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## THE MOSLEM WORLD: THEORETICAL AND PHILOSOPHICAL PROBLEMS

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*Abstract. Based on the study of numerous foreign and domestic sources, the authors of this article determine the essence of financial transactions through the hawala system. It has been revealed that this system is historically determined in nature, it was used, first of all, in the countries of the Near East, Middle East and South Asia in foreign trade operations in the framework of various directions of the so-called Silk Road. This system is also practiced in our days, however, in a slightly modified form, since globalization processes fixed in recent decades throughout the world have influenced its transformation. However, in addition to traditional trading activities, hawala was often used in the criminal activities of various modern organized criminal groups (OCG), including radical Islamists. In this regard, the study of the criminological features of financial transactions through the Hawala system has gained particular relevance. At the same time, the analysis of available sources indicates the insufficient scientific development of this subject. This is especially true of the Russian Federation, which has faced since the beginning of the 90s of XX century with deviations on its territory, including numerous sabotage and terrorist acts, which were often financed through Hawala. As for the domestic law enforcement system, the term "Hawala" itself began to be used only from the middle of the first decade of the new millennium. However, in practice, the situation with countering the financing of terrorism in this area is still not up to par. By the way, in the USA they began to pay attention to this problem only after the terrorist attacks of September 11, 2001, but so far in this country it has not been possible to completely block unwanted financial flows.*

The pragmatism of the issue requires further reflection on the phenomenon and building an effective system to counter it. In this regard, studying world experience, building up our own

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research in terms of ensuring the national security of the country in the economic and financial fields seems to be one of the most important tasks in identifying, preventing and suppressing the use of the Hawala system for legalizing criminal proceeds and financing terrorism.

In the course of studying the available classifications of the Hawala system, an important conclusion was made, which is of both theoretical and applied nature: the “traditional” and “transforming” types of Hawala under certain circumstances can transform into a “criminal” one. It is also important that the authors of this article highlight five features that are characteristic of Hawala, which pose a potential threat to the security of financial and economic system at the global and national levels. It is proved that the current system of combating the financing of terrorism is not able to respond quickly enough to the use of the Hawala system in criminal activity. This circumstance additionally actualizes the subject under consideration and requires further research in this direction.

The Hawala system is one of the types of money and value transfer systems (hereinafter referred to as MVTs) that has strong historical, ethnic, cultural and religious ties with the countries of the Near and Middle East (primarily Afghanistan, Pakistan, Iran, Iraq, Saudi Arabia, and UAE). The Hawala system, like most other MVTs, has served trade relations since its inception and for many centuries, creating the conditions for timely and safe mutual settlements between the parties involved. The functioning of the hawala system is based on the principle of a compensating balance, which consists in transferring money from a sender from the country “A” (SA) or in transferring money as payment for services rendered from another sender from country “B” (SB). “Hawaladar” from country “A” (HA) receives money in the same currency from SA and in response HA gives SA a password. HA instructs the counterparty (“hawaladar”) in the country “B” (HB) to transfer the appropriate amount in local currency to the recipient (RB), which must provide a password in order to collect

the money. After the transfer is completed, the stage of equalizing mutual obligations between the “hawaladars” begins [1].

Significant impact on the Hawala system in the XX-XXI centuries was made by technological progress and the emergence of the Internet, which led to the formation of a modern, upgraded model for the transfer of funds through the Hawala system. Under this model, the Hawala system operators (hereinafter referred to as the hawaladars) use banks and modern payment systems based on the Internet (the so-called Internet banking). It was this circumstance that expanded the capabilities of the “hawaladars” and provided them with a variety of payment tools, which allows implementing complex economic schemes for equalizing the formed mutual obligations in countries geographically distant from each other [2–4].

For the previously listed countries where hawaladars are active, high terrorist activity is characteristic. In this regard, in a number of scientific studies, speeches by executives and articles in authoritative international publications in recent decades (especially after the attacks in the United States on September 11, 2001), the use of the Hawala system in criminal activities was noted: financing of terrorism; legalization of criminal proceeds [5–8] (including those from the drug trade) [9]; avoiding currency and tax control; other types of shadow economy, such as drug trafficking, smuggling (precious stones, precious metals), arms trade, as well as the transfer of money and material assets to corrupt officials [10–11].

In 2002, UN specialists estimated the amount of money transferred annually through the Hawala system at \$ 200 billion [12]. Taking into account the costs of the terrorist attack at the World Trade Center in the USA, which, according to expert estimates, reached \$ 500 thousand (that is, about 0,00025% of the amount of funds transferred in 2002 through the Hawala system), and the facts established during the investigation (they are reflected in the final document “The 9/11 Commission Report”) that the Al-Qaida members and their business connections used

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In this regard, it seems appropriate to consider the “Hawala” system in the criminological context from the standpoint of threats to national security. It should be noted that a number of studies by Russian scientists state the use of the Hawala system in criminal activity, but its criminological classification is not given [13]. It seems that an accurate criminological classification of the Hawala system will allow us to properly build a set of measures aimed at preventing the use of the system’s capabilities in criminal activity. It should be noted

that the most accurate classification of the Hawala system, which has the greatest practical value, was proposed by the FATF experts [14], who distinguish its following types:

1. Pure Traditional - "hawaladar" serves the legitimate needs that circulate in the system money of mainly legal origin;

2. Hybrid traditional - sometimes not entirely legal, because the "hawaladar" can participate in illegal activities not intentionally;

3. Criminal - "hawaladar" deliberately acts as the organizer of a criminal channel (financing of terrorist groups; legalization of criminal proceeds; illegal withdrawal of funds from the country) or as an accomplice, providing the above services to criminals.

In addition, the position of the professor of criminology at Northeastern University, N. Passas, an expert in the MVTs, who draws parallels between the Hawala system models and their use in criminal activity [15], deserves attention. So, he highlights:

- Informal Funds Transfer Systems (IFTS) - traditional ("ancient") systems that are closely intertwined with the cultural characteristics of a particular ethnic group. IFTS operators have adapted to new realities and opportunities, which led to the diversification of payment instruments and economic schemes, but in fact the mechanism itself has not changed. The author admits that "hawaladars" that carry out operations mainly within the traditional model of the Hawala system can transfer dirty money / values or carry out financial transactions in criminal interests, but their volume is insignificant.

- Informal Value Transfer Methods (IVTM) received a powerful impetus for development, thanks to the emergence and development of the Internet, advanced technologies and the development of globalization processes, as well as the end of the Cold War. Here, the researcher suggests that "hawaladars" performing operations within the framework of the modern model of the Hawala system (in larger volumes than under the

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traditional model) may more likely transfer dirty money / values, or carry out financial transactions in criminal interests.

- The area of intersection of IFTS and IVTM. Passas believes that within the framework of the transfer chain (interstate, interregional), there can be involved the “hawaladars” that carry out operations both within the traditional model of the Hawala system and within the modern one, hawaladars can also transfer dirty money / values, or carry out financial transactions in criminal interests. The researcher also implies that the area of intersection of IFTS and IVTM identified by him is quite complex from several angles at the same time.

Firstly, the direction of movement within this area can go both from developed countries to developing countries, and vice versa. Secondly, within the framework of transfer chains, a wide variety of payment tools can be used [16]. Third, schemes for equalizing mutual obligations between hawaladars can be very diverse, although the initial intent of the operators is criminal. Thus, within the intersection of IFTS and IVTM there are no clear financial and economic restrictions, which must be taken into account when regulating the Hawala system.

According to N. Passas, the greatest threat to the security of states is the area of intersection of IFTS and IVTM, as well as IVTM. This is due to the high economic efficiency and great opportunities available for transferring money by operators on a large and especially large scale, including the money of criminal origin.

There are simpler criminological classifications of the Hawala system proposed by other reputable researchers. So, P. Jost and H. Sandhu [17] divide the Hawala system into:

1. White Hawala, with in the framework of which money of legal origin is circulating;
2. Black Hawala, through which money of illegal origin is transferred, which poses a security risk.

Due to the importance of this aspect, it is necessary to consider in more detail the criminological classification proposed by the FATF experts.

So, the Pure Traditional type of the Hawala system is widespread in the countries of South Asia and the Middle East. Indeed, by “Hawala” they mean precisely the “Hawala” system in the traditional sense (the traditional model) – the one that has long been used in long-distance trade. The traditional Hawala system has been operating for many centuries in the economies of the countries of the specified region, where it is not regulated and where it is still used in some countries to finance trade and to transfer money. In some countries it is regulated, but mainly it functions autonomously.

The customers of the operations are low-income sectors of the population – migrants of certain ethnic groups who work in other countries. For example, transfers through the “traditional” type of the Hawala system are widespread in the UAE, since a significant number of labor migrants from other Asian countries (India, Pakistan, etc.) work there.

The traditional form of the Hawala system is in demand among migrants of certain ethnic groups for the following reasons: the presence of ethnic, fellow countrymen, and even family ties with hawaladars, which increases confidence in them; difficult access (for senders and recipients) to official banking institutions.

For the most part, the operators of the traditional Hawala system have adapted to new realities and opportunities, which as a result has led to diversification and complication of the payment instruments and economic schemes used by them, although in fact the mechanism itself has not changed.

The operators of the traditional Hawala system transfer money of legal origin, provide demanded money transfer and trade finance services to low-income clients, mostly law-abiding. The traditional form of the Hawala system is quite regulated both in the developed countries of the West and in the rich states –

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members of the “Council for Cooperation of the Arab States of the Persian Gulf” (hereinafter – GCC).

Due to the fact that operators of the traditional type of Hawala system transfer money in a small amount because of the low solvency of customers, the traditional type of Hawala system poses a relatively low security risk in terms of the possible legalization of criminal proceeds and the financing of terrorism. At the same time, an insufficient level of regulation of this type of Hawala system can still pose certain risks.

The “hawaladars” of the transforming type (Hybrid traditional) of the Hawala system differ from the already considered type in that they can intentionally or unintentionally be involved in transfers of money of illicit origin across borders.

The purpose of this type is not to transfer money of criminal origin. However, it is possible that the money of legal and illegal origin obtained as a result of committing economic crimes (transferring money generated as a result of tax evasion, or in order to circumvent the current currency regime in the country, as well as, possibly, existing sanctions) at the disposal of a hawaladar may mix.

The operators of this type of Hawala system are not members of organized criminal groups or communities. In their activity, they use those tools and schemes for equalizing mutual obligations and ensuring transfers, as do operators of a traditional kind. This type of Hawala system develops where there is an unmet demand for transfers, where operators of this type of Hawala system can interact with other FATF operators.

According to N. Passas, the operations that are carried out within the framework of the transforming type of the Hawala system are characterized by the fact that they [15]:

- occur in the official financial system, but at the same time almost leave no traces in it;

- do not require the presence of a widely branched network of people involved in the activities related to its implementation

(most operations can be carried out by a group of several persons both simultaneously and permanently);

- are often embedded in a legal or legal-looking trading scheme (this implies the ability to make significant transfers of values);

- are criminal in nature, while different types of crime are intertwined (for example: avoiding taxation, withdrawing capital, circumventing the embargo, smuggling);

- have the ability to transfer money in large and especially large amounts (significantly exceed the amount of money usually transferred through this type of "Hawala").

The criminal type of the Hawala system is characterized by the fact in that it transfers money on a particularly large scale between people of different ethnic and social groups, as well as from different countries. This type is used to transfer money to countries with a developed and regulated banking system [14].

In some countries, there are well-grounded fears that the Hawala system may be used in criminal activities. The operators of the Hawala system in this case are actually criminals. This type of Hawala system is often controlled by organized criminal groups (hereinafter referred to as OCG). Money transferred within it is formed as a result of committing crimes. In this regard, it is precisely this type of Hawala system that poses a possible threat to security in terms of its possible use for legalizing criminal proceeds, or for financing terrorism.

The criminal type of the Hawala system is often one of the areas of criminal activity created to provide financial infrastructure for members of organized crime groups committing other crimes.

It should be noted that the "traditional" and "transforming" types of the Hawala system can be transformed into a criminal one. In particular, as the amount of money used by the hawaladar increases, its capabilities may become attractive to criminals who will seek to take control of it and subsequently carry out their operations through it.

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N. Passas emphasizes that the capabilities of the Hawala system make it attractive to transnational criminal groups and terrorists. In practice, the criminal type of the Hawala system is manifested in the following activities [18]: transfer of secured valuables (credit cards, paid cards for paying for telephone communications and various services, gift certificates); making electronic payments (based on the Internet); sending expensive liquid goods; option trading; use of credit / debit cards by several users at the same time; using brokerage, correspondent accounts and bank guarantees. Moreover, the fictitious nature of the chain of transfers and transactions is often recorded, which poses a threat to the financial security of the countries involved.

World criminological experience indicates that when the Hawala system is used for illegal purposes, the hawaladars in the chain of operations involve the following elements: false accounts ("bename" accounts); offshore accounts, commercial organizations registered with shell companies.

For a deeper understanding of the Hawala system, the purpose of the transfers passing through it should be clearly understood. Let the transfers within the framework of the Hawala system be made in the directions from point "A" to point "B". In this case, as a rule, point "A" is developed countries, and "B" is developing countries.

As a rule, through the Hawala system, money from point "A", is sent for the following purposes [19–20]:

1. The primary needs of the relatives of migrant workers (food, utilities). From their point of view, the Hawala system is not only cheaper and faster, but also more accessible than the official banking sector. Through the Hawala system, money can be transferred to remote villages in Pakistan or Bangladesh, where there is no official financial infrastructure, in a short period of time. In cases where there are doubts about the possibility of making a transfer to a specific destination, a hawaladar can make a transfer by paying its money, and only

after receiving the money by the recipient of the transfer, take money and commission fees from its client.

2. Personal expenses. This should include expenses related to tourism, medical care, tuition fees, expenses for marriage.

3. Transfers from humanitarian, non-governmental, charitable organizations in conflict zones. MVTs and the Hawala system are often the only channel through which money can be transferred to and from countries where military operations are taking place or are experiencing the effects of wars. In such countries as Afghanistan and Somalia, where the banking system is weak, most charitable organizations use the informal financial sector to make international and domestic transfers. For the vast majority of the mentioned organizations (with the exception of the largest ones), the cost of transferring money is important, which also stimulates the use of the Hawala system. Of course, the leaders of NGOs or their representative offices, when traveling to countries in the conflict zone, often take with them money in large and especially large amounts in cash. These amounts are intended to cover the current costs associated with the activities of the representative office of NGOs, but cannot, as a rule, cover the arising needs for unplanned needs.

4. Payment for import / export.

5. Personal investments abroad. Payment for services provided abroad.

In this case, the Hawala system is used, first of all, to circumvent economic sanctions and the legislation aimed at combating the withdrawal of capital abroad.

In cases where the Hawala system is used for criminal purposes (the criminal type of the Hawala system), transfers are made for [15, 19, 20]:

- dispatching of proceeds from criminal business to other countries for their legalization and possible subsequent reinvestment in the official sector of the country where predicate offenses are committed;

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- tax evasion, state duties, customs duties and reduction of tariff costs;
  - financing of terrorist groups (for their infrastructure and direct costs).

In turn, transfers from point "B" through MVTs and the Hawala system are intended for [14, 15]: payment for tuition and treatment; compensation of tourist costs (if they send amounts larger than currency control permits); payment for import / export.

In cases where the Hawala system is used for criminal purposes, the money transferred is intended to transfer bribes to public servants; tax evasion, state duties, customs duties and reduction of tariff costs; withdrawing money abroad for the acquisition of liquid property; return of legalized money belonging to members of organized criminal groups.

Thus, there is always the possibility that if "clean" money is sent from point "A", then "dirty" money can be paid in point "B", both at the stage of equalizing mutual obligations between "hawaladars" and in ensuring execution of the transfer (issue of money). Thus, there is always a risk of contamination of "clean" money.

The amount of commission charged for rendering transfers within the framework of the Hawala system varies significantly from 0% to 25%. The following factors affect the price of a transfer: location of the final recipient (in remote places the commission is higher); the amount of money transferred (when the sender wants to transfer large amounts, hawaladars, as a rule, provide discounts on the services provided); the nature of the relationship between the client and the hawaladar; frequency and regularity of transfers; urgency of a transfer (directly proportional); prepayment or payment upon receipt of money; payment currency and its rate (local or freely convertible); the situation in the "recipient country" (in the countries where the financial infrastructure is underdeveloped, or there are wars / revolutions, or embargoes, sanctions, etc., tariffs are charged

higher); the attitude of law enforcement agencies to the Hawala system; the Hawaladar's awareness of whether the money being transferred is of criminal origin.

From an economic point of view, the Hawala system operators manage to keep such a low commission charged for making transfers, primarily for moral and religious reasons, due to diversification of sources of profit, and also often due to the lack of state regulation and appropriate taxation.

The central institutions of the Islamic economy have a significant impact on the size of the commission charged by the hawaladars. In world practice, there have been cases when the hawaladars were involved in the operations of the Hawala system without any direct financial benefits for themselves. This can happen for charitable and advertising purposes (for the sake of the main business) and out of feelings of compassion for a poor migrant from their ethnic group.

World experience shows that hawaladars have branched and stable sources of income generation as a result of [21]: the resulting difference in exchange rates; microfinance (financing legal and illegal trade); placing customers' money on deposit; free cash sales; the maintenance of small branches of ethnic banks (in this case, the main service is currency exchange); implementation of export-import operations; trade (precious stones and metals, jewelry, antiques, carpets, souvenirs, books and flowers); the provision of tourist, telephone (including facsimile, telegraph, Internet) and real estate services; conducting hotel and pawn business, pharmacy, maintenance of various salons (beauty, flowers) and points of sale of tickets; maintenance of gas stations; withdrawal of funds abroad; legalization (laundering) of proceeds from crime.

In view of the foregoing, taking into account the results of published scientific and practical articles, as well as international operational, investigative and judicial practice, it should be recognized that the Hawala system poses the greatest public danger when it is used as a channel for financing infrastructure

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and direct costs arising in the preparation and conduct of terrorist attacks [22-24].

It must be emphasized that MVTs in particular, the criminal form of the Hawala system, is attractive to terrorist groups in terms of transferring money or valuables obtained by criminal means, primarily because of its cross-system nature, due to the fact that hawaladars, for settlements with partners and for ensuring transfers (cash withdrawals), can use payment instruments and economic schemes of fundamentally different settlement systems. Moreover, often in the framework of the same translation chain, their sequential and simultaneous implementation can occur.

There are also other circumstances that stimulate the demand for services provided by "hawaladars" to finance the preparation and conduct of STA, to which the FATF experts include [25]:

1. Inadequate measures the MVTs regulation and the lack of political will among the leadership of some countries;

2. Equalization of mutual obligations by "hawaladars" through a large number of third countries (third parties) through goods, cash (possibly unaccounted for) outside the banking system;

3. Use in the process of equalization of the types of business that are not regulated by supervisory authorities;

4. Implementation of barter equalization schemes or compensation payments;

5. Splicing the proceeds of the offenses and crimes with the net proceeds, which simplifies the legalization of criminal proceeds and complicates the investigation of possibly committed illegal activities.

There are many examples of how MVTs, in particular the Hawala system, was used by terrorist groups. Thus, during the hearings held by the Subcommittee on International Trade and Finance under the US Senate Banking and Household Committee on the use of the Hawala system in unlawful activities, Senators

Evan Bayh and Senator Paul S. Sarbanes in their speeches emphasized that one of the systems used by bin Laden and his terrorist groups to transfer money around the world was Hawala. Attending the meeting, US Financial Intelligence Director (FinCEN) J. Sloan (James F. Sloan) noted that the Hawala system was actually used to support terrorist activities in the Kashmir region in the early 1990s [26].

Subsequently, the persons participating in the hearings drew attention to the specific facts cited from world law enforcement practice that testify to the use of the Hawala system in the financing of terrorism. It was established that through the Hawala system, terrorist operations against the Indian population were financed. So, in 2000, in the city of Red Fort, members of the Lashkar-e-Toiba terrorist group killed three Indian soldiers, having received before this 3.5 million rupees through a "hawaladar" operating in Dubai [27]. The named terrorist group was involved in terrorist attacks in 2008 in Mumbai. It is noteworthy that earlier in 1993, when a series of terrorist attacks took place in Mumbai, the money was transferred to the terrorist members of Lashkar-taiba by the local hawaladar [28].

In addition, it has been ascertained by terrologists that through the Hawala system, money was transferred from Pakistan to the Mujahideen during the local military operations of the USSR in Afghanistan [29].

Noteworthy are the results of the work of the commission investigating the attacks of September 11, 2001 in the United States. Thus, it was established that Bin Laden used in criminal activity the capabilities of the hawaladar network operating in Dubai, Pakistan and some Middle Eastern countries [30].

The connection of the terrorist attacks with the Hawala system is also seen in the case of the terrorist attack at the embassy in Nairobi in 1998, when one of the terrorists, having escaped death, received money transferred by his business connection from Yemen through the hawaladar operating in

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Somalia, who agreed to issue funds without presenting identification documents [31].

Thus, we can distinguish the following five features characteristic of the Hawala system, which pose a potential threat to the security of the financial and economic system at the global and national levels.

1. Each “hawaladar” uses affordable and convenient payment instruments, economic schemes to equalize counterclaims and make transfers.

2. Transfers through the Hawala system can involve a large number of intermediaries and countries involved (especially if equalization of mutual obligations occurs in a triangular configuration).

3. Unaccounted assets (cash, precious stones and precious metals and other liquid values) may be the subject of settlement between “hawaladars”. Types of businesses that are not regulated by supervisors can also be used, thus falling outside the formal banking system.

4. Material values transferred through the Hawala system may be modified (in cash - non-cash form - liquid tangible assets).

5. The process of mutual settlements (along with the use of transfers) is important as an object of regulation by law enforcement and supervisory authorities in terms of counteracting the possible “pollution” of money.

In connection with the above, it should be stated that the current global (40 FATF Recommendations), Russian “anti-legalization” (Federal Law of 07.08.2001 No. 115-FZ “Counteracting Legalization (Laundering) of Criminally Obtained Incomes and Financing of Terrorism”) and industry legislation (Letter of the Bank of Russia dated December 27, 2002 No. 181-T “Recommendations on the regulation and reflection in the reporting of credit institutions of certain types of transactions that carry an increased risk”, Letter of the Bank of Russia dated March 31, 2008 No. 36-T “Recommendations on organizing the management of risks arising from the implementation of

operations by credit institutions using Internet banking systems”, Letter of the Bank of Russia dated August 8, 2011 No. 115-T “Recommended forms of bank account agreements concluded by the Bank of Russia with bodies that open and maintain personal accounts of organizations”, Regulation of the Bank of Russia dated March 2, 2012 No. 375-P “Requirements for the rules of internal control of credit organization for the purpose of countering the legalization (laundering) of proceeds from crime and the financing of terrorism”, Regulation of the Bank of Russia dated June 19, 2012 No. 383-P “Rules for transferring funds”, Bank of Russia Instruction dated 30.05.2014 No. No. 153-I “Opening and closing bank accounts, accounts for deposits, deposit accounts” primarily due to the global nature of transactions, the cross-system nature of Hawala, the involvement of intermediaries (high-level “hawaladars”), often delayed in time for hawaladars to close their obligations to partners with rapid progress in the field of payment instruments (primarily through Internet banking) is not quite capable of responding quickly to the use of Hawala in criminal activities.

The foregoing dictates the need for timely, proactive formation and adjustment of international, domestic profile, as well as related industry legislation. These measures can create conditions for a more effective use of the available tools, forces and means within the framework of the implementation of internal functions of state regulation, as well as potentially improve the quality of interaction within international organizations.

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