



Hacettepe University Graduate School of Social Sciences

Department of International Relations

**A POST-STRUCTURALIST APPROACH TO THE UN BASED
INTERNATIONAL REFUGEE REGIME**

Burçin Nilay Kalınbayrak

Master's Thesis

Ankara, 2013

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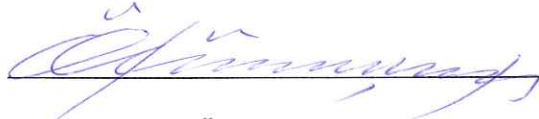
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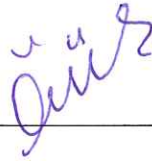
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KABUL VE ONAY

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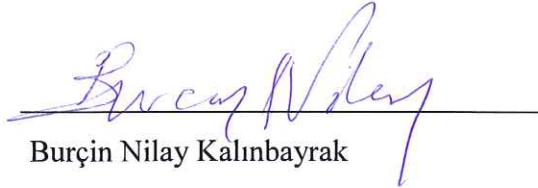
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ÖZET

KALINBAYRAK, Burçin, Nilay. *Birleşmiş Milletler Temelinde Uluslararası Mülteci Rejimine Post-Yapısalcı Bir Yaklaşım*, Yüksek Lisans Tezi, Ankara, 2013.

Bu tezin amacı, 1951 Mültecilerin Hukuki Statüsüne İlişkin Cenevre Sözleşmesini, 1967 New York Protokolünü ve Birleşmiş Milletler Mülteciler Yüksek Komiserliğini (BMMYK) temel alarak Birleşmiş Milletler çerçevesinde gelişen uluslararası mülteci rejimini post-yapısalcı bir perspektiften incelemektir.

Post-yapısalcılığın çalışmanın ana teorik yaklaşımı olarak seçilmesinin sebebi, devletin Uluslararası İlişkilerin en önemli aktörü olarak kabul edilmesini sorgulayan ve içerisi-dışarısı gibi zıt kavramlar arasındaki hiyerarşik yapılanmaları araştıran eleştirel doğasıdır. Bu açıdan bakıldığında çalışmanın odak noktası, sınırlar çerçevesinde içerisi ve dışarısı arasındaki farkı vurgulayarak güvenlik odaklı bir söylem yaratan devletin uluslararası mülteci rejimini şekillendiren rolüdür.

Bu bağlamda çalışma üç bölümden oluşmaktadır. Birinci bölümde, Birleşmiş Milletlerin mültecileri korumaya yönelik tarihine ve Cenevre Sözleşmesi ile New York Protokolünün önemli maddelerine değinilmektedir. İkinci bölümde, post-yapısalcılığın temel çıkarımları, Jaques Derrida'nın yapı sökümü modeli ve Michel Foucault'nun biopower ve soy kütüğü çözümlemesi çerçevesinde açıklanmaktadır. Üçüncü bölümde uluslararası mülteci hukuku, post-yapısalcı bir yaklaşımla ele alınmaktadır. Bunun için öncelikle Cenevre sözleşmesi eleştirel bir şekilde tekrar okunmakta ve bazı tartışmalı kavramlar değerlendirilmektedir. Daha sonra, özellikle Batılı devletlerin değişik söylemlerinin mülteci rejimini nasıl etkilediğini örneklemek için Soğuk Savaş ve 11 Eylül sonrası olmak üzere iki farklı dönem incelenmektedir.

Anahtar Sözcükler: Mülteci, Devlet, Post-yapısalcılık, Söylem, Farklılık, Güvenlik, Soğuk Savaş, 11 Eylül.

ABSTRACT

KALINBAYRAK, Burçin, Nilay. *A Post-Structuralist Approach to the UN Based International Refugee Regime*, Master's Thesis, Ankara, 2013.

The aim of this thesis is to analyze the United Nations (UN) based international refugee regime by focusing on the 1951 Convention and 1967 Protocol relating to the Status of Refugees and the implementations of the United Nations High Commission for Refugees (UNHCR) from a post-structuralist perspective.

The reason why post-structuralism is chosen as the main theoretical approach is its critical nature that questions how the state is accepted as the main actor of the International Relations, and that investigates the hierarchical structures of binary oppositions like inside and outside. From this point of view, the study indicates the role of the state that shapes the international refugee regime with a security-based discourse by highlighting the differences between the inside and outside of the borders.

In this sense, the study consists of three chapters. The first chapter presents a brief history of the UN based refugee protection, and points out the main provisions of the Convention and the Protocol relating the Status of Refugees. The second chapter remarks the main arguments of post-structuralism by focusing on Jacques Derrida's method of deconstruction and Michel Foucault's genealogical analysis and biopower. The last chapter evaluates the international refugee regime within the post-structuralist framework by rereading the Convention with a critical approach to discuss some disputable concepts. Then, the study investigates on two periods, the Cold War and the September 11, to exemplify how varying discourses of states affected international refugee regime.

Key Words: Refugee, State, Post-structuralism, Discourse, Difference, Security, Cold War, September 11.

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ABBREVIATIONS

EU	European Union
OPEC	Organization of the Petroleum Exporting Countries
IDPs	Internally Displaced Persons
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNRRA	United Nations Relief and Rehabilitation Agency
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WMD	Weapons of Mass Destruction

INTRODUCTION

Refugees represent an important issue of considerable interest to international relations. But, the issue has generally been undermined by mainstream theories of International Relations Theory. Rather than accepting refugee movements as an issue needed to be considered at international level, they have mostly been included to the domestic affairs of states. Because, state has commonly been accepted as the main actor in the international relations with the right to decide who should be inside the borders and who should remain outside. Therefore, the attempts to develop an international refugee regime have mainly been under the shadow of individual states.

States that refugees arrive have different attitudes towards refugees which are generally shaped by security conceptions. Refugees are rarely welcomed and their journeys do not always please the country they arrived for many reasons. For instance, the country that these people are escaping might suffer from an inter-state or intra-state conflict. The country harboring these people might not want to be a part of the situation that may create a conflict between all the neighboring states even may turn into an international problem. In a kind of a situation refugees might become the source of the conflict itself. Moreover, the host country may not have enough place or money to protect these people. Settlement of refugees may be costly for a country. All aside, host countries may simply define and consider those people as threats for their societies, so they may take precautions to prevent them to enter the country.

Despite all of these possible reasons of attitudes against refugees, their movement cannot be controlled simply by preventing their entrance the country, by closing borders or by sending them to a third country. The basic need to survive makes them always find other ways to cross borders. The situation of the people crossing borders for safety concerns is a never ending case due to ongoing conflicts and wars in the world. Hence, the issue has never been a problem of a single state, but the international community.

Since the First World War, there have been major steps of the United Nations (UN) to provide an international protection for refugees. Many institutions were established for

specific events, such as the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) or High Commissioner for Refugees from Germany. The most comprehensive establishment for refugees, the United Nations High Commissioner for Refugees (UNHCR), came into existence in 1949, and the Convention relating to the Status of Refugees was signed in 1951. The Convention basically presents the definition, rights and responsibilities of refugees. The refugee definition is one of the most disputable concepts of the Convention and it was changed by the New York Protocol in 1967 mainly by focusing on the limitations that the Convention presented. These were attempts to find a way to solve the refugee issue at an international level and the states were expected to adhere to the Convention. The states, especially the Western powers, however, used the Convention according to their interest and the evolution of the international refugee regime has been affected from different perceptions and attitudes of states against refugees.

In this sense, this thesis aims to understand the nature of the international refugee regime based on the Convention and the Protocol relating the Status of Refugees and the implementations of UNHCR through a post-structuralist approach. In order to do that, the thesis is divided into three chapters. Accordingly, the first chapter explains basic historical steps of the international refugee regime and basic provisions of the Convention and the Protocol relating the Status of Refugees. The first part of the chapter presents a chronological progression of the initial institutions before the foundation of UNHCR. The attempts towards an international refugee regime after the two world wars and the Cold War are briefly explained. The second part of the chapter focuses on the main provisions of the Convention and the Protocol by underlining the definition of refugee, and by scrutinizing the mutual rights and responsibilities of the refugees and the Contracting States. The first chapter, in this direction, draws the basic historical and textual understanding of the UN based international refugee regime.

The second chapter points out the main arguments of post-structuralism and its relation to International Relations Theory. The reason why post-structuralism is chosen as the main theoretical approach is its critical nature. Post-structuralism questions all universal norms, stable beliefs, meanings and truths. International relations, which is generally

defined with its Western based, state-centric, power-oriented nature, in this connection, is exposed to the criticism of post-structuralism. As post-structuralism is an extensive approach, in an attempt to remain within the boundaries of the subject, the chapter focuses on two important post-structuralists: Jacques Derrida and Michel Foucault. First part of the chapter explains Jacques Derrida's method of deconstruction in order to understand the hierarchical structure of binary oppositions like East/West, inside/outside or self/other. Second part of the chapter takes Michel Foucault's biopower and genealogical analysis in order to understand the power and knowledge relations.

This hierarchical structure of binary opposition and control mechanisms paves the way for investigating the role of the state in the refugee issue. Since states use their power to draw a line between inside and outside by highlighting the differences. In this regard, the thesis indicates the evolution of the state and investigates the issue of sovereignty. The thesis tries to adjust genealogical perspective to see the power relations behind the initial steps of the evolution of the state that leads to today's nation states within capitalist modes of economy to ease the conditions in any part of the world to promote the production capacities. By this way, rather than taking the state as a non-arguable concept as the mainstream theories of international relations does, the study takes state as a research subject to be discussed in its historical foundation and evolution. In this context, the study focuses on how the state becomes capable of creating its own discourse through the power and knowledge relations by highlighting differences which caused refugees to be perceived as outsiders that threatens the security of the inside.

The last chapter presents the evaluation of the international refugee regime by a post-structuralist approach provided in the previous chapter. First part of the chapter rereads the Convention with a critical approach by focusing on essentially the definition and rights of the refugees. The chapter mainly underlines some disputable concepts like "well founded fear", "persecution" "being outside of the country" and "being avail of the protection of home country." By highlighting these concepts the part investigates who benefits from the provisions of the Convention most: Refugees or states?

The second part focuses on two important periods, the Cold War and the September 11, to see various attitudes of individual states against refugees. The Cold War and the September 11 were crucial cornerstones in the evolution of refugee regime with different discourses. During the Cold War, the international refugee regime was used as an instrument of the superpower rivalry. The Convention was interpreted by the West to eliminate the differences to welcome the ones who particularly escape from the communist regime. In this sense, the first part of the chapter indicates some major refugee crisis to exemplify the distinct attitudes of the West against refugees through specific events: the Hungarian Revolution, the Algerian refugee crisis, Cuban refugees and Vietnamese boat people. The chapter continues with the changing discourses of United States after September 11 which changed not only the security policy of the United States, but also the perception of refugees around the world. After the September 11, the regime was interpreted to put forward the differences to condemn the ones who particularly come from the potential terrorist states or axis of evil. Mainly Iraqi and Afghan refugees are examined because they were directly affected after September 11 by the intervention of the United States.

In conclusion, the main argument of this thesis is to analyze the nature of international refugee regime based on the 1951 Convention and the 1967 Protocol relating the Status of Refugees, and the implementations of the UNHCR, which has been influenced by primarily Western powers. By presenting the hierarchical structure of binary oppositions and power relations behind the historical evolution of the international refugee regime, post-structuralism helps to see that state attitudes, perceptions and discourses are effective in the regulations and implementations about refugees.

CHAPTER 1

EVOLUTION OF THE UN BASED INTERNATIONAL REFUGEE REGIME

This chapter aims to provide a brief chronological history of the UN based international refugee regime in order to understand how the attitudes against refugees evolved. In this sense, the chapter first, indicates basic institutions, especially UNHCR, founded by the UN for the protection of refugees after the two great wars. Chapter continues with the explanation of the main articles of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Essentially, the refugee definition, the rights and responsibilities of refugees and Contracting States are examined.

1.1. BRIEF HISTORY OF THE UN REFUGEE PROTECTION

The two great wars were the major cornerstones that directed first attempts to regulate an international refugee regime. The war affected many part of the world, mainly Europe. On the one hand, there were people without identities across the borders trying to find themselves a place in the remnants of collapsed empires; on the other hand there were countries realizing the importance of the borders which were closed against those refugees. According to Gill Loescher (1994), without identification or protection, those people wandering outside their home countries were not welcomed by the countries of destination and generally regarded as threats against regional security. Naturally, policies were shaped with protectionist attempts which eventually resulted in more refugee flows (Loescher, 1994, p. 353).

The situation after the First World War led to the initial practices that expected states to act multilaterally in order to answer the refugee problem (Loescher, 1994, p. 353). Fridtjof Nansen was assigned by the League of Nations as the High Commissioner for Refugees in 1921. Under the leadership of Nansen there were sincere implementations to help refugees. Within this context, Nansen Passports were provided for refugees to solve problems about identification (Çelebi, 2011, p. 20). In those years, for Russian

refugees, High Commissioner on behalf of the League in connection with the problems of Russian Refugees in Europe was established. Also, assistance was served for the population exchange between Turks and Greeks. Besides the help for the people remained homeless with identification problems due to the collapse of major empires, there began to emerge new kind of refugee flows due to rising authoritarian regimes in Europe, particularly Germany and Italy. In 1933 a special High Commissioner for Refugees coming out of Germany was appointed to help those people fleeing from Nazi Regime (Zolberg, Suhrke, & Aguayo, 1989, p. 20).

In this sense, attempts after the First World War focused on the refugees of collapsed empires like Russian, Ottoman and Austria-Hungarian empires; refugees without national identities or protection due to newly emerging states; and refugees of rising authoritarian regimes. Moreover, all these political situations resulted in more serious consequences after the great depression which created another dimension of migration involving people who want to migrate for economic reasons. Hence, it became more difficult to define and distinguish migrants and refugees who need emergent political assistance. Therefore, it can be said that the international refugee regime in these years were limited, depending on temporary budgets without long-term planning (Loescher, 2001, p. 24). Despite the fact that the refugee issue was getting serious, states had no official international regulations or commitments to solve this situation, they generally decided individually based on protectionist policies and there were limited help without international consent (Zolberg, Suhrke, & Aguayo, 1989, p. 20).

With the Second World War, increasing severity of the movements of people across the borders required more efficient regulations. Thence, the United Nations Relief and Rehabilitation Agency (UNRRA) was established in 1943. UNRRA was for helping the restoration of war-torn Europe. Although it was promising an advance planning and more comprehensive scope, it remained on an ad hoc basis unable to answer to long-term needs and open to be used as an instrument of Cold War (Zolberg, Suhrke, & Aguayo, 1989, p. 22). In 1946, another institution, the International Refugee Organization (IRO), was established with expectations to solve the refugee crisis erupted after the World War II and was expected to end its task in 1951 (Zolberg,

Suhrke, & Aguayo, 1989, p. 22). Although it was not effective enough to fulfill the expectations, IRO was closer to create a common sense of refugee assistance involving more specialized staff which eventually left its place to United Nations High Commissioner for Refugees (UNHCR) in 1949 which was also assumed to complete its mission in three years (Zolberg, Suhrke, & Aguayo, 1989, p. 23). The task, however, was not completed as expected since there was an increase in refugee flows every year. So, UNHCR become a worldwide organization which is still influential today in shaping and conducting regulations about settlement, repatriation, protection and rights of refugees under the umbrella of the 1951 Convention relating the Status of Refugees.

Until the adoption of the Convention, UNHCR has operated to solve newly erupted refugee flows due to the partition of India and the foundation of Israel in 1948. These incidents were important as they caused a huge non-European refugee flows aiming to arrive Europe which is a new issue for European states (Zolberg, Suhrke, & Aguayo, 1989, p. 23). One of the major establishments in this term was the establishment of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). This indicates that the United Nations was enhancing its capacity in a broader geography with special organizations for refugees. Still, UNHCR was the main body for refugees and found itself in a rush to answer different types of refugee movements at the same time in an environment where individual state decisions become prominent rather an international sense of refugee assistance. Nevertheless, Statute of the Office of the United Nations High Commissioner for Refugees was presented in 1950 and a step was taken to determine the conditions to be accepted as a refugee and prepared the basis of the Geneva Convention.

The Convention was accepted in Geneva in 1951 as the basic legal international regulation for the rights of refugees worldwide and it is still prevailing today. The Geneva Convention basically presents a definition of refugee and determines rights and responsibilities of refugees and of the states accepting them. According to the Geneva Convention, in order to define a person as a refugee, the conditions that made him/her seek for asylum must had been occurred in Europe before 1951. These limitations have

been removed with the 1967 New York Protocol and people from any region gained the right to seek from asylum.

The implementation of 1951 Geneva Convention and 1967 New York Protocol is observed and provided by UNHCR. In order to protect refugees, their settlement to a safe place is crucial. After asylum seekers are defined as refugees, UNHCR helps them to be settled and begin their new lives. If there is no chance for refugees to turn their own countries voluntarily, they are settled in the country they get the asylum or in a third country. When they settled to a country or returned voluntarily, UNHCR helps them to accommodate. UNHCR also helps internally displaced persons (IDPs) and stateless people even if they are not covered by the 1951 Convention. Since its establishment, UNHCR has been helping refugees and asylum seekers by trying to ease the conditions to become a refugee. In this direction, UNHCR seeks for cooperation with states, expects them to be reasonable in accepting refugees and especially encourage them to consider the principle of non-refoulement.

During the Cold War, there occurred major refugee flows due to various severe incidents as the Hungarian revolution, the process of decolonization, Vietnam War, Russian invasion of Afghanistan and so forth. All of the incidents in the Cold War indicated a change in the profile of the refugees as well as the change in the reasons that create refugee flows. Newly erupting states, proxy wars and civil wars created new refugees who were mostly from non-European populations seeking for asylum in European states which was a novel situation for Europe. These refugees were generally welcomed if they were coming from communist states. For why, the United States and its allies used refugees as a policy tool to continue anti-communist propaganda. End of the Cold war was another major moment in the evolution of the international refugee regime, since with the collapse of the Soviet Union, there began political instabilities, economic crisis and civil wars in newly emerging states that caused more refugee flows.

While the effects of the Cold war were continuing even after a decade, the refugee regime was tested again with the September 11 attacks. The policy of the United States was shaped by the war on terror within the perspective of “axis of evil” as if any person

from certain regions, generally from the Middle East, is suspects of terror. Thus, border controls became more rigid, policies against refugees become discriminatory, and gaining refugee status become more difficult.

Given that brief history of the UN based foundation of the refugee regime after the two world wars, it can be seen there are important attempts to find solution for the ongoing problems of refugees and to develop an international refuge regime. These attempts, however, were limited because of individual implementations of sovereign states. The Cold War and the September 11 are important moments in the evolution of the refugee regime, therefore the paper will point out them comprehensively later. Before that, the Geneva Convention and the New York Protocol as the major international document for the rights of refugees and accepting states will be analyzed.

1.2. MAIN PROVISIONS OF THE CONVENTION AND THE PROTOCOL RELATING TO THE STATUS OF REFUGEES

1.2.1. Main Provisions of the Convention relating to the Status of Refugees

The Convention Relating to the Status of Refugees is an international regulation that defines people fleeing from their country and seeking international protection due to political reasons and determines basic rights, responsibilities and implementations related to the refugee status. The Convention also provides regulations about the rights and responsibilities of the states accepting refugees. Hence, the Convention frames the rights and mutual responsibilities of refugees and host countries.

The Convention, which is also called The Geneva Convention, was accepted in 1951 in Geneva and entered into force in 1954. Before the Geneva Convention, there was an uncertainty about the distinction between them and regular migrants and refugees due to economic or social conditions which was creating confusion and affecting the implementations. In this sense, the Geneva Convention was designed to ease the lacks in protection of refugees by indicating the definition of a refugee. Accordingly, before being defined as a refugee, anyone who escaped from the country of origin and entered into a host country whether with legal or illegal ways are accepted as asylum seekers as

long as they are applied to the refugee status. Asylum seekers are expected to prove their situations in accordance with the conditions of the Convention (Koser, 2007, p. 70). When people accepted as refugees, they have important rights as housing, working and having property related to their status. If their application does not meet the conditions, they are not accepted as refugee and cannot benefit from the refugee rights.

Before the achievement of final decision about the refugee status, since it is a long process to be accepted as a refugee (Castles & Miller, 2008, p. 145), these people are permitted to stay temporarily and they cannot be sent forcibly in respect to the principle of non-refoulement whether they are defined as refugees or not (UNCHR, 2010, p. 30). It is stated in the Convention that a refugee cannot be sent to its origin country forcefully as long as there is no threat to national security or public order (UNCHR, 2010, p. 30).

The Convention starts with consideration of the Universal Declaration of Human Rights and the Charter of the United Nations by marking the importance of non-discrimination expecting to enhance the area for refugees to enjoy their fundamental rights and freedoms (UNCHR, 2010, p. 13). The Convention continues with underlining the significance of international cooperation and burden sharing as refugee protection can be difficult morally and materially for any state (UNCHR, 2010, p. 13). By this way, the Convention affirms the core of the refugee issue at international level. It also indicates that refugees should not become a reason of conflict between states and international cooperation can prevent this possible outcome (UNCHR, 2010, p. 13).

In the light of these basic principles, the Convention consists of seven chapters and forty six articles involving definition of a refugee, rights of refugees and mutual responsibilities of refugees and signatory states. The definition of a refugee is one of the most striking points in the Convention. The Convention presents the refugee definition in the first Chapter of General Provisions, Article I:

As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection

of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNCHR, 2010, p. 14).

The basis of the definition is the “well founded fear” in which the one who applied to refugee status must prove the grounds of this fear (UNCHR, 2010, p. 14). As long as this fear has reliable evidence, the one can access the refugee status. The importance of proving the reasons of fear is repeated in the same article indicating also the situations of the people with two nationalities:

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national (UNCHR, 2010, p. 14).

Given that, in any circumstances the asylum seekers has to prove their reasons of fear according to the conditions determined in the Convention. The Convention states that this fear should cause the loss of protection of their countries because of certain political circumstances; otherwise, it is not possible to be accepted as a refugee. If the roots of this fear ends or the refugee voluntarily returns to his/her home country, the status granted to him/her will no longer be valid (UNCHR, 2010, p. 15). Refugee status becomes invalid if

He has *voluntarily* re-availed himself of the protection of the country of his nationality; or

Having lost his nationality, he has *voluntarily* re-acquired it; or

He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

He has *voluntarily* re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality (UNCHR, 2010, p. 15).

Accordingly, if the refugee regains citizenship of his/her home country or benefits from the protection of this country again or returns to this country to resettle, international protection is not available anymore (UNCHR, 2010, p. 15). Also, in a case of gaining new citizenship, the refugee status is no more valid since he/she starts to enjoy the rights of the citizenship rather than status of the refugee (UNCHR, 2010, p. 16). On the other hand, even if the conditions creating valid fear for refugees in the home country improved, the refugee shall continue to enjoy the refugee rights as long as the refugee maintain its valid reasons of fear that prevent him to return (UNCHR, 2010, p. 16).

There are some other situations that prevent people to enjoy the refugee rights provided by the Convention. One is that the Convention does not involve the people who enjoy the benefits provided by other agencies of the United Nations rather than the UNHCR (UNCHR, 2010, p. 16). However, if there is an uncertainty in the regulations or unresolved settlement albeit the decisions of the General Assembly or the assistance ended for any reason, the person shall enjoy the rights of the Convention (UNCHR, 2010, p. 16). The other one is that the ones that committed certain crimes against peace and humanity, a war crime or a serious non-political crime outside the country of asylum, or an act against the principles of the United Nations cannot benefit from the rights determined in the Convention (UNCHR, 2010, p. 16).

General provisions, in this way, define who the refugee is and who does not meet the conditions in the definition. After these basic determinations, the Convention continues with the mutual responsibilities and obligations of refugees and the Contracting States. First of all, refugees have to respect the laws, regulations and measures taken for public order of the country that they reside; and the Contracting States have to respect the religion, race or country of origin of the refugees without discrimination (UNCHR, 2010, pp. 16, 17). Contracting States should treat refugees in the same way as it does to aliens in the country which is also related to the issue of reciprocity (UNCHR, 2010, p. 17). According to the Convention, refugees who lived in any Contracting State three years will be exempted from reciprocity (UNCHR, 2010, p. 17). If there is not reciprocity, the rights and benefits granted to refugees without reciprocity should continue to be implemented when the Convention took effect in a certain Contracting

State (UNCHR, 2010, p. 18). If refugees do not meet the conditions needed for the exemption, Contracting States should provide opportunities for them to benefit from the exemption (UNCHR, 2010, p. 18).

The Convention also notes the exemption from exceptional measures which might be implemented to a national of a foreign State (UNCHR, 2010, p. 18). According to the Convention, the Contracting States cannot put forward these measures to refugees because of his nationality (UNCHR, 2010, p. 18). Even if any Contracting State is not able to perform in accordance with this article, they, still have to consider the exemptions in appropriate cases for refugees (UNCHR, 2010, p. 18). If there is a threat to national security, the Convention approves that Contracting States can take provisional measures against a particular person even if he/she is a refugee in cases of war or other significant situations (UNCHR, 2010, p. 18).

Chapter II of the Convention, Juridical Status, indicates basic rights of refugees involving personal status, properties, artistic rights, rights of association and right to access to courts. For the personal status, the Convention points out that the refugee is subject to the country of domicile and if there is no domicile, he/she is tied to the country of residence (UNCHR, 2010, p. 20). The Contracting States are expected to entitle refugees the right to acquire movable and immovable properties “as favorable as possible” or “in the same circumstances not less favorable” than the rights of aliens (UNCHR, 2010, p. 20). About the artistic rights and industrial property, the Convention notes that refugees will benefited from “the same” treatment as the nationals have, even he/she is in another territory of another Contracting States (UNCHR, 2010, pp. 20,21). When refugees join to non-profit making and non-political associations, the Contracting States should provide “the most favorable” way as it is possible for the aliens in “the same circumstances” (UNCHR, 2010, p. 21). Finally, the chapter includes the right to access to courts. Accordingly, refugees have free access to courts in any Contracting States and have the same right as the nationals to benefit from legal assistance and exemption from the caution (UNCHR, 2010, p. 21).

Chapter III, Gainful Employment, involves the rights of wage-earning employment, self-employment and liberal professions. The Contracting States are responsible to apply “the most favorable” way for the rights to work in a wage-earning job “in the same circumstances” as nationals (UNCHR, 2010, p. 22). Moreover, restrictive measures for protection of the national economy enforced to aliens are not subjected to refugees as long as they are leaving in a country of residence for three years or married to a national of that state or have children with nationality of that state (UNCHR, 2010, p. 22). Also, the Convention projects the Contracting States to have “sympathetic consideration” on equating the rights of refugees to work with those of nationals (UNCHR, 2010, p. 22). Refugees are also supported “as favorable as possible” to open their own companies in the fields of agriculture, industry, handicrafts and commerce, and to practice liberal professions (UNCHR, 2010, p. 23).

Chapter IV, Welfare, is related to the social conditions of refugees involving significant rights of public education, housing, public relief and social security. The chapter begins with the conditions of a rationing system and indicates that in such a circumstances refugees should be treated the same as the nationals (UNCHR, 2010, p. 24). Also, refugees benefit from the same rights as nationals about public relief and assistance in any Contracting State (UNCHR, 2010, pp. 24,25). Refugees, however, have the same rights with nationals only in elementary education. Education other than elementary level is provided for refugees “as favorable as possible”, and “not less favorable than” the aliens in any Contracting State (UNCHR, 2010, p. 24).

Refugees benefit from labor legislation equally with the nationals as long as these are parallel with the laws and regulations such as remuneration, work hours, holidays with pay, job training and so forth (UNCHR, 2010, p. 25). However, there are some restrictions about social security regulations due to the arrangements of present and future rights and there might be national regulations about the assistance paid with public funds to those who are not able to cover the conditions for pension (UNCHR, 2010, p. 25). For the death of a refugee due to work accidents, the Convention protects the compensation rights of the relatives who are outside the country of residence of the refugee (UNCHR, 2010, p. 25). Agreements between Contracting States about social

security rights that only nationals will benefit should enhance to the refugees as well (UNCHR, 2010, pp. 25,26). Additionally, agreements between contracting and non-Contracting States should be considered to comprehend refugees as far as possible (UNCHR, 2010, p. 26).

In Chapter V, Administrative Measures, first article embodies the administrative assistance provided for refugees including identity papers, travel documents, freedom of movement, fiscal charges, transfer of assets and so forth (UNCHR, 2010, p. 27). In situations when a refugee could not access help that is needed for him/her to exercise a right, the country of residence should provide help through international or national authorities (UNCHR, 2010, p. 27). In these circumstances, any necessary documents, which are naturally yielded to aliens by their own countries, should be provided for refugees by those authorities of the country of residence (UNCHR, 2010, p. 27). These documents should be accepted as official documents and considered valid as if they were given by their own authorities (UNCHR, 2010, p. 27). The fee, if it is necessary, must be reasonable and proportional with those of nationals (UNCHR, 2010, p. 27).

Chapter V remarks that refugees must be free to choose where they want to live in the country of residence and should enjoy the right to travel in that country's territory. If the refugee has no valid documents for travel, the Contracting States has to provide him/her identity papers (UNCHR, 2010, pp. 27, 28). If refugees want to travel outside their country of residence, that state should provide necessary documents (UNCHR, 2010, p. 28). Fiscal charges for the refugees in return for the documents must not be different or higher from those of nationals and legal provisions related to those fiscal charges bind refugees as well as nationals (UNCHR, 2010, p. 28). Refugees are free to carry their valuable properties from the residence country to another country that accepted them as refugee (UNCHR, 2010, pp. 28,29).

The convention also indicates the situation of refugees unlawfully arrive countries. In a kind of condition, the Contracting States cannot punish refugees due to their illegal arrival to their territories as long as the refugees applied to the competent authorities to prove their justified reason of escape (UNCHR, 2010, p. 29). Accordingly, "the

Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country” (UNCHR, 2010, p. 29). Expulsion of a refugee is possible only when there is a threat to national security and public order, otherwise a refugee cannot be expelled (UNCHR, 2010, p. 29). In such a case, refugees have right to submit evidence, to appeal to and to be represented to clear himself/herself (UNCHR, 2010, p. 29).

Nonetheless, as a basic principle of the Convention, a refugee cannot be compelled to return. As the article 33 underlines,

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (UNCHR, 2010, p. 30).

Exception of this article is the national security of the residence country. The Convention indicates that if “there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country” then this person is subject to the expulsion and cannot benefited from the non-refoulement principle (UNCHR, 2010, p. 30). The contracting states are expected to contribute the process of naturalization of refugees for their integration to the society. (UNCHR, 2010, p. 30).

Chapter VI, Executory and Transitory Provisions, involves arrangements about cooperation of the national authorities with the United Nations, information on national legislation, and relation to previous conventions (UNCHR, 2010, p. 31). Correspondingly, Contracting States are expected to cooperate with UNHCR for anything related to refugees such as application and settlement processes. If UNHCR needed any information related to the situations of refugees or to application of the Convention or to laws and regulations about refugees that are expected to take effect, Contracting States will be responsible to provide the information to UNHCR (UNCHR, 2010, p. 31). At the same time, Contracting States have to report any related laws and

regulations about the implementation of the Convention to the Secretary-General of the United Nations (UNCHR, 2010, p. 31).

Chapter VII, Final Clauses, generally is related to the Contracting States and focuses on the technical issues of the Convention such as the settlement of disputes, signature, ratification and accession, territorial application clause, federal clause, reservations, entry into force, denunciation and revision of the Convention. First article of this chapter is about the settlement of the disputes that might occur between the Contracting States regarding the implementation or interpretation of the Convention. In this case, one of the parties can apply to the International Court of Justice (UNCHR, 2010, p. 33).

Accordingly, the Contracting States proclaim that the Convention is implemented on all of its territory or some parts of the territory (UNCHR, 2010, p. 34). A notification to the Secretary General of the United Nations is necessary for if there is a determination of the regions in the coverage of the Convention (UNCHR, 2010, p. 34). The Contracting States are expected to effort to enhance the application area of the Convention to the territories excluded when the signature, ratification or accession processes ended (UNCHR, 2010, p. 34).

The Contracting States are free to be chary of the provisions of the Convention except the articles 1, 3, 4, 16(I), 33 and the articles from 36 to 46 (UNCHR, 2010, p. 35). They can also withdraw their reservations at and they may cancel the Convention any time by notifying the Secretary General which will be valid after one year since the notification was made (UNCHR, 2010, p. 35). The Contracting States can also notify that the Convention is canceled in the territories that were defined as the coverage area of the Convention (UNCHR, 2010, p. 36). Contracting States also ask to make changes in the Convention with an application the Secretary General (UNCHR, 2010, p. 36). In this case of a request, General Assembly may exercise its power to make suggestions (UNCHR, 2010, p. 36).

1.2.2. Main Provisions of the Protocol relating to the Status of Refugees

The Protocol Relating to the Status of Refugees remarks the limitation of the Convention Relating to the Status of Refugees on the terms of acceptance as a refugee only due to the events before 1951. Hungarian Revolution was the main factor that paved the way for the New York Protocol. The revolution revealed the inability of the Convention because of the time limitation and the need for a change. But most importantly, after the revolution, the Convention began to be interpreted in according to the interests of individual states. The United States and its allies began to use refugees for their anti-communist propaganda.

Appropriately, the Protocol removes the limitation by “considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention” (UNCHR, 2010, p. 46). Hence, people outside their home countries seeking for asylum before or after 1951 could be considered to be accepted as refugees without a time limitation as long as they meet the conditions in the Convention.

The Protocol consists of eleven articles consisting of general provisions, cooperation of the national authorities with the United Nations, information and national legislation, settlements of disputes, accession, reservations, denunciation, entry into force and notifications by the secretary general of the United Nations. Main point of the Protocol is the change in the definition of the refugee. The first article indicates that the Convention should be understood as the definition of refugee is enhanced to every person without the limitations of the terms “as a result of events occurring before 1 January 1951...” and “a result of such events...” (UNCHR, 2010, p. 46). In this sense, article 2 in the Convention which points out the responsibilities of the refugees to the residence country’s laws and regulations, and the article 34 in the Convention which maintains that States Parties are expected to facilitate the normalization process for refugees should be applied in the light of the change in the definition of refugee (UNCHR, 2010, p. 46). The Protocol emphasizes that there should not be geographical limitation; however, the Protocol reserves the right to be chary of the article 1 B (1) of

the Convention (UNCHR, 2010, p. 46). That is to say, Contracting States may make reservation to accept refugees only due to the events in Europe.

The Protocol expects the state parties to cooperate with the United Nations in the process of the implementation of the Protocol (UNCHR, 2010, p. 47). States Parties should provide any information needed by UNHCR to inform the United Nations about the certain issues as the situation of refugees, the implementation of the Protocol and the possible or present laws, regulations and decrees related to the refugees (UNCHR, 2010, p. 47). Any possible laws, regulations and decrees about the implementation of the Protocol must be informed to the Secretary General of the United Nations (UNCHR, 2010, p. 47). If a dispute between States Parties occurs about the interpretation and the implementation of the Protocol, States Parties can apply to the International Court of Justice (UNCHR, 2010, p. 47). The state parties can make reservation to the Protocol to in the frame of article 1 and article 4 (UNCHR, 2010, p. 49). State parties can cancel these reservations or denounce the Protocol at any time with a notification sent to the Secretary General of the United Nations that will be valid after one years of the notification (UNCHR, 2010, pp. 49, 50).

In conclusion, given that brief history of the refugee protection at international level and main provisions of the Convention and the Protocol, it can be seen that the refugee regime has been evolved through important attempts. Since the interwar years there is an inclination to create an international refugee regime. The establishment of the UNHCR and the Geneva Convention were the major step to design a mechanism for the protection of refugees at international level. The mutual rights and responsibilities of refugees and states were arranged, and with the definition of refugee it was determined who should be granted the refugee status and who should not. It is, however, true that the regime was established more likely on stopping the refugee movements rather than solving the problems of refugees or finding the reasons of why these people are leaving their countries in the first place. The last chapter tries to understand this questionable character of the refugee regime within the post-structuralist perspective. Before that main arguments of post-structuralism as the main theoretical approach of the thesis will be examined.

CHAPTER 2

POST-STRUCTURALISM IN INTERNATIONAL RELATIONS THEORY

This chapter aims to specify basic arguments of Post-structuralism by focusing mainly on Jacques Derrida and Michel Foucault. Post-structuralism in International Relations Theory refers to a critical approach that has been effective since 1980s with the influence of newly occurring issues and actors within the period of disintegrating Cold War. It was also stemmed from or originated within the post-positivist tradition. Post-positivism in International Relations Theory reflects the forth debate in the discipline. The theory of International Relations has been shaped through four major debates. First, there is the debate between realism and idealism. The second debate includes traditionalists and behavioralists. The third debate is the interparadigm debate including liberals, realists and Marxists. Finally, the forth debate is between positivism and post-positivism.

Post-positivism generally remarks a critical stance against positivist accounts. Positivism, basically, as a theory of science, depends on empirical data and observation resulted in general laws that do not accept non-observable processes. (Kurki & Wight, 2010, pp. 22, 23). Post-positivism, on the contrary, took their sources from differences rather than the sense of belonging to a totality (Jorgensen, 2010, p. 155). It does not depend on only observable data with an aim to reach general laws. Post-positivists argue that positivism cannot be applied to the study of social sciences, because positivism does not accept any reality free from observation and measurement, however, other factors have to be considered like meanings, beliefs, norms and language. (Kurki & Wight, 2010, pp. 23, 24). There are more than one approaches and theories connected with post-positivism with different outcomes such as feminism, constructivism and critical theory, but what unites them is their common opposition to positivist understanding of knowledge production (Jorgensen, 2010, p. 155). In this regard, post-positivist approaches critically investigate International Relations by criticizing fundamental theories and questioning certain concepts that these theories

accept as the major issues of international relations like state, power, sovereignty and boundaries.

Post-structuralism, as Campbell points out (2010), focuses on the state as well as the mainstream theories do, however, rather than ensuring the fundamentality of the state as the main actor of international relations, post-structuralism tries to understand how the state gained such a role with the power to define inside and outside. Accordingly, post-structuralism indicates the impact of discourses and perceptions in creating reality through power and knowledge relations and in this manner criticizes the characteristics of international relations based on opposite terms like interior/exterior, inside/outside, us/them, developed/underdeveloped or East/West. The relation between them appears as a kind of process that highlights the primary by excluding the secondary through their significant characteristics where one term is the superior and the other them is the deficient (Keyman, 1996, p. 254). In this manner, the definitions of inside and outside and also defines the relations between them where inside is the self, good, primary and original, outside is the other, dangerous, secondary and derivative (Campbell, 2010, p. 225). Differences between these terms, however, are not stable, given or clear as it seems, since they are related to each other, and exist through their relations (Devetak, 2009, p. 191).

Post-structuralism is a comprehensive approach, so the study includes only two main names: Jacques Derrida and Michel Foucault. In this sense, the study focuses on first Derrida's deconstruction over texts and discourses regarding the binary oppositions like inside and outside, and then Foucault's genealogical analysis and biopower to see the power and knowledge relations.

2.1. DECONSTRUCTION

Deconstruction is a method used by Jacques Derrida to analyze and criticize texts or discourses that presents universal, common, stable and structural meanings through oppositional concepts. It is a critical method focusing on reading rather than "an examination of the flaws or imperfections of the theoretical text but an analysis that

seeks to explore the grounds of possibility of the text” (Edkins, 1999, p. 74). As Madan Sarup mentions, deconstruction

...is a method of reading a text so closely that the author’s conceptual distinctions on which the text relies are shown to fail on account of the inconsistent and paradoxical use made of these very concepts within the text as a whole. In other words, the text is seen to fail by its own criteria; the standards or definitions which the text sets up are used reflexively to unsettle and shatter the original distinctions (Sarup, 1993, pp. 34, 35).

Deconstruction focuses on writings to untie what is really behind the stable and oppositional concepts (Devetak, 2009, p. 191). This is also related to Derrida’s emphasis on writing. As Sarup indicates (1993) Western Philosophy, according to Derrida, is phonocentric and logocentric that basically privileges speech over writing. On the one hand, writing is regarded as the secondary instrument of expression in Western Philosophy and it has no validity when it is compared to the speech (Sarup, 1993, p. 36). As Norris points out “to write is to risk having one’s ideas perverted, wrenched out of context and exposed to all manner of mischievous reinterpretation” (2001, p. 110). Hence, when ideas are written, it becomes open to interpretations or misinterpretations of the reader. In this context, writing “is condemned to circulate endlessly from reader to reader, the best of whom can never be sure that they have understood the author’s original intent” (Norris, 2001, p. 110).

Phonocentrism, on the contrary, emphasizes the voice which is immediate and vivid in contrast to writing which is artificial and secondary (Sarup, 1993, p. 36). The speech is relevant to the moment that enables to convey meaning directly and reveals the relation between word and idea (Norris, 2001, p. 110). By this way, there occurs the possibility to prevent misunderstandings, because the listeners have the opportunity to consult the speaker and speaker has chance to defend himself/herself. Therefore speech is accepted as the major instrument of expression. As Sarup specifies, “in the moment of speech we appear to grasp its meaning and are thereby able to capture presence, as if the meaning was decided once and for all” (1993, p. 36). Derrida, in this regard, emphasizes to uncover the metaphysics of presence by deconstructing the opposition between writing and speech (Sarup, 1993, p. 36).

Derrida also, remarks that the Western philosophy is logocentric which refers to the desire to prove there is a certain, stable sign that is able to unite a signifier and a signified which eventually remark a foundational essence (Sarup, 1993, p. 37). Derrida rejects this kind of a commitment to any foundational system, because this system is basis of the conceptual oppositions where concepts are defined through their superiorities and deficits which, according to Derrida, is a process exposed to deconstruction (Sarup, 1993, p. 37). In this context, deconstruction refers to the disentanglement of constant conceptions depending on the oppositional characters of these conceptions (Devetak, 2009, p. 191). These opposed conceptions like West/East, South/North, developed/undeveloped, civilized/uncivilized involve a hierarchical relationship where one term always superior and the other is inferior (Devetak, 2009, p. 191). As Devetak mentions,

One of the two terms in the opposition is privileged over the other. This privileged term supposedly connotes a presence, propriety, fullness, purity, or identity which the other lacks. Deconstruction attempts to show that such oppositions are untenable, as each term *always already* depends on the other. Indeed, the prized term gains its privilege only by disavowing its dependence on the subordinate term. (Devetak, 2009, p. 191).

This also reflects the opposition against the structural constitution of language presented by Ferdinand de Saussure who notes that the sign is formed within the compatible relation between the signified and signifier “as if they were two sides of the same sheet of paper” (Sarup, 1993, p. 33). Derrida’s understanding of the sign, on the contrary, reflects a different interpretation of the signifier (the word or the name) and the signified (the conception). As Sarup indicates,

In Derrida’s view of language the signifier is not directly related to the signified. There is no one-to-one set of correspondences between them... Signifiers and signified are continually breaking apart and reattaching in new combinations... Indeed, there is no fixed distinction between signifiers and signified. Signifiers keep transforming into signified, and vice versa, and you never arrive at a final signified which is not a signifier in itself. (Sarup, 1993, p. 33).

Within this context, Derrida, remarks that meaning is not clear due to the complex relation between the signifier and the signified (Sarup, 1993, p. 34). Correspondingly,

meaning is not in the words, but always elsewhere (Benton & Craib, 2008, p. 211). As Sarup points out,

Derrida argues that when we read a sign, meaning is not immediately clear to us. Signs refer to what is absent, so in a sense meanings are absent, too. Meaning is continually moving along on a chain of signifiers, and we cannot be precise about its exact 'location', because it is never tied to one particular sign (Sarup, 1993, p. 33).

In this sense, there are diverse interpretations related to a sign which involves more than one relation of the signifier and the signified that eventually defer the meaning which Derrida (2003) uses the term "Différance" to express this situation. Différance is neither a signifier nor a signified; however, it reveals the sense of meaning (Belsey, 2002, p. 84). This may be the soul of Derrida's conclusion that there is no clear meaning, since, as Derrida (2003) mentions, it is not exactly a word or a concept. "Différance" refers to both differ and defer in French (Norris, 2001, p. 114). Derrida explains that

The verb "to differ" [*différer*] seems to differ from itself. On the one hand, it indicates difference as distinction, inequality, or discernibility; on the other hand, it expresses the imposition of delay, the interval of a *spacing* and *temporalizing* that puts off until "later" what is presently denied, the possible that is presently impossible. Sometimes the *different* and sometimes the *deferred* correspond to the verb "to differ" (Derrida, 2003, p. 225).

Différance is also related to Derrida's emphasize of writing, as the distinction between différance and difference does not appear in speech but it is only visible in the writing (Belsey, 2002, p. 84). Concisely, différance is the term that Derrida summarizes the whole process of deconstruction. In this direction, the signified and the signifier are intertwined without a clear, absolute meaning where the meaning has to be unraveled (Belsey, 2002, p. 83). As Derrida says,

Différance points to a relationship (a 'férance') – a relation to what is other, to what differs in the sense of alterity, to the singularity of the other – but 'at the same time' it also relates to what is to come, to that which will occur in ways which are inappropriable, unforeseen, and therefore urgent, beyond anticipation: to precipitation in fact. The thought of *différance* is also, therefore, a thought of pressing need, of something which, because it is different, I can neither avoid nor appropriate (Derrida, "The Deconstruction of Actuality: An Interview with Jacques Derrida", 2001, p. 534).

In conclusion, deconstruction reveals that any thought, belief or idea that appears with certain, pervasive meaning depending on binary oppositions is open to question. International relations as a process merely seem to be established on the differences of binary oppositions can be criticize. In this way, some conceptual oppositions like inside and outside, self and other, or East and West in international relations transform generally into differences between states and highlights inequality and otherness. The concept that reinforces differences is “the borders” that clearly separate inside and outside. Borders may seem as referents of a simple separation between one state and another, however, they create complexity as well. In classical understanding of international relations, outside the borders is accepted as an anarchical environment where there is no superior authority. In this environment, states have to protect themselves by their own which leads them to acquire more power and to use it against any threat from outside. Thus, it becomes possible to define anarchy as well as sovereignty by marking borders (Devetak, 2009, p. 199).

According to post-structuralists, borders that simply divide one state from another since the evolution of the sovereign state are not natural or necessary but a political act to define or limit a political space (Devetak, 2009, p. 195). The political space of one state is strictly separated from the other states by its frontiers. Eventually, borders occur as the literal reflection of what post-structuralism implies with conceptional oppositions. Borders draw the line between inside and outside and automatically create the self and the other. Hence, it becomes possible to define “the other” by excluding it through its location depending on which side of the border that it stands or come from. Appropriately, international relations relates to the creation of a threat from outside. As anything from outside actually comes from the anarchy, there occurs the possibility of anarchy to spread inside the borders. Security, by this way, associates with the control and prevention of anything outside the borders including people as long as the security of inside prevails.

While defining inside and outside by drawing a line between states, borders also indicate cultural, ideological and political differences. In a sense, the Cold War was one of the basic moments that divide the world not only territorially but also culturally,

ideologically and politically through the process of power maximization of the two superpowers shaped by ideological differences. In this context, the Berlin Wall was an important example as both a symbolic and a physical border between ideological differences that pole the world apart. Thence, borders not only separate inside and outside, but also give meaning to this separation. By this way, borders initially create the conceptual oppositions what post-structuralism criticizes and tries to untie through deconstruction. Deconstruction, in this sense, is a method to see not only the relations between binary oppositions but also the discourses behind them.

2.2. GENEALOGY AND BIOPOWER

Post-structuralism generally investigates how certain concepts gained their present prominence. For instance, post-structuralism asks, as Campbell points out “how the relations of inside and outside were mutually constructed... how the state came to be regarded as the most important actor in world politics, and how the state came to be understood as a unitary, rational actor” (2010, p. 216) In order to put a historical view, post-structuralism focuses on genealogy, as it investigates “how have we made the present seem like a normal or natural condition?” (Devetak, 2009, p. 189). In this regard, “genealogy is, put simply, a style of historical thought which exposes and registers the significance of power-knowledge relations” (Devetak, 2009, p. 185). As Bleiker asserts, genealogy focuses “on the process by which we construct origins and give meaning to our past” (2001, p. 42).

Genealogy investigates the bound between disqualified, local, neglected knowledge and the scholarly knowledge against the totalizing and compelling effects of pervasive discourses (Foucault, 2003a, p. 9). The understanding which indicates that certain meanings, institutions, regulations and discourses accepted as indestructible and unquestionable was challenged as these global models can be criticized and broken into pieces (Foucault, 2003a, p. 6). Foucault stresses that the divisibility of these global and all-pervading collective models through unlimited questionings in fact creates its own critique in itself, since integrity of the discourse can only be pervasive as long as they are fragmentized or reversed (2003a, p. 6). In other words, the totality is questioned

through local and autonomous criticisms that does not need a centered or common sense (Foucault, 2003a, p. 6). For Foucault, this “local character of the critique” had been evolved through “returns of knowledge” which is the desire for truth with a resistance of “subjugated knowledge” that reflects first the history embedded in systematization, and second the disqualified or ignored knowledge (2003a, pp. 6,7). Eventually, the link between subjugated knowledge and disqualified knowledge results in the historical knowledge of struggles which eventually made genealogy possible (Foucault, 2003a, p. 8).

Genealogy, for Foucault, is antisciences, which is not to say that genealogy is against any scientific knowledge, it is to say that genealogy is a resistance against the centralized power depending on the establishment of an organized and institutionalized scientific knowledge in the layers of the society (2003a, p. 9). In this manner, genealogy questions the power behind the scientific knowledge that has ability to omit the disqualified knowledge (Foucault, 2003a, p. 10). Consequently, genealogy aims to disentangle this omitted historical knowledge from the formal, unifier and scientific knowledge and to revitalize them against the influence of power (Foucault, 2003a, p. 10). As Foucault states,

Compared to the attempt to inscribe knowledges in the power hierarchy typical of science, genealogy is, then, a sort of attempt to desubjugate historical knowledges, to set them free, or in other words to enable them to oppose and struggle against the coercion of a unitary formal and scientific theoretical discourse. The project of these disorderly and tattered genealogies is to reactivate local knowledges... against the scientific hierarchicalization of knowledge and its intrinsic power-effects. (Foucault, 2003a, p. 10).

This is why, in a way, Foucault is interested in madness, illness and sexuality which are the neglected, omitted and disqualified issues that were exposed to the direction of certain power relations and they may seem separated or disconnected, however they constitutes the fragments of the genealogy (2003a, p. 11). Scattered genealogies do not need to have a solid theoretical basis, rather it is important to understand the process when knowledges challenge the power and knowledge effects of scientific discourses (Foucault, 2003a, p. 12).

Foucault determines the aim of the genealogy as to question and analyze different instruments and factors of power (2003a, pp. 12,13). Power is generally considered with its rule-based and restrictive characteristics, however, it is a complex formation that reaches everywhere capable of producing reality with new objects of knowledge (Sarup, 1993, pp. 73,74). Power and knowledge are connected to each other, such that “it is not possible for power to be exercised without knowledge, it is impossible for knowledge not to endanger power” (Sarup, 1993, p. 74). Foucault argues that power is not something that can be reduced to a negative factor with legal terms defending rigid rules and prohibitions or locked within legal and formal limitations (2005, p. 141). Rather, there are lots of specific forms of power relations in the society like the relations between children and parents, or patients and doctors which do not derive from a central authority but constitutes it. (Foucault, 2005, p. 145). Thus, power should not be understood as a field that the state has privileges, or a mechanism to protect itself, or a legal superstructure; rather it is a complex system consists of various relationships of power (Foucault, 2005, p. 147). As Sarup points out,

...relations of power do not emanate from a sovereign or a state; nor should power be conceptualized as the property of an individual or class. Power is not simply a commodity which may be acquired or seized. Rather it has the character of a network; its threads extend everywhere (Sarup, 1993, p. 74).

In this combination of power relations, major aim is not the prohibition of the people but to make them more productive which eventually turns into a system of control with variant methods like discipline (Foucault, 2005, p. 145). This process is called biopower by Foucault (2003a). Biopower is constitutes of anatomo-politics and bio-politics which involves discipline and control in distinct levels. While anatomo-politics is related to the individual, bio-politics is related to the population. Therefore, as Foucault indicates (2003a), in the manner of anatomo-politics and bio-politics, technologies of discipline and control as different mechanisms become integrated in the form of biopower.

Foucault states that anatomo-politics focus on man as body, and uses the techniques of discipline since the 17th century and 18th century (2003a, p. 242). Foucault emphasizes that, through discipline, power can be exercised on each individual in order to learn what they are capable of to keep them productive (2003a, p. 242). Concordantly

Foucault asserts that this is also a system to control even the body of individuals with surveillance techniques (2003a, p. 242). On the other hand, there is the bio-politics of the population which is different from anatomo-politics of the human body. Foucault regards bio-politics as another technology of power traced back to 19th century that emphasizes the human race rather than the individual body (2003a, p. 243). Here, the power over the bodies has gone beyond the individualization process and developed through an inclusive interference to the population which takes men as species (2003a, p. 242). One of the main differences between anatomo-politics and bio-politics is to take human lives as a whole, and if necessary, to change the current or upcoming conditions by focusing birth and death rates. It is to say that; for Foucault (2003a), bio-politics aims to change the life of the population collectively according to statistics, predictions and calculations which make it possible even to extend life and increase or decrease the birth rates.

In a sense, as Foucault explains (2003a) there has been a transition from anatomo-politics to bio-politics: first, the power taking man as body was established on the bodies to discipline them; and then by taking man as species, the power was established on the population to control it. As it is seen, there are different terms and conceptions around these two powers; however, there is one concept that Foucault emphasizes seriously as the one that the body and the population meet which is sexuality (2003a, p. 252). Hence, for Foucault sexuality reaches to the body and population at the same time, and anything related to sexuality is also related to the life of individuals and the progress of the population (2003a, p. 251). As Foucault mentions,

It was at the pivot of the two axes along which developed the entire political technology of life. On the one hand it was tied to the disciplines of the body: the harnessing, intensification, and distribution of forces, the adjustment and economy of energies. On the other hand, it was applied to the regulation of populations, through all the far-reaching effects of its activity. It fitted in both categories at once, giving rise to infinitesimal surveillances, permanent controls, extremely meticulous orderings of space, indeterminate medical or psychological examinations, to an entire micro-power concerned with the body. But it gave rise as well to comprehensive measures, statistical assessments, and interventions aimed at the entire social body or at groups taken as a whole. (Foucault, 1978, pp. 145-146)

In general terms, as well as to control and change the life, biopower is a technology to provide security for the population. Therefore, Foucault remarks that biopower relates to the protection of life by optimizing the living conditions which means that biopower is not interested in death as sovereign power does and focuses on life rather than death, because death is also the end of power (2003a, p. 248). Since, biopower is dedicated to the protection of life, there is no excuse to make people die except racism (2003a, p. 254). Foucault explains racism by exemplifying the state with the power to judge the life and to separate people by deciding who should live or who should not (2003a, p. 254). Foucault indicates that racism is also associated with a progress that differentiates the normal and similar ones from the unusual ones; as if the when the secondary ones are eliminated, the primary ones could have more chance to get a better, healthier and safer life (2003a, p. 255).

This is why the normalization process is important in biopower which on the one hand make racism acceptable (2003a, p. 256). On the other hand, this process of the society is to exclude who are different. The process involves people who are not defined as normal, who cannot be disciplined and who are accepted as dangerous for the population. These people have to be confined and expected to be naturalized. Foucault explains that confinement places, however, are not to normalize them by giving the example of prison which are not interested in improving the behaviors of criminals or to reintegrating them into the society, rather, these places are to produce more criminals (Foucault, 2003b, p. 24). They are also used for the control or the intimidation of the society, since if there is no threat of crime, it would be impossible to accept the existence of the police (Foucault, 2003b, p. 31).

In conclusion, as Foucault (2003a) assert that power does not only refer to a restrictive or punitive entity that uses punishment and violence as instruments, rather, power constitutes of various kinds of relations in the society uses varied forms of actions like discipline, control and confine to maintain its existence. What incorporates all of these actions for Foucault (2003a) is biopower which involves both discipline and control in distinct levels. In this connection, within its ability to discipline the individual and control the population, the state might be associated with biopower. Here, the state,

however, is not the only source of the power; institutions like family, factory, school or army are all the sources of power (Foucault, 2003b, p. 112). The state is not superior, rather it interacts with the other institutions of power and constitutes it (Foucault, 2003b, p. 70). Therefore power cannot be reduced to some institutions, classes or individuals (Sarup, 1993, p. 74). Instead of a dominant source of power, there are never-ending and ongoing relations constantly developing and transforming and reaches everywhere (Sarup, 1993, p. 74).

The state, however, has been accepted as the most influential institution and the main actor in international relations and especially with the evolution of the norm of sovereignty the existence of state has been reinforced. Post-structuralism, concordantly, investigates why the state was accepted as the main actor in international relations as well as the mainstream approaches of international relations does. As Campbell points out that post-structuralism

...is not anti-state, it does not overlook the state, not does it seek to move beyond the state. In many respects, post-structuralism pays more attention to the state than realism, because – instead of merely asserting that the state is the foundation of its paradigm – post-structuralism is concerned with the state's historical and conceptual production, and its political formation, economic constitution, and social exclusion. (Campbell, 2010, p. 217)

Hence, the next part will mention how the sovereign state became as the major actor of international relations by focusing on its historical evolution.

2.3. THE SOVEREIGN STATE

Modern nation state has evolved through a comprehensive process including different incidents under the influence of religious, political and economic factors. Today's modern state system is assumed to be started in 1648 with the Peace of Westphalia which was signed after the Thirty Years War. Thirty Years War was an important moment that leads to the transformation of the international system with the idea "that Catholics and Protestants had to find a means of peaceful coexistence" (Lawson, 2012, p. 29). As Michael Dillion indicates,

One the Christian God lost its ascendancy in the western thought of being, and the thought of politics began to escape from the onto-theological determinations of the church, the sovereign political subject of the modern state began to make its appearance, moving quickly to the center of political theory, especially that of international political thought (Dillon, 1999, p. 117).

On the other hand, as J. Martin Rochester notes, Westphalia was the sign of evolving capitalism with growing merchant class of artisans who saw that the feudal system was not able to provide them appropriate grounds to develop a common trade system which seemed possible with a single ruler over a certain territory where communication could conducted productively (2010, p. 36). From now on, emerging nation states would begin to act within capitalist modes of economy and ease the conditions in any part of the world to promote the production capacities and to enlarge the market in order to gain profit which eventually would be used for military power.

In this regard, Rochester (2010) emphasizes Westphalia as an important moment in international relations, as it changed the system of feudalism getting old between the struggles of Vatican, the Holly Roman Empire and land lords seeking to gain control over the people. Malanczuk, as well, marks the importance of the Peace of Westphalia “as a watershed, at least in Europe where a new political order was created (1997, p. 11). One of the striking points of the new system along emerging capitalism was the nascent sovereignty which is accepted as the major norm in international relations. Basically sovereignty mentions the right of any state to use its power within its frontiers and requires a defined territory, population, government and capacity to enter into relations with other states (Malanczuk, 1997, p. 75). It also reflects the independence outside the borders which means any state has to respect territorial integrity and non-intervention. These basic assumptions of sovereignty have been accepted as given and unquestioned, and sovereign state reflected a pre-defined and pre-existing entity (Betts, 2009, p. 47). Since then, international relations began to be shaped with a statist discourse highlighting the sovereignty of the political space and anarchical character of outside the borders where foreign and domestic politics strictly separated (Yalvaç, 2011, p. 17).

Until the sovereign state has evolved into its modern meaning, sovereignty just reflected the power of the monarchy in which decision making process was depending on the monopoly of the divine kings after the Westphalia (Rochester, 2010, p. 38). As Jackson points out,

The earliest 'sovereign' of the modern era were not usually state organizations. They were persons – rulers – whose dynastic claims to rule their territories and subjects were mutually recognized. Internationally society was a society of princes. Only later did sovereignty pass from personal rules and dynasties to constitutional governments resting on popular legitimacy: the sovereignty of the people (Jackson, 2006, p. 136).

As the system was evolving into an arena of sovereign states, the economic gaining was becoming the tool to support military existence, and taxes from the people, gold and commodities from oversea trade and conquest were used to raise the power of the ruler and to sustain defense (Rochester, 2010, p. 38). In this connection, as Rochester indicates (2010), one of the major tasks of the state was being ready to war and states inclined to enhance their power capacity in any case against the other states. Therefore, the system after Westphalia was evolved into a balance of power system due to the sense of insecurity because of relatively equal actors that are in search for more power (Rochester, 2010, p. 39). This system was a kind of multipolarity where there were no poles or blocs strictly fall apart with ideological differences, rather there were flexible alignments in which states were free to make or break if there is a potential offensive power to gain dominance over others (Rochester, 2010, p. 40).

As sovereignty was evolving into an important concept in the evolution of the state, nationalism was also rising among people with the influence the French Revolution. In this sense, French Revolution was a dramatic moment for Europe, since it reflected to the emergence of a bond between the people and the rulers, to a relation depending less on a system regarding people as subjects but a sign of popular sovereignty (Rochester, 2010, p. 41). The Revolution also created its counter-revolution through the émigrés including royal family who fled from France get support from other foreign governments against the revolution (Thomson, 1990, p. 34). But they could not manage to overcome the power of the revolution, especially after the caught of the King when

he and his family were escaping from Paris (Thomson, 1990, p. 35). At that point, Napoleon presented himself and as a French citizen and a leader not a divine king gaining his power from the will of the people, he managed to make people follow him on behalf of the nation (Rochester, 2010, p. 41). Accordingly, with the Napoleon Wars national armies emerged in Europe (Sander, 2010, p. 169). Moreover, the properties of war changed in which not only professional armies but also the whole society and the citizens are the elements of war from now on (Rochester, 2010, p. 41).

The new system after Napoleon Wars was called the Concert of Europe that established a relative peace beginning with the Congress of Vienna in 1815 until the First World War. With the Congress, Europe decided to create a balance without punishing France which prevented France to revenge (Sander, 2010, p. 177). During this period of peace, the major powers of Europe were engaged to divide Africa and Asia which rapidly became most important political and economic instrument of the West, especially with the influence of the industrial revolution (Rochester, 2010, p. 42). The peace, however, was cracking due to increasing differences of power between states, because while the states were considered as equals in a balance in politics; however, the Britain emerged as the first among equals with its economic growth (Rochester, 2010, p. 43). Malanczuk (1997) states that both the balance of power system and the Concert of Europe were unsuccessful for covering the expectations about creating a collective security system. As, first the Napoleon Wars, and then the rising national claims, and eventually the world wars caused both system to end (Malanczuk, 1997, pp. 11, 12).

The two world wars were real catastrophes that caused the death of millions of people around the world. They changed everyday lives of people as well as the nature of the international system. On the one hand, everyday life has been changed, since the wars, as Rochester indicates, were “no mere “sports of kings” but *total war*, engaging the entire populations and economies of the participating nations and combined primitive hand to hand combat, fought with rifles and bayonets...” (2010, p. 46). On the other hand, they changed the international system, as the major empires has been collapsed, new states has emerged, battles for salvation from the colonial powers began,

boundaries become more rigid as determinants of state sovereignty and ethnic clashes increased.

In this context, the two world wars refer to significant points in international relations. With the First World War, major empires collapsed and new states were formed with different ideologies. For example, with the end of czarism in Russia, the Soviet Union was established in the light of communism and with the collapse of the Ottoman Empire, Turkey was founded with the leadership of Mustafa Kemal Atatürk in the form of a secular state of law. After the War, the defeated ones were heavily punished in the Paris Peace Conference in 1919 which especially caused Germany to nurse a grievance that resulted in the Nazi regime with an increasing violent racism. The borders were not satisfying and the price was heavy that even the League of Nations or the Wilson Principles could not manage to prevent the passion of Germany. Meanwhile, France and Britain was still continuing their colonial aims while they were trying to maintain the balance of power, for that they even tolerated Germany to annex Czechoslovakia with hoping to ease Germany's ambitions (Rochester, 2010, p. 51). Nevertheless, the establishment of the League of Nations was an important and hopeful attempt by promising international cooperation, peace and security, and promoting disarmament and open diplomacy (Malanczuk, 1997, p. 24). But the insistence of the United States to remain isolated and not being a member of the League had negative effects for Europe to preserve peace. Eventually it became impossible to prevent the outbreak of the Second World War.

The Second World War signaled a major shift to a bipolar world where two superpowers, Russia and the United States maintained the Cold War with efforts to partition the world and create sphere of influences through their clashing ideologies. The Cold War between the two superpowers began as an ideological clash of liberalism and communism after the Second World War. Blocs were sharply separated with the establishment of certain organizations, NATO and Warsaw Pact, overtly in opposition to each other. As an influential international organization, the establishment of United Nations was an important attempt to preserve peace and security, but its role was limited under the Cold War mentality. United Nations is still the major international

organization in the world that is capable of answering many problems in international environment besides protection of peace like migration, hunger, health and so forth. It is, however, criticized because of permanent member's influence in decision making process. Security Council is heavily dependent on the foreign policies of its permanent members, the United States, Russia, France, England and China, who can each veto decisions according to their interests (Pugh, 2001, p. 71).

In the Cold War, the United Nations however was limited in a world partitioning by sphere of influences which eventually turned into direct or covert military interventions or foreign aids (Rochester, 2010, p. 55). The Cold War was shaped by the fear of a nuclear war between the two powers especially when the devastating effects of such weapons were understood after the United States' attack on Hiroshima and Nagasaki. This fear reached at its peak with the Cuban Crisis in 1962 and the potentiality of a global destruction by a nuclear war brought the two powers into accord in a peaceful coexistence. The *détente*, however, was not last long under the shadow of the Vietnam War and the Russian invasion of Afghanistan. Neither the Vietnam War nor the Afghanistan invasion was successful and those defeats were the harbinger of the loosening blocks, since they questioned the credibility of the United States and the Soviet Union. Hence the lines between the two blocs began to be blurred: on the one hand Europe was planning to connect with the Soviet Union through energy pipelines, and on the other hand communist China was getting closer to the United States (Rochester, 2010, p. 58).

All aside, as, one of the major developments of the Cold War, the process of decolonization led to the creation of new states with new borders. These states began to be united within the non-aligned movement which was a significant indication against the Cold War bipolarity. Both the United States and the Soviet Union were interested in gaining influence over this newly forming Third World, however, most of them preferred to be non-aligned and questioned the methods of the West due to colonialism. Moreover, the oil crisis in 1973 was another fundamental moment in the Cold War history which proved that an organization, Organization of the Petroleum Exporting Countries (OPEC), consisted of less developed oil exporter countries could have a voice in international relations (Rochester, 2010, p. 56).

Eventually, the Cold War was exhausted and the world has changed seriously from bipolarity to a complexity with increasing crises and conflicts in many regions of the world which were once under the influence of two superpowers. The dissolution of the Soviet Union was dramatic not only for the Union itself but also for the United States. As Cohen (2006, p. 25) noted that although the end of the Cold War was a mutual agreement, it was perceived by the United States as the defeat of Russia. Hence, while the international relations were evolving into an environment with emerging new states, strengthening borders of situated states, increasing civil wars, ethnic clashes, economic crisis, political instabilities, engagement initiatives and so forth; the United States cast itself in the leading role as the stabilizer and the organizer of the new world without any defined enemy or an ideologically opposed rival. During the Cold War, the United States, based on its domino theory, tried to prevent communism to expand. With the end of the Cold War, communism was not a threat anymore and, remarkably after the September 11, the United States, based on war on terror, determined other enemies as rough states who were the new threats to the world order. By this way, the United States managed to justify the Iraq war in 2003.

It is, however, after the September 11 attacks and then the Iraq war; there is a challenge against the superiority of the United States. Dale Walton indicates that the unipolarity of the United States has been declining, because even it seems that there is only one superpower, there are “numerous great and medium powers and international organizations actively working to shape, constrain, and/or undermine Washington’s foreign policies” (2007, p. 39). Some states are becoming powerful with their economic, political and military developments like China and Russia.

Especially Russia, as the major rival of the United States once, is supporting multipolarity against the dominance of the United States. According to Mankoff, recessive position of the United States after the Iraq war, the increasing power of China and the changing relations between the European Union and the United States mainly due to the different approaches about the war on Iraq could make this wish about multipolarity possible (2007, p. 128).

Since the end of the Cold War, Russia is working to increase its political influence with particularly economic improvements through its vast energy resources. Thus, rather than ideological differences, what important is the revival but rather a humble one, as Trenin asserts, Russia does not seek whether to rule the world or reestablish the Soviet Union, however, it is important to reemerge as a great power with a strong economy which can provide political influence (2007, p. 96). It is also important to survive in all circumstances whether it requires cooperation or competition with other entities. As Mankoff (2007, p. 126) says, Putin's political slipperiness let him to act as a liberal, or a statist, or a Russian nationalist in which rather pursuing the remnants of the ideological stance, Russia seeks for pragmatic solutions and approaches. Therefore, Russia's desire to be a major power relies on the economic conditions which mostly depend on energy. If the goal is to be called as the regional and global power again, it is appropriate to search for partnerships across the world, but with one condition which is to give priority to the interests of Russia that is to protect the security of the country by maintaining sovereignty and territorial integrity.

In this sense, it can be said that in any circumstances, sovereignty has prevailed and in its historical evolution, the state has been determinative in international relations. Since the Peace of Westphalia, there were important points in the history that changed or shaped international relations which generally related to the major events as Napoleon Wars, First and Second World Wars and the Cold War. All these heavy incidents had a role in the formation of a new international system from balance of power to the Concert of Europe or to the ideological clash between the United States and the Soviet Union. All these points show that states are major factors shaping international relations. Although there are influential international organizations and non-governmental organizations or international companies, it is accepted that the international relations are defined by sovereign states and their interests. Thus, the state is regarded as an unarguable entity in its existence that needs no inquiry which does not encounter any challenge, so it does not need any defense (Ashley, 1984, p. 239). Hence, by the mainstream theories, it is generally accepted that

...The state must be treated as an unproblematic unity: an entity whose existence, boundaries, identifying structures, constituencies, legitimations, interests, and capacities to make self-regarding decisions can be treated as given, independent of transnational class and human interests... (Ashley, 1984, p. 238).

Accordingly, sovereign state has the authority to prevent any possible threat outside the borders, it also has the authority to use power against its own citizens in opposition with the conduct of governmental activities. Although it is a domestic affair and tied to the norm of non-intervention, the brutality of some governments requires international responsibility to intervene with humanitarian concerns. Concepts like humanitarian intervention and responsibility to protect, then, occur as international acts against national authority to protect the citizens within the borders. By this way, sovereignty creates its own problematic. Consequently, there occurs the possible violation of non-intervention because of the sovereignty itself. Then, as well as sovereignty and non-intervention; humanitarian intervention and responsibility to protect are becoming influential in international relations. As long as there is a threat to international order, major powers have ability to label sovereignty as a cause of violence and present humanitarian intervention as an excuse to intervene any region related to their interests. In the meantime, they are strengthening their own borders, highlighting their sovereign rights and territorial integrity. Thus there is always a conflict between inside and outside. In international relations, inside generally prevails over the outside, which is also defined by the inside. Eventually, differences are highlighted to otherize the outside.

Post-structuralism primarily criticizes this character of international relations using and otherizing differences, and creating unifying principles. In this direction, post-structuralism mainly questions the concepts that are accepted unconditionally and believed to be unchangeable. As Walker indicates “yet an uncritical appropriation of established political principles is precisely what cannot inform an account of world politics” (1993, p. 160). In this manner, Walker questions why sovereignty is accepted as inevitable by marginalizing other identities and eventually he stresses that sovereignty is no longer the solution of political contradictions (1993, p. 161). By this way, while it seems almost impossible to consider a world without sovereign states,

however, post-structuralism tries to find a different perspective to examine the world without the influence of sovereignty.

As stated in post-structuralism, sovereignty limits the comprehension of the world politics by leading to a state-centric understanding of international relations (Devetak, 2009, p. 204). Rather than regarding the state as the only actor in international relations, post-structuralism suggest to consider non-state actors, international organizations and individuals. Plurality of the actors would enhance politics beyond territory toward an interactive political space where interactions, actions and flows across boundaries are regarded as important instruments which is enabled by globalization (Devetak, 2009, p. 204). These actions include political, economic and cultural movements which cause politics to be free from territorial definition (Devetak, 2009, p. 205).

Therefore, despite the strict comprehensiveness of sovereignty, it is possible to see the blurring boundaries with flows of people, information or trade especially with the influence of globalization (Devetak, 2009, p. 205). Although the state is still accepted as the major actor with the ability to define inside and outside the borders, it is becoming more difficult to restrict and control actions and interactions within and across the borders of the state. Correspondingly, in any case, the situation of refugees becomes more complicated. There occur various attitudes against refugees that are generally shaped by security based policies of individual states by reinforcing borders and highlighting differences between outside and inside which also affect the international refugee regime. In order to understand this process, the next chapter investigates the international refugee regime by a post-structuralist approach.

CHAPTER 3

A POST-STRUCTURALIST APPROACH TO THE UN BASED INTERNATIONAL REFUGEE REGIME

The previous chapters presented a general outlook of the international regime and post-structuralism separately. This chapter aims to combine these two in order to present a critical approach to the refugee regime. Post-structuralism enables to question everything without depending on certain meanings, concepts or beliefs. The thesis mainly takes this characteristic as a reference point to investigate the international refugee regime. For that reason, this chapter criticizes the refugee regime by first reading the Convention again. The textual reading of the Convention gives the opportunity to think again the certain concepts, words and meanings that the Convention presents like “well founded fear” or “persecution” in the definition of the refugee. The part continues with a historical analysis of power relations in the evolution of the refugee regime under the influence of individual states by focusing on two important periods: the Cold War and September 11.

3.1. REREADING OF THE CONVENTION RELATING TO THE STATUS OF REFUGEES

In the Cold War, refugee flows continued to increase with different bases, reasons and consequences that required more comprehensive regulations and implementations. Thus, an international Convention was signed for the protection of refugees in 1951 and it was renewed with changes about the refugee definition in 1967 with the New York Protocol as it was mentioned in the first chapter. With the Convention, the refugee was defined, the rights of refugees and the rights of host states were arranged and the international refugee regime was established at international level.

It is true that the international refugee regime was ensured with the Geneva Convention as the major international document that many states have accepted. It is, however, disputable whether the Convention is beneficial for refugees or for the host states. It is

also open to comment whether the refugee definition covers the refugees in the changing environment. In order to draw a conclusion to these questions, this part rereads the Convention by focusing on disputable concepts to present a textual criticism of the Convention.

3.1.1. Disputable Concepts in the Convention

The Convention defines the refugee and accordingly determines the rights and responsibilities of refugees based on the definition. Defining refugee means to decide who needs emergent help and who do not or who should enter the borders and who should not. In order to be accepted as a refugee, asylum seekers have to provide the conditions presented in the Convention. Article 1 of the Convention remarks the refugee definition by pointing out certain concepts like “well founded fear”, “persecution”, “being outside of the country” and “being avail of the protection of home country.”

First, the Convention relates “the well founded fear with a possible persecution. The Convention indicates that the fear should be stemmed from a possibility of persecution due to race, religion, nationality, membership of a particular social group or political opinion (UNCHR, 2010, p. 14). It is acceptable that the definition was designed in this way because of the conditions related to the interwar years and post-Second World War. One of the main driving forces that awoke international sensitivity about the refugees was the people escaping from the Nazi regime in Germany that eventually led to regulations presenting international protection of those people (Koser, 2007, p. 74). So, as Steinbock states, “the Convention’s inclusion of persecution for reasons of race, religion and nationality speaks most directly to that experience” (1999, p. 18).

Those years witnessed brutal persecutions that made people flee from their home countries as it was seen in the Nazi regime. It is true that there is still a possibility of persecution by governments due to different national, religious roots or political opinion. But the world has changed since those years and many more reasons of fear occurred. Mainly, the decolonization process, the end of the Cold War and the

September 11 attacks has created their own fears due to changing grounds of violence, economic crisis and political instabilities.

What mostly affected people was the escalating violence against civilians that evolved with the changing character of wars. Rather than between states, wars were occurring within states based on ethnic diversities and fought by mercenary groups targeting civilians (Koser, 2007, p. 77). Thence, new refugee crisis occurred due to the ongoing clashes not only between but also within states with increasing violence against civilians. Concordantly, new wars caused huge refugee movements in global level. Eventually, as Koser (2007) asserts “what had begun as a largely European problem at the end of the Second World War had become a truly global phenomenon with immense complexities.” On that account, many parts of the world began to fall apart with regional, religious, ethnic based civil wars which eventually became international problems as it was witnessed in Balkans and the Middle East.

Besides wars, there are other reasons that make people leave their countries with fear that does not cover by the Convention. For example, poverty became main fear in many parts of the world, especially in Africa and people left their countries to live in better conditions. But the fear of poverty is not covered by the Convention. Those people are generally accepted as voluntary or economic migrants who do not need emergent help and sent back to their home countries. Some major European countries provided refugee status many of those people coming from former colonies, however, there are not much motives to ameliorate the economic and social conditions in those countries. Also, environmental disasters are important reason of fear that make people that leave their countries, but the Convention does not cover the fear of environmental disasters as well as the poverty.

Second, the definition of the refugee in the Convention mentions that in order to be accepted as a refugee, “one should be outside of his/her home country.” This brings the issue of internally displaced persons (IDPs) into question. IDPs are defined as the people who has the same fears as the refugees but unable to escape or leave their countries (Betts, 2009, p. 7). UNHCR helps IDPs but the Convention does not cover

these people. Since they are inside the borders of their country, they are perceived as they do not need international protection and are accepted as under the protection of their origin countries.

The situation of IDPs brings also the question of sovereignty. Because of these people are inside the borders of the country, any intervention inherently points out to the violation of the principle of sovereignty. But at the same time, this violence inside can be used as an excuse for intervention. In the name of humanitarian intervention or responsibility to protect, major actors use their powers to involve in domestic affairs of other countries. If these actions really aimed to protect civilians as the first and only task, it could be acceptable and honorable. However, as it was seen in Iraq and Libya, the war in the name of bringing democracy and the humanitarian intervention to protect civilians from the brutal actions of government caused more instability in the region and served for the interests of the major powers. In this regard, when the sovereignty is in question the situation of civilians within the borders is unclear.

Hence, the definition of the refugee in the Convention is problematic due to the unchanging concepts of fear based on the possibility of persecution and the necessity to be outside of the borders in order to get protection. The world has been changed since the foundation years of the Convention and the reasons of fears increased. So, the fear that refugees experiencing cannot be limited to only persecution. Besides the definition of the refugee, the Convention presents the rights of refugees. These rights include acquisition of movable and immovable property, right of association, employment, housing, public education and so forth. In this direction, refugee status provides many opportunities for refugees, by increasing life standards. Although the rights of refugees seem to be extended as the rights of citizens, there are only some provisions provides “the same” treatment for refugees as nationals (UNCHR, 2010, pp. 20, 21, 24, 25). These rights include artistic rights and industrial property, access to the courts, elementary education, public relief, labor legislation and social security. Besides those provisions, the Convention generally involves limitations. There are certain concepts in the Convention repeated over and over again for the rights of refugees which generally gives priority to states for the acceptance process. Some of these concepts are “as

favorable as possible” (UNCHR, 2010, pp. 17, 20, 23, 24), “the most favorable treatment” (UNCHR, 2010, pp. 21, 22), “in the same circumstances” (UNCHR, 2010, pp. 17, 20, 21, 22, 24,) and “not less favorable than” (UNCHR, 2010, pp. 20, 23, 24,). Moreover, Contracting States are generally expected to give “sympathetic consideration” in the implementation of the Convention (UNCHR, 2010, pp. 19, 22, 26, 28, 29).

These concepts create an uncertainty which Contracting States benefits to interpret the provisions according to their interests. So, any change in the refugee definition or in any other part of the Convention seems difficult. As Koser indicates, it may be very unlikely to expect all of Contracting States to sign a new convention or a revised version of the current one (2007, p. 72). Contracting States have right to take measures against refugees and they have right to put limitation to the Convention. For example, Turkey holds the geographical limitation and accepts only European refugees.¹ Because the refugee protection is a costly process, the interpretation of the Convention through interests can be understood but only if there is an economic concern that may challenge the capacity of any host country. But, when the security concerns prevail, the refugee regime becomes open to manipulation and refugees are exposed to interest based policies highlighting differences. In this sense, in order to understand the role of the interests in the refugee regime and purpose of the Convention, not only textual reading but also historical process should be considered, since “refugee definition is both a product and a part of the history of the twentieth century” (Steinbock, 1999, p. 19).

3.2. CHANGING ATTITUDES AGAINST REFUGEES: THE COLD WAR AND THE SEPTEMBER 11

During the Cold War the international refugee regime was used as an instrument of the superpower rivalry. The Convention was interpreted by the West to eliminate the

¹ The European Union emphasizes the removal of Turkey’s reservation as a condition of the acceptance process to the Union. But, Turkey thinks that if the limitation is removed, there can be an enormous refugee flow from the neighboring countries that could exceed the capacity of Turkey. Hence, Turkey wants the guarantee of burden-sharing to remove the limitation.

differences to welcome the ones who particularly escape from the communist regime. But, after the September 11, the regime was interpreted to put forward the differences to condemn the ones who particularly come from the potential terrorist states or axis of evil. Hence, Cold War and the September 11 were crucial cornerstones in the evolution of refugee regime with various discourses through power relations able to create different perceptions of refugees. So, the next part indicates the genealogical analysis of power relations in the Cold War and after the September 11 behind the international refugee regime.

3.2.1. Attitudes against Refugees in the Cold War

During the Cold War, beginning with the Hungarian Revolution in 1956, the refugee regime and refugees became the instrument of clashing ideologies of the two super powers. Both the Convention and its protector UNHCR was criticized because of its partiality as a Western based formations, and seen as a medium completing Western aims which made its credibility questionable. (Loescher, 1994, p. 361).

Throughout the Cold War years, the ability and capacity of the refugee regime was tested by important refugee crisis. The Hungarian Revolution was one of the major cornerstones, since it started a tendency in the interpretation of the Convention by highlighting ideological differences. By the revolution, refugees began to be welcomed by the Western states as a part of anti-communist propaganda.

The revolution started with the march of students in Budapest against the Stalinist government in Hungary in 1956. The protestors, who were supported by the United States as “freedom fighters” and with the influence of Radio Free Europe, were demanding the removal of Soviet troops and the replacement of the Stalinist government (Loescher, 2001, p. 82). The demand for change was first welcomed by the Soviet Union and a new government was formed, however, when the new government declared the possibility of neutralization by withdrawing from the Warsaw Pact and, the Soviet Union took it as a challenge and entered the country (Loescher, 2001, p. 83). This was a crucial resistance against the communist regime in a communist country

which could not acceptable by the Soviet Union. On that account, the resistance was suppressed brutally. Hungary was invaded by the Soviet Army and nearly 200.000 people fled to neighboring countries, Austria and Yugoslavia (Loescher, Betts, & Milner, 2008, p. 21). In this emergent situation, UNHCR was determined as the lead agency by the General Assembly, and played an important role in easing the conditions and helping both the refugees and the host states (Loescher, Betts, & Milner, 2008, p. 21).

The refugee problem after Hungarian Revolution was important for two reasons. First, it internationalized the issue. As Loescher (2001) specifies, on the one hand Austria was reluctant to accept refugees because of a possible attack by Soviet Union. On the other hand, any possible attack by the Soviet Union was *casus belli* by the West (Loescher, 2001, p. 84). Eventually, the conditions eased on behalf of the refugees and Austria accepted Hungarian refugees with expectations of burden-sharing by the West. This was the moment that the West, specially the United States, could use the situation in order to lessen the power of the Soviet Union. Loescher asserts that,

As this was the first refugee crisis covered by television, this new visual medium was extremely influential in portraying both the dramatic events of the revolution and the plight of the refugees. Spurred by extensive television coverage of students hurling paving stones and Molotov cocktails at Soviet tanks, the Western public viewed the Hungarians as heroes who deserved their help. More than any other event in the 1950s, the Soviet suppression of the Hungarian Revolution symbolized the brutality of the Soviet Union and v, the Soviet suppression of the Hungarian Revolution symbolized the brutality of the Soviet Union and indicated Western descriptions of life behind the Iron Curtain (Loescher, 2001, p. 85).

Second, the inability of the Convention occurred due to the time limitation that was covering refugees only because of the events before 1951. In order to solve this problem it was suggested by the High Commissioner, Auguste Lindt, “that the causes of the flight of Hungarians could be traced to events before 1951 and therefore action was within UNHCR’s mandate” (Loescher, Betts, & Milner, 2008, p. 21). Another problem as Loesher (2001) states was the practice of UNHCR to reach every refugee case by case which was impossible at that moment in a kind of emergent situation. These were occurred as the intentions to cover the limitation of the Convention which normally

made it impossible Hungarian refugees to be accepted. Eventually, by regarding the emergency of the situation, the solution was to accept them as *prima facie* which is a kind of spontaneous hospitality (<http://www.unhcr.org>).

After this major refugee crisis, it seemed that UNHCR accomplished its first big test by generating a solution to cover the Hungarian refugees. Behind this success, however there were ideological and practical reasons. First, it was an influential resistance against communist regime so close to the West. Brutal response of the Soviet Union after the Revolution and the refugee issue were used by the West to condemn the communist regime. Second, the character of the refugees was important in the development of accepting policy as well. As reported by Loescher (2001), Hungarian refugees were qualified people, who would contribute to the host countries. Loescher points out that,

In many ways, Hungarians were a model immigrant group. A large percentage of them were young, skilled, and educated, and they entered labor markets at a time when unemployment rates were low... Receiving countries benefited greatly from what amounted to a Hungarian brain drain (Loescher, 2001, p. 87).

Therefore, accepting Hungarian refugees was valid and beneficial for the West. It was, however, not so easy to cover Algerian refugees as well as the Hungarians. Algerian refugee crisis began after the Algerian Independence war against French colonialism. The war was significant in many ways. Primarily, it was the first resistance against colonialism in Africa in the post war period (Loescher, 2001, p. 97). From 1830 to 1962, Algeria was under French colonialism and France had important interests over the region so that it was reluctant to give up its position. In other words, the interests of one of the most important capitalist country were at stake. Naturally, France strongly resisted UNHCR's assistance to the Algerian refugee crises, as during colonial years France saw Algeria as an integral part of the state, so the refugee issue could be solved only by the return of those people taking refuge in Tunisia and Morocco to Algeria (Loescher, Betts, & Milner, 2008, p. 24).

Secondly, European countries were not accustomed to huge numbers of new-comers to their countries from non-European regions to settle. Since the profile of the refugees

began to change, UNCHR had to revise its stance as the lead agency in refugee crisis. Because, neglecting Algerians would cause UNHCR to be perceived as a discriminatory institution covering only European refugees (Loescher, Betts, & Milner, 2008, p. 24). Hence, it was important for the credibility of the UNHCR. Eventually, in this situation, as it was certainly against the interests of France, UNHCR nevertheless managed to help Algerian refugees. Thus, Algerian issue was the cornerstone that defined UNHCR's function and scope as universal (Loescher, 2001, p. 97).

These two incidents were significant because they revealed that the Convention was limited to cover these new refugees. Under the influence of Hungarian and Algerian refugee crisis, the Convention was revised and it was confirmed that there needed to emergent changes. Thus, The Protocol Relating to the Status of Refugees, the New York Protocol, was accepted in 1967. As it mentioned in the first chapter, the Protocol removed the time limitation of the Convention to cover the refugees depending on the events before 1951. The protocol also suggests that there should not be a geographical limitation, but protects the right of Contracting States to make reservations about accepting refugees coming from different places than Europe. Within this context, it was necessary and a radical movement to change the definition of refugee at that period.

Helping refugees of Hungary and Algeria was the signs of a change in both the profile of the refugees and the implementations of the UNCHR. In particular helping the Algerian refugees was a radical choice of a Western-based international organization. Despite the resistance of France, UNHCR managed to help those people, however Western characteristic always prevailed in the next crises in consideration of the United States factor. During the Cold War, the United States took refugee crises as an opportunity to use them for the anti-communist propaganda. This is why Hungarian revolution was so important, because it was the starting point of this propaganda to blame Soviet Union for being authoritarian or for the human rights violations. In this sense, the United States continued to use UNCHR to infiltrate into critical regions to benefit from refugee crises according to its policy of creating area of influences.

Especially throughout the decolonization process in Africa, the United States used UNHCR as a tool for assisting African refugees. On the one hand, refugees in Africa were a critical issue since they were generally perceived by host states as destabilizing factors. On the other hand, the United States wanted to control these refugee movements in order to prevent any inclination to communism. The United States, however, was in a dilemma and had to consider its interests over the region, so it was difficult to support African liberation movements overtly (Loescher, 2001, p. 127). As Loescher mentions,

Washington felt that, if the US did not support national liberation fronts in Africa, Africa's freedom fighters would then turn to the Communist bloc countries for help. America had military and economic interests in the region, such as US military bases in the Portuguese Azores and large-scale American investment in the mines and industries of southern Africa. Backing southern African liberation movements would endanger these (Loescher, 2001, p. 127).

Hence, the United States focused on the refugees and supported the act of UNHCR in the region. As Loescher (2001) indicates, UNHCR became “the perfect cover for US policy-makers” and an “indirect vehicle for US foreign objectives in Africa.” Loescher states that

One way to signal support to African national liberation movements and to forestall the advance of Communist influence in African countries was to increase US assistance to refugees in the region... The United States gave most of its assistance through the UNHCR, principally by providing surplus food for distribution—PL-480 Food for Peace Program—and assistance to African students. US assistance to a UNHCR supported multilateral effort made the American policy acceptable in the eyes of the Portuguese and the South African governments (Loescher, 2001, p. 128).

While the effects of refugee crisis in Africa were continuing and the United States was supporting those movements via UNHCR, Europe was experiencing the effects of the Berlin Wall which was built in 1961 by the German Democratic Republic (East Germany) to prevent people from crossing to the Federal Republic of Germany (West Germany). Berlin Wall was the concrete evidence of the Cold War highlighting ideological differences until its fall. After the construction of the Berlin Wall, refugee movements decreased dramatically except for the escapes. The United States, by considering this decrease and economically strengthening Europe, began to give less importance to the European refugees (Loescher, 2001, p. 131).

On the other hand, the United States was focusing on another refugee movement occurred in Cuba. Rising communism so close to the borders of the United States with the Cuban Revolution was an important event both for the United States and the Soviet Union. Even one the most striking crises of the Cold War, the Cuban missile crisis, showed the importance of Cuba in the region. In this situation, the United States welcomed Cuban refugees to continue its anti-communist propaganda. Because the issue was considered as a matter of the United States, and the United States did not want any other actor to involve, UNHCR was limited (Loescher, 2001, p. 132). Moreover, Loescher (2001) points out that the definition of refugees in the Convention was not considered as a reference point, since they were accepted regardless of their status as long as they are the part of the interest of the United States: Loescher specifies that

The US response to the Cuban refugees was very similar to the response given Eastern European escapees throughout the 1950s. In both instances, the refugees were characterized as victims of totalitarianism whose departure constituted a 'ballot for freedom'. Refugees from Cuba were part of these larger American foreign policy objectives. US Government policy was to accept all persons fleeing from Cuba, regardless of their status (Loescher, 2001, p. 132).

The role of UNCHR was also disputable in another refugee crisis, Vietnamese boat people. When the United States want UNCHR to help the Vietnam refugees, UNCHR refused to engage with the crisis, since it declared that these are not refugees but IDPs and they are the American responsibility (Loescher, 2001, p. 144). UNCHR stated also that any assistance from UNHCR should have cover both the North and South Vietnam which could not be accepted by the United States that revealed the political sensitivity of the issue (Loescher, 2001, p. 144). The policy of the United States became prominent, because of the resistance of the United States to cover refugees from both North and South Vietnam. This can be associated with the influence of the United States over the organization. It is true that the whole Vietnam War and all the refugees were American responsibility, but it was also the responsibility of UNHCR to protect people escaping with fears of persecution. In this connection, first years of the Cold War witnessed many important events that influenced international refugee regime positively and negatively. Here, among the many other important refugee crisis, there is only three of them was explained here in order to show how the main mechanisms of international

refugee regime was affected by the attitudes of states. In those refugee crises, UNHCR could not manage to protect its impartiality despite its universal character as the leading actor in refugee issues.

According to Loescher both the sending and the receiving states used refugees as policy tools (1992, pp. 31, 40). On the one hand, refugee movements have been used as instruments for sending states to affect other states politically and economically. Sending states may use mass movements to control certain regions. Loescher (1992) exemplifies the desire of the sending states with the European colonization process encouraging the settlements of civilians in the colonies of Asia, Africa and Latin America. They may also use refugee movements to destabilize the rival neighboring countries, to use them as bargaining issues, to benefit from their remittance, and to enhance their influences in certain places they have interests.

On the other hand, receiving states might have the same interests as the sending states. First, the refugee movements were used by receiving states to humiliate the adversaries. As Loescher indicates, the Cuban refugees were “viewed as concrete evidence of the bankruptcy of communism and the superiority of the free-enterprise system” (1992, p. 34). The refugee issue, hence, had been used as a symbol of foreign policy to humiliate enemies (1992, p. 36). But, attitudes of receiving states to the refugees from allies were different. While the refugees coming from enemies were accepted, refugees from allies were not. This was the indication of foreign policy support for the sending government, because “the decision to bestow formal refugee status on citizens of a particular state usually implies condemnation of the sending government for persecuting its citizens” (Loescher, 1992, p. 37).

Secondly, receiving states accepted refugees from former colonies with guilt due to their past military or political involvements as it was seen in France, the UK, Portugal and the Netherlands (Loescher, 1992, p. 35). Decolonization process, as one of the main incidents of the Cold War, has created major refugee flows from the Third World in consideration of the superpower rivalry and civil wars. The bipolar character of the Cold War could be seen directly on those territories where the instability in the region was

used as an instrument of influence by the two super powers. Both the Soviet Union and the United States tried to gain advantages in the region with economic aids, political support and weapon deliveries (Loescher, Betts, & Milner, 2008, p. 25). The United States was anxious about any possible action of the Soviet Union that can manipulate the refugees to gain influence, thus, the refugee aids through UNHCR was supported by the Western powers as the complement of the Cold War policy (Loescher, Betts, & Milner, 2008, p. 25).

Refugee movements did not diminished with those aids, rather they increased because of conflicts and civil wars, ethnic clashes, economic and political instabilities in newly emerging states. Although many of those refugees settled in the neighboring countries, many of them wanted asylum in developed countries as well (Koser, 2007, p. 74). The Western states, however, were not eager to accept them anymore. As long as those refugees stayed in their own territories there was no problem about helping them, but when the massive accumulation of refugees appeared in borders of the developed countries, enclosed camps started to occur as a solution in order to keep them out of the countries (Loescher, 1994, pp. 361, 363).

The end of the Cold War did not end the refugee crisis, on the contrary, with the end of the Cold War refugee movements increased seriously. Due to the changing character of the international environment, which was not being shaped by the ideological differences anymore, the world encountered new problems, new concepts and new issues. There were no more the rivalry of two superpowers and the rest of the world seemed alone with their own territorial, ethnic, economic, social problems without the “protection” of the superpowers. On the one hand, the Soviet Union has collapsed and turned to its internal affairs, mainly engaged with economic crisis and political instabilities. On the other hand, the United States declared its victory and cast a role as the new leader of the world.

In this environment and in the absence of two super powers rivalry, clashes began to occur in many parts of the world, particularly in the Middle East, Africa and Balkans. New states emerged with the dissolution of Soviet Union and Yugoslavia; new borders

and new territorial disputes occurred; minor conflicts transformed into brutal internal wars with ethnical or religious bases, and many of these regions come face to face with economic catastrophes and political instabilities. To put it simply, remnants of the Cold War dragged the world into new problems and all of these circumstances created new refugees.

Years after, September 11 attacks caused an obvious enmity against the refugees coming from especially the Middle East as if they were related to terrorism. Accordingly, control over refugees is increased due mostly to religious and ethnical based enmity that made it more difficult to be accepted as refugee. Hence, changing discourse of the United States after September 11 had an important role in changing attitudes against refugees. As the United States, with its war on terror, draw strict lines by using specific terms to separate “us” and “them” which affected many parts of the world.

3.2.2. New Discourse of the United States after the September 11

The categorization of the world as “us” and “them” continued after the Cold War and reached its peak with September 11 which was the cornerstone of the changes in the foreign policy attitudes of the United States and its allies. Relatively peaceful discourses focusing on economic developments a decade before replaced with an open war against terrorism. While the United States was engrossed in the leadership of the world after the fall of its old rival, September 11 became the moment to prove this leadership capacity by creating totally a new discourse. The process of creating this new discourse that caused also the Iraq war is important to understand the role of state perception. Thence, the effect of September 11 on the refugees will be discussed first by focusing on how the United States changed its discourse from its containment strategy of the Cold War to war on terror.

The United States has always used the power of words to create certain discourses mainly to condemn its rivals. Chomsky (2007) mentions about how the United States has created misimpressions since the Cold War years to justify its actions as well as to

get public support by creating misimpressions about Soviet Union with the words like “evil empire.” He points out that “throughout the Cold War years, the framework of defense against Communist aggression was available to mobilize domestic support” (2007, p. 106). Chomsky (2007) also exemplifies the war on drugs campaign in Bush I years to justify the invasion of Panama. By this way, these attitudes of the United States have another side that was “to frighten the domestic population into obedience as domestic policies were being implemented to benefit extreme wealth at the expense of the large majority” (Chomsky, 2007, p. 107).

The United States’ attitude of creating misimpressions about enemies continued after the September 11 with a new security strategy which represented a change in the traditional containment strategy of the United States. During the cold war period, the ideological and political struggle between the United States and the Soviet Union prevailed in the international arena. The bipolar character of the world made other states choose a side between the two, except the non-aligned countries. Especially the potentiality of a nuclear war was effective in foreign policy decisions and had a certain role in conducting international relations. In this period the United States developed strategies to encircle its rival. Containment strategy was the basic principle of the United States involving “the balance of power, nuclear deterrence, and political and ideological competition” (Ikenberry, 2005, p. 273). Mastanduno indicates that containment strategy was a way to unite non-communist states in security alliances in order to prevent the ideological, political and military expansion of the Soviet Union (2005, p. 258). Accordingly, the new strategy of the United States after the September 11 provides a definition of the enemy which paved the way for preemptive action. In this sense,

The United States of America is fighting a war against terrorists of global reach. The enemy is not a single political regime or person or religion or ideology. The enemy is terrorism – premeditated, politically motivated violence perpetrated against innocents (<http://georgewbush-whitehouse.archives.gov>).

The definition of the enemy did not involve only the terrorists. It was also pointing out any potential threat that could endanger the security of the United States. This potential threat could be a country harboring or supporting terrorist acts against the United States

and the maintenance of the global order. New enemies began to be categorized as terrorist states, rough states and axis of evil. These denotations were to create the sense about those states “from which we must protect ourselves, and which we must help, sometimes by devastating them... which we must destroy in self-defense” (Chomsky, 2007, pp. 107, 108). In this manner, the enemy was defined as “not only terrorists but also anyone, including states that aid them” (Snauwaert, 2004, p. 123). Those states were Iraq, Iran, and North Korea which were regarded as rough states and the parts of “an axis of evil, arming to threaten the peace of the world” (Kreft, 2005, p. 70).

Within the new security strategy the weapons of mass destruction (WMD) have a special place as it is the most important legitimizing way to get public support that paved the way to the preemptive action. The Presidential Directive in 2002 asserts the United States national Strategy to Combat WMD and declares that

... Terrorist groups are seeking to acquire WMD with the stated purpose of killing large numbers of our people and those of friends and allies -- without compunction and without warning. We will not permit the world's most dangerous regimes and terrorists to threaten us with the world's most destructive weapons. We must accord the highest priority to the protection of the United States, our forces, and our friends and allies from the existing and growing WMD threat (<http://www.nrt.org>) .

According to this, three points are important to be mentioned. First this statement specifies the anger of the United States and its intolerance against terrorist groups seeking to possess WMD. Second, the United States also pays attention to protect its friends and allies which in fact shows that the United States officially declares its role as the protectorate of the world order. This was a direct call for states to act in accordance with the United States in the war on terror, because if they did not join the United States they were simply against it. By this way, the United States determined who were the allies and who were not. So this strategy gave a broader right to the United States to categorize states as enemies or friends. Third, within these conditions, the United States prepares the structure that would allow it to create a strong reason to start a war against Iraq with the role of WMD. Hence, the new strategy of the United States, by defining the enemy and by adding the role of WMD as the potential threat to national security, determines the conditions of preemptive action. Correspondingly, as long as there were

the threats to the peace they had to be prevented even before they mobilized. So, the new strategy also strengthened the possibility of the United States to act unilaterally with preemptive action. Hence, as Derian indicates the United States developed “a rhetoric of total victory over absolute evil” (2003, p. 39).

Ikenberry explains the new security strategy of the United States with seven elements (2005, pp. 568, 572). First, he asserts that the unipolar structure of the world after the end of the Cold War where the United States has no tolerance to the establishment of counter forces against its hegemony. This gives the right to the United States to strengthen its position as the superpower that protects and maintains order without any equal rival. Second, Ikenberry (2005) focuses on the new definitions of threats which are small groups of terrorists that probably possess WMD, rather than states. This changing character of the enemy explains why the traditional deterrence strategy was given up by the United States, because it is hard to contain such groups. Third, Ikenberry (2005) mentions that deterrence, sovereignty and balance of power work together. So, the deterrence becomes useless as long as these transnational terrorist networks are not easy to find because they have no clear locations and they do not belong to any state but only supported by them, so the possibility of preemptive action occurs. This action clashes with the norms of sovereignty, self-defense and proper use of force. The sovereignty as the forth element for Ikenberry (2005) then becomes a question under the ability of the United States to intervene any place in the world.

The intervention clearly undermines the norm of sovereignty. Not only the norm of sovereignty but also other requirements that international relations presents as “general depreciation of international rules, treaties, and security partnerships” (Ikenberry, 2005, p. 570) are undermined by the United States. As the fifth element in the characterization of the new grand strategy by Ikenberry, it can be understood that the United States does not want to be restrained by such norms. According to the United States, from now on diminishing actual and potential threats are more important than binding norms and values which means sovereignty of other states are not important as well as the security of the United States. This gives the United States “a direct and unconstrained role in responding to threats” (Ikenberry, 2005, p. 571) that is the sixth element which points

out the role of the United States within its notion of the self identification as the only major actor who have enough capacity to deal with any threat. All these classifications combine within the seventh element which indicates the United States as the creator of instability.

The presence of the United States in the Middle East creates instability because it has other aims than bringing democracy or freedom to the region involving basically the control of Iraqi oil. Hinnabush (2007) asserts that it was important to limit the role of Saddam to use Iraq oil for political advantages. In this regard, Iraq with its repressive attitudes within the region was an obstacle. Moreover, the suspicious of the United States about WMD made Iraq already a dangerous actor as a threat not only for the region but also for the global peace. According to this suspicious, the United States felt justified in questioning Iraq regardless how. For the United States, all these reasons were enough to categorize Iraq as a rough state within the axis of evil. Hence, "there was a conviction within the Bush administration that if we could turn Iraq into an open, democratic society supporting free enterprise, it would be a model for the Middle East" (Turner, 2003, p. 49). Moreover, "The Bush administration also hoped that a convincing victory in Iraq would have a deterrent effect on other rogue states" (Kreft, 2005, p. 73).

In conclusion, the United States tried to sustain its interest in the region by labeling certain states like Iraq as rough states or axis of evil who are the threats to the world order. By this way, the United States tried to justify its preemptive actions in the region. In this context, the changing discourse of the United States from containment strategy to war on terror affected also the implementations against refugees. In order to exemplify this, the study focuses on the situation of Afghan and Iraqi refugees.

3.2.3. Attitudes against Refugees after the September 11

New discourse of the United States after the September 11 affected the attitudes and implementations against refugees all around the world. Discourse of the United State made people inside the borders afraid of anyone coming from outside and most of the Muslims or people from the Middle East, even if they are refugees or not, were began to

be questioned. Lori Peek (2011) points out that Muslims and Arabs living for long years in the United States encountered discriminatory actions. As Peek exemplifies,

Civil-rights organizations recorded thousands of incidents of anti-Islamic and anti-Arab harassment, hate crimes, and vandalism in the months following 9/11... In addition to the attacks on Muslims and Arabs, public anger was directed at other religious and ethnic minorities who were mistakenly identified as “Middle Eastern.” Federal officers raided mosques and froze the assets of several major Islamic charities that regularly sent donations overseas. Arab and Muslim men were questioned and arrested. Some were deported without their family members’ knowledge of their whereabouts. Others were detained indefinitely and denied access to legal counsel. Members of religious and ethnic minority communities were barred from boarding airplanes based solely on their names, appearances, or countries of origin. Muslim children were bullied by their peers, and adults were fired from their jobs (Peek, 2011, p. 6).

These were the results of increased security concerns that also affected policies against refugees and asylum seekers. As Betts indicates “policy and the media in the US and Europe focused on asylum and refugees even though the 9/11 attackers had entered the country on student visas rather than asylum seekers” (2009, p. 76). Hence, along the United States, other Western powers began to shape their policies against refugees by enhancing the security of borders with strict regulations. Controls against refugees become solidified around the world as if any refugee is a terrorist threatening order of the society.

The fight against terrorism created an unprecedented level of suspicion and hostility against refugees and migrants around the world. Most governments, especially those in Europe and North America, introduced stringent new anti-terrorist laws or gave new life to old laws once used to suppress peaceful dissent and other civil and political liberties. Politicians and the media began to portray all border-crossers, whether migrants or refugees, as potential terrorists and security threats. (Loescher, Betts, & Milner, 2008, p. 60).

Even before the September 11, developed states began to restrict refugee applications due to increasing refugee flows with the end of the Cold War. Main reason was to prevent the attempts of irregular migrants to seek for refugee status. Accordingly,

...Western states introduced a series of measures to reduce the number of individuals seeking asylum on their territory. These measures included non-arrival policies, such as carrier sanctions and visa requirements, diversion policies, such as safe-third country agreements, an increasingly restrictive application of the 1951

Convention, and a range of deterrent policies, such as detention of asylum seekers and the denial of social assistance (Loescher, Betts, & Milner, 2008, p. 101).

By the September 11, however, security becomes the main reason that made the West closed the borders. Developed states did not want any more refugees in their borders from critical regions. They considered them as threats to their security and social order and “with each new terrorist attack, governments used security as a rationale to further tighten their immigration systems and visa regimes and limit their resettlement programs” (Loescher, Betts, & Milner, 2008, p. 60). In order to prevent the new refugees, Western states tried to make them remain in their origin countries or to send them to a third country.

So, UNHCR focused more on the repatriation processes and IDPs. As it mentioned before, IDPs are not covered by the Convention since they are still inside their countries and unable to exit the borders. It is, however, true that IDPs are as vulnerable as refugees because they neither protected by their countries nor an international organization except some efforts of UNHCR. Their situation is also related to sovereignty and non-intervention. As it was witnessed in Vietnam, UNHCR put forward the issue of sovereignty and non-intervention by regarding refugees of Vietnam as a domestic issue. Years after, UNHCR took step in favor of IDPs to protect them with new norms: humanitarian intervention and responsibility to protect. These norms are in contrast with sovereignty and non-intervention, so it can be evaluated as an important step. However, the basic factor behind this shift can be associated with the changing attitudes of the developed countries to make refugees remain their own countries. So, it is normal to see that UNHCR has enhanced its capacity and experience on IDPs as long as developed states does not want refugees to reach their borders.

On the other hand, with the restrictions on the implementations against refugees by the Western states, developing countries begin to take measurements against refugees, as well. They have been already in a critical situation placing most of the refugees within their borders coming from neighboring states. With the refusals of the West, developing countries experienced more refugee flows. Hence, they make provisions, they limited

the quantity of asylum, closed their borders, pushed return of refugees, forcibly expelled them or kept them isolated in refugee camps (Loescher, Betts, & Milner, 2008, p. 61).

Among many of the refugees, Afghan and Iraq refugees may be the most vulnerable ones both before and after the September 11. Afghanistan is the major refugee producing country in the world since 1979 and many of the Afghans are in Pakistan and Iran (Güler, 2013, p. 90). Afghanistan has been the center of instabilities for decades because of the internal disorder, invasion by the Soviet Union in 1979 and intervention by the United States and its allies after the September 11 attacks. Taliban was blamed by its link and assistance to el-Qaida who undertook the attacks in 2001 (Güler, 2013, p. 88). Since then the United States has been trying to demolish Taliban which was removed, but is still active in the region (Güler, 2013, p. 90).

After September 11 attacks, due to intervention of the United States, Afghan people tried to survive by fleeing the country and seeking asylum in the nearest countries. By 2012, there are 486,298 IDPs, 2,585,605 refugees, 51,834 asylum seekers originating from Afghanistan and 98,609 Afghan refugees returned to the country (<http://www.unhcr.org>). Since 2002, UNCHR is active for Afghan refugees regarding repatriation, reintegration, rehabilitation and reconstruction (Güler, 2013, p. 91). These processes were discussed at an international conference in Geneva with participation of Afghanistan, Iran, Pakistan and UNHCR with expectation to be more effective and to conduct a Solution Strategy for Afghan Refugees (<http://www.unhcr.org>).

Iran and Pakistan have been hosting most of the Afghan refugees since 1979. When the new refugee flows began to appear in their borders after intervention by the United States in 2001, Iran and Pakistan hesitated to take them into the borders. As Noor points out,

The initial response of the Pakistan government was to keep its border closed with Afghanistan and tighten security along the border crossings to obstruct new arrivals. Entry was allowed only to those who carried valid documents. For many days displaced Afghans, mostly women and children, waited in the border areas for entry into Pakistan... Like Pakistan, Iran kept its border closed with Afghanistan when war was looming after 9/11. Iran cooperated with aid agencies in providing

emergency assistance to refugees and agreed to set up seven camps in the border areas (Noor, 2006, p. 64).

Iran and Pakistan have still concerns about keeping refugees in their territories because of economic and political reasons. Iran has been hosting most of the Afghan refugees more than thirty years. There are approximately 840,200 Afghan refugees in Iran (<http://www.unhcr.org>). Due to the sanctions on Iran that affect its economy, Afghan refugees are facing difficulties in reaching government services, job opportunities and safe living conditions (<http://reliefweb.int>). As reported by Economist, Iran might send them back due to economic conditions (<http://www.economist.com>). On the other hand, there are more than 1.6 million Afghan refugees in Pakistan which is the largest refugee population (<http://www.unhcr.org>). They are facing the same difficulties as the ones in Iran. Pakistan wanted Afghan refugees to leave the country until June 30, 2013, but recently the deadline was extended (<http://www.presstv.ir>).

Hence, uncertain and unsecure conditions make Afghan refugees in the neighboring countries find ways to arrive the developed countries mostly Europe. Their route of movement to Europe mostly requires crossing over the borders of Turkey and Greece. On the one hand, Turkey with its geographical limitation does not accept new comers as refugees except the ones coming from Europe. On the other hand, due to the EU regulations, refugees aiming to reach Europe are mostly stuck at Greece “prevented from going beyond and unwilling to return home” (<http://www.washingtontimes.com>). According to Amnesty International, attitudes of Greece against refugees in order to push them back to Turkey put the lives of refugees in danger (<http://www.amnesty.org>). Because of this critical situation between the Turkish and Greek borders, Amnesty International recently released a report called “Frontier Europe: Human rights abuses on Greece border with Turkey” regarding the conditions that refugees face between the borders (<http://www.amnesty.org>). Not only is the route of refugees dangerous but also the conditions when they arrive in Europe. In her article in 2009, Caroline Brother indicates the situation of Afghan teenagers managed to reach Europe with aims to go to school and then find a job (<http://www.nytimes.com>). When they arrive European countries after long days, may be years, on road, they hardly find a place to stay and

they take shelter in sewers, containers, subway stations, under bridges and canals (<http://www.nytimes.com>) . Moreover they are mostly treated badly by the police or local people. Despite these treatments and tough conditions most of the refugees do not want to return back except of voluntary repatriations due to the uncertain situation in Afghanistan.

Besides Afghanistan, Iraq refugees were also affected from the September 11. As it mentioned before, after September 11 the United States declared war on terror. As a part of its security strategy, the United States began to identify enemies by certain words like axis of evil or rough states who were possibly harboring terrorists and who should be prevented even before they mobilize. Iraq was one of those states that constitutes axis of evil who were considered as potential threats to the world peace. The United States managed to make people support its actions in Iraq by convincing them that Iraq is a rough state having WMD and aiming to use them against civilians. Eventually the war began in 2003, and caused many people to flee Iraq and seek for asylum in neighboring countries.

The Iraq war in 2003 was only a part of Iraqi refugee crisis. Before the war, there were already thousands of Iraqi people outside the country due to the Iran-Iraq war between 1980 and 1988, and Gulf War in 1991. After these two events, there occurred huge refugee flows into neighboring countries that affected the international relations as well. Especially, 1991 Gulf War caused many refugees to reach at the borders of Turkey. Because of security concerns mostly regarding that the terrorist organization in Turkey could have benefited from the refugee situation, Turkey did not accepted refugees (Sönmezoğlu, 2006, p. 545). In order to solve the problem of refugees, Operation Provide Comfort started to create a security zone for refugees in Northern Iraq via the UN Security Council Resolution 688 (Sönmezoğlu, 2006, p. 545). Also, no flight zone was established to prevent any military action by Saddam Hüseyin (Sönmezoğlu, 2006, p. 545).

Turkey's hesitation can be understood due to economic burden of refugees or security concerns regarding the terrorist organization, however, Turkey's permission given to the

United State to use its bases for operations to Iraq is disputable. The Operation was supposed to be for refugee protection but it became an act to limit Saddam Hüseyin in the region (Sönmezoğlu, 2006, p. 551). Fortunately, Turkey gave up this attitude in 2003 with the decision that did not permit the United States to use its bases for the Iraq War (Sönmezoğlu, 2006, p. 546). In this sense, Iraqi refugee crisis after 1991 Gulf War was critical in international relations. The process that began with a refugee crisis eventually turned into an international operation in which refugees became a policy medium.

After September 11 attacks, when the United States started the war in Iraq in 2003 to keep its interests safe and prevent Iraq to be a powerful actor in the region, another dramatic refugee crisis began and many people became displaced. According to UNHCR, there are 1,331,810 IDPs in Iraq, 746,440 refugees and 23,920 asylum seekers mostly in Jordan and Syria (<http://www.unhcr.org>). Now, by the official withdrawal of the United States from Iraq, refugees are expected to return to their homeland. By the end of 2012, 82,270 refugees returned to Iraq (<http://www.unhcr.org>). Approximately 32,000 of the returned refugees are from Syria because of the unrest in the country since 2011 (<http://www.unhcr.org>). The withdrawal of the United States also brings the problem of Iraqi people who assisted the United States during the War. As stated in The Independent, there are “around 70,000 people who worked for the US military. They were promised the offer of refuge in the US, but little has been done fulfill the pledge” (<http://www.independent.co.uk>).

On the other hand, many Iraqi refugees are still living in EU countries. By the Iraq war in 2003, the EU showed its sensitivity about the Iraqi refugees in EU Member States with 288th Justice and Home affairs Council Meeting in 2008, EU (<http://www.eu-un.europa.eu>). Correspondingly, the EU countries were ready to accept thousands of the Iraqi refugees (<http://news.bbc.co.uk>), however, some of them are in fear of being deported. Some EU countries, mainly Denmark, Britain, the Netherlands and Sweden started forcible deportations of Iraqi asylum seekers (<http://www.unhcr.org>). It was even claimed that British officials were mistreating asylum seekers before being deported (<http://www.cbsnews.com>). UNHCR indicated that the conditions in Iraq were not safe

for refugees to return (<http://www.aljazeera.com>). But host states in general want refugees out of borders and send them voluntarily or forcibly. Refugees do not want to go back to Iraq forcibly because of uncertain conditions, therefore, in 2011, some refugees went on hunger strike to protest the deportations in Oxford (<http://www.bbc.co.uk>). Iraq, on the other hand, is reluctant to accept deportees and “has banned the forced return from Europe of tens of thousands of failed asylum seekers and threatened to fine airlines that take part in deportation programmes” (<http://www.guardian.co.uk>). In this direction, neither wanted by hosts states nor Iraq, Iraqi refugees are in a tough condition worried about being deported or not accepted.

As it seen in the examples of Afghan and Iraqi refugees, the situation of refugees is uncertain depending on the decisions of host countries. While the future of refugees is unclear in host countries with fears of deportations, the future of their countries of origin is unclear as well. Except voluntarily returns, many of the refugees prefer to stay in the host countries due to the uncertainty in their origin country. Even their countries do not want them to return because of political and economic situations. But, the host countries want to send them regarding the normalization in the region with the withdrawal of the United States. The region, however, have been going through a different phase with public movements demanding basically democracy and freedom since 2010. Many countries in the North Africa and the Middle East including Tunisia, Libya, Egypt and Syria have deeply experienced the process which also created other refugee crises. Especially, recent events in Syria made around 2.1 million people displaced waiting for international protection (<http://www.unhcr.org>). Events in Syria are not only creates refugees, but also affect the refugees residing in Syria. Many Iraqi refugees had to leave the country because of latest incidents. UNHCR as the lead international organization works for all of these refugees, but host countries’ refugee policies already involve strict regulations mostly independent from UNHCR and despite the condemnations of UNHCR, many EU countries deported refugees.

In conclusion, from the Cold War to the September 11, there have been many refugee crises and states generally responded with ideological and sometimes discriminatory security based policies. Instead of a certified international actor, UNHCR, the role of

individual states are determinative in the process of acceptance. State perceptions and discourses are valid in the attitudes and implementations against refugees. A refugee's entrance to or exit from a country depend on the final decision of states. For instance, as it mentioned before, even the conditions in the origin country is not ameliorated, the host country deports asylum seekers forcibly. Moreover, as in the example of Pakistan, the host country may decide to deport the refugee population by giving them a deadline and then it may extend the time limitation and permit them to stay more. Hence, along poor living conditions, refugees have fears about deportation after long days, months or years in the road to arrive a safer place.

In conclusion, refugee crises in the Cold War and after the September 11 reveal that refugees are generally considered through where they are coming from rather than where they want to live. Refugees from specific regions have been facing various implementations and their differences are highlighted in the acceptance or deportation processes. The state, as if it is the reflection of biopower, uses its power rigorously in borders with policies to control refugees. Refugee camps and safety zones are established to keep refugees close to but outside the borders. Some of the refugees are accepted and many of them have to return their homelands whether it is safe or not, or seek for opportunities in other countries.

CONCLUSION

Different periods in the history presented various attitudes against refugees that shaped international refugee regime. Establishment of the UNHCR and the acceptance of the 1951 Geneva Convention were important steps to create an international refugee regime for the protection of refugees. The regime, however, has been under the influence of interests, policies and relations of individual states, primarily the Western powers. During the Cold War, The United States and its allies generally welcomed refugees as a means of anti-communist propaganda. With the end of the Cold War, refugee movements continued to increase dramatically. Emerging new states and new borders created their own territorial and ethnic conflicts with brutal violence against civilians which caused many people to seek for asylum not only in the nearest countries but also in developed countries. Thus, refugee acceptance began to diminish and control mechanisms started to involve strict regulations. Protectionist policies against refugees reached its peak after the September 11. Perceptions towards refugees changed as if anyone coming from outside the borders, especially from the Middle East, was a potential threat to the security. As a result, the Western states began to take action to prevent the arrivals and deport the existing asylum seekers (Betts, 2009, p. 75).

Hence, the refugee issue has been generally interpreted and determined through state perceptions, attitudes and implementations. In this sense, this thesis tries to understand the determinative role of the state in the refugee issue by taking the state as a research subject to be discussed in its historical evolution instead of taking it as an indisputable concept as the main theories of international relations does. For this reason, the thesis takes post-structuralism as the main theoretical approach to question how the state is accepted as the main actor in the International Relations Theory. Within a post-structuralist perspective, the study focuses on briefly the evolution of the state that became capable of using differences like inside and outside to create its own discourse which eventually causes refugees to be perceived as outsiders and threats to the security of the inside.

In this regard, the thesis examines two important components of post-structuralism: Jacques Derrida's method of deconstruction and Michel Foucault's genealogical analysis of biopower. First, Derrida's method of deconstruction helps to understand the role of binary oppositions like East/West, inside/outside or self/other. These oppositions highlight differences by accepting one term as superior and the other term as inferior. As the main actor of the international relations, the sovereign state has used these oppositions to separate the outside from the inside. The otherness of the refugees has been indicated by state perceptions which made the lines between people clearer, and which made the borders between the countries apparent. On the other hand, it can be said that refugees gain meaning generally through threat perceptions. As stated by Derrida, however, there is no clear meaning because of the various equivalences of a signifier. On that account, refugees cannot be reduced to only one meaning or a concept like threat. The treatment of refugees mainly after the September 11, however, has been shaped through security based policies of states. Second, the thesis uses Foucault's genealogical analysis in order to understand the power and knowledge relations. According to Foucault, genealogy is to understand the power that uses knowledge to create its own reality. Power is not something that state or any other institution has privilege. Instead, power constitutes of different relations in the society that is called biopower using surveillance techniques to discipline the individuals through their capabilities and to control the populations in order to make people more productive to enhance the capacity of the power itself.

In this context, Derrida's deconstruction focusing on binary oppositions and Foucault genealogical analysis of biopower are adopted to understand the refugee issue. On the one hand, refugees are at the heart of binary oppositions mostly related to the differences between inside and outside. As they are coming from outside the borders, they are perceived as threats to the inside. On the other hand, as a result of this understanding, they are controlled in refugee camps near borders and they are mostly not allowed to enter the host country. Appropriately, they encounter strict regulations, preventions and measures by the state. So, the state has a determinative role in the refugee issue with its attitudes and implementations against refugees that change

according to the perceptions and discourses. Particular situations show that refugees were treated differently throughout the history. They were generally considered through their differences related to where they come from.

Both periods of the Cold War and the September 11 inclined to use differences to set a line between inside and outside of the borders. The attitudes in the Cold War highlighted the differences to welcome the refugees from particular countries. For instance, following the Hungarian revolution, the refugees escaping from the communist regime were accepted almost unconditionally by Western powers as the Hungarian revolution paved the way to condemn the Soviet Union and shaped an anti-communist propaganda. On the contrary, the Algerian refugees encountered hesitations during their war of independence against France. Since Algeria was accepted as a French territory, France opposed UNHCR to help the Algerian refugees. On the other hand, the Western powers indicated the differences to exclude refugees after the September 11; differences were highlighted even more when it was confirmed that the attacks were performed by Muslims. Then, any Muslim began to be discriminated as if they were direct threats to the Western society. The changing discourse of the United States that announced a war on terror not only affected the perceptions against refugees but also created many more refugees all around the world. Particularly Afghanistan and Iraq, already vulnerable by refugee crisis, again experienced new refugee crises mostly because of the direct military intervention of the United States to Afghanistan and then the Iraq war.

Consequently, the UN based international refugee regime, mainly depending on UNHCR and the Convention and the Protocol relating to the Status of Refugees, is under the influence of individual states. On the one hand, UNHCR as a Western based organization, has been manipulated by Western powers. Discourses and interests prevailed over the implementations of UNHCR. On the other hand, although the world has been changing, the Convention is still focusing on the same concepts remains from the Cold War. For example, the refugee definition still focuses on “well-founded fear.” While there are lots of other reasons that make refugees to leave their countries, the Convention still tries to measure the fear through punishment. Moreover, rather than covering refugees, the Convention and the Protocol is more likely to cover the states by

expecting them to “give sympathetic consideration” and by giving them the opportunity to interpret the provisions “in the most favorable” way.

Hence, states are still the main decision makers in the protection of refugees and the international refugee regime is shaped by their behaviors. In order to provide a better protection for refugees, it might be an important step if states interpret the Convention and the Protocol for the sake of refugees rather than only for their interests and give more space to international organizations free from manipulations, especially to UNHCR as the main international organization for refugee protection.

ANNEX

TEXTS OF THE CONVENTION AND THE PROTOCOL RELATING TO THE STATUS OF REFUGEES AND THE LIST OF STATE PARTIES

CONVENTION RELATING TO THE STATUS OF REFUGEES

Preamble

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

CONSIDERING that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

CONSIDERING that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

NOTING that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the cooperation of States with the High Commissioner,

HAVE AGREED as follows:

CHAPTER I: General Provisions

Article 1

DEFINITION OF THE TERM "REFUGEE"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality " shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if,

without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either:

- (a) "events occurring in Europe before 1 January 1951"; or
- (b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2**GENERAL OBLIGATIONS**

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3**NON-DISCRIMINATION**

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4**RELIGION**

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5**RIGHTS GRANTED APART FROM THIS CONVENTION**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6**THE TERM "IN THE SAME CIRCUMSTANCES"**

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9

PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11

REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II: Juridical Status

Article 12

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15
RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16
ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III: Gainful Employment

Article 17
WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was

already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence.

A refugee may not invoke the benefits of this provision if he has abandoned his spouse;

- (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV: Welfare

Article 20

RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21

HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V: Administrative Measures

Article 25

ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26**FREEDOM OF MOVEMENT**

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27**IDENTITY PAPERS**

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28**TRAVEL DOCUMENTS**

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29**FISCAL CHARGES**

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30**TRANSFER OF ASSETS**

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31**REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGEE**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country.

The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

EXPULSION

1. The Contracting States shall not expel a refugee law fully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34**NATURALIZATION**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI: Executory and Transitory Provisions**Article 35****CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS**

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) The condition of refugees,
 - (b) The implementation of this Convention, and;
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36**INFORMATION ON NATIONAL LEGISLATION**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37**RELATION TO PREVIOUS CONVENTIONS**

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII: Final Clauses**Article 38****SETTLEMENT OF DISPUTES**

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39**SIGNATURE, RATIFICATION AND ACCESSION**

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40

TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41**FEDERAL CLAUSE**

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42**RESERVATIONS**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43
ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument or ratification or accession.

Article 44
DENUNCIATION

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45
REVISION

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46
NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED
NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments,

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

PROTOCOL RELATING TO THE STATUS OF REFUGEES

THE STATES PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

CONSIDERING that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

CONSIDERING that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

HAVE AGREED as follows:

Article I

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and ..." "and the words"..."a result of such events", in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

Article II
CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED
NATIONS

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III
INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV
SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- (b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII
RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII
ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

STATES PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL

Date of entry into force:
22 April 1954 (Convention)
4 October 1967 (Protocol)

As of 1 April 2011

Total number of States Parties to the 1951 Convention: 144

Total number of States Parties to the 1967 Protocol: 145

States Parties to both the Convention and Protocol: 142

States Parties to one or both of these instruments: 147

States Parties to the 1951 Convention only:

Madagascar, Saint Kitts and Nevis

States Parties to the 1967 Protocol only:

Cape Verde, United States of America, Venezuela

The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V), adopted by the General Assembly of the United Nations on 14 December 1950.

The dates indicated are the dates of deposit of the instrument of ratification or accession by the respective States Parties with the Secretary-General of the United Nations in New York. In accordance with article 43(2), the Convention enters into force on the ninetieth day after the date of deposit. The Protocol enters into force on the date of deposit (article VIII (2)). Exceptions are indicated below.

Most recent ratification/accession:	Convention	Protocol
Monaco	18 May 1954 a	16 June 2010a
Montenegro	10 Oct 2006 d	10 Oct 2006 d
Country	Convention	Protocol
Afghanistan	30 Aug 2005 a	30 Aug 2005a
Albania	18 Aug 1992 a	18 Aug 1992a
Algeria	21 Feb 1963 d	08 Nov 1967a

Angola	23 Jun 1981 a	23 Jun 1981 a
Antigua and Barbuda	07 Sep 1995 a	07 Sep 1995 a
Argentina	15 Nov 1961 a	06 Dec 1967 a
Armenia	06 Jul 1993 a	06 Jul 1993 a
Australia	22 Jan 1954 a	13 Dec 1973 a
Austria	01 Nov 1954 r	05 Sep 1973 a
Azerbaijan	12 Feb 1993 a	12 Feb 1993 a
Bahamas	15 Sep 1993 a	15 Sep 1993 a
Belarus	23 Aug 2001 a	23 Aug 2001 a
Belgium	22 Jul 1953 r	08 Apr 1969 a
Belize	27 Jun 1990 a	27 Jun 1990 a
Benin	04 Apr 1962 d	06 Jul 1970 a
Bolivia	09 Feb 1982 a	09 Feb 1982 a
Bosnia and Herzegovina	01 Sep 1993 d	01 Sep 1993 d
Botswana	06 Jan 1969 a	06 Jan 1969 a
Brazil	16 Nov 1960 r	07 Apr 1972 a
Bulgaria	12 May 1993 a	12 May 1993 a
Burkina Faso	18 Jun 1980 a	18 Jun 1980 a
Burundi	19 Jul 1963 a	15 Mar 1971 a
Cambodia	15 Oct 1992 a	15 Oct 1992 a
Cameroon	23 Oct 1961 d	19 Sep 1967 a
Canada	04 Jun 1969 a	04 Jun 1969 a
Cape Verde (P)		09 Jul 1987 a
Central African Republic	04 Sep 1962 d	30 Aug 1967 a
Chad	19 Aug 1981 a	19 Aug 1981 a
Chile	28 Jan 1972 a	27 Apr 1972 a
China	24 Sep 1982 a	24 Sep 1982 a
Colombia	10 Oct 1961 r	04 Mar 1980 a
Congo	15 Oct 1962 d	10 Jul 1970 a
Congo, Democratic Republic of	19 Jul 1965 a	13 Jan 1975 a
Costa Rica	28 Mar 1978 a	28 Mar 1978 a

Côte d'Ivoire	08 Dec 1961 d	16 Feb 1970 a
Croatia	12 Oct 1992 d	12 Oct 1992 d
Cyprus	16 May 1963 d	09 Jul 1968 a
Czech Republic	11 May 1993 d	11 May 1993 d
Denmark	04 Dec 1952 r	29 Jan 1968 a
Djibouti	09 Aug 1977 d	09 Aug 1977 d
Dominica	17 Feb 1994 a	17 Feb 1994 a
Dominican Republic	04 Jan 1978 a	04 Jan 1978 a
Ecuador	17 Aug 1955 a	06 Mar 1969 a
Egypt	22 May 1981 a	22 May 1981 a
El Salvador	28 Apr 1983 a	28 Apr 1983 a
Equatorial Guinea	07 Feb 1986 a	07 Feb 1986 a
Estonia	10 Apr 1997 a	10 Apr 1997 a
Ethiopia	10 Nov 1969 a	10 Nov 1969 a
Fiji	12 Jun 1972 d	12 Jun 1972 d
Finland	10 Oct 1968 a	10 Oct 1968 a
France	23 Jun 1954 r	03 Feb 1971 a
Gabon	27 Apr 1964 a	28 Aug 1973 a
Gambia	07 Sep 1966 d	29 Sep 1967 a
Georgia	09 Aug 1999 a	09 Aug 1999 a
Germany	01 Dec 1953 r	05 Nov 1969 a
Ghana	18 Mar 1963 a	30 Aug 1968 a
Greece	05 Apr 1960 r	07 Aug 1968 a
Guatemala	22 Sep 1983 a	22 Sep 1983 a
Guinea	28 Dec 1965 d	16 May 1968 a
Guinea-Bissau	11 Feb 1976 a	11 Feb 1976 a
Haiti	25 Sep 1984 a	25 Sep 1984 a
Holy See	15 Mar 1956 r	08 Jun 1967 a
Honduras	23 Mar 1992 a	23 Mar 1992 a
Hungary	14 Mar 1989 a	14 Mar 1989 a
Iceland	30 Nov 1955 a	26 Apr 1968 a

Iran, Islamic Republic of	28 Jul 1976 a	28 Jul 1976 a
Ireland	29 Nov 1956 a	06 Nov 1968 a
Israel	01 Oct 1954 r	14 Jun 1968 a
Italy	15 Nov 1954 r	26 Jan 1972 a
Jamaica	30 Jul 1964 d	30 Oct 1980 a
Japan	03 Oct 1981 a	01 Jan 1982 a
Kazakhstan	15 Jan 1999 a	15 Jan 1999 a
Kenya	16 May 1966 a	13 Nov 1981 a
Kyrgyzstan	08 Oct 1996 a	08 Oct 1996 a
Korea, Republic of	03 Dec 1992 a	03 Dec 1992 a
Latvia	31 Jul 1997 a	31 Jul 1997 a
Lesotho	14 May 1981 a	14 May 1981 a
Liberia	15 Oct 1964 a	27 Feb 1980 a
Liechtenstein	08 Mar 1957 r	20 May 1968 a
Lithuania	28 Apr 1997 a	28 Apr 1997 a
Luxembourg	23 Jul 1953 r	22 Apr 1971 a
Macedonia,		
The Former Yugoslav Republic of	18 Jan 1994 d	18 Jan 1994 d
Madagascar (C)	18 Dec 1967 a	
Malawi	10 Dec 1987 a	10 Dec 1987 a
Mali	Feb 1973 d	02 Feb 1973 a
Malta	17 Jun 1971 a	15 Sep 1971 a
Mauritania	05 May 1987 a	18 May 1987 a
Mexico	07 June 2000 a	07 June 2000 a
Moldova, Republic of	31 Jan 2002 a	31 Jan 2002 a
Monaco (C)	18 May 1954 a	16 June 2010 a
Montenegro	10 Oct 2006 d	10 Oct 2006 d
Morocco	07 Nov 1956 d	20 Apr 1971 a
Mozambique	16 Dec 1983 a	01 May 1989 a
Namibia	17 Feb 1995 a	17 Feb 1995 a
Netherlands	03 May 1956 r	29 Nov 1968 a

New Zealand	30 Jun 1960 a	06 Aug 1973 a
Nicaragua	28 Mar 1980 a	28 Mar 1980 a
Niger	25 Aug 1961 d	02 Feb 1970 a
Nigeria	23 Oct 1967 a	02 may 1968 a
Norway	23 Mar 1953 r	28 Nov 1967 a
Panama	02 Aug 1978 a	02 Aug 1978 a
Papua New Guinea	17 Jul 1986 a	17 Jul 1986 a
Paraguay	01 Apr 1970 a	01 Apr 1970 a
Peru	21 Dec 1964 a	15 Sep 1983 a
Philippines	22 Jul 1981 a	22 Jul 1981 a
Poland	27 Sep 1991 a	27 Sep 1991 a
Portugal	22 Dec 1960 a	13 Jul 1976 a
Romania	07 Aug 1991 a	07 Aug 1991 a
Russian Federation	02 Feb 1993 a	02 Feb 1993 a
Rwanda	03 Jan 1980 a	03 Jan 1980 a
Saint Kitts and Nevis (C)	01 Feb 2002 a	
Saint Vincent and the Grenadines	03 Nov 1993 a	03 Nov 2003 a
Samoa	21 Sep 1988 a	29 Nov 1994 a
Sao Tome and Principe	01 Feb 1978 a	01 Feb 1978 a
Senegal	02 May 1963 d	03 Oct 1967 a
Serbia	12 Mar 2001 d	12 Mar 2001 d
Seychelles	23 Apr 1980 a	23 Apr 1980 a
Sierra Leone	22 May 1981 a	22 May 1981 a
Slovakia	04 Feb 1993 d	04 Feb 1993 d
Slovenia	06 Jul 1992 d	06 Jul 1992 d
Solomon Islands	28 Feb 1995 a	12 Apr 1995 a
Somalia	10 Oct 1978 a	10 Oct 1978 a
South Africa	12 Jan 1996 a	12 Jan 1996 a
Spain	14 Aug 1978 a	14 Aug 1978 a
Sudan	22 Feb 1974 a	23 May 1974 a
Suriname	29 Nov 1978 d	29 Nov 1978 d

Swaziland	14 Feb 2000 a	28 Jan 1969 a
Sweden	26 Oct 1954 r	04 Oct 1967 a
Switzerland	21 Jan 1955 r	20 May 1968 a
Tajikistan	07 Dec 1993 a	07 Dec 1993 a
Tanzania, United Republic of	12 May 1964 a	04 Sep 1968 a
Timor-Leste	07 May 2003 a	07 May 2003 a
Togo	27 Feb 1962 d	01 Dec 1969 a
Trinidad and Tobago	10 Nov 2000 a	10 Nov 2000 a
Tunisia	24 Oct 1957 d	16 Oct 1968 a
Turkey	30 Mar 1962 r	31 Jul 1968 a
Turkmenistan	02 Mar 1998 a	2 Mar 1998 a
Tuvalu	07 Mar 1986 d	07 Mar 1986 d
Uganda	27 Sep 1976 a	27 Sep 1976 a
Ukraine	10 Jun 2002 a	04 Apr 2002 a
United Kingdom of Great Britain and Northern Ireland	11 Mar 1954 r	04 Sep 1968 a
United States of America (P)		01 Nov 1968 a
Uruguay	22 Sep 1970 a	22 Sep 1970 a
Venezuela (P)		19 Sep 1986 a
Yemen	18 Jan 1980 a	18 Jan 1980 a
Zambia	24 Sep 1969 d	24 Sep 1969 a
Zimbabwe	25 Aug 1981 a	25 Aug 1981 a

Limitations:

Article 1 B(1) of the 1951 Convention provides: "For the purposes of this Convention, the words 'events occurring before 1 January 1951' in article 1, Section A, shall be understood to mean either (a) 'events occurring in Europe before 1 January 1951'; or (b) 'events occurring in Europe or elsewhere before 1 January 1951', and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purposes of its obligations under this Convention."

The following States adopted alternative (a), the geographical limitation: Congo, Madagascar, Monaco and Turkey. Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol. Madagascar has not yet adhered to the Protocol.

All other States Parties ratified, acceded or succeeded to the Convention without a geographical limitation by selecting option (b), 'events occurring in Europe or elsewhere before 1 January 1951'.

Notes:

*Ratification (r), Accession (a), Succession (d).

** (C) denotes States Parties to the 1951 Convention only; (P) denotes States Parties to the 1967 Protocol only. As of

***4 February 2003, following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia, the official name.

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