MUSLIM-MAJORITY STATES IN HUMAN RIGHTS REGIMES: PROSPECTS OF PROGRESS

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ABSTRACT

MUSLIM MAJORITY STATES IN HUMAN RIGHTS REGIMES: PROSPECTS OF PROGRESS

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Popular perception disassociates human rights and Muslim-majority states resting on claims of incompatibility between Islam and human rights, relativist arguments put forward by leading Muslim-majority states and poor human rights records in these countries. However, human rights have progressed not in a linear manner but more in a discontinuous and fragmentary manner, and the status of advanced institutionalism is a 20th century development which did not leave Muslim-majority as outliers. They opted for joining the UN-centered human rights regime, participated in norms creation, acceded to major human rights instruments, and even took a step for forming a cross-regional regime within the OIC. Yet, such engagement has not been accompanied by an equal progress of human rights in each. Their engagement was assessed by major standpoints of realism, liberalism, and constructivism to understand the reasons of engagement but poor records. UN-centered regimes' being a declaratory regime, Muslim majority states' selective accession to treaties and ineffective regime created under the OIC suggest that Muslim-majority states did not participate in these regimes with a genuine persuasion on the moral appropriateness of human rights or due to the strength of the international system as liberalism would claim. Legitimacy power of

human rights and the low cost associated with the participation in UN-centered regime were more determinant. Therefore, progress of human rights solely relying on superiority of human rights is not likely to happen while the emergence of underlying conditions suggested by realists and constructivist are more plausible for meaningful engagement to yield progress.

Keywords: Human rights, Muslim-majority states, human rights regimes.

ÖZ

İNSAN HAKLARI REJİMLERİNDE MÜSLÜMAN ÇOĞUNLUK ÜLKELER: GELİŞİM OLASILIKLARI

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İslam ve insan haklarının uyuşmazlığı, önde gelen Müslüman çoğunluk ülkelerin görecelik iddiaları ve bu ülkelerin düşük insan hakları karneleri nedenleri ile genel algı, insan haklarını ve Müslüman çoğunluk ülkeleri, ayrı tutmaktadır. Ancak, insan hakları doğrusal bir şekilden ziyade kesintili ve kısım kısım gelişmiş ve mevcut ileri kurumsallaşması 20. Yüzyıl ürünü olup, Müslüman çoğunluk ülkeler bu sürecin tamamen dışında kalmamıştır. Bu ülkeler, BM-merkezli insan hakları rejimine dahil olmayı tercih etmiş, norm oluşturulma sürecine katılmış, temel insan hakları enstrümanlarına taraf olmuş ve hatta OIC bünyesinde bölgesel bir rejimin oluşturulması için adım atmıştır. Ancak bu katılım, eşit derecede insan hakları gelişimini beraberinde getirmemiştir. Katılımları, katılım nedenleri ve düşük karnelerini anlayabilmek üzere realism, liberalism ve yapısalcılığın temel bakış açılarından değerlendirilmiştir. BM merkezli rejiminin tespit edici (declaratory) oluşu, Müslüman çoğunluk ülkelerin anlaşmara seçici bir şekilde taraf olması ve OIC bünyesinde oluşturulan etkisiz rejim, Müslüman çoğunluk ülkelerin, liberallerin iddia ettiği üzere insan haklarının manevi üstünlüğüne ikna oluşları ya da uluslararası

sistemin gücü nedeniyle bu rejimlere katılmadığını göstermektedir. İnsan haklarının meşruiyet kazandırıcı gücü ve BM merkezli sisteme katılımın beraberinde getirdiği düşük maliyet daha etkili olmuştur. Bu nedenle, insan haklarının üstünlüğüne dayalı bir ilerleme pek mümkün görünmemekte olup, realist ve yapısalcıların öne sürdüğü ön şartların oluşması insan haklarının ilerlemesini sağlayacak anlamlı katılım için daha olası görülmektedir.

Anahtar Kelimeler: İnsan hakları, Müslüman-çoğunluk ülkeler, insan hakları rejimi.

To Zeynep

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ACHPR	African Charter on Human and People's Rights
ACtHPR	African Court of Human and People's Rights
CAT	Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment
CDHR	Cairo Declaration of Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRCI	Convention on the Rights of the Child in Islam
COE	Council of Europe
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
GAHNRI	Global Alliance of National Human Rights Institutions
GATT	General Agreement on Tariffs and Trade
HRC	Human Rights Council
ICCPR	International Convention on Civil and Political Rights
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICRMW	International Convention on the Protection on the Rights of All Migrant Workers and Members of Their Families
ICRPD	International Convention on the Rights of Persons with Disabilities
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IPHRC	International Permanent Human Rights Commission - OIC
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NHRI	National Human Rights Institution
OAS	Organization of American States
OIC	Organization of Islamic Cooperation
OPAAW	OIC Plan of Action for Advancement of Women
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women
OP-CRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
OSCE	Organization of Security and Cooperation in Europe
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission on the Human Rights
UNGA	United Nations General Assembly
UPR	Universal Periodic Review

WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

Human rights which are defined as "universal and inalienable rights held by individuals simply because they are part of human species" have a mixed reception across the World since the first utterance of the concept. Although a two-century long evolution process is depicted in its history, discussions on its scope, expansion and characteristics of unity and universality continue under the effects of other social and political developments such as the consensus on the superiority of public order and security after September 11 attacks and ensuing war on terrorism. While a multifaceted debate goes on, codification of these rights and institutionalized protection mechanisms have also improved in the last half century and an international regime as well as regional regimes came to existence. However, the mixed reception of human rights as well as protection mechanisms presents an uneven development of human rights regimes as well.

A quick search on regional human rights records easily reveals a picture where mainly Muslim majority and Asian states are under strong criticism of gross violations while these criticisms are popularly counteracted on the grounds of cultural and religious relativity or by total denial of human rights as a Western hegemonic concept. Well-known driving ban imposed on women or arbitrary imprisonment of dissidents in Saudi Arabia[1], denial of passport and travel abroad to the married women without formal consent of the husband in Iran[2], punishment of blasphemy or apostasy by death

[1] Human Rights Watch. (2017), *World Report 2017: Saudi Arabia*, Retrieved from: https://www.hrw.org/world-report/2017/country-chapters/saudi-arabia#58df9a (Accessed on 27.07.2017)

[2] Human Rights Watch. (2017), *World Report 2017*: *Iran*, HRW, Retrieved from: https://www.hrw.org/world-report/2017/country-chapters/iran (Accessed on 05.04.2018)

in 13 Muslim-majority states[3] and other numerous cases of violation of fundamental rights that can be read over country reports of leading human rights organizations, affirming the poor human rights record prevalent among many Muslim-majority states.

The most popular and salient explanation of a poor human rights record is the argument of incompatibility of Islam with the human rights ideology. Although it would be very simplistic to link poor human rights protection performance to a single factor of religious incompatibility, Islamic references used by many Muslim-majority states and other non-state actors fostered this perception. Populist foreign policies and justifications produced based on Islamic interpretations in face of human rights violations by states like Iran, Pakistan, Saudi Arabia and Sudan which put forward their Islamic identity in every platform leads to the perception of Islam's incompatibility with international human rights law and its restrictive role on human rights. At the same time, security concerns have started dominating the agenda of international politics due to growing terror threat perception in the post September 11 age and multiple radical Islamist groups emerged and increased their influence due to the vacuum of authority in the Middle East. In consequence of these global political developments, Islam with its highly popular negative connotations like radicalism, "jihad[4]", oppression etc. is now widely presented as a religion in conflict with Western ideals including human rights. However, absolute dissociation of Islam and Muslim-majority states from the human rights development process and assumption of disengagement from human rights regimes bear a great risk of further distancing these states from international human rights regimes by fueling defensive religious sentiments and degrades history of human rights to just religion and state relations.

[3] International Humanist and Ethical Union. (2017), *Freedom of Thought Report 2016 Key Countries Edition*, p.10

[4] Term of "Jihad" here is exemplified with its popular negative connotation. First definition of Jihad in the Merriam Webster dictionary is "a holy war waged on behalf of Islam as a religious duty. https://www.merriam-webster.com/dictionary/jihad (Accessed on: 12.12.2021.) Yet, the term is quite contested and it means "struggle" by definition. Apart from comprehensive literature on jihad, an alternative definition of Jihad as "effort for a noble goal" is noted here. According to this explanation Jihad can only be defensive by listing principles of it as: a. Self-defense and preservation of inalienable rights b. Prohibition of hostility unless war is waged by someone c. Accepting truce once it is offered d. Having main objective of stopping repression e. War's unacceptability without a legitimate cause f. showing mercy in victory f. Negotiation with compromise and humility.
(Khan, M.A. (2003), *Human Rights in the Muslim World*, North Carolina, US: Carolina Academic Press, pp.130-131)

Notwithstanding the diverse political roles attached to Islam, political Islam stands as the most extreme ideology with respect to ideal relationship between Islam and politics and its influence cannot be neglected particularly in the Middle East. Political Islam suggests that Islam has a unitary characteristic, and it incorporates a political philosophy as well. In other words, Islam is not seen as a religion to be practiced in personal sphere but a political solution as well. However even from the perspective of political Islam, it is difficult to find a coherent, consistent, and monolithic Islamic response to either to state administration or legal problems. Role placed on Islamic rules in legal systems of each Muslim-majority state differ just as government forms. Saudi Arabia, Afghanistan and Maldives are the only states where a religious law is adopted, whereas various mixtures of religious, customary, common, and civil law are adapted in many other Muslim-majority states.[5]

Further, Quran stands as a divine book of guidance rather than a law book with thematic sections.[6] Number of verses rendering rules (*ayat al ahkam*) counts only 10 percent of the total number and context of these rules is not only related to legal matters but also to the rituals, morality and ethics.[7] In other words legal rulings of Quran constitute a very small portion of it and most of the Islamic interpretations are diverse, which has shaped current sectarian fractions among Muslims. On the other hand, Islamic law (*fiqh*), which relies on Quran and Sunnah, has not been transformed into a comprehensive legal code to address every administrative and legal challenge and it has evolved as a "private jurists' law" amid the tensions between fuqaha and the Muslim rulers.[8] Moreover, neither is there a powerful independent and widely recognized *fuqaha* which can vividly render Islamic rulings on contested issues, nor is a consensus on interpretation methodologies to be utilized. In other words, there is no institutionalized independent fıqh system or self-ordained authority who can speak for

[5] Muslim Law Systems and Mixed Systems With A Muslim Law Tradition, *Juriglobe World Legal Systems University Ottawa*, Retrieved from: http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-musulman.php (Accessed on 19.01.2020)

[6] Khan, M.A. (2003), *Human Rights in the Muslim World*, North Carolina, US: Carolina Academic Press, p.180

[7] Esmaeilli, H. Marboe I & Rehman J. (2017), *The Rule of Law, Freedom of Expression and Islamic Law*, Bloomsbury, USA: Harts Publishing, p.67.

[8] Ibid., p.106

Islam. In that sense, Islam's relevance in poor human rights performance will remain contested as Muslim-majority states attribute different roles to it in their administrative structures and various religious informal authorities are likely to remain divided on interpretation of Islam, while these states will continue to evolve within the international system.

In that context, it is misleading to treat as if there exists only one Islamic community, a generally accepted Islamic stance on political issues and human rights and a detailed legal acquis covering full range of legal challenges and dynamic well-respected judicial structure settling disputes. It can be said that neither is there a single and homogeneous Islamic World where policies are formed under similar social, economic, and political conditions nor does Islam stand as a legal textbook where most of the legal issues of today are addressed in a final and undisputed manner. Therefore, this study will use the term of "Muslim-majority states" where more than fifty percent of the population define their religion as Islam, instead of "Islamic countries" or "Muslim countries" in order not to reduce the identity of these states to a religion which is interpreted differently and assigned different or no political role in state administration.

Putting aside the philosophical debate on relationship between Islam and Human rights and relationship between Islam and democracy in a broader context, even the official stances of Muslim majority states on human rights varies at a great extent, making it impossible to conclude that Muslim-majority states share a common trait in terms of human rights because of their religious identity. Even though it is one of the worst performing states with respect to the number of human rights violation applications brought against it and the number of judgements pending for implementation, secular Turkey recognized European Court of Human Rights' (ECtHR) jurisdiction in 1990 and it is integrated to the European regime.[9] On the other hand, Islamic Republic of Iran officially rejects international human rights law as the supreme leader of the country, Ali Khamenei, states that *"When we want to find what is right and what is wrong, we do not go to the United Nations, we go to the Holy Quran. For us, the*

[9] Other Muslim majority states signatory to the European Convention of Human Rights are Albania, Azerbaijan and Bosnia Herzegovina.

Universal Declaration of Human Rights is nothing but a collection of mumbo-jumbo of disciples of Satan."[10]

Fifty-seven Muslim majority states offer a great variety with respect to government type, religion-state relationship, and role attached to Islam either in personal and public sphere or in legal structure. Twenty-two Muslim Majority states[11] refer Islam in their constitutions and 18 refers to it as a state religion.[12] On the other hand, states like Turkey, Azerbaijan, Albania, Kosovo, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Indonesia, Senegal, Burkina Faso, Benin, Cameroon, Côte d'Ivoire, Chad, Gabon, Guinea, Guinea Bissau, Guyana, Mali, Togo and Bangladesh, which are non-Middle Eastern countries, incorporated secularism in their constitutions, while the rest remain silent with respect to state religion or secularism. However, close look at the politics of Turkey and Indonesia, reveals that Islamic sentiments still play a central role in politics. As for the Central Asian states, Islam started to gain a more critical position in politics after the Soviet dissolution when Islam was once confined to its traditional perceptions in private sphere due to Soviet imposition of secularism.[13]

Questioning this simplistic attitude of correlating religion and human rights record for Muslim-majority states, Emon et al suggest first to "clear the ground" between Islamic Law and International Human Rights Law which both has their own historical, political and intellectual backgrounds before seeking a common ground between two.[14] Elaborating both international human rights law and Islamic law through their

[10] Mayer, Ann E. (2006), *Islam and Human Rights: Tradition and Politics* (4th ed.), Colorado, US: Westview Press, p.35

[11] These states are Afghanistan, Bangladesh, Brunei, Iran, Malaysia, Maldives, Pakistan, Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, Yemen, Mauritania, and Somalia.

[12] Stahnke, T., Robert, C.B. (2005), *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries,* U.S. Commission on International Religious Freedom, p.5, Retrieved from: https://www.uscirf.gov/sites/default/files/resources/stories/pdf/Comparative_Constitutions/Study0305.pdf (Accessed on 15.12.2021)

[13] Krausen E.S. (2015, April 10), The Diplomat*, Can Secular Islam Survive?* Retrieved from: https://thediplomat.com/2015/04/central-asia-can-secular-islam-survive/ (Accessed on 15.12.2021)

[14] Glahn B., Emon A. M. & Ellis M.S. (2012), *Islamic Law and International Human Rights Law: Search for A Common Ground*, Oxford, UK: Oxford University Press, pp.3-4

positions on the most contested rights such as freedom of religion, freedom of speech, gender equality and minority rights, this study reveals that no clear cut conclusions about their overlap or incompatibility can be drawn, and these two do not develop on pure scholar studies without any state influence.[15] Hence, just as we cannot mention about a perfect and agreed international human rights law and flawless implementation of it, we cannot either assume that Islamic law, which is presumably in contradiction with human rights by nature, will stand on the way of human rights progress of Muslim majority states regardless of the other socio-economic and political developments. As Mayer states, Muslim's attitudes towards human rights varies in a wide range from total denial to fully acceptance, rejecting the approach of attributing one's just religious affiliation to human rights stance.[16] Moreover, current lag in legal developments in Muslim majority states compared to the West cannot be attributed to a single factor; it is a result of combination of political, economic, and cultural factors just like as it is in any other tradition.[17]

Drawing on this perspective of avoiding a simplistic conclusion and human rights regimes' potential to contribute to the progress of human rights, this study aims to explore an answer to the question of "What is the prospect of human rights development in Muslim-majority states through either a meaningful engagement with existing international regimes or forming an effective regional or cross-regional regime which can promote human rights?" To answer this question, it is further broken down into three interlinked sub-questions, which are:

1. Is the human rights progress and formation of protection regimes a linear process where Muslim-majority states are bound to stay outliers to, or does it follow a "discontinuous, multiple and fragmentary manner"[18] which can signify a more

[15] Ibid., pp.5-6

[16] Mayer, 2006, p.19

[17] Ibid., p.20

[18] Bhuta, N. (2012), Rethinking the Universality of Human Rights: A Comparative Historical Proposal for the Idea of Common Ground with Other Moral Traditions IN Glahn B., Emon A. M. & Ellis M.S (ed), *Islamic Law and International Human Rights Law: Search for A Common Ground* (123-143), Oxford, UK: Oxford University Press, p. 123

participatory evolution pathway. If so, how did it evolve and produced an international regime and regional regimes?

2. Are Muslim-majority states totally disengaged from international human rights regimes? If not, is there a meaningful and constructive engagement?

3. When assessed from the three major international regime standpoints, how can a prospect for Muslim-majority states to have a meaningful engagement with existing human rights regimes or to form an advanced regional or cross-regional regime come into being?

This study argues that human rights outlook of Muslim majority states cannot be assumed to be absolute to conclude that these states and their societies are categorically out of human rights debates or institutionalism, and it is open to be reshaped within a broader political, social, and economic context just as it is in any other tradition yet with relatively higher challenges. To support this, firstly, it is argued that evolution of human rights mainly over two centuries is not a simple linear progress, but it has a more intricate characteristic with retreats and challenges like nationalism. Fragmentary progress in minority rights, women rights, LGBTI rights etc., ongoing nature of institutionalization and protection process and imperfect regional regimes display how human rights progress and regimes are dynamic and shaped by various factors. Mainstream historical studies of human rights[19] presents those rights which had not been granted at the earlier stages have been later recognized by Western communities. In the 18th century when modern conceptions of human rights have been constructed, women, propertyless persons, homosexuals, Jews, and slaves continued to suffer from inequalities. Political presence of women, who had been invited to take arms during French Revolution later was called threatening at the last stage of the Revolution.[20] Likewise, abolitionist ideas had initially been embraced during French Revolution, while later lost support due to possibility of losing economic advantages.[21]

[19] Please see: Ishay, M.R. (2004), *History of Human Rights: From Ancient Times to the Globalization Era,* London, England: University of California Press

[20] Ishay, M.R. (2004), *History of Human Rights: From Ancient Times to the Globalization Era,* London, England: University of California Press, p.111

[21] İbid., p113

While early abolitionist started their struggles at the end of 17th century, it was 1833 in Britain, 1847 in France and 1865 in the US when it was finally abolished.[22] It is fair to say that rights have been granted progressively and gradually.

Current picture of the evolution is not perfect either. United Nation (UN) - centered human rights regime is under criticism of effectiveness. Even the most successful and envied regime is not free from deficiencies and critiques. Contested and contradicting judgements rendered by the ECtHR like *Kokkinakis vs Greece, Dahlab vs Switzerland and Sahin vs Turkey* or abuse of rights of derogation in case of emergency mostly by referring to the *Lawless vs Ireland* ruling of the Court as well as growing list of rights pose a critical test for the European regime. This is further compounded with a new debate on the decline of human rights where defendants of this argument suggest existing international human rights schemes are too ambitious to be embraced by every state and protection of the rights as stipulated in the international law is too costly for most of the developing states.[23] As such flaws and ongoing debates demonstrate that the progress of human rights and development of human rights regimes are not static and a given outcome of philosophical developments in the West, particularly in Europe, they do not either lessen the significance of the achievement of forming human rights regimes and belittle their impact of behavioral changes of the participant states, yet, indicate that human rights progress as well as the regimes are dynamic.

Secondly, it is also argued that Muslim-majority states are not totally disengaged either from the evolutionary process of human rights or from the international human rights regimes. Muslim-majority states did not form a bloc against human rights initiatives based on their religious identity; on the contrary, they presented a great variety in their arguments shaped by multiple political, social and cultural factors. They actively participated in codification of human rights led under the UN. Further, these states are not totally disengaged either from international human rights regime and protection bodies or debates on human rights. Most of the Muslim-majority states acceded to core

[22] Ibid., p.115

[23] Posner, E., Roth K., (2014, December 28), Have Human Rights Treaties Failed?, *New York Times,* Retrieved from: https://www.nytimes.com/roomfordebate/2014/12/28/have-human-rights-treaties-failed) (Accessed on 15.12.2021)

human rights instruments, continue to take part in respective UN monitoring bodies. Although the compliance with the regime norms is in question, the engagement level is not negligible. On the other hand, the human rights have become an agenda item within the Organization of Islamic Cooperation (OIC) leading to adoption of some legal instruments and formation of the International Permanent Human Rights Commission (IPHRC) although this can also be considered as an attempt to dilute the definition and monitoring of fundamental rights with an ineffective alternative cross-regional mechanism. On the other hand, some of the Muslim-majority states have participated in other regional regimes such as the European regime and African Regime which have supranational courts. The current engagement level of Muslim-majority states with the UN-centered human rights regime and the OIC regime, with no enforcement power on the participating states are inadequate to lead immediate behavioral changes, which can dismiss many liberal arguments. On the other hand, what has pushed the Muslim majority states to engage with these regimes and remain within these regimes and promotional role of the regimes may also lead the participating states to comply with the regime norms once some pre-conditions occur.

To support the arguments above, this study has been built on three sections. First chapter elaborates the historical background of the evolution of human rights from a critical standpoint rejecting the linear progress to dispel the perception that non-Western states are outliers to the process, and on the theoretical arguments brought up to explain how and why the human rights evolved and human rights regimes have been formed to set a theoretical foundation. The other two chapters will wrestle with Muslim-majority states' engagement with international human rights regimes, protection mechanisms and alternative schemes and protection bodies created under OIC and examine the chance of a meaningful engagement with existing human rights regimes or forming an effective cross-regional regime based on the perspective presented by the major theories on the development of international regimes.

CHAPTER 2

EVOLUTION OF HUMAN RIGHTS AND THE FORMATION OF HUMAN RIGHTS REGIMES

Human rights which have started dominating the international politics since World War II is a notion mostly associated with the Western ideology. Another common inclination is to treat human rights absolute with the definitions and meanings assigned to them today. However, the evolution of human rights is beyond a linear line drawn between two historical points which can reduce it to a static concept now. Definitions, likewise, have followed an evolutionary process too. Given the existing debates around human rights and the growing list, it is apparent that it is not definitive either yet. Further to varying definitions, interpretations of rights, list of it, the importance attached to promotion and protection of them has varied significantly in different quarters of the world.

In this chapter, evolution of international human rights is analyzed in a way to show that human rights have not blossomed out of an adoption of an intellectual thought and progress on a linear line in a smooth cumulative way, which can leave non-Western societies as outliers of this line. This is presented and elaborated first to dismiss the popular perception that human rights regime is built purely on liberal thinking originated in the West without influence of other historical, political and social developments and resulted in a flawless and static regime. Analysis of the evolution of human rights both historically and theoretically is vital to demonstrate that the norms and principles of the current regime have not evolved just in a philosophical vacuum but under the influence of international politics and social developments. Liberal philosophical developments rooted in Europe during 17th and 18th centuries mainly on freedom of religion and opinion, right to life, and right to property laid the

groundwork for later political struggles for institutionalization of these rights[24] and socialist views manifested by Karl Marx, Friedrich Engels an others inspired many revolutions and broadened the rights talk in a way to incorporate social and economic rights.[25] However, neither political and civil rights nor economic and social rights came to existence with an immediate embracement and a comprehensive agreement but it had its own challenges and retreats. For instance, 1815 Vienna Convention which sought to strengthen status quo helped the Church to regain its power to some extent. In addition to political challenges, rights were not attached with absolute definitions either. To illustrate, while death penalty is now absolutely rejected in the European regime, Kant whose ideas were inspiring for human right groups in his time defended death penalty for certain crimes like murder or crimes against state, which would be challenged now.[26] In other words, codification and institutionalization of these rights are parts of an ongoing process, which has been confronted by various challenges. More recent interpretations of historical evolution of human rights further suggest that it was mainly the political development of the second half the 20th century that has created favorable conditions for such progress. The universalism and relativism debate will be also briefly touched upon to suggest that two extremes continue to dispel each in a destructive way, and deconstruction of the universalism may reveal a more constructive basis for progress.

This chapter will secondly focus on the definition of regime with its various types that can help better understand the capacity of existing human rights regimes and on the interpretations of three mainstream international theories, which are realism, liberalism and constructivism, with respect to states' acknowledgement of human rights, engagement in protection mechanisms and underlying factors of the regime formation. Each theoretical viewpoint brings different explanations on the causal links leading to formation of regimes based on the existing examples and hints on the capacity of regimes based on the causal links leading to emergence of them. Realists, on one hand, reckons on states as the main actors deciding on forming such regimes and solely as a result of national interest calculations without dismissing the possibility

[24] Ishay, 2004, p. 65

[25] Ibid., p.119

[26] Ibid., p.88

of states to cooperate in an area where their sovereignty can be restricted. Liberals, on the other hand, highlight the moral appropriateness of human rights, the roles of well-established global institutions and domestic calculations and pre-existence of domestic structures. Lastly constructivists point out to the world system and human rights' becoming a constitutive part of it and the transformative relations between transnational and domestic actors to push governments towards human rights. This will help us to lay out a theoretical foundation to explore reasons why the Muslim-majority states engaged with human rights regimes. Such analysis will also show how the underlying factors generating regimes are also definitive of the enforcement power of them and it can allow us to comment if the engagement is meaningful to lead progress of human rights in these states.

2.1. Historical and Ideological Background of Human Rights and Cross-Cultural Cumulative Pattern of Evolution

Human rights is not a notion that can be attached to a single historical event, a moment, an invention or a development. Contemporary reference books on the history of human rights takes its origins to the very first existence of early societies and they offer an extensive discussion compassing centuries with interlinked intellectual and political developments. More recent studies, on the other hand, emphasizes the political development in the second half of the 20th century with a particular focus on 1970s and onwards. To lay out a historical background, this section will briefly present the evolution of human rights from these alternative perspectives. It will also briefly touch base on the debate of universalism and relativism to unveil its potential impact to block any progressive step to be taken to promote human rights in non-Western contexts. Such assessment is vital to understand whether the human rights is a solely Western concept built on an ideological foundation peculiar to the West, which makes it alien to other cultures, or it is a concept which can address similar political and social challenges in other parts of the world.

2.1.1. Historical Background of Human Rights and the Pattern of Evolution

A brief examination of the human rights history from two different historical standpoints is explored here to understand whether this evolution is a linear process

built solely on European liberal thinking and embedded with European identity, or whether it is a more complex and fractious process shaped by multiple factors.

Common tendency among most of the prominent scholars studying the evolution of human rights and its eventual transformation into international human rights law is to trace its origins to natural law although they also highlight some ancient contributions of various cultures and religions. Revealing early ethical contributions of many ancient beliefs and ideologies as well as Enlightenment, Industrial Age, political developments of 20th century ideologies to the human rights, Michelle Ishay defines the history of human rights as a "*cumulative, historical process that takes on a life of its own, sui generis, beyond the speeches and writings of progressive thinkers, beyond the documents and main events that compose a particular epoch*."[27] Adopting a more idealist approach against realist interpretation of history with a focus on power relations, she articulates that ideas and events are carried from one generation to another through multiple means like media, art or traditions and they are built up to their current look.[28] From this perspective, Ishay presents a historical progress of human rights constructed on both intellectual and political domains which directly feed each and offers a cumulative progressive background despite serious political challenges, retreats and limited inclusiveness.

Looking from this mainstream perspective, it can be said that human rights take its root in mainly natural law discussions and liberal thought, and this term later replaced the natural law in time.[29] Although some early ethical contributions of various cultures or religions in terms of liberty and equality are identified in pre-modern history like the Code of Hammurabi, Hinduism, Buddhism, Judaism, Christianity and Islam[30], these exceptional traces of some modern conceptions of rights found in ancient

[27] Ibid., p.34

[28] Ibid., p.35

[29] Weston, H.W. (1984), Human Rights, *Human Rights Quarterly*, Vol 6, No 3, p.257

[30] To illustrate some early legal or social norms which can be considered in the context of human rights today, Hammurabi's laws introduce protection against violence by adopting talion principle and also it provides protection against calumny by setting out punishment for false accusations. Jewish Bible denounces wrong accusations and recommends fair judgement among believers. It is possible to identify similar importance attached to just ruling in Indian texts. Buddhism was built on some moral tenets including probation of killing.

ideologies and religious doctrines, it can be misleading to take these similarities as the origin of human rights as there was no a comprehensive rights talk and discussion. In other words, ancient social or legal norms reminiscent of what today is called human rights were not in a broad or organized character to pave the way for a creation of rights terminology in a broader legal system.

Considering the cumulative effect it produced on Roman law, Greek stoicism and natural law are mostly agreed as the starting point of human rights ideology and claimed to be replaced by human rights in time.[31] It is based on the premise that "*right or justice held to be common to all humans and derived from nature rather than from the rules of society, or positive law*."[32] In other words, there exists a law created by nature and its rules are over everything created by human such as social norms and legal norms. To cite some basic tenets, Aristotle differentiated what is "legally just" and "naturally just" by pointing the possibility of differences and attributes superiority to the natural one.[33] More on this, Cicero took the superiority of natural law applicable to everyone by stating that natural law provides universal moral principles to all human beings.[34] Greek philosophy which offered vivid and substantial controversies on the essence of natural and man-made order laid ground for forthcoming intellectual developments and contributed to the formation of Roman law.

Although natural law was placed on the top of hierarchy of norms, sanctity of it was not observed by the rulers of Medieval Age, and this triggered challenges against it duty-oriented overtures on both intellectual, social and political levels, resulting in a shift towards "rights" in 17th and 18th century.[35] On the social and political side, this period marks important power and civilizational shifts where the West rises against rival civilizations of India, China and Islamic.[36] This shift can be attributed to multiple

[31] Weston, 1984, p. 257

[32] Natural Law, *Britannica*, Retrived from: https://www.britannica.com/topic/natural-law (Accessed on 15.12.2021)

[33] Pope, S. (2008), Reason and Natural Law. In Meilaender, G., Werpehowski, W., (eds.), *The Oxford Handbook of Theological Ethics* (149-167), Oxford, UK: Oxford University Press, p.150

[34] Ibid., p.50

[35] Weston, 1984, p. 258

[36] Ishay, 2008, p.138

concurrent developments that took place in the West, including the Reformation, the inception of science, emergence of nation state, geographical discoveries, adoption of mercantilism, and social upheavals witnessed in England, France and America.[37] Catholic Church was debilitated by Protestant postulates advancing individual choice and rights against the absolute superiority of the Church, and religious conflicts spread across Europe on the sectarian fault lines of Catholicism and Protestantism. These conflicts were ended up with Treaty of Westphalia in 1648 which further undermined Church's power.[38] Balance of economic and social order also shifted in Europe with the decline of feudalism, adoption of mercantilist policies and geographical discoveries which led to stronger national economies, formation of economically advanced towns and development of a "relatively autonomous class" with the emergence of a new bourgeoisie.[39]

On the political and intellectual side, advancements in science strengthened the position of natural law but discourse turned towards right claims rather than duty definitions among the first rights uttered by Enlightenment thinkers, there comes freedom of religion, right to life, and right to private property which were mostly linked to liberty. Church's absolute control over religion including individuals' choice as well as its so-called possession on Heaven was shaken by Protestant principles elucidated by Martin Luther King by emphasizing the centrality of Bible as the source of divine good and individual responsibility.[40] John Locke also justified individual responsibility with a focus on "inward persuasion of the mind", and he argued that everyone has right to select a religion rather than being imposed by state and defended separation of the Church and the state.[41] These ideas blossomed in England soon found its sympathizers across Europe and America including Rousseau, Montesquieu, Voltaire and others in France and Thomas Jefferson in America. Similarly, diffusion of ideas in right to life and right to private property can also be observed in this period. While Hobbes who praised the sanctity of life as a part of need of safety, liberal

[37] Ibid.

[38] Ibid., p.140

[39] Ibid., p.142

[40] Ibid., p.150

[41] Ibid., p.152

thinkers like Locke, Voltaire, Kant, and Jefferson condemned torture, and they engaged in a vivid discussion on deterrent power of death penalty if they did not totally reject it.[42]

Intellectual arguments were not just confined to papers, but they were also reflected on social movement and radical political development that would lead to a radical change in the state and citizen relations. Firstly, claim of rights were first articulated in English Puritan Revolution (1642-1648) against the King Charles I who wanted to dismantle the Parliament. This revolutionary spirit emerged again in 1688 with Glorious Revolution which resulted in adoption of English Bill of Rights in which first civil rights were introduced.[43] Setting an important example of resistance, English Revolutions were later followed by American (1776) and French (1789) Revolutions in which noble status quo is challenged and right claims were raised, and each resulted in formulations of principal declarations in human rights. The Bill of Rights of the US Constitution offered protection for freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition and it banned unreasonable search and seizure, cruel and unusual punishment, and compelled self-incrimination. Similarly, Declaration of the Rights of Man and of the Citizen credited freedom and equality, provided protective provisions for freedom of religion, freedom of expression and presumption of innocence.[44]

Although liberal achievements of 17th and 18th centuries were threatened by new consensus reached at Vienna Congress in 1815 to maintain monarchical balance of power in Europe, 19th century is marked with new advancement in human rights thanks to socialist contributions in accompany with Industrial Age.[45] Industrial revolutions

[42] To illustrate Locke, Kant and Rousseau shared similar opinions on death penalty application. For them, defense of right to life and practice of death penalty in a proportionate and limited way were not contradictory. Locke, for instance defended death penalty by stating that "*a punishment should be enough to make an ill bargain against the offender, give him a cause to repent and terrify others from doing the like.*"

[43] Ibid., p.159

[44] Declaration of the Rights of Man and of the Citizen, *The Yale Law School Lillian Goldman Law Library,* Retrieved from:
https://avalon.law.yale.edu/18th_century/rightsof.asp
(Accessed on 13.09.2019)

[45] Ishay, 2008, p.225 (ePub)

which reformed economic structure also reshaped societies by triggering population flows towards industrial sites, creating a working class and widening the income gap between rich and poor which would bring socialist uprisings and socialist demands as a part of human rights.[46] Harsh working conditions as well as exclusion from political participation, working class was soon mobilized in first in Paris and later in other European cities where appeals for reduction of daily working hours, right to a safe working environment, anti-slavery, women's political and social rights were upheld.[47] At the same time, a socialist perspective of human rights against pure liberal view was also constructed by Marxist and socialist thinkers like Marx and Engels who criticized human rights ideal constructed till that time had a pretense of liberal and religious morality which had favored bourgeoisie.[48] Socialist perspective as well as uprisings resulted in advancements in universal suffrage and some economic and social rights such as right to education and right to work. In brief, socialist perspective enriched human rights debate in 19th century and mobilization it provided contributed to the elimination of slavery, expansion of universal suffrage, advancement of women rights and right to education in the rights talk and restriction of child labor.[49]

Although human rights were challenged heavily on individual basis by two World Wars costing millions of lives in the first half of the 20th century, this century is of importance as intense codification and protection mechanisms came to live on an international basis. Carnage of the World War 1 resulted in reappraisal of human rights with two alternative ideologies on the East with international socialism and on the West with a more liberal understanding championed by Woodrow Wilson's emphasis on freedom and equality.[50] Liberal alternative casted in the League of Nations and other newly emerging intergovernmental organizations was soon threatened by the rising fascism and eventually World War 2, however, these events also raised international awareness on the necessity of setting up more effective and reliable institutions to secure international peace which would culminate in

[46] Ibid., p.221

[47] Ibid., p.228

[48] Ibid., p.236

[49] Ibid., p.278

[50] Ibid., p.314

establishment of the UN as well other liberal institutions like IMF and World Bank.[51] Human rights provisions were included in UN Charter and this was followed by the adoption of "Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)" and "The Universal Declaration of Human Rights (UDHR)". Declaration consisting of 30 articles enlisted mostly civil rights but also it secured some social, economic and cultural rights such as right to social security, right to work, right to rest and leisure right to education and right to participate in the cultural right of the community. These rights were later elaborated and legalized by twin Covenants which are the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Social, Economic and Cultural Rights (ICSECR), adopted in 1966 and entered into force in 1976. These landmark covenants were also accompanied by theme-based covenants in 1970s and 1980s, which all together contributed to foundation of international human rights law.

The process of institutionalization of human rights in 20th century was carried on differently in different regions and some human rights regimes were set. European regime shines out among others as it was supported by a supranational court, ECtHR, issuing binding judgments for 47 states that recognized its jurisdiction. Member States of African Union (AU) also established a commission and a court with a view to safeguarding the rights set forth in African Charter on Human and People's Rights (ACHPR) as well. While it is possible apply to the Commission just by an individual petition, the Court is mainly mandated to complement the activities of the Commission and its jurisdiction is limited to contentious cases and advisory decisions. As for the Inter-American system, Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) active since 1959 receives individual petitions. Moreover, the Commission issues reports including recommendations to the state against which the petitions are logged. Yet, the rights to individual application is limited to states which recognized the competence of the Commission. Besides the Commission, Inter-American Court on Human Rights (IACtHR) constitutes the second body of the Organization responsible for protecting the human rights in member states. However, this court like as the African Court has its own weaknesses

[51] Ibid., p.316

to ensure implementation human rights comparing to ECtHR. Jurisdiction of the Court is limited to interstate applications and application brought by the Commission.

Within this trajectory of human rights, Ishay claims that each major human rights stride was followed by severe reversals like rise of nationalism both after French Revolution and in World War 1, rise of Stalinism and fascism in interwar period which defused newly established intergovernmental organizations, nationalist policies adopted in Third World countries in face of colonialism and currently security-freedom dilemma in form of fights against terrorism following the September 11 attack. However, human rights still continued to evolve in this ages-long process by preserving certain achievements of each generation and building up on them with a cumulative pattern. This process is also a cross-ideological one with contributions from both liberal and socialist ideologies as well as Third World countries.[52]

Depiction of long historical development of human rights beginning from Greek stoicism and proceeding through transformation of natural law in medieval ages, the Enlightenment and liberal achievements gained in France and America is criticized by some other historians. One is Moyn who opposes the dominant historical understanding of human rights by naming it as "triumphalist credentialing model"[53] and he claims that that the fact of today is being justified by constructing historical precursors as it is in mainstream historical studies of human rights, and this approach ignores or underestimates the real reasons which made human rights so powerful.[54] Instead, he suggests a more recent date to trace the origin of today's transformational human rights from within a power relations perspective, and he underscores post-World War Two timeline and modern state of affairs to trace real causes of the rise of human rights ideology while crediting limited effects of age-long historical contributions.[55] For him, human rights were championed not because of its ideal appropriateness but because other alternative visions failed.[56] He points out to the fact

[52] Ishay, 2008, p.5

[53] Moyn, S. (2011), The First Historian of Human Rights*, The American Historical Review*, 116 (1), p.59
[54] Moyn, S. (2010), *The Last Utopia: Human Rights in History*, Cambridge USA: The Belknap Press of Harvard University Press, p. 6

[55]Ibid., p.7

[56]Ibid., p.8

that, it was not in 1940's, but in 1970s that human rights gained international recognition. Although an immediate awareness about human rights were raised by World War Two, it was limited to the center states rather than being all inclusive human when human rights emerged as a powerful alternative ideology in 1970's when multiple histories were realized simultaneously which encompass "the search for a European identity outside Cold War terms, and the American liberal shift in foreign policy, in new moralized terms, after the Vietnamese disaster, the end of formal colonialism and the crisis of the postcolonial state."[57]

Another one is Eckel, who portrayed human rights evolution as "polycentric, ambiguous and discontinuous" rather than a simple cumulative trajectory.[58] He also dismisses linear historical narratives but highlights complex political contexts such as decolonization, détente and North-South confrontation and these context produced the success and failure of human rights.[59] In this perspective, human rights may have ideological roots in liberal thinking but it was very recent political and social changes of the second half of the 20th century that built the international momentum in favor of its codification and embracement by the most of the international community. To sum, nor the liberal historical reading of human rights or new historical approach emphasizing the modern era developments suggest a simple set of ideological tenets or historical events as the attributes of human rights progress. From a liberal perspective; although it is possible to trace origins of human rights in early ages and mostly in enlightenment ideology, it can be said that it took centuries for civil rights to develop and to be recognized. To illustrate, right to vote featured in 18th century was initially granted to property-holder men but later it was expanded and became universal almost all around the world thanks to suffrage movements. From the new historical perspective, it was the social, political and economic context after the World War and specifically after 1970s shaped the human rights progress. Catching historical references to rationalize the situation today is also dismissive of the possibility to find a common ground among different cultures, and it can disengage non-Western

[57] Ibid., p.8

[58] Cited in Bhuta, 2012, p.127

[59] Ibid., p.127

populations from human rights developments by displaying human rights as a Western output that has been produced within this culture.

To sum, either from the mainstream liberal perspective built on the history of natural law and Enlightenment or from the alternative perspectives presented lately by Moyn and Eckel and emphasizing the role of modern political developments, it can be inferred that human rights is not a natural outcome of a linear intellectual process, but it is shaped by political, social and economic developments which can be described as discontinuous and fragmented. Such evolution demonstrates the philosophical foundation built by European thinkers, yet also reveals how the more inclusive international politics and social developments contributed to the institutionalization of rights in the 20th century.

2.1.2. Debate of Universalism versus Relativism

Previous section reveals that the progress of human rights has been going on over two centuries both on philosophical and political domain. Yet, its inherent debates such as "*universalism vs relativism*", "*growing list of rights and law* making" or "*decline of human right*s" also continue to evolve. In this section, universalism and relativism will be briefly touched upon since sharp argumentation between the advocates of the two leaves a very narrow room for the development of rights in different contexts, while approaches that are more moderate put forward by scholars such as Al-Naimi and Morgan-Foster are likely to create a more constructive basis for a potential progress of human rights in Muslim-majority states. This analysis here is presented to dismiss the absolute adoption of either universalist or relativist approaches which are restrictive for the potential of human rights progress.

Although universalism is firmly confirmed on the widely adopted UDHR with clear reference to "equal and inalienable rights of all members of the human family" and by using the pronoun of "everyone" in the definition of rights, universalism versus cultural relativism, both theoretically and practically, stand as one of the most contentious debate on human rights field. It occupies an extensive and rich coverage in human rights doctrine, and it is possible to delve into culture-based or right-based studies. However, this section will be confined to a general overview to understand the

main premises of each side and their prospects about the intersection of international human rights and cultural norms.

Advocates of each side found their arguments on normative assumptions and absolute arguments of each can be placed on two extremes of a continuum. However, there are also moderate propositions in-between. Universalists reject any concession on their side as it would harm all the progress achieved in human rights, while cultural relativist arguments are mostly employed by states as a basis of justification of their violations regardless of whether the norm-violating practices are really rooted in culture or not. However, standpoints in-between present a wider room to maintain a constructive discussion and for a convergence between international and cultural norms.

To define their basic stance, universalism refers to the idea that a fundamental group of human rights are applicable to every human being regardless of the diversity of cultures, values and beliefs. In other words, human rights are same everywhere. On the other hand, cultural relativists mostly represented in disciplines of ethnology and ethnography argue that every society is distinct making uniform application of "universal" human rights impossible.[60]

Those who advocate universalism justify their arguments from various perspectives which were classified by Zechenter in four bases as natural law, rationalism, positivism, and human capabilities. According to natural law theory, human rights derive its origins from natural law in which good and bad are defined theologically, and it is instructed to all human beings, transfiguring it to a universal character. Rationalists, on the other hand, attributes universality of human rights to the fact that all humans think rationally which would converge them on creation of knowledge and norms. Positivist doctrine discusses universality from a legal perspective. If states, which hold the superior authority in international order, enter binding international covenants, it indicates their recognition of the principles laid down in these covenants and their commitment to uphold them. Lastly, according to human capability theory which approach to the matter from anthropological view, all humans share

[60] Billet, B.L. (2007), *Cultural Relativism in the Face of the West: Plight of Women and Female Children*, New York, USA: Palgrave Mc Millan, p.2

commonalities like need for food, shelter, capacity for pain and pleasure and these commonalities lead to a shared baseline in rights entitled by everyone.[61]

Universalism arguments are countered on various grounds. As seen by the explanations brought in favor of universalism, any cultural derogation from human rights is rejected. However, current tensions on this debate as well as tens of contested practices like male or female circumcision, inequality between sexes, punishment of apostasy etc. continue to take place on many quarters of the world and these practices do not go away simply by claiming that they are in contravention with universal human rights. Additionally, although most of the states signed the UDHR, and became party to subsequent covenants and conventions, numerous reservations by many states have been put on these documents, contributes to refutation of positivist approach on universality.[62] Another point that can be raised against positivist arguments is that signatures of states on these basic documents does not necessarily means that it has been domestically approved and endorsed by the public. Continuous violations of signatory states contradict with positivist assumption that states sign conventions that they assent to uphold the principles of them. Lastly, as one of the main tensions in human rights debate, growing list of human rights without formally agreed definitions alienates many non-Western states from human rights or serve as pretext for them to justify their abuses.

As mentioned above, cultural relativist arguments are theoretically grounded on the assumption that culture are variable, and what is approved in one can be disapproved in another.[63] For them, every human being can be best perceived in accordance with his/her cultural context and imposition of any transboundary moral or legal norms that would classify human acts as acceptable or unacceptable is rejected.[64] This intellectual basis was adopted and promoted by many states in time. Rising relativist arguments were articulated by many states in regional meetings organized on the sidelines of the

[61] Billet 2007, pp.5-6

[62] Morgan-Foster J. (2003), A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context, *ILSA Journal of International and Comparative Law*, 10(35), p42.

[63] Billet, 2007, p.9

[64] Teson F.R (1985), International Human Rights and Cultural Relativism, *Virginia Journal of International Law*, 25(4), p. 871.

World Conference of Human Rights held in 1993 in Vienna. One of the most important one was the Bangkok Conference at the end of which Bangkok Declaration was adopted. The Declaration underlined that human rights evolution should be considered as a dynamic process developed through various historical, cultural and religious backgrounds.

Like universalism, cultural relativism is also challenged by some counter arguments. One is the claim that it is self-contradictory as its core argument stating that all values are culturally relative is already a culturally shaped argument.[65] Additionally, cultural relativists treat cultural norms as static, and ignores the possibility of any intersection or convergence with international human rights.[66] In other words, their very basic tenets are already value-laden which can be rejected by a different school or transformed in time.

Placed on two extremes, cultural relativism and universalism seem to be irreconcilable because of their strict adherence to their very first assumptions, however, there exists some other accounts between two extremes. Donnelly, for instance, deconstructs universality concept in terms of various senses (historical/anthropological/ontological, functional, legal, and overlapping consensus), examines each separately, and concludes that human rights are relatively universal which leave some room for some cultural particularity. He dismisses claims of conceptual, anthropological and ontological universalities and indicates that human rights are universal in terms of its legal development and functionality as a protector of global challenge against human dignity.[67] He rejects conceptual universality, which articulates that human rights are equal and inalienable rights inherently held by everyone, by stating that only very few rights have palpable definitions.[68] Similarly, he repeals historical and anthropological arguments in favor of universalism which identifies ancient appeals to justice, fairness and humanity in non-Western civilizations and claims that existence of these values

[65] Morgan-Foster, 2003, p.42

[66] Zechenter, E.M. (1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, *Journal of Anthropological Research*, 53(3), p.326

[67] Donnelly, J. (2007), The Relative Universality of Human Rights, *Human Rights Quarterly*, 29(2), p.281.

[68] Ibid., p.283

does not necessarily mean that practices of human rights protection exist.[69] On the other hand, he argues that universalism exist in legal domain which is indicated by strong support and high level of ratifications of the primary human rights documents.[70] Alike, he claims that human rights has a universal functional use against modern challenges as it is the only effective means to ensure human dignity. In other words, human rights which "arose from social, economic and political transformation of modernity" rather than unique Western roots, may be seen attractive in other cultures which go through similar crisis that Europe experienced.[71] To simply put, Donnelly rejects both strict universalism and strict cultural relativism, promotes relative universality by pointing to the universal function of human rights to ensure human dignity.

Another mid-point between two extremes of the debate is moderate cultural relativism which asserts that universality applies to some core rights while some cultural differences can prevent them to recognize the others.[72] Foster cites Muslim scholar Abdullah Al-Naim's as a moderate cultural relativist who promotes the possibility of Islamic law's alignment with international human rights with a constructive interpretation of Islamic sources. Al-Naim suggests that Sharia is formed through interpretation of jurists, and it should be examined in consideration of political, social and economic circumstances. As these circumstances evolve in time, Sharia should also be revised in a way to reflect and address the challenges of today. Al-Naim's revisionist approach is likely to result in a rapprochement between Islamic Law and international human rights law on freedom of thought, conscience and religion, abolition of apostasy and gender equality.[73]

While Donnely's and Al-Naim's positions mostly envisage a convergence towards the established human rights norms and they adopt a standpoint closer to strict universalism extreme of the continuum. On the other hand, Morgan-Foster advances a

[69] Ibid., p.286

[70] Ibid., p.289

[71] Ibid., p.288

[72] Morgan-Foster, 2003, p.44

[73] Ibid., pp.44-45

"reverse moderate relativist" argument which can be pinned at a point closer to relativism. Foster criticizes Al Naim and other moderate cultural relativists for attributing a superior position to international human rights norms against cultural norms and for suggesting modification only on cultural norms. Although agreeing that there should be universality on some core norms, he differs from moderate cultural relativism by arguing that local norms should be determinant on definition of these rights rather than the already established Western set of rights. Supporting his arguments by analyzing zakat, individual-society balance and right-duty relationship in Islam and international human rights law[74], he simply states that;

> reverse moderate relativism searches for these core shared values in reverse fashion from moderate cultural relativism: instead of starting with the international value as the neutral benchmark and reinterpreting local law to draw it closer to the international norm, reverse moderate relativism takes a given local law as the neutral standard and exposes ways in which international law has drawn closer to that standard.[75]

To sum, despite the universality of human rights defended on various grounds by its proponents, continuous human rights violations and appeal to cultural differences as happened in the regional meetings held on the sideline of Conference on Human Rights convened in 1993 in Vienna suggest that relativism remain a refuge for rights abusive states against absolute universalists. Likewise, although many states resort to relativist arguments, they neither totally reject human rights nor dissociate themselves from human rights debate or promotion and promotion mechanisms, which affirm Donnelly's argument existence of universalism in legal development and functionality. In other words, neither absolute universalism nor absolute relativism prevails over each other in practice. As such the human rights evolution is not over, states engagement level with the human rights regimes is not static either as will be shown in next sections. Within such reality, this study assumes a midpoint between two extremes by arguing that universalist and relativist arguments are not definitive

[74] According to Foster's analysis, Islam has addressed social security problems by zakat while this issue is still under discussion and process within the context of economic and social rights. Similarly, balance set between individual and society in Islam stands as a more advanced benchmark compared to the third generation, group, rights which is the least developed component of human rights. Lastly, he also argues that rights and duties in Islam coexist together, and they are interlinked while international human rights law recently started discussing duties.

[75] Foster, 2003, p. 49

and such debate is also open to be shaped with social, economic, political and cultural developments shaping overall human rights debates.

2.2. Formation of Human Rights Regimes and Theoretical Explanations

The initiative for drafting a human rights declaration was taken in 1946 and it was on December 10, 1948 when the UDHR was adopted as a legally non-binding declaration at United Nations General Assembly (UNGA) Plenary on by a decisive majority of 48 yes votes, while eight states abstained and two others did not vote.[76] Despite intense discussions in the Third Committee Meetings and substantial amendment proposals tabled during UNGA Plenary, adoption of the Declaration with such an overwhelming majority without any negative vote shows the consensus at least on the general characteristics of human rights and need to uphold them. However, it took ten years for subsequent legally binding covenants of the ICCPR and ICESCR to be effective in 1976 since their first adoption at the Plenary and opening for signature in 1966, implying that domestic political evolution in favor of human rights in each state differed. Moreover, a strong human rights text, European Convention on Human Rights (ECHR) was adopted in Europe paving a way of formation of a regional regime while major atrocities were in place in different parts of the world, suggesting an uneven development trajectory. In short, divergence in the progress of human rights as well as in the formation of or accession to human rights regimes is evident with the existence of supranational courts on one hand and non-accession to fundamental human rights agreements on the other hand. This section will briefly discuss what an international regime is and how regimes can be categorized and primarily focus on theoretical explanations brought by international relations theories on the development of international regimes including human rights regimes to establish a basis to assess Muslim-majority states engagement with existing regimes and potential to form a regional or cross-regional one.

[76] Belorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR and Yugoslavia abstained while Honduras and Yemen did not vote. https://digitallibrary.un.org/record/670964?ln=en&p=Resolution+217%28III%29+A (Accessed on 01.08.2019)

2.2.1. International regimes and categorization of regimes

A standard definition of regimes proposed by Krasner, founder of the regime theory, reads as "*sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations*"[77]. A modification to deal with its vagueness was suggested by Levy at al which reads "*social institutions consisting of agreed upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas".*[78] What distinguishes regimes from agreements which are ad-hoc one time arrangement is their continuous mandate to facilitate agreements.[79] Regimes are more than just accumulation of agreements but they restrict and regularize the behaviors of its participating members and affect the determination of what is legitimate and not.[80]

Given these broad definitions, it is possible to name many regimes at national or international level and categorize them by utilizing different parameters. Levy and et all categorize the regimes based on their constitutive elements or their formation processes as shown in the below table:

Table 1: Regime Types

Category attribute	Examples
Principles and Norms	International Sea-bed regime Market oriented economic regimes Internal and External regimes
Rules	Strong regimes Weak regimes
Procedures and Programs	Evolutionary Regimes Compliance Regimes
Formation Process	Self-generating regimes Negotiated regimes Imposed regimes

[77] Krasner, D.S. (1982), Structural Causes and Regime Consequences: Regimes as Intervening Variables, *International Organization*, 36(2), p.186

[78] Levy, M.A., Young, O.R. & Zürn, M. (1995), The Study of International Regimes, *European Journal of International Relations*, 1(3), p.274

[79] Krasner, 1982, p.187

[80] Puchala, D.J., Hopkins, R.F. (1982), International Regimes: Lessons from Inductive Analysis, *International Organization*, 36(2), p.247

On the other hand, Donnelly presents a bi-dimensional classification by taking both the norm types and level of authority delegation into account. He defines four types of norms which range from fully national norms to international norms and six decision making procedures which are authoritative international decision making, international monitoring, international policy coordination, international information exchange, international promotion or assistance and national decisions. Eventually he defines four types of regimes which are "declaratory regime", "promotional regime", "implementation regime" and "enforcement regime" with different permutations of norm and decision-making categories.[81]

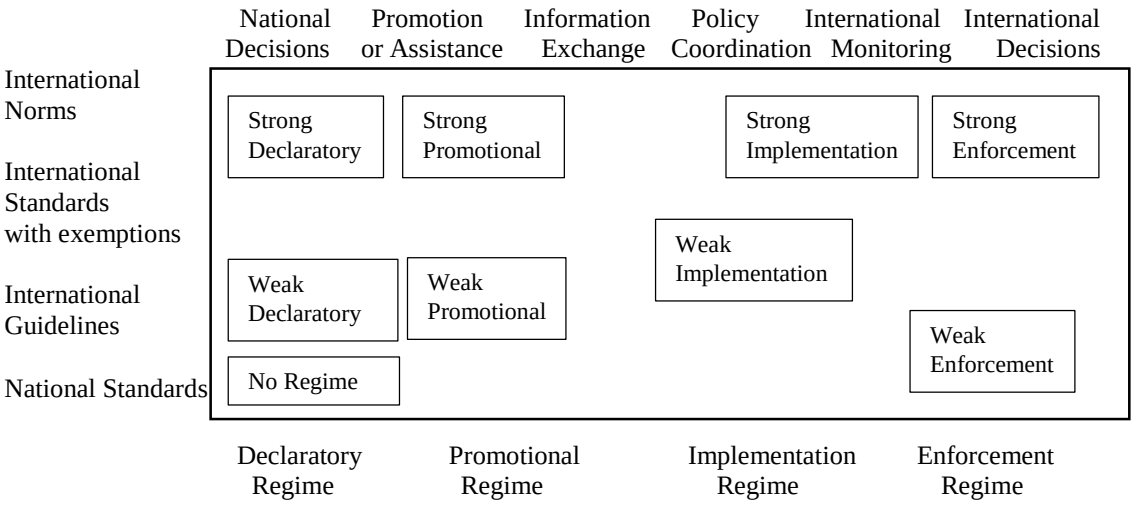

Figure 1. Matrix of Regime Types

[81] Donnelly, J. (1986), International Human Rights: A Regime Analysis, *International Organization*, 40(3), p.603

As shown in the figure, Donnelly categorizes the regime made up of just guidelines and with full authority of states on decisions as "weak declaratory regimes", while he calls regimes "strong enforcement regimes" when they are built on international norms and strong international decision-making procedures over national ones. In-between of these two regime types, he suggests a wide variety of regimes.

Given the wide range of regime types, it can be argued that both the willingness of states to participate in a regime and impact of the regimes on states behaviors can vary for different types of regimes. For instance, a self-generated regime can come to existence when there is already a consensus and converged behavioral pattern, and such regime may not require a very strong enforcement mechanism and it can be a simple compliance regime. However, when it comes to human rights, the long historical evolution, ongoing debates, and inherent dilemmas such as *universality versus relativism* and *public security and individual rights* may suggest that norms are being agreed in a negotiation process in an evolutionary manner. In addition, the fact that the human rights are concerned about the relations between state and individual rather than inter-state relations as it is the case in many other regimes is making it a more complicated live regime with evolving norms, various formation processes within alternative regional regimes. From Donnelly's two-dimensional analysis, it is possible to locate UN-centered human rights regime and some other regional regimes across the regime types of matrix he developed.

UN-centered human rights regime is now the most inclusive and prominent one in terms of number of participating states and UN's role in setting regime norms and standards. Although there are still normative gaps mostly stemming from relativist arguments[82], the UDHR and accompanying ICPCR and ICCESR along with other core human rights instruments make a coherent and interdependent set of regime norms which have been widely accepted by the majority of UN member states.[83] However, when it comes to the decision making to comply with these norms, state sovereignty prevails over human rights.[84] Despite the progressive improvements introduced in

[82] Weiss, T.G. and Thakur, R. (2010), *Global Governance and the UN: An Unfinished Journey*, Bloomington, USA: Indiana University Press, p.296

[83] Ibid., pp.293-297

[84] Donnelly, 1986, p.613

human rights protection mechanisms such as introduction of treaty-based monitoring mechanisms, replacement of the Commission on Human Rights (CHR) with Human Rights Council (HRC) with authority to suspend the membership of a right violating member states and more structured review mechanisms, the state discretion remains dominant on all procedures of UN monitoring bodies where UN reports are non-binding and the implementation recommendations are up to states.[85] In addition, UN human rights monitoring bodies are made up of member states, which risks an impartial assessment on human rights violations where a party the violating party is already state itself. The risk of politicization of human rights is also high because human rights are discussed among states, which point out to significant level of compliance gaps.[86] Institutional gaps such as insignificant budget allocation, possibility of selection of the right-abusive members and limited time allocated to country report reviews are further feeding to the weaknesses of the regime.[87] Given these and the conclusion that decision making is still vastly vested with states, Donnelly defines the UN-centered human rights regime as a "strong promotional regime".

While UN-centered human rights regime has been leading the human rights debate more than 70 years, regional human rights regimes encompassing authoritative judicial systems to nascent regimes have also come into existence. European and African regional regimes and "Islamic" cross-regional regime under the OIC are relevant to this study due to having Muslim-majority participating states. European regime made up of prominent Council of Europe (COE) system with an embedded supranational court European Court of Human Rights (EctHR), European Union with Court of Justice of the European Union and Organization of Security and Cooperation in Europe (OSCE) exemplifies the strongest regime among others. Normative cores of the European Regime including ECHR, European Social Charter (ESC) along with additional protocols expanding and deepening the rights are quite aligned with the international principles if not more comprehensive. What differentiates the European

[85] Donnelly, J., Whelan, D.J. (2018), *International Human Rights: Dilemmas in World Politics* (5th ed.), New York, USA: Routledge Taylor and Francis Group, pp. 75-85
[86] Weiss and Thakur, 2010, p. 274

[87] Ibid., p.271

regime is the supranational jurisdiction power vested in ECtHR, that can place it more on the upper-right corner of the regime types matrix presented in the previous section.

African regime is another one with a supranational court yet not as strong as its European counterpart. African Court of Human and People's Rights (ACtHPR) was established in 2006 as a judiciary arm of the African Union and it accepts individual applications for human rights violation in consideration of African Charter on Human and People's Rights (ACHPR). The content of this Charter and definitions of rights may be narrower compared to international standards yet establishment of such a supranational mechanism is of importance to demonstrate the member states' assentation to be overseen by a technical body with a compromise on their national jurisdictional sovereignty. What is making the ACtHPR a significantly less effective mechanism is the limitative nature of bringing cases before it. It accepts cases filed by the African Commission on Human and People's rights, State Parties to the founding protocol and African Intergovernmental Organizations while applications by non-governmental organizations with observer status before the African Commission and individuals are subject to a special declaration by the states.

Despite the differences in their enforcement levels, none of the mentioned human rights regimes in this section are merely declaratory regimes and have varying level of impacts on states. They are neither static. Decision making authority has changed gradually since the emergence of these regimes making some of the regimes evolve from solely weak declaratory regimes to strong promotional or implementation regimes. To illustrate, UN-centered international regime which was a weak declaratory regime in 1950's when legal framework of norms was under preparation and evolved to a strong promotional regime with strengthened and institutional monitoring bodies.[88] Similarly, African regime, which had been a declaratory regime for a long time, launched steps that changed its nature to a weak implementation regime.

To sum, international regimes are of a great variety in terms of the nature of its norms and level of authority that states hold. The interaction between states and regimes are also dynamic. Types of the regimes are defined based on the norms and decision-making procedures can be influential for states to decide being part of them as well as

[88] Donnelly, 1986, p.634

on behavioral changes of the states. Moreover, regimes are not static either and they can evolve too. Given these complexities, the central question of why a state would assent to a limitation on its absolute sovereignty to be bound by regime norms, principles and rules are elucidated differently by major theoretical schools of international relations. Realists on one extreme underline the states' national interest calculations and great powers' hegemonic roles and treat human rights regimes with suspicion, while liberal view them as the extension of natural rights and as an integral part of democratic order.[89] In between or outside of these, constructivists challenges states' role in contextualization of the human rights regimes. For them, the role of the states is overemphasized, and contribution of other societal factors are overlooked. They point to the socialization processes of human rights from ideas towards norms and regimes. However, as it would be seen in the sub-sections, none of the modern approaches of these mainstream theories discards the possibility of progression of human rights regimes but each underpins this possibility with distinct explanations.

2.2.2. Realism and contemporary realist approaches

Realism is one of the leading international relations theories to explain state actions, motivations and strategies utilized in interstate relations. For realists, states are unitary actors which have to survive in a competitive and anarchic world which requires prioritization of national interests. To ensure their survival and security, they are committed to increasing their power and engage in power-balancing.[90] In other words, normative positions including rightful state actions are mostly discarded from their analysis or evaluated within the national interest perspective.

As Morgenthau argues, states are driven by their interest defined by power, and formulate their policies in a way to maximize their power by calculating and comparing the cost and benefits of each possible policy options from a rational perspective.[91] From this perspective, he holds a skeptical standpoint towards

[89] Dunne, T. and Hanson M. (2009), Human Rights in International Relations. In *Human Rights: Politics and Practice* (pp 62-76), Oxford, UK: Oxford University Press, p.64

[90] Korab-Karpowicz, W.J (2018, May 24), Political Realism in International Relations, *The Stanford Encyclopedia of Philosophy,* Retrieved from: https://plato.stanford.edu/archives/sum2018/entries/realism-intl-relations/ Accessed on 19.12.2021

[91] Ibid.

normative codes in state affairs including human rights, and claims that states cannot be judged from a universal normative perspective as "*human rights are filtered through the intermediary of historical and social circumstances, which will lead to different results in different times and under different circumstances"*.[92] In this sense, he argues, human rights cannot be applied in foreign policies consistently as other interests can outweigh it in terms of importance.[93]

While the main premise of mainstream realism highlights the fact that states act on national interests, such a premise do not automatically rule out the possibility of formation of effective regimes. On the contrary, for neorealists, the existence of regimes is fully compliant with realist perspective. Rejecting ideal appropriateness and possibility of the adoption of principles or norm such as human rights due to its moral superiority, realists bring various explanations on why states sign international human rights treaties or take part in formation of regimes including human rights regimes, which is an obvious restriction of their sovereignty. According to Waltz, international system is characterized by anarchy and state actions are defined by the relative power of each to pursue their self-interest, leaving a limited rom for cooperation[94] With this perspective, he argues that states engage in international regimes to seek their own preservation or, to a maximum extent with a drive for universal dominations.[95]

Similarly, Krasner rejects zero-sum nature in international relations and underlines the possibility of international cooperation and international law which is formulated by the powerful ones in the international order.[96] For him, the equilibrium in international law is determined according to national power, which is asymmetric and would lead to international arrangement more favorable for more powerful ones.[97] To illustrate the imposition of international rules by powerful states from their own self-interest

[92] Morgenthau, H.J. (1979), *Human Rights and Foreign Policy*, New York, USA: Council on Religion and International Affairs, p.4

[93] İbid., p.6

[94] Waltz, K. (1979), *Theory of International Politics,* California, USA: Addison Wesley Publishing Company, p.114

[95] Ibid., p.118

[96] Krasner, S.D., Realist Views of International Law, *American Society of International Law*, 96, pp. 265-268

[97] Ibid., p.266

perspective, Krasner explores the transformation of the General Agreement on Tariffs and Trade (GATT), which had recognized most-favored-nation status for the underdeveloped countries, to World Trade Organization (WTO) which was less favorable for the Third World countries and concludes that "*law can matter for realists, but only because it helps to construct self-enforcing equilibria, though ones that reflect the preferences of the powerful*.[98] In other word, international regimes can come to existence with the participating states' motivation of pursuing national interests.

Another interest based explanation which was brought forward by Stein is that states form international regimes when a coordination among them is necessary to derive an optimum outcome through a regime.[99] States compromise their decision making authorities to deal with the dilemmas arising around common interests and common aversions.[100] In areas where a Pareto-optimum outcome is not achieved by independent decisions of states and such independent decisions may result in undesired outcomes, stated tend to engage in regimes which would allow states to take collective decisions.[101] In other words, regimes exist only when states forgo their independent decision making, which is also driven by the national interests of states. Stein argues that states may abandon their independent decision-making authority under bases of common interests or common aversions which are also determined by other structural bases such as distribution of power between states, hegemonic power which can impose certain regime rules on minor states, technology and knowledge.[102]

Given all these various realist explanations put forward for the existence of international regimes, Krasner explains the development of international regimes with various causal variables including "**egoistic self-interest**", "**political power**", "**norms and principles**", "**customs**" and lastly "**knowledge**".[103] As described differently

[98] Ibid., p.267

[99] Stein, A.A. (1982), Coordination and Collaboration: Regimes in an Anarchic World, *International Organization*, 36(2), pp.300-330

[100] Ibid., p.297

[101] Ibid.

[102] Ibid., p.320

[103] Krasner, 2002, p.196

among the abovementioned scholars, self-interest of the states prevails in the formation of regimes.

When it comes specifically to why states created human rights treaties and formed an international regimes, Donnelly suggests that regimes are created to overcome the problems arising from insufficient or inadequately coordinated state actions and World War II marked a decisive break revealing such a need and made it relatively easy for states to agree on some international principles.[104] Remembering that regimes can be categorized as "declaratory", "promotional", "implementation" and "enforcement" based on decision making procedures and strength of monitoring mechanism and classifying UN-centered international human rights regime as a promotional regime, he argues that states participate in such regimes since the cost of ascension of sovereignty on such a promotional regime was not very high compared to a moral stance taken against gross human rights violations.[105] A similar argument is posed by Landman who asserts that states take higher international legitimacy benefits compared to low cost of non-compliance and weak sanctioning mechanisms into account and prefer to join them as a result of this cost-benefit analysis.[106]

Such encouraging factor, on the other hand is absent for other stronger regimes such as European regime. For such instance, Donnelly underlines that the relatively homogenous population of Europe make the regional regime "safe" in terms of little likelihood of manipulation of norms and principles for the sake of national interests.[107] In other words, the existence consensus on the norms and low risk of manipulation of norms in favor of the interests of some states made the European regime relatively less costly for its participating members.

From the realist perspective depicted above, one may conclude that realist's discounts human rights, portrays it just a subtle instrument that can be utilized in foreign policy, and a foe in case of the establishment of a supranational authority to monitor states'

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[104] Donnelly, 1986, p.619
[105] Ibid., 615

[106] Koldo, C. (2018), Realism: Human Rights Foe? In Orsi, D., Avgustin J.R, & Nurnus, M, *Realism in Practice: An Appraisal*, Bristol, England: E-International Relations, p. 144.

[107] Donnelly, 1986, p.623

compliance with international law. Likewise, human rights progress would be limited as it will finally clash with states' sovereignty. However, Koldo argues that human rights' survival and progress is possible even in a realist world, and he sets out three justifications to this argument. First, human rights got its current shape as a result of a "hegemonic contestation" among all international stakeholders who invoked legal rules and principles against each other to vindicate their positions.[108] Disparity between the institutionalization of "political and civil rights" and "economic, social and cultural rights" can be attributed to the fact that political and civil rights gained dominant role in international talks at earlier stages compared to economic, social and cultural rights, and more incorporated in hegemonic contestation.[109] In other words, political concerns can result in human rights" being an agenda item in international politics from a realpolitik perspective and it can find room for further development. Secondly, realist premise that states refrain from wars by maintaining a balance of power in terms of economic and military strength can contribute to states' siding with human rights advocates who are already ardent opponents of any armed conflict.[110] Lastly, referring to English School postulate which asserts that states may form their own international political structure defined by joint interests and values, Koldo concludes that states which uphold human rights as a part of their own self-interested policy may agree on establishment of an international regime as happened in Europe.[111]

In brief, contemporary realists treat human rights as a component of state policy just like any other political consideration that should be taken into account while calculating policy options in terms of national interest. However, current institutionalization level of human rights proves that progress is possible under certain circumstances even though it is not adopted as high moral set of standards to ensure rightful state action.

[108] Ibid., p.146
[109] Ibid., p.148

[110] Ibid., p150

[111] Ibid., p.151

2.2.3. Liberalism and contemporary liberal approaches

Positioned on the opposite extreme against realism, liberalism promotes freedom, cooperation, peace and progress, and takes a positive assumption that humans are rational, and this positive nature and utilization of reason result in cooperation at many level of relations.[112] Compared to interest-oriented and state-centric outlook presented by realists and neo-realists, liberals from different sub-schools reach a more optimistic conclusion about interstate relations where cooperation could prevail over power competition. Although liberalism, as any other doctrine, has its own fractions, cooperation remains one of its essential premises. Rejecting the presumption of states' being sole or dominant actor, sociological liberals emphasize transnational relations between people, movements, NGOs and other possible actors and claim that cooperation is more likely to dominate international society rather than conflict in such a complex relationship with multiple stakeholders.[113] Similarly, interdependence liberals also points to chance of greater cooperation as states will be more interlinked due to foreign trade and economic interdependence and republican liberals assert that republican states are less likely to engage in disputes as citizens who are directly affected by a conflict would support peace.[114]

When it comes to the progress of human rights and development of human rights regimes, it is easy to say that liberal ideas championed by great philosophers of Enlightenment of 17th and 18th century like Locke, Kant, Rousseau, and Mill constitute the bedrock of human rights philosophy, and the evolution of human rights briefed in the previous section despite its fractious characteristics is mostly illustrated as a liberal victory. Locke's emphasis on equality of human beings and attribution of law as a means to preserve and enlarge freedom rather than restraining them, Rousseau's promotion of freedom and social contract theory which treats state as a party of this contract with obligations towards its citizens were critical intellectual contributes that would be embraced by middle classes in France and America which launched the

[112] Jackson, R., and Sorensen, G. (2006), *Introduction to International Relations Theories and Approaches (*3rd ed), Oxford, UK: Oxford University Press, pp. 100-101
[113] Ibid., 103

[114] Ibid., 106-113

revolutionary course in history in favor of liberal state.[115] The intellectual stock accumulated since the Enlightenment paved the way of formation of institutions and codification of rights and an agreement has been formed stipulating that human rights are inherently gained simply because of being human and they were inalienable and universal regardless of nationality, status, gender or race.

Questioning the reasons why a state would favor establishing a human rights regime constraining its own activities, idealists underline the power of ideological and normative appeal of human rights and argues that altruism of persuasion power of the principled ideas drive states to lock themselves in regimes of superior norms.[116] In other words, the cost of concession from sovereignty is outweighed by the moral appropriateness of human rights and such self-persuasion leads states to join in human rights regimes. Forsythe examines the evolution of international human rights regimes and argues that human rights regimes evolved in line with favorable state policies.[117] Although states did not abandon pursuing their national interests, they increasingly tend to compromise their traditional national concerns with human rights as they are pushed by well-established liberal framework in international relations.[118] Likewise, liberal states which affirm human rights at home promote human rights ideologically and do not take a direct opposite stand in international domain to sustain their self-images and remain participant in human rights regimes.[119]

Another liberal perspective highlights the pre-existence of a certain pattern of behaviors among states driven by the normative superiority of human rights and leading to formation of regimes. Puchala and Hopkins argues that regimes are formed

[115] Stearns, P.N. (2012), *Human Rights in World History,* New York: USA: Routledge Taylor and Francis Group, pp.58-61

[116] Moravcsik, A. (2000), The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe, *International Organization 54(2)*, p. 223

[117] Forsythe, D.P. (2006), *Human Rights in International Relations* (2nd ed.), Cambridge, UK: Cambridge University Press, p.257

[118] Ibid., p.257

[119] Ibid., p.257

when "*the tenets of an international regime match the values, objectives, and decision-making procedures of the preeminent participant or participants*".[120]

Discarding realist and ideational explanations brought to explain the formation of human rights regimes similar to what Puchala and Hopkins suggest, Moravcsik argues that states integrate into such regimes neither because they are coerced to do so by super powers, nor because they are convinced by their feature of "ideally appropriateness", and he promotes a republican liberal view.[121] From this perspective, he defends that engagement in such regimes is a political decision taken by "instrumental calculations about domestic politics".[122] Motivated by their own self-interests, states are expected to take two important considerations into account while assenting to integrate in such a regime, which are the cost of restriction on sovereignty and diminished domestic political uncertainty. Elaborating the discussion held on the process of drafting the ECHR, particularly on its compulsory jurisdiction and right for individual petition clause, he puts forward that it was newly established democracies to push for incorporation of these articles,[123] and he justifies by these states' desire to "lock in" democracy and not to backslide to tyranny by binding themselves with strong regimes.[124]

As for the conditions conducing to the establishment of effective human rights regime, Moravcsik points out to "*prior convergence of domestic practices and institutions*" and argues that "*effective international regimes are likely to emerge only where they have deep root in the functional demands of groups in domestic and transnational society*, as *represented by the domestic political institutions that mediate between*

[120] Puchala, D.J. and Hopkins, R.F. (1982), International Regimes: Lessons from Inductive Analysis, *International Organization*, 36(2), p.247

[121] Moravscik, 2000, p. 221-225

[122] Ibid., 225

[123] Ibid., 230

[124] Moravcsik classifies nations taking place in discussions as unstable non democracies (Greece, Turkey), new democracies (Austria, France, Italy, Iceland, Ireland and Germany) and established democracies (Belgium, Denmark, Sweden, Netherlands, Norway, United Kingdom and Luxemburg). He points out that Individual petition and compulsory jurisdiction gained support of all six new democracies and of only one (Belgium) out of seven established democracies.

society and the state."[125] Drawing on the determinant role of the convergence in domestic practices, Moravcsik contends that European regime has been successful since it was built on improvement of democratic regimes rather than transforming the undemocratic ones.[126] Arguing that international or regional regime actions will result in a policy shift only through by affecting domestic calculations, Moravcsik identifies three main instruments that can be utilized to encourage policy changes in favor of regime standards, which are *"*sanctioning, shaming, and cooptation*"*.[127] Sanctions refer to the actions taken by foreign actors to material exploitation of power to achieve a behavioral change through affecting domestic groups to influence their governments for such change and may include negative import-export, investment sanctions as well as conditional development assistance, shaming refers to creation of an international and domestic climate of criticism towards national wrongdoings and cooptation includes gaining support of domestic political institutions including courts and legislatures to shift domestic balance in favor of human rights.[128] He states that all these three instruments work through the same course of transformation by changing domestic balance of power between domestic actors and government institutions and finally result in compliance with regime standards. In that sense he concludes that effective enforcement of human rights are mostly linked to prior sociological, ideological and institutional convergence toward common norms, and it is lack of international consensus on protection of human rights rather that weakness of international institutions which affect the level of this enforcement.[129] He finally suggests to strengthen domestic civil society and public institutions before awaiting a supranational organization that would guard and enforce human rights.[130]

To sum, liberal theories vary in explaining why states would join international regimes including human rights regimes. The ideational explanations emphasize the moral appropriateness of principles norms such as human rights which lead to formation of

[125] Moravscik, A. (1995), Explaining International Human Rights Regimes, *European Journal of International Relations,* 1(2), p.158

[126] Ibid., p. 159
[127] Ibid., pp. 160- 161
[128] Ibid.

[129] Ibid., pp. 178-181

[130] Ibid., pp. 182

human rights. Alternatives draw attention on existence of prior patterned behaviors among states and such isomorphism's leading to self-generating regimes or on domestic calculations.

2.2.4. Constructivism

Rejecting realist position which emphasizes material power and treats anarchic social world as given which would lead each state to seek for self-help, social constructivists argue that social world is made of human consciousness, ideas and norms which also play a defining role for state interests.[131] Shared ideas, beliefs and values are constitutive elements of structures which influence social and political actions through contributing to the creation of state identity and interest definition.[132] As for the process of such a construction of states, constructivists also present distinct answers based on the levels that it takes place. While those focusing on system level socialization process like Alexander Wendt highlights "structural contexts, systemic processes and strategic practices" in formation of state identities, unit-level constructivist points out the domestic social and legal norms.[133] Placed between those two, holistic constructivists admits influence of both system and unit level variables suggest a "mutual constitutive relationship" between them.[134]

With respect to states' intersection with human rights, Reus-Smit challenges the contradictory attributes of sovereignty and human rights, and claims that both are linked to each other as elements of legitimate statehood which have been constructed over time. He defines sovereignty from a social-constructivist perspective and argues that it is not a self-referential concept but it is "*justified with reference to particular conceptions of legitimate statehood and rightful state action*".[135] From this perspective, Reus-Smith states that sovereignty is justified by some higher-order

[131] Jackson and Sorensen, 2006, p. 176.

[132] Reus-Smith, C. (2005), Constructivism. In Burchill, S., Linklater A., Devetak, R., Donnelly, J., Paterson M., Reus-Smith, C., & True, J. *Theories of International Relations* (3rd ed.), New York, USA: Palgrave Macmillan, p. 196

[133] Ibid., pp.199-200

[134] Ibid., 201

[135] Reus-Smith, C. (2001), Human Rights and Social Construction of Sovereignty, *Review of International Studies*, 27, p.520

values and observance of human rights have become the new legitimacy source of statehood.[136] Following the decoupling of the relationship between state authority and monarchial right, states obtained their legitimacy from national interests (*ration d'etre*) which might contain justice, protection of individual rights and social order.[137] Since then, first self-rule became major sovereignty source and later following Worlds War II, respect and protection of human rights started to emerge as premises on which sovereignty depended.[138]

Adopting a system level approach and institutionalist perspective, Meyer et al, reaches a similar conclusion with Reus-Smit.[139] They argue that world models shaped that state and societies and this can be observed through isomorphic structure of states, in which each developed similar administrative structures around similar purposes although they also maintained some level of decoupling due to distinct capacities and levels of alignment with an externally defined system.[140] They argue that world culture is made up of rationalized actors functioning on system level and includes world-level entities like UN, states, global associations, organizations, social movements, prominent scientists and professionals which can dynamically change world culture.[141] However such formation of world level systems like international human rights regime do not automatically assure states commitment to human rights and high level of ratification in human rights instruments by mostly repressive states is attributed to human rights with a great legitimating value and little cost of non-compliance. [142] In other words, regardless of being genuinely committed to human rights principles, states may prefer

[136] Ibid., p.530

[137] Ibid., P.528

[138] Ibid., p.537

[139] Meyer, J.M., Boli, J., Thomas, G.M & Ramirez, F.O. (1997), World Society and the Nation State, *The American Journal of Sociology*, 103 (1), pp.144-157

[140] Ibid., 144-157

[141] Ibid., 167

[142] Burton, H., Tsutsui K E.M. & Meyer J.W. (2008), *International Human Rights Law and the Politics of Legitimation: repressive States and Human Rights Treaties,* International Sociology, Vol: 23(1), pp.121-122

to join in the regime as the cost of non-compliance is less than remaining outside of it without actually being convinced of their inherent values.[143]

On the other hand, concerned on how ideas are primarily turned into first norms and later become determinant on behaviors and domestic structures, Risse and Sikkink embrace a holistic approach and emphasize the interaction between system level and domestic level actors which lays out how human rights regimes and national protection mechanisms evolve as a result of this interaction. It is worthy elaborating more here to later assess the presence or possibility of such interactions between civil society actors and international regimes that Muslim-majority states are participants in. They argue that liberalization process, including the progress in human rights, parallels domestic structural transformation, and they suggest "5-phase spiral model" for internalization of human right norms.[144] Authors identify five phases in three types of socialization processes[145] through which principled human rights norm are transformed into domestic practices.[146] First phase, *repression*, triggers the interaction between domestic and transnational human rights actor that would result in the norm-violating state's becoming an agenda item in international human rights fora. Second phase, *denial*, marks the reflexive response of the state against the lobbying efforts of international human rights organizations. In this phase, states embrace the rhetoric of domestic solidarity discourse by claiming that international pressure is an attempt to intervene in domestic affairs and violation of sovereignty. Assuming that the state is vulnerable against any international pressure due its own political or economic concerns, it makes some *tactical concessions* in an instrumental way to ease the pressure, which constitutes the third phase of the spiral mode. Tactical concessions result in two types of functions. First, human rights discourse become a consolidating

[143] Ibid., 123

[144] Risse., T and Sikkink K (1999), The Socialization of International Human Rights into Domestic Practices*:* Introduction. In Risse. T., Sikkink, K. and S.C. Ropp (Eds), *The Power of Human Rights: International Norms and Domestic Change,* Cambridge, USA: Cambridge University Press, pp.1-38

[145] Three socialization processed are defines as; 1. Adaptation and strategic bargaining > norm-violating state makes tactical concessions to limit pressure which opens further room to engage in bargaining 2. Shaming, argumentation, dialogue and persuasion > norms violating state shamed in international society engages in dialogue 3. Institutionalization and habitualization.

[146] Authors developed the theory by examining process of the progress achieved on rights to life and freedom from torture and extrajudicial execution and disappearance in Chile, South Africa, Philippines, Poland and formed Chezhslovakia which managed progress, and Guatemala, Kenya, Uganda, Morocco, Tunisia and Indonesia in which human rights violations became intractable.

topic for opposition. Second, it marks an important turning point for the government as they no longer deny the violations and accept the validity of human rights norms. The more norm-violating states engage in argumentation about the human rights with, the more they tend to concede on both discourse and policy levels. In case a state opts to use power or increase repression against domestic networks, this may first weaken local human rights advocates and cause a delay in the model, yet, human rights aspirations gain strength in time with increased pressure by transnational networks. Tactical concessions are later followed by "*prescriptive status*" which is defined as human rights norms becoming uncontroversial grounds of dialogue and argumentation. Norm-violating states start to change their policies, ratify respective international human rights conventions, transmit them into domestic legislation and they may establish national mechanisms. These actions may have truthful intentions to align with international norms as well as they may intend to divert international attention focused on the states. Therefore, it should be proven by *rule-consistent behavior* where violations are mostly abandoned, and states uphold human rights principles that they acknowledged in the fourth phase.[147]

As already admitted in the referred study, five-phase spiral model works on some important premises that can remarkably hinder witnessing similar complexion in other regions and states. One of the important prerequisites of the model is the existence of a substantial link between domestic and transnational actors to trigger international pressure on norm-violating states. Others are existence of international human rights institutions that would put pressure on norm-violating states and their vulnerability against this pressure which is an important realist factor in the model. Power of international governmental institutions regulating human rights and vulnerability of the state are defined by balance of power in world politics and material power of states which are put forward by realists as the major variables dominating international politics. For instance, a norm-violating state like Saudi Arabia is not subject to substantial pressure in form of shaming from world leaders, it is resilient against any possible economic sanction, and it has enhanced interdependency with its Western allies in both economics and regional politics.[148] In such cases, only INGOs are left to

[147] Ibid., pp. 11-35

[148] US President Donald Trump met Crown Prince Mohammed Bin Salman on June 29, 2019 Saudi Arabia just ten days after UN Human Rights Council Special Rapporteur on Extrajudicial Killings

raise their voices in their reports by criticizing violations with a limited impact on ground.

concluded that Saudi Arabia is responsible for the murder of journalist Jamal Kasogi and senior officials including the Crown Prince should be investigated for their roles in the murder. Although, Prince Salman did not receive a warm welcome in G20 Summit in December 2018 held just two months after the killing of Jamal Khashoggi, he was not totally isolated in the events.

CHAPTER 3

MUSLIM MAJORITY STATES' ENGAGEMENT WITH HUMAN RIGHTS REGIMES

Although the popular belief may suggest that Muslim-majority states are disconnected from human rights regimes with continuous gross human rights violations and vocal objections on the grounds of relativism, these two have a more complex relationship. Muslim-majority states were engaged in early discussions on the Universal Declaration of Human Rights (UDHR) and all except Saudi Arabia ratified it despite significant objections on the contested issues like equality in marriage, right to change religion which had been articulated during the various meetings held within UN. Such engagement has been maintained since 1946 at various platforms at varying degrees among these states. This section will focus on Muslim-majority states' engagement with UN-centered human rights regime, regional regimes of Europe and Africa where some Muslim-majority states are participant in and finally assess the alternative human rights schemes and protection mechanisms devised under the OIC. Engagement herein refers to states' acceptance of regime norms by acceding to international or regional human rights treaties as well as their commitment to comply with these regime norms either through nationalization of these norms or positively cooperating with regimes' monitoring processes. Such examination will provide a situational analysis background to be referred in the next section for an analysis of Muslim-majority states against the theoretical foundation presented in the first section.

3.1. Muslim Majority States Engagement with the UN-centered Human Rights Regime

As briefly mentioned in section 1.2.1, UN-centered human rights regimes refer to the set of human rights instruments including the UDHR, and seventeen conventions finalized under the auspices of the UN and human rights protection and promotion bodies operating within the UN. As Donnelly described, this regime is a strong

promotional regime with well-established strong international norms yet relatively weaker implementation enforcement authority vested with the UN. In this sections, Muslim-majority states engagement level with the UN-centered regimes will be analyzed by examining accession to the major human rights treaties and their participation in human rights promotion and protection mechanisms.

3.1.1. Muslim Majority States' Positions Regarding the Codification of Human Rights

Muslim-majority states' positions regarding the codification of human rights will be examined in three aspects: participation in early development of human rights treaties, ratification status of each in nine core human rights instruments and their accompanying protocols and reservations placed on these instruments. This is to assess to what extent Muslim majority states preferred engaging or disengaging from the international human rights regime. It can also reveal to what extent such positioning were solely attributable to Islam which may lead to a decisive conclusion that progress may be limited due to a faith-based resistance.

It was in 1946 that the Commission on Human Rights commenced its studies to codify human rights and it continued to work on the issue till 1966 when twin covenants ICCPR and ICESCR were adopted at UNGA. Drafting committee was set up in 1947 with three members who are Eleanor Roosevelt from USA, Pen Chung Change from China and Charles Malik from Lebanon. Committee later was enlarged to include members from Australia, Chile, France, the Soviet Union and the United Kingdom.[149] Committee discussions were not isolated from the global political context dominated by the Cold War, and the main repercussion was whether to incorporate civil, political, social, economic and cultural rights into a single document by equalizing their importance or to draft separate covenants by differentiating social, economic and cultural rights. Although it would be easy to assume that the initiative of drafting a human rights text was sponsored by great powers which championed the foundation of human rights, the drafting committee discussions and UNGA Third Committee

[149] Drafting of the Universal Declaration of Human Rights, Dag Hammarskjöld Library, Retrieved from:
http://research.un.org/en/undhr/draftingcommittee (Accessed on 19.12.2019)

debates suggest that the process was much more inclusive, and the outcomes reflect significant contributions of both states and other actors.[150]

Although the popular belief disconnects Muslims from human rights progress due to gross violations, twenty-year long formation process of "International Bill of Rights" indicates that Muslim states were a part of this process, and each displays a different stance in terms of ratification of the major UN human rights documents. In its twenty years of work, many representatives from various countries served in the committee including many Muslim majority states. Charles Malik, though coming from the Christian community, from Lebanon and Omar Loutfi from Egypt were participants in the discussions and drafting of UDHR within the commission while Afghanistan, Pakistan, Syria, Saudi Arabia, Iraq, and Iran were involved in discussions in UNGA Third Committee where the documents were finally adopted.[151]

Susan Waltz in her article *Universal Human Rights: Contribution of Small States* exposes that the representatives from Muslim states were involved in the drafting and major Muslim states were also present in UNGA Third Committee discussions. As each country had its own prioritization for rights, Muslim states also had their own considerations during the discussions. Many leading Muslim-majority states were more active during the discussions about freedom of religion, gender equality in marriage, social justice, self-determination and right to petition.[152] While their contribution to the discussion on civil rights right were in a more restrictive nature, self-determination and a separate article on gender equality were incorporated into the Declaration thanks to Muslim and other small states' contributions.[153]

While it is possible to catch Islamic references in Muslim majority states' positions, it is difficult to conclude that their positions were directly linked to their "Islamic" identity.[154] Some of the prominent Muslim-majority states raised their objections to

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[151] Waltz, S. (2004), Universal Human Rights: Contribution of Small States*, Human Rights Quarterly* 26, p. 808.

[152] Ibid., p.815

[153] Ibid., pp.829-834

[154] Alnaim A.A (1999), The Position of Islamic States Regarding the Universal Declaration of Human Rights. In Baehr, P., Flinterman, C., and Senders, M. (Eds), *Innovation and Inspiration: Fifty Years of*

the draft articles of freedom of religion, gender equality in marriage and some social rights with some Islamic attributes; however, it should be noted that this was not a united objection that would result in rejection of some articles or the entire text. To illustrate, Article 18 of the UDHR, which introduced the freedom of religion and conscience, could be considered one of the most contentious articles since apostasy is interpreted as a crime in some of the Muslim majority states. Definition of the right[155] included "change of religion and belief" and mainly Syria, Egypt and Saudi Arabia displayed their disagreements about this definition during both Third Committee Discussions on the draft Declarations and UNGA Plenary[156]. Saudi Arabian Delegate Baroody expressed that such sentiments like "freedom to change religion" were reasons of religious wars in the history.[157] Saudi Arabia tabled an amendment for deletion of the mentioned part but this was rejected.[158] Egyptian representative Raafat, in his address at UNGA Plenary, expressed Egypt's dissatisfaction over Article 18 along with some others associated with Article 16, yet, he also declared support for the adoption of the Declaration recorded in UNGA Plenary minutes:

> "With regard to article 19, Mr. Raafat pointed out that that text did not confine itself to proclaiming freedom of thought, conscience and religion - which of course his government approved without reservations - but that it also proclaimed man's right to change his religion or belief; the Egyptian delegation was not entirely in agreement with that right." Religious beliefs could not be cast aside lightly. When a man changed his religion, it was often due to outside influences or for purposes which were not very commendable, such as divorce. His delegation fear that by proclaiming man's freedom to change his religion or belief, the declaration would be encouraging, even though it might not be intentional, the machinations of certain missions, well-known in the Orient, which relentlessly pursued their efforts to convert to their own beliefs the masses of the population of the Orient. Mr. Raafat said that he might have withheld the reservations he had made on articles 17 and

the Universal Declaration of Human Rights, Amsterdam: Royal Netherlands Academy of Arts and Sciences, 177-192

[155] Article 18 of the UDHR: *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

[156] Waltz, 2004, p.814

[157] Ibid., p.815

[158] UNGA Third Committee Third Session, *United Nations Documents*, Retrieved from: https://undocs.org/A/C.3/247/REV.1 (Accessed on 19.12.2021)

> 19, but it seemed more loyal and franker to have stated them, since, in voting for the declaration, his country intended to apply and execute it in all honesty."[159]

Similarly, Syrian representative Abdul Rahman Kayaly uttered a criticism for the draft's not being perfect which was not possible due to time taken to finalize it and stated that:

> During the examination of the articles of the declaration in the Third Committee, it had been found that there were certain ideas or principles on which not all members were in agreement; the Syrian delegation had opposed some points and had agreed to others. It would, however, go along with the majority because democracy implied acceptance of the majority's decisions.[160]

As seen from the addresses of both Egypt and Syrian representatives, there was at least a consensus on necessity to have such instrument in place and states' obligation to uphold human rights. However, the discontent among major Muslim-majority states about Article 18 laying out the right to freedom of thought, conscience and religion later led to adoption a different wording in ICCPR. "Freedom to change or maintain" phrase in the UDHR was replaced by "freedom to have or adopt" which pleased Saudi Arabia to sign the Covenant.[161]

Another discussion point where cultural norms of some of Muslim majority states' disaccorded with draft articles of UDHR was gender equality. Gender equality was not totally rejected but marriage age and gender equality in marriage were contentious. Both Egypt[162] and Saudi Arabia[163] proposed amendments but both failed to get majority's approval. While Egypt's amendment proposal reduced it to right to found a family, Saudi Arabia proposed to use "legal matrimonial age" instead of "full age", and secondly it aimed at limiting rights with marriage laws of each country avoiding

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[159] UNGA Plenary Meeting Minutes - 183rd Plenary, *United Nations Documents*, Retrieved from: https://undocs.org/A/PV.183 (Accessed on 19.12.2021)

[160] Ibid., p.10

[161] Waltz, 2004, 818

[162] UNGA Third Committee Third Session, United Nations Documents, Retrieved from: https://undocs.org/A/C.3/264 (Accessed on 27.01.2020)

[163] UNGA Third Committee Third Session, United Nations Documents, Retrieved from: https://undocs.org/A/C.3/240 (Accessed on 27.01.2020)

the term of equality, which was supported by Syria and Lebanon.[164] As in the case of freedom of religion, marriage age again caused debate during discussions of ICCPR and ICESCR, and the text has been finally adopted with "marriageable age" wording. Similarly, wording of gender equality was also softened with Philippines's initiative and states were instructed to take appropriate steps to ensure equality of rights.[165]

Table 2. Comparison of the right to marriage definitions in the UDHR and the ICCPR

UDHR – Article 16	***ICCPR – Article 23***
1. Men and women **of full age**, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.	1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.	2. The right of men and women of **marriageable age** to marry and to found a family shall be recognized.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.	3. No marriage shall be entered into without the free and full consent of the intending spouses.
	4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Although this would look like an achievement in favor of Muslim-majority states like Saudi Arabia, Syria, and Lebanon, it was also a concession from other Muslim-majority states like Iraq and Pakistan.[166] Iraq strongly advocated for inclusion of an article articulating gender equality in UDHR and took lead of inclusion Article 3 in ICCPR and ICESCR which underlines states' duty to take steps to ensure equality between men and women.[167]

[164] Waltz, 2004, p.821

[165] Ibid., p.825

[166] Ibid., P.824

[167] Ibid., p.824

Most of the Muslim-majority states considered that social and economic rights were not different from political and civil rights, and they opposed the idea of splitting and creation of two covenants. Syria, Iraq, Saudi Arabia, Egypt, Pakistan, and Afghanistan extended their support for incorporating many social rights into UDHR.[168] Another relatively more uniform stance among Muslim-majority states can be observed in their positions regarding right to self-determination. Regardless of the national motivation or intent, prominent Muslim-majority states and representatives defended UDHR to be applied to "*both among the peoples of member states and the peoples of territories under their jurisdiction"* and proposed this phrase to be inserted into the operative section of the Declaration. [169] Similarly, Muslim-majority states together with South Asian states took lead of drafting and inclusion of right to self-determination in both UDHR and twin covenants.

It is noteworthy that Muslim-majority states did not form a bloc on common religious norms or values in intergovernmental deliberation of UDHR and consecutive ICCPR and ICESCR texts, which could result in either a different bill of rights, or a major disengagement of these states from the process. Despite verbal utterance of disagreements, it was only Saudi Arabia, which abstained in the vote of the entire text while the other Muslim-majority states approved it. Furthermore, it is also possible to observe that some leading Muslim-majority states disagreed about certain articles such as gender equality and right to self-determination where multiple determinants including national interests, cultural diversity, and difference in political systems or religious interpretations come into play. Another significant inference is that there was no strong and clear religious reference used by Muslim majority states to justify their primary objections raised against freedom of religion and gender equality. Even if the representatives of states like Saudi Arabia and Pakistan were articulate of Islamic references, there were no unified approach dissociating the entire Muslim-majority states from the process. Although this does not mean that some of the objections were free from Islam's influence for the states which refrained from Islamic references, it

[168] Ibid., p.827

[169] Egyptian representative Omar Loutfi and Lebanese representative Charles Malek were staunch advocates of inclusion of a universality phrase within the Declaration and it was Loutfi who officially proposed the mentioned phrase to be incorporated to the UNDH. However, their efforts were countered by great Powers like France and United Kingdom.

displays a political choice not to base their arguments on solely dogmatic imperatives and but to engage in political argumentation.

A similar outlook of active engagement of Muslim-majority states' with UDHR and following twin instruments can be observed in ratification of other human rights treaties. Although the level of acceptance of these documents varies for each state, it is possible to say there is not a Muslim Majority state totally disconnecting itself from the regime. Table 3 shows the number of human rights treaties and protocols ratified by each Muslim-majority state against the total 18 instruments.

Bosnia Herzegovina stands out as the country which ratified all of the treaties and it is followed by Albania and Turkey which ratified 16 treaties. The countries with the lowest ratification ratio are Brunei Darussalam (5), Malaysia (5), UAE (6), Iran (6) and Comoros (6). Average of the ratified treaties among the countries, which fully or partially applies Sharia[170] range around 9-10.

"Convention on the Rights of Children" is the only convention signed by all the Muslim Majority States. "International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)" and "Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC)" are the other two which significant majority of the Muslim-majority states ratified. It is mentionable that "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)" has been ratified by 45 states while it is only Iraq, Somalia and Sudan which have not signed it yet.

The least ratified conventions, on the other hand, are "Optional Protocol to the International Convention to the International Covenant on Social, Economic and Cultural Rights (OP-ICESCR)" with ratification by only three states which are Bosnia Herzegovina, Maldives and Nigeria, and "Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CRC-CP)" ratified by only Albania, Bosnia Herzegovina, Maldives, and Turkey. Both protocols set out monitoring and protection mechanisms for the protection of the rights defined in the main conventions. OP-IESCR introduces a committee which would be competent to

[170] Afghanistan, Egypt, Indonesia, Iran, Iraq, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, UAE and Yemen.

receive communications from individuals or group of individuals under the jurisdiction of a state party, open inquiry and ask for a written explanation from the receiving state. OP-CRC-CP lays out a quite similar communication procedure for the protection of rights defined in CRC and its protocols.

Table 3. Number of International Human Rights Treaties ratified by Muslim Majority States[1]

(*Blue: Ratification, Light Blue: Signature, Orange: No action. Total is calculated out of ratification)*

#	Muslim-majority states	ICERD	ICCPR	ICCPD -OP1	ICCPR-OP2	ICESCR	ICESCR-OP1	CEDAW	CEDAW-OP1	CAT	OP-CAT	CRC	OP-CRC-AC	OP-CRC-SC	OP-CRC-CP	ICRMW	ICPPED	ICPRD	OP-CRPD	Total
1	Afghanistan																			11
2	Albania																			16
3	Algeria																			11
4	Azerbaijan																			14
5	Bahrain																			9
6	Bangladesh																			12
7	Bosnia Herzogovina																			18
8	UAE																			6
9	Brunei Daruselam																			5
10	Burkina Faso																			14
11	Chad																			10
12	Comoros																			6
13	Cote D'voire																			11
14	Djibouti																			12
15	Egypt																			10
16	Indonesia																			10
17	Gambia																			13
18	Guinea																			12
19	Iran																			6
20	Iraq																			9
21	Jordan																			9
22	Kazakhstan																			12

Table 3 (cont'd)

#	Muslim-majority states	ICERD	ICCPR	ICCPD - OP1	ICCPR-OP2	ICESCR	ICESCR-OP1	CEDAW	CEDAW-OP1	CAT	OP-CAT	CRC	OP-CRC-AC	OP-CRC-SC	OP-CRC-CP	ICRMW	ICPPED	ICPRD	OP-CRPD	Total
23	Kyrgyzstan																			14
24	Kuwait																			9
25	Libya																			12
26	Lebanon																			8
27	Maldives																			13
28	Malaysia																			5
29	Mali																			14
30	Mauritania																			11
31	Morocco																			12
32	Niger																			15
33	Nigeria																			13
34	Oman																			8
35	Palestine*																			11
36	Pakistan																			9
37	Qatar																			9
38	Saudi Arabia																			8
39	Senegal																			13
40	Sierre Leone																			10
41	Somalia																			7
42	Sudan																			8
43	Syria																			11
44	Tajikistan																			11
45	Tunisia																			14
46	Turkey																			16
47	Turkmenistan																			13
48	Uzbekistan																			10
49	Yemen																			10
TOTAL		47	42	24	10	44	3	46	19	45	16	49	43	47	4	21	14	46	21	

Such pattern of ratifying the treaties where rights are broadly defined, and state obligations are set out with no systematic monitoring system but not participating in the optional protocols introducing certain communication channels and oversight mechanisms for violations is visible among many Muslim-majority states. For instance, while 42 ratified the ICCPR, only 24 ratified the First Optional Protocol which designates a committee to receive complaints of potential violations and communicate with the concerned state for explanation. Same applies to CEDAW-OP1 ratified by only 19, OP-CAT ratified by 16 and OP-CRPD. Such pattern is indicative of the level of genuine participation in a full-fledged international human rights regime.

While it is apparent that Muslim-majority states took part in the formation of the human rights texts and did not absolutely detach from the regime, this does indicate a manifest of embracement of the regime either or a plea for effectual observation of the treaties in practice. As many refrained from recognizing the competence of an UN committee to oversee communication of individuals or group of individuals reporting violation, reservations put on several articles of the treaties, particularly on CEDAW and CRC can be called to be running against the objective and purpose of these covenants.[171]

To illustrate some samples of reservations placed, Bahrain, Mauritania, and Qatar placed reservations on Articles 3, 18 and 23 of the ICCPR with Islamic references as shown below:

Table 4: Reservations placed on the ICCPR with Islamic Reference

State	Reservation excerpt with Islamic reference
Bahrain	The Government of the Kingdom of Bahrain interprets the Provisions of Article 3, (18) and (23) as not affecting in any way the prescriptions of the Islamic Shariah

[171] Although Vienna Convention on the Law Treaties set out the boundaries of acceptable reservations with "incompatibility with the purpose and objective" of the treaties, the Convention lacks clear direction about the acceptance and rejection of a reservation and leaves this judgement to the other states.The reservation comes into affect between the reserving state and accepting states. Convention does not foresee an independent mechanism to assess the validity of reservations, leaving a large room for states to place reservations.

Table 4 (cont'd)

State	Reservation excerpt with Islamic reference
Mauritania	The Mauritanian Government interprets the provisions of article 23, paragraph 4, on the rights and responsibilities of spouses as to marriage as not affecting in any way the prescriptions of the Islamic Shariah.
Qatar	1. The State of Qatar shall interpret the term "punishment" in Article 7 of the Covenant in accordance with the applicable legislation of Qatar and the Islamic Sharia. 2. The State of Qatar shall interpret Article 18, paragraph 2, of the Covenant based on the understanding that it does not contravene the Islamic Sharia. The State of Qatar reserves the right to implement such paragraph in accordance with such understanding. 3. The State of Qatar shall interpret that the term "trade unions" and all related matters, as mentioned in Article 22 of the Covenant, are in line with the Labor Law and national legislation. The State of Qatar reserves the right to implement such article in accordance with such understanding. 4. The State of Qatar shall interpret Article 23, paragraph 2, of the Covenant in a manner that does not contravene the Islamic Sharia. The State of Qatar reserves the right to implement such paragraph in accordance with such understanding. 5. The State of Qatar shall interpret Article 27 of the Covenant that professing and practicing one's own religion require that they do not violate the rules of public order and public morals, the protection of public safe[t]y and public health, or the rights of and basic freedoms of others.

Similar references to Islam can be observed in declarations or reservations to the ICESCR by Egypt ant Qatar. Egypt, in its reservation, announced its ratification by noting that "*Taking into consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it*". [172] Qatar articulated its objection to the formulation of Article 3, which

[172] International Covenant on Economic, Social and Cultural Rights, *United Nations Treaty Collection*, Retrieved from: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en (Accessed on 19.12.2021)

sets forth the equal enjoyment of the rights by men and women" and acclaimed that it does not "*consider itself bound by the provisions of Article 3 of the International Covenant on Economic, Social and Cultural Rights, for they contravene the Islamic Sharia with regard to questions of inheritance and birth."*[173]

CEDAW, calling for the equality of men and women and elimination of discrimination against women, appears to be the one which received highest number of reservations from many Muslim-majority states dismissing multiple articles of it due to either explicitly "incompatibility with Islamic Sharia" or "national family laws". Among those are Algeria, Bahrain, Bangladesh, Brunei Darussalam, Egypt, Iraq, Kuwait, Lebanon, Libya, Malaysia, Niger, Oman, Pakistan, Qatar, Saudi Arabia, and UAE. The reservations put by these states are mostly very broad and vague implying that these states would be complying with CEDAW provisions as long as they do not conflict with Islamic Sharia while what this prescribes with respect to specific rights defined in CEDAW is not clearly defined.

Critically assessing the reservations placed on CEDAW, Meyer enunciates that Muslim majority states were considering both the international treaty and Islam as supranational laws but favoring Islam over the treaty in case of a divergence.[174] However, the way that reservations changed in time or the efforts to conceal Islamic references by referring to national laws such as Algeria to retain Western support[175] is also significant to show the political calculations made by some Muslim-majority states and religious allegiance is in a way relaxed against national interests. Meyer concludes that the argument articulating that Islamic Law dictates the Muslim states' positions to abide or not to abide by human rights treaties is an "oversimplification" and the pattern of replacing Islamic references with national laws is an indication of search for a global legitimacy for the reservations.[176] In other words, despite the reservations, which sometimes are detrimental in terms of treaties' implementation in

[173] Ibid.

[174] Meyer, E.A. (1988), Islamic References to Human Righst Conventions, *Recht van de Islam,* 15, pp.28-29

[175] Ibid., p.34

[176] Ibid., p.43

reserving countries, many Muslim majority states do not automatically detach itself from international treaties.

Notwithstanding the invalidating effect of Sharia reservations, it should also be noted that Sharia reservations put on various clauses of the mentioned covenants by different Muslim-majority states present a non-uniform outlook where some Muslim Majority states declared their reservations for a particular treaty and ratified another without any reservations.[177] The content of these reservations are not monolithic either. While some states opted for just referring to 'prescriptions of Islam' and formulated their reservations with a phrase of "in accordance with Sharia rules', some others gave a more detailed account to explain the difference between the interpretations of certain rights between Sharia and treaties. This portrays that there is no consensus among Muslim majority states about the role of Islam or Sharia, but each adopts a national stance in their own understanding of Islam and its role in national jurisprudence. Referring to this fact, An-Naim argues that lack of a unified attitude by Muslim states indicates that national ideologies and interests influenced more than religious concerns.[178]

Lack of a consensus and uniformed approach among Muslim-majority states in their reservations does not necessarily rule out the influence of the religion. As Sawad argues from a relativist perspective, signatory states showed their desire to engage in human rights regime but also demonstrated their national capacity to uphold the rights through placing culture-based reservations.[179] He contends that each state differs in its source of legitimacy and many Muslim-majority states are "*reliant on religious convictions of the people to assert and maintain legitimacy"*[180] In other words, some of the reservations placed on the international human rights treaties are the reflection of the social dynamics and they constitute a gateway for these states to engage in human rights discourse in a more pluralistic discourse with limitations posed by

[177] Sawad, A.A. (2018), Islamic Reservations to Human Rights Treaties and Universality of Human Rights within the Cultural Relativists Paradigm*, The Journal of Human Rights Semi-Annual*, 12(2), p. 128

[178] Al-Naim, 1999, p.187

[179] Sawad, 2017-2018, p.105

[180] Ibid., p.104

national capacities defined by cultural norms. Sawad also ascertains absence of a homogenous approach by Muslim-majority states can be attributed to distinct cultures of each state, different political systems, and sectarian variances in Islam and dissimilarities in the political philosophy of Islam.[181] In other words, Islam's influence on states' capacity to comply with international human rights instruments; however, it would be a simplistic approach to conclude that Muslim-majority states distances themselves from the regime on pure Islamic grounds.

To sum, Muslim-majority states were not passive in deliberations of drafting and adoption of the UDHR and ensuing treaties. Despite the disagreements on particularly freedom of religion, gender equality and right of marriage, such disagreements did not result in rejection of the UDHR except for the case of Saudi Arabia. Such engagement continued on the creation and adoption of the succeeding treaties as shown above. Not signing the treaties which regulate oversight mechanisms through UN committees and so-called Sharia reservations which mostly contravene the overall purpose of the purpose and objective of the treaties are, on the other hand, signifying the level of commitment made by certain states to genuinely uphold the rights. However, it is also noteworthy that Muslim-majority states have not adopted a uniform approach in deliberations, reservations, and decisions to adopt-reject. This is important to underline two arguments to discuss the possibilities of improved engagement. First, the religion, itself, has not been an absolute determining factor for states to be a part of the regime but is one of many inter-wined factors. Second, Muslim-majority states were fully aware and part of the codification of international treaties and did not adopt a rejectionist approach. However, their participation in the regime is also limited to suggest a genuine commitment to the regime norms and uphold them in practice.

3.1.2. Muslim Majority States' Engagement with UN Human Rights Monitoring Bodies

As shown in the previous section, Muslim-majority states were mostly engaged with codifications process yet some failed to show a strong dedication to fully take both negative and affirmative actions as part of observing these treaties, which can be inferred by the invalidation reservation they have put and non-accession to the treaties

[181] Ibid.

forming oversight mechanisms. In this section, Muslim-majority states overall engagement with human rights protection bodies within UN-centered human rights regime will be examined. This section will focus on Muslim-majority states' recognition of the mandate of protection bodies, meaningful participation in these mechanisms and establishment of National Human Rights Institutions (NHRIs) in compliance with Paris Principles[182] and accredited by Global Alliance of National Human Rights Institutions (GAHNRI).

Human rights promotion and protection mechanisms within the UN is categorized as charter-based bodies and treaty-based bodies functioning under the broad secretariat of Human Rights Office of High Commissioner.[183] Charter-based human rights bodies consist of the United Nations Commission on the Human Rights (UNCHR) replaced by the Human Rights Council (HRC), Universal Periodic Review (UPR), Special Procedures of the HRC and the complaint mechanisms, while treaty-based monitoring mechanisms refer to committees set up per individual treaties and vested with mandate to oversee the compliance with the terms of that specific treaty.

UNCHR, which was set up in 1946 as a functional committee under Economic and Social Council (ECOSOC) had been vested with the mandate of examining, monitoring, advising and publicly publishing reports on human rights situations either with a country-specific or thematic approach and considered to be the main charter-based monitoring body. The Commission developed and passed hundreds of resolutions in major thematic areas and publicized thematic or country specific report for 60 years that it operated. It was replaced with the HRC in 2006 because of ongoing criticism for the UNCHR for being ineffective in addressing human rights violations and major violating states' being its member. The HRC is made up of 47 elected states serving for three years and mandated to examine, monitor, and publicly report on either country-mandates or thematic-mandates. It holds three regular sessions annually as well as special sessions that can be called by one third of the member states for human rights violations and emergencies. Main outcomes of the HRC sessions are resolutions,

[182] Paris Principles refers to set of key criteria for national human rights institutions to be considered legitimate, credible and effective in protomotion and protection of human rights. These include impartiality, pluralist representation and independency with adeaquate funding along with other principles allowing these institutions to operate freely and with quasi-jurisdictional competence. (https://www.un.org/ruleoflaw/files/PRINCI~5.PDF, Accessed on 30.10.2021)

which lack a binding power for the concerned states and may be influential to the extent a state attributes importance. Similar to criticisms directed at UNCHR, HCR is also criticized for remaining ineffective due to politicization of human rights matters in such a mechanism where decision makers are states, which may act according to their national interests rather than human rights concerns as well as due to many states with gross violation records sitting in the Council. In that sense, it is considered that being an active HRC member is not a testament of commitment to human rights. Therefore, in this part, other treaty-based subsidiary bodies of UPR and Special Procedures, which require a more intense state engagement, will be examined to comment on overall meaningful responsiveness of Muslim-majority states.

To begin with UPR, it is a cyclical state-driven peer-review process for all UN member states by the UPR working group member states against the obligations towards the UN charter, the UDHR and others arising from the treaties that a state has ratified. Review is carried out based on the information provided by the state in question through a) information provided in a national report which is ideally supposed to be prepared with an extensive national consultation, b) information contained in reports of independent human rights experts such as HRC special procedure reports and c) information provided by national human rights institutions or civil society organizations. [184] Reviews take place as a deliberation between the reviewed and other member states in UPR Working Group sessions over the information provided on national report and outcome report is eventually produced containing a summary of the deliberation and recommendations by the other states with an addendum in the form of a matrix on which the state under review responds to each recommendation recorded.[185] The first review cycle was initiated in 2011 and ended in 2011 and all of the UN members showed an active participation in the review process, which shows a good level of buy-in. Muslim-majority states were among those attaching importance

[184]Basic facts about the UPR, *United Nations Human Rights Council*, Retrived from: https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx (Accessed on 31.10.2021)

[185] Ibid.

to the process by sending high-level delegations to the UPR Working Group discussions.[186]

The UPR process has been ongoing since 2011 and two cycles have been completed while the third is ongoing for some states. During the past three cycles, all Muslim majority states except for Palestine fulfilled procedural processes while each showed a different level of meaningful engagement. Table 3 shows the number of recommendations received and accepted by each state in their latest completed review process.

Table 5. Acceptance level of UPR recommendations by Muslim-majority states

Muslim-majority states	Acceptance of Recommendations (3rd cycle unless otherwise is stated)	Ratio
Bosnia Herzegovina	204/207	99%
Niger	249/254	98%
Mali	187/194	96%
Chad	195/204	96%
Guinea	203/213	95%
Albania	186/197	94%
Somalia	258/273	94%
Comoros	166/177	94%
Uzbekistan	198/212	93%
Gambia	207/222	93%
Afghanistan	236/259	91%
Burkina Faso	184/204	90%
Turkmenistan	172/191	90%
Cote D'voire	222/247	90%
Senegal	229/257	89%
Kazakhstan	214/245	87%
Djibouti	177/203	87%
Tajikistan (second cycle)	60/70	86%
Lebanon	179/214	84%
Kyrgyzstan	193/232	83%
Oman	189/228	83%
Nigeria	240/290	83%
Iraq	245/298	82%
Yemen	201/252	80%

[186] Nazir, A. (2019), The Universal Periodic Review and Muslim States' Engagement, *Journal of International Law and Islamic Law,* 15, pp.1-28

Table 5 (cont'd)

Muslim-majority states	Acceptance of Recommendations (3rd cycle unless otherwise is stated)	Ratio
Bahrain	139/175	79%
Egypt	294/372	79%
Algeria	180/235	77%
Tunisia	189/248	76%
Kuwait	230/302	76%
Mauritania	201/266	76%
Indonesia	167/225	74%
Sierre Leone	202/274	74%
Maldives	187/259	72%
Bangladesh	178/251	71%
Saudi Arabia	182/258	71%
Azerbaijan	179/259	69%
Turkey	216/321	67%
Jordan	149/226	66%
Qatar	178/270	66%
Libya	181/285	64%
Pakistan	168/289	58%
Syria (second cycle)	118/203	58%
UAE	132/232	57%
Malaysia	148/268	55%
Sudan (second cycle)	27/53	51%
Brunei Darussalam	108/220	49%
Morocco	136/296	46%
Iran	143/329	43%
Palestine*	NA	0%

Iran, Morocco, Brunei Darussalam, Sudan, Malaysia, UAE, Syria and Pakistan rank bottom of the list while Bosnia, Mali and Niger rank top. As it was the case in the deliberation and adoption of the international human rights treaties, Muslim-majority states demonstrate distinctive approaches. While some explicitly refer to Islam in not accepting the recommendations concerning mostly death penalty, non-discrimination based on sexual orientation, women rights and while some majority does not base their explanations on religious precepts but refer to the incompatibility with national laws. For instance, Brunei Darussalam stated that 81 out of 108 not-accepted

recommendations were due to their being contrary to the official religion of the state.[187] Among some others where there are general explicit Islamic references are Algeria, Bahrain, Bangladesh, UAE, Iran, Iraq, Kuwait, Qatar, Saudi Arabia and Somalia.

It is noteworthy that recommendations made during the UPR discussions are bilateral where a state can issue a very generic recommendation such as "maintenance of implementation of good national policies" which may not require any action to change or improve the human rights progress. Categorizing the types of recommendations, McMahon groups the recommendations under five main categories[188] and Category 5 represents the recommendations with clear actions, which makes around 39 percent of the total recommendations uttered in the first cycle of review.[189] Looking from this perspective, the number of accepted recommendations can be misleading to conclude a good level of buy-in to progress in human rights. To illustrate, at least 83 accepted recommendations of Turkey start with "continue" or "maintain" with very generic wording and can be considered as Category 2 where a good practice is encouraged to maintain.[190] It is also notable that such recommendations mostly come from states which the state under review has good relations with, such as Qatar, Azerbaijan, Libya in Turkey case.

Similarly, bilateral nature of the process risks to lead interstate relations or political disputes to dominate UPR Working Group discussions and some recommendations to

[187] Human Rights Council (42nd Session), *Report of the Working Group on the Universal Periodic Review Brunei Darussalam*, Retrieved from: https://undocs.org/A/HRC/42/11/Add.1 (Accessed on 02.11.2021)

[188] Category 1 recommendations are mostly in nature of seeking information. Category 2 represents the recommendations where a state under review is encouraged to maintain a good practice. Category 3 recommendations call for a change with a soft tone advicing the state under review to consider doing something differently or adapt a practise. Category 4 recommendation asks for an action yet fails to clearly define it. Finally, Category 5 recommendations urges for a certain action to be taken such as "abolish death penalty.

[189] McMahon, E.R. (2012), The Universal Periodic Review: A Work in Progress, *Friedrich Ebert Stiftung,* p.14

[190] Human Rights Council. (44th Session, 2020), *UPR 3rd Cycle Turkey Matrix of Recommendations,* Retrieved from: https://www.ohchr.org/EN/HRBodies/UPR/Pages/TRindex.aspx (Accessed on 02.11.2021)

be rejected due to the recommending state. To illustrate, Iran, which ranks quite bottom of the list, noted the below for five recommendations submitted by Saudi Arabia:

> The recommendations submitted by Saudi Arabia are entirely rejected. These recommendations shall not be accepted due to the illegal behaviors and treatments of the recommending State in contravention of the fundamental principles of human rights and violation of international laws and norms. The Islamic Republic of Iran has decided to reject these recommendations with a view to neutralizing and confronting such systematic behaviors, which are in violation of human rights and international rules and principles. Additionally, most of these recommendations are based on unsubstantiated allegations aimed at insulting the Iranian nation.[191]

Similarly, Saudi Arabia rejected recommendations of Iran and Qatar due to the sponsors of these recommendations.[192]

Lastly, bilateral structure of the review mechanism and vague terms used by the states pave a way for avoiding any tangible action. To illustrate; Belgium recommended Afghanistan to "*review and amend the various penal laws that prevent journalists from carrying out their essential mission in full security and independence"* which was replied by Afghanistan with "*there is no provision in the penal laws to prevent journalists from doing their mission in full security and independence except in cases where their performances cause public agitation and disorder in the country.* [193] Similar, de-facto rejections of recommendations can be observed when it comes to personal status law and equality of men and women.[194]

Despite the abovementioned flaws of the UPR mechanism and low prospect of close follow-up on actions taken in face of accepted recommendations, it still provides a continuous review platform where the human rights can remain on the agenda of UN

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[191]Human Rights Council (43rd Session 2020), *Report of the Working Group on the Universal Periodic Review - The Islamic Republic of Iran Addendum*, p.2, Retrieved from: (https://undocs.org/en/A/HRC/43/12/Add.1 (Accessed on 02.11.2021)

[192] Human Rights Council. (40th Session 2019), *Report of the Working Group on the Universal Periodic Review - Kingdom of Saudi Arabia*, p.2, Retrieved from: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/054/17/PDF/G1905417.pdf?OpenElement (Accessed on 02.11.2021)

[193] Human Rights Council (12th Session 2009), *Report of the Working Group on the Universal Periodic Review Afghanistan Addendum*, p.2, Retrieved from: https://www.refworld.org.es/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4afbf6492 (Accessed on 31.10.2021)

[194] Ibid.

member states in a continuous manner. While the bilateral nature of the UPR poses a risk of each state to interpret rights according to their understanding or interest, special procedures mechanism under the HRC offers more of a technical and impartial monitoring mechanism under the lead of a special rapporteur and independent experts. Special procedure mechanism may be formed for a thematic issue or a country-specific mandate where independent experts report and advise on. The working modality of the experts include country visits and communication with states, which may require mandate recognition by states. States may issue a standing invitation, which refers to an open invitation for special procedure on any thematic issue and can be considered as a strong buy-in of the process. 117 out of 193 UN member states have extended standing invitations and this list includes 26 Muslim-majority states[195] while 23 others[196] opted for not extending such invitations.

While Muslim-majority states actively involved in UPR and at least half of them showed buy-in for special procedures, it is not possible to see such endorsement level for treaty-based bodies. Treaty-based human rights bodies consist of ten committees set up per specific human rights treaties as shown below:

- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Human Rights Committee (CCPR)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of Persons with Disabilities (CRPD)

[195] States which extended standing invitation are Afghanistan, Albania, Azerbaijan, Bosnia Herzogovina, Chad, Comoros, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Niger, Nigeria, Palestine, Qatar, Sierre Leone, Somalia, Tunisia, Turkey, Turkmenistan and Uzbekistan.

[196] States which has not extended a standing inviation are Algeria, Bahrain, Bangladesh, Brunei Daruselam, Burkina Faso, Cote D'voire, Djibouti, Egypt, Gambia, Guinea, Indonesia, Mali, Mauritania, Morocco, Oman, Pakistan, Saudi Arabia, Senegal, Sudan, Syria, Tajikistan, UAE and Yemen.

- Committee on Enforced Disappearances (CED)

As stated in previous section, the level of accession to the protocols, which sets out either a committee or a communication procedure to receive complaints and communicate with the receiving state, is quite low. It will not be repeated here again which states are party to these protocols. However, it can be noted that Bosnia Herzegovina ranks top among Muslim-majority states by recognizing the competence of all ten treaty-based human rights bodies and it is followed by Niger with 9, Albania, Burkina Faso, Mali, Tunisia, and Turkey with 8. Malaysia and Darussalam rank bottom by recognizing the competence on only one body, which is CRPD. Among the committees receiving higher recognition by Muslim-majority states are CERD which is recognized by 47 states and CPRD with recognition of 45 Muslim-majority states. The ones which high majority states opted out are CESR recognized by only three[197] and CRC recognized by only 5.[198] The low recognition for the latter can be attributed to for its being a relatively new mechanism.

Given that neither UPR nor Special Procedures have strong sanctioning mechanisms, and their influence is further limited by the politicization of these mechanisms, it would be unsubstantiated to claim that such participation is testament of participating states' commitment to human rights. As the high level of accession to human rights treaties indicate all Muslim-majority states maintain some level of engagement yet many leading states fail to fully adopt the protection mechanisms by not ratifying the ones regulating monitoring mechanisms or making these mechanisms effectively work. Overall, it should be underlined that Muslim-majority states de facto recognize the superiority notion attributed to the human rights, do not disassociate themselves from human rights debate and do not form a bloc on grounds of relativism. However, majority of them do not either show a meaningful ownership for the entire regime by effectively utilizing the protection mechanisms.

One of the other strong indicators of engagement with international human rights regime is the creation of accredited national human rights institutions. Accredited NHRIs are vested with competence to promote and protect human rights and mandated

[197] Bosnia Herzogovina, Niger and Maldives.

[198] Bosnia Herzogovina, Albania, Tunisia, Turkey and Maldives.

to freely consider any human rights question or hear individual complaints, issue and publicize reports with recommendation to other competent national authorities such as Government, Parliament, prepare reports on national situation with regards to human rights, promote human rights, encourage the state to ratify relevant international treaties. The Sub-committee on Accreditation SCA under OHCHR assesses accreditation requests of national institutions (in the form of either human rights councils or ombudspersons) against the Paris Principles and may assign full (A) or partial (B) accreditation, which is subject to five-year reviews.

Table 6. Existence of NHRIs in Muslim-majority states and Accreditation Status

#	Muslim-majority states	NHRI Accreditation status
1	Afghanistan	A
2	Albania	A
3	Algeria	B
4	Azerbaijan	B
5	Bahrain	B
6	Bangladesh	B
7	Bosnia Herzegovina	A
8	UAE[199]	Not accredited
9	Brunei Darussalam	Non-existing
10	Burkina Faso	NA
11	Chad	B
12	Comoros[200]	Not accredited
13	Cote D'voire	A
14	Djibouti[201]	Not accredited
15	Egypt	A
16	Indonesia	A
17	Gambia[202]	Not accredited
18	Guinea	Non-existing
19	Iran	Non-existing
20	Iraq	A
21	Jordan	A
22	Kazakhstan	B
23	Kyrgyzstan	B
24	Kuwait[203]	Not accredited

[199] UAE announced a plan in August 2021 to establish a national human rights institution.

[200] Comoros established National Commission on Human Rights and Freedom in 2011 yet it is not accredited.

[201] Djibouti has National Commission on Human Rights yet it is not accredited

[202] Gambia established National Human Rights Commission in 2017 yet it is not accredited.

[203] Kuwait established National Human Rights Institution in 2015 yet it is not accredited.

Table 6 (cont'd)

#	Muslim-majority states	NHRI Accreditation status
25	Libya	B
26	Lebanon[204]	Not accredited
27	Maldives	B
28	Malaysia	A
29	Mali	B
30	Mauritania	A
31	Morocco	A
32	Niger	A
33	Nigeria	A
34	Oman	B
35	Palestine*	A
36	Pakistan [205]	Not accredited
37	Qatar	A
38	Saudi Arabia	Non-existing
39	Senegal	B
40	Sierra Leone	A
41	Somalia	Non-existing
42	Sudan	Non-existing
43	Syria	Non-existing
44	Tajikistan	B
45	Tunisia	B
46	Turkey[206]	Not accredited
47	Turkmenistan	Non-existing
48	Uzbekistan	B
49	Yemen	Non-existing

40 out of 49 Muslim majority states have established NHRIs while only 16 got it accredited at A level and 15 at B Level. The accreditation is granted based on level of mandate, existence of enabling law to function effectively, inclusive representation of societies, transparent and participatory selection, and appointment of its members, having appropriate level of funding and independency of the institution. This assessment is undertaken by review of the governing legislation, its organizational structure, annual budget and last annual report of the institutions. A similar conclusion as in the previous sections can be drawn based on this table. It is early to assess the

[204] Lebanon established a National Human Rights Insitution in 2016 yet it is not accredited.
[205] Pakistan established National Commission on Human Rights yet it is not accredited.
[206] Turkey has National Human Rights Institution yet it is not accredited either by GAHNRI or ENHRI.

efficacy of these national institutions since majority of them have been recently established; however, establishment rate of 40 to 49 demonstrates a high degree of responsiveness to UN recommendations to form such institutions.

3.2. Engagement with Other Regional Human Rights Regimes

As shown in the previous section, Muslim majority states vary in their commitment to human rights and accompanying protection mechanisms. This is also apparent in their participation in regional protection mechanisms, which also differ greatly in terms of their jurisdiction and power. In addition to the IPHRC, the other regional human rights mechanism where some Muslim majority states are part of the European and African regimes. In this section, the engagement level of some major Muslim-majority states will be briefly showcased.

Albania, Azerbaijan, Bosnia Herzegovina and Turkey diverge from other Muslim-majority states by recognizing the supranational jurisdiction of the ECtHR which is accepted as the strongest human rights protection body with its broad jurisdiction, power and credibility. Although Turkey ranks top among the worst performing states with highest number of violation and non-implemented court decisions[207] and Azerbaijan is highly criticized for gross violations, both continues to stay part of the regional regime. One can easily observe the political motivations for these states' assenting on jurisdiction authority of the ECtHR such as Turkey's westernization aim, aspiration to be a part of European regime and alliance with European countries to gain power on various other international or bilateral dispute fronts. Regardless of the political motives behind the recognition of the ECtHR jurisdiction, such engagement brought responsibilities and contributed to some level of improvement of human rights record in these countries. For instance, Turkey introduced the individual right to complain to the Constitutional Court and undertook a series of law reforms in light of the Court decisions and recommendations of the COE along with European Union. On the other hand, Albania and Bosnia Herzegovina, which are non-typical Muslim majority states located in the middle of Europe and in the negotiation process with the

[207] ECHR Statistics. (2020), *Violation by States and Articles*, Retrieved from: (https://www.echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf (Accessed on 07.11.2021)

European Union as candidate states, are not negatively different among other European states in terms of number of human rights violation decision rendered by the Court.

Even if not as strong as the ECtHR, the ACtHPR which was established in 2006 as a judiciary arm of the African Union stands as another regional regime with a supranational court receiving individual applications for human rights violation in consideration of ACHPR. The content of this Charter and definitions of rights may be narrower compared to international standards yet establishment of such a supranational mechanism is of importance to demonstrate the member states' assentation to be overseen by a technical body with a compromise on their national jurisdictional sovereignty.

The jurisdiction of the ACtHPR has been recognized by 31 countries out of 55 members of the AU. Among Muslim-majority states, which issued declaration to allow applications to the ACtHPR, are Tunisia, Gambia, Burkina Faso, and Mali.[208] Although Tanzania and Cote D'Ivoire issued declarations recognizing its jurisdiction, they later withdrew in 2019 and 2020 respectively after numerous cases were filed against them. What is making the ACtHPR a significantly less effective mechanism is the limitative nature of bringing cases before it. It accepts cases filed by the African Commission on Human and People's rights, State Parties to the founding protocol and African Intergovernmental Organizations while applications by non-governmental organizations with observer status before the African Commission and individuals are subject to a special declaration by the states.

Despite its restrictions, ACtHPR has been active since 2005 and finalized more than 110 cases and issued progressive decisions such as the breach of the CEDAW by Mali

[208] Declarations, African Court of Human and People's Rights, Retrieved from: https://www.african-court.org/wpafc/declarations/ (Accessed on 21.11.2021)

on the right to consent for marriage [209] or breach of right to life by Tanzania along with others such as right to justice.[210]

To sum, in addition to the UN human rights protection mechanisms, many Muslim-majority states became party to regional regimes where a supranational court exists. Regardless of the effectivity of these regimes and the differences on rights definition on reference rights conventions, such engagement is vital to demonstrate that there is no faith or national interest-based barrier preventing them to take steps towards progress.

3.3. Islamic Human Rights Schemes and Muslim-majority States Engagement with Human Rights Protection Mechanisms under OIC

As shown in the previous sections, majority of Muslim-majority states recognized the international human rights regime made up of UN treaties and ensuing protection mechanisms even if their engagement may not necessarily imply a genuine commitment to promote human rights within their respective countries. However, it was also salient that many leading Muslim-majority states and particularly those fully or partially apply Sharia were explicit in their rejection to some of the right definitions in these treaties or to the recommendations received through monitoring mechanisms. While they officially recognized the international human rights regime, a parallel yet unequable and limited set of human rights treaties were put together under the umbrellla of the OIC. In this section, human rights instruments under OIC will be assessed to analyze its alignment with international norms and decision-making authority designation which can signal about its potential to progress into an effective regime.

[209] Institute for Human Rights and Development in Africa vs Mali Application No: 046/2016. (2018), African Court on Human and People's Rights, Retrieved from: https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/215/dbc/5f5215dbcd90b917144785.pdf (Accessed on 22.11.2021)

[210] Ally Rajabu And Others V Unıted Republıc Of Tanzania Application No: 007/015 Press Release. (2018), African Court on Human and People's Rights, Retrieved from: https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/63d/93c/5f563d93ceb8d690262130.pdf (Accessed on 22.11.2021)

3.3.1. Alternative Human Rights Schemes under the OIC

OIC, which was established in 1969 works for promotion of Muslim solidarity following the arson of Al-Aqsa Mosque, has become the second largest intergovernmental organization with 57 members under the motto of "Collective Voice of Muslim World". Over the historical course of the Organization, it managed to bring leading Muslim-majority states along with others together in its regular plenary and committee meetings despite the sharp bilateral disputes and ideological differences among its member states and it stands as a significant political body where Muslim-majority states are unitedly represented in the international community.

OIC Charter recognizes United Nations Charter and expresses an adherence to the principles of the UN Charter yet by putting emphasis on national sovereignty with a limitative formulation as below:

> Determined to uphold the objectives and principles of the present Charter, the Charter of the United Nations and international law as well as international humanitarian law while strictly adhering to the principle of non-interference in matters which are essentially within the domestic jurisdiction of any State.

It is also noteworthy that the Charter does not refer to the UDHR, which had been adopted almost twenty years before the OIC Charter. While the Organization's work focused more on political matters, it, later in 1990, adopted "Cairo Declaration of Human Rights (CDHR)" which was a precursor of human rights' becoming an agenda item of the OIC. The CDHR was further followed by other alternative instruments, which are "Convention on the Rights of the Child in Islam (CRCI)", "OIC Plan of Action for Advancement of Women (OPAAW)".

The CDHR was intended to be a complementary instrument transferring international standards into a regional instrument while it ended up undermining multiple rights defined in the UDHR.[211] It is made up of 25 articles[212] with a very similar coverage

[211] Akkad, D.,(2012, December 10), Human Rights: Universal Declaration vs the Cairo Declaration, *London School of Economis and Politics Middle East Blog*, Retrieved from: https://blogs.lse.ac.uk/mec/2012/12/10/1569/ (Accessed on 08.11.2021)

[212] These are organized under the titles of human dignity, right to life, inviolability, right to liberty and safety and prohibition of torture, protection of the family and marriage, rights of women, rights of the child, right to recognition before the law, right to education, right to self-determination, freedom of movement, right of migrant and refugees, nationality rights, right to work, right to legitimate economic and financial gains, right to own property, intellectual property rights, right to

with the UDHR. However, examining the CDHR, one can easily see how the fundamental rights set out in the UDHR and subsequent instruments were diluted radically with reference to Islamic precepts or Sharia.

To illustrate the significant definition discrepancies, the CDHR frames the right to life but restrict it by allowing death penalty in the Article 2.b which reads; "*Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime".* Similar formulations can be found in the definition of many rights with strong emphasis on Islamic principles such as husband's being the head of a households, marriage age, parents' rights over a kid to raise him/her according to their beliefs, prohibition of proselytization and freedom of opinion to be limited as long as it does not contravene with principles of Sharia. The definition of right to marriage refers to "men and women of marrying age" in contrast to the definition in the UDHR which says "men and women of full age". Similarly, right to freedom of opinion and expression is defined with the allowable restriction on the exercise of these rights. Restrictions articulated in Article 21.b reads as below:

> …Any restrictions on the exercise of this right to be clearly defined in the law, and shall be limited to the following categories:
>
> i. Propaganda for war.
> ii. Advocacy of hatred, discrimination or violence on grounds of religion, belief, national origin, race, ethnicity, color, language, sex or socio-economic status.
> iii. Respect for the human rights or reputation of others.
> iv. Matters relating to national security and public order.
> v. Measures required for the protection of public health or morals.

The CDHR is more of a reflection of major Islamic sensitivities that it even mentions non-allowance of interest in Islam while the issue is not a direct concern of state-individual relations. With these great backlashes against international standards, as Mayer argues, that such imposition of Islamic criteria weakens, "if not to nullify", the civil and political rights and place state prerogatives above individual rights.[213]

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the enjoyment of the highest attainable standard of physical and mental health, protection of privacy, right to freedom of thought, conscience and religions, right to freedom of opinion and expression, rights to access to justice and free trial, right to participate in the conduct of public affairs and freedom of peaceful assembly and association, and fair treatment during situations of war and armed conflict.

[213] Ibid., p2

Similar traces of right restriction are evident in the Covenant on the Rights of the Child in Islam (CRCI), which was adopted in 2004. Unlike the UN Convention on the Rights of the Child (CRC), the OIC Covenant does not specify an upper age limit for a human being to be considered a child whereas it considers the fetus as a child who has right to life. While the rights of a child in terms of access to education, freedom of forming opinion or right to protection are so-called granted in the Covenant, boundaries are drawn according to Sharia and traditional family structure and Islamic values are emphasized.[214]

OPAAW differs from both the CDHR and CRCI by having relatively less reference to Islam or restrictive national laws. Although, the rights of women are already restricted in the CDHR, the OPAAW sets some measurable objectives to advance the women in their access to public positions, education, health and improve their social protection, economic empowerment, and protection from violence.[215] However, it is noteworthy that this text has been approved as an action plan with under the OIC implementation. The OIC created a subsidiary organ named "OIC Women Development Organization" in 2020. The objectives of the Organization were set very broadly and concentrated more on development of technical work in the area of women development:

> 1. Highlight the role of Islam in preserving the rights of the Muslim woman especially at the international fora in which the Organization is involved.
> 2. Develop plans, programmes and projects necessary to implement policies, orientations and decisions of the OIC in the area of women's development, welfare and empowerment in Member States societies.
> 3. Organize conferences, symposia, workshops and meetings in the area of women's development in the Member States.
> 4. Conduct courses and training programmes aimed at strengthening and building capacity, skills and competences in the area of women's development and empower them to discharge their mission in the family and society.
> 5. Support and encourage national efforts in Member States to develop human resources in the area of women's development.
> 6. Organize activities aimed at upgrading the role of women and ensuring women's full rights in Member States' societies, in line with the Charter and the decisions of the Organization of the Islamic Conference.
> 7. Carry out studies to enhance the role of women in Member States.

[214] Kayaoglu, T. (2013), A Rights Agenda for the Muslim World: The Organization of Human Rights' Evolving Human Rights Framework, *The Brookings Doha Center,* p.11
[215] OIC Plan of Action for the Advancement of Women (2016), Retrieved from: https://www.oic-oci.org/upload/documents/opaaw/opaaw_en.pdf (Accessed on 13.12.2021)

8. Activate the rights of women enshrined in the OIC Charter by working to remove the restrictions that will enable women to participate in community building.
9. Suggest ways and methods of the society's support for women.
10. Establish an information network that will enable Member States to identify experiences and practices regarding women, including through the cooperation with civil society.[216]

Compared to both UN-led international regime and the European Regime, legal framework created under the OIC is quite weak with only a very broad and vague charter and a similarly weak convention on the rights of the child. Given that the CDHR was adopted in 1990 and it has not been complemented with more clear instruments in more than thirty years, the norm setting within the OIC is not comparable to either UN-led international regime or other regional regimes. OIC's strategic direction laid out in the Program of Action – 2025 adopted in 2016 is not signing any significant development either. Human rights have been allotted only a half-page with a commitment to promote human rights in line with Islamic precepts.[217] Although the goals set out in the accompanying action plan refers to "*Update and refine in consultation with OIC Member States, the existing OIC human rights instruments vis-à-vis universal human rights instruments, as and where required*" with a timeframe of 2016-2018, the progress is delayed. The progress reports, on the other hand, reveal that such alignment is very limited to revise the CDHR and the CRCI rather than a comprehensive work to expand the legal framework.[218] The CDHR has been revised under the title of "The OIC Declaration of Human Rights", which was anticipated to be adopted in 2020 but postponed due to Covid-19 outbreak. To conclude, given the lack of clarity around the existing legal framework within the OIC may allow us to interpret that it is of a nature of some sort of guideline rather than a set of international norms on the Donnely's matrix of regime types.

[216] OIC, The Statute of the OIC Women Development Organization, Retrieved from: (https://ww1.oic-oci.org/english/convenion/Statue_of_the_oic_women_development_org_en.pdf) (Accessed on 13.12.2021)

[217] OIC, OIC 2025 Program of Action (2016), Retrieved from: https://www.oic-oci.org/docdown/?docID=16&refID=5 (Accessed on 13.12.2021)

[218] OIC, OIC 2025 Program of Action Progress Report 2018-2019, p.71. Retrieved from: https://www.oic-oci.org/upload/documents/POA/en/progress_report_2018_2019_en.pdf (Accessed on 19.12.2021

3.3.2. Human Rights Promotion and Protection Mechanisms under the OIC

While the CDHR was adopted in 1990, it was 2011 when the OIC established a treaty-based monitoring body with an advisory capacity, which is the Independent Permanent Commission on Human Right (IPHRC). Such commission emerged out of multiple concurrent factors rather than a genuine consensus among the member states to promote and protect human rights. Security discourse adopted after 9/11 and the war on terror with rising Islamophobia, the motive to increase the credibility of the organization, political rise of more "moderate" countries like Turkey, Morocco and Malaysia against traditionally dominant states such as Iran and Saudi Arabia, and the efforts of Secretary General Ekmeleddin İhsanoglu, who is portrayed as a progressive technocrat, paved the way of establishment of the IPHRC.[219] Although formation of such commission is an indication of the OIC's desire to be a credible actor in international community, such mixed political motives and lack of a joint commitment to create an effective mechanism led to a mechanism which is not fully designed for the promotion or protection of human rights. In this section, the ICPHR will be elaborated through its jurisdiction and mandate, its independency and impartiality, and structural strength to set standards, monitor the states against these and enforce its recommendations to assess the decision-making procedures in the OIC regime.

The statute of the IPHRC is worded generically with a broad objective of "advancing of human rights and serving the interest of Islamic Ummah". Initial formulation which reads as "the Commission shall seek to ensure the promotion and protection of the civil, political, economic, social and cultural rights in the Member States" were revised to "advancing of human rights", which constrained its jurisdiction against the states.[220] The commission is mandated with "carrying consultative tasks, supporting the OIC's position on human rights at global arena, provision of technical support to member states, conducting studies on human rights, presenting recommendations on refinement of human rights instrument". In other words, the mandate of the IPHRC is limited to

[219] Peterseen, M.J. (2018), *Islamic or Universal Human Rights: The OIC's Independent Permanent Human Rights Commission*, Danish Insititute for International Studies Copenhangen, p.6. Retrieved from:
https://pure.diis.dk/ws/files/66504/RP2012_03_Islamic_human_rights_web.pdf
(Accessed on 19.12.2021)

[220] Peterseen, 2013, p.16.

promotion of human rights rather than protection of them with solid jurisdiction to receive complaints, review and communicate with states. It is designed as an advisory body, which can extend technical consultancy to approving states. As Kayaoglu states, the commission is just tasked to take up on human rights, diplomacy through persuasion within the limits of what member states allow.[221]

As its jurisdiction and mandate are restricted against member states, it is not well equipped either to fulfill its restrained objective. Although the OIC Committee of Foreign Ministers continued discussing it over years, the Rules of Procedures have not been enacted yet and the broad and vague Statute remains as the sole legal framework guiding the work of the IPHRC.

A similar weakness is also evident in its membership structure. It comprises of 18 members elected on equitable geographic representation. As prescribed in Article 3 of the Statute, members are elected among candidates nominated by states. Statute falls short to set qualifications criteria to assure impartial and independent human rights experts to take on the role. It turned out that members mostly came from governmental backgrounds with strong ties to their respective states.[222]

The activities of the IPHRC, similarly, have a restricted nature in advancing human rights. It holds two annual regular sessions and can organize extraordinary sessions upon request of a member state or the Secretary General of the OIC and with the approval of a two-third of member states. Thematic debates and outcome documents adopted until now reveals a selective review of human rights issues or violations. Ten sessions held between 2015 and 2021 indicate a dominant coverage of the rights of Muslim minorities such as Kashmir and Rohingya communities as well as Palestinians.[223] Other topics discussed and documented include rights of the disabled, cultural diversity, rights of the children, rights of refuges and migrants, good governance, climate change and freedom of expression-hate speech. In-depth assessment of the outcome document demonstrates that ICPHR focuses more on the

[221] Kayaoglu, 2013, p.4

[222] Kayaoğlu, 2013, p.14

[223] Session Documents, *Independent Permanent Human Rights Commission (IPHRC) of The Organisation of Islamic Cooperation (OIC),* Retrieved from: https://oic-iphrc.org/home/post/34 (Accessed on 20.11.2021)

cases where the rights of Muslims are violated. It avoided, till the time of writing, discussing any human rights violation in any of the member states. Likewise, all the seminars held focus on the same a few key concerns as listed above.[224] This is mainly because all the activities of the IPHRC are conditional on approval or request of the relevant state, hindering its independence from OIC member states.[225]

With such a restricted mandate and quite weak mechanisms to lead a meaningful human rights promotion and protection among the member states, the IPHRC stands as a spokesperson of Muslim minorities and Muslims when it comes to the matters such as hate speech and Islamophobia. Despite its structural shortcomings, it is also possible to infer some positive arguments in terms of the progress of human rights. The establishment of the IPHRC is an indication of increased importance of human rights agenda within the OIC. Further, the advisory capacity, which is being built up through coordination with UN bodies and civil society organizations, may also bring potential to support the member states in their engagement with the international regime.

The weak structure of the ICPHR is not likely to change soon either since the OIC does not set out any priority to strengthen it soon. The accompanying action plan does not foresee any plan to strengthen the IPHRC.

To sum up, the human rights regime within the OIC lacks either a strong and a coherent norm basis with a clear framework or an effective monitoring mechanism to enforce regime principles on the participating states where the Organization and its sub-bodies remain very state centric. Assessed against Donnelly's matrix of regime types, it can be called as a "weak declaratory regime" which is vocalizing the human rights stance of the OIC members in a very selective manner. One may even argue against calling it a regime due to very limited coverage of both the legal instruments and protection mechanisms. However, it should also be noted again that regimes can evolve too. Despite the instrumental role assigned not human rights within the OIC, it remains an agenda item. The recent decisions taken to refine human rights instruments in line with the universal instrument is worthy monitoring to assess if the OIC human rights

[224] Ibid.

[225] Kayaoglu, 2013, p.17

instruments can evolve to more coherent norms. On the other hand, Kayaoglu also advocates that the establishment of a human rights commission within the OIC and evolution of human rights instruments suggest a potential progress of human rights because they signify a shift from a strict focus on Sharia to state sovereignty and such shift is more likely to pave the way of progress with a strengthened OIC over state sovereignties.[226] The revision of the CDHR under the name of "OIC Declaration of Human Rights" is expected to align the document more with the UDHR.[227]

[226] Ibid, p.6

[227] OIC Declaration on Human Rights Highlights the OIC's Strong Commitment to Universal Human Rights Standards. (2018, Decmber 18), *The Organization of Islamic Cooperation,* Retrieved from: https://www.oic-oci.org/topic/?t_id=20408&t_ref=11631&lan=en
(Accessed on 19.12.2021)

CHAPTER 4

ASSESSMENT OF MUSLIM MAJORITY STATES' ENGAGEMENT WITH HUMAN RIGHTS REGIMES

Theoretical explanations in relation to causal effects leading states to form an international regime and well as the impact of these regimes on behavioral changes of the participating states present an intricate structure of relations between various factors, which define different types of regimes. On the other hand, regime types may also be a factor for states to decide to participate in it too. Given all these complexities, this section will provide an assessment first on the reasons why Muslim-majority states participate in human rights regimes by drawing on realist, liberal and constructivist premises and if such participation is meaningful to enforce regime norm. Second, it will interpret the chance of progress based on the participation reasons and efficacy of regimes.

4.1. Assessment of Muslim Majority States' Engagement with Human Rights Regimes

Before proceeding with an endeavor to understand the reasons of Muslim-majority states' participation in human rights regimes through different theoretical explanations and based on their behaviors within the regime, it can be helpful to draw some conclusions from their engagement with human rights regimes based on the analysis provided in Chapter 2.

- Muslim-majority states do not form a uniform bloc in the UN-centered human rights regime in which their stance is defined by the same religious attributes
- Muslim-majority states are not absolutely disengaged from the human rights regime.

- The engagement level of the Muslim-majority states varies within the UN-centered human rights regime.
- OIC-based human rights regime is a weak declaratory one and even very close to "no regime" categorization.

As explained in the first chapter, **realists** suggest that human rights are not different than any other instrument of politics which are patterned by national interests. From this mainstream perspective, states may form human rights regimes with a calculation of national interest against the cost of participating in such a regime. This calculation may be affected by various conditions and variables such as

- Participation may be aligned with a particular state's national interest,
- Participation may be imposed by a hegemon power,
- Forming such a regime may be a Pareto-optimum outcome which states may not reach independently,
- Cost of the regime may be less than the cost of non-participation.

In addition, these conditions and variables may be interlinked too.

On the other hand, **liberal interpretation** on why states embrace human rights and assent to restricting their own sovereignty differ for many sub-schools of it. The liberal arguments brought to explain the reasons of forming regimes are as follows:

- Self-persuasion by the moral appropriateness of human rights (idealist explanation)
- Well-established liberal framework and institutions
- Existing pattern and prior convergence of national policies and practices

Lastly, although partially linked to both neo-realist and neo-liberal arguments, **constructivists** reject overemphasis placed on states and highlights the role of other social actors and processes transforming ideas to norms and norms to regimes. For them, human rights regimes may emerge due to

- Human rights' becoming constitutive element of the state legitimacy,
- Emergence of world systems including human rights system out of isomorphic state structures and global actors or

- The transformative interaction between transnational and domestic actors pushing governments to own certain regime norms.

Although these premises are categorized under different theories due to nuances on the units of analyses that each school attach particular importance, some are quite like each other in terms how they function and outcome they reach. For instance, both liberal institutionalists and constructivist system theorists emphasize the role of international institutions and actors in their explanation about the causal factors leading to formation of regimes, yet explain the emergence of such institution differently. Similarly, both some realists and constructivists refer to state legitimacy to explain the emergence of regimes. Realists treat it as an external notion while the latter suggest that it is constructed by the ideas and social norms.

Looking from a liberal perspective, it is difficult to conclude that all Muslim-majority states own the idea of moral appropriateness of all the human rights with the definitions assigned to them in UN texts. Although, many highlight their religious and cultural tolerance and draw examples from Islam to demonstrate that human rights are rooted in their societies and Islam, relativist arguments on various matters including the freedom of religion, freedom of expression, minority rights, marriage rights were also put forward by many leading Muslim-majority states, even if not by all. The overlap between the UDHR and the rights that Muslim societies or Islam define and respect are commonly studied, and commonalities are revealed to challenge the idea that Islam and human rights conflict, yet the disagreement either grounded on Islam or culture are of significant nature restricting even the fundamental rights. This is also affirmed by the level of their engagement with the UN-centered human rights regime.

The early consensus reached on the UDHR has not been evenly maintained during the evolution of the regime. Engagement level of Muslim-majority states have relatively diminished when it comes to accessing to treaties introducing some monitoring mechanisms or bringing more tangible responsibilities. For instance, as shown in Section 2.1.1. A total 42 Muslim-majority states out of 47 have ratified the ICCPR yet only 24 have ratified the First Protocol introducing a committee competent on receiving communications on the matters concerning the ICCPR. This figure is even lower for the ICESCR. Although 44 Muslim-majority states ratified the ICESCR, it is only 3 Muslim-majority states; Bosnia Herzegovina, Maldives, and Nigeria, that

approved the Optional Protocol to the ICESRC introducing a treaty-based monitoring mechanism. Same is valid for CRC with the ratification of 47 Muslim-majority states while the Optional Protocol is ratified only by Albania, Bosnia Herzegovina, Maldives, and Turkey. The level of accession to the human rights treaties as well as the also show how Muslim-majority states differ among each other. Albania, Azerbaijan Bosnia-Herzegovina, Burkina Faso, Mali, Niger, Nigeria, Tunisia, and Turkey differ from the rest of the group with a higher level of engagement. However, it should be also noted that it is difficult to conclude that such pattern is specific to Muslim states. Number of state parties to the ICCPR is 173 while it is 116 for the Optional Protocol to the ICCPR. This gap is wider for the ICESR and Optional Protocol to the ICESR with number of state parties of 171 and 26 respectively. The gap is small only in Europe.

The invalidating reservations placed on these legal instruments is another indication of the level of genuine engagement at varying degrees among states and treaties, which can help us to question if the Muslim-majority states accept the regime norms due to their moral appropriateness. Non-recognition of some fundamental rights through such reservations is less common among Muslim-majority states than their accession level to optional protocols regulating monitoring mechanisms. For instance, it is only Bahrain, Maldives, Mauritania, and Qatar placing reservations on certain as shown in Table 4 and it is only Algeria, Kuwait, Pakistan and Qatar which placed reservations on the ICESCR. However, CEDAW and CRC differ from other international treaties with more invalidating reservations. 16 Muslim-majority states[228] placed significant reservations on CEDAW with a reference either to Islamic Sharia or the national Constitutions.[229] In other words, although, Muslim majority states desire to be within the UN-centered regimes by ratifying these treaties, they also show little capacity to uphold the rights defined in these instruments.

The structure created under the OIC is affirmative of such a capacity to uphold human rights and leads to questions on the genuine intention of participating in the

[228] These include Algeria, Bahrain, Bangladesh, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mauritania, Oman, Pakistan, Saudi Arabia and Syria.

[229] UN CEDAW, *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women*, Retrieved from: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement (Accessed on 09.12.2021)

international regime. Although, all Muslim-majority states except Saudi Arabia, proclaimed their acceptance for the UDHR and remain engaged with the UN-centered international regimes, they have also contradictorily agreed on the CDHR which significantly deviates from the international standards set with UN human rights treaties. Creation of such an alternative scheme diluting the human rights concept rather than transforming them it into a more effective cross-regional regime can be interpreted that Muslim-majority states, particularly the ones leading the strategic direction of the OIC, had some disagreements with the UDHR on particular subjects and were not ready to concede on state sovereignty. In other words, Muslim-majority states were not fully persuaded by the moral appropriateness of all the rights defined, which hindered their full-fledged participation in the UN-centered human rights regimes.

Assessed against the institutionalist perspective which suggest that existence of strong institutional frameworks may force states to accept regime norms and comply with them, it is again difficult to conclude that UN-centered human rights regimes were attributed such a role by all Muslim-majority states. UN-centered regime with its evolution from weak promotional regime to strong promotional regime, has been very effective in setting international standards with a very inclusive way. However, with respect to the compliance and effectivity to enforce its participants to comply with regime norms, the impact created by the regime is in question with continuous criticisms rooted in structural shortcomings of the UN monitoring bodies. Although, there are some empirical studies demonstrating that states ratifying human rights treaties have better human rights record than the other which do not sign[230], the assessment of impact is not easy to be measured globally and the level of progress made in each country and attribution of such success to the UN-centered human rights regime require a case-by-case study. However, it is also possible to draw some broad conclusions based on the engagement level of Muslim-majority states with the UN-centered human rights regime. As shown in the Section 2.1., significant number of Muslim-majority states opted not to ratify some treaties and refrained from recognizing some regime norms. For instance, the ICCPR-OP2 on abolition of death penalty dated adopted in 1989 has been ratified by only 10 Muslim-majority states in

[230] Hathaway, O.A. (1991), Do Human Rights Treaties Make a Difference, *The Yale Law Journal*, 111, p. 1991

more than thirty years. When it comes to the compliance with the ratified treaties, performance of the Muslim-majority states can be also easily put in question with repetitive violations.

The republican liberal theory, on the other hand, suggest a pre-existing convergence of domestic practices and institutions for states to form a regime based on such self-imposed principles. This theory is built on the European regime with strong enforcement mechanism rather than devised as an explanation of the UN-centered regime. As highlighted many times, Muslim-majority states differ greatly in terms of administrative systems, economic, social, and cultural dynamics as well as political power and independency. Therefore, it is not possible to spotlight a joint attitude drawn based on convergence of national structures to explain their participation in either UN-centered or OIC-based human rights regimes.

Looking from the realist perspective and to start with the role of a hegemon power forcing others to join in UN-centered human rights regime throughout the second half of the 20th century, the United States and the United Kingdom can be the only hegemonic powers to look to assess such a role and impact. Although, Netherlands and some Scandinavian countries like Denmark, Norway and Sweden incorporated human rights into their foreign policy agenda, such policies started to emerge beginning from 1970s and were not in a global nature to coerce all Muslim-majority states to encourage joining human rights regimes and promote them.[231]

The early engagement of Muslim-majority states in UN-centered human rights regime is difficult to be attributed to only one factor of imposition from a hegemonic power. Although the process of drafting the UDHR was led by Eleanor Roosevelt, it was a very inclusive process. Later on, the US has incorporated human rights, particularly the civil and political rights, into its foreign policy and utilized some means to promote human rights across the world, yet it is difficult to identify a direct link between Muslim-majority states decision to participate in the regime due to various reasons. US foreign policy on human rights have followed mostly a bilateral nature where the tradeoff between US national interests and promotion of human rights were weighed

[231] Baehr, P.R. (200), Trials and errors: The Netherlands and human rights. In Forstyhe, D.P. (ed), *Human Rights and Comparative Foreign Policy: Foundations of Peace* (pp.49-86), Tokyo; New York : United Nations University Press, pp.49-50

case by case with accompanied inconsistent approaches attached to such calculation for different countries. To briefly illustrate some well-known examples, Saudi Arabia, which stand out as one of the leading states among Muslim-majority states to challenge human rights on the grounds of cultural and religious attributes, remained a long-term ally of the US with little, if none, utilization of means to enforce human rights such as sanctions in the form of cutting some trade deals. Same conclusion can be drawn for Pakistan which remains a strong ally for the US in the region in its war on terrorism. The UK's early human rights concerns in the international politics concentrated more on civil and political rights and mostly affected by the UK's interests on its former colonies.[232] Beginning from 1960's, UK acknowledged a role at both multilateral and bilateral level to promote human rights and led many initiatives within UN. However, similar inconsistencies in utilization of effective bilateral means to enforce its stand in multilateral platforms are quite visible too. To draw some examples from today, while it is vocal when it comes to violations in Syria or Sudan, it is silent on violations in Bahrain, Yemen, Saudi Arabia, Turkey or in Egypt. [233] To sum, in the case of UN-centered human rights regime, both US and UK were strong in advocacy of political and civil rights; however, they were not very assertive in coercing other states in joining the regime or in imposition of regime norms on participating states, but opted for bilateral policy means where they can differentiate their policies one-by-one per country. It is possible to observe some influence on certain states allying with the US or UK to act in a shared vision by accessing to treaties; however, it is not possible to mention about a hegemon explicitly coercing others to join the regime.

While UN-centered regime is a very complex and inclusive structure to trace the determinant influence of a single hegemon, it is possible to detect the instrumental role assigned to human rights in the OIC. Remembering the reasons paving the way for formation of the IPHRC, which were the reaction to the security discourse adopted after 9/11 and the war on terror with rising Islamophobia, the motive to increase the

[232] Morphet, S. (2000), British foreign policy and human rights: From low to high politics. In Forstyhe, D.P. *Human Rights and Comparative Foreign Policy: Foundations of Peace* (pp. 87-114), New York : United Nations University Press, pp.88-94

[233] Ward, B. (2020, September 29), *The Value of a UK Strategy on Human Rights*, The Foreign Policy Centre, Retrived from:
https://fpc.org.uk/the-value-of-a-uk-strategy-on-human-rights/
(Accessed on 10.12.2021)

credibility of the organization, political rise of more "moderate" countries like Turkey, Morocco and Malaysia against traditionally dominant states such as Iran and Saudi Arabia, and the efforts of Secretary General Ekmeledding İhsanoglu who is portrayed as a progressive technocrat, one can argue that human rights have become an agenda item for the OIC to increase its credibility by benefitting from the legitimate discourse of human rights. The inconsistent advocacy of human rights within the OIC by focusing only Muslim minority rights in other states and totally neglecting similar cases in member states is also affirmation of the instrumental role assigned to human rights rather than genuine acknowledgement it.

Looking from a cost and benefit perspective with national interest calculations, the tangible consequences of the engagement of Muslim-majority states with the UN-centered human rights regimes may suggest that the cost of participation was not very high for them particularly in the early stages of the standard setting efforts under the UN. The UDHR was not an international treaty holding its signatories tangibly responsible for the commitments made in the UDHR. The political atmosphere at the time of drafting was also heavily influenced by the sufferings inflicted by the World War II, sanctifying the necessity of defining human rights and upholding them. In other words, UN-centered human rights regime was a weak declaratory regime with a very low cost of participation and non-participation had a higher cost in terms of states' legitimacy in international politics. This was the case for most of the Muslim-majority states as well. Muslim-majority states' maintaining the engagement but not fully endorsing or complying with the monitoring mechanisms and initiatives of forming a cross-regional regime with significant deviations from the UDHR suggest that the early calculations of the cost of joining the UN-centered human rights regime was not high compared to legitimacy gains derived from human rights.

The treatment of human rights as a foreign policy instrument is clearer on the OIC side. The Implementation Plan of the OIC Program of Action – 2025 sets the below goals in human rights:

> 2.15.1 Enhance OIC's engagement on promotion and protection of universal human rights as well as effectively portraying the OIC's vision of moderation, tolerance
> 2.15.2 Safeguard the rights, dignity and religious and cultural identity of Muslim Communities and Minorities in non-Member States, in accordance with the principles of the Charter

2.15.3 Make efforts that OIC Member States take a united stand at the UN General Assembly, Human Rights
2.15.4 Update and refined in consultation with OIC Member States, the existing OIC human rights instruments vis-à-vis universal human rights instruments, as and where required.
2.15.5 Strengthen the global discourse on Right to Development and its effective implementation.
2.15.6 Promote knowledge and share experience about best practices in good governance, justice, due process, equality of opportunity, accountability, and rule of law.[234]

The priorities set in 2.15.1, 2.15.2, 2.15.3 and 2.15.14 derive from the political priorities of the OIC to promote its image in the international community and to speak up for the Muslim minorities in non-member states.

Assessing from a constructive perspective which attributes human rights a constitutive role in state sovereignty, a conclusion can be reached again by assessing the level of genuine engagement. All Muslim majority states except Saudi Arabia demonstrated a clear approval for the UDHR. As excerpted in this study in Section 2.1, even the ones stating their disagreements with the definitions of particular rights expressed support for the UDHR and underlines the necessity to uphold them. These addresses may also imply a perception of superiority and moral appropriateness of the human rights; however, continuous violations of basic rights and maintenance of a limited engagement is indicating that many Muslim-majority states are not inherently persuaded by the moral appropriateness but did not either raise an objection. In other words, the legitimacy gains for the most outweighed the cost of participation.

As regards to alternative explanations resting on existing isomorphic domestic structures and emergence of global actors based on such isomorphism or the 5-phase spiral model facilitating the nationalization of international norms, it is difficult to mention about an advanced global consensus on human rights because of converged domestic practices, and this explanation is mostly applied to explain the emergence of strong regional regimes. Existence of such a consensus would be expected to lead to a stronger enforcement mechanism whereas the UN-center regime has emerged due to gross atrocities and remained a promotional regime for more than seventy years. As

[234] OIC, OIC 2025 Program of Action Implementation Plan (2016-2025), p.44-50 Retrived from: https://www.oic-oci.org/upload/documents/POA/en/The%20OIC%20-2025%20POA%20Implementation%20Plan%202016-2025%20%28E%29.pdf (Accessed on 13.12.2021)

this explanation mostly relates to regional regimes, the OIC-based mechanism can be a better spot to investigate. The unsophisticated nature of the OIC-based human rights instruments and mechanisms is evidence for lack of such convergence of domestic practices among Muslim-majority states and any political consensus to build an enforcement regime.[235] For these reasons, non-existence of a regime similar to European one can be attributed to lack of such convergence of domestic structures from a constructivist perspective or human rights not being aligned with the national interests of this group of states from a realist perspective. As argued previously, human rights discourse has been adopted by the OIC with realpolitik concerns rather than a need arising from domestic realities in the Muslim-majority states.

It is noted earlier that it would be delusive to treat Muslim-majority states as a single entity, but this study still focuses on Muslim-majority states as a group to have a broad assessment. However, it is still noteworthy to differentiate Albania, Azerbaijan, Bosnia Herzegovina and Turkey particularly from other Muslim-majority states with their participation in the European regime in the absence of a regional regime encompassing all Muslim-majority states. While Albania, Azerbaijan and Bosnia Herzegovina joined the COE in 1995, 2002 and 2001 respectively, Turkey, on the other hand, was one of the founding member-states. Turkey' foreign policy calculations including its republican vision of being European, its rivalry with Greece and siding with West during the Cold War as well as its domestic secularization policy aligned with its Europeanization policy were the motives behind Turkey's participation in European regimes, including both security and human rights. Given the fact that its relations with the COE was never stable or linearly progressive but mostly characterized by strained relations as well as its poor record in the ECtHR, it would be difficult to conclude that Turkey has been in the European regime as its domestic dynamics were already aligned with the regime norms. In other words, the cost of being part of the European regime was much costlier than many other European states which had already nationalized most the regime norms, yet national interest outweighed that cost at the time of making the decision to join.

All in all, Muslim-majority states have engaged with the UN-centered human rights regime and took a light step to bring the human rights into the agenda of the OIC and

[235] Peterseen, M.J., 2013, p.6.

a few key conclusions can be drawn from the assessment made against theoretical explanations. First, the analysis of their participation motives along with how they behave in these regimes are dismissive of idealist explanations. Although, Muslim-majority states have shown a stronger ownership for the rights overlapping with Islamic or their cultural norms, significant disagreements lasted since the adoption of the UDHR.

Second, considering that UN-centered regime remains a promotional regime despite the progressive steps taken to strengthen its monitoring mechanisms and most of the Muslim majority states are not governed by liberal democratic means, the institutionalist explanation is not likely to yield an outcome unless these states go through strong democratization processes.

Third, Muslim-majority states within the OIC lack a convergence of domestic structures favoring human rights which can also bring them together under a cross-regional regime. Human rights' getting a place on the agenda of the OIC is mostly fed by realpolitik reasons and human rights priorities are shaped around the political priorities of the credibility of the OIC and Muslim-minority rights. The influence of former OIC Secretary General Ekmeleddin İhsanoğlu to bring international norms onto the agenda of the Organization was also vital; however, discontinuity of such leadership to transform organizational norms around human rights led to stalemate in progress of the initiative he led.

Fourth, Muslim-majority states took part in UN-centered human rights regime despite some occasional but significant objection they have raised against the definitions of certain rights and expressed their support for the adoption of the UDHR and necessity to uphold rights. In other words, they were convinced by the legitimacy power of human rights and cost of participating in the UN-centered regime was not high.

Lastly and in light of the previous conclusions, the argument that national interest calculations embedded with human rights legitimacy role were determinant for many Muslim-majority states to participate in human rights regime requires case-by-case study on the motives of each state; however, the behavioral pattern of the Muslim-majority states within the UN-centered regime and the structure created under the OIC

hint that many Muslim-majority states became party of the UN-centered human rights regime based on national interest conclusions.

4.2. Assessment of the Chance of Progress of Human Rights in Muslim Majority States

Given the facts reached until now which suggest that Muslim-majority states are politically opted to remain part of the UN-centered regime due to both legitimacy power of human rights and political calculations but they lack moral motives to fully comply with the regime norms and UN-centered regime enforcement capabilities are weak, a few conditions can pave the way for the progress of human rights either through a meaningful engagement with existing UN-centered human rights regime or transformation of the OIC-based mechanisms into an effective cross-regional regime.

Holding on realist premises, the change of progress lies on the potential of a hegemon to utilize its influential power in favor of human rights promotion either within the UN-centered regime, within the OIC or bilaterally over the leading Muslim-majority states to create a positive spill-over effect on others or the alignment of state interests with human rights. From a liberal perspective and given the absence of moral appropriateness sense attached to human rights, progress is possible with the human rights becoming a demanded function by domestic structures. For such demand to lead to a cross-regional regime, it is also essential such progress to be observed in all potential participating state. Lastly and linked to liberal viewpoint, human rights can progress in Muslim-majority states through 5-phase spiral model suggested by Risse-Sikkink on the condition of substantial link between domestic and transnational actors to trigger international pressure on norm-violating states.

To begin with realist posits, many states include the respect and promotion for human rights in their foreign policies such as the US, UK, Netherlands and some other North-European countries; however, any conflict between a material interest or promotion of human rights are likely to be resolved in favor of the material interests. This has been tested many times over the US foreign policy. One of the most recent example of a case with trade-off between human rights promotion and material interests is the murder of Jamal Kashoggi in 2018. Although the US Office of the Director of National Intelligence report reached a conclusion that "*Saudi Arabia's Crown Prince*

Muhammad bin Salman approved an operation in Istanbul, Turkey to capture or kill Saudi journalist Jamal Khashoggi"[236], the US opted to "recalibrate the relations" rather than rupturing it and did not introduce any direct sanction against the Crown Prince but placed both treasury and travel sanctions on some other official who were part of the murder.[237] Similarly, although the US had frozen an arms sale deal with Saudi Arabia in February 2021 with concerns of the humanitarian cost of Yemen War, yet, retreated later in November 2021 by approving another deal.[238] In addition to the trade-off between human rights and other national priorities, the visible inconsistent policies of the great powers even risk the genuine efforts of human rights promotion due to evaded credibility and may lead to blowbacks as well.

Looking for a hegemon power among Muslim-majority states to take lead in promotion of human rights, these could be Turkey, Iran, Saudi Arabia, or the coalition of some other states in terms of capacity to exert influence. However, none of these states have an active human rights promotion agenda or a claim to lead human rights promotion among Muslim-majority states. Although, the formation of the IPHRC within OIC was a result of the influence of more moderate states such as Turkey, Malaysia, Morocco, and Indonesia[239], this influence within the OIC has faded away in recent years. The OIC has been standstill in strengthening institutional framework of human rights since the end of Ekmeleddin Ihsanoglu's general secretariat role. As mentioned in the previous section, human rights were not granted a dominant role in the strategic direction of the OIC, and it has been assigned only a half-page space in the OIC 2025 Program of Action with very broad terms on commitment to promote human rights in

[236] The US Office of Director of National Intelligence (2021, February 11), *Assessing the Saudi Government's Role in the Killing of Jamal Khashoggi,* Retrieved from: (https://www.dni.gov/files/ODNI/documents/assessments/Assessment-Saudi-Gov-Role-in-JK-Death-20210226v2.pdf
(Accessed on 13.12.2021)

[237] Stewart. P., (2021, February 26), U.S. imposes sanctions, visa bans on Saudis for journalist Khashoggi's killing, *Reuters*, Retrieved from: https://www.reuters.com/article/us-usa-saudi-khashoggi-sanctions-idUSKBN2AQ2QI
(Accessed on 13.12.2021)

[238] Stone. M. & Zengerle. P., Saudi gets first major arms deal under Biden with air-to-air missiles, *Reuters*, Retrieved from: https://www.reuters.com/world/middle-east/us-state-dept-okays-650-million-potential-air-to-air-missile-deal-saudi-arabia-2021-11-04/
(Accessed on 13.12.2021.

[239] Kayaoglu, 2013, p.13

line with “Islamic culture and values”. Implementation Plan, as cited in Section 2.3 also indicate the limited instrumental role attached to human rights and absence of an intention of institutional strengthening.

Another enabling factor could be alignment of the self-interest of these states with promotion of human rights. Albania, Azerbaijan, Bosnia Herzegovina, and Turkey are examples of how such alignment led these states to join the European regime. However, traces of similar political converge among other Muslim-majority states is predominantly missing.

From the liberal perspective and given the limited impact of the UN-centered regime and dilutive effect of current legal framework of the OIC human rights instruments and state-centric structure of it, the chance of progress can be only possible with the transformation of domestic structures. The effect of the UN-centered human rights regime is limited by the national buy-in level in absence of an enforcement mechanism embedded in the regime. In other words, what can create difference in terms of progress is significantly linked to existence or emerge of human rights as a demanded function by the domestic structures. Existence of such domestic dynamics in addition to existence of transnational actors is also vital for the transformation within the 5-phase spiral model suggested by Risse-Sikkink so that both transnational and domestic actors can compel states to concede and comply with regime norms, particularly within the UN-centered human rights regime where all Muslim-majority states have already participated in. Transnational actors exist. UN-centered human rights regime and leading human rights organizations such as Amnesty International and Human Rights Watch are capable to exert influence on human rights violations and advocate for rights to be recognized. Under these circumstances, the emergence of strong domestic actors and states’ capacity to tackle with the pressure matter.

Since the emergence of such domestic structures are partially related to the level of freedom of expression and association, the current status of the Muslim-majority states against this two is vital to trigger the formation of such a by triggering relations between domestic and transnational actors. According to the Human Freedom Index measured by the CATO Institute, only seven Muslim-majority states rank above the global average in freedom of expression indexes, and these are Bosnia Herzegovina, Albania, Lebanon, Senegal, Nigeria, Tunisia and Mali, while the rest are below

average.[240] What is concerning is that leading Muslim-majority states rank bottom at the list with scores less than five out of ten. A similar outlook is visible in the freedom of association. Only Bosnia Herzegovina, Albania, Lebanon, Senegal, Pakistan, Guinea, Nigeria, Tunisia, Mali and Burkina Faso rank over the global average, while the leading states rank bottom of the list.[241]

However, low scores do not necessarily dismiss the potential of forming a transformative link between domestic and transnational actors but signals the necessity first to make progress on these areas. Once domestic political environment turns more enabling for the freedom of expression and association, it can create strong base of domestic actors.

[240] Akyol, M. (2020), Freedom in the Muslim World, *Economic Development Bulletin Center for the Global Liberty and Prosperity,* 33, p.6

[241] Ibid., p.7

CHAPTER 5

CONCLUSION

After more than seventy years since the adoption of the UDHR and the process of institutionalism of it with both codification and introduction of monitoring mechanisms, human rights continue to be violated across the World. The comprehensive support it received in 1948 in the UN General Assembly has not been maintained evenly in all the corners of the world. While such early steps of institutionalism have paved the way for formation of strong enforcement regime in Europe, it did not follow a similar course of progress in other regions like Asia or Middle East.

Among some other others, Muslim-majority states are very salient with their quite poor records. A simplistic approach, adopted popularly, points out to Islam as the major barrier before the progress of human rights. However, there is neither a uniform intellectual or religious power rendering Islamic decisions addressing every legal matter of today nor a uniform Muslim world with similar government types with similar administrative roles attached to Islam. Muslim-majority states are no different than any other state acting in an environment formed by complex social, economic, cultural and political developments. Religion, Islam, is also a factor shaping these at varying degrees in each state. Therefore, the human rights outlook of the Muslim-majority states cannot be assumed to be absolute. Dismissing such a simplistic conclusion this study explored the prospects of human rights progress in Muslim-majority states through either meaningful engagement with existing human rights regimes or creation of an effective cross-regional regime.

The evolutionary process of human rights is not dismissive of such progress to take place in different contexts either. The mainstream history of human rights takes the origin of it back to natural law and demonstrates how it has progressed in an accumulative pattern, particularly with the onset of the Enlightenment movement in

Europe. It presents a very long history full of retreats, challenges, and blowbacks but with an accumulated progress built on the ideological appropriateness of human rights. An alternative approach, on the other hand, indicates how the progress has accelerated particularly after 1970's with the failure of alternative ideologies. While the first emphasize on its moral appropriateness, the second highlight the social, political and economic developments with an emphasis on the discontinuous and fragmentary process of evolution. One conclusion both agrees is that the progress has not been a linear and a static one. On the contrary, it has been shaped significantly by external factors leading to retreats or accelerations. Regardless of its ideological roots, human rights have been a global concept. In other words, being a precept mostly embraced by the Western ideology does not make it a notion only applicable in the West.

As its evolution is not one one-direction, current status of it with is not fixed and finite. Many multifaceted debates including growing list of rights, increasing global security concerns, dilemma of public, and universalism versus relativism debate are also ongoing. Universalism and relativism debate was of particular importance of this study as both arguments on both extremes are limitative of human rights progress through influencing states' engagement with human rights, and not sufficiently expressive of the human rights developments on the ground. Universalists with an absolute claim that some fundamental rights are universal and apply to every human being is challenged by relativists who claim that every individual should be perceived within his/her own culture. While such debate on paper would contribute to the human rights literature, unfortunately, such sharp argumentation between two extremes is making this debate a refuge for right-abusive states. On the other hand, the explanations in-between these two extremes are offering a more constructive ground. Deconstructing the concept of universality as conceptual and functional universality, a more accurate and practical reflection of the debate is presented. Conceptual arguments are ongoing with only a few rights with palpable definitions, it is difficult to fight for the universality of all rights. On the other side, an agreement on the functionality of the human rights is more probable since human rights stand as the only option of protecting human dignity. Given this functionality role to human rights and consensus reached on UDHR and necessity to uphold these to avoid mass violations as happened before and during the World War II, such midpoint is more reconciling than extreme universalism and relativism debate.

Dismissing both static natures attributed to human rights evolution and extreme argumentation between universalism and relativism and human rights regimes can come to life and progress in any context as long as various social, political and cultural enabling factors are concurrently realized. Yet, likelihood of emergence of a regime may vary and be very low and type of the regime can also differ. Different enabling factors have led to formation of human rights regimes till the date, including the UN-centered human rights regime as well as some other regional regimes with different characteristics in terms of the nature of regime norms and the authority vested with the decision-making rights to comply with regime norms. Regimes can take form of a weak declaratory regime if the regime rules are like guidelines and if it lacks mechanisms to force the compliance. They can also be strong enforcement regimes if the regime rules are well-established international norms, and the regime has mechanisms vested with strong enforcement authority. Various types can emerge in-between. The regime type, the motive of participation and the effectiveness of the regime are not independent from each other either.

Assessing how these regimes come to existence, different schools of international relations discipline put forward various explanations. Realists and neorealist treat human rights as any other policy instruments and argue that states, as the main decision makers, may agree on forming a regime if their national interest calculations favor it or an optimum outcome is only reached through cooperation. Such calculation may also lead some hegemon states to coerce other to join the regime as well. Idealists and liberals emphasize the moral appropriateness of the human rights, existence of strong institutional frameworks pushing states to be party of these regimes, and convergence of domestic democratic practices which create like-minded states and eventually lead to formation of a regime. Constructivists draw from both realist and liberal premises yet emphasize the constitutive role of human rights in world system and within societies, and present two alternative explanations. On one hand, they argue human rights is an integral constitutive component of the world system which promotes human rights through some global actors. On the other hand, some highlights the domestic construction processes where human rights turn into regime norms and shape states as well.

Liberal arguments refer to the success of the codification of international norms and the European regime to justify their arguments. Wide-scale adoption of international norms and emergence of liberal institutions are success indicators of liberals. European regime also is an exemplary success which liberals draw examples on how existence of domestic liberal practices paved the way for formation of it. Realists draw on legitimacy effect of human rights compared to cost associated with participating in such regime to explain how UN-centered regime has developed. In other words, each point of view can draw examples to justify their argument given wide variety of regime types and tens of states acting with different motives. However, none rules out the potential of formation of regimes in any context or to trigger behavioral changes on states.

To assess the chance of progress of human rights in Muslim-majority states in light of the theoretical foundation presented, Muslim-majority states' engagement with human rights regimes have been explored. In contrary to the popular belief, Muslim majority states do not absolutely stay outside of the human rights regimes. All is engaged with the UN-centered human rights regimes to varying extents, human rights have become an agenda item within the OIC, and some Muslim-majority states are already participant in some advanced regimes. However, such engagement is not an indication of genuine commitment of complying with regime norms or promoting them.

To briefly summarize their engagements, they have taken part in the drafting process of the UDHR. Although, some leading Muslim-majority states expressed disagreements on formulation of some certain rights, all except for Saudi Arabia extended support to promotion of human rights and approved the text. Such similar attitude has been shown in accession to ensuing human rights treaties. However, such engagement does not signify a genuine and comprehension acceptance of the human rights formulations and commitment to promote and protect them. A visible pattern in accession to human rights treaties is that a significant number of Muslim-majority states refrained from ratifying the ones introducing monitoring mechanisms through establishment of commissions and communication mechanisms.

Such similar approach, if not that common, can be noticed by the invalidating reservations placed by some Muslim-majority states on human rights treaties. Although this is resorted by a few states, the nature of the reservations is mostly against

the spirit of the texts and very restrictively formulated with phrases of "in compliance of Islamic Sharia", "Islamic values" or "in compliance with the national law". Despite such regressive attitudes, Muslim-majority states continue to remain engaged with the UN-centered regime with quite active participation in monitoring practices as well. All has taken part in UPR processes and showed a high level of acceptance for the recommendations and established national human rights institutions. This does not necessarily indicate the ownership of human rights promotion motives due to bilateral nature of the monitoring systems and high level of politicization with numerous useless recommendations inflating the acceptance rate. In other words, Muslim-majority states are somehow engaged with the UN-centered human rights regime. However, both this regime's being a weak promotional regime with many structural shortcomings and Muslim-majority states' limited engagement hinder the effective use of it.

Muslim-majority states remained in the UN-centered regime, but the human rights have been brought to the agenda of the OIC in late 1980's and led to adoption of the CDHR in 1990. This was followed up by a convention of the rights of the child. However, both falls behind the standards that has already been set in UN instruments. The CDHR with its restrictive characteristics is more a manifestation of what human rights perception that OIC members own rather than a text of human rights. The institutional mechanisms to uphold human rights has not been devised effectively either. The IPHRC vested with only an advisory capacity has been dealing with only a limited range of issues such as Palestinian's and Kashmir Muslims' rights and Islamophobia. Rights violations within the member states are not covered by the IPHRC due to the state-centric nature of the Organization. The weakness of the legal framework and lack of effective monitoring mechanisms, the OIC regime is not more than a weak declaratory regime. Although, the CDHR is ongoing a revision process, the importance attached to the strengthening the institutional capacity in human rights is very minimum and the chance of the OIC to directly contribute to human rights promotion in its member states is very low if none.

The picture reveals that Muslim-majority states remain engaged with human rights regimes and do not adopt an absolute rejectionist standpoint, yet their engagement is also very limited to uphold regime principles in their respective countries. Although, country-by-country studies may reveal more accurate conclusions per each, a broad

one can be drawn from this analysis too. Muslim majority states did not engage with the human rights regimes as a result of self-persuasion on the moral appropriateness of human rights. This engagement can be attributed to a single hegemon's coercion either due to absence of such an effective and consistent hegemonic influence encouraging states to join multilateral institutions.

Muslim-majority states were convinced by the legitimacy role embedded in human rights. Despite objections on the formulations of rights, they highlight the overlap between their cultures and human rights and remain engaged with the regime. Existence of such engagement can enable the progress of human rights with the concurrence of other factors that realists and constructivist put forward. This engagement can form the basis of transformative relations between transnational and domestic actors. What is missing in this function is the strong domestic actors and low leverage on states. Many leading Muslim-majority states hold power to push back any pressure thanks to interest-based relations they established with great power which can also influence the capability of transnational actors.

To conclude, the level of engagement of Muslim-majority states is limited with the UN-centered regime which is also weak in terms of enforcing regime norms. OIC regime is not more than an ineffective realpolitik instrument for the time being with no prospect of change in near future. Therefore, progress of human rights in Muslim-majority states can be realized with the concurrence of enabling factors that constructivist and realist argue. First, the alignment of human rights with the national interests of the Muslim-majority states or increased hegemonic influence is likely to yield results. However, the likelihood of such transformation of the state policies in favor of human rights is quite low in light of the declining importance attached to human rights in international politics. Second, empowerment of domestic actor and structures to demand human rights and trigger a pressure on states with an effective spiral link between domestic and transnational actor as suggested by Risse-Sikkink may also transformative for the promotion of human rights. However, given the limited freedom of expression and right to association in many Muslim-majority states, domestic structures may not be as strong as it is required by the model and states can be still powerful to pressure them. Strengthening this link and influencing the state power will be influential in the promotion of human rights in Muslim-majority states.

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APPENDICES

A. TURKISH SUMMARY / TÜRKÇE ÖZET

İki yüzyılı aşkın gelişim tarihine sahip insan hakları, günümüzde uzayan hak listesi, kamu güvenliği ve birey hakları arasında denge, evrensellik ve görecilik gibi konular etrafında halen tartışılmakta ve dünyanın farklı bölgelerinde farklı seviyelerde benimsenmektedir. Bir yanda gelişmiş bölgesel rejimler ortaya çıkmışken, diğer yanda dünya temel insan haklarının ihlallerine sahne olmaktadır. Müslüman-çoğunluk ülkeler de genel olarak insan hakları konusunda oldukça zayıf karneler vermektedir. Bu durum çoğu zaman basite indirgenmiş bir şekilde, İslam'ın insan hakları ile uyuşmazlığı varsayımıyla ile ilişkilendirilmektedir. Önde gelen Müslüman-çoğunluk ülkelerin insan hakları ihlallerini savunurken İslam dinine atıflarda bulunmaları da bu algıyı güçlendirmektedir.

Bu çalışma, Müslüman-çoğunluk ülkelerin zayıf insan hakları karnelerinin salt din ile ilişkilendirilmesi fikrine varsayımsal olarak karşı çıkmaktadır. Müslüman çoğunluk ülkeler, yönetim şekillerinde dine atfedilen siyasi rol ve toplumlarının sosyo-kültürel ve ekonomik özellikleri bakımından davranışları tek bir faktöre indirelemeycek şekilde birbirinden büyük farklılık göstermektedir. Öte yandan, Kuran ve Sünnet yorumlarından oluşan İslam Hukuku, günümüz yasal gereksinimlerine cevap verecek ve bütün Müslümanları bütüncül bir şekilde yönlendirebilecek dinamik bir fıkıh sisteminden mahrumdur. Bu nedenle, bu alanda yürütülen İslam ve insan haklarının uyumuna dair felsefik tartışma bir kenara bırakılarak bu çalışmada, insan hakları rejimlerinin ortaya çıkışı, Müslüman çoğunluk ülkelerin bu rejimlerle ilişkisi ve rejimlerle kurulan ilişki çerçevesinde bu ülkelerde insan hakları gelişim olasılığını değerlendirmektedir.

Bu çalışma, "Mevcut insan hakları rejimleri ile kurulabilecek anlamlı bir ilişki ya da gelişmiş alternatif bir rejim kurmak suretiyle, Müslüman-çoğunluk ülkelerde insan

haklarında ilerleme görülmesi olasıkları nedir?" sorusunu yanıtlamaya çalışmaktadır. Bu soruyu yanıtlamak amacıyla aşağıda sunulan üç alt soru sorulmuştur:

1. İnsan hakları gelişimi ve koruma rejimlerinin kuruluşu, Müslüm çoğunluk ülkelerin dışarıda kaldığı doğrusal bir süreç midir ya da kesintilere uğramış ve parça parça mı gelişim göstermiştir? Bu süreç sonunda insan hakları rejimleri nasıl oraya çıkmıştır?

2. Müslüman çoğunluk ülkeler, uluslararası insan hakları rejimlerinden tamamen kopuk mudur? Değilse, anlamlı ve gelişimi destekler nitelikte bir ilişki söz konusu mudur?

3. İnsan hakları rejimlerinin ortaya çıkışlarını farklı şekillerde açıklayan üç temel teorik görüş açısından değerlendirildiğinde, Müslüman çoğunluk ülkelerin mevcut insan hakları rejimleriyle anlamlı bir ilişki kurması ya da gelişmiş bir yeni rejim kurması yoluyla gelişim gösterme olasılığı nedir?

İlk soru aracılığıyla, insan hakları gelişiminin, insan hakları gelişim sürecinin Müslüman çoğunluk ülkeler dahil olmak üzere Batılı olmayan toplumların dahlinin olmadığı linear bir süreç olup olmadığı tartışılmış ve ayrıca insan hakların rejimlerinin ortaya çıkış nedenlerine dair liberal, realist ve yapısalcı önermelerin sunulduğu teorik bir zemin oluşturulmuştur. İkinci soruyla ise, Müslüman çoğunluk ülkerin mevcut insan hakları rejimleri ile ilişkisi incelenmiştir. Bu incelemede, Müslüman çoğunluk ülkelerin, Birleşmiş Milletler (BM) merkezli uluslararası rejim kapsamında temel insan hakları sözleşmelerine taraf olma ve BM bünyesinde denetim mekanizmalarına katılma eğilimleri, Avrupa ve Afrika rejimlerine katılımları ve son olarak da İslam İşbirliği Teşkilatı bünyesinde oluşturulan mekanizma ele alınmıştır. Son soru kapsamında ise, yapılan durum tespiti ışığında, ilk soru kapsamında sunulan teorik önermelerin Müslüman-çoğunluk ülkeler için geçerliliğine ilişkin bir değerlendirme yapılmış ve bu değerlendirme kapsamında insan hakları gelişimini tetikleyebilecek şartlar ortaya konulmuştur.

İnsan haklarının tarihsel ve ideojik gelişimi genellikle iki farklı açıdan incelenmektedir. Ana akım insan hakları tarihçileri, her ne kadar tarih öncesi topluluklarda kabul edilen hukuk metinlerinde ya da toplumsal kurallar ile günümüz insan hakları arasında benzerliklere atıflarda bulunsalar da, insan haklarının kökenini genellikle Doğal Hukuka dayandırmakta, sonrasında ise 17. yy'da Avrupa'da baş

gösteren Aydınlanma ile birlikte günümüz anlamındaki "hak" kavramının ortaya çıkışına ve 18. yy'dan itibaren Avrupa ve Amerika kıtalarında ortaya çıkan siyasi gelişmeler paralelinde hak kazanımlarına işaret etmektedirler. Ana akım tarihçilere göre; insan hakları 17.yy'dan itibaren dönem dönem gerilemeler ve tavizlere rağmen kümülatif bir şekilde gelişmiştir. Bir başka deyişle, zaman zaman edinilen kazanımlardan tavizler verilerek gerilemeler yaşanmış, zorluklar karşısında haklar öncelikle dar bir şekilde tanımlanmış ve hak tanımları zamanla gelişmiştir. Haklar, Aydınlamanın doğal bir sonucu olarak günümüz anlamları ile doğrudan ortaya çıkmamış, siyasi ve toplumsal gelişmelerin ışığında parçalı ancak kümülatif bir şekilde gelişmiştir.

Ana akım insan hakları tarihine alternatif bir bakış sunan Samuel Moyn ve Jan Eckel gibi modern tarihçiler ise, her ne kadar insan haklarının gelişiminde Doğal Hukuk zemini üzerine inşa edilen tarihi ve Orta Çağ sonrası Avrupa'da ortaya çıkan Aydınlanma hareketi ile ortaya çıkan entellektüel ve siyasi gelişmeleri reddetmese de, 20. yy ikinci yarısını şekillendiren siyasi gelişmelerin insan hakları tarihinde dönüştürücü bir rol oynadığını iddia etmektedirler. Buna göre, özellikle yeni Avrupa kimliği arayışı, Amerikan dış politikasında liberalleşme, kolonileşme sürecining sona ermesi gibi 1970'lerden itibaren uluslararası politikayı belirleyen siyasi gelişmeler, insan haklarını alternatif bir politika olarak ortaya çıkarmış ve insan hakları bu dönemde daha kapsamlı bir şekilde kabul görmüştür. Bir başka deyişle, insan haklarının köklerini her ne kadar geçmişte bulmak mümkünse de, dönüşümü 1970'lerden itibaren dünya politikasını şekillendiren siyasi gelişmeler sayesinde olmuştur.

Her ne kadar insan haklarının günümüz halini almasındaki tarihsel etkenleri farklı açılardan değerlendirseler de, her iki yaklaşımın da önerdiği temel sonuç benzerdir. İnsan hakları, Avrupa Aydınlanma Döneminin entellektüel düzlemde doğal bir sonucu olmayıp, siyasi ve toplumsal gelişmeler neticesinde gelişmiştir ve bu gelişme geri adımları, zorlukları da içeren parçalıklı bir yapıda kendini göstermiştir. Bundan hareketle, insan haklarını, Batıya özgü ideolojik bir kavram olarak yorumlamak yanlış olacaktır. İnsan hakları Batı coğrafyasında geliştiği gibi, benzer siyasi ve toplumsal gelişmeler ile birlikte dünyanın herhangi başka bir yerinde de gelişebilir.

Tarihsel sürecin ortaya koyduğu üzere, insan hakları, dünyanın her yerinde eşit bir şekilde kabul görüp, eşit bir kurumsal gelişme göstermemiştir. Avrupa'da etkin bir bölgesel rejimle birey hakları devlet egemenliğinin üzerinde korunurken, dünyanın diğer bölgelerinde ise temel insan hakları ihlallerini yaygın bir şekilde gözlemlemek mümkündür. Bu farklılığın nedenlerini daha iyi anlayabilmek için, rejim kavramı, rejim türleri ve insan hakları rejimlerinin ortaya çıkışını farklı şekillerde açıklayan realist, liberal ve yapısalcı teorilerin sunduğu önermeler incelenmiştir.

Rejim, literatürde genel kabul gören ve Krasner tarafından sunulan tanımına göre; katılımcı aktörlerin belirli bir uluslararası ilişkiler alanında beklentilerinin birbirine yakın olduğu açık ya da örtülü prensip, norm, kural ve karar alma süreçlerinin bütününü ifade eder. Rejimler, normların ilgili olduğu alanlara göre sınıflandılarabilir. Ancak, bu çalışmada, Jack Donnely tarafından geliştirilen rejim matriksi esas alınmıştır. Donnely, rejim türlerini, normların uluslararası kabul görürlüğü ve aktörlerin rejim kurallarına uyum konusunda karar alma serbestliği parametreleri üzerinden kategorize etmektedir. Örneğin, insan hakları normlarının uluslararası standartlarda belirlendiği ancak bu normlara uyum konusunda devletler üzerinde yetkinin kısıtlı olduğu BM merkezli insan hakları rejimi "güçlü geliştirici rejim" olarak sınıflandırılmaktadır. Öte yandan, Avrupa rejimi normların uluslararası boyutta olmasının yanında, devletleri bu normlara uyum konusunda güçlü supranasyonel bir mahkemeye sahip olması sebebiyle "güçlü uygulama rejimi" olarak sınıflandırılmaktadır. Rejim türleri, devletlerin rejime katılma kararlarını etkilyebilecek niteliktedir. Zayıf rejimlere katılım maliyeti devletler açısından düşükken, Avrupa rejimi gibi rejimlerde katılım maliyetinin devletin egemenlik haklarından vereceği taviz nedeniyle daha yüksek olduğu aşikardır.

Devletlerin kendi egemenlik haklarını kısıtlayıcı nitelikteki insan hakları rejimlerine katılmaları realistler, liberaller ve yapısalcılar tarafından farklı şekilde açıklanmaktadır. Realist bakış açısı altında farklı önermeler sunulmaktadır. Buna göre, devletler kendi çıkarlarını korumak amacıyla insan hakları rejimlerine dahil olmayı tercih edebilirler. Başka bir çıkar temelli açıklamaya göre, devletler, tek başlarına optimum Pareto sonucuna ulaşamadıkları durumlarda iş birliği yapmayı tercih edebilir. Bir başka realist göre, güçlü devletler kendi çıkarları çerçevesinde diğer devletleri belirli rejimlere dahil olmaya zorlayabilir. İnsan hakları özelinde

bakıldığında ise; devletler insan hakları rejimlerine yine fayda maliyet hesapları yaparak katılmak isteyebilirler. İnsan haklarının meşruiyet gücü, BM merkezli insan hakları rejimine katılım maliyetinden yüksek görülebilir. Özetle, realistlere göre insan hakları ve insan hakları rejimi devletin çıkarlarını korumak için başvurabileceği araçlardan birisidir. İnsan hakları rejimlerine katılım, devlet çıkarlarına hizmet ettiği sürece devletler bu rejimlere katılabilir ve diğer devletleri de güçleri oranında katılmaya zorlayabilir.

Liberal bakış açısı ise, devletlerin insan haklarının üstünlüğü konusunda ikna olmalarının rejimleri doğal olarak meydana getireceğini savunmaktadır. Diğer bir liberal yaklaşım ise, mevcut güçlü uluslararası liberal sistemin ve kurumların devletler üzerindeki etkisine dikkat çekmekte ve devletlerin böylesi bir sistem içerisinde kalma eğilimi göstereceğini iddia etmektedir. Bir başka alternatif liberal yaklaşım ise, liberal devletler arasında gözlemlenebilecek mevcut benzer yönetim yapılarının ve rejime konu normlara ilişkin benzer yaklaşımların önceden varlığına işaret etmektedir. Rejim kurallarının halihazırda o devlette gözetiliyor olması, bu devletin rejime katılmasını kolaylaştırıcı niteliktedir. Cumhuriyetçi bir değerlendirmeye göre ise, devletler iç politika hesaplamaları ile halkın talepleri, ülkenin demokratik kazanımlarının korunması gibi gerekçelerle insan hakları rejimlerine katılma eğilimi gösterirler.

Son olarak, yapısalcılar, devlet egemenliği kavramını insan haklarının dışında varolan bir kavram olarak görmemekte ve egemenlik ve insan hakları kavramlarının arasında tanımlayıcı bir bağ olduğuna işaret etmektedir. Rejimlerin oluşumunu da sistem ya da birey düzeyinde yapılan analizler ile açıklamaktadırlar. Sistem düzeyinde yapılan açıklamalara göre; küresel düzeyde genel kabul gören normlar bulunmaktadır ve bu normlara saygı da devlet egemenliğinin meşruiyetini etkilemektedir. Birey düzeyinde yapılan analizlere göre ise normlar toplumlar tarafından benimsenir ve zamanla devletler de bu normlara uygun davranışlar sergilemeye başlar. Bu ikisi arasında interaktif ve dönüştürü bir ilişki de mümkündür. İnsan hakları özelinde bakıldığında, Risse-Sikkink tarafında önerilen 5'li spiral modele göre, sistem düzeyinde bulunan aktörler ile yerelde bulunan aktörler arasında iletişim kurulması ile devletler üzerinde baskı kurulur ve devletler zamanla normlara uygun hareket etmeye başlar. Özetle, yapısalcılara göre, insan hakları sistem ya da yerel düzeyde meşruiyet unsuru olabilir ve iki düzey arasında kurulabilecek bir ilişki ile devletler rejim normlarını sahiplenir.

Teorik düzlemde sunulan argümanlar literatürde genellikle mevcut sistemlere dayandırılarak aktarılmaktadır. Haliyle, Müslüman-çoğunluk ülkeler özelinde bir açıklama bulmak zordur. Bu nedenle, Müslüman çoğunluk ülkelerin mevcut rejimlerle ilişkileri, BM-merkezli rejim, İslam İşbirliği Teşkilatı (İİT) rejimi ve Avrupa ile Afrika rejimlerinin bünyesinde Müslüman-çoğunluk ülkelerin katılım düzeyleri durum tespiti yapmak için incelenmiştir. BM merkezli rejim kapsamında, Müslüman-çoğunluk ülkelerin insan hakları yasal çerçevesinin temelini oluşturan on sekiz temel sözleşme/protokollerine katılımları, BM bünyesindeki insan hakları izleme mekanizmalarını dahilleri ve son olarak ulusal insan hakları kurumları kurmak suretiyle insan haklarını içselleştirme oranları ele alınmıştır.

Müslüman çoğunluk ülkeler, insan hakları metinlerininin oluşturulması sürecinin dışında kalmamıştır. 1947'da Elanor Roosevelt başkanlığında kurulan İnsan Hakları Evrensel Beyannamesi (İHEB) yazım komitesinde farklı milletlerden temsilciler olduğu gibi Müslüman-çoğunluk ülkeler arasından Mısır temsilcisi Omer Loutfi ve Lübnan temsilcisi Charles Malik de bulunmuştur. Müslüman-çoğunluk ülkeler, İHEB'in BM komite ve Genel Kurul tartışmalarında da tamamiyle pasif kalmamıştır. Suudi Arabistan, Mısır, Suriye gibi önde gelen ülkeler tarafından din özgürlüğü, evlilik yaşı, cinsiyet eşitliği gibi konularda itirazlar dile getirilmiş, değişiklik önergeleri sunulmuş olsa da metnin oylanmasında söz alan Müslüman-çoğunluk ülke temsilcileri, insan haklarının korunması gerekliliğine vurgu yapmış, itiraz ettikleri hususlar olsa da böylesi bir metnin önemi nedeniyle metnin oylanmasında olumlu oy kullanacaklarını ifade etmişlerdir ve metin Suudi Arabistan hariç diğer bütün Müslüman-çoğunluk ülkeler tarafından kabul edilmiştir.

İHEB'i takip eden diğer insan hakları sözleşmeleri de benzer şekilde toptancı bir şekilde reddedilmemiş ve farklı seviyelerde kabul görmüştür. Müslüman-çoğunluk ülkeler arasından Bosna Hersek bütün sözleşmeler ve ek protokolleri imzalamıştır. Bosna Hersek'i, toplam on altı sözleşmeye taraf olan Arnavutluk ve Türkiye takip etmiştir. En az sayıda anlaşmaya taraf olan Müslüman çoğunluk ülkeler ise; Brunei Darussalam (5), Malezya (5), BAE (6), Iran (6) ve Komor Adalarıdır(6). Kısmi ya da tamamen Şeriat uygulayan ülkelerde sözleşme kabul ortalaması ile dokuzdur.

Çocuk Hakları Sözleşmesi bütün Müslüman çoğunluk ülkeler tarafından imzalanarak en çok kabul gören sözleşme olmuştur. Bunu, "Her Türlü Irk Ayrımcılığının Ortadan

Kaldırılmasına Yönelik Uluslararası Sözleşme" ve "Çocuk Haklarina Dair Sözleşmeye Ek Çocuk Satışı, Fahişeliği ve Pornografisine İlişkin İhtiyari Protokol" izlemektedir. En az imzalanan sözleşmeler ise yalnızca 3 Müslüman çoğunluk ülke tarafından imzalanan "Ekonomik, Sosyal ve Kültürel Haklara İlişkin Uluslararası Sözleşmeye Ek İhtiyari Protokol" ile dört ülke tarafından imzalanan "Çocuk Haklarına Dair Sözleşmenin Başvuru Usulüne İlişkin İhtiyari Protokol" olmuştur. Her iki protokol de konularındaki ana sözleşmelerde belirlenen hakların korunmasına yönelik iletişim ve denetim mekanizmaları öngörmektedir.

Taraf olunan sözleşmelerin incelenmesinden, Müslüman çoğunluk ülkelerin önemli bir kısmının hakların genel tanımlarının yapıldığı sözleşmelere taraf olduklarını, ancak koruma ve gözetim mekanizmalarının kurulduğu ek protokollere yöenlik kabul seviyesinin ise daha düşük olduğu görülmektedir.

BM merkezli rejim içerisindeki denetleme mekanizmaları kapsamında ise Evrensel Periyodik İzleme (EPİ), özel usuller ve sözleşme temelli denetleme komitelerine katılım oranları incelenmiştir. Filistin hariç, diğer bütün Müslüman-çoğunluk ülkeler EPİ'de iki tur izlemeyi tamamlamışlar ve bu görüşmelere üs düzey hükümet yetkilerini göndermişlerdir. EPİ kapsamında devletlere iletilen tavsiyelerin kabul oranının incelenmesinden, önemli bir çoğunluğun tavsiye kabul oranının yüzde 70'in üzerinde olduğu, yalnızca 8 ila 10 devletin kabul oranının yüzde 70'in altında olduğu görülmektedir. Ancak EPİ'nin emsal değerlendirmesi olması ve verilen tavsiyelerin önemli bir kısmının herhangi bir somut aksiyon içermekten ziyade mevcut iyi uygulamalın sürdürülmesine ilişkin teşvikler olması sebebiyle, yüksek kabul oranının insan haklarının korunmasına yönelik içten bir motivasyonu kanıtlamadığını söylemek mümkündür.

İkili ilişkilerin etkisinin bulunmadığı ve daha teknik bir değendirme olan özel usullere katılım, EPİ'ye göre daha sınırlıdır. Teknik uzmanlar tarafından, ilgili ülkeler ile iletişim ve ziyaretlerle bilgi toplanılarak ülke ya da tematik raporların hazırlandığı özel usullere katılım, devletlerin bu sürece katılımlarını teyit ettikleri ve teknik uzmanların görevlerini tanıdıkları davet mektupları üzerinden gerçekleşmektedir. 26 Müslüman-çoğunluk ülke özel usul denetim yetkisini tanımış, 23'ü ise tanımamıştır. Bu oran, EPİ katılım oranına göre daha düşüktür.

Benzer şekilde, sözleşmeye dayalı denetim mekanizmalarına katılım oranı da EPİ'ye oranla oldukça düşüktür. Daha önce belirtildiği üzere, Müslüman-çoğunluk ülkeler arasında denetim mekanizması öngören protokollerin imzalanma oranı oldukça düşük kalmaktadır. Toplam sayısı 10 olan sözleşmeye dayalı denetleme mekanizmasına 8 ya da daha üzeri sayıda katılım gösteren ülke sayısı 7'dir.

Son olarak, kurulan ulusal insan hakları kurumlarına bakıldığında 40 Müslüman-çoğunluk ülkede ulusal kurumlar kurulmuş ve bunlardan 31'i A ya da B seviyesinde akredite edilmiştir. Ancak, bu kurumlar oldukça yakın tarihlerde kurulmuş bve akreditasyonları görev alanları, kurumsal yapıları ve bütçe bilgileri üzerinden verilmiştir. Performanslarına dair henüz bir bilgi bulunmamaktadır.

Özetle, Müslüman-çoğunluk ülkeler BM merkezli rejimi toptan inkar eden ve kendilerini dışarıda tutan bir tutum sergilememişlerdir. Egemenlik maliyetinin düşük olduğu alanlarda daha yüksek seviyede kabul göstermişlerdir. Ancak tarafsız denetim mekanizmalarından kaçınma oranı da bir kaç istisna ülke hariç oldukça yaygındır. Bir başka deyişle, BM sisteminin dışında kalmayı göze almamışlar, ancak rejime tam olarak da entegre olmamışlardır.

Diğer rejimlerden Avrupa rejimine bakıldığında Türkiye, Azerbaycan, Bosna Hersek ve Arnavutluk bu rejime dahil olduğu görülmektedir. Türkiye, açılan dava sayısı, verilen ihlal kararı ve uygulamayı bekleyen mahkeme sayısı kararları bakımından rejim içerisinde en kötü performans sergilen ülkelerden biridir. Azerbaycan, her ne kadar dava ve ihlal sayısı Türkiye kadar yüksek olmasa da rejime uyumu konusunda sıkça eleştiriler alan ülkelerden biridir. Bu iki ülkenin Avrupa rejimine dahil olmasının ardında bilinen siyasi nedenler sayesinde, her ikisi de rejim içersinde kalmıştır; ancak, tam anlamıyla rejim normlarına uyum gösterememektedir. Arnavutluk ve Bosna Hersek ise rejim normlarına uyum konusunda diğer Avrupa ülkeleri ortalamlarına benzer bir performans göstermektedir.

Her ne kadar Avrupa rejimi kadar güçlü olmasa da, bünyesinde supranasyonel bir mahkeme bulunduran Afrika rejimine katılım gösteren Müslüman-çoğunluk ülkeler de bulunmaktadır. Bunlar, Tunus, Gambiya, Burkina Faso ve Mali'dir. Mahkeme yetkisini tanıyan bir diğer Müslüman-çoğunluk ülke olan Tanzanya, aleyhine açılan çok sayıda dava neticesinde tanıma bildigesini geri çekmiştir.

Müslüman-çoğunluk ülkelerin tamamının BM merkezli rejime ve diğer bazılarının farklı bölgesel rejimlere dahil olmasına rağmen, insan hakları İİT gündeminde de yer almıştır. İİT bünyesinde öncelikle kısıtlı sayıda ve nitelikte alternatif insan hakları metinleri kabul edilmiş ve sonrasında 2011 yılında insan haklarının üye ülkelerde geliştirilmesini teşvik edecek "Bağımsız İnsan Hakları Daimi Komisyonu (IPCHR)" kurulmuştur. İİT bünyesinde kabulen alternatif insan hakları metinleri olan "Kahire İnsan Hakları Beyannamesi" ve "İslamda Çocuk Hakları Sözleşmesi"nin incelenmesi, bu sözleşmelerin İHEB ve BM Çocuk Hakları Sözleşmesinde belirlenen hakların bir kısmını "Şeriat ile uyumlu olduğu takdirde", "taraf ülkelerdeki hakim aile yapısına uygun şekilde" gibi ibarelerle ile kısıtladığı görülmektedir. Bir başka deyişle, İİT bünyesinde kabul edilen sözleşmeler, bir çok hakkı uluslararası versionlara kıyasla daha kısıtlı şekilde tanımlamaktadır. Öte yandan bu iki metinin kabulünden sonra, İİT bünyesinde farklı alanlarda insan hakları entstrümanları oluşturulmamıştır. Dolayısıyla, İİT insan hakları alanında kapsamlı ve net bir yasal çerçeve sunmaktan uzaktır.

Kahire İnsan Hakları Sözleşmesinin 1990 yılında kabulünden yirmi bir yıl sonra kurulan IPCHR da BM'deki müadillerine kıyasla oldukça zayıf bir mekanizmadır. Danışman yetkisi ile kurulan Komisyon, coğrafi rotasyon usülü ile üye devletlerce seçilen 18 üyeden oluşmaktadır. Komisyon raporları tavsiye niteliği taşımaktadır. Mevcut üye profillerininin incelenmesinden görüleceği üzere, üyelerin önemli bir kısmı, seçildikleri ülkelerde hükümet görevlisi olarak çalışmışlardır. İnsan hakları alanında teknik bir geçmişe sahip üye sayısı açık profiller arasında yalnızca üçtür. Komisyon, yılda iki kez olağan olarak toplanmaktadır. Yazım tarihi itibariyle, on kez toplanan Komisyon, Keşmir ve Rohingya Müslüman azınlıkların hak ihlalleri, artan İslamofobi, Filistin meselesi, çocuk hakları, göçmen hakları gibi konularda görüş bildirmiş ve üye ülkelerden birinin ihlalci olduğu herhangi bir konuyu görüşmemiştir.

İİT bünyesinde Organizasyonun uluslararası itibarının güçlendirilmesi amacıyla ve daha ılımlı ülkelerin öncülüğünde oluşturulan insan hakları rejimi, gelişmiş bir yasal çerçeve sunulmaması ve yapısal eksiklere sahip zayıf izleme mekanizmaları ile zayıf tespit edici bir rejim olarak sınıflardırılabilir. İİT 2025 Aksiyon Programı, insan haklarına yalnızca yarım sayfa ayırarak bu rejimin güçlendirilmesine yönelik ciddi bir kurumsal yatırımın olmadığını da göstermektedir.

Ortaya konulan durum tespiti ışığında, liberal önermelerin Müslüman-çoğunluk ülkeler için mevcut durum itibariyle geçerli olmadığı göstermektedir. Müslüman-çoğunluk ülkelerin insan haklarının üstünlüğü konusunda ikna oldukları çıkarımını yapmak mümkün değildir. Gerek BM merkezli rejim içerisinde bir çoğu tarafından takınılan kaçınmacı tutum gerekse İİT bünyesinde oluşturulan insan haklarını kazanımlarını sulandırıcı nitelikteki çalışmalar, bu ülkelerin önemli bir kısmının insan haklarının üstünlüğü fikrine sahip çıkmadığını göstermektedir. Öte yandan, güçlü uluşlararası kurumların rejim normlarını uyumu da beraberinde getireceği yaklaşımından değerlendirildiğinde, BM merkezli rejimin bir uygulama rejimi olmayışı, norm ihlal eden devletlerin herhangi ciddi bir maliyet yüklenmemesi gibi sebeplerle, BM'nin Müslüman-çoğunluk ülkeleri normlara uyum konusundaki etkisi kısıtlıdır. Nihai olarak, Müslüman-çoğunluk ülkelerin birbirlerinden çok farklı sosyal, ekonomik ve siyasi yapılarının bulunması da bu ülkeleri ortak bir rejim düzleminde bir araya getirme ihtimalini oldukça düşürmektedir. Bu bağlamda, Müslüman çoğunluk ülkelerde insan haklarının liberal önermeler ışığında gelişme olasılığı, bir çoğunun liberal devlet anlayışından uzak olması sebebiyle pek mümkün görünmemektedir.

Realist bakış açısından bakıldığında, bir kaç realist önermenin, Müslüman-çoğunluk ülkelerin insan hakları rejimlerine dahil olması bakımından doğrulandığı görülebilir. Bu ülkelerin BM merkezli rejimi toptan reddetmemesi, ancak rejim normlarını tam olarak da sahiplenmemesi, rejimin meşruiyet gücünün katılım maliyetinden yüksek olması ile açıklanabilir. Güçlü devletlerin diğer devletleri kendi çıkar hesapları gereği rejime katılmaya zorlayabileceği önermesi ise bir çok Müslüman-çoğunluk ülke için tek başına geçerli sebep değildir. Böylesi bir gündeme sahip olabilecek iki hegemon güç olan ABD ve İngiltere, insan haklarını genel olarak ikili ilişkilerinde gündeme getirmeyi tercih etmiş ve rejimin aktif savunuculuğu rolünü oynamamışlardır. İnsan haklarının dış politika araçlarından birisi olduğu yönündeki önerme, İİT bünyesinde insan haklarına atfedilen anlam ile doğrulanmaktadır. İİT, insan haklarını örgütün itibarını güçlendirecek bir alan olarak nitelendirmektedir. Benzer şekilde, İİT'nin insan hakları çalışmaları da öncelikli gündem maddelerinden olan Müslüman azınlıklara odaklanmaktadır. Realist çerçeveden bakıldığında, Müslüman çoğunluk ülkelerde insan haklarının gelişimini teşvik edecek hegemon bir güçten bahsetmek zordur. İnsan hakları gelişimini dış politika amaçlarından biri olarak kabul eden

ülkelerden ABD veya İngiltere'nin bu politikası diğer çıkarlarından bağımsız hareket etmemektedir. Bu ülkelerin mevcut siyasal ve toplumsal yapıları düşünüldüğünde, insan haklarının ülke çıkarları ile birebir örtüşmesi olasılığı da düşüktür.

Son olarak, Müslüman çoğunluk ülkelerin önemli bir kısmı, insan haklarının meşruiyet gücüne halklarının taleplerini neticesinde değil uluslararararası politika dengeleri sayesinde ikna olmuş ve bbu rejimlere dahil olmayı tercih etmişlerdir. Haliyle, yapısalcı bir açıdan bakıldığında, insan haklarının bu toplumlarda norma dönüştüğünü iddia etmek zordur. Ancak, yapılan durum tespiti Risse-Sikkink tarafından önerilen 5'li spiral modelin işlevselliğini dışlamamaktadır. Bu modelin, işleyip işlemeyeceği ülkeler bazında bir yapılacak bir değerlendirme ile mümkün olabilir.

Sonuç olarak; zayıf karnelerine rağmen Müslüman-çoğunluk ülkeler bütüncül bir yaklaşımla insan haklarını reddetmemekte ve insan haklarının meşruiyet kazandırıcı gücü ile birlikte BM merkezli rejim içerisinde kalmaya devam etmektedir. Her ne kadar bu ve diğer çalışılan rejimlerle ilişkileri rejim normlarına tam uyum olarak ifade edilemese de, kendilerini bu rejimlerden soyutlamamaktadır. Çalışma, Müslüman-çoğunluk ülkelerde mevcut halleriyle liberal önermeler çerçevesinde gelişim olması olasılığını oldukça düşük olarak değerlendirmektedir. Öte yandan, realist ve yapısalcı önermeler çerçevesinde gelişim daha olasıdır. Ancak, realist önermelerin bu ülkelerde geçerli olması için gerekli şartların oluşması mevcut politik dengeler kapsamında da yine düşük olasılığa sahiptir ve her bir ülke için farklı dinamiklerle gerçekleşebilir. Nihai olarak çalışma, uluslararası ve yerel aktörler arasında dönüştürü bir ilişkinin kurulması yoluyla devletlerin insan hakların normlarına uyumlu hale gelmesine yönelik önermeyi dışlamamaktadır. Ancak, böylesi bir dönüşüm, Müslüman-çoğunluk ülkelerin tamamı için birlikte değil, her ülkenin kendi dinamikleri ile şekillenecektir.

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