

# Money Laundering and Capital Flight

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Private banking is the international business of the solicitation and management of wealth that is either illegally generated or that, legally earned, is now concealed from the authorities in order to avoid taxation. So this could be drug money, kickbacks, or what is called 'black' money. The trusts and offshore jurisdictions are a part of this very business.

One way to conceal such money is to put it in the name of other nominal owners, such as employees or relatives. This is often done in the case of assets that are immovable such as feudal property in land. Liquid assets can be taken completely out of the jurisdiction, so that the local authorities may not, even should they so desire, seize it. Typically, a private banker will meet a prospective client on an introduction from another client, a lawyer or accountant, or the local branch of the international bank he works with; and set up arrangements with him in Bombay or Lagos. Thereafter, the money is transferred abroad, by *havala* or other method such as payments from overseas offices of the firm controlled by the Third World account holder.

In this process, the money has been undoubtedly been **laundered** in the sense that it has been concealed in legitimate business activity such as export or import remittances so that it is untraceable. Yet what is termed money laundering is curiously only used to describe drug and terrorist money.

The international agencies, the Financial Action Task Force in particular, focus on them – to the exclusion of the major business of money laundering, which is capital flight, taking criminal and tax evading money out of the jurisdiction of the sovereignties where the money has been made. Actually if one looks at the sums of money involved in recent acts of terror against the state -- as distinct from the terror practised by the state -- one sees the sums involved are trivial. The Nine Eleven Commission speaks of less than half a million dollars over several years – a sum that will never show up on any radar screen; and the London bombers spent just a few thousand pounds if that, assembling materials that are widely available. And terrorists are relative newcomers, who have skilfully employed widely available services. Terrorists and drug lords use *havala* but they also use the main money centre banks, trusts and tax havens- all of which are effectively unsupervised and not monitored. Money laundering of course is central to the narcotics trade but as Alexander Cockburn has shown, America is often encouraging the very people who are shipping drugs. (Indeed, there is the curious case of a senior Indian policeman involved in smuggling drugs who has now been happily relocated in New York with the United

Nations, supported by both America and the Indian Government – even as a warrant for his arrest lies in Bombay.)

So I wish to argue that this is a meaningless definition. Money laundering should be properly seen as the concealment and transmission of funds involved in any crime in any jurisdiction. The most important such crime is the enabling of capital flight, the biggest business by volume and profit in private banking: the theft of the resources of countries in a state of crisis where citizenry is helpless; where democracy is inadequate and there is insufficient control of the machinery of the state by the people. This is as true of India as Nigeria as Russia or China. Such capital flight is in different ways the proceeds of theft: either tax evasion by the rich in a country such as India where the tax base is derisory; or bribes, agency commissions and other corrupt earnings which are so important in the fortunes of third world elites. Curiously, flight occurs because flight capitalists apprehend government action to seize assets but can only take place if the threatened action never takes place; illegal capital flight and tax evasion does occur in advanced capitalist countries but much less than in Third world countries that can neither institute effective controls nor simply transfer surplus openly as the colonial administrations of those very countries once did.

Now the reason that this description is not adopted by international agencies is, I wish to submit, that it is the West that benefits from such theft; especially the United States and the United Kingdom; which is why the international institutions the US dominates, the Fund and Bank have so long campaigned for convertibility, and claimed controls to be counterproductive, and welcomed returning capital flight as evidence of the success of a country's policies. This is of a continuity with the transfers of the multinationals, effected in various ways; and of a continuity with colonial drain.

## **MONEY LAUNDERING AND THE UNITED STATES**

America benefits significantly from funds laundered by companies, banks and financial institutions. Together all this laundering brings in significant capital. This, along with the investments in US instruments (such as United States Treasury securities and corporate stocks and bonds) by the Asian economies has helped the US to finance its current account deficit.

The U.S. net international investment position at yearend 2004 was - \$2,484.2 billion ... largely due to substantial net foreign purchases of U.S. Treasury securities and U.S. corporate bonds...Foreign-owned assets in the United States ... increased ... to \$12,515.0 billion with foreign direct investment in the United States valued at market value” (Bureau of Economic Analysis, 2005).

There was significant flight to the dollar when the Soviet Union collapsed and was looted. Raymond Baker an eminent scholar at the Brookings Institution, and author of *Capitalism's Achilles Heel* (John Wiley, November 2005) has estimated that as much as half a trillion dollars may have left Russia in the nineties, and a significant part of

that has migrated to the United States (Baker 2003, p.5; Senate Money Laundering 1999, p.85).

The fact of widespread capital flight to the US has been independently documented in a study which has offered examples of how this work: Russian caviar is exported to America at \$3 a kilo and 5,642 kg were exported in 1999, while actual market prices have ranged around \$5,000. In the same year Russia imported bicycle tyres at \$364 each when the actual market price outside Russia could not have been more than \$30 (Boyrie et al, 2004). Much the same happened when the Asian economies suffered massive capital flight in the nineties.

Baker has shown that American multinational banks and corporations developed techniques for mis-pricing, false documentation, and for setting up fake companies, shell banks, and developing business in tax havens and secret banking jurisdictions, since they play the important role of funnelling funds to the United Kingdom or the United States. These techniques were subsequently adopted by drug cartels in the 1960s and 1970s and by other criminal syndicates during the 1980s. More recently, terrorists have adopted the same mechanisms originally developed by multinationals.

Baker points out that US law tolerates money-laundering when that occurs on the basis of money 'earned' outside the US:

Anti-money laundering legislation in the United States identifies more than 200 classes of domestic crimes, called **predicate offenses**. If a person knowingly handles the proceeds of these crimes, then a money-laundering offence has been committed. However, only 12 to 15 of these offenses are applicable if the crime is committed outside U.S. borders, and these have to do principally with drugs, crimes of violence and bank fraud.' (Baker 2003, p.2; House Committee Money Laundering 2000 p. 105)

US regulations do not currently respond to these money laundering systems. Although the United States has a Foreign Corrupt Practices Act (1998) that makes it illegal for Americans to bribe foreign government officials, it is not illegal to handle or solicit funds acquired from corruption committed in any jurisdiction outside the US (House Committee Money Laundering, 2000, 106).

US regulators have turned a blind eye to the frequent failure by US banks to file "Suspicious Activities Reports". In a number of transactions concerning trade deals or government contracts, an unvarying percentage of the transaction has been paid out of certain accounts in banks to third parties no matter the size of the deal – into another account in the same bank (House Committee Money Laundering, 2000, p. 109).

This raises suspicion that these may be kick backs – why else would the identical percentage of the amount of the deal be paid into the account of a third party unless he were some sort of facilitator or commission agent? Such transactions should invite further attention. Indeed, banks are enjoined by regulation to investigate such

transactions but they generally have chosen not to do so, because US regulators do not pursue such negligence.

The United States has enacted an Advance Pricing Agreement that makes it difficult for foreign corporations with local subsidiaries in the United States to mis-price trade in order to take tax-evading money out of the United States, placing the onus for demanded clarifications squarely on the suspected evader. Yet officials turn a blind eye to mis-pricing that brings tax-evading money from other countries *into* the United States. The US has never addressed money being brought into America through transfer pricing, for instance. It is entirely concerned with *outflows, not inflows*. (House Committee Money Laundering, 2000 , pp.108-9)

Karin Lissakers has discussed the lending boom to the Third World during the 1970s and 1980s and the collusion of US bankers in siphoning funds off to the private accounts of the Third World elite. The Edge Act banks were set up in Florida for the specific purpose of laundering Latin American capital flight funds. Capital flight from many developing economies and now deposited in money centre banks – large banks with an international presence and important wholesale business, such as Citibank or JP Morgan Chase which are involved in all the important areas of financial activity, namely, corporate finance, trading, distribution and portfolio business -- has frequently matched or exceeded the amounts borrowed by those countries (Lissakers 1991).

Lissakers cites a World Bank estimate that Argentina, Mexico and Venezuela and perhaps other Latin American countries in the 1980s had private deposits abroad which exceeded their sovereign debt. A large part of these funds were held in the US. She points out that in 1984 US Treasury Secretary Baker had the withholding tax on non-resident owners of US securities withdrawn, in order, as Rudiger Dornbusch commented, “for foreigners to use the US financial system as a tax haven.” (Dornbusch, 1987 quoted by Lissakers).

Taxes in the US are generally withheld at source by the Internal Revenue Service on earnings in bank deposits and portfolio investments. But the Reagan Administration amended law to provide a special exemption to foreign investors in US securities and bank deposits from this tax withheld at source. This exemption continues today. Such foreign investors are in fact paying no taxes anywhere; in courting them, the United States has become an important tax haven.

As the conservative American business economist Lawrence Hunter has pointed out:

For nearly two decades, US law has encouraged foreigners to invest in US banks and debt securities by imposing no tax on interest earned on foreign deposits (Hunter, 2002)

He gives instances of opportunities for such investment by foreigners: ‘interest on bank deposits with US banks is exempted (871(i)(2)(A))’ (Hunter, 2002). Another important benefit is that:

‘Enacted in 1984, the portfolio-interest exception (section 871(h)) is perhaps the greatest single example of Congress’s attempt to attract offshore investment’ And why has this been done? It is in the interests of the United States. (Hunter, 2002.)

Again to quote Hunter:

The rationale of the portfolio-interest exception is perhaps the purest example of enlightened self-interest and realism in attracting foreign capital. .... analysts generally believe that this provision has attracted somewhat over **\$1 trillion** in foreign capital to the United States. Former senior Treasury official, Stephen J. Entin (currently President of the Institute of Research on the Economics of Taxation) estimates that private foreign investment here is \$8 trillion, of which about \$1 trillion is bank deposits (emphasis added by author, Hunter, 2002.).

Since America benefits, runs his argument, it should assist such flight capitalists in keeping their money inside the US:

Non-resident aliens who place deposits in US banks ..., may be **escaping oppressive tax burdens**, while others may be fleeing corruption and crime. In either event, the **US economy benefits greatly from gaining access to their capital**. .... This capital stimulates economic growth and creates jobs, benefiting US workers and business owners. ....” (Hunter, 2002, author’s emphasis)

This is really a straightforward admission that the purpose of these amendments is to attract flight capital, including the money of those who don’t want to pay taxes.

The Reagan Administration provided anonymity to foreign owners of US bonds when it converted them to bearer bonds in 1985. Bearer bonds are debt instruments in which the investor need not be registered with any authority in the world, and may remain entirely anonymous and transfer such bonds to whomever the investor pleases. They are, therefore, ideal for the purpose of laundering money.

### **Private Banking**

Yet what has been equally important has been the willingness of US authorities to tolerate the enormous expansion of the US private banking industry. Private banking in this case does not merely refer to the general private banking sector but rather to the highly specialised business of soliciting and managing of the deposits of very wealthy overseas clients; these clients keep their wealth in a place other than their domicile because the money is often criminally or corruptly acquired or they are avoiding taxes at home.

The private banks serve only 'high net worth' individuals, the very wealthy from all over the world, with a great deal of personal attention, and a guarantee of absolute secrecy. In London, for instance, the Bank of America private bank is located in the mansion that Charles I gave Nell Gwynn, but is unlisted in the London telephone directory, and unknown to most officers of Bank of America London. The 'banques privees' of Switzerland became known between the Wars as the home of flight capital from other parts of Europe; essentially this is the role of the international private banking business which now has a global clientele, which has grown dramatically with independent states in the former colonies, and with the requirement of serving flight capital from all of them, beginning with India.

In America, this grew significantly on Latin American capital flight, and was centred in what were called the 'Edge Act' banks, located in Florida (the Edge Act permitted exceptions to the controls on inter state banking developed during the Depression). These banks handled suitcases of cash from Latin American flight capitalists in the 1970s; they were presumed to be simply stealing their countries' wealth, but often turned out to be drug dealers as well. The US private banking business grew explosively in the Seventies with the great financial explosion of recycling petrodollars; and since then has defied effective regulation, since it lives on the fear that regulation might prompt such capital to fly out again.

A dramatic example of public knowledge about money laundering in the US is provided by the events of the summer of 2004 when the Riggs Bank scandal broke out. The Riggs Bank had been laundering money for many years, with the compliance of officials of the Office of the Comptroller of the Currency appointed to oversee it. Moreover, for years the bank had been advertising its money laundering services on its website in the following manner:

The Riggs Bank, N.A., of Washington D.C., offers a full range of international private banking services. Our International Service Banking office provides discreet, personalized, and specially adapted activities needed by prominent foreign customers...' (RIGGS, 2000)

As investigations by the Senate Subcommittee on Investigations showed, Riggs was involved in systematic money laundering of the proceeds of crime including probably the narcotics trade by General Pinochet, as well as Omar Bongo of Equatorial Guinea, and what investigators suspected was a Saudi contribution to the September 11 hijackers (Senate Subcommittee Riggs Report 2004, p. 2). All such information is in the public domain, not because of vigilance by authorities such as the office of the Comptroller of the Currency, which frequently colluded with the bankers, but because of articles in the press based on leaks and investigations by journalists of *Le Monde* and *Washington Post* among other papers, and the work of the Minority of the Senate Subcommittee on Investigations, especially Senator Carl Levin, and the Minority Staff, especially Elise Bean and Robert Roach.

The case of Riggs was significant: it was no Panamanian hole in the wall but rather the leading Washington DC based bank founded in 1836.

Its customers have included twenty-two American Presidents including Abraham Lincoln and Dwight Eisenhower as well as prominent personalities such as General Douglas MacArthur. Riggs financed the Mexican War and the purchase of Alaska and Samuel Morse's invention of the telegraph. It was instrumental in the setting up of the United States Federal Reserve.

The head of its investment banking division was Jonathan Bush, brother of the former President and therefore uncle of the present one, and formerly head of the family investment bank, J Bush and Co. The bank and its promoters have had enormous influence and access in the nation's capital. President Bush even stopped during his Inauguration Parade to greet chairman Albritton (DAY 2001), and the annual dinner in honour of Confederate General Robert Lee was the first public appearance by President Bush and Vice President Cheney after the September 11 terrorist attacks (O'Brien, 2004).

Senator Carl Levin ranking Democratic Senator on the Sub Committee on Investigations, and former Chair of this committee pointed out that with 60 accounts and \$700 million in them, Equatorial Guinea was the bank's largest customer (Levin, July 2004). Levin describes how Riggs went out of its way to help the E.G. president set up an offshore shell corporation in the Bahamas called Otong (Levin, July 2004). An offshore shell corporation is one that is set up in jurisdictions that levy no income tax, and have a minimal investigative regime. This device is also used by many major corporations that are actually operationally based in the US or EU in order to avoid taxation; the headquarters in, say New York, becomes a subsidiary of a Cayman Islands corporation. Obviously, with such shell corporations in the Bahamas, Riggs knew that they were laundering the President's money. At least one of these deposits was personally brought into Riggs Bank by the Riggs account manager who handled the E.G. accounts:

He carried the funds in a suitcase of plastic-wrapped dollar bills weighing 60 pounds or more. If that kind of cash deposit doesn't make a bank sit up and ask questions, I'm not sure anything will (Levin, July 2004).

US regulators were aware of Riggs' non compliance with US anti money laundering law, but did nothing. Even the possibility that Riggs' negligence and greed may have aided the September 11 bombers of the World Trade Centre did nothing to impart a sense of urgency to federal regulation, says Levin. Levin is no conspiracy theorist, but a mainstream Democrat, known for working closely with Republican Senator McCain in running the powerful Armed Services Committee as well as the Subcommittee on Investigations with Senator Coleman. As he goes on to say:

In November 2002, media stories began alleging possible connections between certain Riggs accounts associated with Saudi Arabia and two of the 9-11 hijackers (Levin, 2004).

Yet, amazingly, it still took another year for the agencies to impose a \$25 million civil fine on the bank for moneylaundering

Another example of the linkages between the highly respectable Riggs Bank and international crime is given by Levin's report on how the bank assisted the Chilean dictator Pinochet, who had been accused of murder, torture, corruption, narcotics and arms trafficking. Riggs went out of its way to solicit his business. In 1994, top Riggs officials travelled to Chile and asked Pinochet 'if he would like to open an account at Riggs Bank here in Washington, D.C.' (Levin, July 2004). Unsurprisingly, 'Mr. Pinochet said yes. The bank opened an account for him personally, helped him establish two offshore shell corporations in the Bahamas ... Mr. Pinochet eventually deposited between \$4 and \$8 million in his Riggs accounts' (Levin, July 2004).

Riggs' 'Know your Customer Profile' for Pinochet's business interests states:

The client is a private investment company domiciled in the Bahamas used as a vehicle to manage the investment needs of a beneficial owner, now a retired professional, who achieved much success in his career and accumulated wealth during his lifetime for retirement in an orderly way.

The client is a company, and the term "beneficial owner", the language of private banking, describes the real client, whose identity is kept secret in all dealings in the bank itself. So Citibank private bank, for instance, will not tell the Citibank investment bank the identity of investors, but only the names of corporations that they own.

'Success in his career' is an euphemism for a trail of murder and torture, which began with Pinochet's overthrow of a legally elected government. The profile provides the following description as the source of wealth and hence the source of funds in the account- 'High paying position in Public Sector for many years' (Senate Riggs Subcommittee 2004, p 25).

In 1998 Mr. Pinochet was arrested in London on charges of crimes against humanity and a Spanish magistrate issued an order seeking to freeze his bank accounts. The order, requiring the attendance of Pinochet on trial for murder of Spanish nationals in Chile, was enforced in the United Kingdom under reciprocal arrangements. Riggs ignored the order of the court and secretly helped him move money from London to the United States. The law enforcement authorities were not alerted to these movements. In 2000, after a British newspaper alleged that Mr. Pinochet had over \$1 million in accounts at Riggs Bank, Riggs altered the name on his personal account – changing it from 'Augusto Pinochet Ugarte' to 'A.P. Ugarte'. The US Office of the Comptroller of the Currency (OCC) did not even consider taking enforcement action when the OCC was made aware of major irregularities. And the OCC Examiner-in-Charge of Riggs thereafter took a job with Riggs Bank (Senate Riggs Subcommittee 2004, pp.18-37).

The Riggs Bank example has been cited here because it had such a prominent and respectable history. However, it is far from being a lone example of how money laundering works. Most US banks have made no effort to hide the 'special'

laundering facilities that they provide. For example, a brochure for Citibank's private bank advertises the attractions of the secrecy jurisdictions of the Bahamas, the Cayman Islands, Jersey and Switzerland (**Senate Money Laundering 1999**, p.7). This brochure goes on to advertise the advantages of using a PIC or private investment corporation. One advantage is: 'your ownership of the PIC need not appear in any public registry.' (**Senate Money Laundering 1999**, p.7)

As Levin points out that American banks have circumvented the official prohibition that they must not set up secret accounts that cannot be scrutinised by the authorities by going offshore to destinations where such legal scrutiny does not apply. Being multinational banks, these US banks have no problems in servicing the needs of their clients by managing these offshore financial deposits (**Senate Money Laundering 1999**, p.7) Citibank is one American bank willing to provide just this kind of service to its clients. It is the largest bank in the United States, it has one of the largest private bank operations, and it also has the most extensive global presence of all U.S. banks. In the words of Levin, it also had 'a rogues' gallery of private bank clients' (**Senate Money Laundering 1999**, p. 7)

Levin lists Citibank's rogues' gallery:

- Raul Salinas, brother to the former President of Mexico; now in prison in Mexico for murder and under investigation in Mexico for illicit enrichment;
- Asif Ali Zardari, husband to the former Prime Minister of Pakistan; now in prison in Pakistan for kickbacks and under indictment in Switzerland for money laundering;
- Omar Bongo, President of Gabon; subject of a French criminal investigation into bribery;
- sons of General Sani Abacha, former military leader of Nigeria; one of whom is now in prison in Nigeria on charges of murder and under investigation in Switzerland and Nigeria for money laundering;
- Jaime Lusinchi, former President of Venezuela; charged with misappropriation of government funds;
- two daughters of Radon Suharto, former President of Indonesia who has been alleged to have looted billions of dollars from Indonesia;
- and, it appears General Albert Stroessner, former President of Paraguay

and notorious for decades for a dictatorship based on terror and profiteering (**Senate Money Laundering 1999, p.7**).

And these are just the clients we know about. Other banks have similar accounts. When important international criminals have been assisted by the single most important American bank, one can see how unlikely it is that American regulators will be able to intervene selectively against only certain categories of crime.

Levin also discusses Banker's Trust and how its officials feared that they would be murdered by their clients if they revealed their names to the US Government:

The legal counsel for Bankers Trust private bank asked the Subcommittee not to make public any information about an account of a certain Latin American client because the private banker was concerned that the banker's life would be in danger if the information were revealed (**Senate Money Laundering 1999, p.8**).

Clearly the fact that its business could not be revealed even to the United States Senate was an acknowledgement that the bank was participating in criminal activity. This document gives one an idea of the extraordinary scale of the US private banking business, and how focused it is on Third World elite clients that have often made their fortunes by stealing from their countries.

Robert Roach, Counsel to the Minority, explained how Citibank dealt with the Salinas account, held by the brother of the Mexican head of state:

“The private bank, through the direction of Amy Elliott, private banker to Mr. Salinas, established a shell company for Mr. Salinas with layers of disguised ownership. It permitted a third party using an alias to deposit funds into the accounts, and it moved the funds out of Mexico through a Citibank concentration account that aided in the obfuscation of the audit trail.

Cititrust in the Cayman Islands activated a Cayman Island shell corporation called a PIC, or private investment corporation, called Trocca, Ltd., to serve as the owner of record for the Salinas private bank accounts. ...

Cititrust used three Panamanian shell companies to function as Trocca's Board of Directors. Cititrust also used three Cayman Island shell companies to serve as Trocca's officers and principal shareholders.”

In fact, Cititrust has controlled all six of these shell companies and routinely uses them to function as directors and officers of PICs that it makes available to private clients.

“Later, Citibank established a trust, identified only by a number, to serve as the owner of Trocca, Ltd. Raul Salinas was the secret beneficiary of the trust.

The result of this elaborate structure was that the Salinas name did not appear anywhere on Trocca's incorporation papers. The Trocca, Ltd. accounts were established in London and Switzerland. The private bank did not disclose the identity of Trocca's owner to any private bank personnel other than the personnel who administered the company and personnel required by Swiss law to know the beneficial owner. And Ms. Elliott, who knew Mr. Salinas was a client, did not know the name of his shell corporation. The private bank did not use Mr. Salinas' name in bank communications, but instead referred to him as "Confidential Client No. 2," or "CC-2."

To accommodate Mr. Salinas' desire to conceal the fact that he was moving money out of Mexico, Ms. Elliott introduced Mr. Salinas' then-fiancee Paulina Castanon as Patricia Rios to a service officer at the Mexico City branch of Citibank. Operating under that alias, Ms. Castanon would deliver cashiers checks to the branch where they would be converted into dollars and wired into a concentration account in New York.”

The concentration account is a business account established by Citibank to hold funds from various destinations prior to depositing them into the proper accounts. Transferring funds through this account enables a client's name and account number to be removed from the transaction, thereby clouding the audit trail.

“From there, the money would be transferred to the Trocca, Ltd. accounts in London and Switzerland. Between October 1992 and October 1994, more than \$67 million was moved from Mexico to New York and then on to London and Switzerland by way of this system.”

After Mr. Salinas was arrested, Hubertus Rukavina, the head of Citibank Private Bank at the time, suggested that the Salinas accounts in London be transferred back to Switzerland because they would be afforded more secrecy there.

“Also, according to Mrs. Salinas, Ms. Elliott advised her that it might be wise to move the Trocca, Ltd. account out of Citibank because it might be more difficult for Mexican authorities to obtain account information from a non-U.S. bank.”

Later arrested for murder, he had no legitimate business that could account for such earnings. There was no curiosity about where this money came from: instead, his banker Ms. Elliott, wrote to her colleagues in June 1993 that the Salinas account:

... is turning into an exciting, profitable one for us all. Many thanks for making me look good. (Roach testimony, Senate Money Laundering 1999, p.15).

The client profile in August 1996 contained only this explanation of President Bongo's background: "Head of State for over 25 years" It explained that his wealth was "Self-made as a result of position. Country is oil producer." When Alain Ober of Citibank was cross examined about Omar Bongo this is what he said about his client:

Senator COLLINS. Did you ever ask President Bongo directly about the sources of the millions of dollars that he was depositing in your accounts?

Mr. OBER. No, I did not.

Senator COLLINS. Why didn't you pursue this?

Mr. OBER. Well, Senator, let me say that it was-it felt very awkward to ask information, that kind of information to a head of state, while at the same time I was able to gather the information that I wished to obtain from reliable sources and I was able to develop information about sources of wealth of our client.

The Gabon Elf Aquitaine scandal broke in the French press early 1997; yet in an e-mail dated April 28, 1997, the private bank's African marketing head, Christopher Rogers, urged Mr. Ober and others not to make judgments based on the press reports and to "be extremely careful about sharing such information with regulatory authorities because we can't answer for it."

On August 6, 1997, Le Monde, a major French newspaper, reported that a Swiss prosecutor had declared in open court that President Bongo was "the head of an association of criminals." As late as November 1998, when Citibank was again considering terminating the Bongo accounts, their top manager in Africa, Mr. Rogers, wrote the following warning:

"We ought to insure that we face this issue and its possible implications with our eyes wide open. Whatever internal considerations we satisfy, the marketing fallout is likely to be serious. [President Bongo's] family and friends extend far The impact on [the Private Bank's] marketing in Francophone, Africa will be serious."

Elise Bean, then Chief Counsel, recounts the case of Mohammed, Ibrahim, and Abba Sani Abacha, three sons of General Sani Abacha, former military leader of Nigeria from 1993 until his death in 1998. General Abacha has been widely condemned as responsible for one of the most corrupt and brutal regimes in Africa.

General Abacha's sons, Mohammed and Ibrahim, first became clients of Citibank Private Bank in 1988. They began by opening accounts in London and later opened accounts in New York.

"Over time they required, and the Private Bank agreed to provide, a number of

secrecy measures, including three special name accounts, an offshore shell corporation, and the use of two sets of codes to refer to funds transfers. The London accounts held as much as \$60 million at one time. The New York accounts generally stayed under \$2 million, but in one 6-month period saw deposits and withdrawals of almost \$47 million.

A few weeks after General Abacha's death in June 1998, and the initiation of a Nigerian Government investigation into bank accounts held by him, his family and associates, the General's wife was stopped at a Lagos airport with 38 suitcases full of cash, and his son was found with \$100 million in cash. These and other funds were seized by the Government of Nigeria.”

In September 1998, while the Nigerian Government investigation was on, the Abacha sons made an urgent request to Citibank to transfer \$39 million out of their London accounts. Citibank assisted the Abacha sons in moving \$39 million out of their Citibank accounts in the face of a Government investigation into their funds.

The primary private banker in London who opened and managed the accounts was Michael Matthews; in New York it was Alain Ober. Amazingly “Both Mr. Matthews and Mr. Ober were required to perform due diligence reviews of the Abacha sons prior to accepting them as clients and while managing their accounts. Mr. Ober has indicated, however, that he was unaware for 3 years, from 1993 until 1996, that the sons' father had become the military leader of Nigeria, until a Citibank colleague mentioned it to him by chance in January 1996. The documents suggest that Mr. Matthews was also uninformed of General Abacha's status.”

## **THE PATRIOT ACT**

The Patriot Act as well as other legislation seems to make foreign criminal acts illegal in the United States. Yet as Raymond Baker points out, the Patriot Act's definition of 'specified unlawful activity' provides the loophole needed for money laundering operations. He argues that for crimes committed in the U.S., “the definition is very extensive. For crimes committed outside the U.S., it's very restricted, essentially to drug trafficking, terrorism, corruption, bank fraud and some treaty violations. Foreign tax evasion and handling the proceeds of foreign tax evasion is not a specified unlawful activity under U.S. law” (email by Baker to author, 28<sup>th</sup> April 2005)

Anti-money laundering legislation in the United States identifies "predicate offences" where a person knowingly handles the proceeds of any of 200 classes of crime if committed domestically. Yet the proceeds of all but 15 such crimes are exempt by US law, including the Patriot Act 2001, if the crimes are committed overseas. These include such acts as racketeering, securities fraud, credit fraud, forgery, embezzlement of private funds, burglary, trafficking in counterfeit and contraband goods, slave trading and prostitution.

So it is perfectly legal for an American private banker to knowingly solicit the deposit of a South Asian trafficker in women or in illegal immigrants. This amounts to an invitation to those who profit by such crimes to bring their money to the US.

The definition of what constitutes the 'proceeds of a foreign crime' is given Section 320 of the Patriot Act which states that:

f) There is extraterritorial jurisdiction over the conduct prohibited by this section if— (1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000 (Patriot Act 2001).

Note that should the crime be entirely committed outside the US continent, the proceeds of the crime may presumably be safely banked in America. Foreign governments headed by corrupt politicians will not file suit in America to test these laws and to curb their own corruption. And the United States Government of its own does not examine whether the proceeds of corruption transit through or are deposited in American banks. The same businesses of private banking, tax havens and other financial services that have sucked in money from around the world to the United States, have also enabled such attacks on it that Raymond Baker calls money laundering 'Capitalism's Achilles Heel'.

### **UK TAX HAVENS**

London is an important financial centre, and an important recipient of laundered funds; a significant part of these come from the world's tax havens, led by the Crown Colonies, the offshore possessions of the Queen of England. These are nominally independent, having delegated powers such as the conduct of diplomatic relations to the UK Government. In reality, this is a legal fiction as the Channel Islands function as an extension of London and permit the United Kingdom to facilitate money laundering without accepting responsibility for it. The motives of the UK government are identical to those of the United States, namely attracting foreign capital to the British economy. The Edwards Report has played an important role in exposing the scale of money laundering in the Channel Islands. The Report points out the illusory nature of many of the directorships of the companies listed in the Channel Islands:

11.2.2 Although formally Directors, some of these "nominee" Directors are Directors of so many companies that they could not credibly discharge the proper duties of a Director with respect to all of them, especially in cases where they have no professional or technical support (Edwards 1998).

Virtually the entire local population seem to be company directors. It is difficult to believe the scale of these money laundering facilities so again I quote from the Edwards Report. Para 11.2.3 describes the population of Sark, the capital, and the distribution of the directorships of these companies:

In Sark itself, where the total population is 575, information fairly readily publicly available in the autumn of last year indicated that:

- total Directorships held by Sark residents may have been around 15,000 or more;
- 3 residents appeared to hold between 1600 and 3000 Directorships each;
- a further 16 residents appeared each to hold more than 135 Directorships each; and a further 30 residents appeared each to hold between 15 and 100 Directorships.

The Edwards Report concluded that the residents of Sark, the smallest of the four Channel Islands located some 80 miles south of the English coast, were hardly entrepreneurs driving global industries. Rather Sark's residents were most likely front men who were acting on behalf of the real clients located in some other country. Para 11.2.5 of the Edwards Report notes that:

Whatever the precise figures may be, the perception has arisen that many of the Directors on Sark are Directors in name only, not in substance, and the real Directors -- or owners of the accounts -- are other people altogether (Edwards 1998).

Much discussion has been conducted on how tax evasion is as fundamental a right as free speech, and how capital flight should act as a corrective to bad economic management. It has been inadequately understood how capital flight, which we argue uses the same methods, has impoverished so much of the Third World.

Intervention is both selective and useless, since the drugs deals, the arms deals, and the funds to terrorists cannot be separated from all the other unregulated flow of capital traffic. In their funding structures and transfer mechanisms, these 'criminal' funds are indistinguishable from so called 'legitimate' capital flight and money laundering transactions. It is easy enough for a private banker to claim: I am not laundering money for drugs, just arms deals, or tax evasion money, or corruption. Like many countries India for instance undertakes no surveillance of external money laundering at all, leaving it to the markets to do their work. This is in tune with the global trend -- there is no regulation of the private banks, the tax havens, the trusts, or law firms and accountants who serve them.

The monitoring of international export and import prices would indicate over-invoicing and under-invoicing, and could go a long way towards restricting such capital flight. Customs and income-tax scrutiny and regulation of trade could significantly limit the scope of such concealed flows, as is evident in the success the United States had in its intensive regulation of foreign multinationals, especially Japanese, engaged in transfer pricing to avoid US taxation in the 1980s and 1990s. Anti-money laundering initiatives should include regulation for the legal profession, for accountants, the tax havens and the private banks.

We can see enough in the case of India to know that the flight of illegally acquired or illegally held wealth is an important issue here. Zdanowicz, Pak and others documented major systematic mis pricing in the Indian trade account over a period. The Ambani “crocodile” companies abroad which invested in their businesses as supposed NRIs were well documented in the Eighties. Many of the businesses that raised large sums of money from the public financial institutions and the general public in the Eighties – firms such as Essar, Usha Rectifier, Oswal Agro – seem to be in trouble, though their promoters have graduated to an international lifestyle. Mauritius has been well documented as one route for round tripping funds. Indian balance of payments statistics have been incoherent and inconsistent, and studies have shown both large illegal outflows at the time of crisis as well as “round tripping” inflows more recently. All this would seem to indicate that India should be concerned about capital flight, and even the nature of returning capital.

It is impossible to act against the concealment of wealth which is criminal in **all** jurisdictions unless states are prepared to act against concealment that is criminal in **any** jurisdiction. It is impossible to segregate the range of illegal acts which, when presenting themselves as financial transactions, appear identical. The effort to permit one sort of crime while cracking down on another has doomed the entire effort to control crime. If one wants to act against one, one must act against all.

The difficulty in implementing the strategy described above is that none of this can be accomplished without substantial international cooperation, and the exchange of information on funds that flee any jurisdiction to be concealed elsewhere in some safe haven.

Those who facilitate money laundering and capital flight services and employ such funds constitute a significant lobby, and include many of the world’s largest banks, law firms and accounting firms. Opposition to intervention would also include many important multinationals, especially the oil companies, large contracting and engineering firms.

**I wish to place on record my deep debt to Professor AKN Bagchi and Professor Marika Vicziany for guidance in my research on money laundering; this is preliminary work, and there is much else they have suggested and developed which I have not incorporated. This paper draw upon my chapter in a forthcoming work: Vicziany AM (ed), *Controlling Arms and Terror: After Bali and Baghdad*, In Press, Edward Elgar, 2005.**