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The Obstacles to Regulating the Hawala: A Cultural Norm or a Terrorist Hotbed?

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Abstract

This Note examines the complex mechanics of hawala networks. Part I provides information regarding their origins, scope and reasons for continued existence. Part II contrasts the U.S. approach to regulating hawala networks through the USA PATRIOT Act and Operation Green Quest, with the U.A.E.'s approach, which is resistant to some of the American-led efforts. Part II also reviews three separate Green Quest actions: 1) Al Barakaat, an expansive Somalia-based organization through which Somalia's diaspora sent cash to families abroad; 2) Hussein Alshafei, an Iraqi American, who operated a money service business to Iraq; and 3) Mohammed Albanna, a Yemeni-American, based in Lackawanna, New York, who operated a hawala service to Yemen. Part III is a critical assessment of these American-led efforts to regulate hawala networks. This Note concludes that regulating hawala operations is indeed necessary, but argues that some of the U.S. law enforcement efforts as in the Al Barakaat, Alshafei, and Albanna cases are misguided. This Note proposes that the United States actively develop region-specific hawala networks to compete with informal systems. By offering tangible alternatives to convince people to switch to institutionalized banking, the United States would be taking a more international, culturally and economically sensitive approach

THE OBSTACLES TO REGULATING THE HAWALA: A CULTURAL NORM OR A TERRORIST HOTBED?*

*Rachana Pathak***

INTRODUCTION

In its efforts to stymie the flow of funds for terrorists, the U.S. government has, since September 11th, put a halt to many hawala operations.¹ As the *Al Barakaat*, *Alshafei*, and *Albanna* cases show, however, these actions have needlessly sideswiped many civilians with no terrorist involvement, resulting in financial damages and civil rights violations.² The U.S. government

* Author's Note: There is little reliable information on hawala networks as few comprehensive studies have been conducted. Due to the lack of academic material and case law, this Note relies heavily on the following sources: 1) U.S. Congressional hearings and Interpol reports for law enforcement perspectives; 2) International Monetary Fund and World Bank reports for economic perspectives; and 3) news articles based on anecdotal perspectives.

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1. See *Hearing on the Financial War on Terrorism and the Administration's Implementation of the Anti-Money Laundering Provisions of the USA PATRIOT Act Before the U.S. Sen. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 15-20 (Jan. 29, 2002) (statement of Kenneth W. Dam, Deputy Secretary, Treas. Dep't) [hereinafter *Dam*] (describing U.S. efforts to stop terrorist financing); *Hearing on Hawala and Underground Terrorist Financing Mechanisms Before the Subcomm. on Int'l Trade and Finance, U.S. Sen. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 28-35 (Nov. 14, 2001) (statement of Patrick Jost, SRA International) [hereinafter *Jost Statement*] (testifying about links between hawala networks and terrorists). Jost notes that Osama bin Laden is a Saudi national with connections to Afghanistan and Somalia, countries where hawala is the preferred means of remitting money. *Id.* See also Financial Action Task Force on Money Laundering, *Combating the Abuse of Alternative Remittance Systems*, Int'l Best Practices, June 20, 2003 (agreeing to extend anti-money laundering requirements to alternative remittance systems in October 2001).

2. See General Accounting Office, *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms*, Nov., 2003, at 3 [hereinafter *Terrorist Financing*] (stating that extent to which terrorists use hawala networks is unknown); Jean-Charles Brisard, *Terrorism Financing: Roots and Trends of Saudi Terrorism Financing*, Report prepared for U.N. Security Council, Dec. 19, 2002, 26-28 (describing practice of *zakat* as more important source of terrorism funding rather than alternative remittance systems).

needs to reassess its understanding and treatment of hawala,³ a longstanding method of money transfer for Middle Eastern and South Asian countries that offers its users many advantages.⁴

This Note examines the complex mechanics of hawala networks.⁵ Part I provides information regarding their origins, scope and reasons for continued existence. Part II contrasts the U.S. approach to regulating hawala networks through the USA PATRIOT Act⁶ and Operation Green Quest,⁷ with the U.A.E.'s

3. See Nikos Passas, *Informal Value Transfer Systems and Criminal Organizations; A Study Into So-Called Underground Banking Networks*, Hague (1999) [hereinafter Passas 1] available at <http://usinfo.state.gov/regional/ea/chinaaliens/ivts.pdf> (noting misunderstanding of hawala networks); Lisa C. Carroll, *Alternative Remittance Systems Distinguishing Sub-Systems of Ethnic Money Laundering in Interpol Member Countries on the Asian continent* (Interpol Paper 2000), available at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/EthnicMoney> (describing prevalent erroneous information about hawala networks); Jammaz Al-Suhaimi, *Saudi Arabia — Demystifying Hawala Business — Separates Fact from Fiction about the Financial Service That Is Centuries Old*, *BANKER*, Apr. 1, 2002 (correcting common misperceptions about hawala use in Middle Eastern countries); K. Raveendran, *UAE Takes Unprecedented Action on Hawala; Emirates License Local Operators in Bid to Control "Underground" Banking System*, *DAILY STAR*, Oct. 25, 2003, at 5 (reporting about Western misunderstanding of hawala networks).

4. See Patrick M. Jost & Harjit Singh Sandhu, *The Hawala Alternative Remittance System and Its Role in Money Laundering*, Interpol Rep. (2000), available at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala> (describing hawala networks in Middle Eastern countries); Mohammed El Qorchi et al., *Informal Funds Transfer Systems: An Analysis of the Informal Hawala System*, IMF Occasional Paper No. 222, at 6-9 (2003) (describing logistics of hawala networks); Samuel Munzele Maimbo, *The Money Exchange Dealers of Kabul: A Study of the Hawala System in Afghanistan*, World Bank Rep., at 8-10 (June 2003) (describing logistics of hawala networks in Afghanistan).

5. See John F. Wilson, *Hawala and Other Informal Payments Systems: An Economic Perspective*, IMF Rep., at 2-3 (2002) (showing that hawala networks have different complexity levels, users, and purposes); Carroll, *supra* note 3 (distinguishing different types of alternative remittance systems). Carroll defines three such systems: 1) The first transfers money between locations without using formal banks, and honors verbal commitments based on trust; 2) the second involve the issuance of a receipt as proof of a transaction; and 3) the third system is more a rotating loan association than a remittance method. *Id.* See also El Qorchi, *supra* note 4, at 14-15 (describing simple reverse transactions, complex reverse transactions, bilateral financial settlements, and multilateral financial settlements).

6. See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272 (2001) [hereinafter "USA PATRIOT Act"].

7. See *Treasury Officials on Anti-Terrorism Finance Initiative: U.S. Seeks to Break Up Terrorists' Financial Networks*, Oct 25, 2001, available at <http://usinfo.state.gov/topical/pol/terror/01102512.htm> (describing mission of Operation Green Quest). Created by the Treasury Department on October 25, 2001, Operation Green Quest is a multi-agency anti-terrorist financing task force, aimed at denying terrorist groups access to the international financial system. *Id.* The following groups are involved in the task force: Department of Treasury's Customs Service, Internal Revenue Service, Financial Crimes

approach, which is resistant to some of the American-led efforts. Part II also reviews three separate Green Quest actions: 1) Al Barakaat, an expansive Somalia-based organization through which Somalia's diaspora sent cash to families abroad; 2) Hussein Alshafei, an Iraqi American, who operated a money service business to Iraq; and 3) Mohammed Albanna, a Yemeni-American, based in Lackawanna, New York, who operated a hawala service to Yemen. Part III is a critical assessment of these American-led efforts to regulate hawala networks.

This Note concludes that regulating hawala operations is indeed necessary, but argues that some of the U.S. law enforcement efforts as in the *Al Barakaat*, *Alshafei*, and *Albanna* cases are misguided. This Note proposes that the United States actively develop region-specific hawala networks to compete with informal systems. By offering tangible alternatives to convince people to switch to institutionalized banking, the United States would be taking a more international, culturally and economically sensitive approach.

I. WHAT IS THE HAWALA: ORIGINS, EXPLANATION, AND SCOPE

Although there is some dispute as to the origins of hawala networks, some variation has existed for centuries. Its long history is a testament to its effectiveness, as a hawala-type of money transfer system currently exists in virtually every part of the world.⁸ Such networks are cost-effective, efficient, far-reaching, and reliable.⁹ Today, such networks are used primarily by diaspora communities, although there is concern that some sectors of the population use hawala networks to launder money, evade

Enforcement Network ("FinCEN"), Office of Foreign Assets Control ("OFAC"), Secret Service, Customs. *Id.* See also Operation Green Quest Overview, available at http://www.customs.treas.gov/xp/cgov/newsroom/press_releases/archives/2002/22002/02262002.xml (providing background on Operation Green Quest). Operation Green Quest also utilizes U.S. Customs Attaché offices in twenty-six Nations to pursue overseas leads and develop independent investigations through cooperation with host Nation governments. *Id.*

8. See El Qorchi, *supra* note 4 (describing hawala systems worldwide); Michael Beebe & Sandra Tan, *Yemeni Connection; Arrests Extend to Michigan in Federal Probe of Money Transfers*, BUFFALO NEWS, Dec. 19, 2002, at B1 (reporting worldwide scope of hawala use).

9. See Jost & Sandhu, *supra* note 4 (illustrating advantages of hawala networks); El Qorchi, *supra* note 4 (noting reasons for hawala use); Maimbo, *supra* note 4 (describing heavy reliance on hawala networks in Afghanistan).

taxes, traffic contraband, and fund terrorist activity.¹⁰

A. Origins of Hawala Networks

The word hawala (حوالة) itself comes from Arabic and has various translations including: “assignment,” “change”, “transform” or “promissory note.”¹¹ Although most of the literature terms the hawala broker a “hawaladar,” a more accurate translation is muhauwel-hawala (حولحوالة).¹²

A hawala money transfer system exists in virtually every part of the world.¹³ The oldest of such systems, called the *fei ch'ien*, existed in China during the Tang Dynasty, from 618-907A.D.¹⁴ This money transfer system developed to reduce the inconvenience of carrying currency and to facilitate the transfer of funds

10. See El Qorchi, *supra* note 4 (pointing out illegal uses of hawala networks); Carroll, *supra* note 5 (positing that hawala networks are tied to criminal activity).

11. See S.H. Amin, ARABIC-ENGLISH DICTIONARY OF LEGAL TERMS (1990) (defining hawala as “assignment”); Jost & Sandhu, *supra* note 4 (translating hawala as “change” and “transfer”); See Al-Suhaimi, *supra* note 3 (defining hawala as “transfer of value” rather than a “physical transfer”).

12. See Jost & Sandhu, *supra* note 4 (defining hawaladar as hawala broker); Nikos Passas, *Hawala and Other Informal Value Transfer Systems: How to Regulate Them?*, U.S. State Dep't, Int'l Information Programs, 2003 [hereinafter Passas 2], available at <http://usinfo.state.gov/regional/ea/chinaaliens/shawala.htm> (disagreeing with translation of hawala operator as hawaladar). Wilson, *supra* note 5, at 6 (disagreeing with hawaladar designation). Wilson notes that some intermediaries are not just brokers because they operate on a large scale. *Id.*

13. See Manuel Orozco, *Worker Remittances: An International Comparison*, (Inter-American Dev. Bank, Working Paper Feb. 2003, at 2), available at <http://www.iadb.org/exr/prensa/images/RemittancesInternational.pdf> (last visited May 6, 2004) (describing use of informal monetary transfer systems worldwide); El Qorchi, *supra* note 4, at 11, 26 (describing hawala-analogous systems). The black market peso exchange is used in Latin America, the *fei ch'ien* in China, the *padala* in the Philippines, the *hui kuan* in Hong Kong and the *phai kwan* in Thailand. *Id.*; Jost & Sandhu, *supra* note 4 (describing global hawala networks); Beebe & Tan, *supra* note 8 (citing examples of Jamaican, Mexican, and Puerto Rican immigrants using hawala-like systems to send money to families); *International Narcotics Control Strategy Report*, 1999, Released by the Bureau for Int'l Narcotics and Law Enforcement Affairs, U.S. Dep't of State, Mar. 2000 [hereinafter *Int'l Narcotics Control Report 1999*] (describing mechanics of black market peso exchange).

14. See Leonides Buencamino & Sergei Gorbunov, *Informal Money Transfer Systems: Opportunities and Challenges for Development Finance*, U.N. DESA Discussion Paper No. 26, Nov. 2002, at 1 (describing origins of *fei ch'ien* system); Ian Angel, *Flip Side of the Coin: Community Currencies and Digital Cash Could Spell the End for Money*, FIN. TIMES (London), Dec. 22, 1997, at 15 (arguing *feich'ien* system has been used for generations to bypass financial regulations). See generally El Qorchi, *supra* note 4, at 10-11 (stating that hawala networks facilitated trade between distant regions when conventional banking systems were weak); Jost & Sandhu, *supra* note 4 (discussing origins of hawala networks).

during the prospering tea trade, and was expanded to other countries by Chinese emigrants.¹⁵

The precise antecedents of hawala in the Middle East are not well documented.¹⁶ One theory posits that Arab traders used it as a means of avoiding robbery along the silk trading route.¹⁷ Another theory holds that it is an extension of the money transfer system in existence during the Mughal rule in India.¹⁸ Still other theories hold that it originally developed from the *hundi* system as a way for individuals to receive cash advances.¹⁹ Regardless of its precise origins, hawala networks have been integrated in various Middle Eastern and Asian economies for centuries.²⁰

B. Explanation of Hawala Networks

There are many ways in which hawala networks operate.²¹ In the simplest hawala transaction, a hawala broker in one coun-

15. See El Qorchi, *supra* note 4, at 10-11 (describing how trade growth led to increased reliance on hawala networks). Remittance networks eventually extended from China to Japan, Russia, and Southeast Asia. *Id.* See also Buencamino & Gorbunov, *supra* note 14, at 2 (propounding different theories on origins of hawala).

16. See El Qorchi, *supra* note 4, at 11 (stating that history of hawala use in Middle East is not well documented); Al-Suhaimi, *supra* note 3 (stating long history of hawala networks along trading routes of Mediterranean, central Asia, Arabian Peninsula, and Indian subcontinent).

17. See N.S. Jamwal, *Hawala: The Invisible Financing System of Terrorism* (2002), available at http://www.mafhoum.com/press3/111E62_files/AN-APR0402-1.htm (discussing role of hawala in terrorist financing) (stating hawala's centuries old existence in India and other Asian countries); Al-Suhaimi, *supra* note 3 (describing use of hawala networks along various trading routes); El Qorchi, *supra* note 4 (discussing how hawala networks facilitated trade and avoided risks of physical cash transportation).

18. See Jamwal, *supra* note 17 (stating that Sindhi community developed *hundi* system of money transfer during Mughal rule to avoid dacoity and highway robberies); Al-Suhaimi, *supra* note 3 (providing brief history of hawala networks).

19. See Passas 1, *supra* note 3, at 21 (arguing that *hundi* system of India originally developed for cash advances); Jost & Sandhu, *supra* note 4 (describing *hundi* systems prevalent in India).

20. See Jost & Sandhu, *supra* note 4 (discussing origins of hawala networks); Passas 1, *supra* note 3, at 9 (positing that hawala networks served people before modern banking institutions and became integral elements of Asian cultures); Al-Suhaimi, *supra* note 3 (stating long history of hawala networks along various trading routes in Middle East and Indian subcontinent); Jamwal, *supra* note 17 (stating existence of hawala networks as far back as Mughal rule or silk trading routes); Buencamino & Gorbunov, *supra* note 14 (describing history of hawala-analogous systems); El Qorchi, *supra* note 4, at 10-11 (stating that hawala networks have been used for centuries mainly for trade).

21. See Wilson, *supra* note 5, at 2-3 (showing that hawala networks have different levels of complexity); Carroll, *supra* note 3 (distinguishing different types of alternative remittance systems). See also El Qorchi, *supra* note 4, at 14-15 (describing various types

try, takes money from a customer and, for a fee, has an associate in another country dispense an equal amount to the recipient.²² The hawala brokers settle their debts with each other daily, weekly, or monthly, often by a reverse transfer.²³ These settlements are sometimes paid in gold.²⁴ Notably, the hawala brokers do not physically exchange any money between themselves; rather, what moves is asset and liability positions.²⁵ A more complex hawala transaction might involve multiple hawala networks and multiple borders.²⁶

Consider the case of Abdul, a Pakistani taxi driver living in New York.²⁷ He entered the United States on a tourist visa five

of hawala transactions, complex reverse transactions, bilateral financial settlements, and multilateral financial settlements).

22. See Passas 1, *supra* note 3 (clarifying logistics of hawala networks); *Having Escaped Regulation for Ages, Hawala Defies Controls*, 13(1) MONEY LAUNDERING ALERT, NOV. 2001, at 14 (describing specific hawala transaction between Afghanistan and Pakistan); Jost & Sandhu, *supra* note 4 (explaining logistics of hawala transaction); El Qorchi, *supra* note 4, at 6-9 (describing prototypical hawala transaction); Maimbo, *supra* note 4, at 6 n.4. (discussing operational characteristics of hawala networks in Afghanistan).

23. See Maimbo, *supra* note 4, at 13 (documenting that outstanding accounts are balanced daily, weekly, or monthly); Jost & Sandhu, *supra* note 4 (describing settlement process as extended if hawala brokers are repaying existing debts or unable to leave country). See also Carroll, *supra* note 3 (writing that hawala brokers generate profits through exchange rate differentials or commissions).

24. See SANJAY KAPOOR, *BAD MONEY, BAD POLITICS: THE UNTOLD HAWALA STORY* 84-85 (1996) (stating that because gold is often used in settlement, many hawala brokers work in jewelry business); Douglas Farah, *Al Qaeda's Road Paved with Gold; Secret Shipments Traced Through a Lax System in United Arab Emirates*, WASH. POST, Feb. 17, 2002, at A1 (reporting that gold is used because it can be melted, smelted, or deposited without regulation); Carroll, *supra* note 3 (stating that debts are frequently settled by gold).

25. See Jost & Sandhu, *supra* note 4 (noting that hawala transfers money "without actually moving it"); El Qorchi, *supra* note 4, at 18 (noting lack of direct physical cash transfers between hawala brokers); Wilson, *supra* note 5, at 14, Fig. 2 (stating that money is not sent directly in hawala transactions); Carroll, *supra* note 3 (explicating that no money physically crosses borders in hawala transactions). The debt between the two hawala associates is eventually cleared, either by reverse remittances or other money movement methods. *Id.*

26. See Passas 2, *supra* note 12 (arguing that reduced economic asymmetries would lead to less hawala use); El Qorchi, *supra* note 4, at 14 (pointing out unlikelihood of such simple transactions because of asymmetrical remittance flows); Wilson, *supra* note 5, at 7 (noting that simple, bilateral, reverse hawala with symmetric set of remittances sent in opposite direction through same intermediaries to be highly unlikely). For instance, millions of subcontinent workers in the Gulf countries send large amounts home, but there is no obvious reverse flow to balance hawala markets. *Id.* See also Carroll, *supra* note 3 (describing complexity of alternative remittance systems).

27. See Jost & Sandhu, *supra* note 4 (providing this very example of hawala user); *Jost Statement*, *supra* note 1 (providing other examples of hawala transactions).

years ago, which has since expired.²⁸ He has saved U.S.\$5,000 and he wants to send it to his brother in Karachi.²⁹ Abdul has several options: He could go to a bank, use a money service business such as Western Union, or use a hawala. If Abdul chooses to use a bank, he would probably have to first open an account with proper identification, which might be difficult because of his expired visa.³⁰ In addition, the bank could charge him the official exchange rate, an additional charge of at least U.S.\$30 to issue a bank draft to send the money abroad, and it could also could take a week.³¹

Abdul might use a money service business such as Western Union instead, which would also require proper identification.³² Western Union limits the number of transactions to Pakistan to U.S.\$2,000 during each thirty-day period, charges U.S.\$39 for each transfer, charges another undisclosed exchange rate fee, and takes five business days for the transaction.³³ Western Union would charge him an exchange rate of fifty-six to the dollar, meaning that he pays U.S.\$117 for three transfers, plus the undisclosed exchange rate fee for the same transaction.³⁴

Another option for Abdul is to send money through a hawala broker.³⁵ Abdul will be charged anywhere from a 0.25-

28. See Jost & Sandhu, *supra* note 4 (describing specific steps that Abdul must take to send money to Pakistan).

29. See *id.* (discussing hypothetical of sending money to Pakistan).

30. See Citi.com, *Wire Transfers*, at http://web.da-us.citibank.com/cgi-bin/citifi/scripts/prod_and_service/prod_serv_detail.jsp?BV_UseBVCookie=yes&BS_Id=WireTransfers&M=S (describing Citibank's ability to transfer funds from United States after user opens checking account with U.S. address and social security number, driver's license or state identification, and second form of ID (U.S. passport, military ID or major bank/credit card)). International transfers cost U.S.\$30 and take between two and five business days, but could be longer depending on the country and its banking policies. *Id.*

31. See *id.* (describing services that Citibank offers to customers).

32. See www.westernunion.com (listing U.S./Pakistan exchange rate at U.S.\$1.00 = PRs56.5087, as of April 18, 2004).

33. See www.westernunion.com (listing rates for transfers to Pakistan). These figures are calculated according to the website rates listed as of April 18, 2004.

34. See *id.* (noting that his brother would receive at most, PRs275,931.98, and it may be delayed).

35. See Jost & Sandhu, *supra* note 4 (providing examples of hawala transactions); El Qorchi, *supra* note 4, at 7 (describing characteristics of typical informal hawala transaction). See also *Hearing on Hawala and Underground Terrorist Financing Mechanisms Before the Subcomm. on Int'l Trade and Finance, U.S. Sen. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. (Nov. 14, 2001) (statement of Rahim Bariek, Bariek Money Transfer) [hereinafter Bariek] (explaining logistics of his hawala business). Bariek testified,

5% commission fee for the transaction.³⁶ The hawala broker will provide Abdul with a number or code,³⁷ which Abdul will have to tell the recipient, his brother.³⁸ This hawala broker will contact his associate in Pakistan via telephone, facsimile, or e-mail to give the equal amount to Abdul's brother upon providing the correct code.³⁹ Using the hawala would allow Abdul to get a better exchange rate compared to Citibank and Western Union,⁴⁰

One of my customers comes to me with \$300 and asks to send it to his brother in Pakistan. Charging about a 5% commission, I take the money and give my customer a transfer/code number which they give to their family in Pakistan. They will need that transfer/code number and identification to get the money from Insaf Exchange. The family member in Pakistan must also sign a form to show that they received the money. I call and fax Insaf Exchange with the name of the person who will get the money and the transfer/code number. Within 24 hours, the money is guaranteed safe in the hands of my customers family in Pakistan. That is how I do Hawala. Other Hawala brokers may operate differently. In order to balance our accounts, I pay some of the bills Insaf Exchange owes to other businesses not located in Pakistan. The money I receive in the United States never goes directly to Pakistan. But, it does get to the families in Pakistan that need it.

Id.

36. See Craig S. Smith, *For Afghans, the Bank Is Often a Bag of Cash*, N.Y. TIMES, Mar. 10, 2002, at C5 (reporting that Afghani hawala broker that charged 1% fee for world-wide transfers); Carroll, *supra* note 3 (quoting 0.25% to 1.25% fee for legal remittances and up to 15% to 20% for illegal transactions); Wilson, *supra* note 5, at 4 (listing hawala networks' advantages compared to banks, money exchanges, Western Union and Money Gram); Tom Jackman, *Two Men Sentenced in Wiring of Money to Bin Laden Backer*, WASH. POST, Sept. 12, 2002, at A29 (reporting that Virginia-based hawala broker charged 4% fee, keeping 1% and sending 3% to Al Barakaat); Christopher Cooper & Ian Johnson, *Ongoing Concerns: Money Network Tied to Terrorism Survives Assault*, WALL ST. J., Apr. 22, 2002, at A1 (noting Somalian hawala broker based in Germany charged 5% fee, keeping 1% and passing 4% on to parent Al Barakaat network). Cf. Passas 2, *supra* note 26 (asserting that hawala fees can be extortionate in some cases).

37. See Maimbo, *supra* note 4, at 12 (discussing use of code words in hawala transactions); Jamwal, *supra* note 17 (noting code word "trouser" for telegraphic transfer, "recorder" for one lakh rupees, "cassette" for one thousand during investigations in India); Kapoor, *supra* note 24, at 105-15 (providing examples of decoded names); Anil Padmanabhan et al., *Hemant Lakhani: Trading in Terror*, INDIA TODAY, Sept. 1, 2003, at 34 (describing code in one hawala transfer as U.S.\$1 bill with serial number F83616063J).

38. See Maimbo, *supra* note 4, at 12 (describing some hawala brokers who require recipient to present code words and secondary identification in hawala transactions); Kapoor, *supra* note 24, at 86 (describing situation in which recipient pays amount only after confirmation that money has been received by recipient).

39. See Jost & Sandhu, *supra* note 4 (discussing increased e-mail use in hawala transactions); El Qorchi, *supra* note 4, at 7 (noting that phone, fax, or e-mail communication is used between hawala brokers); Carroll, *supra* note 3 (stating that certain hawala brokers even offer fund pick-up and home delivery to avoid trails between banker and client).

40. See Al-Suhaimi, *supra* note 3 (describing significant differences between official and unofficial exchange rates in many developing countries).

and thus, send more money home.⁴¹

1. Efficiency

If Abdul sends money through the hawala he receives a guarantee that the money will be delivered more quickly.⁴² Hawala networks are notably efficient, as a hawala remittance can be completed in a matter of days or even hours in large cities.⁴³ In contrast, banks or money service businesses usually take several business days, and could involve additional delays due to holidays, weekends and time differences.⁴⁴ Also, because there are many places without banks, hawala networks fill a void.⁴⁵ Furthermore, some recipients are illiterate, and do not know how to cash a check, operate a bank account, or sign for legitimately wired money.⁴⁶

41. See Cooper & Johnson, *supra* note 36 (comparing 5% rate charged by Dahabshiil hawala with twice that rate by Western Union); Carroll, *supra* note 3 (quoting 0.25% to 1.25% fee for transfers); Wilson, *supra* note 5, at 4 (listing hawala networks' advantages compared to other money service businesses).

42. See Bariiek, *supra* note 35 (testifying at Senate hearing about his use of hawala networks after wiring money to Pakistan through formal channels failed). Bariiek tried to send money to Pakistan through Maryland-based Chevy Chase Bank, but his money order was stolen. *Id.* See also Jost & Sandhu, *supra* note 4 (listing multiple advantages of hawala use); El Qorchi, *supra* note 4, at 7 (highlighting hawala networks' speed, convenience, versatility, and potential for anonymity); Maimbo, *supra* note 4, at 12 (discussing reliability of hawala networks).

43. See El Qorchi, *supra* note 4, at 7-9 (discussing efficiency of hawala networks as key reason for their continued use); Mohammad El Qorchi, *Hawala: How Does this Informal Funds Transfer System Work, and Should It Be Regulated?*, 39(4) FIN. & DEV., Dec. 1, 2002, at 31 [hereinafter El Qorchi 2] (describing lack of bureaucracy as reason for hawala's efficiency); Maimbo, *supra* note 4, at 10 (stating that transferring funds from Peshawar, Dubai, and London to Kabul usually takes between six and twelve hours); Al-Suhaimi, *supra* note 3 (discussing lack of delays in hawala transactions).

44. See Motoo Noguchi, *Help Needed for the "Unbanked"*, WASH. POST, Mar. 26, 2004, at A23 (contrasting hawala's 24/7 service with bank money transfers, which can take three to five days); Jost & Sandhu, *supra* note 4 (describing potential delays with formal banking system); www.westernunion.com, *supra* note 32 (describing fees and delays in Western Union transfers).

45. See El Qorchi, *supra* note 4, at 7-9 (describing advantages of hawala); Carroll, *supra* note 3 (relating broad reach of hawala networks); Passas 2, *supra* note 12 (reporting that hawala networks reach isolated areas that are deemed unprofitable for banks to open branches).

46. See Al-Suhaimi, *supra* note 3 (discussing education level and fear of banks as reasons for dependency on hawala networks); Carroll, *supra* note 3 (stating that hawala are popular because of their ability to serve remote Asian locations); Noguchi, *supra* note 44 (describing hawala use for those have no access to banks such as those along Pakistan-Afghan border); Subhash Mishra, *Azamgarh: Talk of the Town*, INDIA TODAY,

2. Cost-Effectiveness

The hawala network is cost-effective not only for the user, but also for the operator, because many hawala brokers already conduct businesses where money transfers are necessary.⁴⁷ Hawala brokers often operate out of an import/export businesses, travel agencies, or jewelry shops.⁴⁸ These rented storefronts have lower overhead costs because they are without vaults or alarm systems.⁴⁹

To illustrate a more complex transaction, Abdul will give U.S.\$5,000 to a hawala broker who runs an import/export business to send to a family member in India.⁵⁰ This hawala broker will tell his contact in India to pay U.S.\$5,000 to the Indian family and then under-invoice a shipment to her contact by sending him U.S.\$20,000 worth of telecommunications devices but only invoice him for U.S.\$15,000.⁵¹ In this way, he is paying him the

Oct. 7, 2002, at 49 (describing Indian diaspora in Middle East who use hawala because official channels are too cumbersome and time-consuming).

47. See Financial Crimes Enforcement Network, *A Report to the Congress in Accordance with Section 359 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Act of 2001*, (Nov. 22, 2003) at 11-12 [hereinafter *Report to the Congress*] (reporting that U.S.-based hawala brokers often work in conjunction with legal enterprises that deal in large sums of cash, such as transmitters, check cashers, jewelry businesses or grocery stores); Jost & Sandhu, *supra* note 4 (listing businesses such as import/export, travel, jewelry, foreign exchange, rugs/carpets, used cars, car rentals telephones/pagers as more likely to be involved in hawala transactions); Carroll, *supra* note 3 (noting that hawala system is intertwined with gold smuggling and money movement through import/export invoicing manipulation).

48. See Jost & Sandhu, *supra* note 4 (listing businesses that are likely to be involved in hawala transactions); Kapoor, *supra* note 24, at 84-85 (stating that many hawala brokers are in jewelry business because gold is often used in settlement); Carroll, *supra* note 3 (stating links between hawala transfers and gold smuggling).

49. See Cooper & Johnson, *supra* note 36 (describing Somali hawala broker in Germany who worked out of McDonalds fast food restaurant, conducting about 2,000 financial transactions, and moving about U.S.\$1.2 million to African countries in late 1990s); El Qorchi, *supra* note 4, at 8 (discussing low overhead costs for some hawala brokers); Carroll, *supra* note 3 (stating that hawala brokers have lower overhead costs than banks, enabling them to exchange at better rates than official exchange rates).

50. See *Terrorist Financing*, *supra* note 2, at 9-15 (reporting that terrorists use mechanisms such as charities, informal banking systems, bulk cash and commodities such as precious stones and metals); Jost & Sandhu, *supra* note 4 (providing example of hawala transaction within export/import business); Carroll, *supra* note 3 (noting that hawala transfers can be disguised in invoicing of imports and exports).

51. See Wilson, *supra* note 5, at 15, Fig. 4 (describing how hawala transactions work within export businesses); *Having Escaped Regulation For Ages, Hawala Defies Controls*, *supra* note 22 (arguing that grocery stores and other legitimate businesses, where cash can be picked up or dropped off, often function as foreign "affiliates" of hawala brokers); *Ancient Underground Banking System, Hawala, Surfaces in U.S.*, 7(9) MONEY LAUN-

U.S.\$5,000 that he owes him.⁵² In order to move money from India to the United States, his contact would over-invoice a shipment.⁵³ Using the existing business allows the hawala brokers to create a paper record, which authenticates the transaction and satisfies reporting requirements.⁵⁴

3. Trust

The primary features of hawala networks that distinguish it from other remittance systems are trust⁵⁵ and the extensive use of family or regional relationships.⁵⁶ A hawala broker in any given region or country tends to be known to members of the same family, village, clan, or ethnic group and is likely to speak the same language.⁵⁷ As one commentator noted, the under-

DERING ALERT, June 1996, at 6 (describing 1996 N.J. federal case involving two Indian brothers who moved more than U.S.\$5 million through corporate accounts).

52. See Jost & Sandhu, *supra* note 4 (showing how export/import business masks money transfers); See Dep't of the Treasury & Dep't of Justice, *National Money Laundering Strategy 2003*, at 42 [hereinafter *Nat'l Money Laundering Strategy 2003*] (noting that trade provides counter valuations in hawala networks); Passas 1, *supra* note 3, at 22 (positing that hawala and mis-invoicing have been used extensively for tax evasion and/or capital flight).

53. See *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 42 (recognizing that over-invoicing disguises illicit fund transfers); Passas 2, *supra* note 12 (noting that over-invoicing of exports is one form of hawala transaction); Andres Rueda, *International Money Laundering Enforcement & the USA PATRIOT ACT of 2001*, 10 MICH. ST. U. J. INT'L L. 141, 178 (2001) (describing how corporate fronts, banking vehicles, legitimate import-export business use over-invoicing to layer dirty money).

54. See Rueda, *supra* note 53, at 178 (stating that individuals can transfer funds abroad and avoid taxes with documentation by using over-invoicing); Jost Statement, *supra* note 1 (testifying about over or under-invoicing scams); Carroll, *supra* note 3 (discussing logistics of remittance systems within existing business frameworks).

55. See Maimbo, *supra* note 4, at 12 (stating reliability of hawala networks). This World Bank study examined hawala networks in Afghanistan, and found that the remitter often paid the hawala broker only after the recipient confirmed receipt of the money, indicating a strong honor system in place. *Id.* Cf. Carroll, *supra* note 3 (reporting that contracts are adhered to primarily because parties fear punishment or death). *But see* Passas 2, *supra* note 12 (arguing that notion of retributive violence as baseless assertion); Passas 1, *supra* note 3, at 28 (concluding that trust, rather than fear and violence, makes hawala networks function according to interviews with hawala users). Passas argues that hawala networks hardly fit the Western description of "gangs." *Id.*

56. See Passas 2, *supra* note 12 (stating that trust is defining element of hawala transactions); Al-Suhaimi, *supra* note 3 (emphasizing trust and integrity features of hawala); Jost & Sandhu, *supra* note 4 (discussing trust component of hawala networks); Bariek, *supra* note 35 (testifying about importance of trust before U.S. Senate). Bariek stated, "Let me emphasize — I know all of my customers, and I would never send money for a family that I do not know." *Id.*

57. See Jost & Sandhu, *supra* note 4 (describing family relationships or regional affiliations as feature of hawala networks); Carroll, *supra* note 3 (asserting that underly-

standing is, “You pay me here, my Uncle will pay you there.”⁵⁸ Many expatriate communities, which tend to be predominantly male, will use a trusted hawala broker, who is known in the village accountable to it and aware of social norms to protect women from directly dealing with banks and other institutions.⁵⁹ Any cheaters will usually be punished by ex-communication, which is the equivalent of an economic death sentence.⁶⁰

4. Lack of Paper Trail

Unlike institutional banking, hawala networks make minimal use of written records; rather, transfers of money take place based on verbal communications.⁶¹ Because it is rare for hawala brokers to keep records of individual transactions, it is unlikely that either the sender or recipient will ever be identified.⁶² Re-

ing characteristic common to hawala networks of Asia/Pacific region is strong cultural sense of honor and trust); Al-Suhaimi, *supra* note 3 (noting that trust is important because satisfied existing customers refer expatriate workers to hawala brokers).

58. Kapoor, *supra* note 24, at 85 (emphasizing trust as premier feature of hawala networks). See also Carroll, *supra* note 3 (asserting that strong familial or cultural ties are pillars of every hawala transaction).

59. See El Qorchi 2, *supra* note 43 (describing hawala networks as based on national, ethnic, and village solidarity); Passas 1, *supra* note 3, at 20 (describing tradition of migrant workers who met needs of European economies and sent back home money to support their families).

60. See Jost & Sandhu, *supra* note 4 (describing honor system within hawala networks); Passas 1, *supra* note 3, at 27 (stating that violation of trust brings about shame, ostracism, and dishonor within family); Carroll *supra* note 3 (writing that broken trust is tantamount to community ostracism and economic suicide).

61. See El Qorchi, *supra* note 4, at 14 (clarifying that money does not “simply submerge[] on one side of a border and pop[] up in a village on the other side”). Many features of hawala transactions resemble other kinds of formal transactions. *Id.* See also Wilson, *supra* note 5, at 5 (noting press distortion of hawala system, and arguing its similarity to other types of transactions); Passas 2, *supra* note 12 (arguing that hawala is similar to older and contemporary “conventional” banking practices). *Cf.* Jost Statement, *supra* note 1 (emphasizing differences between hawala transactions and formal banking). Jost testified,

The most significant investigative barrier is probably the fact that ‘hawala behavior’ lies well outside the cultural experience of most U.S. investigators. Hawala is a system where large amounts of money are handed over without receipts, confirmation numbers, or identification. Hawala transactions take place in the context of a large network unlike a “traditional” corporate structure. The business of hawala is conducted informally, with little in the way of overhead and almost nothing in the way of a regulatory infrastructure, *making it, in this respect, nearly the antithesis of banking.*

Id. (emphasis added).

62. See Maimbo, *supra* note 4, at 12 (maintaining that there are no standard documentary requirements for conducting hawala transactions). Each hawala broker, how-

mittances recorded by hawala bankers are often insubstantial and encrypted in the banker's personal handwriting.⁶³ Moreover, many hawala networks are difficult to trace because they operate out of existing businesses.⁶⁴

Figure 1 below is a sample hawala bookkeeping record.⁶⁵ The first column is the date of the transaction.⁶⁶ The second is the name of the hawala broker to whom the debt is owed. The third column is the amount of the debt.⁶⁷ The fourth and fifth columns indicate the dollar/rupee exchange rate in effect for the transaction and the value of the transaction in dollars.⁶⁸ The sixth column reflects the way in which the payment was made.⁶⁹

ever, may develop their own system, such as a hawala slip, customer identification, accounting records. *Id.*, at 12-13. *See also* Carroll, *supra* note 3 (stating that receipts may take many forms including torn bank notes, marked notes, and *chops*, which are Chinese carved seals used as ink stamps); Passas 2, *supra* note 12 (noting that hawala brokers keep some details of clients, such as payment instructions, names, telephone numbers, addresses at least until accounts are settled); Kapoor, *supra* note 24, at 92-128 (reprinting records of hawala payments between Dubai, India, and London); *Having Escaped Regulation for Ages, Hawala Defies Controls*, *supra* note 22 (reporting that transmittance receipt can be as simple as postcard torn in half).

63. *See* Kapoor, *supra* note 24, at 92-96 (writing of Surinder Jain scandal in India). This scandal involved a hawala broker who paid nearly U.S.\$18 million in bribes to 115 public officials of top ranks of Indian politics. *Id.* Diaries seized during the investigation revealed codes in jotted initials and numbers that were difficult to decipher. *Id.* *See also* *Having Escaped Regulation for Ages, Hawala Defies Controls*, *supra* note 22 (stating that investigators rarely find detailed accounts as in Jain hawala scandal).

64. *See* Jost & Sandhu, *supra* note 4 (describing many hawala brokers operating within existing businesses such as import/export, travel, jewelry, foreign exchange, rugs/carpets, used cars, car rentals, and telephones/pagers); *Report to the Congress*, *supra* note 47, at 11-12 (reporting that hawala brokers often work in money transmitting businesses, check cashing, jewelry businesses or grocery stores); *Terrorist Financing*, *supra* note 2, at 9-15 (reporting that terrorists use mechanisms such as charities, informal banking systems, bulk cash, and commodities such as precious stones and metals).

65. *See* Jost & Sandhu, *supra* note 4 (using same example to illustrate sample hawala records). *See also* Kapoor, *supra* note 24, at 92-97 (providing copies of actual hawala records from Jain hawala scandal).

66. *See* Kapoor, *supra* note 24, at 92-97 (showing that actual hawala records have fewer columns and are more difficult to decipher); *Report to the Congress*, *supra* note 47, at 12 (describing records as insubstantial, written in idiosyncratic shorthand, and lacking key information such as amounts, names, or times).

67. *See* Matt Miller, *Underground Banking: in Pakistan, Other Third World Nations*, 24 (1) INSTITUTIONAL INVESTOR, Jan. 1, 1999, at 32 (noting that there are 1,110 identified hawala brokers in Pakistan and transactions run as high as U.S.\$10 million). *But see* Passas 1, *supra* note 3, at 10 (arguing that informal systems cannot easily handle substantial amounts of money generated by illegal enterprises).

68. *See* www.bloomberg.news (reporting currency exchange rate at U.S.\$1 = IRs43.88 as of April 18, 2004).

69. *See* Jost & Sandhu, *supra* note 4 (providing explanation of column entries).

The notation “52t” for Ganesh Trading represent fifty-two tolas of gold, possibly used instead of remitting the money through a bank.⁷⁰

Figure 1: Sample Hawala Bookkeeping Record

Date	Hawala Broker Owed	Amount of Debt	Dollar/Rupee Exchange Rate	Value in U.S.\$	Method
16/6/98	Vinod	100,000	37.6	2659.57	F-1202
16/6/98	Nitin Bhai	350,000	42.3	8274.23	B-8146
17/6/98	DK	50,000	38.75	1290.32	F-1204
17/6/98	SK	300,000	39.25	7643.31	B-8147
17/6/98	Anil	200,000	40.1	4987.53	S-5428
18/6/98	Ganesh Trading	200,000	38	5263.15	52t

C. Modern Scope of Hawala Networks

Hawala networks in many countries are openly advertised, and legal.⁷¹ But given its unregulated nature, it is difficult to characterize these networks generally.⁷² They serve a diverse cli-

Notations such as “F-1202” usually represent a bank (“F” might be “First Bank”; “B” and “L” would represent other banks) and the check number. *Id.* See also *Terrorist Financing*, *supra* note 2, at 29 (describing non-transparency and indecipherable transaction records as characteristic of alternative remittance systems); *Report to the Congress*, *supra* note 47, at 12 (citing language and cultural barriers as obstacles to understanding hawala records).

70. See *Int’l Narcotics Control Report 1999*, *supra* note 13 (describing gold as primary medium of exchange in certain transactions). Many monetary transactions to South Asia involve gold for two reasons: first, the combined historical, religious and cultural importance gold enjoys in the region; and second, the increasing distrust in the value of local currencies. *Id.* See also Farah, *supra* note 24 (reporting on frequent use of gold in India).

71. See *Nat’l Money Laundering Strategy 2003*, *supra* note 52 (noting that hawala networks are unregulated in some countries); Raveendran, *supra* note 3 (reporting legality of hawala networks in United Arab Emirates); Jost & Sandhu, *supra* note 4 (documenting instances in which South Asian American newspapers hawala openly advertise hawala services); Passas 1, *supra* note 3, at 8 (suggesting that because hawala networks are not “underground” in many regions, the term “informal value transfer systems” is more appropriate). *Cf.* Carroll, *supra* note 3 (stating that while hawala services are sometimes openly advertised, most serve select covert clientele).

72. See Carroll, *supra* note 3 (describing hawala-like systems worldwide). Alternative remittance systems function in Australia, Bahrain, Hong Kong, India, Indonesia, Israel, Japan, Kuwait, Malaysia, Nepal, New Zealand, Oman, Pakistan, People’s Republic of China, Republic of Korea, Republic of the Philippines, Saudi Arabia, Sri Lanka, Thailand, Turkey, and Vietnam. *Id.* These systems are diverse, have a wide range of clients, the nature of the trust bond varies, the way profits are generated varies, and the degree to which systems leave proof of their profits and dealings is unknown. *Id.*; Wilson, *supra*

entele, and thrive in both rich⁷³ and in less developed countries.⁷⁴

Millions of immigrants, migrant workers, and refugees use hawala networks to send money home to relatives.⁷⁵ According to the World Bank, the total value of money remitted to developing countries in 2002 reached at least U.S.\$80 billion, a figure double the aid provided by the combined total of government aid, private bank lending and International Monetary Fund (“IMF”) or World Bank aid and assistance.⁷⁶ India and Mexico

note 5, at 10 (discussing barriers to measuring number, scale, and magnitude of hawala networks); Passas 1, *supra* note 3, at 54-59 (pointing out lack of reliable estimates about scope of informal banking networks, but noting their prevalence in Asia and Africa); El Qorchi, *supra* note 4, at 18-19 (reporting macroeconomic implications of unrecorded remittances).

73. See United Arab Emirates, Comment & Analysis, Middle East Review World of Information, Oct. 8, 2003, at 1 (discussing United Arab Emirate’s wealth and prevalence of hawala use); Jost & Sandhu, *supra* note 4 (documenting extended hawala use in United Arab Emirates); Raveendran, *supra* note 3 (reporting Dubai as key point in global hawala networks due to expatriate workers and businessmen).

74. See Maimbo, *supra* note 4, at 9 (documenting more than 300 registered money exchange dealers and between 500 to 2,000 unregistered money exchange dealers with no limit on the volume of transfers allowed in Afghanistan); El Qorchi, *supra* note 4, at 26 (stating that informal hawala networks have thrived where formal banking sector is absent or weak).

75. See Liz Stuart, *Monthly Cheques Home from Migrant Workers Are Building Prosperity: Analysis*, THE GUARDIAN (London) Apr. 12, 2004, at 23 (reporting findings of Harvard study that 1 million Indians living in United States, equivalent to only 0.1% of India’s population, earn 10% of India’s national income by sending money to India); *The Money Go-Round*, NEW ZEALAND HERALD, May 10, 2003 (discussing diaspora communities reliance on remittance transfer systems); Al-Suhaimi, *supra* note 3 (positing that hawala networks in Middle East mainly cater to needs of large underprivileged expatriate worker communities); Bariek, *supra* note 35 (testifying about money transfer business, which primarily serves Pakistani diaspora). Bariek’s hawala network supplies 200 to 300 customers, who generally send money to Pakistan once a month. *Id.* Bariek testified:

[W]ithout the money families send from the U.S. and other countries, many of the families in Pakistan would not be able to pay rent or afford food and other basic needs. Families also send larger sums of money — between \$1,000 and \$5,000 — for weddings, when someone passes away and other big events. For all of these reasons, I consider my job very important and humanitarian in nature.

Id.

76. See Dilip Ratha, *Workers’ Remittances: An Important and Stable Source of External Development Finance*, World Bank Global Dev. Fin., at 159 (2003) (quantifying worldwide remittance values); *The Money Go-Round*, *supra* note 75 (citing World Bank statistics); El Qorchi, *supra* note 4, App. II, at 35 (calculating amount of informal remittances in billions); Orozco, *supra* note 13 (estimating that annual remittances may amount to more than U.S.\$100 billion, and that present data is incomplete and underreported); El Qorchi, *supra* note 4, App. II, at 33-40 (estimating informal remittance values in select countries); Stuart, *supra* note 75 (noting that British government could almost

were the largest recipients of remittances from the United States, receiving U.S.\$10 billion each.⁷⁷ Pakistan estimated that hawala networks could account for approximately U.S.\$3 billion entering Pakistan, compared with only U.S.\$1 billion via the formal banking system.⁷⁸

1. Infrastructure

Hawala networks offer a service to those who cannot otherwise send money to their relatives due to political situations⁷⁹ or weak infrastructure.⁸⁰ For example, after the 1947 India-Paki-

scrap its non-disaster related aid budget altogether if it were to put a policy in place which made it cheaper and easier to remit).

77. See Ratha, *supra* note 76, Fig. 7.3. (stating that South Asia was largest recipient of recorded remittances, measuring nearly 2.5% of GDP in 2001); *U.S. Says Grave Laundering, Corruption Ills Plague Many Nations*, 15(6) MONEY LAUNDERING ALERT (Apr. 2004) at 15 (reporting that 30% of India's gross national product originates from hawala networks); Orozco, *supra* note 76 (reporting growth of remittances by Latin American diaspora); El Qorchi, *supra* note 4, at 35-40 (estimating remittances for Algeria, Bangladesh, India, Iran, Pakistan as extremely high).

78. See Ratha, *supra* note 76, at 159 (discussing inefficiencies in formal banking systems that lead diaspora communities to use informal remittance systems). The United States and Saudi Arabia are the largest sources of workers' remittances to developing countries and South Asia is the largest recipient of remittances relative to GDP size in 2001. *Id.*; Michelle Cottle, *Eastern Union; Hawala v. the War on Terrorism*, NEW REPUBLIC, Oct. 15, 2001, at 24 (reporting annual hawala remittances into Pakistan was between U.S.\$2.5 billion and U.S.\$3 billion versus only U.S.\$1 billion via banks); *The Money Go-Round*, *supra* note 75 (discussing worldwide scope of diaspora remittances); Douglas Frantz, *The Financing: Ancient Secret System Moves Money Globally*, N.Y. TIMES, Oct. 3, 2001 (reporting that U.S.\$2-\$5 billion moved through hawala system annually in Pakistan, more than amount of foreign transfers through its banking system); El Qorchi, *supra* note 4, at 35 (showing unrecorded remittances outweighed recorded remittances in Pakistan, Algeria, Bangladesh, and Iran); Wilson, *supra* note 5, at 18 (estimating that hawala transfers to Pakistan is high).

79. See Maimbo, *supra* note 4, at 8-10 (describing almost complete reliance on hawala networks in Afghanistan); El Qorchi, *supra* note 4, at 12 (stating dependence of informal money transfer systems in war torn-countries); Lourdes M. Leslie, *U.N. Reps Listen to Somalis' Concerns; Money-Wiring Difficulties Continue, International Delegation is Told*, STAR TRIB., Oct. 18, 2002 (describing Somali diaspora reliance on hawala networks). See also Cottle, *supra* note 78 (describing increased hawala use after Pakistan faced global condemnation for testing nuclear weapons in 1998). Cottle reports that money flowing into Pakistan through official channels from overseas workers dropped from U.S.\$150 million a month to U.S.\$50 million, as hawala essentially replaced banks. *Id.*

80. See *Hearing on Hawala and Underground Terrorist Financing Mechanisms Before the Subcomm. on Int'l Trade and Finance, U.S. Sen. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 26-35 (Nov. 14, 2001) (statement of Dr. Tarik M. Yousef, Professor, Dep't of Economics, School of Foreign Service, Georgetown Univ.) [hereinafter Yousef] (expressing concerns about realities of regulating hawala networks). Yousef testified, "so long as their remains a divergence between the US and other countries in

stan partition, currency exchange between Pakistan and India was banned, and hawala, also called *hundi*⁸¹ or *chitthi*,⁸² played a vital role.⁸³ During the Vietnam War, many Americans used hawala to send money to the United States through Indian merchants in Saigon.⁸⁴

The Afghani population too, has internally relied on hawala for years, especially because the country just opened its first international private-sector bank able to take international transactions in September 2003.⁸⁵ The U.S. government ironically, has found that the only effective way to transfer funds into Afghani-

financial development, banking efficiency, taxation levels and laws pertaining to foreign exchange transfers, there will exist a demand for the Hawala and other means of moving money across the globe." *Id.*; Bariek, *supra* note 35 (testifying that hawala fulfills important need for diaspora communities).

81. See Jost & Sandhu, *supra* note 4 (translating *hundi* as bill of exchange, promissory note, trust, reference, and alternative remittance system). *Hundi* comes from the Sanskrit root meaning "collect," and is used to refer to the collection box found in a Hindu temple. *Id.* See also Carroll, *supra* note 3 (distinguishing *hundi* from hawala). Carroll defines hawala as international, without negotiable instruments, and associated with criminal activities, while *hundi* is local, issues written receipts that can be physically carried across India's borders to neighboring countries and exchanged for local currency. *Id.* See also Miller, *supra* note 67, at 33-37 (explaining *hundi* money transfers). Miller writes that a Bombay businessman would visit his local hawala dealer before embarking on a trip to Pakistan. *Id.* He would sell the dealer Indian rupees and receive, in return, a coded piece of paper or a torn rupee note and a contact address. *Id.* Upon landing in Karachi, the businessman would proceed to the address, hand over the paper or note and pick up his Pakistani currency, who has written on the subject. *Id.*

82. See Passas 1, *supra* note 3, at 24-25 (documenting that British colonists introduced *chit* system in China). British colonists borrowed the term from *chitthi*, which in Hindi means a "note." *Id.* In the *chit* system, British workers would write *chits* to pay for food and other essentials from local merchants. *Id.* In turn, the merchants would present these *chits* for payment to the Chinese comprador, who would then deduct the corresponding amounts from the British accounts. *Id.* The *chit* system enabled British workers to avoid carrying cash or bulky commodities. *Id.* See also Buenacamino & Gorbunov, *supra* note 14, at 9 (describing origins of *chit* system).

83. See Cottle, *supra* note 78 (discussing use of hawala networks after partition); El Qorchi, *supra* note 4, at 10 (stating that virtually no payment between India and Pakistan was transacted through banks after partition).

84. See Jost & Sandhu, *supra* note 4 (stating that many Americans took advantage of hawala services to remit money through Indian merchants in Saigon); Passas 1, *supra* note 3, at (noting resurgence of hawala in Southeast Asia during Vietnam War); Buenacamino & Gorbunov, *supra* note 14, at 9 (describing hawala use during Vietnam War when increased demand for foreign exchange in black market).

85. See Victoria Burnett, *Afghanistan to Grant Licenses to First Foreign Banks in Years*, FIN. TIMES, Sept. 17, 2003, at 14 (reporting that these new banks will accept deposits and perform international money transfers for first time); Maimbo, *supra* note 4, at 8 (describing Afghanistan's weak infrastructure and eighty-year history of hawala networks).

stan to aid in its reconstruction is to use existing hawala networks, e.g., no other financial infrastructure exists.⁸⁶ In addition, many Iranian Americans depend on hawala networks to send money to relatives in Iran because of sanction limitations.⁸⁷ In countries with these types of infrastructure limitations, hawala services help residents of the remitting country to send money, medicine and other goods to relatives.⁸⁸

2. Capital Controls

Several Middle Eastern and South Asian countries have laws that prohibit capital flight, prohibit foreign exchange transactions at anything other than the official rate of exchange, and impose strict licensing requirements on money remitters and foreign exchange dealers.⁸⁹ One of the attractions of hawala networks is to evade these regulations.⁹⁰ Thus, hawala networks

86. See Maimbo, *supra* note 4, at 9 (estimating that aid groups have moved at least U.S.\$200 million through Afghani hawala networks since fall of Taliban); Michael M. Phillips, *Afghan Aid Flows Through Dark Channels: U.S. Is Forced to Move Funds in Money-Transfer Networks Used by Terror Groups*, WALL ST. J., Nov. 12, 2002 (reporting that Bush administration has used hawala networks to distribute aid in Afghanistan while simultaneously working to regulate such systems); Burnett, *supra* note 85 (reporting arrival of first international banks in Afghanistan); Eric J. Gouvin, *Bringing Out the Big Guns: The USA PATRIOT Act, Money Laundering, and the War on Terrorism*, 55 BAYLOR L. REV. 955, 978 n.106 (2003) (discussing U.S. reliance on hawala transactions in Afghanistan).

87. See Edward Hegstrom, *Iranian Exiles In Quandary*, HOUST. CHRON., May 5, 2003, at 14 (describing dilemma for Iranian diaspora who may not trust Iranian banks); Carroll, *supra* note 3 (stating that many immigrants have fundamental mistrust of government and central banking systems). See also Office of Foreign Assets Control, Sanctions Program and Country Summaries, Iran, available at <http://www.ustreas.gov/offices/eotffc/ofac/sanctions/sanctguide-iran.html> (explaining limitations on sanctions on Iran).

88. See Marc Kaufman, *Somalis Said to Feel Impact of U.S. Freeze of Al Barakaat*, WASH. POST, Nov. 30, 2001, at A30 (reporting that Somalia's largest single source of income is money sent from relatives abroad); Maimbo, *supra* note 4, at 8 (describing heavy reliance on hawala networks by communities abroad); Yousef, *supra* note 80 (presuming that most individuals utilizing hawala in United States do so for legitimate reasons); El Qorchi, *supra* note 4, at 12 (stating that hawala networks offer services in remote regions).

89. See Yousef, *supra* note 80 (stating financial systems of most Muslim countries are unsophisticated). Yousef testified that extensive government intervention in certain societies through excessive taxation, foreign exchange, and trade restrictions have retarded the emergence of modern financial systems. *Id.* See also *Jost Statement*, *supra* note 1 (explaining that capital flight regulations lead to increased use of hawala networks); Passas 2, *supra* note 12 (suggesting additional channels for fund transfers to reduce economic asymmetries); Wilson, *supra* note 5, at 11 (giving example of Philippines as successful in regulating hawala due to improvements in formal banking channels).

90. See Wilson, *supra* note 5, at 8 (describing currency controls as reasons for

offer a ready means of moving money to bypass such regulations.⁹¹ From the government's perspective, this undermines the economy or at least the government's economic plans, as the unregulated nature of hawala networks translates into lost revenues and taxes and the increased potential for criminal activity.⁹²

3. Cultural-Religious Reasons

Many people use hawala networks for cultural-religious reasons because under Islamic law, the use of certain banking systems is considered sinful if it makes interest from money.⁹³ The Qu'ran encourages followers to build financial relationships based on trust rather than contract.⁹⁴ Hawala networks then, are

hawala use); Passas 1, *supra* note 3, at 22 (arguing that hawala brokers make their profit from substantial differences between black market rates and official rates). Passas argues that hawala brokers can get a better rate by selling the hard currency in the black market particularly when government interventions impose artificial exchange rates, when there are currency controls, in cases of high inflation, during periods of political instability. *Id.*; Miller, *supra* note 67, at 32-37 (arguing that hawala use becomes vital to economies when financial system is in crisis); *Follow the money*, *ECONOMIST*, June 1, 2002 (reporting that hawala is "boon" for poorer people remitting money home).

91. See Jost & Sandhu, *supra* note 4 (writing that money launderers violate currency control laws by using hawala networks); Yousef, *supra* note 80 (describing hawala use as market response).

92. See Maimbo, *supra* note 4, at 25 (describing lost economic revenue from unregulated hawala transfers); El Qorchy *supra* note 4, at 14-21, 26-27 (discussing economic costs of unregulated money transfers); Orozco, *supra* note 13 (estimating that annual worldwide remittances may equal more than U.S.\$100 billion).

93. See Hegstrom, *supra* note 87 (reporting use of hawala because Muslims believe it sinful to collect interest on loans); Barbara L. Seniawski, *Riba Today: Social Equity, the Economy, and Doing Business Under Islamic Law*, 39 COLUM. J. TRANSNAT'L L. 701, 702-12 (2001) (describing Qur'anic prohibition of *riba* to prevent usurious conditions in exchanges and loans); Michael J.T. McMillen, *Islamic Shari'ah-Compliant Project Finance: Collateral Security and Financing Structure Case Studies*, 24 FORDHAM INT'L L.J. 1184, 1213 n.31 (2001) (describing hawala under Shari'ah law). McMillen explains,

[T]he Islamic contract of hawala contemplates a situation where a creditor, A, assigns to his own creditor, C, a debt which is owed to A by B. In order for this contract to be effective as a contract of hawala, the amount owed to A by B must equal exactly the amount owed by A to C. Furthermore, A must be indebted to C and B must be indebted to A at the time the contract of hawala is concluded. The contract of hawala may not relate to future indebtedness, a particularly thorny issue in an ongoing funding regime for a project financing.

Id. See also Mian Ahad Hayaud-Din, *The Hawallah Network: Culture and Economic Development In Afghanistan*, 78(1,2) INT'L SOC. SCIENCE REV., June 22, 2003, at 21 (describing Islamic principles involving hawala).

94. See Hegstrom, *supra* note 87 (reporting that Qu'ran encourages financial relationships based on trust rather than contract); Shi'a Islamic laws on hawala according to the Fatawa of Ayatullah al Uzama Syed Ali al-Husaini Seestani, available at <http://www.al-islam.org/laws/transactions3.html#2298> (last visited May 9, 2004) (describing

used by millions of Muslims who are simply following Qu'ranic scripture and cultural norms.⁹⁵ In other words, the hawala network is a financial system governed by cultural values and religious tenets.⁹⁶

4. Illegal Purposes, including Terrorism

Finally, other sectors of the population use hawala networks for illegal purposes.⁹⁷ Because they offer privacy and lack a paper trail, hawala networks serve as vehicles to launder money, evade taxes, and traffic contraband.⁹⁸ U.S. law enforcement authorities have recently targeted hawala networks fearing that they were being used by terrorist financing operations.⁹⁹ The

basic rules of hawala transfers). See also English translation of one set of hawala rules by Iran's Grand Ayatollah Fazel Lankarani, available at <http://www.lankarani.org/English/onlinepub/tawdhih-al-masael/draft.htm> (last visited May 9, 2004). See also Brisard, *supra* note 2, at 12-15 (describing legal almsgiving practice of *zakat* required of Muslims).

95. See Bruce Crumley, *Follow the Money; Is the Islamic Hawala Exchange System Being Used to Bankroll the Al Qaeda Terror Network?*, TIME, Nov. 19, 2001, at 43 (describing interest-free hawala as exemplary of Islamic world's unique approach to international finance); John C. Lyman, *Cultural Defense: Viable Doctrine or Wishful Thinking?*, 9 CRIM. JUST. J. 87, 143 (1986) (propounding cultural defenses to negate or mitigate criminal responsibility where acts are based on actor's cultural heritage, religion, or tradition).

96. See Hayaud-Din, *supra* note 93 (describing hawala as culturally ingrained and clashing with Western ideals). Because of the economic infrastructure and instability in Afghanistan, Hayaud-Din argues that a centralized banking system based in Kabul would never integrate as well as hawala networks. *Id.*

97. See e.g. Kapoor, *supra* note 24 (describing use of hawala in notorious corruption scandal in India); Carroll, *supra* note 3 (describing illegality pervasive in alternative remittance systems); Jamwal, *supra* note 17 (discussing role of hawala in terrorist financing in Kashmir); Jost & Sandhu, *supra* note 4 (stating that terrorists in India used hawala network to transfer funds); El Qorchi, *supra* note 4, at 12-13 (listing illegal activities associated with hawala networks); Maimbo, *supra* note 4, at 14 (stating that hawala is vulnerable to money launderers and those seeking to finance terrorism); Passas 2, *supra* note 12 (listing crimes associated with informal value transfer systems).

98. See *Int'l Narcotics Control Report 1999*, *supra* note 13 (identifying hawala networks as key in money laundering and financial crimes in South Asia). The report describes a 1999 investigation into international alien smuggling ring into the United States that relied on hawala networks. *Id.* But see Wilson, *supra* note 5, at 10 (stating hawala remittances have "little to do with underground or illicit economic activity"); Passas 1, *supra* note 3, at 10 (positing that hawala-related crime may be exaggerated given that they are one of numerous systems used by money launderers).

99. See Dam, *supra* note 1 (describing American efforts to stop terrorist financing); Ilias Bantekas, *Current Development: The International Law of Terrorist Financing*, 97 AM. J. INT'L L. 315, 328-29 (2003) (describing ease with which terrorist money infiltrates legitimate or illegitimate money); Meenakshi Ganguly, *A Banking System Built for Terrorism*, TIME, Oct. 25, 2001, available at <http://www.time.com/time/world/article/0,8599,178227,00.html> (reporting links between hawala networks and terrorism). But see *Ter-*

scrutiny on hawala networks became especially urgent after U.S. officials discovered that several of the September 11th hijackers had received U.S.\$110,000 through a financial institution in the United Arab Emirates.¹⁰⁰

While it is undisputed that Osama bin Laden's financial strength was a factor in the execution of the September 11th attacks,¹⁰¹ there is some debate as to the extent of his reliance on hawala networks.¹⁰² U.S. officials have estimated the costs of ex-

terrorist Financing, supra note 2, at 3 (characterizing U.S. government's battle against terrorist financing as weak). The General Accounting Office ("GAO") reports that the extent to which terrorists use alternate financing mechanisms is not known and faults the U.S. government for poor understanding of methods terrorists use, weak intelligence gathering, and lack of rigorous analysis and data sharing. *Id. See also Having Escaped Regulation for Ages, Hawala Defies Controls, supra* note 22 (pointing out that commercial banks, wittingly and unwittingly, have helped Osama bin Laden transfer funds); Jost & Sandhu, *supra* note 4 (stating that hawala transactions are often disguised within other legitimate business activity).

100. See Judy Pasternak & Stephen Braun, *Emirates Looked Other Way While Al Qaeda Funds Flowed; Finance: For years the Persian Gulf Country Shrugged Off Warnings from U.S. Officials About Money Laundering*, L.A. TIMES, Jan. 20, 2002, at A1 (detailing money transfers between U.A.E banks and U.S. banks). An Al Barakaat branch in the United Arab Emirates wired U.S.\$9,485 to a Florida SunTrust bank account in the names of Marwan Al-Shehhi and Mohamed Atta, the leader of the September 11th hijacking operation. *Id.* On August 30, 2000, U.S.\$19,985 was wired and on September 18, 2000, U.S.\$69,985 was wired to that account. *Id. See also* David Olinger, *The Bucks Stop, Start Here: Open Climate in Arab Emirates Made Transfers Easy for Terrorists*, DENVER POST, Feb. 24, 2002, at 8 (reporting that Florida SunTrust bank generated suspicious activity report for largest amount, U.S.\$69,000, but was lost in myriad transactions reported by U.S. banks); Brisard, *supra* note 2, at 9 (positing that hawala system is an "end user" tool rather than primary tool or instrument for moving money).

101. See Robert O'Harrow, Jr. et al., *Bin Laden's Money Takes Hidden Path to Agents of Terror; Records Hint at Complex Financial Web*, WASH. POST, Sept. 21, 2001, at A13 (reporting bin Laden's wealth at U.S.\$300 million); Adam Cohen, *How Bin Laden Funds His Network*, TIME, Oct. 1, 2001, at 63 (discussing bin Laden's wealth); Ganguly, *supra* note 99 (reporting on terrorists' reliance on hawala networks); Crumley, *supra* note 95 (reporting that Mohamed Atta received cash wire transfers from suspected bin Laden operative); Farah, *supra* note 24 (reporting that part of U.S.\$500,000 used to fund attacks came from Dubai).

102. See Brisard, *supra* note 2, 26-28 (describing practice of *zakat* as primary source of terrorism funding rather than alternative remittance systems). For example, Saudis contribute approximately U.S.\$10 billion per year in *zakat* donations to more than 240 charities in the form of bank transfers. *Id.* Brisard notes the "severe internal resistance from its religious branch to act decisively against funding [terrorist] networks." *Id. See also Terrorist Financing, supra* note 2, at 3 (stating that extent to which terrorists use hawala networks is unknown); *Public Hearing of the Nat'l Commission on Terrorist Attacks Upon the United States*, Apr. 1, 2003 (statement of Lee S. Wolosky, Boies, Schiller & Flexner, LLP) (testifying that Al-Qaeda and other Islamic terrorist groups have taken advantage of *zakat*). Wolosky testified that many Muslims donate at least 2.5% of their income [*zakat*] to prominent, trusted community leaders or institutions, who then com-

ecuting the September 11th attacks at approximately U.S.\$500,000.¹⁰³ But, much of the funding of Al Qaeda and other terrorist networks was obtained legally.¹⁰⁴ Fund-raising activities of Al Qaeda allegedly have run the gamut from ostrich farms and shrimp boats in Kenya, to forestland in Turkey, to diamond trading in Africa and agricultural holdings in Tajikistan.¹⁰⁵ Simply put, terrorists have used both institutionalized and informal banking systems.¹⁰⁶

II. REGULATING THE HAWALA

Although there are a host of laws that attempt to regulate informal banking systems in the United States, this Note only discusses post-September 11th provisions in the USA PATRIOT Act.¹⁰⁷ U.S. law enforcement officials have used USA PATRIOT Act provisions to regulate hawala networks in the *Al Barakaat*

mingle and disperse donated moneys to persons and charities they determine to be worthy. *Id.* Passas 2, *supra* note 12 (positing that hawala networks are not only or main vehicle of illegal or terrorist funds).

103. See Don Van Natta Jr., *Terrorists Blaze a New Money Trail*, N.Y. TIMES, Sept. 28, 2003, at A1 (reporting that September 11th attacks cost an estimated U.S.\$500,000; the attack on the American destroyer Cole in October 2000 was estimated at U.S.\$5,000 to U.S.\$10,000; the October 2002 bombing of Bali nightclub cost approximately U.S.\$74,000); Dan Eggen & Kathleen Day, *U.S. Ties Hijackers' Money to Al Qaeda; Investigators See Cash Trail as Key*, WASH. POST, Oct. 7, 2001, at A1 (describing links between Al Qaeda terrorist network and September 11th hijackers). Two men with names similar to that of two of the hijackers brought U.S.\$14,000 and U.S.\$20,000 in bulk cash and declared these amounts to Customs. *Id.*

104. See Carroll, *supra* note 3 (noting that hawala system is intertwined with gold smuggling and money movement through import/export invoicing manipulation); Bantekas, *supra* note 99, 315-18 (describing how terrorists use both legitimate and illegitimate funds); Jamwal, *supra* note 17 (stating that funding terrorism through hawala comprises miniscule part of overall black economy in India).

105. See O'Harrow, *supra* note 101 (reporting on Al Qaeda fundraising activities); Brisard, *supra* note 2, at 3 (pointing out that Al Qaeda revenues come primarily from legal sources).

106. See *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 42-43 (recognizing that hawala networks intersect with traditional financial institutions for terrorist financiers to obtain currency); Ganguly, *supra* note 99 (discussing elusive nature of hawala networks); Daniel Williams, *Swiss Probe Illustrates Difficulties in Tracking Al Qaeda's Cash*, WASH. POST, Nov. 12, 2001, at A19 (discussing "infinite" channels in hawala networks). *But see* Brisard, *supra* note 2, at 8-9 (arguing that hawala systems are not main tool for moving terrorist money).

107. See Financial Action Task Force on Money Laundering, *Combating the Abuse of Alternative Remittance Systems*, Int'l Best Practices, June 20, 2003 (agreeing to extend anti-money laundering requirements to alternative remittance systems in October 2001); *Report to the Congress*, *supra* note 47, at 6-10 (describing Bank Secrecy Act provisions); El Qorchi, *supra* note 4, at 24 (listing other laws such as Money Services Act that require

case, the *Alshafei* case, and the *Albanna* case.¹⁰⁸ After September 11th, the United Arab Emirates also began to license and regulate hawala networks.¹⁰⁹ There are, however, shortcomings in each State's respective laws, policies, and practices.¹¹⁰

A. *The Laws in the United States*

1. USA PATRIOT Act

On October 26, 2001, six weeks after the September 11th attacks, President George W. Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, more commonly known as the USA PATRIOT Act.¹¹¹ The USA PATRIOT Act recognizes that "money laundering, and the defects in financial transparency on which money launderers rely, are critical to the financing of global terrorism and the provision of funds for terrorist attacks."¹¹² Title III of the USA PATRIOT Act, entitled the International Counter-Money Laundering and Financial Anti-Terrorism Act of 2001, addresses illegal money laundering and terrorist financing.¹¹³

Although the USA PATRIOT Act does not specifically use the term "hawala," it implicates hawala networks in several provi-

licensing provisions for certain money services businesses in United States); Maimbo, *supra* note 4, at 21 (describing legislation that addresses hawala networks).

108. See Kaufman, *supra* note 88 (describing Al Barakaat hawala shutdown); Florangela Davila & Ray Rivera, *U.S. Urged to Drop Trade-Ban Case Man's Company Helped Iraqi People, Supporters Say*, SEATTLE TRIB., Apr. 22, 2003, at B1 (reporting on charges against Hussein Alshafei); Dan Eggen, *3 N.Y. Men Arrested for Money Transfers; Nearly \$500,000 Allegedly Sent to Yemen*, WASH. POST, Dec. 18, 2002, at A2 (describing charges against Mohammed Albanna).

109. See Paul Beckett, *Informal Money-Movement System in UAE Is Likely Uncontrollable*, WALL ST. J., Nov. 12, 2001, at A6 (reporting on U.A.E. government's hawala regulations).

110. See *Critics Question US Tools Against Terror Funding*, KHALEEJ TIMES, Feb. 7, 2004 (criticizing USA PATRIOT Act provisions); Raveendran, *supra* note 3 (describing shortcomings with U.S. hawala regulations).

111. See USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001). See also J.M. Lawrence, *War on Terrorism; Anti-Terror Laws in Place; Feds Urgently Implement Crackdown*, BOST. HERALD, Oct. 27, 2001, at 5 (reporting that USA PATRIOT Act was swiftest-moving bills in federal history due in part to sense of vulnerability after attacks). Lawrence reports that that USA PATRIOT Act was rushed because many lawmakers were preoccupied with anthrax contamination and had less opportunity to consider legislation fully. *Id.* See also Bantekas, *supra* note 99, at 328-29 (discussing swift U.S. reaction to September 11th in passing USA PATRIOT Act).

112. See USA PATRIOT Act § 302 (a)(2).

113. See *id.*, at tit. III.

sions.¹¹⁴ For instance, it re-defines “financial institution,” to include “any person that engages as a business in the transmission of funds, including any person who engages as a business through an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.”¹¹⁵ Under this definition, a hawala operation could now be considered a financial institution and subject to various regulations and due diligence requirements.¹¹⁶

In other words, the USA PATRIOT Act makes it unlawful to run an unlicensed international money transmittal business, and eliminates the requirement that the operator should have known about the licensing requirement.¹¹⁷ Second, the USA PATRIOT Act mandates that such financial institutions report cash transactions of over U.S.\$10,000 and complete suspicious activity reports (“SARs”) for certain cash transfers.¹¹⁸ Moreover, structuring the sum into amounts less than U.S.\$10,000 would be illegal.¹¹⁹ Furthermore, the USA PATRIOT Act requires certain financial institutions that operate outside of the United States to conduct “special measures” of record-keeping and reporting.¹²⁰

114. *See id.*, at §§ 359, 373. *See also BSA Gets Great Expansion in Coverage, Reach and Strength*, 13(1) *MONEY LAUNDERING ALERT*, NOV. 2001, at 5 (discussing USA PATRIOT Act provisions that expand definition of “financial institution” to include underground banking systems, such as hawala and requires all “financial institutions” to maintain anti-money laundering programs).

115. *See USA PATRIOT Act* § 359.

116. *See id.*, at § 373. *See also Having Escaped Regulation For Ages, Hawala Defies Controls*, *supra* note 22 (recognizing that although hawala is not mentioned by name, its description as financial institution subjects it to Treasury Department regulations); Charles Doyle, *The USA PATRIOT Act: A Legal Analysis*, CRS Rep. for Cong., Apr. 15, 2002, at 30 (describing USA PATRIOT Act provisions that require financial institutions to implement due diligent policies, procedures, and controls).

117. *See USA PATRIOT Act* § 373(b)(1)(A).

118. *See id.*, at § 359. *See also Int'l Narcotics Control Strategy Report*, 2003 Released by the Bureau for Int'l Narcotics and Law Enforcement Affairs (Mar. 2004) (listing indicators of suspicious activity: frequent domestic and international ATM activity, even dollar deposits or transfers, no known source of income, use of wire transfers to move funds to and from high risk geographic locations, frequent address changes, occupation “student,” purchases of military items or technology, and media reports on suspected/arrested terrorists or groups).

119. *See USA PATRIOT Act* §§ 321, 356. *See also Doyle*, *supra* note 116, at 25 (describing provisions that require financial institutions to track anyone who transports more than U.S.\$10,000 into or out of United States).

120. *See USA PATRIOT Act* § 311. *See also Doyle*, *supra* note 116, at 27-29 (describ-

Finally, other provisions allow the United States to freeze assets from hawala networks.¹²¹ The proposed VICTORY Act¹²² seeks to further strengthen the USA PATRIOT Act.

2. Operation Green Quest

Operation Green Quest, a multi-agency financial enforcement task force formed on October 25, 2001, augments the “existing counter-terrorist efforts by bringing the full scope of the government’s financial expertise to bear on systems, individuals, and organizations that serve as sources of terrorist funding.”¹²³ As early as four months after the September 11th attacks, Operation Green Quest agents made arrests and froze more than U.S.\$80 million in assets.¹²⁴ The United States also designated

ing provisions that require certain institutions that pose money laundering risks to keep more extensive records); Angela D. Hardister, *Can We Buy Peace on Earth?: The Price of Freezing Terrorist Assets in a Post-September 11 World*, 28 N.C.J. INT’L L. & COM. REG. 605, 620-21 (2003) (describing extraterritorial reach of USA PATRIOT Act provisions).

121. See USA PATRIOT Act §§ 315-316, 319-20, 371, 373, 376, 806.

122. See Draft Copy of The Vital Interdiction of Criminal Terrorist Organizations Act 2003, S., 108th Cong. 103 [hereinafter “VICTORY Act”], available at <http://www.libertythink.com/VICTORYAct2.pdf> (last visited May 6, 2004). The proposed VICTORY Act explicitly mentions “hawalas,” and states that a “transfer of funds shall be considered to involve the proceeds of specified unlawfully activity” if it is “part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity.” *Id.*; Dan Eggen, *GOP Bill Would Add Anti-Terror Powers*, WASH. POST, Aug. 21, 2003, at A3 (describing lower standards for convicting defendants of money laundering through hawala networks in proposed VICTORY Act).

123. See *Treasury Officials on Anti-Terrorism Finance Initiative U.S. Seeks to Break Up Terrorists’ Financial Networks*, *supra* note 7 (discussing U.S.-led initiatives); Dam, *supra* note 1 (describing composition of financial antiterrorism task force known as Green Quest); Bantekas, *supra* note 99, at 329 (discussing formation of Operation Green Quest). See also *President Announces Crackdown on Terrorist Financial Network*, Remarks of Pres. George Bush (Nov. 7, 2001), available at <http://www.whitehouse.gov/news/releases/2001/11/20011107-4.html> (quoting President Bush’s strategy). He stated:

The United States is pressing the war against terror on every front. From the mountains of Afghanistan to the bank accounts of terrorist organizations. The first strike in the war against terror targeted the terrorists’ financial support. We put the world’s financial institutions on notice: if you do business with terrorists, if you support them or sponsor them, you will not do business with the United States of America.

Id.

124. See Dam, *supra* note 1 (describing successes of law enforcement efforts); Edmund L. Andrews, *Traces of Terror: The Money Trail; White House Denies Report Qaeda Funds Are Flowing*, N.Y. TIMES, Aug. 30, 2002, at A10 (describing international cooperation in freezing funds); Michael M. Phillips & Ian Johnson, *U.S.-European Divisions Hinder Drive to Block Terrorists’ Assets: Some Countries Identify Few Targets Except Those That Are of Local Interest*, WALL ST. J., Apr. 11, 2002, at A1 (reporting that governments worldwide have clamped down on assets of alleged terrorist groups). The United States has blocked

over 315 terrorist-related entities and began freezing their assets.¹²⁵ Two years after the attacks, more than U.S.\$136.8 million has been frozen around the world due in part to the efforts of Operation Green Quest.¹²⁶ The U.S. Treasury Department claims that Al Qaeda's annual budget has shrunk to U.S.\$5-10 million from U.S.\$35 million before September 11th.¹²⁷ As of July 31, 2003, however, the U.S. government had only frozen U.S.\$719,832 in Al Qaeda assets.¹²⁸

U.S.\$34 million in assets allegedly tied to terrorism, the Europeans U.S.\$35 million and other countries another U.S.\$35 million).

125. See *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 5 (discussing specific progress made in stopping terrorist financing). The report states that since September 11th, the estimated worldwide total of assets with possible terrorist links seized is over U.S.\$60 million. *Id.* See also *Hearing on the Role of Charities and NGO's in the Financing of Terrorist Activities, Before the Subcomm. on Int'l Trade and Fin., Comm. on Banking, Housing, and Urban Affairs*, 107th Congress 6-14 (Aug. 1, 2002) (statement of Kenneth W. Dam, Deputy Secretary, Treas. Dep't) (testifying that since September 11th, the United States has designated seven foreign charitable organizations as linked to Al Qaeda, has shut down two prominent U.S.-based charities with alleged ties to Osama bin Laden and Taliban, and seized at least U.S.\$2.4 million in charitable funds); Kurt Eichenwald, *U.S. Freezes Assets of 2 Groups, for Diverting Gifts to Al Qaeda*, N.Y. TIMES, Jan. 10, 2002, at A17 (discussing U.S. freezing efforts).

126. See Josh Meyer, *Cutting Money Flow to Terrorists Proves Difficult; Nations at the Heart of Al Qaeda's Network Lack Financial Safeguards, and the Global Alliance Is Weaker; Cells Are Now Deeper Underground*, L.A. TIMES, Sept. 28, 2003, at 1 (describing results of Operation Green Quest); Beckett, *supra* note 109 (reporting that U.A.E. government has complied with several U.S. requests to freeze bank accounts including twelve accounts allegedly related to Al Barakaat hawala network). *But see* Hardister, *supra* note 120 (criticizing U.S. freezing of assets as overreaching).

127. See Van Natta, *supra* note 103 (quoting U.S Treasury Department's general counsel about decrease in Al Qaeda funds); *Fact Sheet: Shutting Down the Terrorist Financial Network*, Press Release by Office of the Press Secretary, Executive Office of the President (Nov. 7, 2001) available at <http://www.whitehouse.gov/pressreleases/2001/11/print/20011107-6.html> [hereinafter *Fact Sheet*], (stating that U.S. government had blocked over U.S.\$26 million in assets of Taliban and Al Qaeda and other Nations had blocked at least U.S.\$17 million); *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 34-36 (discussing specific indictments against charities that provided material support to terrorists). *But see* Mohamed Nimer, *Muslims In America After 9-11*, 7 J. ISLAMIC L. & CULTURE 1, 28-29 (Fall 2002 / Winter 2003) (discussing freezing assets of Islamic charities). Nimer argues that shutting down religious charities because of suspicion that some of its associates or recipients have extreme political views is a form of discriminatory profiling. *Id.*

128. See *Terrorist Financing*, *supra* note 2, at 24 n.44 (reporting that U.S. government had only frozen U.S.\$719,832 in Al Qaeda assets as of July 31, 2003). The GAO reports that the frozen funds are rough indicators of the extent of terrorist financial flows, but U.S. government officials have not been able to provide indicators about terrorist assets outside of formal mechanisms. *Id.* See also Ron Howell, *Cash Lifeline Cut; Terror Law Hampers Unlicensed Money Transfer Companies*, NEWSDAY, Jan. 5, 2004, at A3 (describing prosecutions of dozens of Middle Eastern and South Asian immigrants for

Despite these successes, critics have argued that the USA PATRIOT Act provisions¹²⁹ and Operation Green Quest efforts¹³⁰ are inadequate to regulate hawala networks. First of all, financial institutions are already saddled with enormous financial reporting and due diligence requirements.¹³¹ Moreover, even with the extra reporting requirements, some critics have

running unlicensed hawala brokers). Howell reports that in December 2003, a federal jury in Brooklyn convicted a Yemeni immigrant, Ali Kassim Kassim of conducting an unlicensed money transmitting business, part of a hawala network. *Id.* More than a dozen other Yemeni-born men have pleaded guilty to participating in that network, but none of these hawala prosecutions involved charges of terrorism. *Id.*

129. See *Terrorist Financing*, *supra* note 2, at 4 (reporting that U.S. government faces challenges to monitoring alternative financing mechanisms in terms of accessibility, adaptability of terrorists and competing priorities); Gauvin, *supra* note 86 (arguing that increased reporting requirements could hinder criminal investigations). Gauvin writes, "The art of intelligence gathering has always hinged on the ability of analysts to separate the wheat from the chaff, or to find the useful signal hidden in the distracting noise of information. Adding more noise is unlikely to make that task easier." *Id.* See also Mariano-Florentino Cuellar, *Criminal Law: the Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance*, 93 J. CRIM. L. & CRIMINOLOGY 311, 380 (arguing that traditional law enforcement cannot detect non-traditional criminal financial activity); George A. Lyden, *The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift*, 8 FORDHAM J. CORP. & FIN. L. 201 (arguing that U.S. efforts are substantially ineffective in war on terrorism).

130. See Howell, *supra* note 128 (reporting increased use of official means, such as banks and other licensed institutions, rather than hawala networks to send money). A spokesperson at the Pakistani mission to the United Nations said remittances through official channels such as banks and other licensed institutions have dramatically risen in the past two years. *Id.* Roughly U.S.\$300 million was sent through U.S. institutions in the year before September 11th, compared with U.S.\$2.1 billion in the past year. *Id.* See also Michael M. Phillips, *U.S. Says It Cut Off Up to \$20 Million in Al Qaeda Funds*, WALL ST. J., Jan. 29, 2002, at A22 (stating that approximately 8,500 hawalas and other money-service businesses have registered with federal government since new regulations). *But see* Cottle, *supra* note 78 (arguing that crackdown has pushed terrorist activity further underground); Van Natta, *supra* note 103 (reporting that terrorists may have become more savvy at hiding money); Hardister, *supra* note 120, at 641-42 (describing resistance to U.S. freezing efforts).

131. See Eggen & Day, *supra* note 103 (reporting scope of paperwork requirements). Large banks might typically handle 10,000 to 125,000 wire transfers per day, and about 70% are for amounts less than U.S.\$500,000. *Id.* See also Lyden, *supra* note 129, at 231 (stating that extra paperwork for banks is "virtually useless"); Bradley Skolnik, *Reining in Wall Street Regulators*, CHICAGO TRIB., July 7, 2003, at 17 (describing USA PATRIOT Act's anti-money laundering provisions as cumbersome and costly). Skolnik comments that these regulations have spawned a cottage industry of law firms offering expensive seminars and services to help brokerages navigate these new regulations. *Id.* The regulations affects small business and of the NASD's 5,300 member firms, about 50% have only ten or fewer registered people and approximately 75% have no more than fifty brokers. *Id.* Each new regulation adds to the cost of transactions on Wall Street, which are borne out by investors. *Id.*

posited that the new USA PATRIOT Act provisions would not have prevented the September 11th disaster.¹³² Because the nineteen hijackers had opened twenty-four domestic bank accounts at four different banks with deposits averaging between U.S.\$3,000 and U.S.\$5,000, well below the U.S.\$10,000 reporting requirement limit, a financial institution would not have detected anything.¹³³ Furthermore, there was reportedly no unusual activity in those accounts that would have alerted authorities under even the most intense scrutiny.¹³⁴

Law enforcement authorities, too, will have to process a monumental amount of paperwork from these financial institutions.¹³⁵ Even if they rely on SARs, they will have difficulty in detecting terrorist activity.¹³⁶ Furthermore, critics hold that fi-

132. See Eggen & Day, *supra* note 103 (reporting that banks did not make error in failing to follow guidelines for detecting or reporting suspicious activities); Passas 2, *supra* note 12 (arguing that "knee jerk" law enforcement response to regulating hawala is inadequate because many terrorists use formal banking networks).

133. See *Third Public Hearing of the National Commission on Terrorist Attacks upon the United States*, July 9, 2003 (statement of Rohan Gunaratna, Head of Terrorism Research, Inst. for Defense and Strategic Studies, Singapore) (stating that despite Western efforts to regulate formal banking systems, underground unregulated banking networks have grown larger); Eggen & Day, *supra* note 103 (reporting that two alleged hijackers declared U.S.\$14,000 and U.S.\$20,000 in bulk cash to Customs, but did not raise suspicions); Bantekas, *supra* note 99, at 321 (noting that several hijackers opened bank accounts without social security numbers).

134. See *How Two Dates Transformed Money Laundering Field Worldwide*, 13(12) *MONEY LAUNDERING ALERT*, Oct. 2002, at 1 (arguing that money laundering provisions in USA PATRIOT Act were bills that had been pending in Congress for years). These bills were designed primarily to detect traditional money laundering scenarios rather than terrorist financing. *Id.* See also Cooper & Johnson, *supra* note 36 (reporting that German officials discovered hawala activity in one instance without relying on any money laundering laws). The hawala broker regularly performed his transactions at the same McDonald's restaurant and eventually drew the attention of security guards. *Id.* The guards called the police, who got permission to wiretap his phones, which revealed his work for Al Barakaat. *Id.*

135. See *Terrorist Financing*, *supra* note 2 (reporting that FinCEN officials had insufficient resources to draft regulations under USA PATRIOT Act). The new provisions imposed regulations on many financial institutions that were not previously subject to comprehensive anti-money laundering regulations, such as automobile and boat dealers, pawn brokers, and dealers in precious metals, stones, or jewels. *Id.* This requires time and resources to study and consult with law enforcement and industry leaders. *Id.* See also Eric Lichtblau & Timothy L. O'Brien, *U.S. Struggles to Track How Terrorists Finance Their Operations*, *INT'L HERALD DAILY TRIB.*, Dec. 13, 2003, at 2 (noting difficulty of tracing terrorist money especially when funds are transferred in small amounts).

136. See Izzidin Hussein Razem, *Post-9/11 Rule Changes Leaving Banks with Tougher Choices*, *MONEY LAUNDERING ALERT*, Jan. 2004 (finding problematic that banks provide SARs when financial investigations units lack competent and experienced staff); *How Two Dates Transformed Money Laundering Field Worldwide*, *supra* note 134 (questioning

nancial institutions are not well trained at distinguishing between money laundering and terrorist financing.¹³⁷

Finally, many hawala brokers simply will not register without stronger incentives.¹³⁸ Notably, other countries such as India, where hawala use is illegal but rampant, have been unsuccessful in regulating it.¹³⁹ Thus, while the United States mandates additional compliance and identification verification measures, critics have argued that the new requirements fail to convince people to switch to the formal banking system.¹⁴⁰

customer identification requirements given that U.S. agents are “baffled” with Arabic names); Cottle, *supra* note 78 (quoting one former Clinton Treasury official, “If you can even find a hawala broker to interview, one, you’ll be doing better than the FBI”).

137. See *Report to the Congress*, *supra* note 47, at 16 (urging better education for law enforcement and financial businesses on hawala networks); *Jost Statement*, *supra* note 1 (suggesting more efficient ways to regulate hawala networks); Skolnik, *supra* note 131 (commenting that problems are with enforcement rather than legislation); *Critics Question US Tools Against Terror Funding*, *supra* note 110 (critiquing USA PATRIOT Act provisions because they rely on same tactics used to detect money laundering, which is problematic given that terrorists often deal in much smaller sums than money launderers).

138. See Maimbo, *supra* note 4, at 21 (noting that many Afghani hawala brokers interviewed stated they had no incentive to declare their activities for external monitoring). Even if it were possible, their transactions are so varied it would be impossible to develop a consistent set of guidelines and standards. *Id.* See also Hayaud-Din, *supra* note 93 (criticizing attempts to implement Western model of centralized banking given that “the Hawallah system reaches into the remotest regions of the [N]ation more quickly, cheaply, and efficiently than any modern bank in the industrialized world”); Wolosky, *supra* note 102 (testifying that because hawala activity is intended to be without record-keeping or paper trails, the likelihood that individuals will register is quite remote); Nithin Belle, *Hawala Racket Continues to Fox Authorities*, KHALEEJ TIMES, Feb. 18, 2004 (reporting on unsuccessful attempts by Indian government to regulate hawala operations). A big obstacle is that hawala premiums offer 5-7% of official exchange rates. *Id.* See also Nigel Morris-Cotterill, *Fraud — Is the Big Clean-up a Wash Out? — Nigel Morris-Cotterill Assesses the Initiatives Introduced in the Past Year to Counter Money Laundering and Corporate Fraud*, BANKER, Oct. 1, 2002 (arguing that USA PATRIOT Act impinges on privacy of overseas customers).

139. See *Int’l Narcotics Control Report 1999*, *supra* note 13 (estimating that size of underground economies in South Asia are 50-100% that of “documented” economies); Cottle, *supra* note 78 (reporting that other Nations such as India have tried to regulate hawala unsuccessfully); Kapoor, *supra* note 24 (describing unsuccessful verdict in political corruption scandal involving hawala transactions). *Cf.* Wilson, *supra* note 5, at 11 (describing successful attempt to regulate hawala networks in Philippines). Hawala use in the Philippines, which has millions of expatriate workers and migrants, has decreased mainly as a result of improvements and cost reductions for banking channels, and also unification of the exchange rate. *Id.*

140. See Beckett, *supra* note 109 (reporting that legitimate wire-transfer and banking services would become an attractive alternative if countries abolished controls that restrict currency flows); Maimbo, *supra* note 4, at 21 (describing heavy reliance of hawala networks throughout Afghanistan because of lack of other alternatives); Passas

B. *The Laws in the United Arab Emirates*

In the United Arab Emirates, a federation of seven independent States, there are fifty banks to serve three million residents.¹⁴¹ Within Dubai alone, there are at least 113 money exchange stations, and eighty unlicensed but legal hawala operators recognized and legitimately used.¹⁴² One reason for hawala's popularity in the United Arab Emirates is the large expatriate population who uses hawala networks to send money home.¹⁴³

The U.S. Treasury Department has specifically identified Dubai, Pakistan, and India as the "hawala triangle," because people living in these regions rely heavily on hawala networks.¹⁴⁴ After September 11th, the United States heavily scrutinized U.A.E. hawala networks because two of the hijackers, Mohammed Atta and Marwan Al Shehhi, reportedly received more than U.S.\$120,000 from banks in the United Arab Emirates in 2000.¹⁴⁵ Furthermore, the United States has focused on the

1, *supra* note 3, at 69 (noting that after Philippine government abolished currency exchange controls in 1995, official remittances quadrupled).

141. See Middle East Review World of Information, *supra* note 73 (discussing prevalence of hawala use in United Arab Emirates); Timothy L. O'Brien, *U.S. Focusing on Dubai As a Terrorist Financial Center*, N.Y. TIMES, Oct. 5, 2003, at 13 (describing new focus on Dubai after September 11th); Olinger, *supra* note 100 (providing background on hawala prevalence in United Arab Emirates); Raveendran, *supra* note 3 (reporting heavy hawala use in United Arab Emirates).

142. See Olinger, *supra* note 100 (reporting large number of unlicensed hawala); O'Brien, *supra* note 141 (noting legitimacy of hawala in United Arab Emirates); Raveendran, *supra* note 3 (reporting that Western countries lack appreciation of hawala's long historical existence).

143. See Jost & Sandhu, *supra* note 4 (stating reasons for extended hawala use in United Arab Emirates). Laborers from South Asia make up about half the U.A.E.'s population and rely on hawala to send money home. *Id.* Dubai's large gold market is the source of much of the gold sent (licitly and illicitly) to India and Pakistan. *Id.* See also O'Brien, *supra* note 141 (reporting on Dubai's large expatriate labor force); Raveendran, *supra* note 3 (reporting Dubai as key point in global hawala network due to expatriate workers and businessmen). Hawala use often takes the form of flight of capital resulting from exchange controls, regulations against outflow of funds and other policies followed by many Asian countries. *Id.*

144. See O'Brien, *supra* note 141 (reporting that this hawala triangle forms backbone of system that abets terrorism); Jost & Sandhu, *supra* note 4 (discussing illegality of hawala in India and Pakistan).

145. See Pasternak & Braun, *supra* note 100 (reporting that some hijackers wired approximately U.S.\$18,000 to U.A.E. account); Beckett, *supra* note 109 (describing U.S.\$110,000 wire transfers between U.A.E. banks and U.S. banks). Immediately, before the attacks, three of the suspected hijackers used a Boston-based Western Union to send U.S.\$5,000 and for U.S.\$5,400 to U.A.E. bank. *Id.* But see *UAE Defends Hawala*

United Arab Emirates because it, along with Pakistan and Saudi Arabia, had diplomatic ties with the Taliban government.¹⁴⁶

In response to this heightened scrutiny, the United Arab Emirates has implemented new banking rules and regulations.¹⁴⁷ Despite American scrutiny however, the United Arab Emirates has been resistant to Western regulatory efforts.¹⁴⁸ In fact, the U.A.E. Central Bank Governor Sultan bin Nasser Al Suwaidi has continued to openly defend the legitimacy of hawala networks.¹⁴⁹ Al Suwaidi denies that the United Arab Emirates is solely to blame for the financing of the September 11th terror attacks, and alleges that the United States is equally to blame because it failed to detect suspicious currency transactions even with its high-tech banking system.¹⁵⁰

On May 4, 2002, the United Arab Emirates participated in a regional financial conference with over 300 international delegates and adopted the "Abu Dhabi Declaration on Hawala."¹⁵¹

System, Dec. 18, 2003, available at <http://uaeinteract.com/news/default.asp?cntDisplay=20&ID=140> (denying U.S. reports that U.A.E. banks were used to finance September 11th terror attacks).

146. See Pasternak & Braun, *supra* note 100 (reporting that United Arab Emirates had ties to Taliban before September 11th).

147. See Beckett, *supra* note 109 (reporting that U.A.E. exchange houses must get government-issued identification from customers for any transaction over U.S.\$550); Middle East Review World of Information, *supra* note 73 (listing U.A.E. efforts to tighten regulations of hawala); Olinger, *supra* note 100 (describing increased scrutiny on United Arab Emirates).

148. See Raveendran, *supra* note 3 (describing contention with U.S. regulatory efforts); O'Brien, *supra* note 141 (reporting that despite hawala registry, hawala brokers are largely left to police themselves); Hardister, *supra* note 120, at 639-41 (noting that United States cannot rely on other countries such as Saudi Arabia to act as fervently in combating terrorism); *Follow the Money*, *ECONOMIST*, June 1, 2002 (arguing that even if America's regime against terrorist financing were impregnable within its own borders, terrorists could still take advantage of its links with countries that take laxer attitude).

149. See *UAE Defends Hawala System*, *supra* note 145 (describing resistance to American-led efforts). The U.A.E. Central Governor recently stated that, "the Hawala system is internationally recognised and no one can dare to cast doubt over it. It is recognised by 62 countries of the world including the G7 whose financial transactions control 80 per cent of the world financial order." *Id.* See also Raveendran, *supra* note 3 (reporting on Suwaidi's defense of hawala networks); Hayaud-Din, *supra* note 93 (arguing that Afghans will not accept foreign regulatory model unless it operates in accordance with Islamic principles).

150. See *UAE Defends Hawala System*, *supra* note 145 (blaming United States for not detecting terrorist financing); Raveendran, *supra* note 3 (arguing that every money laundering transaction interfaces with formal banking at some stage).

151. See Positive Aspects for Hawala Highlighted, May 5, 2002, available at <http://uaeinteract.com/news/default.asp?cntDisplay=10&ID=140> (describing results of conference on hawala networks). The declaration came after two days of deliberations by

This declaration recognized the “positive aspects” of hawala networks in that it “provides a fast and cost effective method for worldwide remittance of money,” and called for “effective but not overly restrictive” regulation.¹⁵² Furthermore, it noted that, “the international community should continue to work individually and collectively to regulate the Hawala system for legitimate commerce and to prevent its exploitation or misuse by criminals and others.”¹⁵³ Relying on this declaration, the United Arab Emirates formally institutionalized hawala networks in 2002.¹⁵⁴ As part of the first steps, the United Arab Emirates issued licenses to fifty-five hawala brokers.¹⁵⁵

In one sense, this institutionalization of hawala in the United Arab Emirates is no different than the regulation in the United States, as both countries wish to make hawala transactions more transparent.¹⁵⁶ The difference, however, lies in their

experts, bankers, law enforcement agencies and international regulators at the conference hosted by the U.A.E. Central Bank. *Id.* Over 300 delegates from the regional and international financial community including representatives from Europe and the United States attended the conference. *Id.*

152. See Abu Dhabi Declaration on Hawala, available at <http://www.ustreas.gov/offices/eotffc/programs/Hawala-conf.pdf> (reprinting declaration). See also *Follow the Money*, ECONOMIST, June 1, 2002 (reporting that American officials at conference said that cheap efficiency of white hawala, makes it a “beautiful” system).

153. See *id.*

154. See UAE Central Bank Issues Certificates to Hawala Brokers, Sept. 9, 2003, available at <http://uaeinteract.com/news/default.asp?cntDisplay=10&ID=140> (describing new certificates issued to hawala brokers); *IFT's Role in Financial System Discussed*, KHALEEJ TIMES, Apr. 6, 2004 (describing hawala as integral part of international financial system).

155. See *Central Bank Issues 55 Licenses to Hawala Brokers*, KHALEEJ TIMES, Sept. 14, 2003 (reporting that hawala brokers and intermediaries must provide details of money transfers and report any dubious money transfers to Central Bank immediately); *UAE Defends Hawala System*, *supra* note 145 (describing first steps in regulating hawala); Muawia E. Ibrahim, *UAE Money Laundering Law Selected by UN As a Model*, KHALEEJ TIMES, Mar. 5, 2004 (reporting that United Nations selected U.A.E.'s regulations on hawala money transmitting system as model for other countries). According to Michael A. DeFeo, Terrorism Prevention Branch of the U.N. Office on Drugs and Crime, the U.A.E.'s regulations observe principles of Islamic jurisprudence, something that a UN model or European legislation could not have. *Id.*

156. See Abu Dhabi Declaration on Hawala (May 2002) (cited in Maimbo, *supra* note 4, at 36 ann.5) (announcing that U.A.E. government imposes licensing requirement on hawalas). See also USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 § 359, 373 (2001) (expanding definition of “financial institution” to include underground banking systems, such as hawala and requiring all “financial institutions” to maintain anti-money laundering programs). See also *President Announces Crackdown on Terrorist Financial Network*, *supra* note 123 (stating that G8 partners and others, including United Arab Emirates have blocked assets and coordinated enforcement action).

sentiments; namely, the United Arab Emirate's approach clashes with that of mainstream U.S. law enforcement.¹⁵⁷ For instance, the United Arab Emirates has openly voiced its support of and recognizes the need for hawala networks.¹⁵⁸ It has even developed a national hawala-type system explicitly to enable its Somali population to transfer money and other goods to Somalia.¹⁵⁹ In contrast, the United States has sought to shut down hawala networks such as the Al Barakaat.¹⁶⁰

Regulating hawala networks is dependent on collaborative

157. See Ganguly, *supra* note 99 (describing hawala networks as "labyrinthine" of shadiness); O'Brien, *supra* note 141 (citing elusive nature and daunting difficulties in "penetrating the maze" of hawala networks). Cf. Raveendran, *supra* note 3 (distinguishing between hawala use for criminal intent and for justifiable purposes); Anne C. Richard, *Europe Can Do More to Shut Down Terrorist Funds; the Money Trail*, INT'L HERALD DAILY TRIB., Mar. 19, 2004, at 6 (contrasting American "zero-tolerance approach" to regulation with European approach).

158. See *UAE Defends Hawala System*, *supra* note 145 (defending legitimacy of hawala operations); Beckett, *supra* note 109 (discussing prevalence of hawala networks in Dubai and reluctance to take concrete action); *Hawala Operators to be Licensed*, May 28, 2002, available at <http://uaeinteract.com/news/default.asp?cntDisplay=50&ID=140> (reporting conference finding that hawala was widespread and permanent and what was needed is regulation and supervision).

159. See *Emirates Post Opens Window to Somalia*, SOMALILAND TIMES, July 1, 2003 (reporting that Somalis in the United Arab Emirates will be able to transfer money legally). This is the first international postal agreement for Somalia and the nearly 75,000 Somalis residing in the U.A.E. will not only be able to transfer money but will also be able to send letters and parcels to Somalia. *Id.* See also Hayaud-Din, *supra* note 93 (describing Saudi Arabian government and banks working together to develop efficient outlet for money transfers for large expatriate population); Noguchi, *supra* note 44 (offering suggestions on how to use hawala networks positively). The Asian Development Bank found that one midway point between alternative remittance systems and the long-term goal of establishing a more user-friendly formal banking sector is to design innovative, legal remittance methods that target certain groups. *Id.* A special system could be used to deliver money for overseas workers in a specific country, for example. *Id.* Once people have a competitive legal option to send money, and they begin to move away from informal dealers, it will be easier for the authorities to track terrorists and criminals who still use the older system. *Id.* See also *IVTS Seen Emerging As Money Transfer Solution*, KHALEEJ TIMES, Apr. 5, 2004 (describing discussion at Second International Conference on Hawala in Abu Dhabi). Conference participants stressed the huge economic contributions that migrant workers supplied. *Id.*

160. See Dam, *supra* note 1 (advocating increased efforts against hawala brokers and other informal systems); Kaufman, *supra* note 88 (reporting on U.S. government shutdown of Al Barakaat hawala network); *How Two Dates Transformed Money Laundering Field Worldwide*, *supra* note 134 (reporting that U.S.' "extraterritorial jurisdiction" is coerced on other Nations); Gunaratna, *supra* note 133 (positing that "deep reservoir of hatred and a desire for revenge" will remain unless United States thinks beyond counter-terrorist military and financial dimensions). See also Stuart, *supra* note 75 (reporting that initiatives to capture benefits of remittances have been left to banks or recipient communities themselves). Stuart notes that Citigroup, which owns Mexico's

work with multiple countries and jurisdictions.¹⁶¹ But, as the situation in the United Arab Emirates demonstrates, different Nations do not necessarily agree on the best regulatory methods.¹⁶² At the most basic level, Nations disagree as to the degree of connection between hawala networks and terrorism.¹⁶³ Furthermore, there are practical enforcement considerations, given that most banks' staff in the United Arab Emirates are South Asian

largest bank, Banamex, has cut transmission costs to compete with unlicensed services. *Id.*

161. See Cuellar, *supra* note 129, at 374-80 (describing international element of money laundering crimes); Dam, *supra* note 1 (repeating sentiment that international cooperation is important). Deputy Secretary of the Treasury Kenneth Dam stated, "[I]nternational cooperation is particularly important because the financial front of the war on terrorism cannot be won without it . . . you can't bomb a foreign bank account. You need the cooperation of host government." *Id.* See also Meyer, *supra* note 126 (quoting Pakistan's Finance Minister Shaukat Aziz as saying, "the global effort so far was too disjointed and anemic to have any chance of success").

162. See Josh Meyer & Eric Lichtblau, *Crackdown on Terror Funding Is Questioned; Finance: U.S. Officials Say a Lack of Evidence and Fighting Among Agencies Have Hampered the Drive*, N.Y. TIMES, Apr. 7, 2002, at A1 (describing different approaches to hawala regulation). Nations such as Switzerland have asked for additional proof of wrongdoing by suspected terrorists, charities, and other businesses before freezing assets. *Id.* See also Richard, *supra* note 157 (criticizing American "zero-tolerance approach"); *Still Flush*, ECONOMIST (reporting that blacklisting countries has failed); O'Brien, *supra* note 141 (describing lack of international cooperation). U.A.E. officials contend that foreign counterparts rarely respond to their requests for detailed information to aid investigation when they do identify suspicious banking transactions. *Id.* Although the United Arab Emirates filed 429 reports of suspicious transactions between August 2001 and May 2003, and notified Canada, Italy, Luxembourg, Portugal, Switzerland, the United States, and the United Kingdom, these countries provided little aid. *Id.* See also *Follow the Money*, ECONOMIST, June 1, 2002 (questioning American lists of terrorist financiers). *The Economist* reports that the list contained misspelt Arabic names, missing basic identifying details, such as place and date of birth, and some of the people included turned out to be dead. *Id.* Switzerland and France stopped the Revolutionary Armed Forces of Colombia (FARC, a guerrilla army) from going on the European Union's roster of terrorist organizations, because that might hinder their efforts to help peace in the country. *Id.* The list of organizations started out with 100 names, but whittled down to ten after a number of countries had their say. *Id.*

163. See Wolosky, *supra* note 102 (testifying that standards of who and what constitutes a terrorist have hindered progress). Wolosky testified that the European Union still permits Hamas and Hezbollah to legally raise funds on its territory. *Id.* Other States have been less willing to freeze funds over designated individuals and organizations originated by the U.S. government, and asked for increasingly sensitive intelligence information that supported the original U.S. designations. *Id.* See also Razem, *supra* note 136 (pointing out obstacles to regulations due to conflicting laws and different interpretations of "terrorism" among different countries); Pasternak, *supra* note 100 (pointing out that tax evasion is not a crime in the U.A.E. because U.A.E. government does not collect taxes).

immigrant workers on tenuous contracts,¹⁶⁴ who might not necessarily want to press the wealthy locals for documentation.¹⁶⁵ It is unclear what action the United States will take if countries refuse to take the steps that it demands.¹⁶⁶

C. Specific Hawala Cases

As mentioned above, both the United States and the United Arab Emirates have increased efforts to license hawala networks after September 11th.¹⁶⁷ The U.S. government sought to regulate hawala networks through the shutdown of the Al Barakaat hawala, and the prosecution of Hussein Ashafei and Mohammed Albanna.¹⁶⁸

164. See Beckett, *supra* note 109 (discussing popularity and demand of hawala among U.A.E.'s two million foreign laborers and arguing that any clampdown on existing hawala brokers would simply cause others to spring up in their place); Jost & Sandhu, *supra* note 4 (stating that South Asian laborers make up about half U.A.E.'s population); Raveendran, *supra* note 3 (reporting on large number of expatriate workers and businessmen in Dubai).

165. See Razem, *supra* note 136 (stating that most pressing issue against terrorist financing is cooperation among countries and among financial institutions at verification and investigation stages); Beckett, *supra* note 109 (quoting Sultan bin Nasser Al Suweidi, as, "you could say the banks are not really keen to have in their halls these dirty laborers whose shoes are full of dust"); *Report to the Congress*, *supra* note 47, at 17 (warning that cooperation of hawala brokers is essential in translating records, and such cooperation might not be forthcoming if ethnic, cultural or other sensitivities are misunderstood or ignored by law enforcement); *The Financial Front Line*, *ECONOMIST*, Oct. 27, 2001 (describing obstacles in regulating hawala).

166. See Phillips & Johnson, *supra* note 124 (reporting that Germany and France have each ordered banks to block accounts of just 140 of 192 people and entities on U.S.' alleged terrorist financiers list). Some other European countries have focused chiefly on local problems. *Id.* Spain has added twenty-one names, all alleged extremists from its restive Basque region and Britain has contributed six, all allegedly involved in violence in Northern Ireland. *Id.* See also Cottle, *supra* note 78 (arguing that U.S. law enforcement has failed to engage in diplomacy); *Still Flush*, *supra* note 162 (reporting that blacklisting countries might hurt more than it helps); Meyer, *supra* note 126 (describing that European countries do not necessarily believe U.S. assertions linking hawala to terrorism).

167. See Meyer, *supra* note 126 (reporting Operation Green Quest efforts); *Fact Sheet*, *supra* note 127 (stating U.S. dollar amounts that Operation Green Quest had frozen); Phillips, *supra* note 105 (reporting increased hawala registration after September 11th); See Abu Dhabi Declaration on Hawala, *supra* note 152 (describing new hawala regulations in United Arab Emirates).

168. See Kaufman, *supra* note 88 (reporting shutdown of Al Barakaat network); Davila & Rivera, *supra* note 108 (describing prosecution of Hussein Alshafei); Eggen, *supra* note 108 (describing prosecution of Mohammed Albanna).

1. Al Barakaat Hawala

Al Barakaat was a Somalia-based organization with outlets in Europe and North America through which Somalia's diaspora sent cash to their families.¹⁶⁹ While the company began as a money transfer operation (hawala), Al Barakaat grew into a major telecommunications and construction enterprise that even generated electric power and provided internet connection in Somalia.¹⁷⁰ Al Barakaat employed 1,300 people, making it the largest employer in one of the poorest countries worldwide.¹⁷¹ Because Somalia's banking system is weak, Somali emigrants heavily rely on hawala networks to send money to their relatives.¹⁷² A U.N. report estimates that the Somali diaspora sent up to U.S.\$1 billion to Somalia and neighboring regions each year, making the money sent from relatives abroad Somalia's largest single source of income.¹⁷³

169. See Tim Golden et al., *5 Months After Against Somali Company, Scant Proof of Qaeda Tie*, N.Y. TIMES, Apr. 13, 2002, at A10 (discussing broad scope of Al Barakaat operations); Mark Turner, *Barakat Pleads Innocent to US 'Terror' Claim: Remittance Company Washington's Accusations Against the Somalian Operation Have Led to Its Effective Closure*, FIN. TIMES (London) Nov. 12, 2001, at 6 (describing importance of Al Barakaat). Remittances from Somali diaspora dwarf foreign aid and livestock exports, as well as the budget of Somalia's fledgling transitional government. *Id.*

170. See Kaufman, *supra* note 88 (describing importance of hawala networks to diaspora communities); Edward Alden & Mark Turner, *Assets Frozen As US Targets Al-Qaeda Financing*, FIN. TIMES (London), Nov. 7, 2001, at 1 (describing growth of Al Barakaat network to include mobile phones).

171. See Kaufman, *supra* note 88 (reporting that money sent from relatives abroad is Somalia's largest single source of income, and has been cut by more than half); Samson Mulugeta, *Somali Lifeline Now U.S. Target; Money-Transfer Firm Says It's Innocent*, NEWS-DAY, Nov. 25, 2001, at A2; Martin Merzer, *Raids Target Terrorist Assets; Businesses in Five States Handled Millions*, MILWAUKEE JOURNAL SENTINEL, Nov. 8, 2001, at A1 (describing worldwide scope of Al Barakaat).

172. See Leslie, *supra* note 79 (discussing reliance on hawala networks); Mulugeta, *supra* note 171 (discussing Al Barakaat as Somalia's financial lifeline after government collapsed in 1991); Ted Wendling, *Lifeline for Some Is Linked To Terror; Money Transfers That Aid Somalis Also Tied to Al-Qaida*, PLAIN DEALER (Cleveland), Dec. 3, 2001, at A11 (describing Somali refugees' reliance on hawala networks in Columbus, Ohio). One community member sends U.S.\$500 each month to Somalia to support fifty-five relatives. *Id.* Another said he was shocked to learn that the U.S. government believed that Somali refugees, having fled their war-ravaged homeland, would come to the United States and begin supporting terrorists. *Id.*

173. See Leslie, *supra* note 79 (reporting that Somalis from Minnesota wired about U.S.\$7 million each month in 2000); Mulugeta, *supra* note 171 (stating Al Barakaat controlled 60% of U.S.\$650 million in annual remittances by Somalis living abroad); Chris Tomlinson, *Somali Banker Accused of Being Al-Qaida Money Man in Legal Limbo Two Years Later*, THE STATE (Columbia, SC), Oct. 27, 2003 (reporting that Al Barakaat handled U.S.\$12 million in money transfers each year).

After September 11th, the U.S. government identified Al Barakaat as a major financial operation that supported terrorist organizations.¹⁷⁴ According to the U.S. government, Al Barakaat's worldwide network channeled as much as U.S.\$15 to U.S.\$20 million to Al Qaeda each year.¹⁷⁵ The United States alleged that Al Barakaat was founded by Osama bin Laden associate Ahmed Nur Ali Jim'ale, who became close to bin Laden during the Afghan war against the Soviet Union.¹⁷⁶ On November 7, 2001, less than two months after the September 11th attacks, U.S. federal agents raided storefront businesses in four states.¹⁷⁷ As part of that action, the U.S. government included Al Barakaat on a list of organizations accused of funneling money to terrorists, and seized U.S.\$1.9 million in assets.¹⁷⁸

As a result of the Al Barakaat shutdown, the United States disrupted what was potentially a major flow of funds to terrorist groups.¹⁷⁹ By freezing the assets they were able to deny potential

174. See Dam, *supra* note 1 (hailing shutdown of Al Barakaat as successful). President Bush announced sanctions against the Al Barakaat company on November 7, 2001 and stated that it, "raised funds for Al Qaeda. They manage, invest and distribute those funds. They provide terrorist supporters with Internet service. . . . They even arrange for the shipment of weapons." *Id.* See also Golden, *supra* note 169 (discussing U.S. government's allegations against Al Barakaat); Merzer, *supra* note 171 (stating U.S. government's rationale for shutting down Al Barakaat); Edward Alden & Mark Huband, *Case Still Open on "Terror's Quartermasters": But the US Remains Convinced That Barakat, the Somali Money-Transfer Group, Funds Al-Qaeda*, FIN. TIMES (London) Feb. 21, 2002 (reporting that Paul O'Neill called Al Barakaat "the quartermasters of terror" and "a pariah in the civilized world").

175. See Dam, *supra* note 1 (noting that U.S. government disrupted U.S.\$300-400 million in annual flows through hawala networks); Phillips, *supra* note 105 (reporting that Bush administration has named Al Barakaat a "terrorist-related financial entity"); Golden, *supra* note 169 (reporting on Al Barakaat shutdown).

176. See *Fact Sheet*, *supra* note 127 (stating Jimale's links to bin Laden). The White House alleged that Al Barakaat raises, manages, invests, and distributes funds for Al Qaeda. *Id.* See also Golden, *supra* note 169 (reporting that Al Barakaat's founder, Ahmed Nur Ali Jumale befriended Osama bin Laden). Golden also reports that Mr. Jumale claims he has never met bin Laden. *Id.* See also Merzer, *supra* note 171 (reporting links between Al Barakaat and Al Qaeda); Tomlinson, *supra* note 173 (reporting that Ahmed Nur Ali Jim'ale has been deported to Somalia and two years after September 11th, approximately U.S.\$8.5 million remains frozen).

177. See *President Announces Crackdown on Terrorist Financial Network*, *supra* note 123 (describing U.S. Treasury Department's blocking of assets of sixty-two individuals and organizations connected with Al Barakaat and Al Taqua organizations).

178. See Dam, *supra* note 1 (describing financial success of Al Barakaat shutdown); *Fact Sheet*, *supra* note 127 (reporting on freezing efforts).

179. See Dam, *supra* note 1 (describing freezing of funds in Al Barakaat shutdown); Phillips, *supra* note 105 (reporting that U.S. government says it cut off as much as U.S.\$20 million in annual funding for al Qaeda network after shutdown).

terrorists opportunities to travel, communicate, procure equipment, and conduct attacks.¹⁸⁰ Additionally, they were able to punish non-terrorists, who had conducted illegal money transfers, evaded tax payments, or had structured transactions.¹⁸¹ The shutdown also encouraged many hawala brokers to register or license their operations.¹⁸²

On the other hand, critics have maintained that the complete shutdown of Al Barakaat needlessly disrupted a major source of income for many innocent people.¹⁸³ Thousands who invested in branches of Al Barakaat had their money seized indefinitely, as did those who simply put their savings in Al Barakaat banks.¹⁸⁴ Many countries and organizations, including the United Nations, have been critical of this shutdown.¹⁸⁵

180. See Matthew Levitt, *Iraq, U.S., and the War on Terror: Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges*, 27 *FLETCHER F. WORLD AFF.* 59, 61 (2003) (discussing positive outcome of freezing funds); Bantekas, *supra* note 99 (describing freezing efforts of U.S. government).

181. See Jackman, *supra* note 36 (describing penalties for two men who structured transactions to United Arab Emirates); David Marshall Nissman, *Hawala*, U.S. ATTORNEYS' BULL., May 2002, at 18-20 (describing one indictment for failing to fill out currency transaction report and structuring); Merzer, *supra* note 171 (describing other arrests); *Somali Man Convicted In Money Transfer*, N.Y. TIMES, May 1, 2002, at A22 (describing first successful prosecution after USA PATRIOT Act in Boston). Mohamed Hussein was found guilty of two counts of transmitting U.S.\$2.8 million abroad without a license and is subject to two to three years in prison. *Id.* There were no terrorism charges filed. *Id.*

182. See *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 14 (documenting registrations of over 14,000 money service businesses since September 11th); Howell, *supra* note 128 (discussing increased number of money transmitting services that have now registered).

183. See Phillips, *supra* note 105 (reporting that crackdown disrupted U.S.\$15 million to U.S.\$20 million destined for al Qaeda as well as U.S.\$300 million to U.S.\$400 million in annual flows); Mulugeta, *supra* note 171 (describing need for hawala because of anarchy conditions in Somalia). Mulugeta quotes one critic, "It's like trying to kill a fly with a sledgehammer. This is U.S.\$600 million a year in remittances, and you cut that off, and Somalia dies." *Id.* See also Richard, *supra* note 157 (criticizing American "zero-tolerance approach" to hawala regulation); *UAE Urg.s World to Isolate Hawala System Abusers*, May 16, 2002, available at <http://uaeinteract.com/news/default.asp?cntDisplay=50&ID=140> (arguing that prohibition of hawala networks will be unsuccessful).

184. See Olinger, *supra* note 100 (describing disruptive effect of shutdown); Mark Turner, *Barakat Telecoms Gateway Cut Off*, FIN. TIMES (London), Nov. 16, 2001, at 15 (describing suspension of its international telecommunications services after Concert Communications cut off its international gateway); Kaufman, *supra* note 88 (describing impact of shutdown for Somalians); Hardister, *supra* note 120 (arguing for alternative measures that would be equally effective in combating financial support for terrorism without infringing on sovereignty of foreign banks).

185. See Kaufman, *supra* note 88 (describing effects of shutdown). Kaufman quotes a U.N. humanitarian representative in Somalia as stating, "The Al Barakaat clo-

Critics also point out that the evidence linking Al Barakaat to terrorism is more tenuous than at first suspected.¹⁸⁶ Despite freezing millions of U.S. dollars, there have been only four related criminal prosecutions, none of which involve charges involving terrorist activity.¹⁸⁷ U.S. investigators have been sifting through voluminous documents, many of them small remittances from Somali refugees to their relatives.¹⁸⁸ There have even been cases in which the U.S. government has erroneously frozen assets.¹⁸⁹

sure is having a very, very serious effect. We are at a point where we have to start anticipating a crisis that could be unique in the modern state system — collapse of an entire national economy.” *Id.* See also Olinger, *supra* note 100 (quoting several critics of hawala prosecutions). The chief executive at the Abu Dhabi Commercial Bank stated, “When they closed this bank, they closed the service of a Nation. It would be like, in the United States, closing AT&T and Citibank and Microsoft.” *Id.* Another critic stated, “They’ve cast a wide net, and they aren’t providing a way to correct any errors they might have made.” *Id.* See also William Hall et al., *Cash Movers Branded As Financiers of Terrorism*, FIN. TIMES (London) Nov. 8, 2001 at 10 (citing Al Barakaat’s vice president as dismayed at reports linking it to terrorism, which it says are unfounded rumors spread by political enemies); *Follow the money*, ECONOMIST, June 1, 2002 (reporting that Swedish government froze assets as result of Al Barakaat shutdown, but now believes that men are innocent).

186. See Golden, *supra* note 169 (reporting that link between Al Barakaat and Al Qaeda was overstated); Turner, *supra* note 169 (denying that Mogadishu office of Barakaat International has any terrorist links). Somali hawala brokers Barakaat International demonstrated computer records of their transfers and deny links to Osama bin Laden or Al Qaeda. *Id.* See also *Report to the Congress*, *supra* note 47 (citing challenges to law enforcement given that most U.S.-based informal value transfer systems are legitimate and enable U.S. residents to send money to relatives in other countries that normally do not have advanced financial infrastructures).

187. See *Terrorist Financing*, *supra* note 2, at 24 n.44 (noting that U.S. government had only frozen U.S.\$719,832 in total Al Qaeda assets as of July 31, 2003); Golden, *supra* note 169 (discussing questionable prosecutions); Yousef, *supra* note 80 (presuming that most individuals utilizing hawala networks in United States are conducting legitimate activities); Tomlinson, *supra* note 173 (reporting that neither Jim’ale nor any of his employees have been charged with terror-related crimes). At least two Al Barakaat employees in Alexandria, Virginia and one in Boston were convicted of violating minor state banking regulations, while employees in Minnesota and Ohio were released without charge. *Id.* Two employees in Sweden and one in Canada were taken off the Treasury Department terrorist financier list after their governments protested there was no evidence against them. *Id.*

188. See Golden, *supra* note 169 (reporting skepticism at Al Barakaat shutdown efforts); Olinger, *supra* note 100 (reporting doubt about links to Al Qaeda); Tomlinson, *supra* note 173 (questioning Al Barakaat shutdown given that September 11th hijackers used formal banks rather than hawala networks for their financial transactions).

189. See Kavita Kumar, *Lifting of Sanctions Brings Relief; the Somali-Born Owners of Two Money-Wiring Firms Have Their Names Cleared*, STAR TRIB., Aug. 28, 2002 (reporting two cases of governmental error). In one case, the U.S. government seized U.S.\$500,000 from Garad Nor, a Minneapolis resident, who had a money-wiring business called

Finally, it is noteworthy that although U.S. authorities alleged that the Al Barakaat shutdown deprived the Al Qaeda terrorist network of a vital financial conduit, the network is still alive in some European cities, and new networks have reportedly taken its place.¹⁹⁰ One theory as to why such organizations cannot be effectively shut down is that decentralized, small-scale operations moved relatively small sums of cash.¹⁹¹ The resilience of this hawala network calls into question one of the biggest successes the United States has claimed in the offensive against terrorism.¹⁹²

2. Hussein Alshafei, Iraqi-American, Based in Seattle Uses Hawala

In another Operation Green Quest effort, customs officials arrested an Iraqi-American, Hussein Alshafei, in January 2002 for violation of the embargo, alleging that he transferred more than U.S.\$12 million to Iraq and other countries in the Middle East over two and a half years.¹⁹³ For a 4-6% fee, Iraqi-Americans deposited money into his business called Alshafei Family Connect, and through agents in Jordan, Alshafei transferred the money to the intended recipients in Iraq.¹⁹⁴ Prosecutors acknowledged that Alshafei's hawala had no terrorist connections, and that the vast majority of Alshafei's customers were motivated by their concerns for the welfare of relatives in Iraq.¹⁹⁵

Aaran Money Wire Service Inc. *Id.* He was never charged and was without his money for close to nine months. *Id.* He filed a lawsuit, and after nine months the U.S. government acknowledged there was no link to terrorism, and unfroze the money. *Id.* See also Nimer, *supra* note 127 (describing that Minneapolis-based Al Barakaat was cleared of terrorism connections in August 2002).

190. See Cooper & Johnson, *supra* note 36 (reporting that Al Barakaat employees are still offering their services in Bonn, Frankfurt, Munich, Holland, and Sweden); Turner, *supra* note 169 (reporting that Dahabshiil company, Al Barakaat's main competitor provides more remittance services); Wendling, *supra* note 172, at A11 (describing increased business for Dahabshiil Inc. hawala after Al Barakaat shutdown).

191. See Cooper & Johnson, *supra* note 36 (pointing out that although money-laundering investigators generally rely on financial institutions to report large transfers of money, most hawala users move about U.S.\$200 a week); Stuart, *supra* note 75 (noting U.N. intervention to ensure that no other money transfer company is forcibly shut).

192. See Cooper & Johnson, *supra* note 36 (describing resilience of Al Barakaat network).

193. See Davila & Rivera, *supra* note 108 (describing charges against Alshafei).

194. See *id.* (describing logistics of hawala). See generally Jost & Sandhu, *supra* note 4 (explaining how hawala networks operate).

195. See Michael Ko, *Iraqi American Gets 8-Month Term*, SEATTLE TIMES, Sept. 12,

One noteworthy feature in this case is Alshafei's purpose in operating the hawala.¹⁹⁶ Shortly after Saddam Hussein took power in 1979, Hussein executed Alshafei's father and uncle.¹⁹⁷ Alshafei was a Shiite Muslim that participated in the 1991 uprising against Hussein, and fled Iraq shortly after the 1991 Gulf War.¹⁹⁸ Because U.S. sanctions made it difficult to conduct legal financial transactions in Iraq, Alshafei started his hawala service.¹⁹⁹ He believed that he was conducting a humanitarian service because he was able to provide food, medicine and health care to Iraqis.²⁰⁰ Eventually, Alshafei pled guilty to one count of money laundering and admitted that he had lied on his federal income-tax returns, and was sentenced to eight months in prison and fined U.S.\$5,000.²⁰¹ In determining his sentence, the court recognized his background and life as an Iraqi expatriate.²⁰²

There has been an outpouring of community support for Alshafei.²⁰³ Critics have argued that he was justified in operating

2003, at B2 (describing Alshafei's motivation for hawala). See also Ray Rivera, *Judge Sets Bail for Man Accused of Aiding Iraq; Suspect Says Saddam Slew His Father, Uncle Years Ago*, SEATTLE TIMES, Dec. 25, 2002, at B1 (indicating that prosecutors were investigating whether cash was used to support terrorism or Sadaam Hussein regime).

196. See Todd Bensman, *Motive In Transfers Debated; Authorities See a Threat; Iraqis in U.S. Say Funds Keep Kin Alive at Home*, DALLAS MORNING NEWS, Jan. 21, 2003, at 15A (describing repressive regime for Shiites). One Iraqi opposition group based in Washington, D.C., said the flow of U.S. dollars has eased the regime's leverage over the Shiite population, allowing them to resist constant repression. He said without the money, families are forced to rely on government food ration cards and salaries that can be revoked for disobedience, such as refusing to inform on neighbors. *Id.*

197. See Davila & Rivera, *supra* note 108 (providing background on Alshafei's life); Rivera, *supra* note 168 (describing Alshafei's motive in setting up hawala business).

198. See Davila & Rivera, *supra* note 108 (describing Alshafei's execution of his father and uncle by Saddam Hussein); Rivera, *supra* note 195 (reporting that Saddam Hussein executed Alshafei's family).

199. See Rivera, *supra* note 195 (describing Alshafei's motive in starting hawala networks); Hegstrom, *supra* note 87 (describing Iranian Americans' reliance on hawala networks).

200. See Davila & Rivera, *supra* note 108 (reporting that Alshafei's motives were primarily humanitarian). Cf. Ray Rivera, *Edmonds Man Pleads Guilty to 1 Money-Laundering Charge: No Terrorist Ties Found, All Other Charges Dropped Against Iraqi American*, SEATTLE TIMES, June 13, 2003, at B1 (reporting that Alshafei acknowledged profit as an additional motive for operating hawala).

201. See Ko, *supra* note 195 (reporting outcome of case).

202. See *id.* (describing effect of revoked 1990 law banning financial dealings with Iraq in Alshafei's sentencing); Rivera, *supra* note 195 (describing judge's sympathy in sentencing Alshafei).

203. See Davila & Rivera, *supra* note 108 (quoting several community members in support of hawala networks). One local stated, "This guy, he did a great job. He helped all of us by transferring money." *Id.* Another critic posited, "It's a case of selec-

his hawala service because of perceived unfair sanctions.²⁰⁴ Others have argued that the Alshafei case represents selective enforcement of U.S. sanctions laws because many large corporations have received civil penalties instead of criminal penalties for violating sanctions or trade embargoes.²⁰⁵ For example, Ikea, the Swedish home furnishings company, paid U.S.\$8,000 for importing about U.S.\$14,000 worth of rugs from an area of Afghanistan controlled by the Taliban, and Tyson Foods paid U.S.\$150,000 for shipping chicken to Iraq.²⁰⁶

3. Mohammad Albanna, Yemeni-American, Based in Lackawanna Uses Hawala

Operation Green Quest agents also arrested Mohammed Albanna in Lackawanna, New York on December 17, 2002 for running an unlicensed hawala.²⁰⁷ Albanna was charged with using a hawala to illegally transfer U.S.\$3.5 million to Yemen between November 2001 and December 2002.²⁰⁸ He allegedly failed to

tive prosecution is what it is." *Id.* See also Bensman, *supra* note 196 (describing clashing views between federal authorities who allege hawala brokers pose a threat to the United States and Iraqi immigrants who say hawala brokers provide humanitarian service).

204. See Olinger, *supra* note 100 (reporting United Arab Emirates as criticizing sanctions as "economic terrorism").

205. See Peter Shinkle, *Ex-Refugee from Iraq Keeps Faith in Freedom after Arrest*, ST. LOUIS POST-DISPATCH, July 8, 2003 (describing charges dropped for Al Barakaat co-defendants from Dallas, Nashville, Phoenix, Roanoke, St. Louis). See also Davila & Rivera, *supra* note 108 (discussing disparate treatment argument). Since 1999, the U.S. government has collected approximately U.S.\$900,000 from companies to settle allegations of violating sanctions by doing business in Iraq. *Id.*

206. See Davila & Rivera, *supra* note 108 (reporting that settlements have ranged from U.S.\$9,000, collected from ChevronTexaco to as much as U.S.\$244,250 from GRE Insurance Group and Albany Insurance Group); Anitha Reddy, *Ikea, Tyson Foods Among U.S. Embargo Violators*, WASH. POST, July 3, 2002, at E1 (reporting various companies and banks' settlements for violating U.S. trade embargoes); *U.S. Companies Pay Penalties for Trade with Certain Nations*, N.Y. TIMES, July 3, 2002, at A9 (describing American companies cash settlements for violating sanctions on trade and investment in parts of Afghanistan under Taliban control and Cuba, Iran, Iraq, Libya, and North Korea). The companies include Boeing, General Electric, Merrill Lynch, Morgan Stanley Dean Witter, Citigroup, and First Union. *Id.* Johnson & Johnson Medical Middle East paid U.S.\$110,000 for shipping about U.S.\$7 million of medical equipment to Iraq. *Id.* The GRE Insurance Group, Albany Insurance Company paid nearly U.S.\$250,000 in February 1999 for providing insurance coverage for shipments to the government of Iraq and to a company in Libya. *Id.*

207. See Eggen, *supra* note 108 (reporting charges against Albanna); Marc Santora, *The Buffalo Case; A Civic Leader Is Charged in Money Transfers*, N.Y. TIMES, Dec. 18, 2002, at A16 (providing background on Albanna case).

208. See Dan Herbeck, *Albanna Arraigned for Mailing Cash to Yemen*, BUFFALO NEWS,

file the required paperwork in transmitting sums of more than U.S.\$10,000.²⁰⁹ Furthermore, he was not registered in the state of New York or with the U.S. Treasury Department, as the USA PATRIOT Act requires.²¹⁰ His alleged crime is punishable by up to ten years in prison.²¹¹

Albanna has been a U.S. citizen for twenty-seven years, a resident of the Buffalo area since 1970, and has not left the United States for twenty years.²¹² Notably, Albanna is the uncle of Jaber Elbaneh, who was an unindicted co-conspirator in the Lackawanna Six case, and publicly supported them before their convictions.²¹³ Prosecutors concede that none of the money Albanna sent to Yemen was used to fund terrorism.²¹⁴

Albanna's status and ties to the community²¹⁵ have engendered vocal support and sharp criticism against the U.S. government.²¹⁶ His supporters say that he was merely following the traditional Yemeni practice of sending money back home, something that has been quietly tolerated by the government for decades.²¹⁷ Civil liberties groups have weighed in on such guilt-by-

Jan. 13, 2004, at B3 (reporting that Albanna was originally charged with sending U.S.\$486,548 to Yemen).

209. See *The Lackawanna-Yemen Money Trail; Albanna Deserves Presumption of Innocence, But U.S. Has a Duty to Investigate*, BUFFALO NEWS, Dec. 19, 2002, at B10 [hereinafter *Lackawanna-Yemen Money Trail*] (describing Albanna's alleged failure to complete currency transaction reports).

210. See Beebe & Tan, *supra* note 8 (noting that no hawala businesses are registered in New York state); *Nat'l Money Laundering Strategy 2003*, *supra* note 52, at 14 (noting increased number of money transmitter businesses that have registered with federal government after September 11th).

211. See Herbeck, *supra* note 208 (describing potential penalty).

212. See Santora *supra* note 207 (providing background on Albanna); Eggen, *supra* note 108 (describing Albanna's background).

213. See Eggen, *supra* note 108 (reporting that Albanna had been vocally supportive in proclaiming the innocence of the Lackawanna Six, who were all eventually convicted of attending an Al Qaeda camp in Kandahar).

214. See *id.* (reporting on lack of terrorist connections); Herbeck, *supra* note 208 (stating lack of terrorist links in Albanna's prosecution).

215. See Herbeck, *supra* note 208 (describing Albanna's community prominence as president of Lackawanna Yemenite Benevolent Association); *Lackawanna-Yemen Money Trail*, *supra* note 209 (noting his respected status).

216. See David Shepardson, *Fed Raids Target Money to Yemen; 6 Arrested; Millions of Dollars Illegally Sent*, DETROIT NEWS, Dec. 19, 2002, at 1A (discussing community outrage in Detroit). One Yemeni immigrant decried, "What is the connection of Yemeni immigrants working at Ford Motor Co., the Rouge plant, to Al-Qaida? This [is] the government's scorched-earth policy to harass people in abject poverty who are trying to send a few dollars home to their families." *Id.*

217. See Herbeck, *supra* note 208 (describing community sentiment). Albanna in-

association prosecutions reminiscent of the racial profiling of other unpopular groups in times of war.²¹⁸ Similar charges were brought against Yemeni-Americans in Detroit, but they were dropped one year later.²¹⁹ Most recently, one Denver-based federal judge struck down the USA PATRIOT Act provision that deals with unlicensed money transfer systems as unconstitutional.²²⁰ The case against Albanna is presently pending.²²¹

sists he had no criminal intent stating, "People who come to America like to send money back to their families in Yemen. It's a tradition. We helped them. This service is needed by families in Yemen . . . We aren't providing it anymore, and people are suffering." *Id.* See also *Lackawanna-Yemen Money Trail*, *supra* note 209 (arguing that there is no evidence that Albanna did anything other than help his fellow Yemeni-Americans send money to relatives); Howell, *supra* note 128 (describing conviction of Brooklyn-based Yemeni immigrant, Ali Kassim Kassim for conducting an unlicensed money transmitting business). Howell reports that many in the Yemeni community are afraid now to operate or use hawala networks. *Id.* He quotes Yemeni American as saying, "Now there's nobody taking the job [of hawaladar], nobody saying I'm going to do it for these poor people, so people are hurting." *Id.* Many Yemeni Americans are waiting to give their remittances to a relative or friend traveling to Yemen because in some cases, they do not have proper documentation and are afraid of immigration officials. *Id.*

218. See Nancy Chang, Alan Kabat, *A Summary of Recent Court Rulings on Terrorism-Related Matters Having Civil Liberties Implications*, Center for Constitutional Rights, Sept. 11, 2003, at 12-15, available at http://www.ccr-ny.org/v2/legal/september_11th/docs/9-11CaseListv9_11_03.pdf (discussing various post-September 11th prosecutions with civil liberties implications); Eric Lichtblau, *Threats and Responses: American Muslims; F.B.I. Tells Officers to Count Local Muslims and Mosques*, N.Y. TIMES, Jan. 27, 2003, at A13 (reporting that F.B.I. ordered field supervisors to count mosques and Muslims in their areas as part of antiterrorism effort); John Mintz & Douglas Farah, *Small Scams Probed for Terror Ties; Muslim, Arab Stores Monitored As Part of Post-Sep. 11 Inquiry*, WASH. POST, Aug. 12, 2002, at A1 (reporting investigation of 500 Muslim and Arab small businesses across United States); Nimer, *supra* note 127, at 16-25 (giving examples of anti-Muslim rhetoric, hate crimes, racial profiling, detentions after September 11th). See also *Korematsu v. United States*, 323 U.S. 214 (1944) (describing internment during World War II of more than 120,000 Japanese-Americans, including 70,000 American citizens). Haroon Siddiqui, *Treading an Ugly Path on Security*, TORONTO STAR, Oct. 16, 2003, at A31 (warning against collective punishment and selective prosecutions).

219. See David Shepardson, *Feds Drop Charges Against Yemenis; They Were Accused of Illegally Sending \$50 million to Homeland. U.S. Could Refile Later*, DETROIT NEWS, Jan. 8, 2003, at 1C (describing dismissal of charges). It reports the dismissal as "basically another fumble by the government. This is part of a post-9-11 paranoia on the part of the government." *Id.* See also Herbeck, *supra* note 208 (reporting that federal agents wiretapped more than 1,100 phone conversations and hired two Arabic interpreters to translate Albanna's calls).

220. See Karen Abbott, *Judge Strikes Down Money-Transfer Law; Licenses Found Unconstitutional in Aurora Man's Case*, ROCKY MOUNTAIN NEWS (Denver), Apr. 9, 2004, at 15B (reporting about constitutional challenge to PATRIOT Act provision). U.S. District Judge, Lewis Babcock, stated that the law arbitrarily divided money-transfer operators into two groups — those covered by state laws and those who work in states that do not require a license. *Id.*

III: THE OBSTACLES TO REGULATING THE HAWALA: A CULTURAL NORM OR A TERRORIST HOTBED?

The events of September 11, 2001 paved the way for stricter regulation of financial institutions through the new USA PATRIOT Act provisions and Operation Green Quest raids.²²² Law enforcement officials consider regulating hawala networks necessary because its unregulated nature, in particular, makes it an appealing option for money launderers, smugglers, and even terrorists.²²³ Licensing and regulating hawala networks also help bring more money into State economies.²²⁴ At present, it is impossible to accurately gauge the magnitude of hawala use worldwide, but it is fair to state that hawala transactions run in the billions.²²⁵ While the above cases are not necessarily representative of all of Operation Green Quest's efforts, they do raise several issues for consideration.

A. Socioeconomic-cultural Defense

All three of the cases mentioned above prompted community outrage over the persecution of hawala networks.²²⁶ In the *Albanna* case, many in the Yemeni-American community expressed their belief that Albanna had engaged in humanitarian work rather than criminal activity.²²⁷ In the *Alshafei* case, many community members believed that Alshafei was providing a public service to counteract the limits imposed by perceived unfair sanctions.²²⁸ The Al Barakaat hawala shutdown had the largest

221. See *United States v. Mohammed Albanna, Ali A. Albanna, and Ali Taher Elbaneh*, No. 02-CR-255 (W.D.N.Y.); see also FBI Press Release, at <http://buffalo.fbi.gov/pressrel/2004/alb010804.htm> (last visited June 24, 2004) (noting federal indictment of Albanna).

222. See *supra* notes 111-21, 123-29 and accompanying text (describing USA PATRIOT Act provisions and Operation Green Quest raids and freezing of assets).

223. See *supra* notes 97-106 (describing appeal of hawala networks for criminals).

224. See *supra* notes 72-92 (emphasizing economic costs of unregulated money transfer systems).

225. See *supra* notes 75-78 (estimating that annual remittances may be more than U.S.\$100 billion).

226. See *supra* notes 183-92, 203-06, 215-21 and accompanying text (describing individual reactions to hawala crackdown).

227. See *supra* notes 215-19 and accompanying text (describing community support for Albanna).

228. See *supra* notes 203-06 and accompanying text (describing sentiment that hawala use was justified in response to sanctions).

effect, freezing the assets of thousands of innocent people.²²⁹ To these community members, failing to register or license a hawala business hardly appeared to be criminal conduct.²³⁰

Hawala networks serve an essential function and many recent immigrants and refugees choose hawala networks over formal banking systems because they are less expensive, more efficient, broader in reach, and free of extensive paperwork.²³¹ From the perspective of many immigrants, hawala networks are a longstanding cultural norm rather than a criminal offense.²³²

Indeed, there is a greater likelihood that the U.S. government will be able to interrupt terrorist financing, money laundering and other criminal activity by shutting down hawala networks.²³³ Prosecutions of unlicensed hawala businesses send a clear message that such activity is unacceptable, and this increased awareness could result in diminished use of these unlicensed networks.²³⁴ On the other hand, the rash response that spurred law enforcement to completely shut down Al Barakaat was disproportionate to the threat it posed.²³⁵ As yet, there have been no terrorism-related hawala prosecutions as a result of the shutdown.²³⁶ It would have been more effective and less disruptive if the United States had examined the accounts, investigated the owners, and sent intelligence units to the United Arab Emirates to find those with potential terrorist connections.²³⁷ In that way, the United States might have wreaked less havoc in the lives

229. *See supra* notes 183-92 and accompanying text (describing widespread disruption caused by Al Barakaat shutdown).

230. *See supra* notes 183-92, 203-06, 215-22 and accompanying text (reporting community views on hawala prosecutions).

231. *See supra* notes 42-49, 61-63 and accompanying text (discussing multiple advantages of hawala including efficiency and lack of paper trail).

232. *See supra* notes 93-96 and accompanying text (describing cultural and religious reasons for hawala use).

233. *See supra* notes 174-82 and accompanying text (discussing success of Al Barakaat shutdown).

234. *See supra* note 130 and accompanying text (discussing increased number of money services that have registered after September 11th).

235. *See supra* notes 183-91 and accompanying text (describing criticism of Al Barakaat hawala shutdown).

236. *See supra* notes 186-91 and accompanying text (describing most individuals using hawala as conducting non-terrorist activities).

237. *See supra* notes 135-39 and accompanying text (urging for better training and enforcement).

of ordinary people.²³⁸

It is highly unlikely that individuals will stop using hawala networks to send money to their home countries.²³⁹ The *Alshafei* case in particular, reflects the reality that people will find ways to send money despite sanctions.²⁴⁰ Ultimately, the only way to compete with hawala businesses is to reduce the economic incentives to use them.²⁴¹

B. Selective Law Enforcement

All three of the above-mentioned cases, while not necessarily representative, involve Muslim Americans, and demonstrate the anti-Islamic guilt-by-association that became the norm after September 11th.²⁴² *Alshafei* was Iraqi,²⁴³ and *Albanna* was related to one defendant in the *Lackawanna Six* case.²⁴⁴ In addition, the *Alshafei* case arguably illustrates the disparate treatment of small businesses and that of corporations that violate U.S. trade embargoes.²⁴⁵

While arguments for racial profiling, or religious or national origin profiling, might be justified as a law enforcement tool, it is important to consider the couple whose door was broken down by mistake at dawn, the old man who had a gun pointed at his head or the women whose husbands disappeared into detention.²⁴⁶ It is even questionable whether such profiling is effective in detecting terrorist funding, given that no prosecutions of hawala brokers involved in terrorism have taken place

238. See *supra* notes 158-61 and accompanying text (offering ways to regulate hawala with less disruption).

239. See *supra* notes 41-64, 80-99 and accompanying text (discussing multiple reasons that people use hawala networks).

240. See *supra* notes 196-204 and accompanying text (discussing *Alshafei's* tumultuous life and motivation for hawala use).

241. See *supra* notes 79-88 and accompanying text (describing hawala use for those who cannot otherwise contact relative due to political situations).

242. See *supra* note 218 and accompanying text (describing F.B.I. efforts to count mosques and Muslims in select areas).

243. See *supra* notes 196-204 and accompanying text (describing *Alshafei's* Iraqi background).

244. See *supra* note 213 and accompanying text (describing *Albanna's* relation to *Lackawanna Six*).

245. See *supra* notes 205-06 and accompanying text (describing disparate treatment for corporations and individuals who violate sanctions).

246. See *supra* note 129 and accompanying text (describing traditional law enforcement efforts as flawed).

despite three years of intense scrutiny.²⁴⁷

Focusing on Muslim hawala brokers provides a false sense of security that the United States is making progress on the war on terror.²⁴⁸ As mentioned above, many diaspora communities, not just Middle Easterners, use hawala networks to send money to family and relatives abroad.²⁴⁹ Law enforcement officials vigorously zeroed in on Muslim Americans,²⁵⁰ although hawala and hawala-networks do not belong exclusively to any one ethnic group.²⁵¹

C. *International Cooperation*

Given that a hawala transaction, by definition, involves borders, regulating it requires international cooperation.²⁵² Hawala transactions are conducted through code words that the U.S. law enforcement officials may not have the language expertise to decipher.²⁵³ Hawala transactions entail no direct physical movement of money, so linking the illegal transactions to couriers would be virtually impossible.²⁵⁴ Moreover, hawala brokers might merely be links in an intricate network and while they know their immediate contacts, they are not necessarily aware of all the involved parties.²⁵⁵ Attempts to regulate hawala networks without the consensus and input of operators, users, intermediaries, and recipient Nations are not likely to suc-

247. See *supra* note 187 and accompanying text (stating that most individuals utilizing hawala networks in United States are conducting non-terrorist activities).

248. See *supra* note 187 and accompanying text (describing lack of terrorist prosecutions).

249. See *supra* notes 72-74 and accompanying text (citing examples of multiple ethnic groups using hawala-like systems to send money to families).

250. See *supra* note 218 and accompanying text (describing F.B.I. efforts to count mosques and Muslims in select areas).

251. See *supra* notes 72-74 and accompanying text (arguing that variations of hawala are not limited to Middle Eastern countries).

252. See *supra* notes 161-69 and accompanying text (describing international cooperation as obstacle to regulating hawala).

253. See *supra* note 136 and accompanying text (discussing that hawala behavior lies well outside the cultural experience of most U.S. investigators who are "baffled" with Arabic names).

254. See *supra* note 157 and accompanying text (describing hawala networks as infinite, elusive and labyrinth).

255. See *supra* notes 129, 157 and accompanying text (describing flawed law enforcement efforts).

ceed.²⁵⁶

Moreover, the assumption that hawala networks should be more internally regulated does not necessarily ring true in some parts of the world.²⁵⁷ As discussed above, the United Arab Emirates openly defends the legitimacy of hawala networks.²⁵⁸ It has attempted an approach that takes divergent economic and cultural realities into account,²⁵⁹ in contrast to the American black and white shutdown of Al Barakaat.²⁶⁰ These conflicting attitudes pose obstacles for better hawala regulation.

Furthermore, countries believed to be at the epicenter of Al Qaeda's re-emerging network, including Afghanistan, Somalia, and Yemen are, at best, years away from establishing the financial and legal infrastructures needed to license, regulate, and freeze terrorist assets.²⁶¹ As mentioned above, Afghanistan, a country that has relied on hawala for years, just opened its first international private-sector bank in September 2003.²⁶² While this bank will be able to take deposits and perform international money transfers, the World Bank is skeptical about the prospects of having legitimately-licensed and monitored hawala in Afghanistan.²⁶³ The U.S.-led efforts do not adequately consider the fact that many countries simply lack the resources and infrastructure to effectively regulate hawala networks.²⁶⁴ The problem, then, is whether the USA PATRIOT Act requirements are appropriate for such economically deprived countries. While the United States mandates elaborate compliance and identification verification measures, these measures fail to reflect the reality that

256. *See supra* notes 148-56 and accompanying text (criticizing unilateral approach to regulate hawala network).

257. *See supra* notes 148-56 and accompanying text (describing U.A.E.'s resistance to some regulatory efforts).

258. *See supra* notes 151-61 and accompanying text (describing provisions of Abu Dhabi Conference on Hawala).

259. *See supra* note 159 and accompanying text (describing U.A.E.'s efforts to positively use hawala system).

260. *See supra* notes 174-84 and accompanying text (discussing U.S. approach in shutting down Al Barakaat hawala).

261. *See supra* notes 79-88 (describing infrastructural obstacles to regulating hawala networks).

262. *See supra* notes 85-86 and accompanying text (describing Afghanistan banking system).

263. *See supra* notes 85-86 and accompanying text (describing recent attempts to modernize banking system in Afghanistan).

264. *See supra* notes 85, 138-42 and accompanying text (describing reality that many Nations lack technical capacity to actually freeze funds).

they can be implemented in other countries quickly.²⁶⁵

Still another problem is that the PATRIOT Act regulations and Operation Green Quest efforts have alienated needed partners such as the United Arab Emirates.²⁶⁶ The governor of the U.A.E. Central Bank publicly criticized the United States, saying that it had failed to build the necessary global coalition by not sharing information or offering enough financial and technical assistance to developing Nations.²⁶⁷ European countries, too, have been critical of U.S.-led efforts.²⁶⁸ The United States, through its PATRIOT Act, forces its provisions on other countries rather than taking a diplomatic approach,²⁶⁹ thereby hindering efforts at building international cooperation.²⁷⁰ It is probable that some of the efforts will worsen the increasingly tense relationship between the United States and certain parts of the world, which in turn will hamper regulatory attempts.²⁷¹

No efforts to regulate this inherently international problem will be effective without coordinated international action.²⁷² It makes little sense to have one law for the hawala remitter and a separate one for the hawala recipient country.²⁷³ At present, the U.S.-led efforts do not adequately consider the fact that many countries simply do not have the resources, infrastructure or desire to effectively regulate hawala.²⁷⁴

265. *See supra* notes 72-74 and accompanying text (describing worldwide use of and reliance on hawala networks by diaspora communities).

266. *See supra* notes 161-68 and accompanying text (recognizing that regulating hawala networks is dependent on collaborative work with multiple countries and jurisdictions).

267. *See supra* notes 148-52 (criticizing U.S.-led approach).

268. *See supra* notes 162-65 and accompanying text (describing criticism of American-led efforts at regulating hawala).

269. *See supra* notes 157-60 and accompanying text (contrasting American "zero-tolerance approach" with European approach).

270. *See supra* notes 161-67 and accompanying text (repeating sentiment that international cooperation is important and some USA PATRIOT Act provisions lack diplomacy).

271. *See supra* note 160 and accompanying text (arguing that such attempts may generate ill-will and discontent with United States).

272. *See supra* notes 148-57, 157-61, 161-68 and accompanying text (describing U.A.E.'s defense of hawala networks).

273. *See supra* notes 161-68 and accompanying text (describing international component of hawala networks and need for international cooperation).

274. *See supra* notes 161-68 and accompanying text (discussing need for international cooperation).

D. *Impact on Terrorism*

The new reporting and licensing requirements for hawala brokers will definitely help stop criminal activity.²⁷⁵ But it is questionable whether the USA PATRIOT Act requirements will make a permanent dent in terrorist financing, given that terrorist funding comes from multiple sources.²⁷⁶ As of July 31, 2003, the U.S. government had only frozen U.S.\$719,832 in Al Qaeda assets.²⁷⁷

In view of the fact that the September 11th hijackers did not extensively rely on hawala networks, some critics have posited that hawala operators will not be greatly affected by the USA PATRIOT Act regulations.²⁷⁸ More importantly, it is unlikely that illegitimate hawala operators will even register.²⁷⁹ In other words, by relying on the reporting requirements, law enforcement authorities will pursue the immigrant offender who is easily detected rather than get at the root of clandestine money laundering.²⁸⁰ It is noteworthy that the easily detected immigrant offenders such as Mohammed Albanna and Alshafei, have mostly been of Middle Eastern descent.²⁸¹

Arguably, the "success" of the *Al Barakaat* case should not eclipse the fact that it disrupted a source of money for thousands of people and failed to find any terrorists.²⁸² Allowing law enforcement to seize on all hawala without distinguishing between those who used hawala networks to send money to ailing relatives or those with terrorist ambitions impinges on the rights of many in the hopes of catching a few, something antithetical to

275. See *supra* notes 124-30 and accompanying text (stating successes of Operation Green Quest).

276. See *supra* notes 104-09 (describing that terrorists disguise their work through charities, informal banking systems, bulk cash and commodities such as precious stones and metals).

277. See *supra* note 128 (noting amount of terrorist-related funds seized).

278. See *supra* notes 132-36 and accompanying text (describing how September 11th hijackers used formal banks).

279. See *supra* notes 138-42 and accompanying text (stating that Afghani individuals have no incentive to declare their activities for external monitoring).

280. See *supra* note 129 and accompanying text (describing flaws with present law enforcement efforts).

281. See *supra* notes 203-06, 216-21 and accompanying text (discussing reasons such as racial profiling that law enforcement honed in on these suspects).

282. See *supra* notes 183-94 and accompanying text (discussing effect of *Al Barakaat* shutdown).

the notion of innocent until proven guilty.²⁸³ The ends-justify-the-means type of enforcement used in *Al Barakaat* case raises the most basic questions about criminal law, such as whether it is justifiable to punish certain offenders over others who evade detection.²⁸⁴

The efforts to require registration and to require them to file suspicious activity reports will generate unmanageable quantities of paperwork unless law enforcement takes steps to better understand how hawala works.²⁸⁵ Law enforcement officials need to better distinguish between the use of hawala for remittances, money laundering and terrorist purposes as they represent different degrees of criminal culpability.²⁸⁶ For now, it appears that the USA PATRIOT Act provisions merely enhance the prosecution and punishment of run-of-the-mill criminal offenders, which pushes actual terrorists further underground.²⁸⁷

E. *Attempts to Strengthen Hawala Regulations*

It is too early to critique the VICTORY Act because it has not been finalized, but it is important that its provisions be scrutinized and not rushed through Congress as was the USA PATRIOT Act.²⁸⁸ One immediate concern is that under its new provisions, someone completely unconnected to any terrorist transaction may be arrested because the clause, "involves the proceeds of" does not indicate how direct the involvement has to be.²⁸⁹ Because illegal money taints legal money with which it is mixed, every account containing dirty money is itself dirty money.²⁹⁰ Relying on such a provision allows law enforcement

283. See *supra* note 129 and accompanying text (describing problem with broad law enforcement policies).

284. See *id.* and accompanying text (describing problems with present law enforcement efforts).

285. See *supra* notes 129-39 (arguing increased reporting requirements could hinder criminal investigations).

286. See *supra* notes 136-39 and accompanying text (noting that while some hawala are used for illegal activity or to move terrorist funds, others are legitimately providing much needed services).

287. See *supra* notes 129-30 and accompanying text (arguing that attempts to strictly regulate will provide incentives for more secrecy and resistance).

288. See *supra* note 111 and accompanying text (describing swift passage of USA PATRIOT Act legislation).

289. See *supra* note 122 and accompanying text (describing broad language in VICTORY Act provision).

290. See *supra* notes 126-28 (describing U.S.-led freezing efforts as successful).

officials to presume that all hawala operations are linked to terrorism, even if the link is tenuous.²⁹¹ While this might lead to more arrests, it ignores the distinction between hawala networks used by terrorists versus non-terrorists.²⁹² Should someone who had no connection to terrorist assets, who used the hawala to send money home, be penalized to the same degree, particularly since the curtailment of civil liberties by the PATRIOT and VICTORY Acts is justified purely on grounds of national security and terrorism?

F. *An Alternative Approach*

Outlawing hawala networks altogether, as in the *Al Barakaat* case, is not the right answer.²⁹³ Hawala networks are ingrained in various cultural groups, and serve legitimate needs, making it unrealistic to eliminate them completely.²⁹⁴ Also, hawala networks have typically thrived in jurisdictions in which the formal banking sector is absent or weak, or where significant distortions exist in financial markets.²⁹⁵

Lawmakers must offer economic incentives to facilitate cheap, fast remittances across international borders.²⁹⁶ If hawala users were adequately served by the formal banking system,²⁹⁷ they would rely less on hawala networks.

Furthermore, even though it is possible for criminals to move money into the United States via hawala networks with little or no trace, this money is useless unless it can be converted into an acceptable form.²⁹⁸ This requires a relationship between banks and hawala networks, bringing at least some of the money

291. See *supra* note 129 and accompanying text (discussing broad law enforcement efforts).

292. See *supra* notes 79-88, 97-106 and accompanying text (distinguishing between hawala use for criminal purposes and for justifiable purposes).

293. See *supra* notes 183-91 and accompanying text (describing disruption for many after *Al Barakaat* shutdown).

294. See *supra* notes 14-20 accompanying text (describing deep-rooted history of hawala use).

295. See *supra* notes 79-92 and accompanying text (describing specific reasons for heavy hawala use).

296. See *supra* notes 89, 159 and accompanying text (describing need for incentives for people to switch to formal banking system).

297. See *supra* notes 72-78 and accompanying text (describing economic contributions through hawala networks).

298. See *supra* notes 102-06 (arguing that every informal money transaction interfaces with formal banking at some stage).

into the formal banking sector.²⁹⁹ The sheer magnitude of the amounts involved entails the collaboration of more established Western financial institutions.

Thus, the United States should develop region-specific hawala networks to compete with informal hawala networks. They should target refugee or low-income immigrant communities and develop a hawala network in collaboration with other jurisdictions. Western models of regulation are neither a guarantee of success nor appropriate for hawala regulation³⁰⁰ and law enforcement must work with hawala brokers, users and intermediaries to gain a better understanding of the intricacies of their nature.³⁰¹

It is equally important to conduct public education campaigns to inform people of the benefits of using licensed money transfer systems.³⁰² For many people, hawala is a longstanding cultural tradition, and thus, it is not only important to regulate hawala networks, but also to reform alternative remittance systems and educate people about them.³⁰³ The United States could ensure continuation of vital services and minimum disruption for populations who have no other way to send money abroad.³⁰⁴ This culturally and economically sensitive approach would offer tangible incentives to prompt people to switch to the institutionalized banking system.³⁰⁵

CONCLUSION

It is too early to adequately evaluate the overall effectiveness of the U.S.-led efforts to regulate hawala networks. Still, it is

299. *See supra* note 102 (noting that fund transfers rely on formal and informal networks).

300. *See supra* notes 130-42, 148-52 and accompanying text (criticizing Western regulatory efforts).

301. *See supra* note 159 and accompanying text (offering suggestions such as outreach and consultation to provide better insight into how to better understand hawala relationships).

302. *See supra* notes 155, 159 and accompanying text (advocating more culturally sensitive approach to hawala regulation in United Arab Emirates).

303. *See supra* notes 93-96, 159 and accompanying text (describing cultural and religious reasons that some people use hawala networks and suggesting approaches on how to regulate hawala for select populations).

304. *See supra* notes 183-91 and accompanying text (describing negative effects of Al Barakaat shutdown).

305. *See supra* notes 138, 159 and accompanying text (urging for law enforcement to consider incentives for hawala users).

important to understand that hawala networks are too amorphous to control with traditional banking laws, too insular to easily infiltrate, and too enmeshed with other services to abolish outright.³⁰⁶ The laws must adapt to reflect the norms of the social groups that make up the United States, and it is imperative that the United States take a more international, culturally sensitive approach and offer incentives to convince people to switch to a more formalized banking system.³⁰⁷

306. *See supra* notes 138-42 (reporting that other Nations have been unsuccessful in regulating hawala networks).

307. *See supra* notes 138, 159 and accompanying text (advocating for balanced approach in regulating hawala networks).