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Kelsey Mowatt-Larssen
American University Washington College of Law

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"Black" Hawala: Confronting ISIL on the Financial Front

Kelsey Mowatt-Larssen*

I. Introduction

Hawala is an alternative remittance system1 developed in the Middle East, allowing for the transfer of money outside of formal financial institutions.2 Hawaladars, or hawala dealers, operate informally to organize the movement of cash, or its value equivalent, between customers.3 Because there is typically no record of the transaction, hawala is associated with money-laundering and terrorist financing.4

The Islamic State of Iraq and the Levant ("ISIL"), otherwise known as The Islamic State of Iraq and Syria ("ISIS"), ad-Dawla al-Islamiyya fi al-'Iraq wa-sh-Sham, Daesh, or Dawla al Islamiya (hereinafter ISIL) is the most financially sophisticated terrorist organization in operation today.5 The group's diversified marketing strategy has encouraged support from sympathizers across the globe, often in the form of cash donations.6 Historically, hawala has been complicit in such transactions for its anonymity and efficiency.7 A sympathizer in the United States can send money to fighters in the Middle East without any paper trail.8

Kelsey Mowatt-Larssen is a graduate of American University Washington College of Law (2016) and Barnard College, Columbia University (2013). She has been selected for Active Duty in the Army JAG Corps for FY16. She would like to thank Professor Daniel Marcus and Andrew Rejent for their significant benefactions to this piece.

1 Fin. Crimes Enforcement Network, FinCEN Advisory 1-2 (Mar. 2003), https://www.fincen.gov/news_room/rp/advisory/pdf/advis33.pdf (including "alternative remittance systems" within its definition of "informal value transfer systems" (IVTs), which are systems or networks of people that receive money for the purpose of making its value payable to a third party elsewhere. While IVTs may intersect with formal financial institutions, they typically operate outside of conventional banking systems).
4 Bowers, supra note 2, at 383 (suggesting hawala is popular because of cultural familiarity, affordability, anonymity, and an absence of formal sector alternatives).
6 E.g., Justin Sink, ISIS Rakes in Donations on Twitter, Hill (Oct. 23, 2014) http://thehill.com/policy/defense/221666-isis-rakes-in-donations-on-twitter (quoting David Cohen: "I think there's no question that ISIL is among the best-financed terrorist organizations, leaving aside state-sponsored terrorist organizations, that we've confronted").
7 See generally Caulderwood, supra note 5 (statement of Colin Clarke, associate political scientist and threat finance expert at RAND Corporation) ("[H]awala is so difficult to track because "regular people use [it] . . . it would be a lot easier if it was only dirty money.").
8 See FinCEN, supra note 3, at 7-8, for an example of how an anonymous, illicit transaction lacks records.
Hawala is legal in many jurisdictions, despite this potential for misuse. The United States has effectively responded to the threat of “black” hawala, especially since the rise of ISIL, while the Middle East is still reluctant to abandon tradition, even for the sake of international security.

This paper will first analyze the history of hawala and its probable association to ISIL. This paper will then examine U.S. measures in combating hawala, especially after the September 11 attacks. The United States is wiling and able to prosecute suspected terrorist financiers, but as this paper’s discussion on hawala within the Middle East reveals, countries lacking formal sector alternatives are compromising U.S. efforts. In order to impose a truly effective regulatory scheme, this paper concludes, the United States and Middle Eastern states must reach a common understanding on hawala, and enforce this understanding through an international convention.

II. HAWALA AS AN ALTERNATIVE REMITTANCE SYSTEM

A remittance is best defined as the money that migrant workers send back to their country or origin. Hawala, a type of remittance system established in the Middle East centuries ago, became especially popular in the 1990s following the rising costs of formal sector alternatives and currency exchange rates. Now, the sum of informal and formal remittance flows is around $350 billion annually.

Hawala is based on cultural or historical ties and is often ethnically exclusive. This familiarity allows money to pass through recipients quickly and discreetly. Transactions are generated through hawaladars—persons in a country that accept a sum of money for transfer to a recipient in another, usually foreign, location. The hawaladar connects to a hawaladar in the recipient location, who facilitates the exchange and retains a small commission. This process creates a liability from the first hawaladar to the second and the debt is settled through trust; typically,

9 FINCEN, supra note 3, at 11 (turning the question of whether hawala is illegal on the regulations governing remittance services and the circumstances of the remittance).
10 See FINCEN, supra note 3, at 12 (offering the distinction between “white” hawala transactions, which are remittances, and “black” hawala transactions, with are associated with a serious offense, such as narcotics trafficking or fraud).
11 Bowers, supra note 2, at 381.
12 Bowers, supra note 2, at 379 (noting that “hawala” is part of the lexicon of certain countries and is known to represent transfer or collection).
13 Bowers, supra note 2, at 382 (stressing that this is a conservative estimate, since countries are unable to fully measure remittances through informal channels).
14 Bowers, supra note 2, at 383–84 (statement of Saeed al-Hamiz, Executive Director of the Banking Supervision and Examination Department of the Central Bank of the U.A.E) (“Hawala . . . predicts bank transfers by hundreds of years. During the twelfth and thirteenth centuries, the development of trade between regions called for the establishment of reliable and trustworthy instruments to finance those transactions.”).
15 See Bowers, supra note 2, at 383.
16 FINCEN, supra note 3, at 7 (illustrating the four people involved in hawala transactions: the initial person, the hawaladar, the hawaladar in the recipient country, and the recipient).
17 See FINCEN, supra note 3, at 7, for an example of a hawala transaction; when transmitting 180,000 Pakistani Rupees, the hawaladar can retain a fee of one Rupee for each dollar transferred and a fee of thirty-seven Rupees per dollar, delivery included.
hawaladars import/export goods to each other and manipulate invoices to disguise the purpose of the shipment. There is no record of the transaction.

Hawala is a practical option in places that lack formal sector alternatives, including many places in the Middle East. Unlike traditional financial institutions, hawala requires minimal capital and commitment. Whereas, a bank requires an account before conducting business and charges a bank draft fee, hawaladars only ask a one to two percent fee from the value remitted. There are no hidden costs or technical stipulations.

Hawaladars operate out of storefronts with only a notebook and a cellphone. Often, the store is advertised as another business, such as a “music bazaar” or “tea shop.” Whether deliberate or not, this classifies most remittance companies as commercial entities rather than financial institutions, thereby exempting them from regulatory and reporting requirements. This lack of oversight creates great permissibility for illegal transactions.

It is no surprise that hawala is trusted as a successful method for transferring funds; the system’s perseverance through centuries is testament to its workability. Banking sectors have modernized, laws have developed, and technology has advanced, but hawala is still preferred in many areas over the formal financial sector. This may not be a problem if the preference ended with

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18 FINCEN, supra note 3, at 8 (explaining that the initial hawaladar and recipient hawaladar are part of the same network and operate as business partners. An import/export business allows the hawaladars to “conceal” the movement of money. The initial hawaladar may ship the recipient hawaladar telecommunications, for example, in the amount owed, and invoice the recipient hawaladar less than the value of the goods). See Bowers, supra note 2, at 381 (defining this process as “countervaluation” – the settling of accounts through trade rather than transfer).

19 See generally FINCEN, supra note 3, at 7 (highlighting the need for trust because the hawaladar does not give a receipt to the customer; the hawaladar trusts the recipient hawaladar to give the money to the recipient without recordkeeping).


21 See FINCEN, supra note 3, at 9 (noting a major bank prefers a customer open an account before doing business and demands exchange rates and bank drafts).

22 Bowers, supra note 2, at 384 (attributing the low prices to low costs – hawaladars can charge less because they often share costs of infrastructure, in contrast to stand-alone banks).

23 E.g., FINCEN, supra note 3, at 10 (listing the lack of bureaucracy as a motivation for using hawala, especially for people lacking proper identification).

24 FINCEN, supra note 3, at 9 (discussing how low operational costs minimize overhead expenses).

25 FINCEN, supra note 3, at 10 (explaining that remittances services easily fit into existing business activity; because money transfers are usually necessary in any business, hawaladars can process hawala transactions through the same store bank account).

26 Bowers, supra note 2, at 382 (equating exemptions to a lack of uniformity in remittance classification. Adding, even when the transfer companies register as financial institutions, they do not report the details of transactions).

27 See supra note 8 and accompanying text.

28 E.g., NAt’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., MONOGRAPH ON TERRORIST FINANCING: STAFF REPORT TO THE COMMISSION (2004) [hereinafter MONOGRAPH ON TERRORIST FINANCING] (explaining that Al-Qaeda preferred hawala over formal financial institutions because the system is not subject to potential government oversight). See, e.g., Bowers, supra note 2, at 382 (stating that by 2005, formal global remittances exceeded $233 billion).

29 See Bowers, supra note 2, at 383 (defining the four incentives to hawala as the absence of formal sector alternatives,
expatriates and migrants, but it invites terrorists to hide behind a veil of cultural tradition.30

Ironically, the primary challenge for law enforcement with hawala is its legality.31 Hawala is a legitimate remittance system.32 Hawaladars operate for the benefit of many workers and families across the world and typically comply with money-transmitting legislation.33 However, we should not turn a blind eye to the system simply because most remittances are spent for lawful purposes. Consider: the 9/11 attacks are estimated to have cost only $300,000 to $500,000 – this is 0.000003% of the total amount of informal remittances this past year.34 If we objectively attributed that 0.000003% of underground transfers to terrorist financing, we may have considered that figure inconsequential.35 Shortly after the attacks, Osama bin Laden dismissed Western efforts to identify and seize Al-Qaeda’s assets, stating in a Pakistani press interview, “Al Qaeda is comprised of modern, educated young people who are as aware of the cracks in the Western financial system as they are of the lines in their own hands. These are the very flaws in the Western financial system which is becoming a noose for it.”36

A. The Islamic State of Iraq and the Levant

The Islamic State of Iraq and the Levant started as an Al-Qaeda splinter group with the initial mission of creating an Islamic State in Iraq and Syria.37 The leader of Al-Qaeda in Iraq (AQI), Abu Musab al-Zarqawi Al-Zarqawi, was killed in an air strike in 2006 but was quickly replaced; his AQI replacement, Abu Ayyub al-Masri, announced the Islamic State in Iraq (ISI) the same year.38 Leadership eventually passed to Abu Bakr al-Baghdadi after al-Baghdadi was released from Camp Bucca, a United States-run prison in southern Iraq, in 2009.39 IS renamed itself ISIS after merging

31 See, e.g., FINCEN, supra note 3, at 11 (explaining that hawala is illegal in some parts of the US from a regulatory standpoint, but remittance systems are not universally illegal).
32 See FINCEN, supra note 3, at 5 (correcting the misconception that hawala is “underground banking;” hawalas often operate in the open with complete legitimacy).
33 See Suha Maayeh, Hawala Money Transfers Defy Regulation Efforts, NATIONAL (Aug. 26, 2008), http://www.thenational.ae/news/uae-news/hawala-money-transfers-defy-regulation-efforts (using an example of workers in Dubai who use hawaladars as banks to illustrate the effectiveness of hawala in sending money home to families); see also Bowers, supra note 2, at 386 (accounting for the reluctance in poorer countries to cut off a viable channel for money flow).
34 Bowers, supra note 2, at 381–82, 387 (calculating informal remittances account for about $115 billion of the $350 billion of annual remittance flows).
35 See Bowers, supra note 2, at 387 (pointing out that most terrorist attacks require even less than $100,000).
36 Bowers, supra note 2, at 407.
38 Id. (noting Jordanian-born Abu Musab al-Zarqawi created AQI in 2003 and pledged a war against the Shia community three years later).
39 Id. (detailing the initial leadership, Abu Omar al-Baghdadi and Abu Ayyub al-Masri, were killed in a joint United
with Jahbat al-Nusra, an Al-Qaeda backed militant group in Syria.40 After fighting between al-Nusra and ISIS, Al Qaeda renounced all ties to ISIS on February 3, 2014.41 Since that date, the group has kidnapped children in Syria for radicalization, seized airports and public buildings, freed dangerous prisoners, executed captives, and expanded its territory.42 On June 29, 2014, Al-Baghdadi declared himself as the authority over the world’s 1.5 billion Muslims and announced the creation of a caliphate (Islamic state).43 Since the drafting of an Authorization for the Use of Military Force (AUMF) against the “Islamic State of Iraq and the Levant,”44 the group is commonly referred to as “ISIL” within the United States, and will hereinafter be referred to as ISIL within this paper.

Although it has disassociated from Al-Qaeda, ISIL still deploys the Al-Qaeda operative: “There are two things a brother must always have for jihad, the self and money,” and is now the richest terrorist entity on the planet.45 As ISIL was developing, the group received material support from sympathizers in Qatar, Kuwait, and Saudi Arabia.46 Wealthy businessmen gave money to ISIL the same way businessmen back start-ups in the United States.47 These jurisdictions continue to fund extremists in Iraq and Syria, giving ISIL the footing to generate its own capital and expand its territory.48

Laws combating the financing of terrorism often overlook hawala, suggesting that much of ISIL’s donations are conveyed through hawaladars.49 To move money within the Middle East, an ISIL supporter would contact a hawaladar and provide instruction for delivery and the hawaladar would retain a profit.50 The hawaladar in, say, Qatar would contact the counterpart hawaladar in

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40 Id. (adding the Jahbat al-Nusra leader, Abu Mohammed al-Jawlani, rejected ISIS’s attempt to merge with the group in April 2013).
41 Id. (remembering that ISIS started as an AQ splinter group).
42 Id. (chronicling between May 2014 and present-day, ISIS has publicly decapitated Western journalists and aid workers, urging the US into action. In response, leader al-Baghdadi calls the United States “terrified, weak, and powerless” in a seventeen-minute audio message released on November 13, 2014).
43 Id. (adding since this time, the US has sent extra troops to Iraq (June 2014), bombed artillery of Sunni Islamic extremists (Aug. 2014), and carried out airstrikes against the group (Sep. 2014-present)).
45 See supra note 5 and accompanying text.
46 See Matthew Levitt, Qatar’s Not-So-Charitable Record on Terror Finance, HILL (Sept. 24, 2014), http://thehill.com/blogs/pundits-blog/international/218706-qatars-not-so-charitable-record-on-terror-finance (recounting an experience with Qatari officials in Doha who denied hawalas in their country. In a separate investigation, foreign workers told IMF assessors they sent money to their families using hawala; the IMF team returned to the government with a list of hawaladars and demanded implementation of laws combating terrorist financing).
47 See id. (quoting Qatari Emir Sheikh Tamim bin Hammad ad Thani’s concession to German Chancellor Angela Merkel that “[Extremists in Syria and Iraq] are partly financed from abroad.” Knowing this, the Department of the Treasury singled out Qatar as a “permissive jurisdiction” for terrorist financing).
48 See id.
49 E.g., JOHN A. CASSARA, HIDE & SEEK: INTELLIGENCE, LAW ENFORCEMENT, AND THE STALLED WAR ON TERRORIST FINANCE 144 (2006) (“As I saw in the Middle East, most hawala networks are based on tribal, clan, and family relationships, making it difficult for U.S. criminal investigators to understand and interdict the system.”).
50 Id. at 148 (examining “Case 1,” where the hawaladar keeps for profit a small percentage of the amount transferred).
the ISIL state and communicate instructions. The hawaladar in the recipient state would contact
the recipient and verify the transaction through a remittance code, and arrange for delivery. This
hawaladar also retains a small fee. The funds move between the countries, and the hawaladars
eventually “settle the books” through either a physical transfer of money, a bank-to-bank wire
transfer, trade, or “counter valuation” gold.

To recruit outside of the Middle East, ISIL targets social media; the group is unparalleled in
its use of Facebook, Twitter, YouTube, and other popular websites. ISIL has gained support
from not only Islamic extremists, but from Westerners. United States and European security services
estimate as many as 3,000 jihadist militants fighting in Iraq and Syria originate from Western
countries. Another, perhaps equally sizable, number has donated to the cause. The group has
effectively rebranded itself to surpass a declining Al Qaeda, and “Islamic State” is the product they
are selling.

Because ISIL and hawala both demand secrecy, it is difficult to qualify their relationship.

What we do know is that ISIL is running a de facto state and has achieved unprecedented success
in marketing. ISIL needs money and knows how to get it. Given hawala’s history of financing
terrorism, we should assume the system is contributing to the illicit transfer of funds to ISIL.

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51 Id. (continuing with “Case 1,” the hawaladar in Country A contacts the counterpart in Country B through telephone,
email or fax to communicate instructions for delivery to the recipient).
52 Id. (finishing “Case 1,” the hawaladar in Country B verifies the transaction with the recipient through a remittance
code sent from the sender to the recipient).
53 Id. (calling this process “door-to-door” money remitting).
independent.co.uk/news/business/analysis-and-features/jim-armitage-isis-is-refining-terrorist-marketing-9585963.html
(equating ISIS marketing to the corporate world’s technique of connecting to a new generation of young adults).
55 See Ben Winsor, Hundreds of Westerners Have joined ISIS – Here’s Where They Came From, BUS. INSIDER (Aug. 27,
present an even greater challenge to security services because Western passports are not subject to the same visa
requirements as non-Westerns).
56 See id. (estimating 700 recruits from France, 400 from the U.K., 300 from Germany, 250 from Belgium, 200 from
Australia, 130 from the Netherlands, 100 from Canada, 100 from the United States, and 51 from Spain).
57 See Sink, supra note 6 (statement of David Cohen) (“You see these appeals on Twitter in particular from, you
know, well-known terrorist financiers . . . and they’re quite explicit that these are to be made to ISIL for their military
campaign.”).
58 See Armitage, supra note 54 (using the analogy of “Microsoft” for Al-Qaeda and “Apple” for ISIS).
59 See infra note 190 and accompanying text.
60 See generally Eoghan Macguire, How has ISIS Become One of the Richest Ever Militant Groups, CNN (June 22, 2014),
http://edition.cnn.com/2014/06/22/world/meast/mme-isis-money/index.html (noting that as ISIS has expanded from
northern Syria across western Iraq, reports put the group’s wealth at $2 billion).
61 See generally Guiora & Field, supra note 30, at 60 (“Terrorists have discovered various methods of using the financial
markets to fund their activities. For instance, they use the investment realm, the banking systems, and particularly the
informal value transfer system of hawalas.”).
III. United States Response to Hawala

The United States started thinking critically about hawala after 9/11.62 The money involved in hawala is “clean” at the time of transfer, but legislative efforts before 9/11 focused primarily on the movement of “dirty” money across borders.63 Since 9/11, money-transmitting legislation has expanded to target specific threats to United States security.64 Now, money-laundering crimes are increasingly considered in the context of anti-terrorism provisions.65 The implications of this shift are apparent through two factually similar, yet legally distinguishable, cases: United States v. Elfgeeh in 2004 and United States v. Elfgeeh in 2014.

A. Post-9/11 Legislation

Before 9/11, most legislation concerning remittance systems focused on the formal sector.66 18 U.S.C Section 1960(a) criminalized any “illegal” money transmitting business affecting interstate or foreign commerce, meaning the business was intentionally operated without an appropriate money-transmitting license and failed to comply with money transmitting business registration requirements.67 Often used in conjunction with 18 U.S.C Section 1960, 18 U.S.C. Section 371 criminalized conspiracy to defraud the United States.68 This legislation failed to account for hawala since the system mostly operates outside the formal sector.69

After 9/11, the USA PATRIOT Act placed regulations on the informal sector.70 The Act amended Section 1960 to substitute provisions relating to the prohibition of unlicensed money transmitting businesses for similar provisions relating to prohibition of illegal money transmitting businesses.71 In other words, the post-October 2001 version of Section 1960 punishes failure to

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62 E.g., Bowers, supra note 2, at 386 (“Only after the attacks on the Twin Towers and the Pentagon did knee-jerk speculation by various federal agencies bring the presumed relationship between hawala and terrorism finance to the forefront.”).
63 Guiora & Field, supra note 30, at 65–66.
64 See Guiora & Field, supra note 30, at 82 (highlighting the PATRIOT Act as a way to “patch many of the . . . holes through which terror financiers have slipped”).
65 See Cassara, supra note 49, at 191 (explaining that countermeasures against money laundering and terrorist financing are very similar because terrorist financing is an inverse partner to money laundering).
66 See generally Bowers, supra note 2, at 402 (noting several loopholes to formal sector regulation).
69 See Bowers, supra note 2, at 406–07 (explaining that Informal Value Transfer Systems (IVTSs) operate underground, parallel to the formal sector, and are more difficult to deal with than systems operating in tandem with the formal sector).
70 See Bowers, supra note 2, at 406 (defining IVTSs as “informal value transfer systems” included in Section 359 of the Patriot Act).
comply with money transmitting business registration requirements regardless of whether the defendant knew that the operation needed to be licensed or that the operation was so punishable.\(^72\) Hawala may have been indirectly implicated through existing law, but it is now explicitly accounted for as an informal value transfer banking system.\(^73\)

Terrorist funding is now largely prosecuted using this legislation, along with 18 U.S.C. Section 2339B(a)(1), which criminalizes attempts to provide material support to terrorist organizations where the subject knew the organization was a designated terrorist organization or engages in terrorism.\(^74\)

**B. United States v. Elfgeeh**

In 2004, a grand jury in the United States District Court for the Eastern District of New York returned a four-count indictment of Abad Elfgeeh and his nephew Aref Elfgeeh (defendants) for violating federal law through their operation of a hawala.\(^75\) Abad’s counts included conspiring, between January 1995 and October 2001, to conduct a business (the hawala), “knowing that . . . [it] was an illegal money transmitting business” in violation of 18 U.S.C. Section 1960(a)(1994) and conspiring to conduct an unlicensed money-transmitting operation between November 2001 and January 2003, when the new version of Section 1960(a) had become effective.\(^76\)

Abad supported customers in Yemen through a strategy designed to evade the IRS.\(^77\) Each check made out to Yemen was under $10,000 or given in cash to Abad’s Carnival French Ice Cream Store, and deposited from the store’s account at J.P. Morgan Chase Bank into 12 “feeder” accounts, maintained at other, various banks.\(^78\) More checks were written on an alternative Prospect Deli...
account, payable to the Carnival French Ice Cream Account, and signed in the name of Abad’s nephew, Aref.79 At trial, Aref conceded he worked in a hawala business and was responsible for opening up several bank accounts and making deposits of cash in these accounts in exchange for room, board, and a small salary.80 Abad also retained a salary in exchange for sending money to Yemen — around $3,000.81 Critical to the case, neither Abad nor Aref, nor their Carnival French Ice Cream store, had a New York State license to transmit money.82 Both defendants argued their hawala was a “service” to the Yemeni community and not a “business” within the meaning of Section 1960, but the New York State Banking Department countered that a money-transmitting business does not need to take in revenue or consider itself profitable in the traditional conception of “business” to fall under the licensing requirement.83

The government agreed it would not discuss the involvement of the FBI’s counterterrorism task force or discuss a terrorism investigation.84 Further, the court reiterated “this is not a terrorism trial . . . this is a banking violation” trial concerning hawalas not obtaining proper licenses to conduct business.85 As such, the government was precluded from allowing the jury to view checks seized from Abad with the words “for the jihad” and “mujahidin” written on them.86

The Second Circuit agreed with the sentences imposed on Abad and Aref, refuting the defendants’ contention that the terms were substantively unreasonable or unwarrantedly high for the crime committed.87 Abad was convicted and sentenced to 188 months.88 Aref was convicted and sentenced to 51 months for his relatively minor role.89

In 2014, Abad’s nephew, Mufid Elfgeeh, was caught through confidential informants in the same situation as Abad — sending money out of a small shop in New York to terrorist organizations in the Middle East.90 Mufid recruited the FBI informants to join ISIL as fighters, paying their

79 Id. at 111.
80 Id. at 110.
81 Id.
82 Elfgeeh, 515 F.3 at 110 (recalling that Section 1960 requires compliance with money transmitting business registration requirements).
83 Id. at 111.
84 Id. at 113 (believing the defense opened the door during its opening statement: “every bit of [the] money came from a decent source, not criminal activity.” Since opening statements do not constitute evidence at trial, the door was not opened.).
85 Id. at 114 (arguing a mistrial when the Criminal Investigator responsible for uncovering ties to the Yemeni terrorist Al Mala|ayd unveiled his identity on the stand, thereby inferring Abad’s involvement in a terrorism investigation).
86 Id. at 113 (according to the government outside of the presence of the jury, the money was transmitted to known terrorist organizations, in “checks that say for the Jihad from the defendant himself”).
87 Elfgeeh, 515 F.3 at 139 (seeing no disparity between the conviction of the defendants in Elfgeeh and the convictions of defendants with similar conduct and similar criminal backgrounds).
88 Id. (noting that the sentences were within the applicable sentencing guideline ranges).
89 Id. at 128 (contending on appeal that the district court failed to canvass the jury to determine whether any juror had been exposed to prejudicial media coverage during the court of the trial. The court agreed the proceedings were “a bit haphazard,” but saw no basis for reversal).
passport costs and contacting travel agents for their trip “to the university.”

These efforts were coordinated through an English-speaking ISIL contact in Syria. Mufid was arrested by the Joint Terrorism Task Force in the Rochester region for sending jihadists to Syria to fight with ISIL and plotting murders of United States troops at home. An affidavit in support of a search warrant in his case contained “tweets” linking Mufid to jihadists: “Al Qaeda said it loud and clear: we are fighting the American invasion and their hegemony over the earth and the people . . . [ISIS] will one day rule the world with the will of Allah.”

Another tweet urged Muslims to donate a third of their money to IS, or “#Five_thousand_dollars_from_every_household.”

Mufid was indicted on three counts of aiding an “Islamic terrorist organization.” His indictment included “Attempt to Provide Material Support to a Terrorist Organization” in Counts One through Three, in violation of 18 U.S.C. Section 2339B(a)(1). Other counts charged Mufid with attempting to kill United States soldiers and possessing firearms and silencers. Mufid pleaded guilty to attempting to provide material support to ISIL and, on March 17, 2016, was sentenced to 270 months in prison; the longest-ever sentence for supporting a terrorist organization.

The two Elfgeeh cases show how much the United States has hardened its stance on terrorist financing and hawala. Both trials centered on the same two issues: 1) unlicensed money-transmitting businesses, and 2) material support to designated terrorist organizations – but handled the issues in markedly different ways. The Eastern District of New York evaded references to terrorism during...
Abad’s trial in 2004; 12 years later, the Western District of New York structured its holding on Mufid’s association with ISIL. On the first issue, Abad maintained he was outside of the scope of Section 1960 because he did not realize his hawala was considered a business requiring a license to operate. On the surface, there exists tension between hawala as a historically legitimate remittance system and the post-9/11 version of Section 1960 that criminalizes unlicensed money transmitting businesses. This tension, however, only manifests when a hawala refuses to obtain a license. Hawala is not by its definition an unlicensed money transmitting system; it is an alternative remittance system that is amenable to licensing and reporting requirements, despite most readily existing outside of licensed banking activity. If a hawaladar obtains a license for his business, he will not be subject to Section 1960’s penalties. If the hawaladar does not obtain a license, instead claiming ignorance of the law, he will fall victim to Section 1960’s reduced mens rea requirement. Looking at the range between Abad’s and Mufid’s convictions, it is clear the United States is actively targeting the more discrete ways financiers raise and move money.

On the second issue, Abad was found to have connections to terrorist groups, largely conceding his relationship with an individual closely affiliated with Al-Qaeda, and yet the government was restricted from arguing this association. Instead, the government relied on Abad’s bank records and was only able to implicate Abad in the illegal operation of an unlicensed money transmitting business. The court should not have been expected to create a correlation where one did not exist, but it should have confronted the reality of a hawaladar wiring money out to Yemen.

102 Compare infra note 109 and accompanying text, with supra note 100 and accompanying text.
103 United States v. Elfgeeh, 515 F.3d 100,106 (2d Cir. 2008), aff’d United States v. Elfgeeh, 2004 WL 3767299 at *1 (E.D.N.Y Jun. 9, 2004) (presenting the Defense’s case that Aref did not consider the hawala a “business” within the meaning of § 1960(a) because he transmitted money only for Yemeni-American individuals, not businesses, and only charged the amount necessary to cover banking and delivery fees).
104 See 18 U.S.C.A. § 1960(a) (stating “[w]hoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined . . . or imprisoned . . . or both.”).
105 But cf. Elfgeeh, 515 F.3d at 108 (quoting FBI Special Agent Daniel Gill on the benefits of hawala over official money transmitting businesses: “it’s conducted outside the realm of licensed banking activity. There is no regulatory oversight. Therefore, the transactions are basically conducted without any sort of legal review . . . ”).
106 See 18 U.S.C.A. § 1960(a) (intentionally amending the federal statute to criminalize operation of money transmitting businesses to eliminate the requirement of proof that the defendant knew a license was required. Now, the government is only required to prove that the defendant knew the business was unlicensed).
107 See Andrew Schouten, Unlicensed Money Transmitting Businesses under the USA PATRIOT ACT, 39 McGeorge L. Rev. 1097, 1105 (2008) (explaining that the USA PATRIOT ACT “clarified the mens rea requirement for section 1960” when it replaced intentionally with knowingly); see also United States v. Hopkins, 53 F.3d 533, 539 (2d Cir. 1995) (explaining how changing “willfully” to “knowingly” reduces the mens rea element and heightens criminal sanctions).
108 See Elfgeeh, 515 F.3d at 111 (refusing to accept the excuse that Abad was unaware of the New York State licensing requirement when he began transmitting money for Yemeni community members in 1995).
109 Id. at 116–17 (barring mentions of Elfgeeh’s relationship with Yemeni cleric Mohammed Ali Hassan Al-Moayad, who was convicted of conspiring to provide material support to Hamas and Al Qaeda and called himself Osama Bin Laden’s “personal sheik”).
110 See id. at 143–44 (discussing heavily the effect of pre-trial publicity on the district court’s requirement that the jury remain unaware that the prosecution was terrorism-related).
and twenty-five similarly-situated countries through checks saying “for the jihad.” When this link 
was acknowledged in Mufid's trial, he received the steepest sentence ever handed to a terrorist sympathizer. Perhaps our treatment has evolved because the threat has evolved. If we feared another 9/11 from Al-Qaeda, we fear a “lone wolf” attack from ISIL. These sporadic attacks are often smaller scale, but they are pointedly destructive in their ability to shock the conscious. ISIL is not predictable and is not structured. This may have rattled the United States' understanding of the enemy, but it did not rattle the means through which the United States can degrade the enemy. While it is often difficult to pinpoint an individual offender in a collective mission, complicity is crucial in enforcing the full breadth and intent of post 9/11 terrorism legislation.

By conceding inadequacies in its counterterrorism strategy pre-9/11, the United States has set the example of how to push back on ISIL financially. This progress, however, will be hindered unless the international community concedes similar inadequacies. As a region, the Middle East has a clear record of backing terrorist organizations, including Al Qaeda, yet acquiesces to hawaladars because of trust and tradition. Understanding these deficiencies in the Middle East is crucial in recognizing the limitations of United States regulations.

IV. Hawala Regulation in the Middle East

Throughout most of the Middle East, hawala is “nothing more than an informal wage remittance service” for guest workers. This characterization has stalled legislation regulating the system.

Afghanistan and Iraq, and to a lesser degree, Syria, complied with international recommendations after 9/11 and passed legislation against terrorist financing. While the

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111 Id. at 117.
112 See supra note 100 and accompanying text.
113 Compare Indictment, Elfgeeh, No. 6:14-CR-06147-EAW-JWF, with Superseding Indictment, Elfgeeh, No. 1:03-CR-00133-SJ (looking at an indictment carrying 65 years against an indictment carrying 15 years).
114 See generally MONOGRAPH ON TERRORIST FINANCING, supra note 28, at 17 (namely, Al-Qaeda was recognized for its ability to develop “an elusive network . . . an unconventional web” of financial facilitators, including hawaladars).
115 See Beyond bin Laden’s Caves and Couriers to a New Generation of Terrorists: Hearing Before the H. Comm. on Homeland Sec., 114th Cong. 2 (2015) (testimony of William J. Bratton, New York City Police Commissioner) (explaining that ISIL has “shunned” Al-Qaeda’s model for the “lone wolf” model, and has been subsequently more successful at delivering direct impacts).
116 Id. at 3 (describing how the NYPD has strengthened its partnerships to better study terrorist groups, trends, and methods of attack).
117 See The 9/11 Commission and Efforts to Identify and Combat Terrorist Financing: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs, 108th Cong. 3 (2004) [hereinafter Wolosky] (testimony of Lee S. Wolosky, of Counsel, Boles, Shiller & Flexner LLP) (“Prior to 9/11, the intelligence community had an ‘incomplete understanding of Al-Qaeda’s methods to raise, move, and store money,’ which hampered the effectiveness of the overall counterterrorism strategy.”).
118 See generally Bowers, supra note 2, at 384 (explaining that community tradition create a distrust of outsiders, which eliminates commercial competition from the outside).
119 CASSARA, supra note 49, at 149.
120 See infra notes 130, 140, 146 and accompanying text.
effectiveness of these laws is difficult to ascertain, the enactment alone is commendable in places lacking formal sector alternatives.\(^{121}\) Still, the International Monetary Fund recognizes that progress is necessarily impeded in countries without a functional banking system.\(^{122}\) In Saudi Arabia and Qatar, authorities have demonstrated a "penchant for passing legislation and considering the matter closed without any implementation or enforcement."\(^{123}\) The situation is similar in the United Arab Emirates, the host of the first International Hawala Conference.\(^{124}\)

\textit{A. Nothing More Than an Informal Wage Remittance System?  
Afghanistan, Iraq, Syria}

During the reign of the Taliban government in Afghanistan, hawala emerged as a reliable alternative to the existing financial sector, which became virtually non-operational after more than twenty years of conflict.\(^{125}\) Hawala is still trusted over formal institutions, especially after the 2010 Kabul Bank scandal, when owners lost more than $900 million of depositors' money through insider loans.\(^{126}\) Now, only seven percent of Afghans have a bank account.\(^{127}\) Most hawaladars in Afghanistan operate in the Kabul money exchange market – an eighty-year-old market housing precious-metal transfers and financial services offices.\(^{128}\) These hawaladars are considered a "financial institution"\(^{129}\) under Afghanistan's 2004 Anti-Money Laundering and Proceeds of Crime Law as a "money transmutation service."\(^{130}\) As such, they must take active steps to verify the identity of customers,\(^{131}\)

\(^{121}\) See Maimbo, supra note 20, at 19 (suggesting that when banks failed, the hawala system filled the financial void, and has since been trusted over formal institutions).

\(^{122}\) World Bank and Int'l Monetary Fund, Informal Funds Transfer Systems: An Analysis of the Informal Hawala System 41 (2003), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/05/03/000094946_03041904002082/Rendered/PDF/multi0page.pdf (contrasting countries where informal hawala systems exist alongside a well-functioning conventional banking sector with conflict torn countries without a functional banking system. For the latter, requirements beyond basic registration may not be feasible because of inadequate supervisory capacity).

\(^{123}\) Levitt, supra note 46 (attributing the money exchange dealers to a diverse financial market).

\(^{124}\) See infra note 121 and accompanying text.

\(^{125}\) Maimbo, supra note 20, at 1 (explained the erosion of the formal financial sector during a period when Afghanistan was subjected to international sanctions).


\(^{127}\) Id.

\(^{128}\) See Maimbo, supra note 20, at 3 (attributing the diverse financial market to hawaladars, who provide a range of banking conveniences).


\(^{130}\) Anti Money Laundering and Proceeds of Crime Law art. 5 (requiring any transfer to or from foreign countries involving a sum equal or exceeding 1,000,000 Afghani to be effected through an authorized financial invitation or an authorized money transmission service).

\(^{131}\) Id. art 9.
monitor transactions, engage in record-keeping, and report suspicious activity. Since the legislation was enacted in 2004, 300 registered money exchange dealers have organized themselves into a self-regulating market. This transparency is crucial in identifying illicit transactions in Kandahar, the birthplace of the Taliban.

In Iraq, hawala's legality turns on whether the money exchangers are licensed. Hawala, in its ancient understanding, was unregulated and prohibited throughout most of Saddam Hussein's reign. Nevertheless, hawala was still widely used to transfer funds from expatriate communities, as the only solution to the challenges imposed by the restrictive banking system. The Iraq Banking Law was enacted in 2003 following renewed international cooperation after 9/11. The Law promotes understanding of the banking system and attaches penalties to all persons engaged in banking business without a banking license, with certain exemptions. The following year, the government passed the Anti-Money Laundering (AML) Law, governing financial institutions and their relationship to terrorism financing. "Persons who undertake hawala transactions" are explicitly included within "money transmitters," whether direct or indirect, formal or informal. The penalty for terrorist financing and money laundering ranges from two to four years’ imprisonment, including a fine of 20 million to 40 million dinar, respectively.

Syria was designated a State Sponsor of Terrorism in 1979 and remains a serious source of terrorist financing. Syria required money-changers to be licensed by the end of 2007, but rather

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132 Id. art 12 (requiring reporting entities to pay special attention to all complex, unusual large transactions).
133 Id. art 14.
134 Id. art 9 (targeting suspects whose transactions are related to or derived from the commission of an offense and any funds linked to terrorism).
135 Maimbo, supra note 20, at 3 (adding that the number of unregistered money exchange dealers in Afghanistan range from 500 to 2,000); see FinTRACA, supra note 129.
136 See Eltaf Najafizadas, supra note 125 (citing a United States Bureau of International Narcotics and Law Enforcement Affairs report predicting that Kandahar and Helmand handle one billion dollars in drug money a year).
137 CENT. INTELLIGENCE AGENCY, COMPREHENSIVE REPORT OF THE SPECIAL ADVISOR TO THE DCI ON IRAQ'S WMD (2007), https://www.cia.gov/library/reports/general-reports-l/iraq_wmd_2004/chap2_annxG.html [hereinafter CIA, IRAQ] (differentiating between hawalas through banks, which are legal, and hawalas through encrypted notes from family-tribal relationships, which are illegal).
138 Id. (adding that the entire system was eventually legalized by Saddam Hussein to reduce illicit smuggling).
139 Id. (inferring that hawala was the most common informal payment system because it was illegal to transfer cash out of the country using the normal banking system).
140 Banking Law of 2003 art. 2 (Iraq) (adding the other objectives of promoting understanding of the banking system and maintaining protection for depositors).
141 Id. art. 3 (including within exemptions, "persons who fund the credits they make . . . " or "persons who, in exchange for the issuance of corporate debentures or corporate bonds, receive repayable funds from the public and use such funds solely for the purpose of making investments for their own account.").
142 Anti-Money Laundering Law of 2004 art. 1 (Iraq) (stipulating that it is a crime to "launder money, finance crime, finance terrorism, and structure transactions;" "financial institutions" encompasses managers of investment funds, insurance institutions, persons trading in securities, money transmitters, and foreign exchange houses).
143 Id. art. 2 (including within the definition of "financial institution" anyone who accepts, keeps, deposits, invests, or transfers financial assets. The CBI can refine the definition of financial institution based on size).
144 Id. art. 4 (defining "Terrorist Financing" as providing property, support, or financial services used to carry out an act for a terrorist group or an act intended to cause seriously bodily harm to a civilian in a situation of armed conflict).
than comply with legislation, these money-changers took their efforts to the black market. Hawala networks largely exist in Syria’s black market, perpetuating trade-based money laundering. This market has grown almost as large as Syria’s formal economy; 60% of all business transactions are conducted in cash and 80% of the population rejects formal banking services. Ultimately, Syria has refused to confront rampant corruption within its borders.

Afghanistan, Iraq, and Syria are plagued by instability and foreign interference, making it difficult to regulate the informal financial sector. These countries lack reporting laws, uniform guidelines, or methods of monitoring the cross-border movement of currency. On a fundamental level, many people engaging in financial transactions face language barriers when attempting to communicate with formal institutions.

Hawaladars in Afghanistan provide a valuable resource against unskilled human resources, outdated technology, and weaknesses in corporate governance. Afghanistan has made efforts to enforce its 2004 Anti-Money Laundering Law, but maintains that hawala-type systems, even as they circumvent officialdom, are not inherently suspect. To the Western word, this may register as an excuse, but hawala does not exist in the Western world under the same circumstances it exists in Afghanistan. Hawala was created in response to the corruption of the formal sector; if Afghans are pointing to a suspect system, they will point to the banks. If there are no real alternatives to the hawala system in Afghanistan, the United States should focus on deepening Afghanistan’s compliance with Financial Action Task Force recommendations rather than criminalizing the system.

As in Afghanistan, hawala has been largely beneficial for the Iraqi community, which decreases Iraq’s motivation to regulate the system. Iraq’s Banking Law only applies to persons carrying on a “commercially organized business undertaking,” thereby exempting most hawaladars.
Even if a hawaladar did operate a banking business on this scale, he must know how to exploit statutory loopholes; the government of Saddam certainly did when it used private banks rather than the state owned bank to hide transactions from the UN. The deterrent of four years’ imprisonment in the AML Law should compel hawaladars to license their business, keep thorough records, and recognize illicit transactions, but the mens rea requirement is still too low. Not long ago, the United States faced similar problems when attempting to identify illegal hawaladars, as discussed above, but imposed new standards to purify the system. Without similar requirements, Iraq's legislation leaves considerable space for "underground" transactions.

According to the United States Department of State, Syria enacts legislation not for the benefit of its own people, but to repress outsiders and combat interference against its interests. This is certainly true for Syria's AML legislation, which is often overlooked in conversation because of how capriciously it is disregard. Of course, Syria has forsaken most of its rule of law amid long-lasting internal turmoil. The instability of the financial sector is a small symptom of a more complicated collapse.

In these countries, hawala primarily exists to avoid government interaction, not to fund terrorism. There is a deep distrust of the formal sector, often for understandable reasons, and comfort in the tradition and familiarity of hawala. Hawala is most likely to remain in this region, which is acceptable as long as it is regulated. To outlaw hawala entirely would potentially signal an imposition of Western ideals; rather, the United States should embolden the more broad participation against terrorist financing the Middle East has exhibited post-9/11.

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159 Banking Law of 2003, supra note 140, art. 3 (continuing that no system may use the word "bank" without a banking license. The process for obtaining a license is stipulated in articles 4–5).
160 See CIA, IRAQ, supra note 137.
161 Andrew Hudson & Maitha AlHashimi, Iraq's New Draft Anti-Money Laundering Law, AL TAMIMI & Co. (Oct., 2015), http://www.tamimi.com/en/magazine/law-update/section-11/october-5/iraqs-new-draft-anti-money-laundering-law.html (discussing new AML draft legislation in Iraq that would broaden the mens rea to implicate an offender if he "ought to have known" that the funds were the proceeds of crime).
162 See supra notes 71–73 and accompanying text.
163 U.S. DEP’T OF STATE, supra note 145 (indicating that only opponents of the regime were charged with violating counterterrorism statutes).
164 See supra note 149 and accompanying text.
166 See id.
167 See supra note 164 and accompanying text.
168 See supra note 168 and accompanying text.
169 See generally Maimbo, supra note 20, at 17 (realizing that a lack of documentation makes it difficult to answer whether hawala is used to launder money in Afghanistan, and suggesting special regulations or supervision techniques to increase hawala's transparency).
B. Consider the Matter Closed
The United Arab Emirates, Saudi Arabia, Qatar

The United Arab Emirates is “an integral part of the international hawala equation,” primarily because of its ties to Al-Barakaat, headquartered in Dubai. Al-Barakaat is a money-transfer system previously investigated for ties to Al-Qaeda. After United States Intelligence learned Osama bin Laden contributed money to Al-Barakaat, the United States froze assets from its operation and designated it a supporter of terrorist organizations. To control the negative publicity surrounding Al-Barakaat, the United Arab Emirates held the first International Conference on hawala, offering a voluntary system of registration for hawala dealers. This initiative supplemented Union Law No. 10 (1980) and Resolution No. 31/2/1986 & No. 123/792 against terrorist financing, which require licensing for all money changing businesses in the United Arab Emirates.

New banking initiatives and outreach programs in Saudi Arabia suggest future progress in the Middle East. The Saudi Banking Control Law punishes persons who engage in unlicensed banking businesses with up to two years imprisonment and a fine of 5,000 Saudi Riyals (SRI) for every day the offense continues. “Banking business” is defined quite broadly in the Law and includes actions such as receiving money on deposit accounts, opening accounts, collecting checks, and facilitating foreign exchange transactions.

Saudi Arabia has also taken measures to identify terrorist financing within its “charity commissions,” which regulate export of all funds and distribute private donations from Saudi Arabia. When Saudi Arabia discovered a notable charity commission, Al Haramain,
supported jihadists and terrorists, including al Qaeda, it froze the assets of its branches and developed new commissions to take over overseas aid operations.\footnote{See CASSARA, supra note 49, at 204 (commending Saudi officials for finally recognizing they had a problem with charitable procedures by mid-2004, and closing down the Al Haramain Foundation for providing support to Al-Qaeda).

Qatar explicitly criminalizes terrorism financing in Law No. 4 of 2010.\footnote{Combating Money-Laundering and Terrorist Financing Law No. 4 of 2010 art. 1 (Qatar) (defining “Terrorist financing” as “an act committed by any person who . . . provides or collects funds . . . with the intention to use them or knowing that these funds will be used . . . for the execution of a terrorist act.”).}

The law requires identity verification and record maintenance for all financial institutions, defined as anyone conducting a financial operation for the benefit of a customer.\footnote{Id. art. 1 (including within operations: accepting deposits; lending, leasing, or transferring money or things of value; issuing payment; offering financial guarantees; trading; and changing currency; among other operations prescribed by the Prime Minister).}

The purpose of the law is to identify money laundering, or the transfer of illicit funds from crime.\footnote{Id. (clarifying that the person is complicit if he knows, or should have known, the funds are the proceeds of crime, and nevertheless possessed, used, concealed, or converted the funds).}

The penalty for terrorism financing ranges from three to ten years; this penalty is doubled where the perpetrator was assisted by a terrorist organization.\footnote{Id. art. 4, 72 (designating the same penalty of ten years imprisonment for any one who attempts to commit terrorism financing crimes, adding that the offence is considered as committed irrespective of an actual terrorist act).}

The Qatari Authority for Charitable Activities approves international fund transfers by domestic and international charities and the Financial Intelligence Unit (FIU) reviews all financial transaction reports and identifies suspicious transactions.\footnote{Levitt, supra note 46 (characterizing the implementation of anti-money laundering laws in the Middle East as inconsistent, lacking, and marred by “significant gaps”).

Levitt, supra note 46 (adding that, despite having the authority to seize funds tied to money laundering or terror finance, not a single money laundering crime had been charged).

Levitt, supra note 46 (noting the International Monetary Fund’s report that terrorist financing is criminalized, but in a marginal way).

Levitt, supra note 46 (detailing Qatar’s vast experience with terrorist financing).

Levitt supra note 185.

Levitt, supra note 46 (reporting the International Monetary Fund’s observations).

Levitt, supra note 46 (referring to the academic and businessman, Abu-Khalid al-Suri, as an “equal opportunity terrorist financier,” for sending nearly $600,000 to ISIS, AQAP, and al-Shabaab in Somalia).}
A reluctance to abide by terrorist financing legislation is not unique to Qatar. In the U.A.E, hawala is unapologetically legal; still, hawaladars do not want to register.191 The international community applauded the Abu Dhabi International Conference on Hawala, but did not question why most hawaladars at the Conference were still unregistered.192 At the Second International Conference in 2004, the mission statement discouraged “over-regulation that might drive [Informal Funds Transfer systems] operations underground.”193 Hawaladars in attendance were not, in other words, focused on how to regulate their activity; to the contrary, they were focused on how to retain anonymity.194 Their reasons for preserving secrecy may not be malicious, but it certainly does not help increase transparency and accountability.195 One has to wonder why, if hawala is legal and funds are legitimate, so many hawaladars are reluctant to reveal their businesses.196

Saudi Arabia has been praised for improving regulations in their financial sector.197 Indeed, Saudi Arabia has made significant strides in establishing charity commissions and controlling the licensing of money-transmitters.198 Still, sharia presents a deterrent to modernization, as it permeates every facet of life in Saudi Arabia, including the judiciary.199 Fundamentally, it is debatable whether the rule of law can ever be fully enforced in a region that abides by a Wahhabi ban on manmade legislation.200 The United States should continue to motivate progressive change in Saudi Arabia to buttress its stable relationship, but, ultimately, the Saudi government has failed in sanctioning terrorist financiers.201

Many countries in the Middle East have struggled to effectively regulate their informal financial sector, for reasons both beyond and in their control.202 The region’s response to terrorist financing and money laundering is indisputably more consolidated and cooperative post-9/11, but

191 See Bowers, supra note 2, at 385 (wondering why most hawaladars refused to come forward at the Abu Dhabi International Conference on Hawala).
192 See Bowers, supra note 2, at 385.
193 Bowers, supra note 2, at 403–04 (“[W]hen has it ever been the policy of law enforcement officials to allow criminal activity to continue in fear that a crackdown might force criminals to work harder at their craft?”).
194 E.g., Bowers, supra note 2, at 404 (nothing the risk-cost analysis for a hawaladars profit margin, speculating that clients would be willing to pay higher rates for a promise of secrecy).
196 See generally Bowers, supra note 2, at 385 (lamenting that when then-United States Treasury Secretary Paul O’Neill scheduled a meeting with a Dubai hawala in 2002, the hawaladars were missing and the entire storefront had been removed the night before).
197 See supra note 175 and accompanying text.
198 See Wolosky, supra note 118 (recognizing that Saudi Arabia has worked hard to impose regulations).
199 See generally Bowers, supra note 2, at 409 (noting every law in Saudi Arabia is governed by the following stipulation: “The system of judges which is applied to all cases presented before it is Shari’a rules according to the teachings of the Holy Qur’an, the Sunnah, and the regulations set by the ruler, provided they do not contradict the Holy Qur’an and the Sunnah”).
200 See generally Bowers, supra note 2, at 409 (citing Article 7 of the Nizam Asasi “Basic Regulation,” the closest equivalent to a constitution, reflecting the “Prophet’s tradition and the Qur’an,” which reign supreme over all state regulations).
201 See Wolosky, supra note 118, at 3 (describing a lack of oversight in Saudi Arabia, due to the Saudi government’s “blind eye” to the financing of Al-Qaeda by prominent religious leaders and businessmen).
202 Compare supra note 125 and accompanying text, with supra note 147 and accompanying text.
hawaladars are still unregulated, for the most part. While these regions lack the incentives to more stringently regulate hawala on their own, the United States cannot expect to enforce regulations unilaterally.

V. A Hawala Convention

Because hawala is legitimately operated in many countries, the system should not be outlawed entirely. This would do little to deter hawaladars in the Middle East, who already largely work underground. Instead, the United States and Middle East should enter into an agreement against the illicit use of hawala, in the form of an international convention. This hawala-specific convention would supplement the 1999 International Convention for the Suppression of the Financing of Terrorism, which never explicitly mentions hawala.

The Terrorist Financing Convention was adopted by the General Assembly on December 9, 1999, with 132 signatories and 186 parties. The Convention imposes the responsibility to report offenses relating to terrorist financing in the jurisdiction where the offense occurs. This is an admirable goal, but given the “new level[s]” of terrorist financing, a new treaty could refine the scope of the Convention. An international agreement on hawala, specifically, could consolidate goals at various international levels, and ensure compliance with pre-existing domestic regulation. On a more fundamental level, it could provide a uniform understanding of the problem.

The basic framework should center on non-intervention – in regulating the informal financial sector, no country may impede on the domestic sovereignty of another jurisdiction. This is especially important for hawala, given the disparities in cultural perception. Because illicit financing affects states outside of where the offense was initially committed, signatories may feel compelled to interfere with capital movement. Nevertheless, parties to the convention must respect the jurisdictions established by the State Parties. Otherwise, we risk disrupting economic independence.

203 See supra Part IV.
204 See FINCEN, supra note 3, at 11 (offering the distinction between “white” hawala transactions, which are remittances, and “black” hawala transactions, with are associated with a serious offense, such as narcotics trafficking or fraud).
205 See supra note 193 and accompanying text.
207 Id. at 197 (including the United States and most countries in the Middle East, and all but 10 member states of the United Nations).
208 Id. at 232–33 (urging each State Party to establish its jurisdiction over the offenses and notify the Secretary-General of the United Nations of the jurisdiction it has established, per Article 7).
209 Alexandra Marks, Terror Finance: Two High Stakes Cases, CHRISTIAN SCIENCE MONITOR (Dec. 24, 2002), http://www.csmonitor.com/2004/1224/p02s01-ushu.htm (statement of Lee Wolosky) (“It’s a sign that the war against terrorism is moving to a new level . . . What you’re seeing now is a focus on something that’s really hard to get at—the nonstructured modes of terrorist financing.”).
210 See generally Financing of Terrorism, supra note 206, 2178 U.N.T.S. at 238 (requiring State Parties to carry out their obligations in a “manner consistent with the principles of sovereign equality and territorial integrity of States.”).
Several provisions of the 1999 Convention could be carried over to the new convention, with increased emphasis. The Terrorist Financing Convention asks Parties to consider measures for supervision, including the licensing of money-transmitting agencies.\(^\text{211}\) In the Hawala Convention, this licensing would have to be a requirement, not a suggestion. Hawaladars in the Middle East currently have too much discretion in deciding whether registration requirements apply to their operation.\(^\text{212}\) When the United States amended its money-transmitting licensing provisions, it ushered in a new era of heightened accountability that demands the apprehension of terrorist sympathizers.\(^\text{213}\) It is clear the United States considers terrorist financing a foreign policy issue, not a domestic regulatory issue, but it is less clear the Middle East shares that viewpoint.\(^\text{214}\) The 1999 Convention asks Parties to communicate offenses to the Secretary-General of the United Nations,\(^\text{215}\) but perhaps the Parties should first establish an understanding of what constitutes an offense. The exchange of information through the UN and Interpol could help identify criminal activity in the future by identifying common elements.

Ultimately, a hawala-specific convention would fulfill the same purpose as the Convention against Terrorist Financing, namely, to ensure "the maintenance of international peace and security and the promotion of good-neighborliness and friendly relations and cooperation among States."\(^\text{216}\) In State Parties lacking adequate domestic legislation, the 1999 Convention highlighted the appropriate measures for the identification and detection of funds allocated for terrorist financing.\(^\text{217}\) This type of guidance could be instrumental in regulating hawala according to pre-existing domestic legislation and international expectations. Just as the 1999 Convention was necessary in the absence of multilateral legal instruments addressing terrorist financing, a new Hawala Convention may be necessary after 9/11.\(^\text{218}\)

\(^{211}\) See Financing of Terrorism, supra note 206, at 238 (calling for "the licensing, of all money-transmission agencies," and "[f]easible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments . . . ").

\(^{212}\) See supra note 191 and accompanying text.

\(^{213}\) See supra note 96 and accompanying text.

\(^{214}\) Wolosky, supra note 117, at 1.

\(^{215}\) See Financing of Terrorism, supra note 206, at 237–38 (requiring in Article 18 that financial institutions to obtain proof of legal existence of the customer and maintain records on transactions, both domestic and international).

\(^{216}\) See Financing of Terrorism, supra note 206, at 229 (expressing concern over the "worldwide escalation of acts of terrorism in all its forms and manifestations").

\(^{217}\) See Financing of Terrorism, supra note 206, at 237 (including within Article 18 a call for State Parties to adapt domestic legislation to prevent terrorist financing offenses).

\(^{218}\) See Financing of Terrorism, supra note 206, at 229 ("The number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain.").
VI. Conclusion

ISIL gains recruits every day. The support allows the organization to thrive – militarily and financially. The latter is especially destructive, as ISIL has discovered how to manipulate a younger generation into providing material support for its terrorist activities.

The Middle East is a dynamic player in the conversation on hawala. On the one hand, Middle Eastern countries have a personal stake in stopping ISIL, which should theoretically translate into a substantial interest in regulating terrorist financing. On the other hand, hawala is ingrained in the culture and trusted as a legitimate business practice. Countries like Saudi Arabia, U.A.E, and Qatar, which have the legislation required to prosecute illicit money transfers, are not compensating for instability in the conflict-torn regions of Afghanistan, Syria, and Iraq.

The United States has enforced a broader interpretation of its legislation against the illicit use of hawala, signaling a more combative response to ISIL funding. Even so, hawala transcends boundaries and controls; without the cooperation of the rest of the world, particularly in the regions where terrorist financing is either directed or initiated, the United States faces an uphill battle in regulating the system. The battle is winnable, but the value of the victory will diminish if it arrives too late in the war.

See Christopher Woolf, *How the US can take the fight to ISIS on the financial front*, PRI (June 26, 2014), http://www.pri.org/stories/2014-06-26/how-us-can-take-fight-isis-financial-front (statement of Matthew Levitt, director of the counter-terrorism program at the Washington Institute for Near East Policy) (“[S]ome people thought that because [AQI or ISIS] were pushed back militarily, they were also crushed financially, which they clearly were not.”).