Partnering With Despots and Failed Regimes: Rogue Banking As a Primary Violation of International Law

Joel Slawotsky

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Partnering With Despots and Failed Regimes: Rogue Banking As a Primary Violation of International Law

JOEL SLAWOTSKY*

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* © 2014 Joel Slawotsky. Joel Slawotsky is a former law clerk to the Hon. Charles H. Tenney (U.S.D.J., S.D.N.Y.) and AV peer review rated attorney at Sonnenschein Nath and Rosenthal (now Denton). He lectures at various law and business schools including the Interdisciplinary Center (IDC) School of Law, Herzliya, Israel.
I. INTRODUCTION

Access to the world’s greatest financial markets enables individuals, corporations, and governments to engage in commercial activity with a globalized world.\(^1\) The ability to conduct transactions such as buying and selling securities, transferring money internationally, and tapping foreign exchange markets, is thus indispensable to rogue actors, as money is crucial to their conduct.\(^2\) Indeed, the vital relationship between

1. The vital importance of access to global financial markets has been underscored by recent current events. For example, to counter Russian conduct vis-à-vis the Ukraine, Western nations have placed sanctions on Russia that focus on financial transactions. See Marcus Walker, Matthew Dalton, & Carol E. Lee, *Europe, U.S. Significantly Expand Sanctions Against Russian Economy*, WALL. ST. J., July 29, 2014, http://online.wsj.com/articles/europe-u-s-significantly-expand-sanctions-against-russian-economy-1406666111 (“The financial sanctions would sharply restrict the ability of Russia’s state-controlled banks, such as Sberbank and VTB Group, to raise capital on European markets, EU officials said. A ban on selling equity and most kinds of debt to EU investors could create major headaches for banks, which have large debts denominated in foreign currencies.”). These financial sanctions are effective and they have undermined Russian economic performance and caused the Ruble to fall sharply.

2. As in any business, salaries must be paid, goods and services procured, and payments received. Moreover, looting billions of national assets and transferring them offshore cannot be easily accomplished by stuffing cash in suitcases. All of these activities require sophisticated services rendered by financial institutions.
international law violators and financial markets is well-established. Large rogue actors, such as despots or terrorist organizations, are essentially substantial business entities in which money, and the ability to move it globally and trade foreign exchange, are essential for either the failure or success of the organization. Financial institutions exercise nearly exclusive control over those markets. Thus, international law violators must use financial institutions. Illustrating the crucial relationship between

3. For example, in the aftermath of Nazi Germany’s invasion of Norway in 1940, The United States Department of the Treasury established the Office of Foreign Funds Control (“the FFC”), whose mission was to block securities and foreign exchange transactions. See U.S. Department of the Treasury, http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited July 23, 2014) (“The FFC’s initial purpose was to prevent Nazi use of the occupied countries’ holdings of foreign exchange and securities and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries. After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions.”).

4. The Islamic State of Iraq and Syria’s (“ISIS”) recent triumphs demonstrate how important money is to rogue actors. ISIS is a terrorist group that has declared a goal of establishing a Caliphate and attacking whom it perceives as crusaders and infidels. See Ishaan Tharoor, Nevermind what Obama Says: The Islamic State claims it’s facing a crusade, WASH. POST, Sept. 16, 2014, http://www.washingtonpost.com/blogs/worldviews/wp/2014/09/16/nevermind-what-obama-says-the-islamic-state-claims-its-facing-a-crusade/ (“[T]he terror organization hails its plans to fight the “crusaders in Washington” and sees its rise amid the chaos of the Middle East as an evocation of history.”). In order to achieve these aspirations, ISIS needs money and it has various business interests that provide earnings to the organization. See Alan Neuhaser, Funding the Islamic State, U.S. NEWS & WORLD REP. (Sept. 11, 2014, 1:35 PM), http://www.usnews.com/news/articles/2014/09/11/funding-the-islamic-state-listing-various-businesses-that-provide-earnings-to-isis). ISIS is, in fact, a multi-billion dollar business. See Jonathan Brown, Islamic State: The ransoms, oil and looted banks that have made Isis the $1.5bn threat it is, THE INDEPENDENT., Sept. 4, 2014, http://www.independent.co.uk/news/world/middle-east/islamic-state-the-ransoms-oil-and-looted-banks-that-have-made-isis-the-1-5bn-threat-it-is-9712783.html (discussing ISIS’ assets). Indeed, the financial aspects of the West’s battle with ISIS are vital. See Jay Solomon, U.S., Allies Step Up Efforts to Choke Off Islamic State’s Funding, WALL ST. J. (Sept. 9, 2014, 11:52 PM), http://online.wsj.com/articles/us-allies-step-up-efforts-to-choke-off-islamic-states-funding-1410307008 (explaining American efforts to block money from flowing to ISIS).


6. The United States Department of the Treasury established a successor to the FFC named the Office of Foreign Assets Control (“OFAC”), which demonstrates the importance of financial institutions to rogue actors. The mission of the OFAC is to disable the
finance and rogue actors is the United States Treasury’s list of sanctioned parties, which bans financial institutions from providing banking and investment services to those lawbreakers. Among the actors sanctioned are drug cartels, terrorists, dictators, and rogue states. Demonstrating the United global concern over the ability of international law violators to access financial markets, a strong level of international collaboration has enveloped recent sanctions. Indeed, a large number of United States sanctions are grounded on United Nations directives.

Notwithstanding the notoriety of rogue clients, large financial institutions have consistently opted to do business with them. Indeed, the largest

access to global banks through enforcement of sanctions and blocking of assets. See U.S. DEPARTMENT OF THE TREASURY, supra note 3 (“The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.”). Moreover, corroborating the global effort, the OFAC works in tandem with other nations to enforce international sanctions. Id.

8. Id.
9. U.S. DEPARTMENT OF THE TREASURY, supra note 3. (“Many of the [United States] sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.”). Significantly, there is an incipient recognition that the key to thwarting rogue behavior lies with financial institutions. See Jordan Chandler Hirsch, TREASURY’S WAR The Unleashing of A New Era of Financial Warfare By Juan C. Zarate, WASH. POST, Sept. 28, 2013, http://www.washingtonpost.com/opinions/treasury-war-the-unleashing-of-a-new-era-of-financial-warfare-by-juan-c-zarate/2013/09/27/f33809b0-08ff-e11e3-9941-6711ed662e71_story.html (“The true value of Zarate’s book lies in explaining the difference between traditional sanctions and this new form of financial warfare. Instead of targeting terrorists and dictators directly by freezing accounts and levying sanctions, the department would aim for their banks. If Treasury could not fell the beasts alone, it could at least restrict their sustenance.”).

fine imposed to date—$9 Billion—was levied against BNP for allegedly providing rogue nations such as Cuba, Iran, and Sudan the ability to conduct $30 billion in financial transactions from 2002 to 2011.\textsuperscript{12}

Some global financial institutions affiliate with despots and dictators because they view them as premier clients that may provide staggering profits. For example, providing services to a single rogue client may result in netting hundreds of millions of dollars in fees.\textsuperscript{13} The revenue must be astonishing if major international financial institutions repeatedly break the law despite knowing the risks of being caught and fined.\textsuperscript{14} To them, the imposition of fines arising from doing business with rogue actors may simply be a tax-deductible cost of doing business.\textsuperscript{15}
Public disclosure of settlements and fines demonstrate that rogue banking has become embedded and pervasive in large financial institutions’ corporate culture. Just some of the bank fines include: BNP $9 billion; HSBC $1.9 billion; Standard Chartered $667 million; ING $619 million; Credit Suisse $536 million; Lloyds TSB Group $350 million; and garnered from conducting business with such clients. Moreover, legal costs and expenses may depend on the circumstances to be treated as tax deductible. See Michael Corkey, Citigroup Settles Mortgage Inquiry for $7 Billion, DEALBOOK (July 14, 2014, 7:17 AM), http://dealbook.nytimes.com/2014/07/14/citigroup-and-u-s-reach-7-billion-mortgage-settlement/ (“The payments to the states are tax-deductible, but the federal penalty is not.”).


19. Id. (“Standard Chartered, the UK’s second largest bank by market value, agreed to pay $327 million to settle U.S. Treasury Department charges of violating sanctions on transactions with Iran, Burma, Libya and Sudan between 2001 and 2007. In August Standard Chartered paid $340 million to the state of New York’s Department of Financial Services to settle civil charges alleging it had concealed $250 billion in illegal transactions with Iran.”).

20. Id. (“Covering up fund transfers in violation of U.S. sanctions against Cuba, Iran.”).


22. Inocencio & Mathema, supra note 18 (“Allowing Iranian and Sudanese clients access to the U.S. banking system.”).
Barclays $298 million. The fact that leading titans of capitalism and brand-name institutions are involved speaks volumes as to the persistent nature of rogue banking.

The magnitude of the transactions demonstrates the profitable nature of the partnership between financial institutions and rogue actors:

HSBC also understood the subtleties of—and were, apparently, fully invested in—money laundering for drug kingpins and terror cells, while ignoring U.S. sanctions established against rogue nations. HSBC’s US unit managed to position the brand in this way by accepting $7 billion of dollars from Mexican drug cartels, conducting 25,000 Iranian transactions totaling over $19 billion in just one week, and helping Saudi banks with terror financing for groups like al-Qaeda.

BNP has agreed to pay a fine of $9 Billion for hiding $30 billion worth of transactions on behalf of various nations such as Iran and Sudan. The bank knowingly enabled various rogue actors to process transactions on global financial markets.

An internal probe by France’s largest listed bank found that it breached sanctions against Iran and tried to cover up these transactions by altering trades to remove coding that would identify their origin, a process known as stripping, said one of the people.

Should rogue banking—a serial pattern of partnering with a despotic regime or failed state including providing financial services such as

23. Inocencio & Mathema, supra note 18 (“Allowing client payments from Cuba, Sudan.”).

24. Other global banks are under investigation for similarly providing financial services to rogue nations and leaders. See Jessica Silver-Greenberg, Deutsche Bank’s Business With Sanctioned Nations Under Scrutiny, N.Y. TIMES, Aug. 17, 2012, http://www.nytimes.com/2012/08/18/business/deutsche-banks-business-with-sanctioned-nations-under-scrutiny.html?pagewanted=all (“Federal and state prosecutors are investigating Deutsche Bank and several other global banks over accusations that they funneled billions of dollars through their American branches for Iran, Sudan, and other sanctioned nations, according to law enforcement officials with knowledge of the cases.”).


wiring funds, investment services, and general banking—constitute a violation of international law? Receiving scant academic attention, the question of whether rogue banking violates international law is timely given recent revelations that large global financial institutions partnered with dictators and despotic governments.28 The announcement that work will begin on the Fourth Restatement of Foreign Relations Law is an opportunity to explore whether it is appropriate to add rogue banking to the list of international law violations.29

Commercial activity has not been treated as constituting an international law violation.30 In the immediate aftermath of the Second World War, and the decades following, international law focused mainly on human rights.31 Illustrative of the near single-mindedness on human rights is the Third Restatement of Foreign Relations Law, which listed the following conduct as constituting violations of international law:

genocide, slavery or slave trade, murder or causing disappearance of individuals, torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, or

28. See Pasikoff, supra note 25 (noting HSBC enabled financial transactions on behalf of narcotics cartels, terrorist organization and other rogue actors).


While, at this stage, the question of what specific violations constitute a violation will not be addressed, the fact that the work is starting indicates that international law has changed significantly in recent years and underscores the need to re-visit whether commercial law should be included and under what circumstances.


consistent pattern of gross violations of internationally recognized human rights. 32

In the ensuing years after the Third Restatement, some additional conduct ripened into breaches of international law. 33 For example, as a consequence of large scale hijackings and major terrorist attacks, there is a budding consensus recognizing such acts as violations of international law. 34

Although not as immediately understandable as conventional international law violations like slavery, human rights violations, or arbitrary detention, providing sophisticated financial services to rogue actors is far from a

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32. Restatement (Third) of Foreign Relations Law of the United States Vol.1–2 (1987). In addition, courts have held that other conduct such as war crimes violate international law. See Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995).

33. International law changes depending upon factors like state practice and international agreements. See Filartiga v. Pena-Irala, 630 F. 2d 876 (2d Cir. 1980). The question of whether conduct previously not treated as a violation becomes a violation is based upon changing global conditions. See John Crook, D.C. Circuit Reverses Hamdan Conviction; Law of War Does Not Include “Material Support for Terrorism,” 107 Am. J. Int’l L. 234 (2013) (“Customary international law is a kind of common law; it is the body of international legal principles said to reflect the consistent and settled practice of nations... It is often difficult to determine what constitutes customary international law, who defines customary international law, and how firmly established a norm has to be to qualify as a customary international law norm.”).

34. Terrorism provides an exemplar to illustrate the changing norms of international law. In 1984, the D.C. Circuit held terrorism was not a violation of international law. See Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 795–96 (D.C. Cir. 1984) (Edwards, J. Concurring) (plaintiffs alleged that the Libyan state had sponsored and otherwise aided terrorist attacks against civilian targets in Israel). C.f., Hickman, supra note 30, at 447 (terrorism has become a violation of international law). See also Christopher L. Blakesley, Terrorism, Law, and Our Constitutional Order, 60 Colo. L. Rev. 471 (1989) (discussing terrorism in the context of international law violations). The view that financing terrorism is a violation of international law was supported by the Second Circuit’s ruling in which financing terrorism was included as an offense under the ATA and ATS. See Licci v. Lebanese Canadian Bank, 732 F.3d 161 (2d Cir. 2013) (finding jurisdiction against a financial institution that “facilitated terrorist organization’s acts by using correspondent banking account at New York bank to effectuate wire transfers on behalf of terrorist organization.”) See also David P Stewart, The Immunity of State Officials Under the UN Convention on Jurisdictional Immunities of States and Their Property, 44 Vand. J. Transnat’l L. 1047, 1060 n.62 (2011) (“Clearly, the exception [to the rule of immunity] cannot be read to apply to acts simply because they are, or are alleged to be, in violation of international law such as, acts of torture, arbitrary detention, international terrorism, or violations of humanitarian law.”); Andrei Mamolea, The Future of Corporate Aiding and Abetting Liability Under the Alien Tort Statute: A Roadmap, 51 Santa Clara L. Rev. 79, 88–89 (2011) (“Today, courts recognize genocide, certain war crimes, piracy, slavery, forced labor, and aircraft hijacking as violations of international law that do not require state action.”).
victimeless crime in the international context. There is a growing recognition
that financial institutions enable villainous leaders and failed states, which
have a devastating impact on global security and stability.\textsuperscript{35}

Compelling reasons militate in favor of finding the financial empowerment
of failed states and rogue leaders a primary violation of international
law. Offering transactional and investment services to terrorists, drug
cartels, rogue nations, and despot enables those rogue actors to launder
money, raise capital, pay salaries, make profitable investments, and diversify
looted wealth.\textsuperscript{36} Moreover, striking at the foundation of international
economic and political stability and the operation of law, failed states
and rogue leaders impede democracy, cause irreparable suffering to millions,
impoverish citizens, trample on their human rights, and severely damage
the global economy.\textsuperscript{37}

\begin{itemize}
\item\textsuperscript{35} See HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist
Financing Risks, HOMELAND SECURITY & GOVERNMENTAL AFFAIRS PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS (July 16, 2012), http://www.hsgac.senate.gov/
subcommittees/investigations/media/hsbc-exposed-us-financial-system-to-money-laundering-
drug-terrorist-financing-risks (outlining how HSBC enabled various rogue actors to engage in
their conduct).
\item\textsuperscript{36} Money is vital for rogue actors. See Neuhaser, supra note 4 (“The Islamic
State has been raking in millions of dollars a day selling oil, gasoline and diesel from the
wells and refineries it’s captured in Syria and Iraq, experts believe, hawking it on the black
market at one-third or even one-quarter the price of a normal barrel of oil.”). Therefore,
financial institutions are essential to performing transactions for bad actors. See Pasikoff,
supra note 25 (HSBC enabled transactions on behalf of narcotics cartels, terrorist
organization and other rogue actors and helped dictators and despots to loot national
wealth by moving the assets offshore); JOHN KERRY & HANK BROWN, THE BCCI AFFAIR,
(BCCI was involved in “money laundering in Europe, Africa, Asia, and the Americas; [];
support of terrorism, arms trafficking, and the sale of nuclear technologies ... and a panoply
of financial crimes limited only by the imagination of its officers and customers.”)
[hereinafter THE BCCI AFFAIR]. See also Greg Morshbach, ‘Abacha accounts’ to be frozen,
(Noting that many banks performed services for Nigerian Abacha. “Among the other
looting profiteers were “Germany’s Deutsche Bank and Commerzbank, France’s BNP
Paribas and Credit Agricole as well as Switzerland’s leading banks, Credit Suisse and
UBS. The court order also reportedly named Britain’s high street banks HSBC, Barclays and
NatWest. American banks Goldman Sachs, Merrill Lynch and Citibank also feature in the
list seen by the FT alongside several Nigerian banks.”).
\item\textsuperscript{37} See Steven R. Salbu, Transnational Bribery: The Big Questions, 21 NW. J.
INT’L L. & BUS. 435, 470 (2001) (noting businesses, governments, NGOs, individuals
and society are adversely affected by fraud and corruption.); see also Lanny A. Breuer,
Assistant Attorney General, Department of Justice, 26th National Conference on the
criminal/pr/speeches/2011/crm-speech-111108.html) (“At a concrete level, roads are not
built, schools lie in ruin and basic public services go unprovided. At a more abstract, but
equally important, level, political institutions lose legitimacy, and people lose hope that
they will ever be able to improve their lot.”).
\end{itemize}
While traditionally the law considers providing financial services aiding and abetting, the time has arrived to re-analyze this perspective. Global financial institutions playing a pivotal role are critical actors, not secondary ones. In fact, viewing sophisticated financial institutions as secondary in importance gives cover to rogue banking by lowering the profile of the financial institutions and allowing them to hide behind the “bad guy.” This provides enormous advantages to financial institutions as it removes public pressure on governments to reign in such institutions and discourages legal action.

38. Rarely, if ever, would plaintiffs contend that employees of the financial institution engaged in violation of international law. The claim would be that the institution helped the primary actor by providing financial services. See Licci, supra note 34.

39. For example, in the context of the United States Alien Tort Statute, which allows aliens to file claims for international law violations, there are jurisdictions that impose the “purposeful” conduct standard before liability can be established against secondary actors. See, e.g., Presbyterian Church of Sudan v. Talisman Energy, Inc., 582 F.3d 244, 259 (2d Cir. 2009), cert. denied, 131 S. Ct. 79 (2010); Aziz v. Alcolac, Inc., 658 F.3d 388, 399–400 (4th Cir. 2011). Under this standard, to impose secondary liability, plaintiffs must prove that the defendant aided and abetted the primary actor with the specific intent or purpose that the violation of international law take place. Id. Pursuant to this approach, to impose liability on a financial institution, proof would be required, for example, that the bank purposely engaged in a business relationship in order for example that the despot massacre political opponents. See Talisman, 582 F.3d at 247–48 (dismissing the claims because of a lack of purposeful intent). See also Aziz, 658 F.3d at 399–400 (applying purpose standard and dismissing claims based on lack of proof of purposeful intent). (There is debate whether the standard should be knowledge or purposeful intent. Id. As discussed in Talisman and Aziz, some international tribunals did employ a knowledge standard while the Rome Statute uses purposeful intent. Id. According to the Rome Statute, imposing aiding and abetting liability requires proof that the party did so “[f]or the purpose of facilitating the commission of such a crime.” Rome Statute art. 25, July 17, 1998, 2187 U.N.T.S. 90.). The problem with purposeful intent in our context is that proof would therefore be needed that the financial institution aided and abetted the conduct on purpose. This may constitute a daunting and nearly impossible challenge to overcome in connection to enabling violations of international law. For example, if a bank authorizes bank wires for a despot can it really be established that the bank did so with the specific intent to bring about the harm? Presumably, most if not all financial institutions are profit motivated and not motivated by ideology or local politics. Moreover, even assuming arguendo that a rare bank would be so motivated, would the institution leave evidence of such intent such as emails or internal memos for example stating they want the wire transfers to help the state torture dissidents? It is highly unlikely such evidence would exist. Under the Article’s proposal, a consistent partnering with rogue actors would itself constitute a primary international law violation. This would remove the “purposeful” problem and reduce the ability of a defendant to evade liability.
Our globalized world and integrated internet-based financial system mandates this change in perspective. Today, criminals can transfer enormous sums from a bank in nation A to an account in nation B with a mouse click. Allowing rogue banking to constitute an international law violation will enable direct actions against financial institutions for international law violations and raise the profile of those institutions that engage in the practice.\(^\text{40}\)

This Article does not propose that isolated incidents of providing financial services should be considered a violation of international law, but rather that rogue banking should be defined in the context of serial partnering with international law violators.\(^\text{41}\) Part II outlines the pervasive role global financial institutions play in enabling rogue actors. Part III discusses the host of international problems emanating from some of these states such as threats to global peace and stability as well as starvation, oppression, execution, and imprisonment. Part IV analyzes whether the sources of international law demonstrate that providing financial services to bad actors should constitute a primary international law violation.

II. THE PERSUASIVE PARTNERING OF FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW VIOLATORS

Global banking is crucial in the world economy to governments, corporations, individuals and of course rogue actors.\(^\text{42}\) The importance of banks is reflected in the range of the customers they serve, from the general public and small businesses, to sophisticated corporations and investors. Financial institutional services for clients include: raising capital for short and long-term purposes, providing accounts and investment options, converting foreign exchange, and helping consumers and businesses plan for the future.\(^\text{43}\)

Wealthy clients investing huge sums of money require sophisticated money management, but even the modestly wealthy can generate large fees for financial institutions. The same services that are central to doing

\(^{40}\) In addition, recovery of a judgment against a global bank will be far easier than tracking assets of a traditional primary actor such as a rogue leader.

\(^{41}\) This Article does not attempt to specify the number of acts or the time period that would trigger a finding of serial partnering.

\(^{42}\) See Michael K. Freedman, *The Invisible Bankers*, FORBES (Oct. 17, 2005), http://www.forbes.com/forbes/2005/1017/094.html (“The sheer size of the global financial industry has confounded prosecutors’ attempts at untangling the illegal use of money transfers from the innocent one of sending money home for relatives’ living expenses. Tracing any of the money to an individual in a remote corner of the world is all but impossible, and just as U.S. and other Western investigators clamp down on one sort of mechanism, terrorists figure out a new scheme.”).

\(^{43}\) Salz, *supra* note 5 at 20.
business in a global economy are also essential to rogue actors. Despots need international financial services to launder looted wealth, wire money into offshore accounts, and invest abroad in a way that garners high returns. Without an array of vital financial services, outlaw regimes and villainous leaders would be financially unable to allow mass incarceration, starvation, murder of political opponents, or to engage in acts designed to crush political opposition.

Doing business with rogue leaders, terrorists and global drug traffickers pays. Financial institutions can reap large profits by working with, managing the assets of, and providing financial services to rogue regimes, leaders, and international criminals. This may include resource-rich states, well-financed terrorists, and cash-rich drug cartels. Indeed, history’s crooked leaders often amassed their fortunes by plundering their citizenry, controlling the national economies, or using local treasuries as a private bank account.

44. See KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES, infra note 45, at 159 (noting that banks have a “reluctance to close accounts containing suspect funds”). Even a small percentage fee on the many billions stashed in banks creates large profits for global financial institutions. See Ed Vullaimi, Western banks ‘reaping billions from Colombian cocaine trade’ THE GUARDIAN, June 2, 2012, http://www.theguardian.com/world/2012/jun/02/western-banks-colombian-cocaine-trade (noting that a large amount of money is laundered through banks enriching them). However, the money is not merely parked; it has to be transferred into and out of other accounts creating transactional profits. See Jessica Silver-Greenberg, Regulator Says British Bank Helped Iran Hide Deals, N.Y. TIMES, Aug. 6, 2012, http://www.nytimes.com/2012/08/07/business/standard-chartered-bank-accused-of-hiding-transactions-with-iranians.html?pagewanted=all (“The New York State Department of Financial Services accused Standard Chartered, which the agency called a “rogue institution,” of masking more than 60,000 transactions for Iranian banks and corporations, motivated by the millions of dollars it reaped in fees.”). Banks processing billions in transactions obviously make large profits. BNP, for example, was fined $9 billion for processing $30 billion in transactions for sanctioned nations. See Hurtado & Farrell, supra note 12 (penalizing BNP for allegedly providing rogue nations such as Cuba, Iran, and Sudan the ability to conduct $30 billion in financial transactions from 2002 to 2011). It is hard to imagine BNP not profiteering from the relationship with rogue nations.


The potential profits serve as a keen incentive for global financial institutional powerhouses to engage in rogue banking. For example, the Justice Department, Treasury Department, and Manhattan District Attorney’s Office allege that five foreign banks earned substantial fees while moving “billions of dollars through their American subsidiaries on behalf of Iran, Cuba and North Korea, sponsors of terrorism and drug cartels.”

An example of the array of fee-generating services is demonstrated in the Senate subcommittee report on HSBC. HSBC’s U.S. affiliate, HBUS—the nexus for HSBC’s international network of banks—made enormous profits providing accounts for 1,200 banks worldwide. “Called correspondent banking, HBUS provides these banks with U.S. dollar services, including services to move funds, exchange currencies, cash monetary instruments, and carry out other financial transactions.” In another example, New York financial regulators found that Standard Chartered Bank (“SCB”) earned huge fees doing business with Iran. “For almost ten years, SCB schemed with the Government of Iran and hid from regulators roughly 60,000 secret transactions, involving at least $250 billion, and reaping SCB hundreds of millions of dollars in fees.”

The specter of earning significant profits is powerful and can serve as a strong motivation for financial institutions to knowingly violate the law. The relationship is so lucrative that some financial institutions who know they are violating the law continue to do so.

47. Silver-Greenberg, supra note 24 (“Since 2009, the Justice Department, the Treasury Department and the Manhattan district attorney’s office, working largely in concert, have brought charges against five foreign banks, contending they moved billions of dollars through their American subsidiaries on behalf of Iran, Cuba and North Korea, sponsors of terrorism and drug cartels.”).

48. Id.


50. Id.

51. Id.


53. Id. at 1.

54. Id. at 2–3 (“In its evident zeal to make hundreds of millions of dollars at almost any cost, SCB undertook a course of conduct that included: falsifying business records; offering false instruments for filing; failing to maintain accurate books and records of all transactions effected and all actions taken on behalf of SCB; obstructing governmental administration; failing to report misconduct to the Department in a timely manner; evading Federal sanctions; and numerous other violations of law that, as with the above, have an impact upon the safety and soundness of SCB’s New York branch and the Department’s confidence in SCB’s character, credibility and fitness as a financial institution licensed to conduct business under the laws of this State.”).
extent legally possible,’ according to a 2008 securities filing.” 55 However, working with and profiting from the business relationship with despots and rogue states is too profitable to give up:

At least several European banks that vowed to stop doing business with Iran have kept handling billions of euros in transactions for Iranian entities and foreign companies with operations there, a review of regulatory filings and other documents by The Wall Street Journal shows . . . Exact figures on the volume of transactions aren’t publicly known, but the Journal’s review shows that European banks have billions of euros in long-term trade-finance contracts in Iran. The dealings are a sign of Iran’s continued access to the global financial system despite U.S. efforts to isolate Iran, and go against a perception among some observers that the banks have cut ties to Iran completely. 56

Thus, Deutsche Bank’s continued partnering with sanctioned regimes illustrates the strong profit incentive financial institutions have in doing business with rogue actors regardless of the perceived penalties.

A. Failed States and Dictators

The United States Senate investigations on financial crime is instructive in demonstrating the extensive and mutually beneficial connection between dictators and financial institutions. 57 The investigations revealed a wide array of exemplars demonstrating how global financial institutions have profited from the plundering of national wealth. 58 The Senate Report unequivocally states that banks are the facilitators of asset transfers and money laundering. 59 In one example, a political strongman ruling

57. See KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES, supra note 45 (listing various banks such as Bank of America, Citibank, HSBC and Riggs, as maintaining accounts for despots and dictators).
58. See id. at 15 (Equatorial Guinea despotic regime); id. at 106 (Bongo the Gabonese strongman for over 40 years); id. at 173 (Nigerian dictator Abubakar); id. at 243 (Angolan arms dealers and government officials).
59. See id. at 159 (“In October 2007, Ms. Bongo-Astier disclosed to Commerce that she had been keeping $1 million in cash given to her by her father in the bank’s safe deposit boxes. Even after discovering this hidden cash, learning that her father had brought it into the United States without declaring it to government authorities as required by law,
Equatorial Guinea transferred large sums out of the country.\textsuperscript{60} “[O]ver a two-month period in 2006, Mr. Obiang was able to move $73 million from Equatorial Guinea into the United States using wire transfer systems operated by Wachovia Bank; and over a four-year period from 2002 to 2006, he was able to move $37 million through wire transfer systems operated by Citibank.”\textsuperscript{61} As the Senate Report notes:

This case history shows how a controversial political figure, from the ruling family of a country plagued by corruption, moved vast amounts of wealth into the U.S. financial system, by employing American professionals such as attorneys, real estate and escrow agents to help him bypass U.S. AML and PEP controls, and by taking advantage of U.S. wire systems unequipped to screen out high-dollar transfers sent by PEPs from high-risk countries. Over a four year period, from 2004 to 2008, Teodoro Obiang was able to move over $100 million in suspect funds into or through the U.S. financial system.\textsuperscript{62}

\ldots

Federal law requires U.S. financial institutions to identify the name and address of the originator of each wire transfer, in part as an AML safeguard. Yet from 1999 to 2003, Bank of America allowed accounts for Pierre, Sonia, and Vincente Falcone to receive over $3.6 million in wire transfers from unnamed clients using accounts in such known secrecy jurisdictions as the Cayman Islands, Luxembourg, and Switzerland. From September 2001 to December 2003, the Monthigne account also received a series of payments from hidden “clients,” ranging from $100,000 to $400,000 at a time, most often from “one of our clients” using a UBS account in Singapore. In just over two years, the payments to Monthigne added up to nearly $2.5 million.\textsuperscript{63}

and acknowledging that the President was under investigation in France for possibly embezzling public funds and using those funds to purchase real estate, the bank’s Enhanced Due Diligence Oversight director insisted that the bank had “not definitely found anything solid that would preclude our continuing [the] relationship.” It is this reluctance to close accounts containing suspect funds that makes it so difficult to keep foreign corruption outside of the United States.”\textsuperscript{60} (emphasis added).

60. \textit{See id.} at 9 (“The first case history found that Riggs Bank had opened over 60 accounts for the government of Equatorial Guinea (EG), the EG President Teodoro Nguema Obiang Mbagasa, senior EG officials, and their relatives; created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other EG officials; and facilitated numerous suspect transactions involving millions of dollars without alerting law enforcement.”).

61. \textit{Keeping Foreign Corruption Out of the United States, supra} note 45, at 98.

62. \textit{Id.} at 105.

63. \textit{Id.} at 256–57.
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The US Senate’s investigation on the relationship between financial institutions and former Chilean dictator, Augusto Pinochet is also compelling:

Riggs Bank had secretly opened accounts for the former President of Chile, Augusto Pinochet, created offshore corporations for him, accepted about $8 million in suspect deposits, and secretly couriered millions of dollars in cashier’s checks to him in Chile. In 2005, a supplemental report by the Subcommittee showed that Mr. Pinochet and his family members had opened a secret network of over 125 accounts under a variety of names at financial institutions operating in the United States.

According to Senator Carl Levin, “Some banks actively helped him hide his funds, while others failed to comply with U.S. regulations requiring banks to know their customers.”

The former dictator of Gabon, El Hadj Omar Bongo, also looted and transferred money from his nation to the United States, with the assistance of financial institutions.

Further, Nigeria’s former President Sani Abacha—a leader who looted his nation—also formed a mutually profitable relationship with his numerous business partners, global banks, and investment houses while he looted Nigeria. The Chairman of the Swiss Banking Commission noted, “[t]he

65. KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES, supra note 45, at 9–10.
67. David Randall & Greg Walton, Africa’s Illicit Money Sent to Western Banks, THE INDEPENDENT (Feb. 7, 2010), http://www.independent.co.uk/news/world/africa/africas-illicit-money-sent-to-western-banks-1891512.html (“And then there is President Bongo of Gabon, the man with $1m in his suitcase. Once on US soil, the cash was deposited by his daughter, Yamilee Bongo-Astier, in a safe deposit box at a New York bank. The bank closed her account soon afterwards. But, the report says, between 2000 and 2007, other accounts controlled by this unemployed student were the conduit for considerable sums of money.”).
68. See Late Nigerian Dictator Looted Nearly $500 Million, Swiss Say, N.Y. TIMES, Aug. 19, 2004, http://www.nytimes.com/2004/08/19/world/late-nigerian-dictator-looted- nearly-500-million-swiss-say.html (“The funds were originally frozen in Swiss bank accounts in 1999 at the request of the Nigerian government, which accuses Abacha of looting more

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mere fact that significant assets of dubious origin, from people close to former Nigerian President Sani Abacha, were deposited at Swiss banks is highly unsatisfactory and damages the image of Switzerland as a financial centre.”

Abacha believed in diversification and spread the billions into numerous locales, besides Switzerland, enabling many banks to profit from the looting, including banks in the United Kingdom. “Britain’s financial watchdog, the Financial Services Authority, revealed that 23 London banks had handled $1.3b belonging to family and friends of General Abacha.” Among the other looting profiteers were “Germany’s Deutsche Bank and Commerzbank, France’s BNP Paribas and Credit Agricole as well as Switzerland’s leading banks, Credit Suisse and UBS. The court order also reportedly named Britain’s high street banks HSBC, Barclays and NatWest. American banks Goldman Sachs, Merrill Lynch and Citibank also feature in the list seen by the FT alongside several Nigerian banks.”

The Bank of Credit and Commerce International (“BCCI”) provides yet another example of a rogue bank earning immense profits for financial institutions:

BCCI’s criminality included fraud by BCCI and BCCI customers involving billions of dollars; money laundering in Europe, Africa, Asia, and the Americas; BCCI’s bribery of officials in most of those locations; support of terrorism, arms trafficking, and the sale of nuclear technologies; management of prostitution; the commission and facilitation of income tax evasion, smuggling, and illegal immigration; illicit purchases of banks and real estate; and a panoply of financial crimes limited only by the imagination of its officers and customers.

As detailed above, numerous financial institutions have partnered with a variety of despots, dictators and failed states by providing them with

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70. Britain goes after Abacha Millions, BBC NEWS (Oct. 18, 2001), http://news.bbc.co.uk/2/hi/africa/1606565.stm (“Britain’s financial watchdog, the Financial Services Authority, revealed that 23 London banks had handled $1.3b belonging to family and friends of General Abacha.”); Abacha Accounts’ to be Frozen, BBC NEWS (Oct. 3, 2001), http://news.bbc.co.uk/2/hi/africa/1576527.stm (“Among the other looting profiteers were “Germany’s Deutsche Bank and Commerzbank, France’s BNP Paribas and Credit Agricole as well as Switzerland’s leading banks, Credit Suisse and UBS. The court order also reportedly named Britain’s high street banks HSBC, Barclays and NatWest. American banks Goldman Sachs, Merrill Lynch and Citibank also feature in the list seen by the FT alongside several Nigerian banks.”).”
73. The BCCI Affair, supra note 36.
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access to Western financial markets. The rogue actors have used the services provided by banks and other institutions to spirit looted wealth offshore, launder money, and engage in their nefarious conduct.

B. Narcotics Trafficking

Access to financial institutions enables drug trafficking despite numerous national\(^74\) and international\(^75\) laws criminalizing drugs and drug trafficking. “Federal and state authorities are investigating a handful of major American banks for failing to monitor cash transactions in and out of their branches, a lapse that may have enabled drug dealers and terrorists to launder tainted money.”\(^76\) In one example, nearly $400 billion of illegal-drug-generated profits were laundered through the banking system.\(^77\) According to a U.S. federal prosecutor, “Wachovia’s blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations.”\(^78\)

Per the former United Nations Drug Czar, international criminal gangs were not merely laundering money, but were influencing the banking system, as such funds were a huge source of cash during a liquidity crisis.\(^79\)

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77. Ed Vulliami, How a Big US Bank Laundered Billions from Mexico’s Murderous Drug Gangs, THE OBSERVER (Apr. 2, 2011), http://www.theguardian.com/world/2011/apr/03/us-bank-mexico-drug-gangs (“The bank was sanctioned for failing to apply the proper anti-laundering strictures to the transfer of $378.4bn—a sum equivalent to one-third of Mexico’s gross national product—into dollar accounts from so-called casas de cambio (CDCs) in Mexico, currency exchange houses with which the bank did business.”).

78. Id.

According to Antonio Mario Costa, “[s]ome of the evidence put before [his] office indicated that gang money was used to save some banks from collapse when lending seized up,” raising troubling questions about crime’s influence on the economic system at times of crisis.\(^{80}\) Global drug cartels, particularly those who market drugs in the United States, substantially affect the United States.\(^{81}\) “After 40 years, the United States’ war on drugs has cost $1 trillion and hundreds of thousands of lives, and for what? Drug use is rampant and violence even more brutal and widespread.”\(^{82}\) The profits available from partnering with narcotics gangs make these criminal enterprises lucrative clients for financial institutions.

**C. Terrorists**

Terrorism is a business and terrorist groups may operate similar to a corporation, owning assets,\(^{83}\) paying employees\(^{84}\) and producing annual reports.\(^{85}\) The business of terrorism requires access to financial markets for money laundering purposes and wiring abilities, as well as providing investment options.\(^{86}\) “Money laundering is the process of disguising

\(^{80}\) See, e.g., EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES: NATIONAL DRUG CONTROL STRATEGY (2012), http://www.whitehouse.gov/sites/default/files/ondcp/2012_nnds.pdf (“Illicit drug use in America contributed to an estimated $193 billion in crime, health, and lost productivity costs in 2007, the year for which the most recent estimate is available.”).


\(^{82}\) See Nigel Wilson, Islamic State Grabs More Oil Fields to Fund Caliphate, IB TIMES, Aug. 6, 2014, https://uk.news.yahoo.com/is1AMic-state-grabs-more-oil-fields-fund-caliphate-095423608.html#KJXyyZN (noting how the organization has oil fields and pipelines which funds operations).


\(^{84}\) Indeed, the organization known as the Islamic State operates similar to a corporation, controlling oil fields and producing annual reports. See Roula Khalaf & Sam Jones, Selling Terror: How ISIS Details Its Brutality, FIN. TIMES (June 17, 2014 7:56 AM), http://www.ft.com/intl/cms/s/2/69c70954-f639-11e3-a038-00144fceb2d0.thml?Ftcamp=crm/email/2014167/nbe/AsiaMorningHeadlines/product/azxx34dtExR6g (“Since 2012 the Islamic State of Iraq and the Levant, (known as ISIS) has issued annual reports, outlining in numerical and geographical detail its operations.”) citing “Al-Naba” 2012-13 Reports, available at http://azelin.files.wordpress.com/2014/04/al-bin481-magazine-1.pdf.

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III. THE EFFECTS OF PARTNERING WITH ROGUE ACTORS

Rogue banking is not victimless in the international context. A litany of global evils are financed through financial institutions and, not surprisingly,
a substantial amount of money is at play. The effects can be separated into three—sometimes overlapping—categories: (a) enabling the looting of national wealth and impoverishment of citizens; (b) escalating the risk of human rights violations and threats to global peace and security; and (c) imperiling democratic development, good governance, and economic growth. Each of these destructive consequences is examined below.

A. Enabling Rogue Regimes and Leaders to Loot Their Nations’ Assets

A prime effect of financial crime is the looting of national wealth and its transfer abroad. In fact, nations with large sums of national wealth are often plagued by chronic poverty and human rights violations. Without financial institutions, the national rulers would not be able to rob their national treasuries.

Financial institutions are essential in transferring and managing these assets. For example, in Libya, former leader Col. Kadafi diverted an astounding sum of $200 billion from Libya into bank accounts, real estate, stock investments, and businesses abroad. The investments were held in the name of the Libyan SWF and other national institutions, but as the

sub-Saharan African nations, a large portion of the population remains poor due to huge income inequality. Yet, according to the World Bank almost one-third of Gabonese live at or below the poverty line.”). 91. The sums are indeed staggering. See Hurtado & Farrell, supra note 12 (“BNP Paribas SA is set to plead guilty to criminal charges Monday in Manhattan federal court . . . ending a wide-ranging probe that may bring the biggest-ever penalty for violations of U.S. sanctions against rogue nations.”); Pasikoff, supra note 25 (“HSBC also understood the subtleties of—and were, apparently, fully invested in—money laundering for drug kingpins and terror cells, while ignoring U.S. sanctions established against rogue nations. HSBC’s US unit managed to position the brand in this way by accepting $7 billion of dollars from Mexican drug cartels, conducting 25,000 Iranian transactions totaling over $19 billion in just one week, and helping Saudi banks with terror financing for groups like al-Qaeda.”).

92. See Richter, supra note 46 (discussing the Kadaffi regime’s plundering of national wealth).


94. THE BCCI AFFAIR, supra note 36 (“Noriega When it came to General Noriega, bribes were unnecessary, as BCCI provided the far more important service of laundering $23 million of his money and keeping it safe from other governments and his eventual successors in Panama by insuring its disappearance following his indictments.”).


96. See Richter, supra note 46.
rogue leader, Kadafi and his family considered and treated those assets as their own personal wealth. The Libyan SWF is being investigated by the new governmental authority and efforts are being made to track down the plundered assets. Notably, financial institutions aided and abetted this heist by facilitating all the asset transfer, investments, and bank accounts. It is difficult to believe these financial institutions and their compliance departments were unaware of the business and political relationship between Kadafi and the Libyan SWF.

Other non-Libyan examples abound. From other North African nations, “[o]ver the last two decades $150 billion is estimated to have been transferred from countries in North Africa (Algeria, Morocco and Tunisia) to European banks . . . North Korean leader Kim Jong-Il kept about $4 billion in European banks. Sudanese president Omar al-Bashir is suspected of siphoning off $9 billion from his country’s oil boom and depositing much of it in British banks.”

In Tunisia, there is an attempt to bring back the assets of the nation, allegedly plundered by the previous ruler. A substantial amount of wealth

97. Id.
98. Patrick J. Keenan, Sovereign Wealth Funds and Social Arrears: Should Debts to Citizens be Treated Differently than Debts to Other Creditors?, 49 VA. J. INT’L L. 431, 434 (2008) (“The widespread emergence of [sovereign wealth funds (“SWFs”)] creates a risk that such rulers will further insulate themselves from political accountability by moving even more of the state’s resources outside the typical channels of domestic political control.”).
100. See Making a Hash of Finding the Cash, THE ECONOMIST (May 11, 2013), http://www.economist.com/news/international/21577368-why-have-arab-countries-recovered-so-little-money-thought-have-been-nabbed (noting that looted wealth finds itself offshore in foreign bank accounts and property markets). Clearly, financial institutions are providing the services to open and maintain accounts and to provide services for property acquisition.
101. See Europe should stop harbouring dictators’ blood money, EUR. PARLIAMENT News (Feb. 6, 2012, 3:35 PM), http://www.europarl.europa.eu/news/en/news-room/content/20120203STO37167/html/Europe-should-stop-harbouring-dictators-blood-money (“[o]ver the two decades $150 billion is estimated to have been transferred from countries in North Africa (Algeria, Morocco and Tunisia) to European banks . . . North Korean leader Kim Jong-il kept about $4 billion in European banks. Sudanese president Omar al-Bashir is suspected of siphoning off $9 billion from his country’s oil boom and depositing much of it in British banks.”).
102. Id.
103. See Vlasic, supra note 90 (“One year ago, the eyes of the world focused on Tunisia as its ruler, Zine el-Abidine Ben Ali, fled the country, allegedly with millions of
was purportedly moved offshore to safe havens. The amount is so vast that the $30 million in private jets recovered is considered a minor percentage. Tunisian corruption and poverty were prime motivating factors for the popular uprising, which spawned the “Arab Spring.”

Kenya provides another powerful example:

In Kenya, $4 billion disappeared during the presidency of Daniel Arap Moi’s 24 years in power...The country’s Central Bank was looted, money was stolen by making fictitious payments on foreign debt, kickbacks were collected on all public contracts and when that didn’t supply enough cash, politicians awarded themselves phony contracts.

...The international banks, the western businessmen who bribe to get the contract, those who are in cahoots with all the millionaires, they are all up to their eyeballs in what is taking place. When it comes to moral standing, everybody belongs in the gutter together.

Nigeria is considered a failed state. Nigerian governmental corruption stretches decades and is embedded in Nigerian governance. The nation dollars in gold and assets on his airplane. The government of Tunisia is now working with the international community to recover Ben Ali’s ill-gotten gains.”).

104. Id. 105. Id. (“Of course, the estimated $30 million that these jets were worth is but a drop in the bucket when compared with the assets that the Ben Ali clan is alleged to have plundered. But asset recovery is not just about the money; it is also about the demonstration effect.”).


108. Id. (quoting Transparency International’s former director Jerome Pope). 109. See Nigeria: Our Stand—This State Has Failed, ALL AFRICA (Apr. 17, 2014), http://allafrica.com/stories/201404170133.html (describing the serious failures in government resulting in health disasters, rampant corruption, terrorist havens and poverty). See also UNITED STATES DEPARTMENT OF STATE, BEAUTEOUS OF DEMOCRACY, HUMAN RIGHTS AND LABOR: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICE FOR 2013, available at http://www.state.gov/documents/organization/220358.pdf (“The most serious human rights abuses during the year were those committed by Boko Haram, which conducted killings, bombings, abduction and rape of women, and other attacks throughout the country, resulting in numerous deaths, injuries, and widespread destruction of property; those committed by security services, which perpetrated extrajudicial killings, torture, rape, beatings, arbitrary detention, mistreatment of detainees, and destruction of property; and widespread societal violence, including ethnic, regional, and religious violence. Other serious human rights problems included vigilante killings; prolonged pretrial detention; denial of fair public trial; executive influence on the judiciary; infringements on citizens’ privacy rights; restrictions on the freedoms of speech, press, assembly, religion, and movement; official corruption; violence against women; child abuse; female genital mutilation/cutting (FMGC); infanticide; NIGERIA 2 Country Reports on Human Rights Practices for 2013 United States Department of State • Bureau of Democracy, Human Rights and Labor sexual exploitation of children;
suffers from immense developmental problems as well as poverty.\textsuperscript{111} Human rights abuses abound and environmental campaigner Wiwa was executed by the Nigerian military.\textsuperscript{112} Nigeria’s former President plundered his nation’s wealth.\textsuperscript{113} Following his death, a large amount of stolen money was located in various banks in diverse areas of the world.\textsuperscript{114} Evidently, billions of dollars were stolen by Abacha and several family members. “The Nigerian Government is trying to recover an estimated three billion dollars in embezzled state funds sent abroad during General Abacha’s five-year rule.”\textsuperscript{115}

Gabon is another nation plagued with severe corruption and is a failed state. The former rogue leader of Gabon Omar Bongo died in 2009 and his place was taken by his son, Ali. Both men, says the report, “amassed substantial wealth while in office, amid the extreme poverty of its citizens.”\textsuperscript{116} American investigators discovered that Ali Bongo’s wife, Inge Lynn Collins Bongo, formed an American trust in her maiden name, opened accounts in its name in California, and used them to receive “multiple large offshore wire transfers . . . and used the funds to support a lavish lifestyle and move money along a network of bank and securities accounts benefiting her and her husband.”\textsuperscript{117} Despite the huge wealth accumulated by government leaders, Gabon is mired in poverty and difficult economic circumstances.\textsuperscript{118}

As demonstrated above, numerous adverse consequences arise from the plundering of national wealth including poverty, hunger, and the suffering of civilian populations. Popular uprisings have been caused by poverty,
which has led to civilian casualties and governmental repression.\footnote{119}{See Breuer, \textit{supra} note 37 (attributing the origination of the “Arab Spring” to a young Tunisian who was the victim of local corruption).} The next section will discuss human rights abuses and endangerment to peace and security.

\textbf{B. Enabling Human Rights Violations and Damage to Global Peace and Security}

Rogue states and leaders pose serious threats to international peace and security.\footnote{120}{\textit{Id.} (“combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.”).} A review of recent military interventions, civilian massacres, and trouble spots provides unparalleled evidence of dangers posed by failed states. North Korea provides an illustrious example. North Korea’s civilian population suffers from severe poverty and starvation.\footnote{121}{See \textit{In Pictures: North Korea’s politics and history}, BBC NEWS (Apr. 2, 2013 9:00 AM), http://www.bbc.co.uk/newsbeat/21999341 (“Aid agencies have estimated that up to two million people have died since the mid-1990s because of food shortages caused by natural disasters and economic problems.”); \textit{see also} Evan Ramstad, \textit{Pyongyang Tests Nuclear Device}, WALL ST. J. (Feb. 12, 2013 1:48 AM), http://online.wsj.com/news/articles/SB100014241278873248805045782989943003246654 (“North Korea started developing nuclear weapons in the 1970s, but its work proceeded slowly due to its poverty and international constraints and sanctions. From 1994 to 2002, North Korea formally halted the effort under an agreement with the U.S.”).} Notwithstanding this impoverishment, the nation has allocated its meager resources into becoming a nuclear state.\footnote{122}{See Choe Sang-Hun, \textit{Failed Launch \$1bn Humiliation for Kim}, \textit{The Telegraph} (Apr. 14, 2012), http://www.telegraphindia.com/1120414/jsp/foreign/story_15373299.jsp#VBCv4vdXnE (citing South Korean Foreign Minister’s comments, “It is very regrettable that North Korea is spending enormous resources on developing nuclear and missile capabilities while ignoring the urgent welfare issue of the North Korean people such as chronic food shortages.”).} Ignoring the advice of its closest ally, China, North Korea pursues long range missile testing and is subject to near universal condemnation.\footnote{123}{\textit{See Lucy Williamson, North Korea Defies Warnings in Rocket Launch Success}, BBC NEWS (last updated Dec. 12, 2012 6:57 AM), http://www.bbc.com/news/world-asia-20690338 (noting Chinese, American and Japanese condemnation).} Further, the North Korean people are subject to gross violations of their basic universally-acknowledged human rights.\footnote{124}{See Michael Kirby, Chair of the Comm’n of Inquiry on Human Rights in the Democratic People’s Republic of Korea, 25th session of the Human Rights Council (Mar. 17, 2014), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14385&LangID=E (describing North Korea as a “country is a dark abyss where the human rights, the dignity and the humanity of the people are controlled, denied and ultimately annihilated.”).} North Korea imprisons approximately 200,000 citizens in “re-education” camps where torture and starvation are
the primary means of re-education. According to the United Nations Special Rapporteur on North Korea, “[g]rave human-rights violations in the prison camps or the mere existence of slave camps may amount to crimes against humanity.” The Special Rapporteur noted that an eight-year investigation “had uncovered nine systematic patterns of abuses including mass starvation, prison camps and no recourse or judicial system for people accused of crimes.”

North Korea has also consistently menaced South Korea and the United States. North Korea has threatened to initiate “full-scale” war, take “merciless counteraction” and turn Seoul into a “sea of flames.” North Korea has threatened to end the ceasefire that concluded the Korean Conflict and “to strike the United States with “lighter and smaller nukes.”

North Korea has, in fact, attacked South Korea several times in recent years. Clearly, North Korea poses serious risk of military conflict and, in addition, poses a present nightmare to hundreds of thousands of its own citizens.


127. Id.


129. Id.

130. See Choe Sang-Hun, North Korea Threatens to Attack U.S. With ‘Lighter and Smaller Nukes’, N.Y. TIMES, Mar. 5, 2013, http://www.nytimes.com/2013/03/06/world/asia/North-korea-threatens-to-attack-us-with-lighter-and-smaller-nukes.html (“North Korea said on Tuesday that it would cut off a hot line with the United States military in South Korea, calling the truce that stopped the Korean War in 1953 null and void and threatening to strike the United States with ‘lighter and smaller nukes.’”).

131. See Foster Klug, North Korea Attack History Shows Pattern in Strikes against South Korea, HUFFINGTON POST (last updated May 12, 2013, 5:12 AM), http://www.huffingtonpost.com/2013/03/12/north-korea-attack-history_n_2859064.html.
Another example of a failed state is Syria where the current leader, President Assad, has engaged in a civil war with Syrian citizens with an estimated death count in the thousands.\textsuperscript{132} Assad has been characterized as a despot who has crushed dissent in an attempt to silence political opposition.\textsuperscript{133} An estimated one million refugees have fled Syria,\textsuperscript{134} but there are estimates that many more may become refugees.\textsuperscript{135}

Iran is also considered a failed state\textsuperscript{136} and has been widely condemned for human rights violations.\textsuperscript{137} Iran has imprisoned and tortured political opponents and brutally crushed a popular uprising.\textsuperscript{138} According to Human Rights Watch:

In 2012, Iranian authorities prohibited opposition candidates from participating in parliamentary elections. They have held prominent opposition leaders under house arrest for more than a year-and-a-half. Executions, especially for drug-related offenses, continued at a high rate. The government targeted civil society opponents and brutally crushed a popular uprising. According to Human Rights Watch:

\begin{itemize}
  \item \textsuperscript{132} See Ashley Fantz, \textit{Syria Death Toll Probably at 70,000}, U.N. Human Rights Official Says, CNN (last updated Feb. 12, 2013 9:07 PM), http://www.cnn.com/2013/02/12/world/meast/syria-death-toll/ (citing United Nations High Commissioner for Human Rights Navi Pillay estimating nearly 70,000 Syrians have been killed in fighting between the Assad regime and rebel fighters); see also David Ignatius, \textit{Syria descending toward anarchy}, State Department reports, WASH. POST, Jan. 11, 2013, http://www.washingtonpost.com/opinions/david-ignatius-syria-descending-toward-anarchy-state-department-reports/2013/01/11.7a524326-5b58-11e2-9fa9-5bdc953eb9_story.html (“Growing chaos in the liberated areas of northern Syria is convincing some members of the Syrian opposition that the country will become a “failed state” unless an orderly political transition begins soon to replace President Bashar al-Assad.”).
  \item \textsuperscript{134} See Lyse Doucet, \textit{Syria’s Millionth Refugee}, BBC NEWS (last updated Mar. 6, 2013 1:37 PM), http://www.bbc.com/news/world-middle-east-21685135 (“As of today, a million Syrians have fled across their borders to escape terrifying violence at home.”).
  \item \textsuperscript{135} See Amir Ahmed, \textit{U.N.: Number of Syrian Refugees Escalating at Rapid Rate}, CNN (Mar. 10, 2013 9:00 PM), http://www.cnn.com/2013/03/10/world/syria-refugees (“In December, the U.N.’s Regional Response Plan for Syryan Refugees estimated that 1.1 million displaced Syrians would move to surrounding countries by the end of June”).
  \item \textsuperscript{136} See Larry Liebert, \textit{Afghanistan, Iran Still ‘Failed States’}, BLOOMBERG (June 18, 2012 4:10 PM), http://go.bloomberg.com/political-capital/2012-06-18/afghanistan-iran-still-failed-states (listing Iran, Congo and Somalia as failed states).
\end{itemize}
activists, especially lawyers, rights defenders, students, and journalists. It also continued to clamp down on Baha’is and other minorities, and announced plans for the first phase of a halal (legitimate) internet. Authorities continued to block access to the United Nations special rapporteur on Iran.

Somalia has also been the subject of UN condemnation, travel bans, and asset freezes. Well known for harboring pirates and terrorists, Somalian government officials act corruptly, selling government protection to criminals and demanding payment for basic items such as food. Somalia has been beleaguered by fraud and corruption for many years. Somalia officials have looted the national wealth. “Somalia is a prime contemporary example of a failed state” where “corruption is king.”

In 2011, half of Somalia’s domestic income was spent on the offices of its three top leaders—that’s almost as much as the government spent on security for its population of 9.6 million. Under the transitional governments of the last twenty years, the report said “the systematic misappropriation, embezzlement and outright theft of public resources have essentially become a system of governance.”

As detailed above, millions of the world’s citizens live in horrendous conditions including abject poverty and state terror, and are bereft of basic human rights. Despotic leaders, who often use the nation’s wealth

140. Id.
142. See Afyare Abdi Elmi, Somalia’s Corruption Epidemic, ALJAZEERA (July 5, 2010 1:51 PM), http://www.aljazeera.com/focus/2010/07/2010759144137365.html (Ministers selling visas and signing dubious deals, misusing revenues, covering for organised crime and piracy, selling weapons and diverting food aid are just a few of the practices taking place within the national and regional governments.).
143. See David Blair, Somalia: Analysis of a Failed State, TELEGRAPH (Nov. 18, 2008 5:19 PM), http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/3479010/Somalia-Analysis-of-a-failed-state.html (“At a strike, the Horn of Africa acquired a failed state with 2,000 miles of coastline skirting one of the world’s great trade routes.”).
145. Id. at 556.
146. Patrick Boehler, Ranking of Corrupt Nations, TIME, Dec. 6, 2012, http://news feed.time.com/2012/12/06/where-corruption-is-king-2012-rankings/slide/somalia (citing to a study revealing “more than two-thirds of all government revenue between 2009-10 was unaccounted for.”).
147. Id.
for their empowerment and enrichment, cause these harms. The next section discusses the damage to economic development caused by rogue states and leaders.

C. Enabling Damage to Democracy, Good Governance and Global Economic Development

Rogue banking, which facilitates fraud and corruption, adversely affects the rule of law, government, and society. Peaceful resolution of conflicts is impeded in favor of military intervention and use of force against civilians. Moreover, the principles of human rights are often cast aside in nations with rampant fraud and corruption. Numerous studies establish the “devastating effects of corruption on economics, political stability and human rights,”

Financial crime is a proximate cause of national developmental failures, which “directly affects the lives and well-being of billions of people and thousands of organizations.” States plagued with financial crime do not properly serve their citizens and the cost to the world economy is staggering. Sometimes the amount of money stolen and transferred is almost incomprehensible. In Africa, for example, it is estimated that over $100 billion is lost annually to theft, fraud, and corruption. Almost $200 billion was looted from Libyan state coffers.

Businesses also bear direct and indirect costs when operating in corrupt nations. The economic toll results in:

148. See U.S. Senate Permanent Subcommittee on Investigations, supra note 66.
152. Id. at 190–91.
155. Richter, supra note 46 (“Moammar Kadafi secretly salted away more than $200 billion in bank accounts, real estate and corporate investments around the world before he was killed. . .”).
156. These relate to the paying of bribes as well as doing business in a slow moving bureaucratic environment with poor infrastructure. See David Hess, Combating Corruption
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1) reduction in productive investment and growth; (2) macro-fiscal costs, in particular the “loss of massive amounts of public revenues from taxes, customs duties, and privatization programs”; (3) redistribution/social costs; (4) economic inefficiency, particularly through the protection of affiliated firms and the discouragement of entrepreneurs and competitor firms; and (5) distortion or loss of foreign aid and debt relief programs.\textsuperscript{157}

Fraud and corruption can result in badly designed and poorly implemented infrastructure, inferior goods and services, and dysfunctional financial aid programs.\textsuperscript{158} Corruption can proximately cause or worsen mass scale poverty and starvation.\textsuperscript{159} In India, “350 million families liv[e] below India’s poverty line of 50 cents a day.”\textsuperscript{160} While financial aid to lessen the poverty exists, this money can be siphoned off:

[A]s much as $14.5 billion in food was looted by corrupt politicians and their criminal syndicates over the past decade in Kishen’s home state of Uttar Pradesh alone, according to data compiled by Bloomberg. The theft blunted the country’s only weapon against widespread starvation—a five-decade-old public distribution system that has failed to deliver record harvests to the plates of India’s hungriest.\textsuperscript{161}

Moreover, governments may enjoy immense wealth while the public is in dire need of foreign financial aid.\textsuperscript{162} These resource-rich nations are managed corruptly for the benefit of select elites who allow their nation’s infrastructure to decay, the health and education systems to be chronically outdated, and their citizen’s standard of living to languish.\textsuperscript{163} There are “[s]tates whose citizens need development and humanitarian assistance even while their leaders invest abroad via SWFs highlights the gulf that often lies between those in power and citizens in poor states.”\textsuperscript{164}

\textit{Through Corporate Transparency: Using Enforcement Discretion to Improve Disclosure, 21 Minn. J. Int’l L. 42, 47 & n.23 (2012).}

\textsuperscript{157} Id. at 157–61.
\textsuperscript{158} Id. at 159–61.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} Keenan, supra note 98, at 439.
\textsuperscript{163} Id.
\textsuperscript{164} Id.
Ironically, these nations are “rich” as proven by their SWFs, yet receive international welfare. To illustrate the problem, consider that some states with large SWFs are also the recipients of development assistance from other states. For example, in 2006, Algeria received just over $208 million in development assistance from foreign governments. During the same period, the government of Algeria controlled an SWF worth $47 billion. In 2006, Libya also received $37 million in development assistance while controlling an SWF worth $50 billion, and Nigeria received $11 billion in development assistance and controlled an SWF worth $17 billion.

With regard to some nations, the wealth is concentrated and the political leaders bear no accountability:

For example, in Angola, a small coterie of elites receives and has almost complete control over that country’s vast oil wealth. The second condition depends in part on the first: those who control the wealth are not politically accountable to an engaged, informed electorate. In some states, the lack of political accountability is both a cause and an effect of unconditioned wealth. In states where the only way to accumulate wealth is through politics, unconditioned wealth can provide politicians with the resources they need to hold onto power against their challengers.

Third, unconditioned wealth is not subject to the discipline that the financial markets impose on other forms of wealth.

Endemic fraud results in poor governmental decisions wherein the citizens are impoverished and lack basic infrastructure, educational opportunity, personal security, and suffer from unmet needs. Fraud and corruption reduce the available number of skilled government workers, reduce tax compliance and revenues, cause government expenditures to be inflated, and result in wholly undemocratic ways of governance and doing business.

As discussed above, good governance and economic development are often victims of failed states and oppressive leaders. The next section will analyze whether sources of international law support finding that financial crime may be treated as a violation of international law.

IV. SHOULD PROVIDING ROGUE ACTORS WITH ACCESS TO FINANCIAL MARKETS BE TREATED AS A PRIMARY VIOLATION OF INTERNATIONAL LAW?

International law has been concerned with preventing violence and suffering through the criminalization of specific conduct such as war crimes, crimes against humanity, torture, and other behavior damaging to the

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165. Id. at 440 (“A number of states both receive official development assistance and, at the same time, possess millions or billions of dollars in their SWFs.”)
166. Id. at 435.
167. Id. at 439.
168. Id. at 454, 459; see also Nichols, supra note 153, at 160–66.
169. See id.
protection of human rights. Providing sophisticated services to bad actors has not been considered a primary international law violation. However, international law adjusts and transforms itself as global events warrant. As outlined above, authorizing financial transactions by rogue actors has devastating consequences. Should rogue banking be added to the list of international law violations? Determining whether conduct in fact violates international law requires examining sources of international law listed in Article 38 of the Statute of the International Court of Justice. These sources are examined in the following sections.

A. The Overwhelming International Concern with Rogue Actor Access to Financial Services

The international effort at recovering lost assets is strong evidence of a collective norm prohibiting the looting of national wealth. Significantly, in contrast to past examples of rogue leaders ransacking the national treasuries without consequences, there is now a concerted global effort at recovery of stolen wealth.

When other past dictators, such as Jean-Claude “Baby Doc” Duvalier of Haiti, fled their countries, they often retired in comfort, living off their plundered assets in French villas and estates. This time, the international community is working to ensure that such outrages are stories of the past.

170. See Hickman, supra note 30, at 450–51; see also Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 781 (D.C. Cir. 1984).
171. Filartiga, 630 F. 2d at 881 (“Thus it is clear that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today.”).
172. See U.N. Charter art. 38 (establishing International Court of Justice) (“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”).
174. The World Bank, supra note 173; see also OECD, supra note 173.
175. See Vlasic, supra note 90.
Misconduct of this genre is almost unanimously acknowledged as destructive and is condemned across the world.\textsuperscript{176} The struggle against the plundering of public money is globally recognized as vital.\textsuperscript{177} As stated by the United Nations, “There is a collective responsibility now, worldwide, to track stolen money, to share intelligence…”\textsuperscript{178} In commenting on the significance of the Anti-Bribery Convention, the OECD noted the international nature of the united front in the struggle against global financial crime, “[The] Anti-Bribery Convention… provides the framework for a united stand against corruption by the international community.”\textsuperscript{179}

Today’s interconnected financial markets permit large sums of money to be pillaged from one nation and transferred instantaneously offshore.\textsuperscript{180} Dictators and tyrants can loot their nation’s assets, ransack the national treasuries, and impoverish the citizenry by diverting wealth abroad.\textsuperscript{181} Large global financial institutions enable such misdeeds and allow rogue actors to launder money and facilitate transfers of wealth.\textsuperscript{182}

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\textsuperscript{176}. OECD supra note 173, at 11 (“Corruption and the illicit financial flows that result hinder economic development and the delivery of basic services, erode confidence in governments and the rule of law, and thereby perpetuate poverty.”).
\textsuperscript{177}. See Regina Menachery Paulose, Beyond the Core: Incorporating Transnational Crimes into the Rome Statute, 21 CARDozo J. INT’L & COMP. L. 77, 78 (2012) (discussing transnational crime and the global growing efforts to combat same).
\textsuperscript{180}. Financial services technology allows for internet banking and the instantaneous movement of capital. See e.g., CITI, http://www.citibank.com/ipb/europe/manage/global transfers.htm (last visited July 31, 2014) (“Moving your money around the world should be straightforward, and with Citi International Personal Bank it is. With Citi International Personal Bank’s international banking services, you can make a global money transfer safely and quickly by choosing from our wide range of options below.”).
\textsuperscript{181}. See U.S. Senate Permanent Subcommittee on Investigations supra note 66.
\textsuperscript{182}. The recent fines levied against financial institutions for repeated violations of sanctions and allowing money laundering demonstrates the consistent partnering of international banks and financial institutions with rogue actors. See supra notes 17–23. As a further illustration, see supra note 181, at 9–10 (describing how one bank allowed a massive network of accounts which enabled dictators to spirit money out of their home nations) (“The first case history found that Riggs Bank had opened over 60 accounts for the government of Equatorial Guinea (EG), the EG President Teodoro Nguema Obiang Mbagasa, senior EG officials, and their relatives; created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other EG officials; and facilitated numerous suspect transactions involving millions of dollars without alerting law enforcement. The second case history showed that Riggs Bank had secretly opened accounts for the former President of Chile, Augusto Pinochet, created offshore corporations for him, accepted about $8 million in suspect deposits, and secretly couriered millions of dollars in cashier’s checks to him in Chile. In 2005, a supplemental
B. Sources of International Law

In analyzing whether certain conduct violates international law, sources of international law must be examined. Article 38 of the International Court of Justice lists authoritative sources, which include: conventions, state practice, general principles of law, and decisions of courts.\textsuperscript{183}

1. Conventions

Treaties are crucial sources of international law.\textsuperscript{184} Treaties, or conventions,\textsuperscript{185} are important sources even when states merely accept the obligations while not being a signatory. As described below, several treaties exist condemning fraud and money laundering and represent a global effort at characterizing such conduct as criminal.

a. The United Nations Convention Against Corruption

Almost 150 nations have signed The United Nations Convention Against Corruption (UNCAC).\textsuperscript{186} The purposes of the UNCAC include combating corruption, promotion of integrity and increased international cooperation.\textsuperscript{187} The convention obligated parties to enact laws and prosecute “the embezzlement, misappropriation or other diversion of either public or private funds by a public official to whom the funds have been entrusted . . . the laundering of proceeds of crime.”\textsuperscript{188} The UNCAC provides powerful evidence of international condemnation of looting, money laundering and fraud.

\begin{itemize}
\item report by the Subcommittee showed that Mr. Pinochet and his family members had opened a secret network of over 125 accounts under a variety of names at financial institutions operating in the United States.\textsuperscript{183}
\item U.N. Charter, supra note 172.
\item See North Sea Continental Shelf, (Ger./Den & Ger./Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20).
\item U.N. Charter, supra note 172.
\item See id. at art. 1.
\item Id. at 17.
\end{itemize}
b. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

This convention represents further evidence of international condemnation of financial crime. Approximately 40 nations have signed the OECD Convention, which obligates parties to enact laws making the bribery of foreign officials in international business and money laundering illegal.\footnote{Ratification Status of Convention on Combating Bribery, OECD, (Apr. 8, 2014), available at http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus_May2014.pdf.} International cooperation on these issues is also a hallmark of the OECD Convention. The Convention obligates signatory countries to enact domestic anti-bribery laws, criminalizing bribery of foreign officials.\footnote{Convention on Combating Bribery of Foreign Pub. Officials in Int’l Bus. Transactions, art. 1, Nov. 12, 1997, 37 I.L.M. 1.}

c. UN Convention Against Narcotics Trafficking

This convention against narcotic drug trafficking and other psychotropic substances (1988) is illustrative.\footnote{U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, arts. 2 & 4, Dec. 20, 1988, 1582 U.N.T.S. 95.} The Treaty emphasizes and obligates states to cooperate in identifying and seizing assets that are the results of the drug related activity\footnote{Id. (“[To] identify, trace, seize, freeze or forfeit property or proceeds located in the requested states, where property was allegedly derived from or used in drug trafficking and drug money laundering in violation of laws of the requesting state.”).} and makes money laundering an extraditable offense.\footnote{Id. at art. 6 (“Because all parties are obliged to establish article 3(1) offences as criminal offences in the domestic law, any requirements of dual criminality, that is, the offence is criminal in both jurisdictions, in a party’s extradition should be met.”).} The importance of this latter provision cannot be understated as it corroborates the international consensus against money laundering.

d. United Nations Convention Against Organised Transnational Crimes in Palermo, Italy

This Treaty obligates nations to enact anti-money laundering laws.\footnote{U.N. Convention against Transnational Organized Crime, Sept, 29, 2003, 2225 U.N.T.S. 209 (signed by 150 nations).} Each member state must criminalize money laundering,\footnote{Id. at art. 6.} enact regulatory mechanisms to discover and prevent all money laundering (such as customer identification, record keeping, and reporting of suspicious transactions),\footnote{Id. at art. 7.} and approve international co-operation between regulatory and law enforcement agencies.\footnote{See id. at art. 18.}
As the above section demonstrates, there is near universal denunciation of financial crime such as corruption, money laundering, and fraud. The next section details that both the United Nations Security Council and General Assembly have condemned the plundering of assets, money laundering, and financial crime.

2. United Nations Security Council and General Assembly Resolutions

UN Security Council resolutions are considered compulsory international law obligations. General Assembly resolutions provide evidence of international custom. International courts recognize UN resolutions as an important source of international law.

In recent years, the UN has strongly condemned fraud and money laundering. For example, the plundering of national wealth is harshly
condemned and the UN has authorized asset freezes. Resolution 1373 ordered actions to be carried out by all states and makes a specific and meaningful confirmation of the global norm against financial crimes. Another UN Security Council resolution condemns government corruption and drug trafficking and imposes travel bans on the corrupt government officials.

Further, UN Security Council Resolution 7057 condemns looting and links such conduct to human rights violations. "The Security Council this afternoon condemned the illegal exploitation of natural resources and wealth of the Democratic Republic of the Congo and expressed serious concern at those economic activities fuelling the conflict in that country." The resolution notes, “the resources of the Democratic Republic of the Congo were not being used for the benefit of the Congolese people, their exploitation was a consequence rather than an objective of the conflict. The resolution also stated, “[A] consensus was clearly emerging in the Council and in the international community on the links between the shameless looting of Congolese natural wealth and the massacres of the Congolese people.”

202. See Staff Report to the Commission, National Commission on Terrorist Attacks Upon the United States, Monograph on Terrorist Financing (2004), http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf (“After the September 11 attacks, the highest-level U.S. government officials publicly declared that the fight against al Qaeda financing was as critical as the fight against al Qaeda itself. It has been presented as one of the keys to success in the fight against terrorism: if we choke off the terrorists’ money, we limit their ability to conduct mass casualty attacks.”).
203. S.C. Res. 1373, ¶¶ 1–2, U.N. Doc. S/RES/1373 (Sept. 20, 2001) (“[T]hwart and stem the financing of terrorist acts; criminalize operations linked with the financing of terrorism; freeze assets related to terrorism; prevent funds being made available to individuals linked to terrorism; reject sanctuary to individuals who finance terrorism and prevent them from entering their territoriality.”).
206. Id.
207. Id.
208. Id.
As the UN resolutions attest, there is a strong global condemnation of looting and money laundering. A consensus exists within the international community that looted assets are to be frozen, tracked down, and returned. The next section will discuss another source of international law—state practice.

3. State Practice

State practice is a significant marker of international law. The global effort to combat money laundering demonstrates a strong international commitment to prevent financial crime. The chorus of international condemnation of rogue leaders and failed states underscores the overwhelming realization that failed states threaten global peace and security.

a. World Bank Sanctions Board

Another indication of the global condemnation of financial crime is the World Bank Sanctions Board, wherein parties found to have engaged in fraud are barred from doing business with the World Bank as well as other developmental banks. Recently, the World Bank decided to publish their debarment rulings. The decision itself to publish the rulings is significant and provides powerful evidence that the World Bank and the other development banks take financial crime very seriously. In the

209. See North Sea Continental Shelf, supra note 184.
213. Id.
recently published decisions, it is evident that the World Bank condemns financial crimes such as forgery, bribery, and fraud.214

b. The Financial Action Task Force

The G-7215 founded the FATF in 1989 in response to the international problem of money laundering.216 The motivation for creating the FATF was international concern with respect to “combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.”217 Stability of the global financial system is a key goal of the FATF as it aims to protect the international financial system from misuse.”218

In conjunction with the United Nations, the IMF and World Bank, the FATF has developed specific recommendations to combat financial crime.219 According to the FATF, the definition of money laundering is broad, “[c]ountries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.”220 The FATF calls for nations to identify, trace, and confiscate money laundering proceeds.221 Moreover, financial institutions are to “know the customer” and identify owners and beneficial owners.222 Global cooperation is essential for investigating, seizing and returning assets.223


218. Id.

219. Id. at 8.

220. Id. at 12.

221. Id.

222. Id. at 14.

223. Id. at 27–30.
Special focus is on the potential of political elites to plunder their national assets for personal gain. To prevent the proceeds of financial crime from being enjoyed, a Recommendation is specifically applicable to politically “exposed” individuals. With respect to foreign politically exposed persons (“PEPs”), financial institutions are obligated to “(a) have appropriate risk-management systems to determine whether the customer or the beneficial owner is a politically exposed person; (b) obtain senior management approval for establishing (or continuing, for existing customers) such business relationships; (c) take reasonable measures to establish the source of wealth and source of funds; and (d) conduct enhanced ongoing monitoring of the business relationship.” These requirements apply not only to the leaders themselves, but also “to family members or close associates of such PEPs.”

The FATF Recommendations provide another powerful example of global condemnation of financial crime. Significantly, the Recommendations signify a global effort at criminalizing financial crime with a specific emphasis on preventing political leaders from plundering their citizens’ wealth through transactions with financial institutions.

c. Securities Regulators

Out of mutual national self-interest, there is a global struggle against financial crime. International cooperation is growing and evident from the extensive international agreements described above. In addition, financial crime is already being prosecuted with the collaboration of international governmental regulators. For example, the United States’ Securities & Exchange Commission (“SEC”) has enforcement and regulatory cooperation with numerous countries including: Canada, Chile, Germany, Israel, Italy, Norway, Portugal and the UK. The SEC’s Office of International Affairs (“OIA”) cooperates with a “global network of securities regulators and law enforcement authorities to facilitate cross-border regulatory compliance

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224.  Id. at 16.
225.  Id.
226.  Id.
227.  Id.
and ensure that international borders are not used to escape detection and prosecution of fraudulent securities activities."

In Securities and Exchange Commission v. Juno Mother Earth Asset Management, the SEC alleged that a firm and its founders schemed to defraud investors by inflating assets, stealing money and filing false reports. Cooperation with non-U.S. securities regulators was crucial in bringing the suit. “The SEC acknowledges the assistance of the Cayman Islands Monetary Authority and the Financial Market Authority Liechtenstein.”

In Securities and Exchange Commission v. Provident Capital Indemnity, the SEC filed (and the U.S. Justice Department filed a simultaneous criminal action) a complaint against a Costa Rican entity involved in a massive financial fraud. The SEC thanked the “Costa Rican Unidad de Analisis Financiero, the Ontario Securities Commission, the Gibraltar Financial Services Commission.”

Another example is Securities and Exchange Commission v. Imperia Invest IBC, wherein the SEC alleged that the defendant defrauded 14,000 investors worldwide. “The Commission acknowledges the assistance and cooperation of the State of Maine Office of Securities, the Securities Commission of the Bahamas, the Vanuatu Financial Services Commission and the Cyprus Securities and Exchange Commission.”

The global cooperation is not relegated merely to securities fraud, but encompasses a broad array of financial institutional misconduct. Indeed,


231. Id.


233. Id.


235. Id.

236. Matthew Goldstein & Ben Protess, U.S. and Britain Join Forces in Bank Misbehavior Cases, N.Y. TIMES, Feb. 24, 2014, http://dealbook.nytimes.com/2014/02/24/u-s-and-britain-join-forces-in-bank-misbehavior-cases/ (“The agreement over Libor could also provide a template for the Justice Department and Serious Fraud Office as they pursue other investigations into global banking giants. In one prominent case focused on the manipulation of foreign currencies, authorities have privately described the misconduct as far worse than in the Libor case. Citigroup and UBS, among other banks, already have fired or suspended more than 20 currency traders as the international investigations gain steam.”); Maud Van Gaal, Dutch Regulators Probe Libor, Euribor Submission Process, BUSINESSWEEK, July 27, 2012, http://www.businessweek.com/news/2012-07-27/dutch-regulators-probe-libor-euribor-submission-process (“The probe is being carried out jointly with financial markets regulator AFM and in cooperation with international supervisors.”).
the depth and level of co-investigations and sharing of evidence is unparalleled in scope.

The Financial Conduct Authority previously said the investigation has led to ‘unprecedented global cooperation’ among the world’s financial regulators, including 52 requests related to the foreign-exchange probe that the authority has received from regulators outside the U.K. Banks have already suspended or fired dozens of traders and other employees in connection with the probe, which got under way last spring.237

As demonstrated above, there is substantial global cooperation on the state to state level indicative of coordinated efforts at fighting financial crime. The next section describes individual state criminalization of financial crime.

4. Domestic Proscription of Financial Crime

Many nations have enacted specific regulations and laws criminalizing financial crime manifesting the global condemnation of financial crime.238 Many nations have enacted laws dealing specific to financial crimes such as fraud and money laundering:

Global efforts to stem bribery of foreign officials in international business transactions are accelerating. Anti-bribery criminal enforcement by many different nations increased significantly in the last decade. The United Kingdom’s new Bribery Act took effect in July, 2011. Russia enacted new anti-bribery legislation restraining its businesses’ conduct abroad.239

Even China has joined the anti-corruption crusade; condemning and criminalizing corruption.240 While the various domestic laws are tailored to the specific domestic legal system, the criminalizing of money laundering

240. Local Law Provisions under the OECD Anti-Bribery Convention, supra note 239, at 252.
and the requirement of financial institutions to perform due diligence and implement risk management are common denominators across various nations.\textsuperscript{241} The similarity merely reinforces the universal nature of the condemnation no doubt influenced by the conventions and treaties mentioned above. The next section highlights some of the domestic laws.

\textit{a. United States}

The United States has various anti-money laundering laws. For example, the Money Laundering Control Act 1986 (MLCA)\textsuperscript{242} criminalizes:

\begin{quote}
[W]hoever knowingly uses or attempts to use the proceeds of some unlawful activity in some form of financial transaction with the intent to either promote the carrying on of a “specified” unlawful activity (SUA) or engages in a transaction designed to disguise or conceal the nature, location, source, ownership, or control of the funds has committed a crime’ \ldots [T]he engaging or attempt to engage in a monetary transaction involving property valued at more than \$10,000 and derived from a SUA when the individual knows that the property is derived from the criminal activity.\textsuperscript{243}
\end{quote}

\textit{b. United Kingdom}

The UK criminalizes money laundering.\textsuperscript{244} The law is very similar to most national anti-money laundering statutes including verification of customer requirements, mandatory reporting of suspicious activity and providing both civil and criminal penalties.\textsuperscript{245}

\textit{c. Other National Laws}

Across the globe, many nations have enacted specific regulations and laws criminalizing financial crime.\textsuperscript{246} Vietnam’s anti-money laundering

\begin{flushright}
243. Id.
245. See id.
\end{flushright}
law obligates reporting of suspicious activities and blocking accounts.\textsuperscript{247} Thailand also requires reporting of suspicious transactions.\textsuperscript{248} China has laws criminalizing both money laundering\textsuperscript{249} and corruption.\textsuperscript{250} Chinese money laundering laws are similar to other nations’ and their bribery prohibition relates to both governmental and commercial bribery.\textsuperscript{251} China is prosecuting such crimes.\textsuperscript{252} Russian laws criminalize money laundering and comport with international standards of identifying customers, reporting suspicious activity, and prosecution of offenders.\textsuperscript{253} Israel has enacted anti-money laundering laws similar to international standards.\textsuperscript{254} The law requires banks to “know their customer,” report suspicious activities, and various civil and criminal penalties are available.\textsuperscript{255} Israel also criminalizes bribery.\textsuperscript{256} The Saudi Arabian Combating Bribery Law was issued in 1992 by the Council of Ministries.\textsuperscript{257} The anti-bribery law is applicable to both public

\textsuperscript{247} Decree of the Government on Prevention of Money Laundering (Decree No.74/2005/ND.CP) (Vietnam) [hereinafter Prohibition on Money Laundering Law].


\textsuperscript{250} Comparison of the FCPA and Chinese Anti-bribery Laws and Regulations as of March 2012 and Japanese and United Kingdom Anti-bribery Laws and Regulations as of March 2011, SQUIRE SANDERS (Mar. 2012), http://www.americanbar.org/content/dam/aba/enews/labor_law/2012/05/international_labor_employment_law_committee_midyear_meeting/mw2012int_millstone-1.authcheckdam.pdf.

\textsuperscript{251} Id.

\textsuperscript{252} See David Barboza, China Sentences Rio Tinto Employees in Bribe Case, N.Y. Times, Mar. 29, 2010, http://www.nytimes.com/2010/03/30/business/global/30riotinto.html?pagewanted=all&r=1& (“Four employees of the British-Australian mining giant Rio Tinto, including an Australian citizen, were found guilty Monday of accepting millions of dollars in bribes and stealing commercial secrets. They were given sentences of 7 years to 14 years in prison, and were later dismissed by their employer.”).


\textsuperscript{254} See Prohibition on Money Laundering Law, supra note 247.

\textsuperscript{255} Id.


officials and may extend to private persons or companies. The law prevents paying money or using intimidation or force to obtain a benefit. Violators risk both monetary penalties and imprisonment while government officials are to be fired. The ill-gotten gains are to be impounded.

New Zealand is another example of a state with anti-money laundering and bribery laws. Under New Zealand law, money laundering laws are also similar to the “international standard” with “know your customer” requirements, mandatory reporting of suspicious activity, and civil and criminal penalties.

V. CONCLUSION

Rogue banking is a pervasive and recurring problem. Enticed by the allure of significant profits from deep-pocketed clients, financial institutions continue to do business with and possibly seek out these nefarious clients. In the international context, these financial institutions are facilitating dangerous consequences such as: enabling rogue regimes, human rights abuses, plundering national assets, drug trafficking, and terrorism. The vast majority of the nations of the world—on an individual state level as well as on an international law level—have condemned financial crime. Based upon the near universal condemnation of financial crime as well as the recognized understanding of how such conduct has deleterious global effects, rogue banking should be treated as a primary violation of international law.

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258. Id. at 125 (applies to private companies that have government business as well as to employees of companies of shares held by the government and companies and establishments that exercise banking.”).
259. Id. at 125.
260. Id. at 124–26.
261. Id. at 126.
263. Id.
264. See Pasikoff, supra note 25 (noting HSBC performed transactions for drug gangs, terrorists and despots); Hurtado, supra note 10 (“BNP, France’s largest bank, admitted it violated the International Emergency Economic Powers Act and the Trading with the Enemy Act by processing almost $9 billion in banned transactions from 2004 to 2012 involving Sudan, Iran and Cuba.”).
265. See supra Part IV.B.