In recent years, the term “fatwā” has been widely used throughout the media, usually to indicate that a death sentence has been dealt to someone or some group of people. The limited use of this term has resulted in a limited understanding of its meaning. ISCA therefore offers the following statement to elucidate the true significance of the term “fatwā.”

Most importantly, a fatwā is not by definition a pronouncement of death or a declaration of war. A fatwā is an Islamic legal pronouncement, issued by an expert in religious law (mufti), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (fiqh), is unclear. Typically, such uncertainty arises as Muslim society works to address new issues – issues that develop as technology and society advance. “Can a Muslim be involved in cloning?” for instance.

We might compare a fatwā to the legal ruling of a high court or the Supreme Court, depending on the authority of the mufti behind it. However, a fatwā is not binding as is the verdict of the secular courts; while correct and applicable to all members of the Muslim faith, the fatwā is optional for the individual to respect or not.

A qaļā, on the other hand, is a legal ruling made by a judge (qādī) that, issued in a nation where Islamic law is observed, is binding on those to whom it is dealt. Usually issued to resolve a legal dispute, a qaļā may be based on a fatwā, yet it applies only to the individuals or groups named in the ruling and no one else. A ruler can impose a qaļā on his entire nation.

Although there is no central Islamic governing authority today – the last having been dismantled with the collapse of the Ottoman Empire, there are generally accepted standards for granting anyone the authority to issue a fatwā. This is an extremely rigorous standard requiring many years of training and study. The fatwā is not based upon the mufti’s own will and ideas, but rendered in accordance with fixed precedents from the sources of Islamic law.

In order to issue an authorized fatwā using his individual skills of reasoning, the mufti or scholar
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must meet the standards of ijtihād. This is the highest standard in issuing a juristic ruling. In general, this means he must be able to distinguish between the other scholars’ positions and their supporting evidence, and judge one stronger according to the strength or weakness of the evidence.

Imam Shāfi¿ī, founder of one of the four great schools of jurisprudence, said:

It is not allowed for anyone to give a Shari¿ah explanation (fatwā), except one who knows the Holy Qur’ān completely including what verses are abrogated and by which verses they were abrogated, and which verses resemble each other in the Qur’ān and whether a chapter was revealed in Makkah or Madina. He must know the entire corpus of the Hadith of the Prophet (s), both those which are authentic and those which are false. He must know the Arabic language of the time of the Prophet (s) with its grammar and eloquence as well as know the poetry of the Arabs. Additionally, he must know the culture of the various peoples who live in each different nation of the community. If a person has all such attributes combined in himself, he may speak on what is permitted (ḥalāl) and what is forbidden (ḥarām). Otherwise he has no right to issue a fatwā.

While in the distant past there were many scholars with the knowledge required to make independent legal conclusions, there are none of that caliber today. Someone who attained this level of qualification was known as the Imam of a school of law. Today, scholars build their reasoning on that of their predecessors, as in US case law. In practice, this limitation is not as restrictive as it sounds, for the inordinate amount of Islamic case law greatly facilitates such research, except in the most abstruse issues.

While not as rigorous as those required for independent legal reasoning, the qualifications for a scholar to issue a fatwā based on legal precedent are nonetheless extremely taxing. He must:

- Know the verses of Qur’ān pertaining to the ruling at hand;
- Know the reason behind the verses of Qur’ān related to the ruling – when each was revealed and why;
- Distinguish the supportive and oppositional verses of the Qur’ān;
- Know all the hadith pertaining to the ruling and the soundness of their chain of transmission;
- Be familiar with the legal precedents of the issue before him, including the arguments or consensus reached by earlier scholars; and
- Be well-versed in the syntax, grammar, pronunciation, idioms, special linguistic uses,
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customs and culture prevalent at the time of the Prophet (s) and succeeding two generations.

It often happens that different Islamic clerics issue contradictory, or competing, fatwās. This divergence of opinion is not considered an issue in Islam; in fact, a well-known saying states that such differences among scholars are God’s mercy, for they allow for different conditions and temperaments among people.

In nations that observe Islamic law, fatwās are debated before being issued publicly. They are affirmed only by consensus, which is determined by the supreme religious council of that nation. In such cases, fatwās are rarely contradictory, and carry the power of enforceable law. If two fatwās do contradict one another, the ruling bodies (which often combine civil and religious law) establish a compromise. This differs in the Shi‘a tradition, which demands that each individual Muslim choose one mufti (marja‘) to follow exclusively in all aspects of religious law.

In nations that do not recognize Islamic law, Muslims confronted with competing fatwās would follow the ruling of the scholar observing their same religious tradition. If two muftis of the same tradition issue conflicting fatwās, a Muslim may choose between them. In practice however, following a particular school is not strictly observed.

These are the requirements for a scholar or religious leader to issue a fatwā that is recognized under Islamic law. Having established this, we may now consider whether fatwās issued by militants, including the many we have read in the past five years, have any authority. Again, the worldwide media has repeatedly presented cases in which known Muslim militants use a fatwā to either declare war or announce another violent action.

However, unless he who makes the declaration is extremely well-educated and trained in Islamic jurisprudence according to the requirements mentioned above, he has no authority to issue a fatwā. The Prophet Muhammad (s) said, “Whoever gives fatwā without knowledge, the angels of the heaven and the earth curse him.” Second, if he is so qualified, the fatwā remains non-binding, applying only to those choose to accept and wish to enforce it.

To issue a new fatwā as an unqualified and unauthorized individual is impermissible and forbidden in Islam. Of course to relate the rulings of qualified scholars is permitted, provided it is
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transmitted without changing the context or wording. The fatwās of unqualified individuals are considered “null and void,” according to ʿUmar, second caliph of the Prophet (s).