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Sovereignty or Subjugation?: Explaining Muslim States' Aversion to Full

Ratification of CEDAW

At the moment, two competing narratives arise from the study of international human rights treaties. First, that the reservations, understandings, and declarations (RUD's) made by States upon ratification appropriately account for the cultural, religious, or political histories of the signatories, allowing each government room for domestic implementation. A second contrary view holds that as universally applicable principles, human rights treaties are uniquely exempt from any modification process, which cannot be cherry picked for State preferences (Neumayer, 2007). However, despite the merit of these arguments, such polarizing debate between cultural relativism and universal morality does little to explain the reality that so few states fully ratify without reservation, or address why many states continue not to adhere to the standards of treaties. In fact, framing this division normatively encourages scholars to assign either cultural or moral righteousness, portraying certain states as behaving in ways deemed "right" whilst others are "wrong". Such diagnosis creates erroneous narratives that picture complex attitudes toward human rights unilaterally, as is the case with the gross mischaracterization of those states with high Muslim populations in utilizing RUD's on treaty provisions. Of particular concern is that heated rhetoric can further inflame diametric opposition between signatory states, rather than the desired unity human rights treaties are meant to afford (Mahalingam, 2004).

Instead this research paper will focus on the underlying factors that hinder the full ratification of the foremost women's rights treaty, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in order to refute the prevailing notion that all so called "Muslim states" are simplistic and uncalculating, blindly following the immutable word of Islam and Shariah. In today's growing hostile climate between Muslims and non-muslims, particularly in the United States, presumptions about the Islamic faith as fundamentally sexist and incompatible with human rights regimes must first be proven. By dropping "should" arguments to examine general human rights treaty roles, the nature of these reservations, and the corresponding domestic implementation of these states, this approach seeks to challenge the dominant narrative that religion is the sole force behind reservations in Muslim nations.

Before delving into the intricacies of CEDAW and compliance strategies of Muslim states, it is important to first clarify how human rights treaties function at the international level. At its simplest, a treaty can be described as any international agreement concluded between states in written form and governed by international law. After World War II and the atrocities that resulted during that period, international law shifted from its traditional role negotiating the relationships of nations, to those between nations and their citizens (Friedman, 2005). "The punishment of war criminals at Nuremberg and Tokyo and the desire to prevent the recurrence of such crimes against humanity drastically changed the status of individuals under international law", affording individual's universal rights and "the means for vindication of those rights on the international plane" (Friedman). However, to allow a country to become a state party to an international treaty in a contingent manner, the Vienna Convention on the Law of

Treaties (VCLT) signed in 1969, prescribed a system of accession that gave states the ability to put on record their dissatisfaction and refusal to comply with a particular treaty provision. As mentioned previously these are known as reservations, understandings, and declarations, which are defined in the VCLT as meaning “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State.” More plainly, through RUD’s, states are able to prescribe what provisions they will or will not choose to comply with.

Not surprisingly then, RUD’s are more commonly found in human rights treaties than in any other area of international treaty making as it most directly dictates how a state should legislate and govern domestic laws (Neumayer, 2007). Other factors contribute to the high number of RUD’s present, such as “vague language that is open to interpretation as to its precise meaning” due to the functional desire for human rights treaties to apply generally to all countries (Neumayer). Another factor is a lack of “reciprocity” in human rights treaties. When ratifying other kinds of international treaty agreements, states are concerned with what their contracting partners declare unbinding as it could adversely affect them as parties to the same treaty. This is a holdover from the past practice of the “unanimity rule” that mandated reservations either be accepted by all parties or withdrawn by the disputing party in order for any treaty to be signed (Hamid, 2006). Now under the reciprocity rule, states refrain from reservations themselves, because they would have to concede to another state’s right to reserve the same provision (Neumayer). Human rights treaties are unique this way, because the same level of

reciprocity in domestic behavior does not exist. If Algeria chooses to revoke a woman's right to initiate divorce it does not directly affect divorce rights in Germany.

Consequently, "international human rights regimes are comparatively weak to say, regimes of finance and trade" as there are "no competitive market forces...nor are there strong monitoring and enforcement mechanisms" to drive states toward compliance (Neumayer). Eric Neumayer refers to this condition as the "low cost of non-compliance", meaning there exists a minimal degree of political backlash for a state's refusal to obey treaty standards. This point is further demonstrated by the vast majority of authoritarian states that sign onto human rights treaties as they do so easily and without bothering to set up RUD's, "because they have no intention to comply anyway" (Neumayer). In contrast, liberal democracies wish to be viewed as taking their "domestic human rights observance" obligations seriously and so will engage in the most RUD's of any government type. Human rights treaties are considered "more intrusive" than other international treaties, because they aim to establish norms of governance in domestic law. Liberal democracies "like any other nation-state, want to limit the extent of interference with their sovereignty", but must continue to be perceived as genuine human rights champions. Therefore, "they are more likely to set up RUD's to minimize the extent of intrusion" to preserve sovereignty (Neumayer). From this it can be concluded that RUD's are put into place only in instances when a state desires to balance continued sovereignty and an image of compliance. This then calls into question why the number of reservations made by Islamic states to CEDAW is attributed overwhelmingly to religion alone. What contributes to this perception and what if any are the unintended consequences of this misinformation?

To tackle these questions, this paper will consider the most heavily reserved human rights treaty, from which stems much of the preconceived notions about the reservation behavior of Muslim states (Mahalingam, 2004). “CEDAW represents the most comprehensive statement regarding the political, economic, social, and cultural rights of women, and thus presents a direct challenge to some of the most ardently held views of militant Islamic fundamentalism” (Mahalingam). Of the seven major multilateral human rights treaties, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) carries with it the largest share of RUD’s of all. With 186 state parties and 139 RUD’s in total, more than one third of the member states to CEDAW submitted a modification (Neumayer, 421). 51 reservations, including 7 that generally reserve or disregard an entire provision, were given by states with high Islamic populations onto CEDAW prior to ratification (Krivenko, 2009). However, it is vital to note that out of the 40 states that in some way currently incorporate Islamic laws and practices in the world today, 36 are parties to CEDAW. From those 36 not all entered reservations and not all made reservations mentioning, nor basing their reservation on a desire to protect Islam or Shariah law (Krivenko). Therefore, claims that all Muslim states react to CEDAW in a uniform way should be subject to scrutiny. To deny that there is no such correlation between the numerous RUD’s registered and Islam would also be equally foolhardy. It is then necessary to deconstruct the nature of these reservations to determine to what extent the Islamic faith and Shariah are responsible for creating an incompatibility with CEDAW.

Articles 2 through 6 of CEDAW, referred to as apart of the “General Part” of the treaty, are the loosely defined provisions prescribing objectives “in general terms, ways

in which State parties shall behave” (Krivenko, 2009). As stated earlier, general ambiguity in it of itself welcomes reservation by States, as they must qualify for themselves how these requirements will be interpreted at a domestic level. Though considered a core provision of the convention, 9 Muslim States submit reservations to Article 2, which requires states “to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. The reservation of Bangladesh reads, “The Government of the People’s Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, [...] and 16 (1) (c) [...] as they conflict with Sharia law based on Holy Quaran and Sunna”. Bangladesh’s statement irrefutably invokes Islam, but of the states that enter RUD’s upon this article, it is the only one to apply a religious justification broadly. Both Malaysia and Algeria refer to the sanctity of their Federal Constitutions as reasons for reservation, whereas Algeria claims in its initial evaluation report submitted to the Committee on CEDAW in 1998, “the rights of women in Algeria are assured...by the provisions of the Constitution that guarantee equality of all citizens...With respect to the adoption of legislation prohibiting all forms of discrimination against women, the principle of equality between sexes is in itself sufficient, since any law that is not consistent with that principle will be annulled by the Constitutional Council”. Algeria also reserves article 2 to prevent conflict with its Algerian Family Code. The Republic of Iraq makes no references to any legal or religious institution, merely exempting itself from the provision. Because this article does not decree specific legislative actions a state must undertake, the number of RUD’s is still somewhat puzzling.

Krivenko's extensive work in this area reveals that reservations to article 2 are merely a gateway to reservations to later provisions of the Convention. Reservations to articles 9, 15, and 16 of the convention, unlike those to article 2, refer directly to specific rights or provisions in law. "Should the reservations to articles 9, paragraph 2, article 15, paragraph 4, and article 16 be removed, the reservation to article to 2 would no longer be necessary" (Krivenko, 2009), which she proves to be true for Algeria, Bahrain, Iraq, Egypt, Libya, Morocco, and Niger. In the language of its own reservation Bangladesh states only "by deduction the reservation on Article 2 was placed". Given this, further analysis of article 2 becomes inconsequential. However, a pattern of differing approaches from each state begins to fracture any conception of a unified Islamic front, be it a cultural or moral perspective.

In contrast, the Special Part, articles 7-16 of CEDAW, indicates certain areas and groups of rights guaranteed by the previous 6 articles featured in the General part. These provisions aim to ensure equality for women in the arenas of Political and Public Life, Representation, Education, Employment, Health, Rural Women, Economic and Social Benefits. Interestingly, Muslim states did not overwhelmingly object to respecting these rights, nor did the few that registered a reservation do so on any religious basis. As a side note, of the eleven Muslim states that signed onto the Convention on the Political Rights of Women, none used Islam to reserve ratification. Articles 9, 15, and 16 make up the majority of the reservations by Muslim States and deserve the most crucial attention. Article 9 deals provisions for determining Nationality, Article 15 calls for equality of the sexes before the Law, and Article 16 deals with legislating Marriage and Family Life relations. Nothing could be considered more "intrusive" as Neumayer put it, to Islamic

nations than demanding compliance with these sets of rights. The question then, does not become do these States orient their arguments around the religious legalistic doctrines and traditions of their laws, but whether such reservations are consistent across States—as Shariah law and Islam know no geographical boundary and do not appear in the reservations as being Morocco’s Islam or Egypt’s Shariah—and correspond with the domestic laws within these dominions.

Bahrain, Brunei, Iraq, Jordan, Kuwait, Malaysia, Morocco, Oman, Syria, and United Arab Emirates all had reservations to the nationality rights described in Article 9. Nationality rights are protected under the Convention in that it requires State parties to “grant women equal right with men to acquire, change, or retain nationality.” This is also meant to avoid marriage implications on nationality standards in Muslim states, where a woman’s nationality is dependent upon on her marital status. In addition, its second paragraph grants women equal say in the nationality of their children. Only three of the states, namely Iraq, Malaysia and, UAE entered reservations to the woman’s right to determine her own nationality. Iraq’s reservation was to preserve its domestic laws unrelated to Islam that revoke a woman’s citizenship upon marriage to a foreigner, if she wishes to obtain the citizenship of her husband. “Moreover, according to Iraqi law, a foreign woman who marries an Iraqi man acquires the Iraqi nationality” (Krivenko). As of 1998, Malaysia has attempted to withdraw its reservation, which again objects to any incompatibility with the Federal Constitution and Shariah law. The United Arab Emirates cryptically states its view of the acquisition nationality as one considered “an internal matter which is governed, and the conditions and controls of which are established, by national legislation...” In sum, each state advances and utilizes differing arguments, two

on behalf of domestic legislation, one on its constitution and religion. Such variance further damages the association of treaty compliance in Muslim states as being entirely influenced by religion. In objecting to determining a child's nationality status, Bahrain, institutes a general reservation, wishing to ensure implementation within the bounds of Islamic Shariah. Brunei, like Malaysia expressed its reservations to those provisions "that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam", but does so without prejudice which means it "is not motivated by...Islam" (Krivenko). Kuwait "reserves its right not to implement...article 9...as it runs counter to the Kuwaiti Nationality Act", while Jordan seemingly blindly prattles off articles it will not comply with. In 2006, Morocco announced plans to modify the Moroccan Nationality Code to remove inequality and Egypt has at last been successful in its attempts to withdraw its reservation, in keeping with modern reforms. If all domestic relations are inextricably linked to Islam and thus immutable, how then is it possible for several nations to reconsider and remove RUD's from these provisions? The rhetorical forms of these as well curiously invoke Islam yet State parties are shown to reserve under secular terms.

Article 15 deals with equality of the sexes before the law, equality in civil matters, the legal capacity and access of women to legal institutions. This includes the right to conclude contracts, administer property, and equal treatment in "all stages of procedure in courts and tribunals". Particularly of interest is paragraph 4 of this article, which affords women the same right as men to move freely and choose their residence. All the Muslim states which maintained reservations to article 15 primarily reject the last right, but make no move toward blocking a women's right to legal equality. Again, these states differ on

their approach to their reservation. Both Tunisia and Morocco only express noncompliance with allowing married women to select their residence freely. “A married woman must accompany her husband when he changes residence” in these states, according to their domestic “personal status codes”. At the same time in Jordan, “women are forbidden to travel alone...They must be accompanied by either a close male relative or a group of women known for their integrity...[Islam] views a woman as belonging to her husband, and as unable, whether married or single, to make an independent choice of dwelling place.” As reflected in the periodic reports of the other Muslim states “and according to their own interpretation”, Jordan is the only state to make this case. Views upon marital status are also conceived and stressed differently, as Tunisia, Morocco, and Niger as well do not restrict the behavior of unmarried women to choose residence or move freely. On the other hand, Jordan proposes no distinction, merely banning both practices for all women. Interestingly Jordan concedes that, “women can in fact include in the contract clauses specifying place of residence...Some experts in fiqh (juricounsults), notably theologian Abdelaziz Al-Khayat, consider that according women the right to freedom of movement and to choose their place of residence is not contrary to the Shariah, particularly since, as was stated above, women may set conditions on that subject in the marriage contract” (CEDAW Country Reports, 2000). Domestic implementation, in this instance then greatly contradicts the unwavering word of Islam as Jordan characterizes it in its reservation, however deeper analysis of State laws will follow.

Lastly, Marriage and Family relations are addressed in Article 16 so that State parties “shall take all appropriate measures to eliminate discrimination against women in

all matters relating to marriage and family relations.” What CEDAW loosely outlines as “appropriate” is the right to enter and choose marriages equally, execute dissolution of marriage equally, to have say over the number of, planning of, and rearing of children equally, custodial and adoption rights, the right to have possession, enjoyment, and disposition of property equally, etc. Article 16 also affords personal rights and protections to allow women to select the family name, a profession, whilst guarding against, child marriages by creating a minimum age restriction. Before examining the reservations made, it is important to note the sensitivity of this particular arena in the international systemic level. Traditionally, human rights treaties shy from attempting to legislate what is referred to in the vernacular as “the so-called private sphere”. In general as an institution, law treats the public and private spheres distinctly, viewing the regulation of the private as less essential (Krivenko, 2009). Using the United States as an example, an ongoing debate continues upon the existence of privacy rights surrounding such controversial issues as the right to choose, marriage equality, and government surveillance. Therefore it can be concluded that intrusion upon sovereignty is at its most precariously sensitive, when aiming to install equality mechanisms for marriage and family relations in Muslim traditionalist nations.

Just as the other heavily reserved provisions of CEDAW, Article 16 demonstrates that a wide scope of reactions exists from state to state in regards to each subsection. Bangladesh reserves under Islamic Shariah 16 (c), the right to equal responsibilities in marriage dissolution, Kuwait reserves 16 (f), equality in child guardianship and adoption rights, and again Algeria offers a general reservation by only complying within the parameters of the Algerian Family Code. Here these nations do not take issue with the

same articles, or in the case of Algeria, do they even bother to specify what they find objectionable. Bangladesh, elaborates further from their meager reservation description by stating how inheritance laws function in the country and most notably, that first and foremost “the Constitution is the fundamental source of law in Bangladesh and laws incompatible with its provisions have no status”. Despite the rhetoric then, this ranks Islam as a force secondary to the legal force of the State’s constitution as Bangladesh’s ruler of determining compliance. Altogether, even a cursory analysis of the reservations provided demonstrates that States vary from being entirely broad and only tangentially basing their RUD’s with Islam, to narrowly citing chapter and verse of Shariah, to the State constitution, or even another code of ethics unrelated to any religious or legalistic institutions. No two States dispute the same sections of CEDAW in the same way or for the same reasons, which firmly disproves the existence of a universal form of Islamic law that can be interpreted in only one way. “These differences follow from the...degree of incorporation of provisions of Islamic law into the legislation of each country and also from different interpretations of the relevant provisions of Islamic law” (Krivenko, 2009). Thus, each state has its own vision of Islam, governed by their own interpretations of what Islamic texts mandate for them. Arguments then about an innate incompatibility with Islam and women’s rights are also precariously placed, because less spiritual cohesion exists between Muslim states. Now that Islam has been defeated as a uniform doctrine in the international rights regime, the next step will be to inspect whether domestic implementation of key states are in line with the reservations these states made. Do these nation-states in effect, practice what they preach?

The key states to examine the consistency of domestic implementation are those that cite Islam as a faith or Shariah as a law in the State's justification for non-compliance. Selecting these states heightens the likelihood that such governments will have incorporated Islam in its State laws and will formulate arguments using Holy text or Shariah law. Algeria, Bangladesh, Jordan, and Morocco will serve as the key states for this purpose.

Algeria represents a case with legal system that corresponds to or has found some genesis from Islam. The Algerian Family code and Constitution combine to form a quasi-Islamic centered legal system. While "the constitution contains a mix of both secular and Islamic references...Shari'a law is the only basis of the Family code" (Entelis, 1996). Furthermore, "the two documents appear to set forth conflicting ideas on what position women occupy in society" (Entelis). However, it is necessary to reiterate that in its 1998 periodic report to the Committee on CEDAW, Algeria has backed the provisions of the Constitution as the mechanism with which to end discriminatory practices in Algeria. "The rights of women are assured...by the provisions of the Constitution that guarantee the equality of all citizens...Any law that is not consistent with that principle will be annulled by the Constitutional Council". Still, reservations were not made under constitutional claims; they were recalled from the Algerian Family Code, which for all intents and purposes is the State's Islamic interpretation of Shariah (Entelis). In its reservation to Article 15 (4), the Algerian state requested that it "should not be interpreted in such a manner as to contradict the provisions of chapter 4 of the Algerian Family Code". Ta'ah, a Muslim wife's duty of obedience to her husband as prescribed in the Algerian Family Code, includes the need to obtain permission before leaving the

home or to move freely as she pleases. Clearly this stands in direct conflict with the Article 15(4), which holds State parties responsible for abolishing any practice that restricts the free movement of women or their right to choose a residence. It is then, not surprising at all that Algeria would provide a reservation on this count. In this instance, we could simply conclude that state and religious doctrine appear one in the same if this was the only level available to check consistency. But Algeria's constitution does just the opposite, in "Article 44 (of the Algerian Constitution): all citizens in possession of their civil and political rights have the right to choose freely their place of residence, and to move freely about the national territory. It also guarantees the right to enter and to leave the country" applying in general scope to "men and to women without distinction" (Krivenko, 2009). Interestingly, despite such divergence between code and con law, both are still ever linked in the eyes of the government. By proclaiming Islam as the religion of the State and outlawing any actions contrary to Islamic morality within the Constitution, it defeats any notion that the Algerian government perceives itself as being inconsistent with Islamic law (Entelis). From this then we can infer that Algeria has a qualified constitutional interpretation of Islam that is capable of out rightly redefining equality for women if it so chooses, but that Islam itself does not alone stand in the way of that goal.

In framing its reservations, Bangladesh does not set limitations of compliance; instead it completely rejects articles 2 and 16 of the Convention—although article 2's presence is as stated, negligible. "The Government of the People's Republic of Bangladesh does not consider" these articles "as binding upon itself...as they conflict with Shariah law based on the Holy Quaran and Sunna." From this we can infer that

Bangladesh finds the above provisions as wholly incompatible with Islam as the state makes no effort to explicitly define its objections. But, like Algeria, this more direct approach to preserve Islamic law ranks secondary to the state's constitution. It is the constitution, not Shariah, which "is the fundamental source of law...and laws incompatible with its provisions have no status...and therefore deemed to be automatically void." Decisions of the Bangladesh Supreme Court support this view, in often ruling in favor of liberal interpretations of women's rights to afford greater gender equality evident by State's jurisprudence. The case of Nelly Zaman v. Guasuddin Khan pitted husband and wife, whereas the husband sued for "forcible restitution of conjugal rights against his wife who was also unwilling to live with her husband." The court rejected Mr. Zaman's claim as violating "the accepted State and Public Principle and Policy" and the Constitutional principle of equality. Another such decision declared polygamous marriages to be against the precepts of Islamic law and moved toward striking down the corresponding law that had previously upheld it. Protections for marital sexual rights are encompassed in Article 16 of CEDAW and are the very same rights that were considered inadaptable due to the Quran and Shariah. In truth, Bangladesh does not even have a codified Shariah law per se, but it influences the procedure of the state's Muslim Family Law Ordinance. "Nevertheless, the law based on Islam is not regarded as an immutable body of clear set rules, but as a set of guiding principles subject to reinterpretation" (Krivenko, 2009). Implementation then at the State level does not agree with the impermeable stonewall stance Bangladesh's reservation seems to suggest. Instead, there is room for Bangladesh to grow more open to gender equality and reforms with time, regardless of the state of its formal reservations to the Convention.

As mentioned earlier, Jordan entered its declaration onto CEDAW in almost a grocery list fashion, that “Jordan does not consider itself bound by”... “Article 9, paragraph 2; Article 15, paragraph 4; Article 16, paragraph 1, subsection (c), (d), (g)” absent any religious or legal institution as justification. Despite its lack of elaboration, however, it is still possible to determine whether or not Jordan functionally means to maintain certain discrimination against women in these instances on behalf of Islam due to the extensive information provided by periodic reports. Yet again, Jordan too defies the interpretation it sets forth of Islam by granting women the right to choose their residence and the ability to move freely, so long as it is entered by the woman in the marriage contract prior to betrothal. Thus, mistaking Jordan’s RUD to Article 15 for discrimination would be foolish as Jordan simply curtailed the meaning of free movement and selection of domicile in terms that accord with the sovereignty of their laws. In fact, Jordan’s periodic report issued in 1997 rejected the claim of cultural relativists that these provisions of CEDAW must be rejected, because of the binding word of Shariah, the Holy Quran, the Sunna, etc. According to Muslim scholars, Jordan reports, “[women’s] right to freedom of movement and to choose their place of residence is not contrary to Shariah...” as “...women may set conditions on” the marriage contract”. Additionally, under Jordanian law, women have been capable of travelling freely since 1976. Dissolution of marriage as well, which Jordan rejects in Article 16, is afforded the right to equal responsibilities and benefits as men through the marriage contract. Jordan, more explicitly utilizes Islamic rhetoric than many other states in setting up its reasons for not fully ratifying CEDAW, yet still breaks with its declaration.

The final key case rests with Morocco, which interestingly utilizes multiple approaches by citing its Moroccan Code of Personal status as Algeria had its Code, Islam and Shariah law as Bangladesh had, whilst describing in incredible detail the implications of each RUD on the State as Jordan had done. Eager to advertise its progressive policies to the West by way of appearing advanced on gender rights, Morocco became a party to CEDAW in 1993 (Mayer, 1998). However, Morocco followed the lead of Egypt and other fellow states, indicating its “duty to abide by Shariah law stood in the way of adhering to international human rights law” through reservations, understandings, and declarations. The Personal Status Code, Morocco asserts, grants “women rights that differ from the rights conferred on men and may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah which strives, among its other objectives, to strike a balance between the spouses in order to preserve coherence of family life.” Months after this however, Morocco changed its Personal Status Code or “mudawwana” to institute several women’s rights reforms that do not align with the interpretation of Islam set forth in their declarations. During this period women gained the right to full consent in marriage, revoking the guardian’s ability to create undesired arrangements. At the same time, men lost the ability to unilaterally decide if the family household would be polygamous (Mayer). The State has announced reforms the laws relating to declarations on articles 9 and 15, which determine a child’s nationality and women’s freedom of movement respectively. Regardless of the several reservations to Article 16, Morocco has conferred upon women the right to dissolution in a Shariah court, with full retaining of her properties. Although, men are still capable of acquiring divorce indisputably, Morocco moved divorce proceedings to an open court forum to create greater equality

(Mayer, 1998). By 2004, the Family Code removed more marital inequalities by setting the age of marriage for both sexes to 18, a woman's "guardian" was taken out entirely from the contract process, and men are no longer deemed to be the head of the household. Since entering into CEDAW in 1993, Morocco has experienced continuing positive change for Moroccan women that does not reflect the traditionalist view of Islam present still in the reservations to the Convention. Whether such reforms go far enough is not at issue here, as one can make the argument that countless nation-states have much to do before systemic and domestic sexism disappears from the earth. However, inherent sexism toward women is not an unwavering "Islamist" view either as both the international state of affairs, nor as the laws of the Muslim states are immutable, ever evolving with each interpretation. Because of the stark inconsistency between the behavior and reaction of each state to each article, religion, though shared commonly by these states, alone is an insufficient explanation to use in order to examine the motivations behind these reservations.

As shown by this extensive study into the laws and reservations of the Muslim states, we are able to conclude that there is a wide range of interpretive diversity between states about what Islamic [text] sources mandate in terms of status for women, and that reform is certainly not impossible in Muslim states (Mayer, 1998). Krivenko further observes, "The most visible trend among [Muslim states] is to declare reservations to be of a certain temporary nature..." and should be seen as "being mere indications of concern" (Krivenko, 2009). These states employ this stall strategy to adapt CEDAW's provisions in accordance to its laws and sovereignty, just as other non-muslim state parties are afforded a "certain margin of appreciation and ...time", but ought not be seen

as permanent prejudice. In fact, the primary sources of Islamic law's derivation from the Quran, Shariah, and the Sunna "do not expressly or necessarily prohibit the right of women to receive an education, to have access to healthcare, to work, to vote or even to have an abortion. In each of these examples, there is no direct conflict between CEDAW and Shari'ah" (Mahalingam, 2004). Sovereignty, then more so than religion, consistently explains the behavior of each state in choosing to use reservations. Why then is there a prevailing cultural relativist narrative in existence that purports to defend Islam as a unified front incompatible with CEDAW? Where does the narrative originate from and what is a potential consequence of disseminating this fallacy?

Surprisingly, the place from which the narrative developed in its most active form is within the Muslim States themselves. Many Muslim countries—Saudi Arabia, Iraq, Libya, and Pakistan for example—claim that they do not accept human rights principles as universal principles because, "Islamic religion mandates unequal treatment for women". At this point, this unilateral statement can be promptly discarded, as the Islamic faith is quite complex and requires no such thing. Still these states attempt to construct a narrative about the incompatibility of Islam with current international norms (Mayer, 1998). "These countries have taken a cultural relativist approach in defending their reservations, arguing that CEDAW represents the active imposition of western secular values or 'cultural imperialism' upon non-western countries. Reservations, they argue, are therefore necessary to develop a better balance between maintaining national sovereignty and respecting the general objectives of the Treaty" (Mahalingam, 2004). To some extent this claim is not entirely unfounded.

The human rights regime was born because of the resolve in the West to combat the atrocities of World War II, and therefore its execution is undoubtedly Western. From the conception of the international rights regime, Western countries have codified ideas about individual rights, originating from European natural law philosophy, into the international system (Entelis, 1996). Most strikingly is the notion of natural law, that there is a state of nature where human beings are afforded inalienable rights from birth. “A common idea in British and French philosophy was that individual rights should be of utmost importance in a political system. Drafters of international human rights documents thus grounded their ideas on these Western principles of individualism and protection of individual rights”. In short, the human rights system has long promoted a universal view not only on law alone but of morality, a concept dear to all major religions. The moral ideals embodied in international documents, such as CEDAW or the International Bill of Human Rights, are notions that stem from the West and to accept them would be to accept the West’s morality as their own. By that virtue, resistance to the westernized human rights regime seems only natural. Cultural relativism thus serves as another sphere of preservation that Muslim States feel they must maintain within the international system. Moreover, their use of religious rhetoric over the legalistic to enter the debate in women’s rights perpetuates this distance between Muslim and non-muslim states. Muslim states then have the arduous responsibility of juggling the preservation of its sovereignty and morality in the international system. However, since CEDAW was drafted in 1979, only 4 Muslim states have not signed onto the Convention. The 36 Muslim states that ratified CEDAW, all of which are also members of the Organization of the Islamic Conference (OIC) that proclaims “to protect and defend the true image of

Islam” (Krivenko, 2009). Therefore, their voluntary participation in an international regime they decry as being imposing and incompatible to their own is intriguing. In order to explain the consequence this, we return to Neumayer’s assertion of the “low cost of compliance” for States (Neumayer, 2007).

With no appropriate mechanisms or adjudicative body to regulate CEDAW’s compliance, the systemic pressure for Muslim states to comply at all is quite negligible (Hamid, 2006). However, these countries went to great pains to go on record with CEDAW on their positions despite no tangible loss. But like other liberal democracies, doing so afforded them greater legitimacy (Neumayer, 2007). Consequently, Islam and Shariah law will likely receive more recognition as a valid international legal system. This would occur in a manner similar to that which created the human rights system. The codification of the Western human rights regime began with the creation of and collective participation by the west to put into place a universal set of principles. Western ideals became international law because of this process of affirmation by community consent in drafting human rights protections (Entelis). The customary practice of the “unanimity rule” that was mentioned previously functionally ensured that all parties entering a treaty would agree to the full force of the agreement, just as any contract (Hamid, 2006). Because human rights treaties lack reciprocity, mechanisms of compliance, and specificity in legislation, the unanimity rule does not apply. However, another affirmation process exists through “tacit acceptance”. The Vienna Convention on the Law of Treaties makes a contracting party’s silent response to a reservation “tantamount to an acceptance” unless the state expressly declares that the treaty is not in force between them. Thus, when Muslim nations pronounce their belief that “because social and cultural

differences exist, the international community should not expect non-Western states to uphold the same standards” by using the same forum to voice dissatisfaction, “acceptance by acquiescence” has an automatic legal effect (Hamid, 2006). Perhaps this is the reason for many Islamic states modeling their reservations after other states, when their domestic implementation strategies are so dissimilar (Mayer, 1998). Whether this consequence is purposeful or not requires deeper study, but codification of Islamic principles by “acquiescence” is very much a possibility at least in so far as it affects other Muslim states, especially given the Committee on CEDAW’s efforts to accommodate and tailor legislation for contracting Islamic parties in recent years. Cultural relativism may then become moot as universal expectations arise for Muslim state behavior. In conceptualizing and participating with other treaty documents, Muslim states have already had such an impact on the international rights system (Waltz, 2004).

Breaking down this total analysis, we can now at last conclude that Muslim states are not solely motivated by religion alone in the international human rights regime, nor can it be claimed their religion is innately sexist. Due to the inconsistency of Islam and its usage in the RUD’s from the 36 participating state parties with high Muslim populations, this measure is quite insufficient in explaining or predicting how any given State will behave toward the subjugation of women’s rights. Instead preservation of sovereignty fits all cases as States would preemptively utilize reservation mechanisms to maintain domestic implementation procedures either to buy time to initiate compliance or to exempt itself from doing so. Further willingness to treat the State’s constitution above Islam also demonstrates this. Additionally, Muslim states’ participation on the international level is curious, as their formal opinions issued in the periodic reports to

CEDAW consistently name cultural relativism as a justification for aversion to full ratification. Still, by registering Islam, Shariah, and other related doctrines at the international level, regardless, creates a degree of tacit acceptance or complicity with the universality of Islam as another natural doctrine. As States withdraw their reservations more and move toward reforming their domestic laws in the meantime, the Islamic rhetoric will not disappear. These reservations have a sticky or frozen quality to them that will forever affix Islam to them (Krivenko, 2009). Instead, as in Morocco for instance, new interpretations of Islamic faith or Shariah may arise to meet demands for more gender equality. Thus, by utilizing the international institutions laid out before by the West, Islamic nations can as a consequence legitimate their philosophies in the same forum.

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