Islamic Reservations to the Convention on the Elimination of All Forms of Discrimination against Women

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Abstract

My study is about the Islamic reservations to the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and their compatibility under the regime of the Vienna Convention on the Law of the Treaties (VCLT). It is focused in the substantive reservations invoking Shari’a Laws entered by some Muslim countries to the central articles of the Convention which are, therefore, impermissible as incompatible with the object and purpose of the Convention. I highlight the paradox of maximizing the Convention’s universal application at the cost of compromising its integrity and how substantive reservations to the CEDAW provisions, tolerating discrepancy between states’ laws and practice and the obligations of the Convention, pose a risk to the achievement of the Convention’s goals. I also question if the compatibility criterion of the VCLT is effective in view of acceptance of some substantive reservations of a derogatory nature. I consider that the “object and purpose” test is subjective, the practice by the objecting states is not uniform and that looking at those which are (or are not) the objecting states in respect of a particular reservation, it is evident how political or extralegal considerations intervene when states evaluate the compatibility of reservations. I especially focus on the paradox of the objections to a

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reservation which have the same effect as an acceptance when the objecting and reserving states are still maintaining treaty relation. Therefore, there is no difference in the legal effects of a reservation accepted and one objected without opposing the entry into force of the treaty between itself and the reserving state. I further analyze how reservations invoking Shari’a Law entail conflicting norms (freedom of religion and equality rules). Recalling the view of the “balancing of interest” I argue that it could be a reasonable approach, but in practice it is difficult to find some sort of equilibrium not prejudiced against women. I then analyze if these reservations are suggestive of a wider ideological conflict between women’s rights enunciated in Islam and the ones formulated under the human rights treaties, and how they are representative of the women’s situation in the reserving states. I question what are the motivating factors behind the decision to reserve and if the reservations should be seen in the broader political and socio-economic perspective of domestic and international context? I then ask if the States ratifying the Convention affording its objectives as a real commitment or if they only do so at political opportune moments? I consider that is not Islamic religious beliefs, but evolving political situations which are the determinant factors in making these kinds of reservations. I finally analyze the work of the CEDAW Committee considering its efforts disappointing as many of the new Muslim states parties did not pay attention to the criteria set out by the Committee, continuing to enter either very general reservations or reservations to specific substantive articles. The new states parties with a predominantly Muslim population referred to the Islamic Shari’a Law as prevailing over the Convention without mentioning any specific articles, clearly not following the Committee’s recommendations in the formulation of impermissible reservations.

**Keywords:** Islam; Reservations; Convention on the Elimination of All Forms of Discrimination against Women; Human Rights.