

FATF AND PAKISTAN: ANALYZING QUESTION OF LEGITIMACY AND COMPLIANCE EFFORTS

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ABSTRACT

The ongoing efforts to tackle Money Laundering via organizations like FATF and related mechanisms exhibit significant shortcomings. This is primarily due to the inherent issue of legitimacy that plagues FATF. Without addressing and safeguarding the fundamental rights enshrined by the United Nations through its declarations and upheld by the Constitution of the State, these endeavors fall short of achieving their intended objectives. Regarding the effectiveness of efforts to combat money laundering, particularly through organizations like the Financial Action Task Force (FATF). The main criticism revolves around the perceived lack of legitimacy within FATF and the failure to uphold fundamental rights as guaranteed by the UN and state constitutions. Money laundering is a global issue that requires coordinated efforts among nations. The text suggests that FATF and similar mechanisms might be flawed because they may not adequately prioritize human rights and may lack the necessary legitimacy to carry out their mission effectively. This is an important point to consider that how to improve anti-money laundering efforts, as it emphasizes the need to balance security concerns with the protection of rights, freedoms of States. Pakistan's engagement with the Financial Action Task Force (FATF) is constrained by the factors of commitments, obligations, and challenges. In addition to Pakistan's collaboration with the FATF on institutional measures, there is a pressing need to address operational measures, including the 27-point Action Plan mandated by the FATF for Pakistan. Given this context, comprehending the intricacies of combating Money Laundering and Terrorist Financing presents a formidable challenge for both Pakistan and the global community. Why Pakistan is entangled in a complex and seemingly biased framework of international regulations, and if so, how can it navigate this situation? What strategies can Pakistan employ to extricate itself from the FATF predicament? Notably, Pakistan has already outlined a narrative through its Combating the Financing of Terrorism (CFT) Regime and National Action Plan (NAP), emphasizing aspects related to terror financing, the leadership of terrorist organizations, and the role of Non-Governmental Organizations (NGOs).

INTRODUCTION

Financial Action Task Force and Question of Legitimacy

Definition and History of Legitimacy

Legitimacy is one of the oldest problem in the intellectual history of the western civilization. The concept of legitimacy has played an extremely prominent role in social and political philosophy for well over 2000 years. Its history spans 24 centuries.¹

The dictionary definition of “legitimacy” is simply “in accordance with a rule” from the Latin “legis”. But a broader definition is more useful, if for no other reason than the need to also legitimate rules. The definition I will use is therefore that something is legitimate if it is in accordance with the norms, values, beliefs, practices, and procedures accepted by a group.²

¹ Theories of Legitimacy by Morris Zelditch Jr. <https://psycnet.apa.org/record/2001-18767-001>

² id

Per Andersen in his book *Introduction to Law and Legitimacy* states that “If you look up the words ‘legitimate’ and ‘legitimacy’ in The Danish Dictionary of Meanings, they are explained by phrases stating that what has to be legitimate or have legitimacy must be in accordance with current legislation or current norms and morals so that it is justified or acceptable. Thus, the law has legitimacy when it is legal, lawful, and fair or morally sound, i.e. when it is in accordance with current norms in a given society. Thereby, it is supported by society.”³ When evaluating the legitimacy of the FATF and its recommendations, it's essential to consider whether they align with current legislation, norms, and morals in the countries they impact. Legitimacy in this context implies that the FATF's actions and recommendations should be seen as justified and acceptable by the international community.

In summary, for the FATF to maintain legitimacy, it must ensure that its recommendations and actions are not only legally sound but also in tune with the prevailing international norms, fair, morally justifiable, and garner support from its member countries. This perspective underscores the importance of staying attuned to evolving global norms and maintaining a consensus-based approach to its work.

According to The Great Danish Encyclopedia, the concept of ‘legitimacy’ relates exactly to the lawfulness of a political government, a governance or a legislation, and the legitimacy is considered to be subject to the condition that the governed population recognizes the ruler and the exercise of authority as something that should be respected. The legitimacy of a government is thus measured by the acceptance of its subjects rather than the State’s threat of coercion.⁴

Dominik Zaum in his book *Legitimizing the international organizations* opined that, it identifies three reasons why legitimization of international organizations merits further analysis: the recognition of the importance of hierarchy in international order, the growing involvement of international organizations in the

domestic affairs of States, and the emergence of legitimacy gap as a result of rapid social change. It proceeds to unpack the concept of legitimacy and legitimation and to identify three conceptual challenges to examining the legitimation efforts of international organizations. First their Janus faced character as both actors and frameworks for action, second the need of international organization to address different and diverse audience, and third, multi faced relationship between power and legitimation.

In the context of FATF, these challenges are particularly pertinent. The organization operates in a realm where financial regulations and anti-money laundering measures affect both national sovereignty and international financial stability. Its legitimation efforts are critical in ensuring that its actions are seen as just, fair, and in line with the evolving global landscape. By addressing these challenges, international organizations can better navigate the complexities of legitimation and fulfill their roles effectively in an ever-changing world.

John T. Jost and Brenda Major in their book “The Psychology of legitimacy, Emerging perspectives on ideology, justice and intergroup relations” defines the Legitimacy as “The dictionary definition of Legitimacy is simply ‘in accordance with a rule from the Latin ‘legis’”. They further states that something is legitimate if it is in accordance with the norms, values, beliefs, practices and procedures adopted by a group.⁵ Although the definition is good and cover almost all the aspects of the Legitimacy but the rights of the small groups has been ignored in the definition. Like FATF all the countries have to implement the recommendations of the FATF whether they are members of the FATF or not. The small countries have no say in the decision making process of the FATF.

Legitimacy in International Organizations

Lisa Maria Dellmuth, Jan Aart Scholte and Jonas Tallberg in their Research Article *Institutional sources of legitimacy for international Organizations* expresses as : Beyond procedure

³ Book *Introduction to Law and Legitimacy* by Per Andersen
<https://samples.pubhub.dk/9788757498257.pdf>

⁴ id

⁵ The *Psychology of legitimacy, Emerging perspectives on ideology, justice and inter group relations* by John T. Jost and Brenda Major

versus performance said that Recent history has seen international Organizations (IOs) acquire substantially enlarged authority, on the premise that increased transnational policy challenges require expanded regional and global governance. However, whether these higher expectations of IOs translate into actual greater problem-solving depends in part on whether these organizations enjoy popular legitimacy. The more that citizens perceive and to be legitimate – i.e. to exercise its authority appropriately the more the institution may be able to obtain resources, take decisions, secure compliance, and, ultimately, mitigate problems. Conversely, an IO with less popular legitimacy can face greater difficulties to act and impact and indeed may struggle to maintain its role in competition with other sites of governance. The importance of popular legitimacy for IOs requires better understanding of its sources, that is, the conditions under which people view IOs as legitimate.⁶

In the case of the FATF, its legitimacy is closely tied to its ability to strike a balance between setting robust global standards for combating financial crimes and ensuring that these standards are perceived as just and fair by its member countries and the global financial community. Transparency, inclusivity, and adaptability are key elements in maintaining and strengthening its popular legitimacy, which, in turn, can enhance its effectiveness in addressing transnational financial challenges.

In the Book “The legitimacy of international organizations” Jean Marc-Coicaud and Veijo Heiskanen describes “Legitimacy” is a complex phenomenon when it is applied to a national government. It is even more problematic when used in the context of international organizations. In the national context, it means various things. It signifies the acceptance of a government by the (majority of) citizens as being the “true” government of a territory. Legitimacy is thus a highly subjective concept. Some will regard a government as legitimate, while others will deny

the legitimacy of the same government. For international organizations, the situation is even less obvious, because it is not immediately clear who forms the constituency that could regard international organizations as legitimate or illegitimate. Would this constituency consist of governments or individual citizens? For international organizations, the situation is still more complicated. They are created by governments, so their legitimacy depends to a large extent on how they perform in the eyes of those governments. But at the same time, different groups in the public at large also have an opinion about the legitimacy of intergovernmental organizations (IGOs) which, in the long run, will have an impact on government perceptions and actions.

There is also, thus, a question of legitimacy in the eyes of the public at large. However, at the same time, such a policy alienates governments and the larger public in many developing countries that cannot identify with the procedures followed and the results achieved. If, on the other hand, the majority of developing countries push through decisions that are not welcome to the United States and other Western countries, it may boost the legitimacy of the organizations in the eyes of the majority of the world's national governments, but decisions will be difficult to implement and this lack of effectiveness will undermine the legitimacy of these organizations in the long run, even in the eyes of those governments who supported the controversial decisions.⁷

Modern legal Scholer Tyler in his Article Psychology of Legitimacy says; throughout the history of social thought, it has been recognized that people can exercise influence over others by possessing power. Power is the ability to shape the gains and losses of others either by threatening or using coercion to deter undesired behavior or by promising rewards to promote desired behavior. A core aspect of social dynamics, therefore, is that power provides a means to shape behavior with the consequence that, as an early social theorist noted, “The strong

⁶ Review of International Studies (2019) <https://cambridge.org/journals/review-of-international-studies/issue/0094955FF0F089FFB4468E2D9C04BD9B>

⁷ The legitimacy of international organizations by Jean Marc-Coicaud and Veijo Heiskanen <https://collections.unu.edu/eserv/UNU:2407/ebrary9280810537.pdf>

do what they will, the weak endure what they must” (Thucydides 1982, p. 351), or as a recent political leader, Mao Tse-Tung, opined, “Political power grows out of the barrel of a gun.” The argument that behavior in social settings is linked to the ability to reward and punish is not only central to psychological theories, but is also influential in political science, sociology, and economics as well as in law, public policy, and management. While accepting the realities of power in social life, early social theorists including Aristotle and Plato also recognized that seeking to gain influence over others based solely on the possession of power is costly and inefficient. The use of power, particularly coercive power, requires a large expenditure of resources to obtain modest and limited amounts of influence over others. It is therefore important that under some circumstances people are also influenced by others because they believe that the decisions made and rules enacted by others are in some way right or proper and ought to be followed (Zelditch 2001). In other words subordinates also “relate to the powerful as moral agents as well as self-interested actors; they are cooperative and obedient on grounds of legitimacy as well as reasons of prudence and advantage”.⁸ Tyler further says, Legitimacy is a psychological property of an Authority, institution or social arrangement that leads those connected to it to believe that it is appropriate, proper and just.

Although Tylor provides a concise definition of legitimacy as a psychological property associated with an authority, institution, or social arrangement. It suggests that legitimacy is rooted in the perception of appropriateness, propriety, and justice by those who are connected to it. This definition can be applied to the Financial Action Task Force (FATF) to enhance its legitimacy in the following ways:

Perceived Appropriateness: Legitimacy, in the context of the FATF, would mean that those connected to this international organization, including member states, financial institutions, and the broader public, view its actions and recommendations as appropriate. This implies that the measures and standards set by the FATF

to combat money laundering and terrorism financing are seen as fitting responses to the global challenges posed by financial crimes.

Perceived Propriety: For the FATF to be considered legitimate, it must be perceived as acting in a manner consistent with ethical principles and international norms. Its processes and decisions should align with widely accepted notions of propriety in the realm of international financial governance.

Perceived Justice: Justice is a critical component of legitimacy. In the case of the FATF, its actions and standards should be seen as just and fair, both in terms of the burdens they place on member states and the benefits they bring in terms of global financial stability and security.

Connection to Stakeholders: Legitimacy is closely linked to the perceptions of stakeholders connected to the organization. This includes member countries, financial institutions, and the public. The FATF's legitimacy depends on how well it engages with these stakeholders and addresses their concerns and expectations.

Adaptation to Evolving Norms: As norms and societal values change over time, organizations like the FATF must adapt to remain legitimate. What is perceived as appropriate, proper, and just may evolve, and the FATF should be responsive to these changes to maintain its legitimacy. In essence, this definition of legitimacy highlights the importance of perception and belief in determining an international organization's credibility and effectiveness. For the FATF, its legitimacy plays a pivotal role in its ability to set and enforce global financial standards, as well as in gaining the cooperation and compliance of member countries and the financial sector in combating financial crimes. Jean Marco Coicaud in his book *Legitimacy and politics, A contribution to the study of political right and political responsibility* argued that:- Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience. To justify power and obedience simultaneously is the first issue involved in the question of Legitimacy. Upon this twofold demonstration depend both the

⁸ Psychological Perspectives on Legitimacy and Legitimation by Tom R. Tyler

right to govern and what result therefrom, political obligation. But in order for this operation to be successful, it has to fulfill at least three complementary conditions that have to do with the domain of consent, law, and norms, these being in reality in dissociable. An examination of these three notions will allow one to see in what way they are constitutive of legitimacy. This definition delves into the concept of legitimacy and its role in addressing the fundamental political issue of justifying both political power and obedience. This perspective can be applied to the Financial Action Task Force (FATF) in the following manner: Recognition of the Right to Govern: Legitimacy is indeed about recognizing the right to govern. In the case of the FATF, it operates as an international body that sets standards and guidelines for combating money laundering and terrorism financing. Its legitimacy rests on the acknowledgment that it has the authority to create and enforce these standards at the global level. Justifying Political Power and Obedience: The challenge of justifying both political power (in this context, the authority of the FATF) and obedience (the compliance of member states and financial institutions with its recommendations) is a crucial issue. For the FATF to be effective, it must be seen as having the legitimate authority to exert influence on its member countries and the financial sector.

Conditions of Legitimacy: The text suggests that legitimacy depends on three complementary conditions: consent, law, and norms. In the case of the FATF.

Consent: The FATF's legitimacy relies on the consent of its member countries to abide by its standards and recommendations. Member states voluntarily agree to adhere to its guidelines and work together to combat financial crimes.

Law: Legitimacy is also linked to adherence to international legal frameworks. The FATF operates within the framework of international law, and its standards should align with these legal principles to maintain legitimacy.

Norms: The FATF's legitimacy is further established by adhering to globally accepted

norms related to financial integrity and security. These norms shape the expectations and behavior of member states and financial institutions in the international community.

In conclusion, this concept provides a valuable framework for understanding the concept of legitimacy and its relevance to international organizations like the FATF. Legitimacy is not just about having the power to govern but also about justifying that power and securing obedience through the consent of member states, adherence to law, and alignment with accepted norms. For the FATF, maintaining and enhancing its legitimacy is crucial to fulfilling its mission of combating financial crimes on a global scale.

Financial Action Task Force, Question of Legitimacy and Response of Pakistan to FATF Recommendations

Legitimacy plays a crucial role in determining whether these organizations can garner support for their rules and decisions without resorting to coercion. The Financial Action Task Force (FATF) is a prime example of an international institution that relies on legitimacy. It is a global standard-setting body for anti-money laundering and combating the financing of terrorism (AML/CFT), and its recommendations have significant implications for the financial systems of countries worldwide. FATF's legitimacy is essential because its rules and assessments can affect not only governments but also individuals and businesses.

From the perspective of the FATF, legitimacy is indeed a valuable asset. If the FATF is perceived as legitimate, countries are more likely to comply willingly with its AML/CFT standards and recommendations. Compliance becomes a matter of cooperation rather than coercion, making the international financial system more secure and transparent.

The question also brings up an interesting twist by suggesting a focus on global legitimacy from the standpoint of political controversy and opposition. This approach raises questions about whether international institutions like FATF align with the desires of the people they affect or primarily serve the interests of the ruling institutions.

In the context of FATF, this perspective highlights the importance of democratic

accountability and transparency. Critics may argue that FATF's decisions and recommendations sometimes lack input from the public and may disproportionately favor powerful countries or financial interests. Therefore, studying legitimacy from this angle prompts us to question whether these institutions adequately represent the interests and desires of all stakeholders, especially those in less influential nations.

In conclusion, the text emphasizes the critical role of legitimacy in the effectiveness of international institutions like the FATF. The legitimacy of such organizations is essential for gaining voluntary compliance and ensuring their decisions benefit all parties involved. Additionally, the text encourages a broader examination of global legitimacy, including perspectives of political controversy and opposition, which is relevant for assessing the credibility and democratic accountability of institutions like the FATF in international relations. It is common for legitimacy scholars to note that institutions work better when they are seen as legitimate. It is also common for studies of global governance to begin with the premise that contemporary global problems can only be addressed with collective efforts through international institutions. This casts those who disagree with an institution or its effects or decisions as obstacles to good governance. It is worth remembering that legitimation is a tool of social control. It is used by those in power to solidify their governance. The politics of legitimation look different from above and from below: to the governor, legitimation is a helpful device to lower the costs of governing; to the governed, it means acquiescing to rules that force you to do something you don't want to do.

Any form of governance will redistribute gains and losses across society. Governance necessarily produces winners and losers. Global governance is no different in this respect from any model of domestic authority (Zürn 2018, 5). The legitimacy dynamics around international

organizations are no doubt in part attributable to IOs' internal structure, media strategies, channels of participation and voice, and other features. But they are also certainly connected to how they affect the distribution of resources, power, and opportunities for people. This is not meant as criticism of global governance. It is instead a reminder that global governance is not politically neutral and isn't inherently desirable – its political valence is generated through action as it shapes the world in favor or some interests rather than others. International authority is thus similar to authority in other settings in that it encodes certain interests and advances some at the expense of others.⁹

Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of and sensitivity to people's needs and concerns. The key point about procedural justice is that being treated fairly communicates value and respect within a group which fosters compliance with group rules, promotes cooperation and leads to identification and engagement with the group. Hence, procedural justice promotes legitimacy and advances each of the three goals outlined: compliance, cooperation and engagement.¹⁰

Navin Beekarry in his article *The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy ; A Critical Analysis of Compliance Determinants in International Law*, elucidates; "a law perceived as legitimate and fair is more likely to be observed than not." Legitimacy as a factor influencing compliance is an idea developed by Franck, who advocated that in a community of organized rules, compliance is directly linked to a perception of legitimacy by those who are at the receiving end. In secularized, democratic societies, the primary source of legitimacy lies in the involvement in the decision-making process of those impacted by its decision. The fundamental principle underpinning the concept of legitimacy in policy-making is the recognition that subjects of international norms

⁹ Legitimacy and contestation in global governance: Revisiting the folk theory of international institutions
Ian Hurd:
<https://link.springer.com/article/10.1007/s11558-018-9338-z>

¹⁰ Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement
Tom R. Tyler, Yale Law School
Jonathan Jackson, Methodology Institute and Mannheim Centre for Criminology, LSE

should have an opportunity to participate and influence the development of those norms observance owes more to the recognition that the existing legal rules reflect the shared values and interests of the members of the international community and are, therefore, legitimate. Similarly, soft law is legitimized on the basis that “a rule is legitimate if relevant audiences accept it as appropriate [and] can be difficult to enforce if it does not reflect a general consensus about its legitimacy.”¹¹

Beekarry has highlighted the importance of legitimacy as a key factor influencing compliance with laws and regulations. It refers to the idea developed by Franck that in a community governed by rules, people are more likely to comply with those rules if they perceive them as legitimate and fair. This concept is particularly relevant when discussing the role of the Financial Action Task Force (FATF) and its efforts to combat money laundering and terrorist financing. The FATF is an intergovernmental organization that sets international standards and promotes measures to combat money laundering and the financing of terrorism. Its effectiveness in achieving its goals depends, to a significant extent, on the legitimacy of its standards and the willingness of member countries to comply with them.

He has further emphasizes that in secularized, democratic societies, legitimacy is often derived from the involvement of those who are affected by the decisions in the decision-making process. This principle aligns with democratic values, where citizens have a say in the creation of laws and regulations that affect them. In the context of the FATF, member countries should feel that they have had an opportunity to participate in the development of international norms related to anti-money laundering and counter-terrorism financing measures. This participation can enhance the perceived legitimacy of the FATF's standards and increase compliance.

In conclusion, the Beekarry highlights the importance of legitimacy in shaping compliance with international financial regulations, including those set by the Financial Action Task Force. Legitimacy is closely tied to perceptions of

fairness, involvement in the decision-making process, shared values, and consensus among the international community. Ensuring the legitimacy of the FATF's standards is crucial for their effectiveness in combating money laundering and terrorist financing.

Financial Action Task Force and Efforts by Pakistan

The Financial Action Task Force (FATF) serves as a global multilateral watchdog, dedicated to combating the funding of terrorism and the laundering of illicit money. In 1989, it was established by a consortium of seven influential nations known as the Group of Seven (G7), comprising the United States, Germany, Canada, Italy, the United Kingdom, France, and Japan. The FATF's headquarters is situated in Paris, France, and it is currently led by T. Raja Kumar. The organization conducts its affairs in both English and French.

In 1990, the FATF introduced a pivotal set of 40 Recommendations outlining the essential legal and regulatory measures countries should adopt to identify, prevent, and penalize money laundering within their financial systems. This marked a significant milestone in the fight against money laundering because, prior to this, many nations lacked the specific legal and regulatory frameworks needed to combat money laundering effectively. For the first time, countries were armed with robust tools and benefited from international consensus on how to combat the global issue of money laundering, particularly in connection with drug trafficking.

Originally formed with the primary goal of preventing money laundering worldwide, the FATF's mission expanded after the tragic terrorist attack on the World Trade Center in New York, USA, on September 11, 2001. The FATF now holds jurisdiction over the prevention of terrorist financing. It boasts a total of thirty-nine (39) members, consisting of 37 independent nations and two organizations. Among the eight associates are the Asia/Pacific Group on Money Laundering (APG) and the Caribbean Financial Action Task Force (CFATF).

¹¹ The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory

Strategy: A Critical Analysis of Compliance Determinants in International Law by Navin Beekarry

Notably, since 2015, the FATF has permitted observer member states, organizations, and institutions such as the United Nations, the International Monetary Fund, Saudi Arabia, and the World Bank to engage in its operations.

One of the key functions of the FATF is to establish criteria for evaluating the legal framework of member countries concerning anti-money laundering and counter-terrorist financing. In 1990, the organization issued a set of forty (40) recommendations, which serve as guiding principles for its members in combating money laundering and terrorist financing. Member nations are obliged to legislate their laws in accordance with these FATF recommendations.

Furthermore, the FATF has established three categories of compliance: the whitelist, the grey list, and the blacklist. These lists categorize member countries based on their adherence to compliance standards. Those nations that fully adhere to FATF recommendations find themselves on the whitelist, while partially committed countries with significant legal gaps are placed on the grey list. 23 countries¹² are on grey list in which Pakistan is included. They are under strict observation of the organization. It can recommend certain measures to the member for compliance of FATF requirements. Third is blacklist. They are non-complying countries. Presently three countries are blacklisted. These includes Iran, Myanmar and North Korea.

FATF grey and blacklisted countries are facing serious global political and economic consequences. International community hesitate to deal with listed counties. They consider them as terrorist sponsor states. UN imposed economic sanctions of the countries. Foreign countries avoid investing in the state. IMF, WB avoid providing loan to the countries. Financial transaction facing strict surveillance. Banking system strictly observe censorship. FATF enlisted countries are under political and economic stress.

¹² <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-Oct-2022>

¹³ Repot published by FATF title “ Financial Action Task Force 30 Years “page 10

The FATF's effectiveness in establishing standards for anti-money laundering measures led to an important expansion of its role in 2001, following the terrorist attacks on the United States on September 11th. In response, the FATF swiftly set clear criteria to prevent the financing of terrorism and broadened its mandate to include combating terrorist financing. The introduction of the FATF's Special Recommendations provided countries with powerful tools to trace and intercept terrorist assets and pursue individuals or nations involved in funding terrorism.

In 2012, the FATF further expanded its focus due to the growing threat of the proliferation of weapons of mass destruction originating from certain countries. Money laundering was no longer the sole risk undermining the integrity of the international financial system. Financial institutions were increasingly being exploited to fund terrorism, facilitate the spread of weapons of mass destruction, and enable the movement of funds associated with corruption and other criminal activities. The FATF's established track record as a global standard-setter in the field of anti-money laundering measures prompted this expansion of its mandate to address these critical issues and new threats to the international community.¹³

Recommendations of Financial Action Task Force

Financial Action Task Force has forty recommendations. These are guidelines for enforcement of FATF mandate. They mainly focus on prevention of money laundering and terror financing. Initially in 1990, the recommendations were drafted for prevention of money through narcotics. The recommendations restrict financial institution to verify their transactions.¹⁴

Later, in 1996 mandate of recommendation were expanded and reorganized. In which included prevention of terror financing in October 2001. Subsequently took the significant step of

¹⁴ The Financial Action Task Force (F.A.T.F.) is an international organization combating money laundering activities. to know more about F.A.T.F. see: oecd, the financial war on terrorism: a guide by the financial action task force (2004)

establishing the Eight (later increased to Nine) Special Recommendations on Terrorist Financing. In 2003, the FATF Recommendations were updated for the second time. These along with the Special Recommendations, have been accepted by over 180 nations and are universally recognized as the international standard for anti-money laundering and counter-terrorist financing (AML/CFT).¹⁵

As of October 2022, Pakistan has successfully exited the FATF's grey list. However, Pakistan has a history of being on this list. In June 2018, it was placed on the grey list for the third time, with the first instance dating back to 2008. Subsequently, it remained on the grey list from 2012 to 2015. These actions were taken due to Pakistan's failure to comply with United Nations Security Council Resolutions (UNSCR) 1267 and 1373.

Despite Pakistan's efforts, including military operations in former FATA (Federally Administered Tribal Areas) that significantly damaged terrorist infrastructure, the United States continued to exert pressure on Pakistan to "Do More." This was due to dissatisfaction with Pakistan's policy initiatives during the Bush and Obama administrations.

Pakistan's placement in the FATF grey list in 2012 resulted from its non-compliance with UNSCR 1267, which mandated a travel ban, asset freeze, and arms embargo on militant groups affiliated with Al-Qaeda. Notable groups and individuals on this list included Tehreek-i-Taliban Pakistan (TTP), Lashkar-e-Tyba, Falah-e-Insaniat Foundation (FIF), Lashkar-e-Jhangvi (LeJ), Al Rashid Trust, Harkat ul Jihad Islami (HUJI), and figures like TTP's Mullah Fazlullah, Hafiz Saeed, and Haqqani. From 2012 to 2015, Pakistan remained on the FATF's grey list, with the FATF publicly stating that Pakistan had not taken sufficient actions to address deficiencies in its anti-money laundering and counter-financing terrorism strategies. This was primarily attributed to the absence of a committed action plan. However, there was a turning point when the PPP

government amended the "ATA Act" in 2013, enabling the Anti-Terrorism Act to seize the assets of affiliated groups and prosecute financiers of terrorist activities within the country.

In 2015, Pakistan's removal from the grey list was facilitated by significant progress in enhancing its anti-money laundering efforts. The nation developed a comprehensive Countering Finance Terrorism plan and established a robust legal framework. This plan encompassed both domestic jurisdiction and alignment with FATF recommendations. Pakistan was placed on the FATF's grey list again in 2018, this time for a lack of "Strategic Deficiencies" in combating corruption, tax evasion, and terrorism financing, according to FATF's declared causes. One of the grounds for inclusion that the US increasing pressure on Pakistan to act against US-designated terrorist organizations, while Pakistan pursuing its own policy to avoid collateral damage. The United States has great influence in the organization. He is the FATF's greatest financer, and the task force's president is also the US Treasury Department's treasury secretary, who also oversees the office of Terrorist Financing and Financial Crimes. With a strong voice in the task force, the US has a good opportunity to remind Pakistan about their "Do More" policy by voting in favor of putting Pakistan on the list.

In June 2018, the FATF recommended twenty-seven points for consistency. Following that, in June 2021, seven more points for consistency were recommended.¹⁶

Pakistan's Response to FATF Recommendations:

Pakistan is a responsible nation that respects international concerns and strives to improve its compliance with international standards. The country's first mutual evaluation report (MER) was released in October 2019, highlighting deficiencies in its anti-money laundering and counter-terrorist financing regimes. However, as of July 2021, Pakistan has made significant

¹⁵ The official site for financial action task force, <http://www.fatf-gafi.org/about/whatwedo>. (Last accessed April, 23, 2023).

¹⁶ Adeel Mukhtar, "Money Laundering, Terror Financing and FATF: Implications for Pakistan",

Journal of International Affairs, Vol.3 No.1(2018):31
<http://www.ipripak.org/wp-content/uploads/2018/10/Article-2-2-Oct-2018-EDSSA.pdf>(accessed August 12, 2022)

progress in addressing these issues. Pakistan is subject to close monitoring and will continue to report to the Asia/Pacific Group on Money Laundering (APG) on its efforts to strengthen anti-money laundering and counter-terrorist financing measures. Additionally, Pakistan has amended various anti-money laundering and anti-terrorist financing laws in response to these recommendations.¹⁷.

A. Phase I (February to July 2020)

Foreign Exchange Regulations (Amendment) Act, 2020, Anti-Money Laundering (Amendment) Act, 2020, NACTA (Amendment) Act, 2020, Anti-Terrorism (Amendment) Act, 2020¹⁸, Mutual Legal Assistance (Criminal Matters) Act, 2020

B. Phase II: (July - August 2020): UN

Security Council (Amendment) Act, 2020, Anti-Terrorism (Second Amendment) Act, 2020, Companies (Amendment) Bill, 2020, Limited Liability Partnership (Amendment) Act, 2020, Islamabad Capital Territory Trust Act, 2020, Control of Narcotics Substance (Amendment) Act, 2020.

C. Phase III (September 2020): Anti-

Money Laundering (Second Amendment) Act, 2020, The Modaraba Companies (Floatation and Control) (Amendment) Bill, 2020, Cooperative Housing Society Bill, 2020¹⁹. In response of 27 FATF recommendation, she has complienced with 26 FATF recommendation untill june 2021.²⁰ One, non complince

recommendations in targeted prosecution of UN designated terrorist and proscribed organization. The FATF President has recognized substintial progress of Pakistan. It shows high level of Pakistan commitment toward FATF recommendation. She has achieved the points efficiently. Remainnig point need some time to complience. Because , investigation and prosecution of the person is time taking job. Criminal justice system of Pakistan is slow. Decision of a case take years to finalize. But the country has promised to punish money launderer and terrorist through prompt justice.

The FATF, on the other hand, has given Pakistan six more points for compliace:

1. The newly recommended points included developing of international cooperation by modifying the Mutual Legal Assistance (MLA) law;
2. Representing and cooperation that foreign countries are being sought for assistance in implementing UNSCR 1373 designations;
3. Demonstrating that supervisors are conducting both on-site and off-site supervision commensurate with specific risks;
4. Registration of Designated Non-Financial Businesses and Professions (DNFBPs), including applying appropriate safeguards.
5. Demonstrating that ML investigations and prosecutions have increased, and that proceeds of crime are still being

¹⁷ Mutual Evaluation Report for Pakistan – Financial Action Task Force (FATF) – 2019 <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-PakistanOctober%202019>.

¹⁸ The Anti-Terrorism Amendment Act 2020 – National Assembly Pakistan http://www.na.gov.pk/uploads/documents/1580477563_927.pdf(Last accessed 03-28-22)

¹⁹ Mutual Evaluation Report for Pakistan – Financial Action Task Force (FATF) – 2019 <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-PakistanOctober%202019.pdf>(Last accessed 22-03-22)

²⁰ FATF keeps Pakistan grey The News, June 26, 2021

restrained and confiscated in accordance with Pakistan's risk profile, including working with foreign counterparts to trace, freeze, and confiscate assets; and

6. Demonstrating that DNFBPs are being monitored for compliance with proliferation financing requirements and that sanctions are being imposed for noncompliance.²¹

These six new proposals are mostly focused on money laundering prevention. As a result, they are simple to achieve. Within a year, she will achieve her goal.

I. Financial Action Task Force (FATF) Summit, June 2022, regarding Pakistan

During 14-17 June 2022, Financial Action Task Force (FATF) meeting was held in Berlin, Germany. The meeting was presided by FATF President Mr. Marcus Player. Delegates from 200 jurisdictions of Global Network participated. Pakistan was represented by Minister Foreign Affairs, Hina Rabani Khar, in the summit. Initiatives of Pakistan were appreciated. She has substantially completed 34 points of two FATF action plans. Implementation of AML/CTF reforms is in process. More political commitment is necessary to expedite the enforcement of the plan. Team of the organization will visit the county in near future to verify the reforms. There is hope Pakistan will exit from grey list within the next 7-8 months. She needs 12 votes out of 39 to exit from the list.

II. Financial Action Task Force (FATF) Summit, October 2022, regarding Pakistan

Finally, in October 2022, Pakistan exits from grey list of Financial Action Task Force. The country has successfully completed thirty-four points programs of FATF related to Money-Laundering and terror financing. The organization has

appreciated performance of Pakistan for substantial improvement in Money laundering and terror financing regime. The country civil and military institutions have performed very well to legislate latest Anti-Money laundering and terror financing laws. The parliament has legislated and amended more sixteen laws. Criminal justice system has performed good. Proscribed persons are arrested, interrogated, and prosecuted as per law.

This exclusion of Pakistan from grey list of FATF is provisional not a permanent. The county should continue to work with Asia Pacific Group to further strengthen Anti-money laundering and terror financing regime. The country should control new wave of terrorism. Because it is documented that some terrorist groups especially, Tereeq-e-Taliban Pakistan, are present in Ex-FATF. They are involved in different terrorist attacks. Their presence and terrorist activities are very dangerous to Pakistan. They may be attack in foreign country and defame Pakistan at international level for harboring terrorist groups. Terror Financing and logistics support of these groups should be curb.

Pakistan should continue to active diplomacy in the World. Foreign office should strengthen relationships with other countries especially FATF members. In 2018, Pakistan was grey listed because of nomination by some strong members of FATF. In which include US, UK, India. At that time these countries have strain relationship with Pakistan. Due to failure of Pakistan at diplomatic front the countries successfully convinced other members to put it on grey list. Despite long and effective struggle of Pakistan it needed twelve votes to come out from the list. It has become possible through vibrant diplomacy. Therefore, diplomacy play important role on listing and delisting of the country.²²

²¹ Amin, M., Khan, M., & Naseer, R. (2020). Pakistan in the FATF grey-list: challenges, remedies and international response. *Margalla Papers* (1), 31-43. <https://ndu.edu.pk/margallapapers/Margalla-Papers-2020/03-Pakistan-in-the-FATF.pdf>(Last accessed 08-07-21)

²² Liberal Arts and Social Sciences International Journal (LASSIJ) eISSN: 2664-8148 (Online) DOI: <https://doi.org/10.47264/idea.lassij/4.2.32> Vol. 4, No. 2, (July-December 2020): 413-426 Research Article

URL: <https://www.ideapublishers.org/index.php/lassij>
Pakistan and the FATF: Exploring the Role of Diplomacy in Getting off the Grey List Muhammad Idrees1 , Manzoor Ahmad Naazer* 1 & Hashmat Ullah Khan2 1. Department of Politics & International Relations, International Islamic University, Islamabad, Pakistan. 2. School of International and Public Affairs, Jilin University, Changchun, Jilin, China. Received: September 5, 2020 Published: December 31, 2020

Conclusion

In present era the IOs international Organizations have gained significantly increased authority due to the growing complexity of global issues. For the FATF, this is evident in its role in setting international standards for combating money laundering and terrorism financing. Understanding how this increased authority aligns with popular legitimacy is essential because it impacts the organization's effectiveness. To maintain and enhance popular legitimacy, it is crucial to understand what factors contribute to people viewing IOs like the FATF as legitimate. This could include transparency in decision-making, accountability mechanisms, fair representation, and responsiveness to the concerns of diverse stakeholders. Legitimacy is not just a matter of perception; it has practical implications. For the FATF, having a high level of legitimacy means it can more effectively obtain the necessary resources, make decisions that are accepted by member countries, secure compliance with its recommendations, and ultimately contribute to solving problems related to financial crimes.

The FATF's legitimacy relies on the consent of its member countries to abide by its standards and recommendations. Whether Member states voluntarily agree to adhere to its guidelines and work together to combat financial crimes. Legitimacy is also linked to adherence to international legal frameworks. Whether the FATF operates within the framework of international law, and its standards should align with these legal principles to maintain legitimacy. For the FATF to maintain legitimacy, it must ensure that its recommendations and actions are not only legally sound but also in tune with the prevailing international norms, fair, morally justifiable, and garner support from its member countries. Understanding how they gain legitimacy is crucial because their actions and decisions can have far-reaching implications for member states and the broader international community.

In conclusion, this concept provides a valuable framework for understanding the concept of

legitimacy and its relevance to international organizations like the FATF. Legitimacy is not just about having the power to govern but also about justifying that power and securing obedience through the consent of member states, adherence to law, and alignment with accepted norms. In essence, legitimacy highlights the importance of perception and belief in determining an international organization's credibility and effectiveness. For the FATF, its legitimacy plays a pivotal role in its ability to set and enforce global financial standards, as well as in gaining the cooperation and compliance of member countries and the financial sector in combating financial crimes. Legitimacy is indeed about recognizing the right to govern. In the case of the FATF, it operates as an international body that sets standards and guidelines for combating money laundering and terrorism financing. Its legitimacy rests on the acknowledgment that it has the authority to create and enforce these standards at the global level. For the FATF, maintaining and enhancing its legitimacy is crucial to fulfilling its mission of combating financial crimes effectively on a global scale.

Being a member of the Asia/Pacific Group on Money Laundering (APG) since May 2000, it was mandatory for Pakistan to frame an anti-money laundering legislation based on international standards.

Pakistan is a responsible state that respects international concerns and strives to improve its compliance with international standards. The country's first mutual evaluation report (MER) was released in October 2019, highlighting deficiencies in its anti-money laundering and counter-terrorist financing regimes. However, after July 2021, Pakistan has made significant progress in addressing these issues. Pakistan has amended various anti-money laundering and anti-terrorist financing laws in response to these recommendations.²³

²³ Mutual Evaluation Report for Pakistan – Financial Action Task Force (FATF) – 2019 <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG->

Mutual-Evaluation-Report-PakistanOctober%202019.