



# IDSS COMMENTARIES (19/2004)

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## TRANSNATIONAL *FATWA* AND RADICAL *JIHAD*

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1 Recent combat between coalition troops and militia loyal to radical Iraqi cleric Moqtada al-Sadr at *Shi'a* holy cities have had ample media play. But behind the scenes, a high-stakes struggle is taking place between al-Sadr and the highest ranking *Shi'ite* cleric, Ayatollah Ali al-Sistani. The fight is over the responsibility to issue a *fatwa* (a religious legal ruling) and to declare *jihad*, or holy war. Mindful of legal precedent, al-Sadr has justified *jihad* against US forces without a legitimizing *fatwa* by appealing to the concept of defensive holy war. Sensitive to popular opinion, al-Sistani has been reluctant to issue a *fatwa* ordering the withdrawal of al-Sadr's militia from the battle-scarred holy cities. This is not a squabble over Islamic legal theory, but a contest over religious and political authority.

2 The power politics in Southern Iraq over *fatwa* issuance is not just a local problem. With globalization, the 'fiber-optic'-sped *fatwa* has helped legitimize militant, Islamist calls to *jihad* to defend their radical vision of the Islamic creed. The transnational *fatwa* can mobilize sections of the *umma*, the worldwide community of Muslims, to either comply with or flout obligations of secular law. Modern communication technologies ensure that the cyber-*fatwa* or satellite-*fatwa* reach a wide audience, making them key instruments for those forces within the faith who struggle to define the range of permissible and forbidden within Islam. Therein lies its explosive potential for misuse, and for either radicalizing or moderating the reflexes of the *umma*. The transnational pull of an increasingly politicized *fatwa* model, used most effectively by Usama bin Laden, is a phenomenon that has not been sufficiently examined either in comparative law or in Islamic legal theory. How has this technical form, drawn from classical Islamic jurisprudence, rendered calls to acts of terrorism authoritative and compelling for certain Muslims?

### Islam and the fatwa

3 Before answering the question, it may be helpful to look at the broad context of *fatwa*-issuance (*ifta*). A basic doctrine in Islam is that religion and law are not separate spheres. Islam tends to synthesize all aspects of human interaction into a single value system, based on sacred law (*Sharia*). But applying a pristine, totalizing *Shariah*, the source from which all principles of Islamic law and life are supposed to flow, has always proved elusive. The sacred law implemented is less a stable monolith than a shifting mosaic. It is shaped by power and policy considerations. Classically, Islamic law is created by the elucidations of jurisprudence (*fiqh*) of various schools whose scholars (*ulama*) and jurists mine legal rules from the sacred sources through accepted protocols and methods (*usul al-fiqh*). Mechanisms for transforming Islamic law were the scholars' commentary or opinion (*fatwa*). The latter was a product of

legal reasoning by an exemplary scholar (*mujtahid*), also known as a *mufti* (issuer of *fatwa*).

4 The *mufti*'s learning and interpretative ability usually compelled a local following of believers. His *fatawa* normally responded to mundane questions in private law, approving an act based on a spectrum ranging from the obligatory to the repugnant. Ideally, the body of *fatawa* served as the case law of Islam, decisions that establish or reinforce the consensus (*ijma*) of the community on a matter. The *mufti* gives moral sanction to a certain action and provided guidance for complicated matters of daily life, based on an interpretation of sacred sources. When *fatawa* encroached upon public law, it could clash with the political objectives of a ruler. For example, when the *amir* or ruler declared a *jihad*, the *mufti* issued a *fatwa* that either backed up or challenged the legitimacy of the *jihad*.

5 In the public mind of the west, the form and substance of the *fatwa* are often confused. The word *fatwa* may be understood as a declaration of war, a death penalty, a contract for a hit or perhaps just an opinion on an everyday issue. What is of note is that the *fatwa* is the most versatile, multi-purpose and flexible instrument for claiming religious legitimacy for a range of actions (from whether it is permissible to mechanically separate chickens, smoke tobacco, incur interest, masturbate, read a particular book, or declare *jihad*). But even if there is general agreement on what a *fatwa* is, there is very little consensus on who is able to issue one.

#### Splintered religious and political authority

6 In the early modern period, prior to the system of sovereign, nation-states in Muslim lands, the Ottoman Empire's chief *mufti* was empowered to issue *fatawa* to reconcile mundane law or cast policy in sacred *sharia* terms. His decision was the law when it came to declaring *jihad* against a group or political entity. Today, the *ulama* or the custodians of 'official Islam', functionaries of the modern nation state such as the *Dar-al Ifta* or Al-Azhar University in Egypt or their Saudi equivalents may insist that only a state-*mufti* is authorized to issue such *fatawa*, especially those relating to matters of public law such as the waging of *jihad*. However, globalization has attenuated the ideological supremacy of a centralized bureaucracy of *ulama*. 'Official' Islam's claims to religious authority are constantly challenged by freelance media *mullahs* at the margins. This has opened up opportunities for a re-casting of the *fatwa* and exploiting the form to promote violent ends.

#### Understanding the radical fatwa

7 Indeed the last three decades have witnessed the hijacking of *fatwa*-issuance by militant Islamist groups for religio-political ends. Islamic labels are used to provide a counter-discourse of legitimacy operating in a parallel moral universe. To cite a recent example, Islamists belonging to the radical Southeast Asian terror network Jemaah Islamiyah (JI) claimed to be following a *fatwa* when they carried out the Bali bombing in 2002. A JI member said in a media interview that a radical Indonesian cleric handed them the 1998 *fatwa* from Usama Bin Laden, which declared in part that the "ruling to kill the Americans and their allies – civilian and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it...in accordance with the words of the Almighty God". He interpreted the *fatwa* to mean: "we can act by killing American civilians anywhere ... armed or unarmed, soldiers or civilians ... women, the elderly or children. That is the nature of the fatwa." For the JI member, bin Laden's transnational *fatwa* gave absolute moral sanction to carry out what would normally be considered reprehensible crimes against

humanity.

8 Crucially, his reasoning hinged on the argument that the form of the *fatwa* provided a cloak of legitimacy to the content of the actions. The stand-alone *fatwa* even cancelled out the weight of preceding Islamic law. Notably, the same year bin Laden issued his *fatwa*, a group of Afghan *ulema* had issued a *fatwa* requiring the removal of US forces from the Gulf region and asserted that theirs was “not merely a *fatwa* issued by the *ulema* of a Muslim country, but rather a religious *fatwa* that every Muslim should adopt and work under.” This firm, normative imperative is a departure from the classical understanding of the *fatwa*, a ruling accepted or rejected at the discretion of the individual believer.

### The mechanics of the fatwa

9 Ideologues like simple and effective instruments. The mechanics of authority supporting a *fatwa* is straightforward. Every believer is compelled to follow a *mujtahid*. It is an expression of the hierarchy between the learned *mufti* or *mujtahid* (striving for their own understanding of Divine command) who professes to understand sacred law and the believer (following the badge of authority because they cannot reason on the basis of textual evidence) who chooses to accept and follow his learning and professed opinion. Traditionally, small communities outside direct state influence can choose their own *mujtahid* or *mufti* who establishes consensus on a given matter. The source of the *mufti*'s authority comes only from his recognized knowledge—not from the government, not from a central religious authority, and certainly not from a claim to divine right. The *mufti* is responsible to his own conscience and bears a large responsibility because people respect his knowledge. One *mujtahid*'s opinion does not cancel out another's, but the system ensures that the *mufti* with his finger on the pulse of popular sentiment attracts a large following.

10 No consensus exists in Islamic jurisprudence on who exactly is authorized to issue a *fatwa*. Indeed, there is no Islamic version of a Bar Association that licenses a *fatwa* issuing member or a *mujtahid*. Ironically, Islamists have pilloried the former Egyptian Chief *mufti* (now Al Azhar rector) Syed Tantawi as unfit to issue *fatawa* because his training was in theology and not jurisprudence. But this is a self-serving argument since no radical Islamist appears to have applied the same yardstick to the militant Usama bin Laden. In *fiqh* terms, it is certainly not only the head of a sovereign Muslim state or his chief *mufti* with exclusive legal authority to declare *jihad*. Islam does not have a formal clergy, and the issuance of *fatwa* may technically be done by any individual believer whose learning or actions have drawn a following within the fold. Crucially, it is public acceptance and a following that makes a *mufti*. Any believer consulting a *mufti* on some matter is responsible for following his or her own conscience in deciding on a course of action based on his advice. It follows that radicalized opinion will seek out a radical *fatwa* – a ready market exists.

11 Boosting Islamist exploitation of the *fatwa* to promote radical *jihad* is the successful hybridization of the classical form. The classical, *fiqh* understanding of *fatwa* connects its acceptance and legitimacy to schools and consensus. The *fatwa* can change the dominant doctrine of the school if it marshals sufficient authoritative opinion. But it still connects with the body of existing doctrine and cannot completely contradict the founding texts of the school. However, the modern, radical *Salafist* (orthoprax) conception stresses conversion of individual belief in a direct relationship with the sacred text. Thus, the single *fatwa* can go against the grain of accumulated consensus and promote a certain course of action. This modern hybrid conception resembles to some degree the *Shi'i* model rather than a classical

*Sunni* one. That is to say, it gives preponderant weight to a single *fatwa* uttered on the strength of the authority of a single *Marja* (model), be it Ayatollah Shirazi's tobacco boycott *fatwa* of 1891 or Ayatollah Khomeini's *fatwa* in the Rushdie Affair, which politically outweighed the counter-*fatwa* of Sunni *ulama* from the prestigious Al-Azhar University.

### Selective fiqh and the radical fatwa

12 The *fatwa* in its modern, radical form gains major traction from the fact that the classical *fatwa* was an instrument for integrating the consensus of a community on questions that had not yet been decided. It provided the gel for the *umma*, the worldwide community of Muslims, to mobilize around a particular position or issue that was uncertain. This was an issue on which the state had yet to intervene, and a person professing religious authority could develop consensus on the question and thereby establish his legitimacy.

13 Exploiting this gap, Usama Bin Laden practices a deviant form of the *mujtahid-muqallid* relationship, using *fatawa* to radicalize the section of the *umma* receptive to his message. Of course, Islamic legal theory certainly does not say that every Muslim is obliged to accept a declaration of *jihad* just because it is called a *jihad* and carried in a *fatwa*. The traditional interpretation of the *mujtahid-muqallid* model expects that the individual believer will follow their conviction after hearing the *fatwa*. And if they are convinced by these arguments, whether or not the *mujtahid* is licensed or trained by an official body, they can follow it. They certainly should not follow every word in a *fatwa* just because it is called a *fatwa*. It is the strength of the content not the form that compels compliance. But the nature of *Salafist* (orthopraxis) belief appears to stress form over content, and privileges strict commands over flexible self-reasoning.

14 Usama bin Laden's *jihad*-steeped discourse roots itself in classical Islamic legal theory. Usama bin Laden may be a political ideologue using the language of *fiqh* to advance specific interests. Like any fundamentalist, he cherry-picks politically expedient content from the sacred sources. He can draw from legitimate deathbed *hadith* of the Prophet that there cannot be two religions in the Hijaz to justify expelling US forces from Saudi Arabia. In this regard, he creates deep dilemmas for even moderate Muslims committed first and foremost to the sanctity of any individual life, even over the pull of the *umma*. Bin Laden justifies using all means possible to protect Islam's holiest places from defilement. His *jihad* and his targets expanded with his 1998 *fatwa* after surviving several US cruise missiles. Henceforth, Muslims were exhorted to kill American civilians. The existential threat to Muslim identity and sacred space expanded beyond the two Holy Mosques. After 1998, Usama bin Laden sounds less like an autodidact with a limited goal that is just about religiously defensible than a deviant Islamo-fascist heaven-bent on overturning the global order.

### Conclusion

15 But for a section of the *umma* (and perhaps even for some outside the community), Usama bin Laden may sound perfectly rational, sane and justified, even if his discourse does not approach the rigours of *fiqh* reasoning. He goes one better – providing an alternative world-view and a call to action. His audience is not the elite jurists of the Islamic world, but the broad *umma*, with select sub-audiences in different parts of the Muslim world. Crucially, his *fatwa* purport to answer unspoken questions (i.e. what is permissible to do to ensure the survival of Muslim religious identity against encroaching western “Crusaderism”). Those who choose to subscribe to his *fatwa* likely support his political vision which ultimately aims

towards the creation of a divine Islamic order against a secular, western order dominated by the US and its allies. Those who do not must find ways to show how bin Laden's selective use of *fiqh* is illegitimate, destructive and ultimately counter-productive to the cause of defending the Islamic creed. They could start by showing Islamist *fatawa* are at best paralegal, misguided opinion and certainly not binding law. No religious decree can sanction the slaughter of unarmed civilians.

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