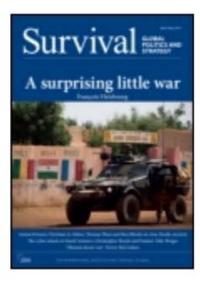
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Globalising Iran's Fatwa Against Nuclear Weapons

Seyed Hossein Mousavian

Over a decade of negotiations between Iran and various world powers over Tehran's nuclear programme have yielded little or no progress. Although all parties seek a peaceful resolution to this quagmire through diplomacy, all the major demands of the P_{5+1} (the permanent members of the UN Security Council – the United States, Russia, China, France and the UK – plus Germany) go beyond the Nuclear Non-Proliferation Treaty and its Safeguard Agreement, the only viable and legitimate international framework for non-proliferation. In 2011, I proposed a peaceful solution based on the 2005 fatwa (religious decree) of Iranian Supreme Leader Ayatollah Ali Khamenei banning the acquisition, production and use of nuclear weapons, and in 2012 Iranian Foreign Minister Ali Akbar Salehi declared Iran's willingness to transform the fatwa 'into a legally binding, official document in the UN', to secularise what many in the West see as a purely religious decree.1 Such a step would provide a sustainable legal and political umbrella for Iran to accept required measures; facilitate transparency and confidence-building measures; and help address doubts in the West about the commitment to the principles expressed in the fatwa in the context of Iran's system of government, where politics and religion are intertwined.

The fatwa

A fatwa is a religious-legal opinion, ruling or decree concerning Islamic law issued, orally or in written form, by a prominent religious leader and expert in Islamic jurisprudence, based on four sources: the Koran, the practice of Prophet Muhammad and his successors, the power of reason and consensus. In Shia Islam, once a fatwa is issued by a marja-i taqlid or Grand Ayatollah, it is considered a religious obligation by his followers and disregarding it constitutes a sin.²

After the 1979 Iranian revolution, Imam Ruhollah Khomeini, the founder of the Islamic Republic, clearly enunciated his religious opinion on the proliferation and use of nuclear, biological and chemical weapons:

If they [two superpowers] continue to make huge atomic weapons and so forth, the world may be pushed into destruction and major loss will afflict the nations. Everybody wherever he is, the writers, intellectuals, scholars, and scientists throughout the world, should enlighten the people about this danger so that the masses of people will stand up against these two powers themselves and prevent the proliferation of these weapons.³

During the 1980–88 Iran–Iraq War, when 100,000 Iranians were killed or injured by Saddam Hussein's chemical weapons (developed with material and technology supplied by the West), Iranian military officials asked Khomeini to permit them to reciprocate. He refused permission, as it would have transgressed Islamic belief. That a country would, during wartime, refrain from responding in kind to the use of such weapons, killing tens of thousands of its own civilians, testifies to the strength of such religious decrees.

Under Khomeini's successor as supreme leader, Ayatollah Ali Khamenei, Iran's commitment to the eradication of nuclear, chemical and biological weapons continued. Khamenei first enunciated a fatwa against the acquisition, production and use of nuclear weapons in 2005, and it was mentioned in an official Iranian statement to the International Atomic Energy Agency (IAEA) in August 2005: 'The Leader of the Islamic Republic of Iran, Ayatollah Ali Khamenei has issued a Fatwa that the production, stockpiling, and use of nuclear weapons are forbidden under Islam and that the Islamic Republic of Iran must never acquire these weapons.'

The supreme leader has reaffirmed his opinion on many occasions since then. In February 2010, a day after a draft report from the IAEA said Iran might be working secretly to develop a nuclear warhead for a missile, he announced that

Iran will not become agitated in its response to these nonsensical statements because we have often said that our religious tenets and beliefs consider these kinds of weapons of mass destruction to be instruments of genocide and are, therefore, forbidden and considered to be haram [religiously banned]. This is why we do not believe in atomic bombs and weapons and do not seek them.5

During a meeting with officials of the Atomic Energy Organisation of Iran (AEOI) and nuclear scientists in February 2012, he declared:

The Iranian nation has never pursued and will never pursue nuclear weapons ... There is no doubt that the decision makers in the countries opposing us know well that Iran is not after nuclear weapons because the Islamic Republic, logically, religiously and theoretically, considers the possession of nuclear weapons a grave sin and believes the proliferation of such weapons is senseless, destructive and dangerous.⁶

He reiterated his fatwa once again in his opening address to more than 120 heads of state and officials at the 16th Non-Aligned Movement summit in Tehran on 30 August 2012:

The Islamic Republic of Iran considers the use of nuclear, chemical and similar weapons as a great and unforgivable sin. We proposed the idea of a Middle East free of nuclear weapons and we are committed to it ... I stress that the Islamic Republic has never been after nuclear weapons and that it will never give up the right of its people to use nuclear energy for peaceful purposes. Our motto is: 'Nuclear energy for all and nuclear weapons for none.' We will insist on each of these two precepts.7

Most recently, in January 2013, a Foreign Ministry spokesman stressed that 'there is nothing higher than the supreme leader's fatwa to define the framework for our activities in the nuclear field'.⁸

Bound by law?

Yet many Western observers are sceptical about the fatwa's authenticity, authority and permanence. Most fundamentally, some argue that, based on the religious concept of taqiyya, Shia religious leaders are permitted to lie and use deceit, and hence the decree may simply be a ruse. But in Shia Islamic tradition, taqiyya means concealing one's faith out of fear of death, when under threat, persecution or compulsion. The fatwa on weapons of mass destruction does not fall within this case. Other critics, such as analysts Michael Eisenstadt and Mehdi Khalaji of the Washington Institute for Near East Policy, argue that a fatwa is 'issued in response to specific circumstances and can be altered in response to changing conditions ... Thus nothing would prevent Khamenei from modifying or supplanting his nuclear Fatwa should circumstances dictate a change in policy. Still others argue that a verbal rather than written fatwa has little force or validity.

In this regard it is interesting to contrast the nuclear fatwa with Khomenei's 1989 edict against Salman Rushdie, sentencing the author to death for insulting Islam and the Prophet in The Satanic Verses. 12 The West took the fatwa against Rushdie extremely seriously. No one questioned its credibility because it was stated verbally (in a radio broadcast) rather than in writing. And the belief that it was later rescinded has been adduced as an argument against the permanence of fatwas in general.13 But in fact the Rushdie fatwa has never been revoked. In 1989 I represented Iran in negotiations with the United Kingdom and European Union over the Rushdie crisis. I told them then that the fatwa was not reversible or revocable, but assured them that the Iranian government would not take any action to threaten Rushdie's life, nor encourage any other entity to do so. When, some ten years later, the UK came to an agreement with the Khatami administration to stand down on the issue based on this understanding, it was a question not of revoking the fatwa but simply turning a blind eye in order to improve relations.14

Some radical Muslim scholars have argued that nuclear weapons are permitted, even required, under Islamic law. Saudi Sheikh Nasir bin Hamad al-Fahd issued a fatwa in 2003 that claimed to justify the use of weapons of mass destruction on legal grounds. 15 His main argument was that the West had declared war on Islam and through its 'war on terror' has blurred where the battlefield begins and ends. With this premise, Fahd concluded that Muslims were in a war against non-Muslims and had the right to utilise any means of defence at their disposal, including weapons of mass destruction. 'If the unbelievers can be repelled ... only by using' weapons of mass destruction, then 'their use is permissible, even if you kill them without exception'. Fahd also raised proportionality as justification, claiming years of US intervention in the region had resulted in a 'number of Muslims killed directly or indirectly by [American] weapons ... of nearly ten million'. He concluded that it would be permissible for Muslims to kill a similar number of Americans. The argument advanced by scholars such as Fahd is that the current battle with the 'infidels' leaves Muslims with no choice but to use any means possible to safeguard their independence and fend off the invasion of non-believers from Islamic lands.

Similarly, some scholars from Pakistan, a Muslim nation with an overwhelmingly Sunni population, have justified its accession into the nuclearweapons club. In the aftermath of India's nuclear test in 1974, Pakistan's political leaders pledged to level the playing field. In 1977 ousted Prime Minister Zulfikar Ali Bhutto wrote from prison that 'we know that Israel and South Africa have full nuclear capability. The Christian, Jewish, and Hindu civilisations have this capability. The Communist powers also possess it. Only the Islamic civilisation was without it, but that position was about to change.'18 The implication was that Pakistan's nuclear weapons were developed to serve not only the national interest of Pakistan in deterring its Hindu neighbour from further aggression, but for the benefit of all Muslims worldwide. As a religious justification for acquiring nuclear weapons, Khurshid Ahmad, spokesman for Pakistan's leading Islamic party, Jama'at-i Islami, said that

the Qur'anic command is ... very clear. 'Make ready for an encounter against them all the forces and well-readied horses you can muster that you may overawe the enemies of Allah and your own enemies and others beside them.' This principle of deterrent power is a dynamic concept and must not be compromised if we want to protect our honor, faith and national security.¹⁹

Al-Qaeda leader Osama bin Laden, who has no authority under tradition or law to issue fatwas, nevertheless did so, declaring it an 'Islamic duty' to acquire and use weapons of mass destruction in the atmosphere of all-out war. The justification he cited was that 'all these crimes and sins committed by the Americans are a clear declaration of war on God, his messenger, and Muslims. To kill the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country.'20

Understanding the theology underlying such fatwas is thus vital. For Muslims the Koran, as the word of God, is the principal source of laws and morals. Its verses call on the faithful to follow the rules and the principles of God and human beings, emphasising kindness, justice, equality and standing by one's commitments and promises. The Koran prohibits Muslims from committing transgressions during war; they are permitted only to fight combatants, not civilians, and are also prohibited from destroying the environment.²¹ The Koran also prohibits all kinds of action that lead to the spread of evil on Earth.²² Verse 5:32 states that 'whoever kills an innocent human being, it shall be as if he had killed all mankind, and whoso saves the life of one, it shall be as if he had saved the life of all mankind'.

In practice, the Koran requires interpretation and clarification. The Sayings (hadith) and Practices (sunnah) of the Prophet Muhammad and his successors are thus a second source for moral and legal guidance. The Prophet prohibited Muslims from spreading poison in the land of the pagans.²³ He also reiterated that 'you must not punish by fire, only the Lord punishes by fire'.²⁴ The sixth Shia imam, Imam Sadeq (702–765 CE), said that during an armed conflict a Muslim commander 'must not punish, enchain, deform or kill children, one suffering from illness or set trees on fire'.²⁵

Both Sunni and Shia scholars have stressed the Islamic moral principle and humanitarian understanding that prohibits the spread of all kinds of evil and acts that lead to transgression against civilians and the environment. The highly respected Shia scholar Shaykh al-Tusi (996–1067 CE) stated that 'fighting against women is prohibited even if they fight against the Muslims', while another prominent Shia scholar, Allamah al-Hilli (1250–1325 CE), adamantly prohibited killing children, women, or the mentally ill even if Muslims were at war with infidels.26 The muftis (scholars of Islamic law) of all four Sunni schools or legal traditions – Hanafi, Shafi'i, Hanbali and Maliki – all take similar positions. In the qh (jurisprudence) of Hanafi, for example, it is said that, during war, mentally ill persons, women, blind people, weak people, wounded and old people must not be killed.²⁷

Imam al-Shafi'i (767–820 CE) said that Muslims are not permitted to kill women, and children, because the Holy Prophet has prohibited it.28

Weapons of mass destruction are for the most part a phenomenon of the twentieth century: the US use of atomic bombs in Hiroshima and Nagasaki; Nazi Germany's use of gas chambers in the Holocaust; Imperial Japan's use of biological weapons against the Chinese; Saddam Hussein's use of chemical weapons against Iran

WMD are a twentiethcentury phenomenon

and the Iraqi Kurds. While the fatwa has its roots in centuries-old religious teachings such as the Koran, the hadith, reason and common sense, it applies these to a modern problem. Nuclear, biological and chemical weapons do not distinguish between combatants, non-combatants and the environment; they are destructive to everything in their path. The Koran's statement that the taking of one innocent life is equivalent to killing of all mankind leaves no room for doubt.

While some fatwas may seem to address particular political contexts or circumstances, their legitimacy is always based on such religious principles. For example, on 20 March 1890 Iranian ruler Nasir al-Din Shah Qajar granted the British a monopoly over the Iranian tobacco trade for half a century in return for annual royalties to the kingdom.29 The population saw this as a clear violation of Persian sovereignty, and Grand Ayatollah Mirza Hassan Shirazi issued a fatwa forbidding the use of tobacco.³⁰ Observance of the ban spread quickly as citizens ceased to smoke and refused to sell tobacco; even the shah's servants refused to prepare his pipe.31 Ultimately the shah was

forced to nullify the agreement with the British, Shirazi annulled the fatwa and tobacco use recommenced. 32 Some observers have used the nullification of the 'Tobacco Fatwa' to stress the limitations of such decrees, but the fatwa was not based on the nature of the commodity, but justified on the grounds that a non-Muslim state would gain control over a key industry that would subjugate the Muslim population to foreign rule – which permitted jihad against invaders. At its core, it aimed to uphold and advance one of the religious principles of Islam, while ridding the country of the British monopoly (a political goal) rather than tobacco itself.

Similarly, popular discontent with the one-sided oil agreement between Iran and the United Kingdom in the 1940s led to the nationalisation of

The supreme leader's fatwasare irreversible

the industry after four decades of British dominance in 1951.33 While the democratically elected prime minister, Mohammad Mossadegh, has usually been credited with championing the cause of nationalisation, the role of the Shia religious establishment has been largely overlooked in the West.34 The turning point came three months earlier, in December 1950, when Ayatollah Abol-Ghasem Kashani issued a fatwa requiring all 'sincere Muslims and patriotic citizens to fight against the enemies of Islam and Iran

by joining the nationalisation struggle'.35 Within days, thousands joined Mossadegh in the streets of Tehran.³⁶ Again, while the pro-nationalisation movement can be seen through a political prism, the fatwa was based on Islamic principles prohibiting foreign rule over Muslims and making such rule grounds for jihad.

According to Article 57 of the Iranian constitution, the supreme leader has the ultimate authority over the three branches of government and his command is binding. This determines the status of the fatwa on the issue of weapons of mass destruction. The strong bond between religion and politics in the Islamic Republic means the supreme leader's fatwas carry both legislative and religious importance. Moreover, his authority ensures that his fatwas are left unchallenged and irreversible by politicians and religious leaders. In fact, Khamenei's fatwa also serves as a hokme hokumati, or State Decree, defined as a ruling issued by a religious leader who is also governing the nation (velayat-e faqih). Such a decree is not only binding on the executive branch but is supported by other religious leaders, who will either agree fully or refrain from issuing any counter fatwas.³⁷

Ultimately, the fatwa on the production, possession and use of nuclear, biological and chemical weapons is permanent, because such weapons always will be destructive and evil. No religious leader can change or issue a ruling against a fatwa banning them. The most prominent Islamic clergy, both Shia and Sunni, agree on this principle. While some Islamic legal scholars do challenge the credibility of the fatwa, they are a tiny minority with little or no authority and few followers.

The proliferation challenge

The challenge of nuclear proliferation is evolving, and nuclear safeguards must do the same. The IAEA is mandated to verify that treaty members – including Iran – do not build or acquire nuclear weapons or divert their peaceful nuclear programmes to such ends, by carrying out safeguard visits as well as ad hoc, routine and special inspections of nuclear sites.³⁸ Since the Nuclear Non-Proliferation Treaty entered into force in 1970, India, Pakistan (both non-members) and North Korea (which withdrew in 2003) have built and tested nuclear bombs. Israel (also a non-member) is believed to be a nuclear-weapons state, with some 100–200 warheads, and may have possessed some even before the treaty was opened for signature in 1968. But except for North Korea, all these countries continue to have normal diplomatic relations with most of the world, which has undercut global efforts to limit nuclear proliferation. Although parties to the treaty are not obliged to sever diplomatic ties with proliferators; they have an obligation under the treaty to take all necessary steps to counter proliferation by states. With 14 countries operating or building enrichment plants, the challenges facing non-proliferation will progressively become more complex. The P5+1 should seek a resolution of the Iranian nuclear case that can serve as a model for dealing with other countries with break-out capability and contribute to non-proliferation.

India's detonation of a nuclear device in 1974 caught the international community by surprise. The test was a demonstration of how specific peaceful nuclear technologies could be misapplied and weaponised.³⁹ Calls for further stringent export controls of nuclear materials and technologies led to the creation of the Nuclear Suppliers Group (NSG), a multinational organisation intended 'to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices which would not hinder international trade and cooperation in the nuclear field'.⁴⁰ Following the 1991 Gulf War and the exposure of Iraq's covert nuclear-weapons programme, the NSG mandate was expanded to cover dual-use items and technologies that can either be used in non-nuclear industries or contribute to 'nuclear fuel cycle or nuclear explosive activity'.⁴¹

Iraq was a member of the Non-Proliferation Treaty, and the IAEA monitored its declared nuclear sites. Its violations of the treaty highlighted the limitations of the IAEA monitoring and inspecting a member state's nuclear programmes, and the agency identified measures to address these short-comings, leading to the introduction of the Additional Protocol. While the protocol is voluntary for member states, it considerably strengthened safeguards by extending the declaration, reporting and site-access responsibilities and obligations of members to the entire fuel cycle from mining to waste storage, and to plans for future facilities. ⁴² It has has been voluntarily implemented by 119 countries. ⁴³

The UN Security Council has required that Iran implement the Additional Protocol, which would open the country to more intrusive inspections at additional sites, where nuclear materials are not present. Moreover, the Security Council has insisted that Iran suspend uranium enrichment – which under the Non-Proliferation Treaty is permitted to all members – for an indefinite period. The IAEA has also raised concerns about 'possible military dimensions' of Iran's nuclear programme, and insists that Tehran provide access beyond that specified in the Additional Protocol.⁴⁴ And the P5+1 insist that Iran limit enrichment of uranium to 20%, although the treaty permits member states to enrich uranium to any level, even to weapons grade (over 90%), as long as there is no diversion towards weaponisation and there is a justifiable need for such enrichment for a peaceful nuclear project.

Iran is by no means the only non-nuclear state with the potential to develop a nuclear capability. Japan reprocesses spent nuclear fuel, some-

thing Iran does not do, and several non-weapon states besides Iran enrich uranium (albeit as part of a consortium which helps assure wider transparency). A framework that goes beyond current international arrangements is needed. With its roots in Islamic belief, the fatwa against nuclear, biological and chemical weapons can play a constructive role beyond resolving the immediate crisis surrounding Iran's nuclear programme.

This could be done in several stages, each building on the last. Iran could adopt legislation or amend its constitution, either by parliament or through a referendum, to outlaw any activity leading to the development, acqui-

sition, production, possession or use of nuclear, biological and chemical weapons by Iran or its citizens. This specific 'operationalisation' and secularisation of the supreme leader's fatwa would help remove ambiguity and doubt about its legitimacy and sustainability, acting as a confidencebuilding measure for the international community with regard to Iran's seriousness about non-proliferation. The P5+1 and Iran could then develop a package to resolve disputes over the Iranian nuclear programme on the basis of a dual framework: the Non-Proliferation Treaty (with its

Sunni and Shia leaders must speak with one voice

Safeguard Agreement and Additional Protocol) and the religious, moral and legal framework of the fatwa for additional measures beyond the protocol. This could in turn become a model for all member states that conduct enrichment and reprocessing.45

There needs to be a concerted effort to have prominent Sunni and Shia religious leaders speak with one voice on banning nuclear, biological and chemical weapons. The supreme leader could take the initiative, convening an Islamic conference in Iran, where such leaders could discuss and collectively endorse a ban by issuing a joint religious decree. Reaching consensus on the fatwa amongst the major branches of Islam would both build strong support for the ban and further marginalise the extremists.

A version of Khamenei's fatwa, as reiterated at a conference on nuclear disarmament in Tehran in April 2010, has already been formally communicated to the UN Secretary-General Ban Ki-Moon.46 The supreme leader could send a letter to the secretary-general providing details of the fatwa

and stressing the need for worldwide religious and moral unity in calling for an end to production, accumulation, proliferation and use of weapons of mass destruction. The Organisation of Islamic Cooperation could submit the new joint decree issued by Muslim religious leaders to the UN General Assembly. The secretary-general might propose a forum where religious leaders of all faiths would discuss and collectively endorse the ban. Agreement among leaders representing billions of faithful adherents to the world's major religions would go a long way towards creating harmony and unity amongst the leading faiths of the globe and accelerate efforts to end proliferation of such weapons.

Following such an endorsement, the General Assembly could take the next step, passing a resolution on non-proliferation in support of the fatwa. This could be further strengthened by a committee of experts at the IAEA, to assess measures to address loopholes and shortcomings within current treaties. This would then pave the way for the UN Security Council to introduce a new arrangement strengthening and expanding the current conventions regarding nuclear, biological and chemical weapons.

* * *

Globalising the fatwa could be a face-saving solution to the current nuclear standoff between Iran and the international community. While the Non-Proliferation Treaty and the fatwa have the same objective, transforming the fatwa into a legally binding document would strengthen the treaty and boost efforts towards eliminating nuclear weapons entirely. It would enhance efforts towards a nuclear, biological and chemical-weapons-free zone in the Middle East. With religious, social and international endorsement of the fatwa, all Muslim countries would be obliged to implement national legislation banning all such weapons, placing increased pressure on Israel to join the movement. It would illuminate proliferation of dedicated and dual-use technologies for such weapons by Western countries as well as those considered proliferation risks by the West.

Rather than challenging the credibility of the fatwa against nuclear weapons, resisting the legitimate rights of Iran to enrichment of nuclear

fuel within the framework of the Non-Proliferation Treaty, and threatening Tehran with further sanctions, the P5+1 should be both realistic and creative. An Iranian model, coupling the current non-proliferation regime with globalisation and secularisation of the fatwa, could both lead to the peaceful resolution of the Iranian nuclear crisis and provide a broader framework for non-proliferation, and even for a move towards global abolition.

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