Legal implications of being on FATF blacklist

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ANALYSIS

In the not-so-distant past, war and military actions played a significant role in advancing the foreign policy objectives of various countries, particularly the United States. However, today, sanctions have replaced war, and sanction tools and policies are used to change the policies and behavior of target governments or even to alter the ruling system of the target government.

Thomas Jefferson, the third US president, said in 1808 that in foreign policy, there are only three options: Sanctions, war, and surrender and tribute. However, in practice, sanction policies have become the most important tool of US foreign policy. Policymakers in this country prefer to use economic sanctions as a substitute for war. Because by imposing sanctions on target countries, without incurring human casualties and enormous expenses and without spending ammunition, more or less the same results are achieved.

American author Bo Ram Kwon, in his 2013 dissertation titled "The Effectiveness of Sanctions Revisited: An Empirical Analysis Using a Bargaining and Enforcement Framework," states: "...Since economic sanctions can inflict significant costs on a target without generating as much human cost and public opinion backlash as the use of force, they have become a much-preferred policy to induce change in a target state's behavior.' Richard Nephew, in his book titled "The Art of Sanctions: A View from the Field," says that the goal of US sanctions is to create hardship, or better put, to inflict pain and frustration, in such a way that the target country changes its behavior.

The US has always used sanction policies alongside other tools for various objectives. For example, in the 1950s and 1960s, to contain communism and prevent its spread, it imposed sanctions on communist countries as well as on anyone with trade relations with them. In the 1970s, it enforced sanctions on countries under the pretext of human rights violations and in the late 1980s, on some countries under the pretext of terrorism, drugs, and the proliferation of weapons.

In recent years, US sanctions against Iran have extensively targeted various sectors of Iran's economy, including banking, insurance, transportation, metals, oil, petrochemicals, etc. It is evident that the primary objective is to compel Iran to change its international behavior through economic pressures and constraints.

Broader effects of being on FATF blacklist

On the other hand, the Financial Action Task Force (FATF), by providing a set of international standards, aims to support the integrity of the global financial system through anti-money laundering and countering the financing of terrorism (AML/CFT) and preventing the production of weapons of mass destruction. Countries that do not cooperate with this intergovernmental organization, after going through certain stages, like Iran, North Korea, and Myanmar, are placed on the so-called blacklist. The effect is that, according to the provisions of Recommendation 19 and Paragraph 20 of Recommendation 10, they are subject to countermeasures, and all countries are obligated to minimize their financial interactions with them and place all their financial and commercial activities under strict surveillance and control.

These measures can have broader and more fundamental sanction-based effects than US sanctions. Considering the United Nations' support for FATF recommendations, the relevant country may even fall under Chapter VII of the UN Charter and face military enforcement.

Non-cooperation with FATF exacerbates sanctions

Therefore, it seems that the effects of non-cooperation with FATF and remaining on the blacklist exacerbate sanctions and equate to giving the US sanctioning entities the rope to hang you with! It effectively transforms the unilateral economic sanctions of the US into multilateral and comprehensive global sanctions.

To better understand the above, we first briefly introduce FATF recommendations, then discuss how countries are systematically controlled by this body and Iran's position, followed by an examination of how sanctions are systematically intensified.

FATF recommendations

Financial crimes such as money laundering, so-called terrorist financing, and the like have become international problems and have contributed to the spread of other forms of economic corruption in various countries. Therefore, international and intergovernmental organizations and governments have deemed transnational cooperation in systematically combating them inevitable. To prevent these crimes and avoid the damages caused by them, solutions have been devised, and principles and rules have been established and implemented.

Actions such as the Vienna Convention (1988), the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime (1990), the EU Money Laundering Directive (1991), the Basel Committee Statement, the Resolution of the International Organization of Securities Commissions (1992), and the like can be considered the offspring of crimes such as money laundering. Also, the Financial Action Task Force (FATF), which is considered an independent intergovernmental organization, was established in 1989 with this approach.

Apart from the G7 member states, the European Commission, and eight other countries that are considered its founders, the number of members has now reached 35 countries, and more than 200 judicial systems and a multitude of regional organizations and international institutions cooperate with FATF. Thus, its standards and recommendations are widely applied. This group is obligated to monitor the progress of its members in implementing the proposed recommendations and, by examining new methods of terrorist financing and money laundering, amend the rules for combating them to enhance the level of cooperation in enforcing financial crime rules.

FATF recommendations are a set of international standards aimed at supporting the integrity of the global financial system through combating money laundering (AML) and terrorist financing (CFT), and preventing the production of weapons of mass destruction. In other words, the goal of these guidelines is to create transparency in the financial system and, consequently, facilitate the examination of criminal activities, help countries combat money laundering, and prevent so-called terrorist financing.

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The Financial Action Task Force (FATF) penalizes Iran during a plenary session in Paris, France, on February 21, 2020, by authorizing member states to take up strict counter-measures against Tehran for not passing appropriate financial safeguarding laws.
FATF

In 1990, FATF guidelines were first published in 40 articles aimed at combating money laundering. In subsequent years, amendments were made to increase their applicability.

Also, after the September 11, 2001, attacks, combating so-called terrorist financing was included among the objectives of this group's guidelines, and in October 2001, eight special guidelines on combating terrorist financing were issued. In October 2004, nine more special guidelines were issued to strengthen international standards.

Finally, in February 2012, 40+9 amended guidelines were published as a clear and robust set, with nine of them dedicated to combating terrorist financing. The current valid set of recommendations is a merged text of previous sets. It is stipulated that FATF must continuously monitor and control monetary exchanges and relationships between banks, financial institutions, and even non-profit organizations, and these controls and monitoring extend to law offices, notary offices, auditing and inspection companies.

Systematic control of countries, Iran's position

In the FATF structure, countries that do not adhere to the above recommendations and standards and do not cooperate in this regard are not treated equally but are classified differently based on the level of cooperation. This classification is briefly as follows:

- Fully compliant countries,
- Largely compliant countries,
- Partially compliant countries,
- And non-compliant countries.

The last group of countries is divided into two types: those with high risk but not deserving countermeasures (grey list) and those subject to countermeasures (blacklist).

In this regard, Iran has been warned in at least eight public statements from 2009 to 2016, and finally, after repeated extensions, in the February 19, 2016, FATF statement, it was strongly urged that if Iran does not reform by June 2016, it will be subject to intensified and effective countermeasures.

Therefore, Iran's then-minister of economic affairs and finance, by signing a high-level political commitment to cooperate with FATF and implement the Action Plan within a one-year period, i.e., until June 2017, managed to temporarily halt the implementation of the FATF decision and, so to speak, suspend Iran's entry into the blacklist.

During the period, despite some efforts, the Iranian government, due to some internal disagreements, could not implement the relevant Action Plan, although FATF granted several extensions until February 2020. But ultimately, due to the incomplete approval of the four bills, Iran was placed on the blacklist.

Currently, on the official FATF website, two countries, Iran and North Korea (plus Myanmar), are on this list. From FATF's perspective, these countries do not have a serious will to combat money laundering and international terrorism. Therefore, they are considered high-risk in terms of economics and investment, and the