

Iran's Nuclear Fatwa

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Abstract

In 2012, alongside the negotiations on Iran's nuclear program, special media attention was paid to a Fatwa (religious decree) issued by Ayatollah Seyyed Ali Khamenei, Leader of the Islamic Revolution of Iran, banning all weapons of mass destruction (WMD), nuclear weapons in particular. This study addresses some misunderstandings and erroneous claims, about the Fatwa. Its aim is to provide accurate and clear information and to investigate why the Fatwa was issued, its importance, credibility, relevance and relationship to international law. The latter is achieved through examining the Fatwa's legal concordance with international principles regarding nuclear weapons non-proliferation and disarmament, as embodied in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). In addition to providing sources and texts of the Fatwa, the study pays special attention to its logical consistency and solid historical roots. The Fatwa elaborates and confirms Iran's commitment regarding WMD ban, on the one hand, and Iran's insistence on its NPT right to peaceful uses of nuclear technology, on the other. It is concluded that the commitment undertaken by Iran via the Fatwa, is, in some important respects, more comprehensive and more long-lasting than that Iran has undertaken under the NPT.

Keywords: Iran's Nuclear Fatwa, Islam, WMD, NPT, Peaceful Nuclear Technology, Discrimination, Confrontation

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Introduction

This study was undertaken to address some misunderstandings and erroneous claims (Smith, 2012)⁽¹⁾, about a Fatwa⁽²⁾ (religious decree) against weapons of mass destruction (WMD), nuclear weapons in particular, issued by Ayatollah Khamenei, Supreme Leader of the Islamic Republic of Iran. Its aim is to provide accurate and clear information by providing sources and texts of the Fatwa, to investigate why the Fatwa was issued, its importance and credibility by examining its logical consistency and solid historical roots, and to assess its relevance and relationship to international law. The latter is achieved through examining its legal concordance with international principles regarding nuclear weapons non-proliferation and disarmament.

What are WMD? Nuclear, biological and chemical weapons are rightly called weapons of mass destruction (WMD). Designed to terrify as well as destroy, they have the potential to kill thousands and thousands of people in a single attack, and their effects may persist in the environment and in people's bodies, in some cases indefinitely (WMD Commission, 2006: 22). Iran is committed to all international treaties banning WMD. They include the Nuclear Weapons Non-Proliferation Treaty (NPT, opened for signature in 1968), the Comprehensive Nuclear-Test-Ban Treaty (CTBT, 1996), the Geneva Protocol (1925), the Biological Weapons Convention (BWC, 1972), and the Chemical Weapons Convention (CWC, 1992).

Why, the Fatwa? Of course, as a signatory to international treaties banning WMD, including the NPT, Iran has in legal and



political terms been committed to the non-proliferation principles. However, in recent years, Iran has become subject to unjust sanctions, unlawful threats of military attacks, industrial sabotage and terrorist attacks against its scientists, based on unfounded yet persistent accusations of violation of the NPT, while the IAEA⁽⁹⁾ has never reported Iran is pursuing a nuclear weapons program. Under these conditions, the Supreme Leader's comprehensive anti-WMD Fatwa, based on the principal tenets of the religion, was to provide additional significant religious and personal assurances, at the highest level of governance in Iran, regarding the state's genuine and deep-rooted non-proliferation commitment. The Fatwa is of extraordinary significance in a number of respects, particularly, as it relates to the seriously politicized case of Iran's nuclear program. The Fatwa issued at the highest level of state authority in Iran, is far more than, either an ordinary religious edict, or an expedient governance order of limited duration. Rather, it is both an extremely important religious edict, reflecting an Islamic primary order banning WMD, and a very significant governance order, with highly important legal, political, military and developmental implications.

Considering that the Fatwa is a reflection of an Islamic primary order (*hokm-e-avvaliye*), it is completely mistaken to assess its issuance, either as an act of pretense out of fear (*taghiyye*), or an act of expediency (*maslehat*), as concluded, for instance, in two essays from The Washington Institute for Near East Policy (Eisenstadt and Khalaj, 2011). To the contrary, the Fatwa, based on clear Islamic teachings, studied in the next section, elaborates and confirms the Islamic Republic's commitment regarding WMD ban, on the one hand, and Iran's insistence on its NPT-right to peaceful uses of nuclear technology, on the other. The Fatwa's commitment is unilateral and unconditional. Moreover, the commitment undertaken by Iran, via the Fatwa is, in some respects, more comprehensive than that via the NPT. Guided by the Supreme Leader's Fatwa, the Islamic Republic of Iran would unilaterally, for all times and under all



circumstances, refrain from producing, acquiring, stockpiling and using all sorts of WMD, including nuclear weapons.

Although, with a terminology different from the NPT, to which Iran has been committed since its inception in 1968, the Fatwa bans Iran from acquiring nuclear weapons, with measures and wordings clearly both not less comprehensive or less restrictive than those set by the NPT. In this sense, I believe, with regards to Iran, the Fatwa complements and offers additional and incontrovertible assurances nationally and internationally over and above those provided by the NPT. Though the NPT is intrinsically discriminatory – dividing the member states into nuclear-haves and nuclear-have-nots, this weakness is further amplified, through a politically selective treatment of its articles. For instance, for more than 40 years after the enforcement of the NPT, no significant achievement has been made with regard to nuclear disarmament, NPT Article 6. Also, in recent decades, several states, not members of the NPT, have obtained or produced nuclear weapons. Israel with its policy of ‘nuclear ambiguity’ is known to have received nuclear material, technology and know-how from nuclear-weapons-member-states of the NPT and despite the UN resolutions⁴⁹ demanding it to join the NPT, has refused to do so with the explicit and public support from the United States. The Obama Administration, which endorsed the idea of a nuclear-weapon-free Middle East in the final document of the NPT Conference 2010, expressed “deep regrets” less than 24 hours later: For the US, undersecretary of state Ellen Tauscher said the document “advances President Obama's vision” of a world free of nuclear weapons. She said the US would work with Middle Eastern nations to organize a 2012 conference; but she added that its ability to do so had been “seriously jeopardized because the final document singles out Israel in the Middle East section, a fact that the US deeply regrets”(Black, 2010).

India, a nuclear weapon state outside the NPT, too, receives nuclear cooperation from the US. Both of these examples are clear



and serious violations of the NPT.⁶⁵ However, what is of even graver concern is the United Nations Security Council's (UNSC) inability to address these developments and violations in a principled and consistent manner. The latter weakness has seriously undermined the NPT's credibility, particularly in Iran. In such circumstances, the Fatwa may, on the one hand, directly help resolve Iran's nuclear case, and on the other, support and complement NPT's key non-proliferation objective. The Fatwa also supports the establishment of a nuclear weapons free zone (NWFZ) in the Middle East, put forward by Iran at the UN General Assembly (UNGA) in 1974.⁶⁶

This study has strengthened the belief that the Fatwa, in conjunction with genuine political will to resolve Iran's nuclear energy case, and in the absence of intimidation, assassinations, sabotage, sanctions, and other instruments of terror and humiliation against an entire nation, would provide a firm foundation for meaningful negotiations aimed at a peaceful resolution of any real concerns regarding Iran's civilian nuclear program. The entirety of P5+1 need to be genuinely cognizant of Iran's full NPT rights to peaceful uses of nuclear technology. What is required is a definite change of paradigm and attitudes. According to a Brown University scholar, 'Today the sense that nuclear weapons are illegitimate is fundamental to the future of the non-proliferation regime. A prohibition regime cannot be sustained over the long haul by sheer force or coercion or physical denial. It requires an internalized belief among its participants that the prohibited item is illegitimate and abhorrent and that the prohibitions must apply to all (Tannenwald, 2005).

I- The Fatwa

Fatwa, in the context of the science of Islamic ruling (Feghh), is an opinion and judgment arrived by an Islamic scholar (Faghih), which is then declared as a religious ruling concerning particular events and subjects. It is different from ordinary knowledge, in that it is knowledge solely regarding the God's ruling concerning a particular



subject. The word Feghh, in general, refers to understanding, but, among Islamic scholars, it is the science of religious ruling, making use of comprehensive reasoning with reference to the Quran, and the body of Islamic tradition, consensus (ejmaa) and wisdom (aghl)(Sajjaadi, 1987). Considering the significance of these sources and methods for Muslims, on the one hand, and the notable status of the Supreme Leader, on the other, the value and credibility of the Fatwa, not only as a consistent religious edict, but as a governance order of important legal and political implications for the state, is amply clear.

For a better appreciation of the consistency of the Fatwa, it should be noted that, an edict of this kind, closely associated with international law, must have deep and strong roots in the religion and fundamentals of Islamic international law - known as "siar"(Ziaaei Bigdeli, 1987: 23). The law is derived from the most relevant and consistent interpretations of the Quran, established Islamic quotations (ravaayaat), treaties made among Muslims and with non-Muslims, formal instructions by the prophet, kholafaa (Muslim rulers after the prophet), and imams (religious leaders, descendants of the prophet), issued to their appointed governors, chiefs, commanders and companions (Ziaaei Bigdeli, 1987: 23). In many verses in the Quran, non-aggression, humane treatment of the enemy and observation of their rights, especially in times of conflict and war, are pointed out.⁽⁷⁾ Bringing the highest amounts of death and destruction upon the enemy is not the purpose for war in Islam. Therefore, using indiscriminate means and methods of warfare, particularly using weapons of mass destruction, are banned.

The Quran points out to its followers "Fight in the way of God with those who fight you, but aggress not: God loves not the aggressors".⁽⁸⁾ That is, when attacked, Muslim forces are required to fight back in their own defense. To do so, naturally, they should be sufficiently prepared, in military and other related terms. However, in fighting back the enemy, Muslim forces are not given a free hand.



Rather, as hinted by the verse, they must not resort to unilateral, disproportionate and indiscriminate aggression. Further, it is asserted, "Who so unjustly slays a soul, shall be as if he had slain mankind altogether; and who so gives life to a soul, shall be as if he has given life to mankind altogether."⁹⁹ Considering the horrible indiscriminate effects of WMD, it could clearly be concluded from the latter Quranic view that the use of all kinds of WMD are forbidden by the religion.

In contrast to the above limitation, defense preparedness, especially in terms of rapidness of response, advancement and abundance of arms, means of transportation, food and other support-means and materials, is given utmost priority, most of all to cause deterrence to avoid the occurrence of war. "Make ready for them whatever force and strings of horses you can, to terrify thereby the enemy of God and your enemy".¹⁰⁰ Prophet Mohammad's guidance to his forces is also interesting: "Best of mankind is one who holds in hand the bridle of his horse, so that as soon as the call to combat is raised, he takes off to the front like a swift flying bird" (Ziaaei Bigdeli, 1987: 161-162). Clearly, there is no hint of making use of unconventional and indiscriminate ways and means of warfare.

Concerning the use of poisons and poisonous chemicals against the enemy, many Muslim scholars, including some very high-ranking Shia scholars, for instance, Sheikh-e Tusi, have dismissed such tactics as inappropriate, referring to the Prophet's saying: "Do not throw poisons at the enemies' towns". Also, Abubakr,¹⁰¹ in the context of instructions given to a fighting force had advised that, through courage and not ever by means of poisons should they overcome the enemies (Ziaaei Bigdeli, 1987: 171). Polluting water resources with poison has been considered forbidden in war (Ziaaei Bigdeli, 1987: 177). Therefore, it may be concluded that, in Islam, use of weapons and means with indiscriminate effects on the enemy is explicitly forbidden.

Standing by one's commitment is another important principle in Islamic international law. Regarding the latter's importance, Islam has



gone to the extent of considering it a religious must⁽¹²⁾. Therefore, the principle is stressed in clear terms in many Quranic verses⁽¹³⁾, and has been given particular attention, by the Prophet, his devout companions and disciples and other great persons in the Islamic world (Ziaaei Bigdeli, 1987: 44-45). The Islamic ban on weapons of mass destruction has also been manifested in Iran in the course of the last six decades. For instance, in 1950, Ayatollah Kashani, in spite of his heavy engagement in leading the resistance against foreign interference in Iran, showed his support for the Stockholm Appeal for an absolute ban on nuclear weapons, approved by the World Peace Council (Salemi, 2012: annex).

Three decades later, Ayatollah Khomeini, Leader of the Islamic Revolution and Founder of the Islamic Republic of Iran, in times when his very newly established Islamic Republic was engaged in an imposed war with Saddam Hussein's Iraq (1980-1988), in the face of the enemy's numerous illegal and indiscriminate missiles and chemical attacks against many Iranian cities and towns, and despite the silence of the United Nations Security Council, and the plea of Iran's military commanders to develop the chemical warfare inherited from the time of the Shah in retaliation, called for patience and self-restraint, rather than retaliation in kind, to the enemy's inhumane methods and means of warfare (Marandi and Soleymani, 2004: 500-511). Also, other highly prominent Islamic scholars, such as Ayatollah Montazeri, Ayatollah Saanei, and Ayatollah Hashemi-Rafsanjani (President of the Islamic Republic of Iran at the time), some as early as mid-1990s, proclaimed, in one way or another, a comprehensive ban on all kinds of WMD (Porter, 2012).

Ayatollah Khamenei, the Supreme Leader of the Islamic Republic of Iran, has on a number of occasions expressed his strong disapproval towards weapons of mass destruction, nuclear and chemical weapons, in particular. At the same time and with an equal earnest, he has stressed the right of all nations to the peaceful uses of nuclear technology. As early as mid-1990s, Ayatollah Khamenei, and



then-President Ayatollah Hashemi-Rafsanjani, had publically opposed the idea of possessing nuclear weapons (Porter, 2012). In a meeting with academicians, in 2004, Khamenei stated that, some powers had expressed concern that ...possibly in pursuit of peaceful uses of nuclear energy; you could come to get hold of nuclear weapons. ...We say no, you should be sure we are not after nuclear weapons ...the work is for preventing dependence on foreign powers and for the preservation of national independence (Khamenei, 2004). In August 2005, the Supreme Leader's Fatwa was, for the first time, officially relayed to the IAEA (IAEA, 2005: 121). According to the Fatwa, [T]he production, stockpiling and use of nuclear weapons are forbidden under Islam and that the Islamic Republic of Iran shall never acquire these weapons. ...The leadership of Iran has pledged at the highest level that Iran will remain a non-nuclear-weapon State party to the NPT and has placed the entire scope of its nuclear activities under IAEA safeguards and additional protocol, in addition to undertaking voluntary transparency measures with the Agency (IAEA, 2005: 121).

Ayatollah Khamenei's disapproval of nuclear weapons was expressed in more details in his message to the Tehran International Disarmament Conference and Non-Proliferation, April 2010. He stated that there was no doubt that there was no possibility for a winner in a nuclear exchange and that engaging in such a war was irrational and inhumane. Towards the end of the message the Leader's abhorrence of nuclear weapons was most emphatically stated: "We regard the use of these weapons to be illegal and haram [canonically forbidden], and it is incumbent on all to protect humankind from this grave disaster" (Khamenei, April 2010). In a meeting with nuclear scientists, March 2012, the Leader restating his views regarding nuclear weapons ban, drew the scientists' attention to the overwhelming disadvantages and dangers of nuclear weapons, and in particular, the fragility of a state's authority relying on these weapons. Really, [having a]nuclear weapon is not advantageous to us;



that is in addition to the point that, in truth, morally, intellectually, and from a religious point of view, we regard this [possession of nuclear weapons] illegitimate, and we regard the move [to acquire them] an illegitimate act. ... We do not see an [added] strength in [the possession of]nuclear weapons, and moreover, we can overcome a power relying on nuclear weapons (Khamenei, March 2012).

In April 2012, Turkish Prime Minister, Teyyip Erdogan, expressed his recognition of the significance of the Fatwa, "After such a statement from such a person, I cannot claim that Iran is building a nuclear weapon" (TehranTimes, 2012). Ayatollah Khamenei's address to the summit meeting of the Non-Aligned Movement (NAM) in Tehran, 26-31 August 2012, reiterated his rejection of all kinds of weapons of mass destruction, including nuclear weapons, on the one hand, and Iran's determination to advance its peaceful nuclear technology, on the other. "[A] nuclear weapon neither provides security, nor does it consolidate political power, rather, it is a threat to both of them. ... Iran considers the use of nuclear, chemical and other weapons of the like, a massive and unforgivable crime." (Khamenei, August 2012)

These statements, which contain the leader's view, or Fatwa, regarding nuclear weapons ban, are directed at Iranian nuclear scientists, policy makers, parliamentarians, and civil and military officials, as well as, the international community, of countries that possess nuclear weapons and those who do not. Purely from a religious point of view, the Fatwa permanently makes it incumbent primarily upon Ayatollah Khamenei's followers, and upon other Muslims, to actively endeavor to realize and keep with the ban on WMD. Based on this solid ground, but from a governance view point, which is in executive terms the Fatwa's dominant aspect, it is upon the government and other institutions of the state, and foreign policy makers and executives to observe the commitment, to codify it into clear, comprehensive, and exact legal texts and executive procedures and to operationalize various aspects of it, if not already



covered through Iran's NPT and other international WMD commitments. Finally, from a moral point of view, an edict of this kind, calls upon all mankind to work steadfastly for the realization of a nuclear weapons ban and disarmament, and for peaceful uses of nuclear technology.

II- The Fatwa's Longevity

From a realist perspective, it would be impossible for a country as important as Iran to abstain permanently from acquiring nuclear weapons that is in view of the presence of unstable and hostile nuclear weapon states in the region. Ending the threat from an Iranian nuclear program will require placing the Iranian decision in the context of the long-standing U.S. goal of a Middle East free of nuclear weapons. It will be impossible for a country as important as Iran to abstain permanently from acquiring nuclear weapons—at least as a hedge—if other countries in the region have them. ... Iranian leaders want some assurances that there is a process under way that can remove what they see as potential threats from their neighbors, including Israel. For domestic political reasons, they will want to present their nuclear abstinence as part of a movement toward a shared and balanced regional commitment (Cirincione, 2007: 152).

Therefore, logically, from a realist perspective, the issuance of the Fatwa is considered as an Iranian act of expediency to hide real intentions behind the nuclear energy program. The security perspective of the Iranian leadership, however, being predominantly based on historically rich, moral, and legal teachings and norms of the Iranian and Islamic cultural heritage, can hardly be described as purely realist. Therefore, it would not be impossible for a country as important as Iran to abstain permanently from acquiring nuclear weapons. Nevertheless, having studied the Fatwa, now, it is reasonable to ask, for how long and to what extent would the Fatwa stand? As a religious decree, rooted deeply in Islamic teachings, discussed above, the Fatwa is a reflection of a primary Islamic order¹⁴⁹



and, therefore, it stands forever and under all conditions. In that sense, there is no question of expediency⁽¹⁵⁾ regarding the Fatwa, and the Fatwa is permanent.⁽¹⁶⁾ However, as a governance order, bar some significant change, either in the present governance setting of Iran⁽¹⁷⁾ or in the international security conditions, which might render the Fatwa ineffective, also there are important reasons to believe that the Fatwa would stand under the Islamic Republic.

The reasons flow from religious, moral, legal, technical, economic and political considerations. They include the solid Islamic ban on weapons of mass destruction, the supreme leader's view regarding the undesirability of nuclear weapons, including the dangers and cost of stockpiling, and its uselessness in an Islamic defense strategy (Khamenei, March 2012), Iran's international legal commitments against all sorts of WMD, nuclear weapons in particular, and last but not the least, the credibility of Ayatollah Khamenei, as the Supreme Leader of the Islamic Republic of Iran, and the highly valued reputation of the Islamic establishment is behind the Fatwa. Moreover, there is a consensus, among outstanding religious and political figures in Iran, regarding the Fatwa's substance and its consequent good for all mankind (Alavi-Garakani, 2012). Many highly respected Iranian scholars, including Ayatollah Alavi-Garakani (Alavi-Garakani, 2012), Ayatollah Makarem-e Shirazi (Makarem-e Shirazi, 2012), Ayatollah Nouri-e Hamedani (Nouri-e Hamedani, 2012), and Hojjatoleslam Dr. Ahmad Moballegi (Moballegi, 2012) have expressed their strong support for the Fatwa's deep-rooted Islamic stance against the tyranny of either using or even possessing nuclear weapons and other WMD. A well-known American security and weapons expert, Joseph Cirincione, believes that: It turns out that the reasons why states do not develop nuclear weapons can be grouped into the same set of reasons why they do: security, prestige, domestic politics, technology, and economics. ... [S]tates decide not to build nuclear weapons _or, in some cases, to give up weapons they have acquired or programs that they have



started- because they decide that the security benefits are greater without nuclear weapons, that prestige is enhanced by non-nuclear-weapon status, because domestic politics convinces leaders not to pursue these programs, or because the technological and economic barriers are too significant to overcome (Cirincione, 2007, 48).

Compared with these realist reasons, it may also be appreciated why, regardless of the Fatwa's rich moral and religious content, Iran does not develop nuclear weapons. Regarding Iran's security, as rightly pointed out by Ayatollah Khamenei, there is no added strength in the possession of nuclear weapons, and that if Iran is threatened by the weapon; it can overcome the threat (Khamenei, March 2012). Regarding the prestige, Iran does not see any prestige in the development, possession, and use of WMD, as weapons of mass terror (Khamenei, August 2012). From the domestic politics point of view, apparently, the issue is not known to have ever risen in the context of domestic rivalries among various groups in Iran (Heeley, 2013). To the contrary, there seemed to be an agreement among the outstanding religious scholars and politicians in Iran concerning the Supreme Leader's comprehensive ban on nuclear weapons (Alavi-Garakani, 2012). Regarding the technology, Iran is priding itself in having made significant advances in the field of peaceful nuclear technology, nanotechnology and in various other highly important scientific and technical fields. Thus, mastering the nuclear weapons technology, particularly when the weapon is of no use to Iran, is unrealistic and clearly uneconomical, too.

III- Nuclear Weapons Non-Proliferation and Disarmament Principles

The nuclear weapons non-proliferation and disarmament principles are stated within the legal framework of the NPT. The NPT is largely the result of proliferation concerns mainly of the nuclear weapon states, that is, concerns about the dangers of nuclear weapons proliferation, as well as seeking to keep their monopoly on the



possession of nuclear weapons. After long and arduous negotiations, the treaty, composed of an introduction and 11 articles, was concluded and signed in 1968, and entered into force in 1970. The NPT has resulted from a compromise between two contending priorities, non-proliferation of nuclear weapons, on one hand, and the use of nuclear energy for peaceful purposes, on the other.

The Treaty is based on three pillars: non-proliferation of nuclear weapons; the right of states to nuclear energy for peaceful purposes; and finally, nuclear weapons disarmament. We would refer to these as international principles on nuclear weapons non-proliferation and disarmament. In a clearly discriminatory fashion, the NPT has divided the states into nuclear-weapon and non-nuclear-weapon states, with different rights and responsibilities. Through specific means and procedures, non-nuclear-weapon states are prohibited from acquiring the weapons. In contrast, however, no specific procedures or plans are envisaged for nuclear weapons disarmament. Articles one and two are related to the nuclear non-proliferation principle. Non-nuclear-weapon states undertake to refrain from acquiring nuclear weapons, and nuclear-weapon states undertake not to transfer the weapons to others. Article three refers to safeguards procedures to verify compliance with non-diversion of nuclear materials from peaceful uses to weapons purposes. Each non-nuclear-weapon state Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency (IAEA) in accordance with the Statute of the IAEA and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.⁽¹⁸⁾

Articles 3, 4 and 5 relate to "the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes".⁽¹⁹⁾ Disarmament of nuclear weapons principle is contained in NPT Article VI. Each of the Parties



to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.⁽²⁰⁾

The Treaty provides for the possibility of withdrawing from it under certain conditions: Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.⁽²¹⁾

The article also deals with the duration of the Treaty. "Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods."⁽²²⁾

IV- Legal Concordance of the Fatwa with NPT Principles

Although, the Fatwa's legal undertaking is of a unilateral character, and that of the NPT is an international one, there are important legal similarities and differences between the two. It is realized that: Although often welcome, unilateral initiatives have limitations. Some of them have not been verified, are not subject to any transparency or reporting requirements, are readily reversible, or are not legally binding. Retiring obsolete weapons while developing replacements cannot be seen as a fulfillment of a commitment to disarm. (WMDCommission, 2006: 44)

Similar to the NPT, although no specific verification mechanism of its own is envisaged in the Fatwa, a clear reference to Iran having placed "the entire scope of its nuclear activities under IAEA



safeguards and the additional protocol in addition to undertaking voluntary transparency measures” has officially been made in relation to the Fatwa (IAEA, 2005: 121). Also, as argued in a previous section, the anti-WMD commitment made in the Fatwa is not reversible and is legally binding. Contrary to that, NPT Article 10 allows for reversal of the commitment, that is, a state’s withdrawal from the treaty. Finally, with respect to developing replacements, it is important to realize that, while the NPT bans a specific type of weapon, nuclear weapons, the Fatwa’s prohibition covers all sorts of WMD, even those that could be invented and developed in the future. Therefore, somehow in contrast to the above WMD Commission’s suggestion, the Fatwa’s unilateral nature has not made it more limited than the NPT, which is a multilateral international treaty.

In general, both the Fatwa and the NPT have legal implications on Iran, prohibiting the latter from the acquisition, production, stockpiling and use of nuclear weapons. However, the Fatwa, covering all sorts of WMD, including nuclear, chemical, biological, and radiological weapons, and any future weapons or methods of warfare which are indiscriminate in their effect, go far beyond the restrictions set by the NPT, which only concerns nuclear weapons. According to the Fatwa, WMD are canonically wrong and sinful, and from the governance point of view, prohibited and illegal. In this manner, the legal prohibition set by the Fatwa is deeply rooted in the religious and moral values of the Iranian people. Therefore, Iran's commitment made through the Fatwa is much more than a government's legal undertaking in respect of an international treaty. Iran's deep rooted religious and moral commitment through the Fatwa adds to the stability and long lasting character of the commitment made through the NPT.

Specifically, NPT articles one and two are related to the nuclear non-proliferation principle. Non-nuclear-weapon states undertake to refrain from acquiring nuclear weapons, and nuclear-weapon states undertake not to transfer the weapons to others. Although worded



somehow differently to the NPT, the Fatwa restricts Iran in ways no less restrictive than the NPT. For instance, NPT Article 2 refers to terms such as "non-acceptance of transfer", "explosive devices", "not to seek or receive any assistance in the manufacture of nuclear weapons". Although, the Fatwa does not make use of these terms, it clearly and strongly bans nuclear weapons, effectively covering the concerns raised in Article 2.

NPT Article 3(1) refers to *safeguards* procedures to verify compliance with non-diversion of nuclear materials from peaceful uses to weapons purposes. Similarly, although no specific verification mechanism of its own is envisaged in the Fatwa, a clear reference to Iran having placed "the entire scope of its nuclear activities under IAEA safeguards and the additional protocol in addition to undertaking voluntary transparency measures" has officially been made in relation to the Fatwa (IAEA, 2005: 121). To be agreed by each non-nuclear weapon state with the IAEA, the Additional Protocol is a supplement to any existing comprehensive safeguards agreement between a state and the IAEA. Therefore, in addition to the IAEA safeguards referred to in the NPT, the Fatwa is also cognizant of the Additional Protocol, which required, among other things, a state's further legal authority for a considerably more effective IAEA inspection of any suspect nuclear activities.

An issue of key importance, reflected in NPT Articles 3, 4 and 5, relate to "the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination".⁽²³⁾ As related to the conduct of the safeguards, NPT Article 3(3) specifically points out that they "shall be implemented in a manner ... to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities". Basically with the same considerations, the issue is also of key importance to the Fatwa. However, in this context, the fundamental matter of the state's national independence is much more explicitly referred to by the



Fatwa (Khamenei, 2004).

Since the NPT's genesis, there has been a give-and-take between the right to peaceful uses and the non-proliferation commitment. The Fatwa, however, there has never been any indications, whatsoever, of conditionality between the WMD-ban and the right to peaceful nuclear energy. While the Fatwa has unilaterally and unconditionally banned WMD, in the NPT no specific procedures or plans are envisaged for nuclear weapons disarmament.⁽²⁴⁾ Worse than that is the NPT wording on the issue, connecting negotiations on nuclear disarmament with the "cessation of the nuclear arms race at an early date", on one hand, and "a treaty on general and complete disarmament", on the other hand, rendering the nuclear disarmament as a far-fetched dream. Thus, in this respect, too, the Fatwa stands at a higher moral and legal ground than the NPT. The Treaty provides the right to a state party to withdraw from it "if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country".⁽²⁵⁾ In clear contrast to the Treaty, according to the Fatwa, regardless of all conditions, including supreme national interests of Iran being in jeopardy, there is no withdrawing from the WMD-ban.

Finally, regarding the Treaty's duration,⁽²⁶⁾ following an agreement made in a NPT Conference, in 1995, it was decided that the Treaty will continue in force indefinitely. However, considering that the agreement, including commitment to nuclear disarmament, necessity for the universalization of the NPT, and establishment of a nuclear weapons free-zone in the Middle East, is not being honored by nuclear-weapon-states, the indefinite duration of the Treaty is increasingly at risk. In comparison, the Fatwa's duration, not being subject to multilateral agreements or situations, but instead, based on deep-rooted Islamic teachings and moral tenets, is permanent.



Conclusions

In the course of the study, a review was made of the roots of Islamic international law banning all WMD. In this respect, the depth of moral and legal commitment of the Islamic Republic of Iran, particularly in the face of an unjust and dangerous international order - most visible in the context of the sanctions against Iran's peaceful nuclear energy program - was discussed. On this basis, it could be appreciated that, far from expediency accusations leveled against it,⁽²⁷⁾ the issuance of the Fatwa has indeed been a highly responsible and courageous act, with solid roots in Islamic principles and history. Moreover, the Fatwa, issued at the highest level of governance in the Islamic Republic of Iran, has invigorated Iran's legal commitment to international law banning WMD, the NPT in particular. The issuance of the Fatwa was also in line with Iran's national defense strategy and national interests, and it provided significant and lasting support to international peace and security.

The Fatwa has elaborated, confirmed and consolidated the deep-rooted Islamic WMD-ban on the national level, and has aimed to enlighten and assure the international community and world public opinion, of Iran's deep-rooted anti-WMD commitment. It is a most important manifestation of Iran's extremely heavy-weight WMD non-proliferation commitment. In addition to a comprehensive ban on WMD, the Fatwa strongly asserts the right of Iran, and other non-nuclear-weapon member states of the NPT, to peaceful uses of nuclear technology. In this sense, and in view of the sanctions imposed on Iran and the threat of military attack, the Fatwa is both a token of commitment to a complete ban on WMD, and a pledge of Iran's resistance in pursuit of its national rights and interests in the face of illegitimate and humiliating demands and inhumane actions of the world powers.⁽²⁸⁾ In these chaotic international security conditions, international norms are increasingly and openly being violated, through powerful states'(and non-states') acts of aggression, both



hard and soft, terror, violation of national rights and liberties, where the powerful states find it in their national interest. Under these gloomy conditions, a Fatwa of this kind, free from narrow considerations of national or multi-nationals interests, is indeed a very valuable asset, to open a new perspective, to have hopes for peace and security, justice, cooperation and progress for the benefit of all people in the world.

Our comparative study of the Fatwa and the NPT revealed serious weaknesses in the NPT's formulation. The Treaty is fundamentally discriminatory, dividing the states into nuclear weapon-haves and have-nots, with unbalanced set of responsibilities and advantages for each group. For instance, no dates were set for such a vitally serious matter as nuclear disarmament, the most important responsibility of nuclear weapon states. Nuclear weapon states were also free from the safeguards. The non-proliferation regime's discriminatory practices have also added to the weight of the situation, as can be seen in the unjust sanctions against Iran's peaceful nuclear energy program, mainly affecting ordinary Iranians.

In relation to the main question of this study, we found that there is an important legal concordance between the Iranian anti-WMD Fatwa and the international non-proliferation and disarmament principles, as contained in the NPT. As regards the nuclear non-proliferation aspect, the unilateral Iranian Fatwa has demonstrated a greater level of consistency, strength, expanse and permanence, than the NPT. In close connection with nuclear weapons non-proliferation and disarmament, there are other highly important aspects, referred to in the Fatwa, on which the NPT is literally silent. For instance, the crucial commitments not to use, and not to make threats to use nuclear weapons, particularly stressed in the Fatwa, have unfortunately no place in the NPT.

In this manner, the Fatwa provides a clear and highly credible manifestation of Iran's commitment, upon which the P5+1 and Iran could chart a promising approach to the negotiations regarding Iran's



nuclear program. Some politicians and decision-makers in the US and among its western allies in the P5+1 might have believed it in their interest for the anti-Iran sanctions to expand and drag-on indefinitely. Surely, the sanctions have harmed Iran, but it has also harmed the US and its allies in very important ways. Much more importantly, contrary to the key objective of the sanctions, Iran's peaceful nuclear energy program has significantly expanded within Iran's NPT-rights and obligations, as evidenced by the IAEA reports. Therefore, it has increasingly been realized that, the sanctions and other illegitimate and inhumane methods of terrorizing Iran, to force Iran to abandon its NPT-rights to peaceful nuclear technology, do not work.⁽²⁹⁾ This ill-fated confrontation could not only lead to war with catastrophic regional and global ramifications, but could also lead to a change of equations domestically in Iran and a different calculus for resistance and survival.

Hopefully, with increasing prevalence of moral conscience and wisdom on all sides, turning to further sanctions, violence, terror and war would be unlikely. Moreover, with the recently held successful presidential elections in Iran and assumption of the highly powerful executive branch of the government, by President Hassan Rouhani, there will be a much brighter prospect for a peaceful settlement to Iran's nuclear case, through constructive negotiations, confidence-building and cooperation, founded on mutual respect, full recognition of rights, including Iran's NPT-right to uranium enrichment for civilian use, non-violence, and solid keeping with past and emerging agreements. Under these prospective conditions that would benefit all, it only seems fair that, Iran should particularly be compensated for the significant losses incurred, mainly through the sanctions, terror, and sabotage, made illegitimately against it.

Notes

1. The Article refers to a Jerusalem-based Middle East Research Institute report arguing that “Khamenei’s anti-nuclear Fatwa doesn’t exist.”
2. In all literary pieces I have come across in this study, the terminology "Fatwa" (religious edict) has been used, in order to refer to the declarations made, by Ayatollah Khamenei, confirming Iran's commitment to WMD-ban. However, as it will become clear in the course of this study, the declarations are far beyond the limit of an ordinary Fatwa.
3. International Atomic Energy Agency.
4. UN Security Council resolution 487, for instance.
5. NPT Articles I and III.2.
6. UNGA Resolutions 3263 (XXIX) of 9 December 1974.
7. Arberry's Quran English translation, *Tanzil.net*, Sura Al-Baqara, verse 190.
8. *Ibid.*, Sura Al-Maede, verse 32.
9. *Ibid.*, Sura Al-Anfal, verse 60.
10. First Khalife ruling over the Muslim lands, following the Prophet's demise.
11. Vaajeb-e Sharei.
12. Arberry's Quran English translation, *op.cit.*, Al-Baqara 177, Al-Maede 1, Al-Rad 20, etc.
13. Hokm-e avvaliyeh.
14. Maslehat.
15. For instance, see (Moballeghi, 2012)
16. For instance, a change in the Leadership.
17. NPT Article III.1.
18. NPT Article IV.
19. NPT Article VI.
20. NPT Article X.1.
21. NPT Article X.2.
22. NPT Article IV.
23. NPT Article VI.
24. NPT Article X.1.
25. NPT Article X.2.
26. Porter, Gareth, *Op.cit.*, while referring to the accusation, rejects it and rightly clarifies that, "Taqiyyeh" was specifically limited to hiding one's Shi'a faith to avoid being killed



... if it were acknowledged."

27. See also (Osborne, 2013). The article is an introduction to a new book by Osborne and Morrison, *A Dangerous Delusion: Why the West is Wrong about Nuclear Iran*, Elliott and Thompson Ltd., 2013.
28. "The US and its European clients are driven by a different compulsion: The humiliation and eventual destruction of Iran's Islamic Regime", *Ibid.*

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فتوای هسته‌ای ایران

فرهاد شهابی سیرجانی

دکترای روابط بین‌الملل از دانشگاه کنت

در سال ۲۰۱۲، در کنار مذاکرات بر سر برنامه هسته‌ای ایران، توجه ویژه رسانه‌ها به فتوای صادره از سوی آیت الله خامنه‌ای، رهبر معظم جمهوری اسلامی ایران، معطوف شد که ساخت هرگونه سلاح کشتار جمعی به ویژه سلاح هسته‌ای را منع کرده بود. این مقاله برای بررسی بعضی سؤنقاهمات و ادعاهای نادرست در مورد فتوا مورد نگارش قرار گرفته است. هدف این مقاله بیان اطلاعات روشن و مستند و کنکاش در چرایی صدور این فتوا، اهمیت آن و اعتبار و ارتباط آن با قوانین بین‌المللی است. پاسخ به پرسش اخیر از طریق آزمودن تطبیق قانونی فتوا با اصول بین‌المللی در مورد منع تکثیر و خلع سلاح هسته‌ای امکان پذیر است. علاوه بر منابع و متون فتوا، این تحقیق تلاش دارد تا توجه ویژه‌ای به سازگاری منطقی و ریشه‌های قوی تاریخی آن داشته باشد. از سویی فتوا نشانگر تعهد جمهوری اسلامی به منع سلاح‌های کشتار جمعی است، و از سوی دیگر تأکید ایران بر حقوق خود در چارچوب ان.پی.تی برای استفاده صلح آمیز از فناوری هسته‌ای را نشان می‌دهد. در مقاله شرح داده شده است که پایبندی ایران به فتوا تعهدی به مراتب مهمتر، جامع‌تر و بادوام‌تر از پایبندی این کشور به ان.پی.تی است. با توجه به این موضوع فتوا متمم و تقویت کننده تلاش ایران به نشان دادن پایبندی خود در قبال ان.پی.تی است. این حرکت قوی نشانه تعهد رهبری ایران در مقابل سلاح‌های کشتار جمعی همراه با شفافیت قابل قبول در فعالیت‌های انرژی هسته‌ای ایران است. به رسمیت شناختن واقعی حق ایران برای دسترسی به فناوری صلح آمیز هسته‌ای توسط غرب، شامل غنی‌سازی هسته‌ای و خواست غرب برای رسیدن به نتیجه‌ای شرافتمندانه در پرونده هسته‌ای ایران، باز شدن راه‌های استوار اعتماد سازی و همکاری‌های روبه جلو بین ایران و گروه ۵+۱ در موضوعات گوناگون را در پی خواهد داشت که به سود همه طرفین خواهد بود.

کلیدواژه‌ها: فتوا هسته‌ای ایران، اسلام، سلاح‌های کشتار جمعی، فناوری صلح آمیز هسته‌ای، تبعیض، رویارویی