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## THE POLITICS OF ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: ISLAM AND RATIFICATION OF THE UN CONVENTION AGAINST TORTURE IN THE GULF COOPERATION COUNCIL (GCC) STATES

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### ABSTRACT

Modern international human rights treaties developed over the latter half of the 20<sup>th</sup> century to address a wide range of human rights issues. Their number is large and growing, yet there is little evidence that these instruments make a difference. Nowhere does the evidence appear more glaring than in the Gulf Cooperation Council (GCC) states, where high ratification rates correspond with relatively poor human rights records in practice. Nevertheless, states in the Gulf have today voluntarily acceded to most UN human rights conventions. The resulting engagement has brought about an ongoing and vibrant diplomatic discourse, particularly about human rights and Islam. Using the case of the ratification of the 1987 Convention Against Torture (CAT) in the GCC, this paper examines the nature and content of discourses about Islam and human rights over time resulting from CAT ratification in the region. The paper demonstrates how arguments about Islam and human rights have been shaped by interactions with the CAT over time, arguing that where UN human rights treaties have failed to result in improved human rights practices, they have provoked an evolving and variegated dialogue about Islam and human rights worthy of greater scholarly attention.

**Key Words:** Islam, International Law, United Nations, Convention Against Torture, GCC

### INTRODUCTION

As the international system developed over the twentieth century into a complex arrangement of multilateral treaties and institutions, the explosion of the international legal system onto the world stage has raised many questions for scholars interested in the role of these laws. Once a minimal collection of specific state-to-state agreements, the international legal realm has expanded to include a multiplicity of international treaties, conventions, agreements, and declarations purporting to regulate the conduct of individual states. These documents have contributed to a growing codification, or 'legalisation', of the international sphere (Abott et al., cited in Simmons and Steinberg, 2012). Because the international sphere lacks direct coercive enforcement mechanisms, however, international relations scholars have fundamentally challenged the 'strength' of international law—and even its status as 'law' at all (D'Amato, 2010; Goldsmith and Posner, 2005).

One area perhaps most perplexing to international law sceptics has been the amount of time and resources devoted to the creation of a growing collection of international human rights laws. Existing scholarship tends to find little to no correlation between human rights treaty ratification and human rights compliance in practice. Human rights records are simply 'not associated' with UN human rights treaty ratification, and sometimes the human rights records of countries party to human rights treaties are worse than those of non-parties (Hafner-Burton, Tsutsui and Meyer, 2008; Goldsmith and Posner, 2005). Lack of evidence that human rights treaties make a difference has contributed to a 'growing scepticism' that 'the world's idealists

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have thrown too much law at problems of human rights' – as Beth Simmons puts it in her 2009 book *Mobilizing for Human Rights*.

The sheer futility of international law at successfully ameliorating human rights problems is clearly evident when considering the Gulf Cooperation Council (GCC) countries, Saudi Arabia, Kuwait, Qatar, UAE, Oman, and Bahrain. These countries have ratified most or all of the UN human rights instruments, but are consistently accused by various human rights monitors of failing to live up to their legal obligations after ratification. This gap between commitment and compliance is obvious when reviewing Gulf state commitments to the 1987 UN Convention Against Torture (CAT), a UN document aimed at protecting all individuals from torture and cruel punishment. All GCC states except Oman have voluntarily ratified the CAT, yet GCC states are consistently widely criticised by leading human rights monitors for torture practices and other forms of 'cruel punishment.' (Human Rights Watch, 2016a).

Most international legal scholars argue that these cases clearly demonstrate the futility of international law, where states can easily sign up to 'look good' at little cost, in a meaningless manoeuvre to marginally improve regime image (Goldsmith and Posner, 2005). Discounting the act as entirely meaningless, however, and subsequently ignoring it in scholarship, fails to provide an account for a growing collection of evolving dialogue and engagement that has resulted from ratification, which will be the focus of this paper.

This paper analyses the ways in which Islam has been negotiated and discussed by GCC states relating to CAT ratification. The paper argues that GCC ratification of the CAT 'matters' more than the traditional international legal literature claims because of its influence on framing diplomatic discourses on Islam and human rights. GCC engagement with the CAT and its committee has 1) exposed a diversity and flexibility across the Gulf in conceptions of Islamic understandings of punishment, and 2) contributed to some 'modernisation' of language and concepts used by GCC representatives. By tracing how norms about punishment and Islam in the Gulf are communicated by states related CAT commitment, the paper will argue that ratification of the CAT across GCC states has served as a unique space that has both captured and progressed how Islam and punishment are discussed by Gulf representatives.

## **THEORETICAL FRAMEWORK**

The concept of norm diffusion broadly discussed within the Constructivist school of International Relations theory is useful to viewing human rights treaty ratification's impact on dialogue. The expanding literature on 'norm diffusion' (Keck and Sikkink, 1998; Klotz, 1999; Risse et al., 1999; Barnett and Finnemore, 2004; Reus-Smit, 2004; and Simmons, 2009)) can help trace the ways human rights have been discussed over time across a wide variety of political contexts. The concept has been applied broadly within the literature to consider a number of factors and indicators for scholars to trace the movement of norms; according to Gilardi, 'Diffusion can take place also within countries, among a wide range of public and private actors, and it can lead to the spread of all kinds of things, from specific instruments, standards, and institutions, both public and private, to broad policy models, ideational frameworks, and institutional settings' (Gibaldi, as cited in Carlnaes, Risse and Simmons, 2012).

Norm diffusion describes a process rather than an outcome (Elikins and Simmons, 2005). Seen as a 'consequence of interdependence' (Gilardi, 2012), literature on norm diffusion considers when and how norms in international sphere influence state behaviour (Katzenstein, 1996; True and Mintrom, 2001). International institutions are often identified as playing a central role in this process as the 'carriers' or 'diffusers' of international norms (Park, 2006; Finnemore, 1996; Checkel, 1999; Grigorescu, 2002). The concept of norm diffusion can help scholars establish whether—and, if so, to what extent—international human rights institutions play a role in the development and spread of human rights norms in particular.

Part of the reason why the existing literature fails to provide satisfactory accounts of outcomes and dynamics concerning norms in the Middle East is that it tends to suffer from Western-centrism. Bettiza and Dionigi suggest that literature on norm diffusion tends to be characterised by a bias, focusing too heavily on Western norms being spread from a 'Western core to a non-Western periphery', and tend to over-emphasise liberalisation as a necessarily related, and even desirable, outcome. 'Constructivism's Western-centrism,' Bettiza and Dionigi argue, 'tends to overlook the fact that the international sphere is replete with normative contestation' (p. 2). This is problematic in considering the Middle East, where actors and norm entrepreneurs are clearly 'not solely norm-takers, but also active norm-makers, seeking to promote and internationalize their own beliefs, values and principles' (Bettiza and Dionigi, p. 2).

A useful concept to consider is that of 'norm localisation', developed most prominently by South Asian scholar Amitav Acharya, who argued through a study of norm diffusion in the Association of Southeast Asian Nations that norms diffuse in varied cultural contexts by processes in which local agents 'reconstruct foreign norms to ensure the norms fit with the agents' cognitive priors and identities' (Acharya, 2004). Norms about punishment take hold in Islamic contexts through congruence-building between Islamic language, concepts and understandings of punishment based on Islamic ideas of justice and humility alongside international concepts of humane and fair treatment, which will be demonstrated in the sections that follow.

Constructivist theorists might posit that in the cases of human rights treaty ratification in the Middle East, where a high ratification turnout corresponds with low compliance in practice, we see a case in which norm diffusion has failed to take place. The reality remains, however, that the process of spreading liberal norms about human rights has perhaps succeeded in certain forms (for example, in shaping Middle Eastern actors' use of certain language and concepts about human rights used in public statements made by government representatives), but failed to result in fully liberalised human rights laws and practices. Identifying and understanding this spread of language and concepts used concerning human rights as a result of interactions between Middle Eastern representatives and UN human rights treaties, regardless of the results in the practice of domestic human rights, will be the focus of this paper.

This paper draws on archival research of UN dialogues between GCC diplomats and the UN CAT Committee, alongside interview research conducted in Doha, Qatar in the summer of 2016 to explore how dialogue about Islam and punishment has developed in relation to CAT ratification. It will begin with an overview of Islam in the GCC states, review GCC engagement with the CAT, starting with the initial ratification decision, followed by an analysis of official UN CAT committee diplomatic dialogues. It will then present conclusions as to how GCC states have engaged in similar and different ways regarding Islam and punishment as a result of CAT engagement, and offer some preliminary thoughts on how these findings might be relevant to international human rights law legal scholars and practitioners.

## **BACKGROUND**

### **Islamic Law and Punishment in the Gulf**

Since the early expansion of the Islamic empire, law in the Middle East has traditionally been 'anchored to religious institutions and personnel' (Zubaida, 2003, p. 440). Law in the region was considered to be derived from divine origin, based on the Qu'ran and the examples of the Prophet. In reality, however, far from being anchored in some static authority from the divine, sacred law has been closely intertwined with the social and political context in which it has been interpreted throughout history, broadly invoked in early Islamic history by clerics (*ulama*) and interpreted to regulate a wide range of affairs from civil transactions, taxation, penal law, and most other areas of criminal and social law. By 1900, religious Sharia law in

the Middle East had reduced in scope to mainly concern finite areas of 'personal status' such as child custody, marriage, and inheritance (Hallaq, 2005, p. 115).

Islamic *sharia* law has historically influenced (and continues to influence) criminal law in varying ways, depending on interpretation. Sharia's influence in sanctioning certain styles of punishment has attracted significant criticism for its role in condoning or even promoting controversial practices such as flogging and stoning in some countries, including many in the GCC. However, the influence of Islamic law in condoning controversial practices like flogging varies between various interpretations of Islamic jurisprudence (*fiqh*), and indeed the practical interpretation of punishment under Islamic law varies widely in the varying domestic contexts of the states of the MENA region. With a dynamic history, the analysis that follows demonstrates that Islamic law neither comprehensively bans torture, nor does it prevent such a ban, making Sharia no clear impediment to the CAT, should one wish to find historical and jurisprudential bases within Islam in support of the convention. Sadiq Reza claims that Islam's stance on torture is as much 'a matter of politics as of law': 'those who seek justification for investigative torture in the *fiqh* or *siyasa* will find it there; so too will those who seek its prohibition.'

Islamic legal understandings of punishment are based on varied interpretations of sacred text. Concepts of 'cruelty', 'degradation' and 'torture' are present in the Quran, and their practical import is debated between and within Islamic schools of thought. While there are many mentions of such concepts directly in Quranic text, the below verses illustrate how these are mentioned. For example, cruelty of a husband towards a wife is condemned:

If a wife fears *cruelty* or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practise self-restraint, Allah is well-acquainted with all that ye do. (Q4:138)

Yet God's 'cruel' power to 'torment' is also identified in sacred text as being just and powerful. The Quran says, 'And (remember) when thy Lord proclaimed that He would raise against them till the Day of Resurrection those who would lay on them a *cruel* torment. Lo! verily thy Lord is swift in prosecution and lo! verily He is Forgiving, Merciful' (7(167)).<sup>2</sup> And certain punishments (such as amputations for thieves) are set out in such verses as 'And the male thief and the female thief: then cut (off) the hands of both, as a recompense for what they (both) have earned, as a *torture* from Allah; and Allah is Ever-Mighty, Ever-Wise' (2:66).

Islamic law sets out a number of 'categories' for types of criminal offence, prompting varied types of penalties based on the nature of the crime. These include offences said to violate divine authority and prescribed a specific punishment in the Qu'ran (*hadd/hadud(pl.)*); those said to violate the divine as well as another individual, resolved in quid-pro-quo exchanges (such as money paid to the family of a murder victim) (*qisas*); those against another individual that fall under a judge's discretion (*ta'zir*); offenses against the public policy of a state that call for administrative penalties (*siyasa*); and offenses that can be addressed by personal penance (*kaffara*) (Forte, n.d.) The first three offenses of *hadd (hadud pl.)*, *jinayat*, and *ta'zir* are to be adjudicated before a religious judge (*qadi*) unless a state has moved jurisdiction under another court. *Fuqaha* (jurists) from the different schools of Islamic law present varying perspectives, then, on how these punishments are imparted (Hakeem, 2003).

The tension surrounding Quranic Hadd punishments and international law, Reza argues, 'richly illustrates ... an essential dynamic of Islamic law: the interplay between the jurists of Islam, whose doctrines and discourses over fourteen hundred years form the corpus

<sup>2</sup> Also see (The people of the city) said: We augur ill of you. If ye desist not, we shall surely stone you, and grievous *torture* will befall you at our hands. 36:18.

of formal Islamic jurisprudence, and Islam's political authorities, whose rules and actions both depend on the jurists' doctrines for legal legitimacy and constitute a complementary source and measure of Islamic law' (Black et al., 2014, pp. 222-223).

While there is some variance among Islamic legal schools of jurisprudence (*madhab*), the five common Sunni schools (Hanafi, Maliki, Shafi'I, Hanbali, Zahiri) and two Shia schools (Ja'fari, Zaidi) tend to converge in their understanding of divine (*hadd*) crimes to include sex outside of marriage, false accusation of unlawful sexual acts, wine drinking (sometimes drinking of any alcohol), theft, and highway robbery, and apostasy. Punishments understood to be divinely sanctioned for *hadd* offenses include flogging, amputation, exile, or sometimes stoning and other forms of execution.

Scholars viewing these legal standards with a view to historical context, as today's relatively strict interpretation of *hadd* crimes and legal punishment may not have, in fact, originated in such rigid form. Islamic legal scholar Joseph Schacht writes that the rules of punishment in Islamic law, seemingly rigid and set in current form from direct reference to Quranic verses, did not, in fact, originate clearly and strictly from the time of Mohammed, and were highly contested in their origins. Schacht makes the point that the religious basis of this law evolved over time until the early 'Abbasid period (yrs. 750–1517). Early Islamic society began to form religious legal institutions along the ancient Arab system of arbitration, in which punishments were often imparted for political reasons, for example in response to disloyalty. More extreme practices of stoning to death as a punishment for adultery (*rajm*) according to the interpretation of the alleged commands of the Prophet also have contested Quranic origins; the verse is claimed to be entirely spurious by some early Muslim sects such as the Khawarij/Khajirites.<sup>3</sup> It was only after the first century of Islam the concepts of punishment began to coalesce into the form commonly invoked today.

Still, although there exists strong convergence relating to sanctioning certain extreme punishments in criminal law in modern MENA states, lesser penalties are far more commonly imparted for most *hadd* offenses, with the more extreme forms of punishment prescribed by law often seen as more metaphorical than literal. This is, however, by no means universally the case. Flogging still occurs in several MENA states, and other violent penalties for adulterous acts remain commonplace. For example, the Quranic guidance for the punishment of stealing by amputating the hand (and if it is a repeated offense, the foot) in Quran 5:38 is still literally invoked today in numerous cases cited in Iran, Saudi Arabia, and northern Nigeria.

These types of literal interpretations of Islamic punishments are often deemed 'cruel' by most human rights monitors. Their purpose, however, is meant to be purely punitive, and thus not in breach of the *intentional* notion contained in the CAT definition of torture (the intention of obtaining information through punishment), although often understood as being in violation of the 'cruel treatment' clause. The extremity of physical suffering endured by those accused of *hadd* crimes, as well as concern over the validity of accusations and allegations that these punishments are often used to provoke false confessions, has grown to be a topic of concern for numerous human rights monitors that the nature of religious punishments across MENA could violate international law against torture.

Torture has been acutely and consistently alleged to take place in the GCC, where Amnesty International reports 'Hundreds of dissidents, including political activists, human rights defenders, journalists, lawyers, and bloggers, have been imprisoned across the region, many after unfair trials and allegations of torture in pretrial detention. GCC rulers' sweeping campaigns against activists and political dissidents have included threats, intimidation, investigations, prosecution, detention, torture, and withdrawal of citizenship' (Human Rights Watch Report, 2016).

Saudi Arabia in particular has been subject to criticisms of torture. Although the Saudi Criminal Procedure Code prohibits 'torture' and 'undignified treatment' (Article 2), it does not provide any specific definition of torture or prescribe criminal sanctions for government officials who carry it out. Human Rights Watch reported in 2016 that Saudi prisons sometimes subject detainees to torture and other ill-treatment, including at detention facilities run by Saudi Arabia's Public Security Department (police) and by the General Directorate of Investigation (*al-Mabahith*) (Human Rights Watch Report, 2016b). Similarly, Human Rights Watch has documented widespread allegations of torture in the UAE prison system, citing 'credible allegations that security forces tortured people held in pretrial detention' and sometimes forced disappearances (Human Rights Watch Report, 2016c). Similar accusations of torture particularly in prison and detention systems have been lodged against the rest of the GCC states, including Oman, Kuwait (Human Rights Watch Report, 2016d), Qatar (Amnesty International, 2016) and Bahrain (Human Rights Watch Report, 2016e).

Islam in the Gulf is 'constantly reinterpreted and negotiated' (this is Pernilla Ouis' phrase: Ouis, 2002, p. 318). According to Ouis, the concepts of Islam, tradition and modernity are central for the legitimisation of power in the Gulf. The Gulf states are engaged in an ongoing balancing of these areas. As El-Affendi (2001) puts it, Gulf states are often challenging how to balance these factors: 'How much of modernity is compatible with Islam? Or, put differently, how much of the Islamic tradition can (and deserves) to survive modernity?' (El-Affendi, 2001). CEDAW ratification exposes these tensions unravelling in Gulf state rhetoric over time.

The legal relevance of Sharia today is globally strongest and most pervasive in the legal systems of the Arab Gulf states. In Saudi Arabia, in particular, Islamic law has remained in a much more traditional and conservative form than in other states of the Middle East. This is what Zubaida calls the 'Saudi Exception': 'The Kingdom of Saudi Arabia is the one major country in the region which has not followed the general pattern of the codification and etatization of law. Saudi courts and *qadis* (judges) rule in accordance with Hanbali *fiqh* (jurisprudence), which is not codified as state law but formally left largely to the discretion and *ijtihad* (reason) of the qadi ... The ulama remain the main legislators' (Zubaida, 2003, p. 153). In Saudi Arabia, strong adherence to conservative principles in Islamic law have also resulted from the monarchy's quest for legitimacy. Zubaida argues that the political importance of Shari'a is strong in bolstering the Saudi monarchy: 'Religious legitimacy and its agents have been crucial for the defence of the [Saudi] dynasty against modernist political opposition of nationalism, constitutionalism and democracy, as well as against the Islamic opposition from various quarters, mainly centred on the dependence of the dynasty on US power, as well as the perceived hypocrisy and corruption of the royal house and its circles' (Zubaida, 2003, p. 155).

Given this context, it is important to view Islam as a moving and dynamic topic influencing law, society and power in the Middle East. Of course, the region is not monolithic, and these dynamics play out in varied ways in each country. The ways in which Islam is discussed at the United Nations reflect certain patterns and commonalities across the region, as well as a heterogeneity in understandings concerning Islam. The era of the proliferation of UN human rights treaties has helped provoke a unique and evolving discourse on Islam and human rights among GCC state representatives at meetings with UN human rights committees. The nature and content of these discourses among GCC and UN diplomats over time since ratification of the CAT will be the focus of the following section.

## FINIDINGS

### Islam and CAT Ratification Engagement: Initial RUDs

Despite slow ratification of the CAT across the GCC, formal concern with applying the tenets of the convention, at least in form, were minimal. Where Reservations, Understandings, and Declarations (RUDs) were submitted to the CAT by states in the region upon ratification, they

tended, on the whole, to be brief and highly specific to particular articles concerning procedure, compared with the longer and more sweeping RUDs sometimes submitted to the other UN human rights treaties.<sup>4</sup> Only in one case did a formal RUD submitted to the UN Committee Against Torture upon ratification of the CAT mention religion (this state, Qatar, went on to remove this reservation, a move which will be examined later).

#### GCC Ratification of the CAT

Kuwait 8 Mar 1996 *Torture Rating 2.0*<sup>5</sup>

Saudi Arabia 23 Sep 1997 *3.0*

Bahrain 6 Mar 1998 *4.0*

Qatar 11 Jan 2000 *1.0*

Iraq 7 July 2011 *5.0*

UAE 19 July 2012 *1.8*

**Table 1:** MENA RUDs to CAT (\* indicates one or more withdrawn)

Mention of Islam	1 * <sup>6</sup>
Articles 21 & 22 (competence of CAT Committee)	2* <sup>7</sup>
Article 30 (competence of the ICJ for referral)	5 <sup>8</sup>
Article 20 (competence of CAT committee investigations)	4* <sup>9</sup>
Other concern	6

While seven MENA states ratified the CAT without reservation, the MENA states that did submit RUDs primarily expressed concern with the same procedural aspects of the convention: the reach of the UN CAT Committee to assess and refer alleged uses of torture, and the competence of the International Court of Justice to adjudicate these cases. Ratifying MENA states almost never expressed concern over arguably more substantive elements of the Convention, such as its definition of torture and the imperatives set for governments to denounce and eliminate the practice (Table 1).

All but one GCC state ratified the CAT (Oman is the only country in the region which has not ratified). GCC countries that did ratify entered various reservations. Bahrain entered a reservation concerning Article 30 (concerning competence of the ICJ for referral). Saudi Arabia mentioned a similar concern with Article 30, but reserved additionally against Article 20 (regarding the competence of the CAT Committee). The UAE entered reservations on Articles 30 and 20, adding a declaration that 'The United Arab Emirates also confirms that the lawful sanctions applicable under national law, or pain or suffering arising from or associated with or incidental to these lawful sanctions, do not fall under the concept of "torture" defined in article 1 of this Convention or under the concept of cruel, inhuman or degrading treatment or punishment mentioned in this Convention.'

<sup>4</sup> Particular pushback in the case of the CAT is mainly against Paragraph 1 Article 30 of the Convention, relating to the competence of the committee and referral of cases to the ICJ.

<sup>5</sup> Torture ratings from year 1999 in study of Hathaway (2002). Scale of 1-5, 5 is worst practice. Average in MENA region is 3.3.

<sup>6</sup> Qatar submitted in 2000, Reserved 'Any interpretation of the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion' (*later withdrawn and amended*).

<sup>7</sup> Qatar (*withdrawn*), Tunisia (*withdrawn*).

<sup>8</sup> Kuwait, Morocco, Saudi Arabia, Turkey, UAE.

<sup>9</sup> Bahrain, Kuwait, UAE, Tunisia (*withdrawn*).

Where Qatar initially expressed reservation upon its ratification of the CAT ('Any interpretation of the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion'), it later removed this statement, reserving instead only Articles 21 and 22 (concerning competence of the committee). It is puzzling and even more provoking that Qatar holds the lowest possible torture rating among its GCC neighbours, according to Oona Hathaway's measures (1.0), yet Qatar was the only Muslim-majority country to mention possible tensions with Islamic law in its reservation. Qatar faced significant backlash from other state parties to the treaty that expressed concern with Qatar's RUDs submitted (and accepted) upon ratification in 2000. Some years after acceding, Qatar withdrew these controversial reservations, a move one Qatari diplomat explained was the result of broad social change: 'We withdrew ... because with the change of society and decision making ideas we found that there were no remaining conflicts' (Cali and Ghanea, 2012).<sup>10</sup>

### **Islam and GCC-CAT Diplomatic Dialogues**

This section will analyse the ways in which Gulf representatives have subsequently discussed Islam and punishment in relation to CAT ratification, highlighting trends and differences in interactions after ratification between GCC countries and over time. CAT ratification has stimulated a space for dialogue in which conceptions about Islam and punishment have been contested. Interactions have also served as a forum in which Gulf representatives have all pushed back against UN imposition of certain 'universal standards' in various ways, all the while consistently framing Islam in language of humanity and modernity, particularly as a religion firmly in support of so-called 'justice' and 'fairness.'

#### *Islam supports 'human rights' and 'human dignity' and abrogates 'torture'*

Although Islam was not central to GCC initial RUDs to the CAT (with the exception of Qatar), the topic of controversial Islamic punishments quickly became prominent in resulting diplomatic dialogues between GCC representatives and the CAT Committee. One important way in which discourse has been framed in GCC engagement with CAT has been the ways in which Gulf state representatives have all described Islam as against gender 'torture' and in favour of 'human rights' and 'human dignity.'

In a 2001 dialogue between Saudi diplomats and the UN CAT Committee, for example, the Saudi delegation insisted that the Kingdom fully upheld human rights in its law:

The Kingdom of Saudi Arabia protects human rights through its system of law and order in the light of its Constitution. ... [A]cts of torture were already prohibited in the Kingdom's judicial and administrative legislation (CAT/C/42/Add.2).

Later, when defending criticisms from the committee for Islamic punishments 'such as flogging, and its domestic legislation and jurisprudence based on its own interpretation of certain religious principles' (CAT/C/SAU/Q/2), the Saudi delegation refuted allegations of torture, insisting that the Koran stood against 'torture' and, by extension, that the acts referred to were forms of religious justice that did not amount to torture:

The sanctions referred to in the Koran were not forms of torture within the meaning of Article 1 of the Convention—which excluded pain or suffering arising from, inherent in or incidental to lawful sanctions—precisely because they were the law of the land. The

Saudi Arabian Code of Criminal Procedure prohibited the infliction of any punishment other than that prescribed by the Shariah or the law.

Similarly, the Qatari delegation insisted in its summary meetings with the CAT Committee that Islam was against torture:

The Islamic sharia totally prohibits acts of torture and other forms of ill-treatment, since such acts are an affront to human dignity, which the religion enjoins us to respect and protect.<sup>11</sup>

Emirati delegates echoed these claims more broadly, suggesting Islamic law did not stand in the way of basic freedoms, including freedom of expression, in response to criticisms of the torture and cruel treatment of certain prominent bloggers and social media users who had criticised the government (Human Right Watch, 2016f). Emirati delegates directly referred to Islamic law's compatibility with principles of freedom:

UAE Freedom of expression and scientific research was guaranteed under the Constitution, and everyone had the right to express his opinion orally or in writing, without prejudice to Islamic law and the unity of the people (CAT/C/SR.656).

#### *Conflict between Islam and CAT is 'rare' or 'small'*

Another aspect of Gulf engagement with CAT has been the defence which religious practices have perceived as conflicting with international law as only 'rare' or 'small'. These statements frame Islam as the reason for which the state held otherwise unpopular practices, defending them by claiming the practices were uncommon.

Saudi delegates, for example, used this tactic to respond to criticisms about the flogging of certain prominent bloggers, issuing broad assurances rather than specific defences: 'As a rule, Saudi law did not condone flogging' (CAT/C/SR.1405).

Qatar, for example, justified practices of amputation and stoning in criminal punishment in the country as exceptions that must be justifiable under Sharia, but defended them by claiming they were rare:

Article 1 of the Penal Code stipulated that Islamic sharia applied to the crimes of theft, banditry, adultery, apostasy and alcohol consumption, when the perpetrators or victims were Muslims. Under the same article, stoning and amputation concerned only a very small number of offences and were hardly ever put into practice (CAT/C/SR.710).

#### *Islam as a source of 'protection'*

Engagement between GCC and UN diplomats in CAT Committee meetings also developed a discourse relating to Islam as a positive source of 'protection' against torture. The Saudi delegation, for example, refuted accusations of torture, claiming that Sharia forbids it: 'As to confessions obtained under torture, Article 187 of the Code of Criminal Procedure expressly stated that evidence obtained in that manner constituted a violation of the Islamic

sharia and was to be deemed null and void' (CAT/C/SR.1405). UN diplomats also contributed to framing Islam this way; for example, a European UN CAT committee member, Mr. Camara, opened a CAT meeting with Kuwait as follows: 'Mr. CAMARA, warmly welcoming the submission of Kuwait's report, said that Islamic countries had nothing to fear from an appearance before the Committee, since there was no place for torture in the rules of evidence established by Islamic law' (CAT/C/SR.334).

## CONCLUSIONS

GCC states' engagement with the CAT has produced a framing effect on discourse, where GCC representatives have increasingly discussed Islamic understandings of justice and punishment in modern terms as firmly against 'torture' and 'cruel punishment.' Importantly in the case of the CAT, the relevance of Islam to GCC understandings of just punishment did not manifest itself in initial RUDs. Such initial statements issued by GCC states upon ratification did not initially capture significant commentary on Islam, and thus did not have any initial 'framing' effect on discourse about Islam and torture during this step in the ratification process. Later on in the process of diplomatic dialogue between GCC state parties and the CAT Committee, however, Islam became a topic of key concern, and a framing effect resulting in changed language and concepts used to discuss Islam as against torture manifested in CAT meetings with GCC diplomats over time. These changes, I argue, constitute a stage of norm diffusion.

CAT ratification in the GCC has revealed tensions between a Gulf state desire to be perceived as modern and compatible with international human rights efforts alongside an opposing desire to assert arguments about Islamic exceptions to UN human rights efforts. Where UN human rights treaties have failed to result in improved human rights practices on the ground in a conventional understanding of successful norm diffusion, they have provoked increased communication over an evolving and variegated dialogue about Islam and human rights. This is a form of norm 'localisation' in a diffusion process. Without modernising and liberalising language and concepts about human rights, one cannot expect liberalised practices. Changes in language about norms among diplomats is a necessary, but not sufficient step in the norm diffusion process worth tracing. Because ratification is theoretically a voluntary action by states, as opposed to other human rights environments such as responding to outside governments or NGO human rights activism, ratification has served as a unique space in which arguments about Islam and women's rights have been voluntarily expressed and negotiated, revealing a diverse and evolving discourse among GCC states about the topic stimulated by CEDAW ratification. The findings reveal the GCC states are not monolithic in the ways in which they communicate understandings of Islam and punishment, while highlighting the continued relevance and centrality of Islamic understandings of punishment to the debate concerning human rights in the region.

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