

**ISLAMIC RESERVATIONS
TO HUMAN RIGHTS CONVENTIONS**

A CRITICAL ASSESSMENT

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Introduction

In the following, some representative Islamic reservations to two important human rights conventions are compared and assessed. The conventions involved are the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).¹ Although the focus is on Islamic reservations, there is no intention to convey the idea that Muslim countries always enter Islamic reservations. Muslim countries have taken a variety of stances on these and other human rights conventions, some ratifying without reservations of any kind and some making reservations that have nothing to do with Islam.

Two reservations that have been entered to CEDAW can illustrate what an Islamic reservation looks like. Consider first a Libyan reservation. In 1989 when Libya became party to CEDAW it announced:

[Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic Shariah.

The implication is obvious: Libya believes that at least some women's international human rights are in conflict with Islamic law.

Where such conflicts loom, Libya is advising other parties that it intends to accord priority to following *shari'a* law in the area of personal status. Upon reflection, one appreciates that the scope of this reservation is left undefined, there being many differing interpretations of what the Islamic sources have to say about women's rights in the sphere of personal status. Exactly what CEDAW rights will be affected one cannot say, but one sees that via this reservation Libya is giving an indication that it is refusing to be bound by basic CEDAW provisions, which require elimination of discrimination against women in all spheres, including in matters of personal status.

When ratifying CEDAW in 1984 Bangladesh made remarks that it did not characterize as a reservation but that amounted to one, asserting that it did not consider:

as binding upon itself the provisions of articles 2, 13 (a) and 16.1 (c) and (f) as they conflict with Sharia law based on Holy Quran [sic] and Sunna.

Bangladesh thereby qualified its CEDAW commitments by positing that central CEDAW provisions conflicted with Islamic law and indicated that it would adhere to Islamic law where there were such conflicts. Affected articles included article 2, which is a fundamental CEDAW provision calling for eliminating discrimination against women in all areas, and other provisions on equality in family benefits, equal rights and responsibilities during marriage and its dissolution, and equal rights in matters of guardianship and adoption of children. Although more specific than Libya's reservation, the exact impact of the reservation on the commitments being made by Bangladesh is hard to ascertain. Significantly, this reservation was withdrawn in July 1997.

Objections were entered to these Islamic reservations by other parties to the treaty — not because of the references to Islam or Islamic law, but because the reservations were allegedly incompatible with international treaty law. These and other Islamic reservations were also roundly criticized by feminists and academic writers.

Islamic reservations were far from being the only reservations that were criticized by CEDAW supporters. To the dismay of advocates of women's international human rights, more reservations of a kind to nullify treaty obligations have been entered to CEDAW than to any other human rights convention.² Those who disapprove of CEDAW reservations have resorted to criticism in international forums like the CEDAW committee to try to shame parties into withdrawing reservations that conflict with the object and purpose of CEDAW. Efforts to curb the reservations to CEDAW have included The Platform for Action adopted at the 1995 Beijing Conference, which in paragraph 230 (c) called for all governments to:

Limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women; formulate any such reservations as precisely and as narrowly as possible; ensure that no reservations are incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law and regularly review them with a view to withdrawing them.³

The position taken in the Beijing Platform for Action reflected the established notion that all reservations should comply with the rules set forth in the Vienna Convention on the Law of Treaties and especially with article 19 (c). The latter says that a state may not formulate a reservation "incompatible with the object and purpose of the treaty."⁴

In order to understand how certain Islamic reservations provoked charges that the countries entering them were in violation of the Vienna Convention, one needs to appreciate what the goals of CEDAW and the CRC were and how the Islamic reservations affected countries' commitments to these goals.

CEDAW and CEDAW reservations

The purpose of CEDAW, which entered into force in 1981 and as of May 1997 had 159 parties, is indicated in its title. CEDAW calls for equality of women and men and also stipulates many specific areas where discrimination against women should be eliminated. Article 5 requires modifying social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or stereotyped roles for men and women. CEDAW allows for no exceptions based on cultural particularism. Although CEDAW does not in terms say that the mandates of religion are to be ignored where these call for sex discrimination, it makes no allowance for religious grounds for upholding male superiority and stereotyped roles for women.

Islamic reservations to CEDAW relate to general arguments to the effect that it is legitimate to deny women human rights on the basis of cultural particularism, but they have a special character, since they purport to rest on divine authority. In making their Islamic reservations to CEDAW, Muslim countries seem to be saying that Islamic law and international law, both stand above their domestic laws and that, when these two supranational laws come into conflict, Muslim countries are compelled by their religious allegiance to abide by Islamic law. For example, when Bangladesh made its reservation indicating that it was bound to comply with the Islamic sources, it spoke as if it were powerless to alter laws deriving from the text of Divine Revelation and the accounts of the Prophet Muhammad.

One way of assessing Islamic reservations is to credit the Muslim states that are entering them with being motivated by respect for their religious law. However, the notion that Muslim countries cannot comply with human rights law due to their obligations to uphold Islamic law would make more sense if the Islamic law that

they refer to actually were a supranational law to which all Muslim nations defer and which governments were powerless to change unilaterally. But there is no such supranational version of Islamic law that the various legal systems in the Muslim world are compelled to defer to in making their laws. Thus, the "Islamic law" that provokes the reservations simply amounts to varying models of domestic legislation that purport to derive from Islamic sources.

The widely diverging formulations of Islamic law that enjoy authority in today's legal systems are the ones that have been selected by governments from a great variety of possible readings of the Islamic sources. Governments of Muslim countries decide what versions of Islamic law will be binding by incorporating certain interpretations of the sources in their positive laws, laws which can be and often are revised in the light of shifting policies.⁵ That is, the positive laws that give rise to Islamic reservations to CEDAW are laws that correspond to current national policies on women's rights. That there is no shared conception of what "Islam" entails in the way of women's rights is shown by the vast gulf separating the relevant laws of Tunisia and Afghanistan. Both countries purport to follow Islamic requirements, but Tunisia follows progressive policies on women's rights, whereas Afghanistan under the Taliban aims to keep women subordinated and segregated. In Tunisia the result is a version of "Islamic law" with few discriminatory features outside the area of inheritance law, whereas in Afghanistan under the Taliban, the consequence is a severely discriminatory version of Islamic law which denies women basic freedoms like the right to attend school or to work outside the home.

Not only do Islamic reservations to CEDAW reflect varying domestic policies on women's rights, but these same national policies may lead Muslim countries to enter CEDAW reservations that have no plausible connection to Islamic law. That is, one sees that Muslim countries may reserve not only to CEDAW provisions that allegedly conflict with Islam but also to provisions that they find uncongenial due to their general disinclination to allow women

equality.

For example, consider Kuwait's 1984 reservation to CEDAW. It reserved to article 7 (a), asserting that it "conflicts with the Kuwait Electoral Act, under which the right to be eligible for election and to vote is restricted to males and to article 9 (2) "inasmuch as it runs counter to the Kuwait Nationality Act, which stipulates that a child's nationality shall be determined by that of his father." These embodied the same discriminatory policy that was manifest in Kuwait's decision to reserve to article 16 (f), which guarantees women equality in matters of guardianship and adoption of children. Kuwait declared that it "did not consider itself bound" by the article "as it conflicts with the provisions of the Islamic Shariah, Islam being the official religion of the State."

One sees that, in addition to stating that it will not abide by article 16 (f), which requires eliminating discrimination against women in an area of family law, because the provision conflicts with *shari'a* law, Kuwait indicated that it would not comply with CEDAW's mandate of equality for women in areas covered by secular law like nationality rules or voting rights. Kuwait's discriminatory policies affecting women reflect the fact that women, who have never been allowed to vote, are excluded from having any role in deciding government policies affecting their rights. When Kuwait decides what aspects of CEDAW are unacceptable, women's views are not counted. From the Kuwaiti case, one might extrapolate that official positions on women's status often reflect political choices, some of which may be rationalized as necessary to uphold religious precepts, but others of which are upheld even in the absence of any semblance of a religious justification.

Norway's critical assessment in registering its objection to Libya's original CEDAW reservations deserves to be considered in this connection. Norway complained that doubts were created about the state's commitment to CEDAW when there was:

...a reservation by which a State Party limits its

responsibilities under the Convention by invoking religious law (Shariah), which is subject to interpretation, modification, and selective application in different states adhering to Islamic principles.

Norway seems to have appreciated that Islamic reservations to human rights treaties basically accord priority to upholding domestic law. Since one goal of human rights treaties is to get states to upgrade their domestic laws to bring them into conformity with international human rights principles, there are strong reasons for objecting to reservations based on a preference to uphold domestic law.

One should compare the most recent reservations to CEDAW by Muslim countries with some earlier reservations. Such comparisons reveal signs of a mounting reluctance to make public assertions to the effect that Islamic law stands in the way of women attaining equal rights. This pattern suggests that Muslim countries have been put on the defensive by the criticisms of Islamic reservations to CEDAW.

The Libyan case provides an interesting example. Having seen its reservation denounced and apparently worried about being attacked at the Beijing Conference, Libya retreated from its first Islamic reservation. On September 5, 1995, at the time of the Beijing Conference, Libya notified the Secretary General of the new formulation of its CEDAW reservation, which was to replace the formulation used at the time of accession. This is a restyled Islamic reservation, one that attempts to avoid criticism by concealing as far as possible the intention to deny women equality. According to Libya's new formulation:

(1) Article 2 of the Convention shall be implemented with due regard for the peremptory norms of the Islamic Shariah relating to determination of the inheritance portions of the estate of a deceased person, whether female or male.

(2) The implementation of paragraph 16 (c) and (d) of the Convention shall be without prejudice to any of the rights guaranteed to women by the Islamic Shariah.

Via this change, it seems that Libya wanted to eat its cake and have it, too. In the second version of its reservation, Libya was trying to convey the message: We comply with Islamic law and we essentially comply with CEDAW, too.

In the first paragraph, Libya seeks to make its reservation look more conventional. It uses neutral, secular terms to refer to the domestic laws that it is upholding — certain “peremptory norms” that pertain to the area of inheritance. Libya does not admit that these conflict with CEDAW; indeed, it carefully avoids explaining what this means. The wording could suggest to a person unfamiliar with Libyan law that females and males will be equally affected by the “peremptory norms” in Libyan inheritance rules. Libya omits vital details like the fact that Libyan law, following Islamic inheritance rules, gives males twice the share of females inheriting in the same capacity.

In the second paragraph, Libya speaks as if its reticence to offer unqualified endorsement of CEDAW was due to concerns about prejudicing rights given women under *shari'a* law, speaking as if Islamic law set standards more protective of women's rights than those in CEDAW article 16 regarding marriage and divorce. This is a disingenuous statement, since the established *shari'a* rules in the area of marriage and divorce deny women equality in many respects — which is precisely why so many Muslim countries have entered Islamic reservations to article 16. Via its new language, Libya reveals that it is losing confidence that religious rationales suffice to justify discriminatory laws.

Algeria long delayed ratifying CEDAW, only doing so on May 22, 1996, and then with curious reservations. These included reservations indicating Algeria's refusal to be bound by central CEDAW provisions like articles 2 and 16. These reservations embody a new

phenomenon, one that might be labelled as disappearing Islamic reservations. By this term one could designate reservations that are based on Islamic laws that are incorporated in a country's domestic legislation but that are presented as involving ordinary principles of domestic law. The Algerian reservations are carefully crafted to avoid mentioning Islam and Islamic law, even where they are aimed at upholding Algeria's extremely conservative 1984 family law, which incorporates rules taken from medieval Islamic jurisprudence. Significantly, Algeria seemed equally determined to uphold the discriminatory features of its nationality rules, which were of purely secular inspiration, thereby following the example of many other Muslim countries that likewise made reservations to CEDAW nationality provisions — as if their discriminatory laws on granting nationality were as sacrosanct as precepts deriving from Islamic sources. The reservations, aside from one on the dispute resolution provisions, were as follows:

Article 2: The Government of the People's Democratic Republic of Algeria [GPDRA] declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code.

Article 9, paragraph 2: The GPDRA wishes to express its reservations concerning the provisions of article 9, paragraph 2, which are incompatible with the provision of the Algerian Nationality Code and the Algerian Family Code. The Algerian Nationality Code allows a child to take the nationality of the mother only when: - the father is either unknown or stateless; - the child is born in Algeria to an Algerian mother and a foreign father who was born in Algeria; - moreover, a child born in Algeria to an Algerian mother and a foreign father who was not born on Algerian territory may, under article 26 of the Algerian Nationality Code, acquire the nationality of the mother provided the

Ministry of Justice does not object. Article 41 of the Algerian Family Code states that a child is affiliated to its father through legal marriage. Article 43 of that Code states that “the child is affiliated to its father if it is born in the 10 months following the dates of separation or death.”

Article 15, paragraph 4: The GPDRA declares that the provisions of article 15, paragraph 4, concerning the right of women to choose their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (article 37) of the Algerian Family Code.

Article 16: The GPDRA declares that the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code.

The Algerian case gives a hint of the political calculations that may underlie how treaty reservations are formulated. President Liamine Zeroual’s beleaguered regime is, of course, trying to retain Western support by positioning itself as the foe of the Islamic fundamentalist groups that have been resorting to violence in Algeria in the wake of the 1992 cancellation of elections that almost brought the fundamentalists to power. Since Algeria’s fundamentalists have threatened to impose a reactionary version of Islamic law that would confine women to the home, thereby associating fundamentalist Islam with the oppression of women, it is expedient for the regime to avoid advertizing that Algeria’s current laws include rules of Islamic law that discriminate against women. The present Algerian regime has every reason to want to avoid becoming associated with the pattern of using Islamic law as a pretext for depriving women of human rights.

Pakistan offers another example of a CEDAW reservation where

the Islamic basis is deliberately concealed. Pakistan was among the countries that were late in ratifying CEDAW, finally doing so on March 12, 1996, years after it had ratified the CRC and after it had had ample opportunity to observe the condemnations of Islamic reservations. In addition to reserving to CEDAW dispute resolution provisions in article 29, it advised that its accession was “subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” This neutral-sounding reservation cloaks Islamic grounds for non-compliance with CEDAW. The Pakistani constitution includes many Islamic provisions and affirms the supremacy of Islamic law, which means that upholding the constitution could simultaneously involve upholding discriminatory Islamic rules at the expense of CEDAW provisions.⁶ Whereas Algeria’s reservation at least indicated what CEDAW articles it would not commit to, the reservation entered by Pakistan was vague and open-ended, so that other parties could not readily ascertain what the impact of this reservation would be.

In deciding not to register a reservation that specifically invoked Islamic grounds for its non-compliance but to make instead this constitutional reservation, Pakistan was apparently seeking what it regarded as more respectable grounds for entering a reservation. In doing this, Pakistan was quite possibly choosing to emulate U.S. practice, the United States having repeatedly entered constitutional reservations to human rights treaties.⁷ Although the United States has received some criticism for its habit of making constitutional reservations to human rights conventions, there has been more tolerance of such constitutional reservations than of Islamic reservations, perhaps due to a belief that legitimate constraints imposed by foundational documents are at stake.⁸

It is too soon to say whether the kinds of disguised Islamic reservations proposed by Algeria and Pakistan will attract more or less criticism than the kinds of Islamic reservations that were commonly entered in the 1980s. However, since the disguised Islamic reservations to CEDAW have the same end as other Islamic reservations, upholding non-conforming domestic laws at the

expense of principles in the convention, they warrant the same censure.

The CRC and CRC reservations

The CRC is aimed at fostering improvement in the situation of children and protecting their interests. The CRC is of all the human rights conventions the one that seems to have found the readiest and most universal acceptance. Some Muslim countries that refused to ratify CEDAW were ready to ratify the CRC. Saudi Arabia, which has been particularly wary of making treaty commitments in the area of human rights, has ratified the CRC, as has Iran in the wake of the Islamic Revolution. The larger number of Muslim countries ratifying the CRC compared to the relatively poor records of Muslim countries in ratifying CEDAW also suggests that one of the greatest obstacles, if not the greatest obstacle, in coming to terms with international human rights law is the requirement that women and men be afforded full equality in rights.

Ratifications of the CRC by Muslim countries may have been encouraged by the fact that the CRC seems more accommodating of cultural difference than does CEDAW. The CRC preamble does give a nod to cultural diversity, calling for taking into account "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child." To date there have not been major pitched battles between the forces calling for the universality of CRC principles and those claiming that culture justifies their refusal to comply with treaty provisions, which is not to say that the Islamic reservations to the CRC have escaped critical review. Many objections have already been entered, not to the use of the Islamic religion per se but to vague character of the Islamic reservations and their according priority to domestic law.

Having entered into force in September 1990, the CRC had 190 parties as of May 1997. Since this convention had come into force a

decade after CEDAW, Muslim countries by then had had time to learn about the politics of reservations to human rights conventions. Generally, Muslim countries that ratified both CEDAW and the CRC ratified the later convention after first ratifying CEDAW, although Pakistan ratified the CRC first. Interestingly, the reservations entered by Muslim countries to CEDAW do not always correlate with the kinds of reservations that they entered to the CRC; a country might make an Islamic reservation to one and not to the other. This is not because the CRC treats reservations in an unusual way; in article 51 (2) it adopts the standard Vienna Convention position on treaty reservations.

Since many Muslim countries ratified the CRC without reservations or at least without Islamic reservations, there obviously was no consensus that Islamic reservations were required. Since not all Muslim countries that did enter Islamic reservations reserved to the same articles, this showed the disagreement regarding which provisions were problematic in terms of Islamic law. Some reservations are broad, whereas others are specific. Some countries explicitly invoke Islam whereas others refer to it only via circumlocutions. Occasionally comments are included that attempt to minimize the disparities between Islamic law and the CRC.

Where Muslim countries have entered Islamic reservations to the CRC and specified what provision they are reserving to, their reservations have not indicated a refusal to be bound by the most central provisions of the treaty. That is, they are not indicating a rejection of the overall goal of improving the wellbeing of children. Where Islamic reservations do specify which articles are objectionable, Muslim countries most often single out adoption and freedom of religion, both of which violate precepts of Islamic law as traditionally interpreted. Although these reservations are certainly significant, they do not announce the kind of fundamental disagreement with the overall philosophy of the treaty that the Islamic reservations to CEDAW did.

When one surveys CRC reservations entered by Muslim countries,

one notices peculiar patterns. It seems that the place accorded to Islam in public life or in official ideologies does not correlate with countries' approaches to the CRC. Thus, whether a state calls itself an Islamic state, whether in its domestic system it provides that Islamic law should override secular law, whether its constitution stipulates that Islam is the state religion, and whether the government follows a secular ideology are not reliable predictors of whether or not a country will enter Islamic reservations to the CRC.

The Sudan, a self-professed Islamic state, and one in the thrall of a regime imbued by an assertive, Islamic fundamentalist ideology, has never ratified CEDAW, but it ratified the CRC in August 1990 without any reservations, Islamic or otherwise. The Sudan's failure to enter an Islamic reservation is intriguing, since the primacy accorded to Islam in the official ideology would have led one to anticipate that the Sudan would enter a broad Islamic reservation to the CRC. That the Sudan made no Islamic reservation suggests that public relations strategies may have driven its response to the convention. It seems plausible that the Sudan was trying to enhance its reputation by registering as a supporter of the CRC without in any way qualifying its obligations. Certainly, one has reason to doubt that the Sudan, which has a particularly grim human rights record where children are concerned,⁹ was ratifying without reservations because it intended to comply with the treaty.

The Sudan's position on the CRC was anomalous, but so was that of Syria, another country that had refused to ratify CEDAW. Whereas the Sudan had ratified the CRC without any reservations, Syria, a state pervaded by a secular Baathist ideology, entered Islamic reservations. Syria, a rare Muslim country where Islam is not the state religion, entered a badly written Islamic reservation to the CRC on July 15, 1993, stating that it:

...has reservations on the Convention's provisions which are not in conformity with the Syrian Arab legislations and with the Islamic Shari'aa's [sic] principles, in particular the content

of article (14) related to the Right of the Child to the freedom of religion, and articles 2 and 21 concerning the adoption'. [sic]

Thus, Syria has advised the world that it is refusing to be bound by any CRC provisions in conflict with its domestic law or with *shari'a* law, mentioning specifically its intention not to accord children freedom of religion or to allow adoption. The articles targeted for reservation, which, one assumes, were meant to include article 20 rather than article 2, are the same as those singled out by several other Muslim countries as being unacceptable. But Syria also has objections based on secular law, refusing to comply with the CRC where it conflicts with domestic legislation, indicating that Syria's qualifications of its CRC obligations extend well beyond areas covered by Islamic law.

The failure of the Sudan to enter any reservations might be contrasted with the broad Islamic reservations to the CRC made by Saudi Arabia and Iran, countries where Islam plays a similarly central role in official ideologies. Saudi Arabia ratified the CRC on January 26, 1996, subject to an especially sweeping Islamic reservation, one that followed a pattern more typical of Islamic reservations in the 1980s, which said that it was entering "reservations with respect to all such articles as are in conflict with the provisions of Islamic law." This ranks as one of the vaguest of all the Islamic reservations, and one cannot begin to ascertain how it will affect Saudi Arabia's commitments under the CRC. The character of this reservation is not surprising, coming as it does from one of the countries in the world that is most profoundly estranged from the international human rights system. One might wonder why Saudi Arabia had not chosen to ratify CEDAW subject to a similar, sweeping reservation. Perhaps it feared that the strongly critical reaction to Islamic reservations to CEDAW meant that ratifying CEDAW subject to a broad Islamic reservation would be counterproductive, merely provoking negative comments in the

CEDAW committee and leading to more bad publicity about the discriminatory treatment of Saudi women. In contrast, Saudi Arabia would not need to feel qualms about having its record on children's rights scrutinized, because this record is not a conspicuously bad one. Unlike many poorer lands, Saudi Arabia does not have hordes of starving and homeless children, children denied basic health care, children exploited in factory labor, child prostitution, or other dramatic ills.

Upon signing the CRC, Iran had indicated that it would reserve to CRC articles and provisions "which may be contrary to the Islamic Shariah," preserving the right to make such particular declaration upon ratification. Upon ratification on July 13, 1994, Iran entered a reservation saying:

The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.

This sweeping reservation invoked two distinct types of law. It indicated that Iran refused to abide by CRC provisions not complying with Islamic laws without specifying which articles would be affected or how. This left Iran free to decide that any or all articles of the CRC should not be applied. Not surprisingly, other parties objected to the reservation because of its unlimited scope. The addition of an indication that Iran was reserving to the CRC in cases where it was incompatible with "the international legislation in effect" added a new and puzzling dimension. What was Iran purporting to say? That the CRC, the preeminent statement of international human rights law affecting children, was actually or potentially in violation of international law?

Iran's puzzling qualification might be explained by assuming that via the odd term "international legislation," Iran meant not international law per se but documents like the Cairo Declaration on

Human Rights in Islam that had been put forward by the Organization of Islamic Conference and endorsed by Iran. Although this declaration was not really "international legislation," perhaps Iran might choose construe it as such.¹⁰ Since the Cairo Declaration subordinated human rights to Islamic law, Iran might imagine that it could provide additional grounds to justify Iran's non-compliance with the CRC. Or, perhaps by the term "international legislation" Iran might have some of its own highly idiosyncratic interpretations of international law in mind.¹¹ In any case, the addition of the extra language showed that Iran, if charged with non-compliance with the CRC, was likely to try to appeal not only to Islamic law but also to some version of international law. The reference to international law suggested that Iran wanted to associate its stance on the CRC with a commitment to uphold international law, having apparently judged that simple reliance on Islamic law provided an insufficient pretext for non-compliance with human rights principles.

On November 12, 1990, Pakistan ratified the CRC with an Islamic reservation. This was several years before it ratified CEDAW, to which, one recalls, Pakistan was later to make a "constitutional" reservation. In entering an Islamic reservation to the CRC, Pakistan did not say that it considered provisions of the CRC incompatible with Islamic law or contrary to the beliefs and values of Islam. Instead, it offered a far more nuanced statement: "Provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values." One sees that, although this is a reservation and is designated as such, it is worded as if it were merely an interpretative declaration. Pakistan may have sought to exploit the language in the CRC preamble allowing for taking different traditions and cultural values into account. That is, Pakistan seems to be trying to convey the impression that it understands Islam to be complementary to, not antagonistic towards, the object and purpose of the CRC. Despite its conciliatory tone, the reservation provoked objections from other parties, whose complaints included that it limited Pakistan's responsibilities by

invoking general principles of national law.

Bangladesh took the opposite tack. Having first entered an express Islamic reservation to CEDAW, it made no mention of Islam in its reservation to the CRC, which it ratified on August 3, 1990. Instead, it offered "a reservation to article 14, paragraph 1." It further advised: "Also article 21 would apply subject to the existing laws and practices in Bangladesh."

The failure to cite Islam in the Bangladeshi reservation is fascinating. Islamic rules that have been incorporated in domestic laws and practices in Bangladesh are most likely behind the reservations made to article 14 (1), which guarantees freedom of religion, and article 21, which says that the best interests of the child should be paramount in adoption cases. That is, like the reservations made by Pakistan and Algeria to CEDAW, this Bangladeshi reservation to the CRC appears to be an Islamic reservation in disguise. It may be that, after experiencing the negative reactions to its Islamic reservations to CEDAW, Bangladesh deemed it advisable to formulate its CRC reservation in secular terms, even though the reservations were designed to uphold domestic rules deriving from Islamic models. Bangladesh may also have taken into account that a large number of countries had made declarations and reservations affecting the CRC based on their preference to uphold domestic law. If hoping to find safety in numbers, a Muslim country like Bangladesh might calculate that it was better to blend into this crowd by eliminating distinctive Islamic references from its reservations. One might contrast this Bangladeshi reservation with the Syrian reservation to the CRC, which had invoked Syrian domestic legislation, as well as Islamic law, as dual bases for its reservation, as if the two types of law might be distinguishable. By presenting its reservation to article 21 as being based on "the existing laws and practices in Bangladesh," Bangladesh may have been conceding the point that it made little sense to treat Islamic rules that had been incorporated in domestic law as if they were somehow separate from domestic law. Certainly,

the patterns in the objections to Islamic reservations indicated that by 1990 other parties were disinclined to accept the notion that Islamic reservations were anything other than a subset of reservations based on a preference to uphold domestic laws. In any event, the Bangladeshi reservation did not escape scrutiny and provoked objections by other parties on grounds such as that it upheld national law at the expense of treaty provisions.

Conclusion

What does a critical assessment of these Islamic reservations show? This review suggests that it is an oversimplification to say that Islamic law dictates the stances of Muslim countries on whether or not to commit themselves to abide by human rights conventions or to enter reservations. There is far too much in the way of variations in Muslim countries' approaches to ratifying human rights treaties and far too much disarray in their substantive reservations for it to be realistic to say that these are inspired by an Islamic model. It seems more accurate to say that differing governmental human rights policies and political calculations regarding how best to present them lead to the widely diverging stances.

As of 1996, it was becoming rarer to see Muslim countries put forward the idea that Islamic law was in conflict with international human rights law. Even some countries that had previously asserted that Islamic law stood in the way of their endorsing provisions in human rights conventions were moving away from the style of Islamic reservations that had often been entered in the 1980s. Where Islam was invoked, the inclination seemed to be growing to try to convey the impression that standing by Islamic law was compatible with adhering to human rights. But, the new phenomenon of the disguised or disappearing Islamic reservation meant that Islam was being less frequently invoked. What are in essence choices to stand by elements of Islamic law that are incorporated in national legal

systems may now be presented to the international community as simple preferences for upholding principles of domestic law. The 1996 CRC reservation by Saudi Arabia, a country with unique difficulties in coming to terms with international human rights law, seems to offer the starkest contrast this trend.

In the most recent reservations made by Muslim countries to human rights treaties, we do not see confident, consistent assertions of Islamic cultural particularism as grounds for non-acceptance of human rights principles. Although this could mean that Islamic reservations are destined to become rarer, the underlying reluctance to upgrade domestic laws to conform to human rights standards will most likely mean that conflicts between domestic rights policies and international law will continue to present problems.

NOTES

1. The reservations to these treaties, including the most recent ones, can be found under the respective treaty rubrics and country names in the human rights convention section at <http://www.un.org/Depts/Treaty/final/ts2/newfiles>. After some delay they also appear in hard copy in the yearly volumes of the United Nations publication *Multilateral Treaties Deposited with the Secretary General*.
2. Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women," *American Journal of International Law* vol. 85 (1991), p. 317.
3. The Beijing Declaration and Platform for Action are available at <http://www.un.org/dpcsd/daw/platform.htm>.
4. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. pp. 331, 337.
5. Saudi Arabia has to be treated as a special case in that it follows Islamic law as set forth in juristic treatises and interpreted by jurists. What passes for Islamic law in Saudi

- Arabia can nonetheless be said to embody government policy, because the jurists whose interpretations are deemed authoritative are also politically allied with the rulers.
6. Relevant provisions include the affirmation of the sovereignty of God in preamble, which is tantamount to an affirmation of the supremacy of Islamic law. Furthermore, article 2 proclaims that Islam shall be the state religion, article 29 that no law shall be repugnant to the teachings and requirements of Islam, and article 277 that all existing laws shall be brought into conformity with the injunctions of Islam.
 7. This is not to say that the United States is the only possible model. Tunisia, for example, had reserved to CEDAW, indicating that it would uphold article 1 of the Tunisian Constitution. This article makes Islam the state religion.
 8. For a critical appraisal of these reservations, see my article "Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?" *Hastings Constitutional Law Quarterly*, vol. 23, Spring 1996, pp. 727-823.
 9. See for example Human Rights Watch/Africa. Human Rights Watch Children's Rights Project, *Children of the Sudan. Slaves, Street Children and Child Soldiers* (New York, 1995).
 10. I have discussed this document and Iran's role in promoting it in "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash With a Construct?" *Michigan Journal of International Law* vol. 15 (Winter 1994), pp. 327-350, 372-374.
 11. I discuss some of these in "Islamic Rights or Human Rights: An Iranian Dilemma," *Iranian Studies* vol. 29 (Summer/Fall 1996), pp. 269-296.