Forget the Fatwa

by Michael Eisenstadt **(/experts/michael-eisenstadt)** , Mehdi Khalaji **(/experts/mehdi-khalaji)**

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ABOUT THE AUTHORS

Michael Eisenstadt (/experts/michael-eisenstadt)

Michael Eisenstadt is the Kahn Fellow and director of The Washington Institute's Military and Security Studies Program.

Mehdi Khalaji (/experts/mehdi-khalaji)

Mehdi Khalaji, a Qom-trained Shiite theologian, is the Libitzky Family Fellow at The Washington Institute.

Articles & Testimony

Even if the Supreme Leader's fatwa against nuclear weapons were enshrined in a UN document, strong monitoring and verification measures would still be the indispensable core of any agreement.

Iranian experts are set to meet their P5+1 counterparts in Istanbul next week to discuss the Islamic Republic's nuclear program. They are likely to reprise a long-standing claim: Iran will never build nuclear weapons, because Supreme Leader Ayatollah Ali Khamenei has issued a fatwa banning "the bomb." (In fact, Khamenei restated his position on this matter just a few weeks ago.) They will explain that this fatwa is an important confidence-building measure that the P5+1 have yet to adequately acknowledge. But there is more to consider than what will likely be conveyed during these expert-level talks.

Khamenei has spoken on this topic numerous times in the past decade, and such oral pronouncements do indeed have the same legal standing as a written fatwa. Khamenei's precise formulation, however, has varied. He has at times appeared to tacitly permit the development and stockpiling of nuclear weapons, but not their use. On other occasions, he has categorically forbidden stockpiling and development, as well as the use of nuclear weapons.

This should not be surprising. Fatwas are not immutable, and can be altered depending on circumstances. The founder of the Islamic Republic, the late Ayatollah Ruhollah Khomeini, modified his position on a number of issues -- taxes, military conscription, women's suffrage, the legitimacy of the Shah's monarchy, and apparently even chemical weapons. And Ayatollah Khamenei could alter his fatwa regarding nuclear weapons should he deem it necessary. Because this could undermine the value of the fatwa as a confidence-building measure, some former

Iranian officials have suggested that the Iranian parliament could pass legislation making the fatwa the law of the land. Conversely, Foreign Minister Ali Akbar Salehi has suggested that the fatwa could be adopted as an official UN document as a way of building confidence.

Yet these proposals would not solve the confidence problem, because it is the principle of maslahat (the interest of the regime) that guides the formulation of Iranian policy. Before he died, Ayatollah Khomeini ruled that the Islamic Republic could destroy a mosque or suspend the observance of the tenets of Islam if its interests so dictated. And the constitution of the Islamic Republic invests the Supreme Leader with absolute authority to determine the interest of the regime. He can therefore cancel laws or override decisions by the regime's various deliberative bodies, including the Majlis (parliament), the Guardian Council, and the Expediency Council. Likewise, Iran's checkered history of adherence to UN documents and resolutions (such as the Universal Declaration of Human Rights and a raft of UN resolutions pertaining to its nuclear program) raises questions about the utility of making the fatwa a UN document.

Further muddying the waters, spokesmen for the Islamic Republic have a habit of proffering convenient interpretations when it comes to fatwas and foreign policy. When Ayatollah Khomeini's 1989 fatwa calling for the death of author Salman Rushdie sparked a crisis in relations with Europe, Iranian foreign-ministry officials tried to downplay its importance, claiming that the fatwa only reflected Khomeini's personal opinion and was not binding on the Iranian government. Now Iranian foreign-ministry officials want the international community to believe that Khamenei's fatwa is a binding religious ruling that would prevent the Islamic Republic from getting the bomb. So which one is it?

The history of Iran's chemical weapons fatwa, moreover, raises additional questions. During the Iran-Iraq War, Ayatollah Khomeini reportedly issued a fatwa regarding chemical weapons. But it is unclear whether the fatwa banned the development and production of chemical weapons, or only their use. It is also unclear whether it was eventually altered in the face of escalating Iraqi chemical warfare. Whatever the matter, the fatwa did not ultimately stop Tehran from producing a "chemical weapons capability" (which is the vague formulation used by representatives of the Islamic Republic) during the latter phases of the war -- although it seems that Iran did not use this capability against Iraq. After the war, the Islamic Republic reportedly dismantled and destroyed its chemical-weapons capability and signed on to the Chemical Weapons Convention (CWC).

This precedent raises two very different questions of particular relevance to this discussion: If Iran's chemical fatwa did not preclude it from subsequently acquiring a chemical-weapons capability, would Iran's nuclear fatwa preclude it from acquiring a nuclear-weapons capability? And just as Iran eventually gave up its chemical-weapons capability (so it seems), would it be willing to negotiate away its nuclear-weapons potential?

Regarding the first question: for now, Tehran appears to be seeking a latent breakout capability that will effectively provide "nuclear deterrence without the bomb." It is treading this path, at least in part, because it was unable to build a secret parallel nuclear program -- which is what it was apparently trying to do by building undeclared enrichment facilities at Natanz and Fordow.

As for the second question: Tehran strongly supported the creation of the CWC, and likely hoped to gain international legitimacy for the Islamic Republic and for its nuclear program by complying with its terms and giving up its declared chemical-weapons capability. By contrast, Iran insists that its participation in the Nuclear Nonproliferation Treaty (NPT) confers on it an "unalienable right" to enrichment -- providing it with a de facto nuclear breakout capability. For this reason, Iran's nuclear fatwa -- even if enshrined as a UN document -- is no substitute for strong monitoring and verification measures, which are the only way to have any degree of confidence that Iran is adhering to its treaty obligations.

Some U.S. officials believe that the nuclear fatwa provides a diplomatic opening for Washington, and an opportunity

to press Tehran to live up to its professed religious principles. Experts from Iran and the P5+1 should explore this issue further in their forthcoming meeting in Istanbul. The goal should be an agreement in principle to translate the tenets embodied in the Supreme Leader's nuclear fatwa into robust monitoring and verification arrangements for any future agreements with the Islamic Republic regarding its nuclear program. As during the Cold War, "trust, but verify" remains the essential basis for any sustainable nuclear deal with Iran.

Michael Eisenstadt directs the Military and Security Studies Program at The Washington Institute. Mehdi Khalaji is a senior fellow at the Institute. They coauthored the 2011 study Nuclear Fatwa: Religion and Politics in Iran's Proliferation Strategy **(http://www.washingtoninstitute.org/policy-analysis/view/nuclear-fatwa-religion-and-politics-in-irans-proliferation-strategy)** . ❖

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