

The Convention on the Elimination of All Forms of Discrimination Against Women. The Political Nature of “Religious” Reservations

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I. Introduction

Many governments of Muslim countries that have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEAFDAW)¹ have entered significant reservations qualifying their adherence to various provisions.² The reservations entered by certain Muslim countries are notable because they amount to a rejection of central provisions of CEAFDAW, such as article 16, which requires the elimination of discrimination against women in all matters relating to marriage and family relations.³ Muslim states have frequently invoked Islamic law as the reason for making these reservations. If individual Muslims objected to CEAFDAW as contrary to their religious beliefs, such objections could be properly termed religious. But, are CEAFDAW reservations entered by nation-states ever truly religious in character? Should the commitments to discriminatory policies that prompt such governmental reservations be regarded as exercises of religious freedom? I explain in this Chapter why the answers to these questions should be negative.

Governments do not have religious beliefs, but follow policies that reflect political calculations. Of course, governments may take religious factors and religious beliefs into account when they decide to uphold discriminatory features of Islamic law at the expense of CEAFDAW. They might be affected by factors such as: strategic alliances with groups or institutions that insist that Islam calls for subjugating women; worry that reforms expanding women’s rights could fuel a fundamentalist backlash; a concern to maintain regime legitimacy by

demonstrating fidelity to Islamic law; and, the desire to win favor with rich donor nations, like Saudi Arabia, that sponsor a reactionary version of Islam. Or, governments might calculate that standing by traditional Islamic morality could serve as a useful prop for national identity. Such concerns are at best politico-religious.

Muslim countries' CEAFDAW reservations are the mutable outcomes of politics, whereas Muslims believe that their religion is universal and its values timeless. The versions of Islamic law that are in force in different Muslim countries vary dramatically in terms of their treatment of women, and are subject to revision and abrogation. The CEAFDAW reservations that Muslim countries enter in the name of upholding Islamic law are likewise diverse, and they, too, are subject to change. After entering CEAFDAW reservations insisting that Islamic law requires a certain treatment of women, countries may modify or discard these same reservations. Evolving political contingencies, not Islamic beliefs, turn out to be determinative factors.

CEAFDAW reservations invoking Islam need to be viewed as the products of skewed political processes that give men a monopoly of power and exclude input from precisely that segment of the population that will be most adversely affected by noncompliance with CEAFDAW. Only exceptionally do women enter the corridors of power in Muslim countries, and women as a whole have never attained the level of influence that would enable them to play a decisive role in defining national policies affecting women. Not surprisingly, governments of Muslim countries have discounted the views of feminists, who have decried their countries' CEAFDAW reservations and have expressed skepticism about the Islamic rationales that have been offered for these reservations.

Appeals to Islamic law to justify deviating from CEAFDAW have a political dimension in that they assume that citizens of Muslim countries are properly

governed by Islamic law, an idea that Islamic fundamentalists promote with vigor but that is disputed by many Muslims. Outsiders may take away the impression that Muslim countries are permeated by a religious ethos, not appreciating that many members of these societies chafe under Islamic laws. Unlike secularists in more open societies, proponents of separation of religion and state in Muslim countries cannot denounce retrograde religious laws without imperiling their safety. Although secularist protests against application of Islamic law are infrequently voiced, secularists quickly take advantage of rare opportunities when they can speak out with relative impunity. Thus, as soon as the anti-fundamentalist battles of Algeria, Morocco, and Tunisia opened the door for the articulation of secularist perspectives, a group of North African feminists assertively proclaimed their distaste for religious law and called for adherence to CEAFDAW.⁴

To challenge the idea that laws discriminating against women rest on divine authority, feminists are deliberately emphasizing the bewildering diversity of national laws affecting women that claim to embody Islamic principles. Due to their utter irreconcilability, they cannot possibly all be valid statements of Islamic doctrine. Thus, a major women's advocacy group is named "Women Living Under Muslim Laws;" the name itself highlights that Muslim women are living under the conflicting positive *laws* enacted in various Muslim countries, rather than under *Islamic law per se*.⁵

II Muslim Countries and the CEDAW

Demonstrating how Islamic reservations to CEAFDAW are imbedded in the political strategies of individual regimes, Morocco made Islamic reservations⁶ that were later explained as being an anti-fundamentalist prophylactic. In speaking to the CEAFDAW Committee in 1997, Morocco's representative

struggled to defend Morocco's reservations, claiming that Islam represented "a total lifestyle and civilization, an integral part of Morocco's culture and traditions. It was also a rampart against fundamentalism and terrorism. . . a basic concern of his country was religious fundamentalism which would seek to impose intolerance."⁷ Islam was thus envisaged as a part of Morocco's heritage that made for a stable identity that shielded the country against the inroads of fundamentalism and terrorism. Fear of the latter is natural, since the upsurge in fundamentalism in neighboring Algeria in the 1990s has culminated in devastating paroxysms of violence. If the Moroccan king's legitimacy as a traditional Islamic ruler were compromised by radical reforms, this might cause instability that ambitious fundamentalists could exploit for their own ends. Supporters of women's rights who accept this logic might agree that the regime's caution was warranted, fearing that women's rights might suffer badly if bold initiatives were undertaken that could provide fundamentalists with a means to mobilize support. Unimpressed by Morocco's defense, the Committee responded that religious fundamentalism was not restricted to Islamic countries; such attitudes existed in Christian countries, as well.⁸ As Morocco discovered, once a country dispensed with the protective cover of religious obfuscation, the logic of its reservations was open to critical scrutiny.

In 1999 King Hassan's more son, Muhammad VI, came to power. He showed a willingness to propose reforms in Morocco's conservative Islamic family laws, offering in 2000 tentative proposals for reforms, which included raising the minimum age for marriage for women to eighteen and abolishing polygamy. However, this prompted mass protest demonstrations in Casablanca in which Islamic fundamentalists played a prominent role.⁹ Although there were smaller demonstrations of support by those favoring the proposed reforms, the reforms seem to have stalled. Obligated to cope with daunting economic woes and

social problems, the new king seems inclined to defer reforms affecting women's rights that threaten to provoke a major backlash at a time when there are many other causes of popular discontent.

The weaker Kuwaiti monarchy has been struggling with how to manage the rise of Islamic fundamentalism, which already affected Kuwait in the 1980s but grew in influence in Kuwait after the Gulf War. Resistance to allowing Kuwaiti women to vote had seemed to be ebbing until the upsurge in fundamentalist fervor in the 1990s. An all-male parliamentary committee in March 1998 unanimously rejected a draft bill that would have crowned with success Kuwaiti women's long struggle to obtain the vote.¹⁰ The rejection was reportedly based on a religious ruling by the *fatwa* department of the Islamic Affairs Ministry.¹¹ That is, after Kuwait had entered a CEAFDAW reservation in 1994 indicating that Kuwait refused to give women the vote but without at that time claiming that Islamic rules were the obstacle, a government ministry subsequently seemed to be adopting the position that Islamic law *did* preclude enfranchising women. When Kuwait's ruler, Sheikh Jabir al-Ahmad al-Sabah, revived the issue and proposed on May 16, 1999, that women should have the right to vote, he provoked a storm of controversy. Some Islamic authorities supported this initiative, but fundamentalists denounced the decree as a violation of Islamic law. When the all-male parliament reconvened, the initiative was vigorously debated and ultimately defeated on November 30, 1999.¹²

In addition to working to ensure that women would not obtain the right to vote, Kuwaiti fundamentalists sought to impose other harsh restrictions on women's freedom, all in the name of Islam. A plan for completely segregating women and men in universities was adopted by the parliament 1996, and the first stage was brought to completion in 2002. It involved

various measures that were designed to keep women and men separated while on university campuses. For example, in Kuwait University a new wall divides the cafeteria, including the Starbucks and the McDonald's, and in the library some floors are now reserved for women and others for men. The longer-range plan is to remove all women to separate university campuses. Supporters of segregated educational facilities claimed that this was needed to preserve Islamic morality, which they saw as being threatened if the sexes could mingle on campus. This meant that Kuwait University, founded in 1966 and originally segregated, turned back from the model that evolved in the 1970s, when women were allowed to study alongside men.¹³ Other social forces were in play, as well. Ali Al-Tarrah, Dean of the College of Social Sciences at Kuwait University, described the pressures to adopt a conservative vision of Islamic morality as "the imposing of tribal values through Islam." Since 1970, the tribal segment of Kuwait's population has mushroomed due to proportionally higher birth rates among Bedouins who immigrated from Saudi Arabia and other parts of the Gulf. The Bedouins' conservative tribal values are at odds with those prevailing among many members of the settled urban population of Kuwait, whose political influence diminishes as that of the Bedouins increases.¹⁴

The segregation and the plan to remove all women to separate facilities prompted criticism. Sheikha Muneerah Al-Sabah, executive director of the Council of Private Universities in the Ministry of Higher Education, deplored the plan, asserting: "This is not healthy at all. It's encouraging the deprivation of knowledge ... this is a way some men see of controlling women."¹⁵ Masoumah Al-Mubarak, a professor of international relations at Kuwait University, described

the demands for more stringent measures keeping women segregated as part of “the lovely game of how to discriminate against women.”¹⁶

As the Kuwaiti case shows, even within this one small country, Muslims are deeply divided regarding what “Islam” calls for in the way of treatment of women, and the laws affecting women’s rights are not fixed by settled religious doctrine, but shift back and forth depending on local political trends and the balance of power. An Islamic label has been pasted on this system of gender apartheid, but no invocations of principles of religious freedom should insulate it from criticism. To see the situation of Kuwaiti women as the exercise of religious freedom entails disregarding the obvious parallels with South African apartheid, where disenfranchised blacks were deprived of rights and kept segregated in a system devised by Whites and approved by the Dutch Reformed Church.¹⁷

The example of Pakistan demonstrates how rank political expediency dictates how CEAFFAW reservations are characterized. Pakistan’s energetic feminist leaders called for CEAFFAW ratification without reservation, but they encountered strong resistance from the Religious Affairs Ministry.¹⁸ A government committee recommended CEAFFAW ratification with a temporary reservation to Article 2(f), which calls on states to take all appropriate measures to modify or abolish laws, regulations, customs, and practices that discriminate against women.¹⁹ Women activists attacked this proposed reservation, saying it would negate the spirit of the convention.²⁰ After heated debates, Pakistan finally decided in March 1996 to ratify CEAFFAW with a sweeping reservation. The Prime Minister at the time, Benazir Bhutto, apparently had calculated that an unconditional ratification could provoke a fundamentalist challenge to her shaky government. Even though the reservation was designed to uphold what Pakistan routinely claims are Islamic requirements, it made no reference to Islamic law,

offering the vague comment that Pakistan's accession was "subject to the provisions of the Constitution of the Islamic Republic of Pakistan."²¹ The Pakistani Constitution contains many provisions supporting the supremacy of Islamic law, and thus this "constitutional" reservation would have the same impact as reservations making specific reference to Islamic law. Why, then, was the idea that Islamic law should override CEAFDAW only obliquely incorporated in this reservation? Pakistan was most likely eager to improve its image in the West and worried about the criticisms leveled at previous Islamic reservations. Therefore, the government of Pakistan was reluctant to tell the international community what Pakistani regimes routinely tell their domestic constituencies-- that they are standing by policies of upholding Islamic law. Instead, it was attracted to a vague formula of "constitutional" reservations that had already been made respectable, at least in some eyes, by the United States, which has entered such reservations to human rights treaties.²²

The case of Algeria provides another example of how political considerations dictate responses to CEAFDAW. In 1984, Algeria enacted a reactionary family law that embodies principles taken from medieval Islamic jurisprudence. The legislation passed despite women's protests over this and other discriminatory laws. Algeria finally ratified CEAFDAW in May 1996, reserving to central CEAFDAW provisions without any reference to Islam.²³ In formulating its CEAFDAW reservations, Algeria referred to its own family law as if it were nothing more than positive law.²⁴ Threatened by radical fundamentalism, Algeria's beleaguered government is attempting to retain Western support by positioning itself as a bulwark against fundamentalism. Therefore, where its international image is concerned, the government does not want to be associated with using Islamic law as a pretext for depriving women of human rights, even though it invokes Islam before domestic audiences to justify discriminatory

features in its family law. Although other Muslim countries might seek to justify CEAFFAW reservations that are designed to shield similar state discriminatory laws by appeals to divine authority, it does not mean that their policies are any less the results of political choices.

As the Pakistani and Algerian cases prove, political considerations dictate whether governments decide to frame CEAFFAW reservations in Islamic terms--hardly the outcome one would expect if religious beliefs were behind these. Similar considerations appear to dictate the withdrawal of such reservations. During roughly the same period, two countries that had originally entered Islamic reservations to CEAFFAW decided to retract them in whole, or in part: Bangladesh withdrew its reservation in July 1997 and Malaysia did so in part in February 1998.²⁵ These countries had not undergone sudden conversions from Islam to other faiths; like Pakistan and Algeria, the governments involved simply judged that it was inopportune to have on record an official statement saying that they upheld Islamic laws at the expense of CEAFFAW.

III. Western Misconceptions about Muslim Countries' Reservations

Unfortunately, literature published in the United States has contributed to the misconception that when governments of Muslim countries enter reservations to CEAFFAW, one should understand these reservations as direct expressions of Muslims' religious convictions. Perhaps in other Western countries where the relationship of religion and state in the Middle East is not well understood, there will also be some tendency to see issues of religious freedom in these reservations.

In the United States, people are accustomed to a system where there can be no state religion and where the state is obligated by the First Amendment to

the Constitution to avoid interfering in the free exercise of religion. They tend to think in terms of religion and state being separate and the state being bound to respect religious beliefs. Influenced by the fact that the Constitution requires the government to respect the freedom of religion, people may reach the unfounded conclusion that when Middle Eastern Muslim countries reserve to CEAFDAW, they also are aiming to uphold the religious freedoms of their citizenry, failing to realize that the state is merely upholding what is the currently approved official version of Islamic requirements – a version that may have little to do with the actual beliefs of part or most of the local Muslim community.

Unfamiliar with Middle Eastern realities, they may fail to reckon with crucial points: that in almost all Muslim countries in the region, Islam is the state religion (Turkey being the notable exception); that the official version of Islamic law is typically applied to individuals and groups regardless of whether it conflicts with their personal religious convictions; and, that dissent from the official version of Islam tends to be treated like political opposition and sometimes even like treason, often with lethal consequences. That is, they may not appreciate what a large gap often separates governmental positions on Islamic issues from the actual beliefs of the Muslims affected by these. In addition, people may imagine that a secular convention like CEAFDAW must necessarily clash with Islamic beliefs, when in reality Muslims may have no religious objections to the convention. Muslims are, after all, currently debating whether there is any Islamic authority for discriminatory laws and policies affecting women and whether Islamic law should in any case be the governing standard where women's rights are concerned.

In discussing Muslim countries' reservations to CEAFDAW, the eminent scholar of international law Theodor Meron has written as if the reservations were mandated by a unitary Islam that stood above politics, with states merely

acting as agents for Muslims' beliefs. According to Meron, "[g]iven the force of religion in many societies," states might resist CEAFFAW obligations that are incompatible with specific religious practices that may bar or impair the achievement of the equality of the sexes.²⁶ Imagining that women's equality clashes with this abstract "force of religion," he goes on to assert: "The attainment of the goal of equality of women may therefore require encroachment upon religious freedom."²⁷ That is, he understands Muslim countries to be standing up to defend Muslims' religious freedom when they refuse to commit themselves to adhere to CEAFFAW provisions calling for eliminating discriminatory laws. That Muslims' beliefs might be offended by being forced to conform their lives to the discriminatory features in reactionary, state-imposed versions of Islamic law seems never to occur to Meron, who opines as he discusses Muslim countries reservations that "(t)he application of religious laws may itself constitute the observance and practice of religion."²⁸ In a bizarre transmogrification, coercive governmental imposition of discriminatory laws that will at best correspond to the religious views of one segment of the population becomes religious observance and practice implicating the religious *freedom* of all believers--a freedom that would be menaced by CEAFFAW!

Meron is certainly not alone in misperceiving and mischaracterizing the positions of Muslim countries regarding CEDAW; it may be due to his influence that others are seeing issues of religious freedom in reservations that are designed to uphold a state-imposed version of religious orthodoxy. Notwithstanding the absence of any reference to religious freedom in the reservations, Henry Steiner and Philip Alston, both distinguished scholars of international law, have been persuaded that the reservations are explicitly based on arguments that the reservations are covered by the principle of religious freedom. [[NEW FOOTNOTE: See the important textbook Henry Steiner and

Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 1996), 959. After materials on CEDAW reservations by Muslim countries, they raise the question: “How do you assess the argument of states parties entering reservations to CEDAW that principles of religious freedom are fundamental to the human rights movement and validate their decisions?” Id.]

One should inquire: Whose religious practice and observance is at stake when governments uphold traditions of discrimination against women? Whose religious freedom would be menaced by adjusting to CEAFDAW requirements – the religious freedom of the nation-state imposing these laws or the religious freedom of individuals? For clarification, consider Egypt’s CEAFDAW reservations which appeal to “firm religious beliefs” as the basis for maintaining Egypt’s discriminatory laws affecting women,²⁹ implying a correspondence between these laws and Egyptians’ beliefs. In reality, no such shared understanding of how Islamic law applies to women underlies these Egyptian laws.³⁰

The objection made by Egypt in 1981 to Article 16 of CEDAW at the time of its ratification merits examination. Article 16 provides for the equality of men and women in all matters relating to marriage and family relations during marriage and upon its dissolution. Egypt sought to justify its reservation to this article by a longer than usual explanation. (Letters have been added in brackets to Egypt's explanation to facilitate identifying passages that will be analyzed subsequently.) Egypt asserted that it had to adhere to provisions of the Islamic shari`a:

[a] whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. [b] This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that [c] one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementarity which guarantees true equality between the spouses. [d] This is because the provisions of the Islamic Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully out of his own funds and [e] shall also make a payment to her upon divorce, [f] whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. [g] The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.³¹

A few aspects of the hypocrisy and twisted logic in this statement deserve special attention.

Egypt equated its laws on personal status with "firm religious beliefs" that are sacrosanct and cannot be questioned. However, a distinction can be readily made between Divine Law itself and Egypt's own laws. The latter are obviously subject to alteration at the wish of the government, having changed considerably since the beginning of the twentieth century and having been altered in 1979 at the time the CEDAW text was being finalized and then modified subsequently,

including two significant alterations in 1985 and a major reform facilitating women's access to divorce that was made in 2000.

Contrary to the gist of Egypt's assertion, the shari`a rules in Egypt's personal status laws are sharply at odds with the principles of male-female equality. Its shari`a-based rules uphold the traditional patriarchal family unit, in which the husband is the master and the provider and the wife is a dependent subject to his control. Thus, as in other patriarchal systems, the "balance" in the rights of the spouses is sharply tilted in the husband's favor. The section following [a] speaks as if it were self-evident that the difference in treatment of men and women in Egyptian personal status law is "just." In fact, the justice of the patriarchal scheme they embody has been vigorously contested. As is well known to the government, Egyptian feminists do not accept that these laws are just; they have challenged these laws and called for their reform, and debates over whether and how these laws should be reformed have raged in public for years.³² Similarly, the claim that these laws guarantee "true equality" in the section after [c] is debatable, since, certainly, nothing like actual equality is being afforded. To agree with this, one would have to accept the idea that women are naturally suited for roles as dependents and homemakers and men suited for the roles of masters and providers, so that the discriminatory treatment mandated by Egyptian law makes women as equal as they should be. This entails accepting ideas directly at odds with Article 5 of CEDAW, which calls for elimination of practices and prejudices based on the idea of the inferiority or the superiority of either sex or stereotyped roles for men and women.

The section following [b] speaks of shari'a law on women as if it offers a single, settled and definitive model of family law that was obviously binding on all

Muslims and that cannot be called into question. This is not true. Since the early centuries of Islam the Qur'anic verses and Prophetic hadith affecting women's rights in the family have been subject to a wide range of diverging interpretations by Islamic jurists, with the interpretations of Sunnis and Shi'is being particularly at variance. As great as the variety of interpretations was in the past, it is even greater today. Many contemporary Muslims find the juristic interpretations made in the premodern period inadequate and reject them as no longer binding. Over the last decades a growing feminist literature has added a fresh layer of interpretations and new insights that go well beyond the liberal reformist interpretations that started in the late nineteenth century. At the same time, Islamist ideologues are reinterpreting the Islamic sources in ways that affirm their vision of the way Islamic precepts should apply to the problems of modern life. There is enormous interpretive diversity on the question of what the Islamic sources mandate in terms of status for women.

This diversity is reflected to some extent in the diversity in personal status laws in contemporary Muslim countries, some of which essentially embody medieval juristic interpretations, others of which have selectively modified and updated aspects of old shari`a rules. Turkey has gone so far as to discard Islamic law altogether. Egypt has personal status laws that embody an in-between position, comprising some modest reforms to the premodern shari'a. The Egyptian personal status law reforms have been criticized by Egyptian feminists and by conservatives, albeit from different perspectives. There is no national consensus that Egypt's personal status law, as reformed, embodies the perfect restatement of shari`a principles. The fact that the government has made a number of changes to its personal laws by itself indicates that it does not in reality consider shari'a law immutable. In addition, outside the domain of personal status, Egypt

does not accept the binding force of shari`a law in other domains. If Egypt really followed the principle that it had to retain shari`a laws because they were religiously mandated, one would expect that Egypt would follow shari`a law across the board, but Egypt long ago discarded Islamic law in favor of French-inspired law except in personal status matters. This is in fact one of the grievances that Islamists invoke in their challenges to the religious legitimacy of the government. In these circumstances, it was strange for Egyptian spokespersons to talk as if Egypt were inextricably bound to follow Islamic norms. Sections [d] and [f] misrepresent the nature of the exchange involved in a shari'a marriage -- the truth being that the husband's financial obligations vis-a-vis his wife correlate exactly with his superior rights and his legal prerogative to demand sexual submission and obedience from her. That is, the man's dower payment and support obligations are the basis of the inequality of the spouses and the wife's inferior position. Moreover, in section [f] there is no acknowledgment that, regardless of the theory that the wife is not obliged to spend her own funds for the upkeep of the family, under present economic conditions in Egypt, wives generally do find that they also have to work outside the home and to contribute their earnings to the family, which has not been reflected in an adjustment in the husband's superior rights. Indeed, even where the wife is the sole breadwinner in the family, the husband retains his superior legal rights, which proves that no principle of balance and complementarity in rights and obligations is actually in effect. That is, Egypt was engaged in deliberately obscuring the discriminatory character of its laws. What happens upon divorce is also not accurately represented. Contrary to the claim following section [e], as Egyptian law now stands, upon divorce the husband does not always have to make a payment to the wife when they divorce; sometimes he owes no payment and sometimes the wife pays.

The statement in [g] speaks as if it were self-evident that the husband, who theoretically bears the financial obligations of dower and maintaining his wife and his family, should have an unrestrained right to divorce, whereas the wife, theoretically his dependent, should establish grounds before a judge in order to obtain a divorce. However, one could easily turn this proposition on its head and say that the wife, who is presumably generally the financially more vulnerable partner and who often will get a very paltry payment upon divorce, is the one who is most exposed to hardship and most likely to see her livelihood suffer upon divorce. That being the case, any restraints on ending the marriage should, in the interests of equity, apply at least as strongly to a divorce sought by the husband as they do to a divorce sought by the wife.

What Egypt asserted in this disingenuous explanation of its CEDAW reservation was in essence that, although shari`a rules did not accord men and women identical treatment, they essentially achieved the male-female equality mandated by CEDAW, albeit by a different route. Of course, this necessitated misrepresenting elements of Egypt's law and steering the discussion away from issues where Egyptian law too obviously violated the principle of male-female equality. Polygamy and inheritance law (according to which women are given one half the share of a male inheriting in the same capacity) were not mentioned. This deceit and evasiveness proves that Egypt had no real confidence in the sufficiency of its shari'a justifications for denying women equality. If Egypt had had such confidence, it would not have needed to misrepresent the features of shari'a law that discriminated against women but would have simply stopped after saying that Egypt followed a divinely inspired law and therefore did not care whether or not its laws were in conformity with CEDAW. Of course, doing this would have meant acknowledging that Egyptian laws conflicted with the

international human rights norm of equality, which Egypt was not disposed to do. It seems that appeals to the shari'a were merely tools in Egypt's efforts to confuse observers and mute international criticism.

In summary, Egyptian personal status rules result from state policies of co-opting and manipulating Islam and delegitimizing feminists' protests.³³ They reflect the regime's hopes to buttress its Islamic credentials and its tottering legitimacy by forming strategic alliances with al-Azhar and other pillars of conservative Islam.³⁴ Much criticized by feminists, Egypt's laws also fail to win the approval of Islamic fundamentalists.³⁵ Thus, contrary to what Meron imagined, Egyptian laws affecting women flout the "firm religious beliefs" of Egyptians at both ends of the religious spectrum, and, of course, they ride roughshod over the beliefs of Egyptian secularists.

Meron may imagine that the kind of national Islam imposed by Egypt's government should be equated with religion. Although he refers often to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,³⁶ Meron seems to overlook that the protection afforded therein is not merely for "religion"--such as state religion--but for the *belief* of one's choice. He implicitly discounts the beliefs of individual dissidents and feminists, as if they did not rise to the level of "religion." He shows no concern that, in accepting the Egyptian governmental version of Islam as authoritative, he has dismissed out of hand the beliefs of Muslims who support CEAFDAW principles and who may decry discriminatory laws in countries like Egypt as being based on patriarchal customs, not on Islam.

Like Meron, Donna Sullivan, a law professor at New York University, applies concepts familiar to lawyers in the United States, leading her to misjudge the significance of Muslim countries' reservations to CEAFDAW and to imagine that the concern of Muslim countries has been for freedom of religion. She states

in examining Islamic reservations to CEAFDAW that “[t]he most comprehensive challenges mounted by states to the international norms guaranteeing women’s rights, and their application, have been couched as defenses of religious liberty.”³⁷ Her own examples support neither this proposition nor her claim that “[s]tates that implement religious law, and believers themselves, have contended that many practices that violate women’s human rights are manifestations of the freedom of religion or belief, and as such are entitled to protection under international law.”³⁸

As noted, in none of the CEAFDAW reservations entered by Muslim countries has the need to protect *freedom* of religion been cited to justify their noncompliance with the Convention. Indeed, it would be awkward for Middle Eastern countries to invoke this principle, since they do not in practice uphold freedom of religion and some have denounced freedom of religion in public forums. In 1990, all Muslim countries endorsed The Cairo Declaration on Human Rights in Islam,³⁹ which is noteworthy for failing to make any provision whatsoever for freedom of religion. Furthermore, even where Muslim countries do provide for religious freedom in their constitutions, they may disregard or nullify this freedom in practice.⁴⁰ Some of the countries most allergic to CEAFDAW, such as [[[countries with policies shaped by political Islam such as Iran, the Sudan, and the Taliban’s Afghanistan]]] have been among the most egregious violators of religious freedom in the world. When we are discussing such countries, it verges on the grotesque to conceptualize the problem as one of governmental concern for religious freedom constituting an obstacle to the acceptance of CEAFDAW.

Meron and Sullivan write as if international law potentially provides a basis for saying that in the case of conflicts, concern for principles like religious freedom should override the liberty and equality rights of women. However, as

Courtney Howland has rightly concluded, international human rights law provides no foundation for saying that women's human rights can be restricted in the interests of religion.⁴¹ After making the mistake of concluding that Muslim countries are restricting women's rights in the interest of protecting religious freedom, Meron and Sullivan seem to assume that, by applying a balancing test, they could limit the nefarious impact that according priority to religion would have on women's rights and freedoms. In their scheme, women's rights and freedoms would generally outweigh religious concerns; they indicate that they would only accept religious reservations to CEAFDAW where these are tied to authentic or significant aspects of religion. In connection with this balancing of women's interests against the claims of religion, Meron imagines that outsiders to a religious tradition can evaluate it and can identify what are the "genuine doctrinal features" of the religion.⁴² This is actually highly problematic. Looking at any religion from the outside, the international community has no basis for saying that the more isolated or unusual view is not as genuine a doctrinal feature as features that enjoy more powerful support and that seem more strongly grounded in religious authority. After all, a "genuine" feature would be either one that is true or sincerely adhered to. A "doctrinal" feature would involve something to be taught and believed. What are the objective criteria for the international community to use in deciding which Islamic beliefs are true or sincerely adhered to, or for deciding what Muslims should be taught and should believe? For example, how would the international community go about deciding whether or not Egypt's discriminatory divorce rules, which have strong support in Islamic tradition but which are strongly contested and criticized by many Muslims, should rank as "genuine doctrinal features"?

Sullivan seems to have relied on Meron in proffering similar categories. She contends that in evaluating religious reservations to CEAFDAW one can

dismiss as invalid reservations that are based on “spurious and fraudulent claims.”⁴³ She seems to think that one should determine “the importance of the religious law or practice to the right of religious freedom,” which is to be done by assessing “the significance accorded that practice by the religion or belief itself.”⁴⁴ But, this assumes that outsiders can locate a uniform, uncontested version of the religion involved and can identify an authoritative ranking that stipulates the relative significance of various religious laws and practices. This is a generally dubious proposition and one certainly inapplicable to Islam, a religion with a particularly diffuse and complex heritage of laws and practices. Howland accurately observes that factoring in the relative importance of a religious law in determining the scope of women’s rights “is impermissible under international law” and that it is “unworkable on a practical basis.”⁴⁵

IV. Conclusion

Experience shows why a scheme of evaluating the importance or genuineness of religious reasons for deviating from CEAFDAW is impracticable. Muslim countries are prepared to claim that harmful practices and discriminatory laws are warranted by Islam even when such claims seem virtually impossible to substantiate. An Egyptian woman diplomat has recounted with palpable scorn the far-fetched assertions made in 1987 to defend practices violating CEAFDAW.⁴⁶ She notes how Islamic rationales were offered to the CEAFDAW committee by an Asian Muslim country for the practice of throwing acid in a woman’s face as punishment and by an African Muslim country for the rule that, when a man died, his wife was to be treated as part of his movable property to be inherited by his brother.⁴⁷ However, once put on the spot, the delegates were at a loss to explain what the Islamic authority for these practices would be.⁴⁸

Apparently hoping to find a way to resolve such disputes by reference to Islamic law, the CEAFDAW Committee then requested that a study of the status of women under Islamic law be prepared.⁴⁹ That it should have proposed such a study suggests that even within the United Nations human rights system there is sympathy for the view that religious principles--as long as these can be shown to be important or "genuine doctrinal features"--may be considered in interpreting women's rights.

If religion were actually the issue, one would have expected Muslim countries to welcome a study of Islamic doctrines regarding women. Instead, Muslim countries strongly opposed this project.⁵⁰ The very countries urging the notion that there should be Islamic exceptions to CEAFDAW requirements do not want the international community to examine what the relevant Islamic doctrines are. With no way to devise a way to differentiate between genuine and spurious religious claims, ultimately, all appeals to Islam would have to be taken at face value. Obviously, if otherwise unacceptable deviations from CEAFDAW could automatically be justified by appeals to religion, there would be no limit to the curbs on women's rights that could ensue.

The Islamic reservations that have been entered to CEAFDAW provide valuable material for examining what religious reservations to CEAFDAW mean. Critical appraisals should dissuade those advocating respect for religious difference and religious freedom from imagining that Islamic reservations to CEAFDAW warrant special accommodation. Religious reservations when offered by governments simply mean that states are refusing to comply with CEAFDAW and are hoping that invoking religious grounds for their non-compliance will win them special indulgence.

¹Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 [hereinafter CEAFDAW].

²A reservation is “a unilateral statement . . . made by a State, when signing, ratifying . . . 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.” Vienna Convention on the Law of Treaties, *adopted* May 23, 1969, art. 2 (d), 1155 U.N.T.S. 331, U.N. Doc. A/CONF. 39/27 (1969). Subject to conditions in particular treaties, states may enter reservations when ratifying treaties that restrict the effect of the treaty, subject to the condition that the reservation may not be incompatible with the object and purpose of the treaty. For a further discussion of reservations to CEAFDAW, see Ann Elizabeth Mayer, *Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution be an Obstacle to Human Rights?*, 23 HASTINGS CONST. L.Q. 727, 731-41 (1996).

³For examples of state reservations, see U.N. Doc. CEDAW/SP/1998/2, Feb. 6, 1998, at 20-21, 24, 28, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS OF 31 DECEMBER 1997, at 173, 174, 175, U.N. Doc. ST/LEG/SER.E/16, U.N. Sales No. E.98.V.2 (1998) (hereinafter MULTILATERAL TREATIES) (reservations of Egypt, Iraq, and Libya respectively). Texts of the reservations and objections to these can be found on the Internet at

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapterIV/treaty9/asp> (visited Jan. 10, 2003).

See also ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 124-25 (Boulder, CO: Westview Press, 3d. ed., 1999).

⁴Zakya Daoud, *En marge de la Conférence mondial des femmes de Pékin: la stratégie des féministes maghrébines*, MONDE ARABE MAGHREB MACHREK, Oct.-Dec. 1995, at 105-19.

⁵See Seema Kazi, *Muslim Law and Women Living under Muslim Laws*, in *MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION: IMPLEMENTING THE BEIJING PLATFORM* 141, 142-43 (Mahnaz Afkhami & Erika Friedl, eds.) (Syracuse: Syracuse University Press, 1997).

⁶See *MULTILATERAL TREATIES*, *supra* note 3, at 176.

⁷See *UN Committee on Elimination of Discrimination Against Women Concludes Consideration of Morocco's Report*, M2 PRESSWIRE, January 22, 1997, available in LEXIS, World Library, Allwld File.

⁸*Id.*

⁹ See *Importante manifestation islamiste au Maroc contre les droits de la femme*, Agence France Presse, Mar. 12, 2000, available in LEXIS, World Library, Allwld File.

¹⁰See *Kuwait Women's Efforts for Political Rights Thwarted*, XINHUA NEWS AGENCY, Mar. 2, 1998, available in LEXIS, World Library, Allwld File.

¹¹*Id.*

¹² Mona Eltahawy in Cairo, *Kuwait rejects political rights for women*, *The Guardian*, Dec. 1, 1999, available in LEXIS, World Library, ALLWLD file.

¹³ See Daniel Del Castillo, *Kuwaiti Universities Return to Separating Men and Women: Some Female Academics Fear the Segregation is a First Step to Removing Them from Public Life*, *Chronicle of Higher Education*, Jan. 3, 2003, A44.

¹⁴ *Id.* at A45.

¹⁵ *Id.* at A46.

¹⁶ *Id.* at A45.

¹⁷For a discussion of the parallels between gender apartheid and South African apartheid on the basis of religion, see Courtney W. Howland, *The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter*, 35 *COLUM. J. TRANSNAT'L L.* 271 (1997).

¹⁸See *Pakistan --Women: Activists Pressure Government to Ratify CEDAW*, INTER PRESS SERVICE, June 21, 1995, available in LEXIS, World Library, Allwld File.

¹⁹See CEAFDAW, *supra* note 1, art. 2(f), at 196, 1249 U.N.T.S. at 16.

²⁰See *Pakistan --Women: Activists Pressure Government to Ratify CEDAW*, *supra* note 12.

²¹See MULTILATERAL TREATIES, *supra* note 3, at 177.

²²For example, see the United States reservation to the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967), MULTILATERAL TREATIES, *supra* note 3, at 121, 131. For a discussion of U.S. reservations, see Mayer, *supra* note 2, at 754-67.

²³See MULTILATERAL TREATIES, *supra* note 3, at 171-72.

²⁴*Id.* at 171.

²⁵See *Convention on the Elimination of All Forms of Discrimination against Women* (visited Dec. 1, 1998) <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_8.html>

²⁶THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS 155 (Oxford: Clarendon Press, 1986).

²⁷*Id.*

²⁸*Id.* at 156.

²⁹See U.N. Doc. CEDAW/SP/1992/2, *supra* note 3, at 11-12; MULTILATERAL TREATIES, *supra* note 3, at 173.

³⁰See Azza M. Karam, *Women, Islamisms, and State: Dynamics of Power and Contemporary Feminisms in Egypt*, in MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION, *supra* note 5, at 18, 26-28.

³¹. Lars Adam Rehof, Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Boston: Martinus Nijhoff, 1993), 257.

32. See Fawzi Najjar, "Egypt's Laws of Personal Status," Arab Studies Quarterly 10 (1988), 319-44.

³³*Id.* at 24, 27.

³⁴*Id.* at 26.

³⁵*Id.* at 23.

³⁶Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, *adopted* Nov. 25, 1981, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981), 25 I.L.M. 205 (1982).

³⁷See Donna J. Sullivan, *Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution*, 24 N.Y.U. J. INT'L L. & POL. 795, 795 (1992).

³⁸*Id.*

³⁹See The Cairo Declaration on Human Rights in Islam, June 9, 1993, U.N. Doc. A/CONF.157/PC/62/Add. 18, at 2, The World Conference on Human Rights, Prep. Comm., 4th Sess., Provisional Agenda, Item 5, *reprinted in* MAYER, *supra* note 3, at 203.

⁴⁰For a general discussion of how Middle Eastern Muslim countries disregard freedom of religion, see MAYER, *supra* note 3, at 149-74; AMNESTY INTERNATIONAL, AFGHANISTAN: GRAVE ABUSES IN THE NAME OF RELIGION (New York, NY: Amnesty International, 1996); AMNESTY INTERNATIONAL, IRAN: VICTIMS OF HUMAN RIGHT'S VIOLATIONS 4-6 (New York, NY: Amnesty International, 1993); AMNESTY INTERNATIONAL, SAUDI ARABIA: RELIGIOUS INTOLERANCE: THE ARREST, DETENTION AND TORTURE OF CHRISTIAN WORSHIPPERS AND SHI'A MUSLIMS (New York, NY: Amnesty International USA, 1993).

⁴¹See Howland, *supra* note 11, at 324-77.

⁴²See MERON, *supra* note 20, at 159-60.

⁴³See Sullivan, *supra* note 29, at 813.

⁴⁴*Id.* at 822.

⁴⁵See Howland, *supra* note 11, at 345, n.317.

⁴⁶See Mervat Tallawy, *International Organizations, National Machinery, Islam, and Foreign Policy*, in *MUSLIM WOMEN AND THE POLITICS OF PARTICIPATION*, *supra* note 5, at 128.

⁴⁷See *id.* at 135-36.

⁴⁸See *id.* at 136.

⁴⁹See *id.*; Report on the Seventh Session of the Committee on the Elimination of Discrimination Against Women, Sixth Session, U.N. GAOR, 42d Sess., Supp. No. 38, U.N. Doc. A/42/38, at 80.

⁵⁰See ANDREW BYRNES, REPORT ON THE SEVENTH SESSION OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN AND THE FOURTH MEETING OF STATES PARTIES TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 6-7 (International Women's Rights Action Watch: 7th cedaw/iwraw report, 1988).