

RELEASE IN PART B6

From: Sullivan, Jacob J <SullivanJJ@state.gov>
Sent: Saturday, March 24, 2012 11:26 AM
To: H
Subject: FW: Nuclear Fatwa of Khamenei

See below David Makovsky's note on the nuclear fatwa, followed by Vali's response.

From: David Makovsky [redacted]
Sent: Thursday, March 22, 2012 04:39 PM
To: Sullivan, Jacob J
Subject: Nuclear Fatwa of Khamenei

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Jake,

I was thinking of your mention of Vali Vasr, who said Khamenei's fatwa on nuclear weapons should be taken seriously. I am including a link below to the study done at the Washington Institute last year by Mike Eisenstadt and Mehdi Khaliji. You may have heard of Mike, who directs our military studies program for us. Mehdi is one of our in-house Iran watchers. Mehdi is a scholar of Islam. He trained in Shia theology and jurisprudence for 14 years at seminaries in Qom! He then went a different direction, studying Shia theology in Paris and has been with us for several years. (He is now an American citizen and has testified on the Hill.)

One of the main points is that fatwas are issued in response to specific circumstances and can be altered in response to changing conditions. Khomeini modified his position on a number of issues during his lifetime – for instance on taxes, military conscription, women's suffrage, and monarchy as a form of government. Mehdi says Shia tradition permits the use of any means to cow and intimidate foreigners/nonbelievers or to prevail over them in warfare. He says such tactics are permitted if they serve the interests of the Islamic umma (community). Let me know if you want to meet Mehdi, as well.

<http://washingtoninstitute.org/pubPDFs/PolicyFocus115.pdf>

All best,
David

From: Vali Nasr [redacted]
Sent: Friday, March 23, 2012 10:54 PM
To: Sullivan, Jacob J
Subject: Re: Nuclear Fatwa of Khamenei

Hi Jake

I hope all is well. I response to David's points:

1) Of course Shia jurisprudence allows change of ruling in specific circumstances--what legal system does not, or is not susceptible to such reversals. Any legal ruling (Roe v Wade comes to mind) can be changed either if circumstances change or there is an exigency. So, if there is an attack on Iran David's prediction is sure to come through. Of course David's is looking for a 100% non-reversible commitment here which is not possible in any legal system--or for that matter international treaty. Can we think of any international treaty we would not renege on if the conditions demanded it?

2) Khamenei has reiterated his ruling 17 years after he issued it first in 1995. In the second iteration he tightened the language to use the term "Cardinal Sin"--even though the international circumstances warranted backing away from the first ruling.

3) As is true of any judge (or our Supreme Court) he/she cannot easily back away from a ruling without losing face or jeopardizing all your other rulings. What WINEP study does not discuss is the following:

- on what basis would Khamenei legitimately overturn his own twice-rendered ruling?
- What would be the political cost to him? What would it do to his other fatwas (would all of his other judgments then challenged as well)?
- What would be the cost to the Islamic Republic?

The WINEP study does not say how many times has a significant ruling been reversed based on changing conditions and then at what cost. They don't provide any historical examples. The examples David gives on Khomeini is misleading. First many of these were not fatwas. Khomeini did not give a fatwa on accepting monarchy, and his view of monarchy as a form government that Islam could live with was two decades after he wrote Islam could live with monarchy and after a major blood bath in 1963 during which the Shah's army killed a few thousand to suppress a religious revolt. It was not a casual reversal, but one that was based on clear evidence that monarchy itself had changed from a pacifist nuisance to a bloody threat. The nuclear weapon is not a fatwa Khamenei can gingerly back away from without incurring significant cost.

4) The key issue is not that Khamenei's ruling is irreversible (it most definitely is, especially after he passes from the scene) but that there is significant cost to Khamenei reversing the ruling without a very clear change in conditions.

5) I know Mehdi and his work, and I know his credentials. Suffice it to say they are more impressive to WINEP than I. Mehdi is an insightful analysts--true to WINEP's party line--but not a scholar of Islam. He is one time seminarian with certain insight into the clerical system, but no more than what a law school drop-out could claim into the working of the Supreme Court.

6) Finally the issue for the US is not whether Khamenei's fatwa is the equivalent of intrusive IAEA inspections guaranteeing our peace of mind. We are not hanging our hat on the fatwa. The issue is whether it provides us with a diplomatic lever to hold the Islamic Republic to its own religious standards for the duration of the talks to get to a more solid and verifiable guarantee out of it. The value of the fatwa is to create the necessary Iran red line coinciding with our red line to provide sufficient space for talks. If you don't believe in diplomacy or wish US did not try it then questioning the viability of the red lines would be a good place to start.