge that "neither the bank nor its owners have ever been charged in any country with financing terrorism" (US Senate 2012b, p. 202). Nevertheless, the Senate sought to enforce the prohibition of dealing with al-Rahji extraterritorially.

When reinserted into this longer historical narrative, we can understand the fine imposed on HSBC as a novel mode of leveraging US currency power in order to take action against the Saudi bank, effectively circumventing the UK libel Court decision. The novel imaginary of jurisdiction as transactional rather than territorial, pressured HSBC to sever business ties with a bank that is not on the EU sanctions list in 2010. The HSBC investigation enforced the prohibition against dealing with al-Rahji extraterritorially, even though the bank was not sanctioned in Europe or the Middle East, and helped cut it off from global financial circulations.

A final element to be drawn out about the finance/security assemblage, which, as we have seen, operates through extraterritorial administrative measures, is its market power. The pursuit of terrorist monies and active interference with banking activities can easily be seen as a constraint on market power and a reassertion of the state – especially because it signalled a "U-turn" for the Bush government, which prior to 9/11 pledged to resist global money laundering regulation (Warde 2007). However, this is not simply a state-versus-market story. A substantial market in professional compliance services, companies and software is fostered through Senate and OFAC actions. The market in compliance software, that helps banks mine for suspicions transactions and fulfil regulatory obligations, has grown significantly in recent years, and is expected to exceed US$10 billion in the coming two years (Keatinge 2014, p. 50). One of the Senate recommendations was that the HSBC US affiliate increase Anti-Money Laundering (AML) resources, "hire qualified staff … and implement an effective AML monitoring system for account and wire transfer activity … including OFAC alerts" (US Senate 2012a, p. 12). During the hearing, it became apparent that HSBC has since contracted financial technology firm Norkom to deliver compliance software to fulfil these obligations. As the new chief executive of HSBC Bank USA put it: "We have installed NORKOM. It has been a huge investment" (US Senate Hearing 2012a: 65). Norkom is one of the market leaders in software compliance products and was bought by British defense multinational BAE systems for €271million in 2011 (Brown 2011).

Risk and Preemptive Account Closures

The HSBC investigation and settlement is a window onto the workings of a finance/security assemblage, in which jurisdictional reach became understood as transactional instead of territorial, through the notion of the US currency domain. As mentioned, the HSBC case was one of a number of settlements between OFAC, the US Justice Department and European banks. By following the leads of the HSBC case further, we can see how the recent OFAC fines 'resonate' across global banking assemblages, reorient risk assessments, and affect in very specific ways banking access and international remittances. In short, the HSBC case eventually led to great societal concerns over banking access of migrant and vulnerable client groups, as this section discusses.

Banks and other financial institutions are required to undertake terrorism financing risk assessments on the basis of what is called a 'risk based approach.' This means that the regulator does not prescribe particular categories and thresholds of suspicion, but authorises banks to undertake in-house risk assessments and subjective judgements. This approach works with the assumption that banks themselves know best what is unusual and abnormal within their systems, and it encourages financial institutions to remain "as supple as the criminals and terrorists themselves" (UK Treasury 2007, p. 13; De Goede 2012: Chapter 3).

Counter-terrorism financing regulation purposefully allows banks and other financial institutions substantial *discretion* in implementation, to encourage them to remain vigilant and pro-active. According to Faravel-Garrigues and colleagues (2008, p. 2), “banking institutions enjoy a wide room for maneuver” and have become “sentinels” for police and security work.

Often, banks’ in-house risk assessments rely on datasets and analytical software tools developed by commercial vendors, for example Norkom, Thomson Reuters and Fiserv. The ways in which knowledge is generated concerning suspicious transactions inside banks, combine software-generated ‘red flags’ with situated judgements based on “personal regard and ethical scrutiny” (Maurer 2005, p. 477). In this process, potential terrorist financing risk indicators commingle with other types of high-risk transactions and clients, including money laundering risk indicators, and the risks associated with banking so-called Politically-Exposed Persons (PEPs). This also suggests that judgement concerning suspicions transactions and terrorism financing risk is inseparable from *practice* (Boltanski and Thévenot 2000). For example, as Anthony Amicelle and Elida Jakobsen show in their ethnographic study of banking practices, banks appropriate sanctions lists in particular ways. Sanctions lists, in their analysis, “acquire multiple, simultaneous identities in the course of [their] banking appropriation (from a compliance and disciplinary device to an inclusionary and exclusionary device)” (2016, p. 30). In short, business logics and commercial objectives become ‘grafted onto’ the instruments that are supposed to detect terrorist finance or money laundering risks (Li 2007).

During the Hearings, representatives of HSBC worked very hard to satisfy the Senate that they were aware of terrorist financing and money laundering risks in their organisation and prepared to remedy past mistakes. One of the problems at HSBC, it appeared, was a backlog of “over 17,000 alerts” generated in (automated) compliance systems that required further review in order to assess whether these should lead to suspicious transactions reports, freezing decisions or account closures (US Senate 2012b, p. 3). According to the subcommittee, HSBC suffered from “poor procedures for assigning country and client risk ratings … inadequate and unqualified AML staffing; inadequate AML resources; and AML leadership problems” (US Senate 2012a, p. 3). In response, HSBC argued that it is working hard implement new compliance procedures and software systems. Irene Dorner, the new Chief Executive of HSBC US testified that, since the investigation, the bank had “exited, as a result of rolling out this remediation, in the order to 14,000 customers because they simply did not fit our risk appetite." (US Senate 2012a, p. 55). However, this rather offhand remark points to much larger – and much disputed – shifts in bank risk assessment practices. The objective of risk-based regulation is that banks and financial institutions develop fine-grained models of risk assessment – differentiating risk profiles for geographical areas, account types and client groups, for example. However, what we have seen in recent years – in conjunction with the financial crisis as well as the OFAC fines – is that some banks have decided to exit particular client relationships altogether, on the basis of what they call their 'risk appetite' (Keatinge 2014).

In July 2014, HSBC announced it would be closing the accounts of a number of UK-based Muslim groups, including the London Finsbury Park Mosque, the Cordoba Foundation and Ummah Welfare Trust. Muslim groups protested the decisions and raised concern over religious discrimination. Finsbury Park Mosque chairman Mohammed Kozbar told the BBC, "For us it is astonishing – we are a charity operating in the UK, all our operations are here in the UK and we don't transfer any money out of the UK" (in Laurie 2014). Mr Al Tikriti, of the Cordoba Foundation, complained the bank did not inform him of the reasons for termination, noting he had been with the bank since the 1980s and "has rarely been overdrawn" (in Laurie 2014). However, HSBC denied allegations of religious discrimination, stating that the decisions were based on a general review of its client base, which concluded that "provision of banking service … now falls outside our risk appetite," but offering no further explanation or a right to appeal the decision (as quoted by Oborne 2015; also Barrett 2014).

The HSBC account closures in 2014 followed an earlier British debate surrounding Barclays Bank's decision, in 2013, to discontinue partnerships with eighty Money Service Businesses (MSBs) remitting money to Somalia. There were no allegations of fraud or misuse of the accounts. On the contrary: the companies were considered "model customers of Barclays."[9] However, and partly motivated by the fines levied against HSBC and other European banks, Barclays conducted an internal risk review and decided to exit these relationship because of a "perceived higher level of risk" in the small-scale MSBs sector.[10] The account closures by HSBC and Barclays can be understood as *preemptive* because they were not motivated by past misuse, but to avoid potential future abuse. As Claudia Aradau and Rens van Munster (2007) have shown, preemption addresses dangers where there is a large measure of uncertainty in risk calculation, but where the consequences of not acting could potentially be catastrophic (also de Goede and Randalls 2009). According to Barclays, the legitimacy of transfers from these accounts to Somalia and Eritrea could not be fully assessed. This became pressing in a context in which anti-terrorism financing requirements oblige banks to report transactions and freeze monies associated with the Somali terrorist network al-Shabaab. In a public statement, Barclays said that it "does not want to unwittingly facilitate such transactions, given these serious risks" [11] Moreover, the bank explicitly referred to the OFAC fines levied on HSBC and other banks, and wrote: "if we were caught up in such transactions Barclays could be punished by our regulators and potentially fined, as we have seen with global banks receiving fines of hundreds of millions for anti-financial crime failures."[12]

The Barclays decision was hotly debated in Britain, with prominent voices like Olympic gold medallist Mo Farah amongst others calling on the bank to reconsider (Muir 2013). A petition calling on the UK government to "find a durable solution" for "Somali M[oney] S[service] B[usinesse]s which provide financial lifeline services to Somalia and other developing countries" received over a 100,000 signatures.[13] The account closures were also debated in UK Parliament, with Rushanara Ali (MP for Bethnal Green & Bow) stating she had "deep concerns about decisions that have been made in the past, not just by Barclays but by other banks such as HSBC, to remove banking facilities that are affordable for hard-pressed families who are trying to get support to other parts of the world" (quoted in Holley 2013a). One of the largest companies affected, a remittance network called Dahabshiil, contested Barclays' decision in court, on the grounds that it affected fair competition by driving selected money remitters out of the market. In November 2013, Dahabshiil won an interim judgement by the UK High Court which prohibited Barclays from closing the accounts until the case was decided at trial (Holley 2013b; Cooper forthcoming).[14] However, the case eventually did not go to trial because the companies reached a settlement in 2014, allowing Dahabshiil time to find alternative banking arrangements "while working with the British government on a project to track payments made from the U.K. to Somalia" (Colchester 2014). If the case had gone to a full trial, Barclays would have been compelled to document its terrorism financing risk assessment practices and the ways in which it decides on risk appetite publicly. In addition, it would have been revealing to see a court weigh Barclay's obligations in counter-terrorism finance compliance against the question of whether banking is a social utility or a right. During the preliminary case between Barclays and Dahabshiil, the court acknowledged that "there is no formal banking system in Somalia" and that there are "clear social and humanitarian benefits associated with an efficient and properly regulated for the transmission of money to Somalia."[15] Decoupling these money service businesses from banking services thus affects what Zelizer calls the "connected lives" that are built, maintained and negotiated through remittance networks (2005, p. 32).

The account closures have fuelled an international debate on what has come to be called "derisking," understood by the FATF as "the phenomenon of … restricting business relationships with … categories of clients to avoid, rather than manage, risk."[16] In an environment where, as Barclays put it, it is not possible to "spot criminal activity with the degree of confidence required,"[17] but where public association with terrorism financing could do very serious damage to a company's reputation and be grounds for hefty OFAC fines, banks apparently deem it better to pre-emptively exit these risky sectors altogether. According to Tom Keatinge, derisking decisions are based new types of "unquantifiable risk" related to money laundering and terrorism financing fines, and potential "worst-case scenarios" about "what would happen if … [a bank's] dealings with this client were to end up on the front page of the newspaper" (Keatinge 2014, p. 50-51; cf. Power 2005). The broad and unspecified concept of risk appetite functions as a quasi-juridical term that suggests a process of solid risk assessment, but which in fact functions to legitimate preemptive decisions under conditions of uncertainty. Here, business objectives and commercial bottom lines become grafted onto the security functions of anti-terrorism financing screening. In fact, as became clear during the Dahabshiil case, Barclays introduced new financial thresholds for MSB customers in its risk assessment, and judged that "it would not be commercially viable to continue to provide services to any customer representing less than £100,000 in annual revenue"[18] FATF for its part stresses that denying banking facilities to entire business sectors is not what the risk-based approach to terrorism financing regulation intends. Even if there is no direct causal relation between the HSBC 2012 settlement and the Barclays 2013 decision to unbank Dahabshiil, there is certainly a relation of what William Connolly (2005, p. 870) calls "resonance" in which "heretofore unconnected or loosely associated elements fold, bend, blend, emulsify, and dissolve into each other, forging a qualitative assemblage." It has to be recognized, furthermore, that derisking affects client groups very unevenly. While European banks continue relationships with the contested Saudi bank al-Rahji, Somali remittance companies and Islamic faith-based charities have faced numerous account closures.

Conclusion

In the wake of the Paris attacks of November 2015, the G20 released a statement reaffirming the commitment to "tackling the financing channels of terrorism" and implementing FATF standards in "all jurisdictions"[19] The pursuit of suspect monies and potential terrorism financing is a seemingly targeted and relatively non-violent response in the war on terror, that places banks in the frontline of global security practice. This chapter has examined the increasingly pressing agenda of pursuing terrorism financing by starting with the US$1.9 billion settlement between HSBC and OFAC, and argued that it entails important and relatively invisible reconfigurations of geographical jurisdiction and financial client risk. In its investigation of HSBC, the US Senate offered an understanding of its jurisdiction as transactional rather than territorial, with important implications for *all* US-dollar denominated transactions. This move takes place in the context of European contestations of the legitimacy of sanctions lists on the basis of human rights concerns. The US Senate's investigation and settlement functioned to enforce OFAC sanctions lists extraterritorially, and instilled a risk-averse attitude in European banks' compliance departments. I have argued that the OFAC fines – not just in the case of HSBC, but also as directed against other European banks including Bank Paribas and Deutsche Bank – have resulted in new risk assessments and client risk profiles, for example concerning the MBS sector. In some cases, banks now prefer to terminate rather than monitor high-risk client relationships, especially in the case of low-profit but high-risk sectors like money transfer services and charities.

Conceptually, I have developed the notion of a finance-security assemblage to capture the particular transnational configurations of power in the pursuit of terrorism financing. Here, traditional national jurisdictional boundaries are circumvented and US sanctions decisions become enforced with global reach. My analysis has suggested that a finance/security assemblage exerts substantial power through administrative fines, whereby the US Senate investigation resonates with technical compliance decisions and banks' risk appetite assessments, resulting in the debanking of vulnerable client groups, including remittance-dependent families. These configurations work through little-known administrative procedures, via commercial risk assessment modules, to affect the everyday lived realities of migrant networks. Understanding these developments as an assemblage is not meant to downplay the hegemonic power of the US in this domain. Instead, it *"broadens* the range of places to look for ... the sources of harmful effects" and looks to "long-term strings of events" (Bennett 2010, p. 37, emphasis added). It takes seriously the independent decisions inside banks and the power of technical risk assessments, and draws attention to multiple potential sites of responsibility for harmful effects including derisking.

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Endnotes

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[14] Dahabshiil Transfer Services Ltd v Barclays Bank Plc [2013] EWHC 3379 (2013).

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