Can Israel Freely Interpret the Refugee Convention (When it Comes to Palestinian Asylum Seekers)?

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An Israeli immigration tribunal[1] recently decided that (all) Palestinians who seek asylum in Israel are excluded from the 1951 UN Convention relating to the Status of Refugees (the "Refugee Convention") under Article 1D thereof.[2] In doing so, the Tribunal went against numerous decisions and academic writings to the contrary.[3]One of the arguments that the Tribunal used, and which I will critically analyze in this short article, is that Israel is entitled to freely interpret the Refugee Convention (within reason), and – furthermore – can take into account, in its interpretation, unique aspects pertaining to it, such as "the complexity of the relations between the State of Israel and the Palestinian Authority and its inhabitants."[4]

The Case Background and an Explanation of Israel's Protection Granting Bodies

The Tribunal case at issue involved a Palestinian applicant in his 50s from a village near the town of Jenin (the West Bank), a territory which is part of the occupied Palestinian territories ("OPT"). In the applicant's original application to regularize his prolonged stay in Israel, he sought status as a threatened person by applying to the "Threatened Persons Committee". In that application, he stated that, because of his past collaboration with Israel as an informant, he would face danger of retaliation upon return to the West Bank. The Threatened Persons Committee operates under the Ministry of Defense and is in charge of finding out, based on confidential information, whether an ex-informant from the OPT faces danger to his life or freedom due to collaboration, and of deciding, based on that finding (and other factors), whether he should be granted a permit to temporarily stay in Israel. As will be explained below, this Committee does not deal with "regular" asylum cases (which are dealt with by the Ministry of Interior) and therefore does not assess refugee status or consider the Refugee Convention in its decisions. As such, it operates as if the Refugee Convention does not apply to it.

In this case, the Committee decided that the applicant did not face danger of retaliation upon return, and consequently that he should not be granted any permit to remain in Israel. The Israeli Supreme Court unanimously rejected the applicant's petition against that decision. "It appears from the information presented before us

[in camera]", the Court wrote, "that the petitioner did not significantly assist the security forces, beyond mere sporadic information [to the Police]; on the other hand . . . there is a serious suspicion that the petitioner himself is somewhat involved in criminal activity . . . According to intelligence sources, there is no updated data as to threats to his life [in the West Bank]. At the bottom line . . . we did not find that the respondents' decision is astray in a way that warrants our interference."[5]

Despite this decision, the applicant did not return to the West Bank. Instead, he applied for status anew – this time seeking *refugee* status before the Refugee Status Determination Unit, a department within the Population and Immigration Authority ("PIA") in the Ministry of Interior, in charge of handling asylum applications in Israel since 2009.[6] In his application for asylum, he argued that he had obtained new information that strengthened a claim of a well-founded fear of being persecuted upon return to the OPT based on an (imputed) political opinion and his membership in a particular social group of informants.

To understand why the applicant first applied for status through the Threatened Persons Committee when he had a claim of well-founded fear of persecution, it is important to highlight the differences in criteria and procedure used by the Threatened Persons Committee and PIA's RSD Unit. To put it succinctly, the Threatened Persons Committee uses more burdensome criteria in terms of degree of risk, type of risks, etc. when compared to criteria used under the "refugee" definition in the Refugee Convention. Moreover, the Threatened Persons Committee ascribes certain rights to a successful claimant, but these almost always fall far short of the rights that a recognized refugee is entitled to in Israel.[7] The Threatened Persons Committee, when deliberating, also considers questions that are completely irrelevant under the Refugee Convention, such as the importance and helpfulness of the information that the claimant gave to the Israeli security forces (sometimes assessed in hindsight), and whether the claimant was involved in (non-serious) criminal activity while in Israel.

Despite obvious benefits of having one's claim go through the refugee determination procedure, lawyers representing Palestinian asylum seekers seldom file asylum applications within the regular RSD system on behalf of their clients, knowing they are unlikely to receive a positive decision. Indeed, it was a well-known secret, somewhat reflected in the PIA written regulations,[8] that the PIA's RSD Unit will simply not hear claims from Palestinian asylum seekers. Many lawyers, perhaps recognizing the low chances of winning a case for a Palestinian in an Israeli court, have refrained for many years from bringing this policy under judicial review.

The lawyer in the case under discussion, however, decided to go somewhat against the herd. After unsuccessfully exhausting the "Threatened Persons Committee"

avenue, as mentioned above, she filed a "regular" asylum application before the "regular" RSD body. Her client was quickly turned down by a decision, which stated, "[a]ccording to Article 1D of the [Refugee] Convention, the Convention's provisions do not apply to Palestinians as they are handled by UNRWA and not under UNHCR mandate".[9] The lawyer then decided to legally challenge this decision. The Tribunal, as I will shortly describe in more detail, has rejected the appeal, and an appeal against the Tribunal's decision is now pending before the Tel Aviv Administrative (District) Court.

The Fallacious Reasoning of the Tribunal's Decision

While the Tribunal's reasoning is far from clear and coherent, a sympathetic reading reveals two main arguments. The first is that the PIA's decision is legally valid because its interpretation of Article 1D (that all Palestinians are excluded from the Convention, as they are all – as a group – "persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner protection or assistance") is "reasonable" and therefore legally permissible. The second is that it is legally valid for Israel to create a distinct procedure for regularizing the status of Palestinian asylum seekers, wholly separate from that used for other asylum seekers. To this end, the Tribunal claimed that because the appellant was free to use (and did use, albeit unsuccessfully) the distinct "Palestinian" procedure (that of applying to "the Threatened Persons Committee" for protected status), Israel did not violate its international obligations. While both arguments are flawed, the following critique will focus on the first argument only[10] in order to address a worrying trend in courts around the world where decisionmakers have at times wrongly opted for a separatist rather than universal concept of treaty interpretation. Of specific interest to this critique is, therefore, whether "reasonable interpretation" is a valid legal criterion for treaty interpretation[11].

Can States "Freely Interpret" Treaties?

There seems to be no scholastic dispute that Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969) ("VCLT") are the inscription of customary international law regarding treaty interpretation.[12] Article 31(1) of the VCLT stipulates the prime rule of treaty interpretation, which is: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose", while other ancillary rules follow. The VCLT is, therefore, the necessary first step in any acceptable legal quest for the correct interpretation of a treaty provision. Once one acknowledges the binding character of the VCLT's Articles 31-32, it is a short way to the conclusion that a treaty provision has (at least in most cases) a single correct

interpretation rather than a "legitimate range" of possible interpretations. As the House of Lords unequivocally ruled:

[A]s in the case of other multilateral treaties, the Refugee Convention must be given an independent meaning derivable from the sources mentioned in articles 31 and 32 [of the VCLT] and without taking color from distinctive features of the legal system of any individual contracting state. **In principle therefore there can only be one true interpretation of a treaty** (emphasis added).[13]

The Israeli Tribunal, unfortunately, never took this necessary first step, and its decision is therefore unsubstantiated quite from the beginning. It did not recognize that rules of international law – rather than each contracting state's own rules of interpretation – govern treaty interpretation, and that such international rules (i.e. Articles 31-32 of the VCLT) should be enforced by each contracting state's local courts (such as the Tribunal itself).[14]

A clarification is due here. As the Tribunal failed to apply the VCLT's rules of interpretation altogether, the jurisprudential grandiloquent question – whether rules of interpretation can (ideally, when administered by Judge Hercules[15]) eliminate *any* need for an interpreter's discretion (as Ronald Dworkin argued[16]), or not (as H.L.A Hart argued[17]) – is *not* the question we grapple with here. If the Tribunal had taken a Hartian view, and accordingly concluded that, despite VCLT's rules of interpretation, Article 1D remained ambiguous, and that such unavoidable ambiguity left room for an interpretation excluding Palestinians from the Refugee Convention altogether, this would be a completely different article. Rather, what the Tribunal said is that Israel was free to*choose* a particular interpretation among an array of reasonable interpretations. The Tribunal did not recognize the authoritative nature of Articles 31-32 of VCLT, and did not even *attempt* to find the *one true universal interpretation* of Article 1D's wording. This is not a story about a "hard case" and a Hartian exhaustion from seeking the one true interpretation of the legal norm; this is a lack of willingness to make such an attempt to begin with.

An Obligation to Consider Others' Interpretations

This leads me to another important point: The Hart-Dworkin debate revolves around Judge Hercules's interpretative capabilities; but in the real world, most judges are not Hercules. Hence, even if judges share the notion that there is a single set of rules of treaty interpretation (the one laid down in the VCLT), and even if they agree that in most cases the VCLT's rules lead to one correct interpretation of each treaty provision (let's call this "the Correctness Principle"), they might nevertheless reach – in good faith – different interpretive outcomes, some of them erroneous. Hence, in remedy to this possibility, serious and responsible judges frequently look at how

other judges construed the same treaty provision, to learn from others' wisdom (or lack of it).

One might further claim that this idea of "checking what other adjudicators (in other countries) did" is not merely a warranted practice, aimed at minimizing the risk of a domestic judge's wrong interpretation of a treaty provision, but an actual *legal obligation*. This obligation, one might further contend, stems from a well-recognized principle of international law, which provides that countries should aspire to interpret and implement international law in a harmonized manner ("the Harmony Principle"). This principle has been mentioned numerous times in the field of refugee law, which is renowned for its inter-judicial cooperation.[18]

There is an analytical tension between the Correctness Principle and the Harmony Principle: consider the case in which a domestic judge is convinced, that the way in which the vast majority of adjudicators around the globe have interpreted a treaty is in conflict with rules 31-32 of the VCLT, i.e. that the "harmonious" legal rule runs against the Correctness Principle. This is a serious jurisprudential question, which is yet to be fully philosophically and doctrinally addressed. For this short article, suffice it to say, that: (a) in theory, if Hercules-type judges in every country would have applied the one true interpretation of a specific treaty's clause, according to the Correctness Principle, then their respective interpretations would have been identical, and hence met the Harmony Principle (at least in cases where there is no judicial discretion, and if we take the (narrow) Hartian view of judicial discretion to begin with); and (b) even if the Correctness Principle supersedes the Harmony Principle, it nevertheless makes sense to *explore* the way various adjudicators around the globe interpreted a treaty provision, as part of a reasonable (and humble) intellectual investigative process, in which a domestic judge *bona fide* seeks the one true interpretation of a treaty clause, according to the Correctness Principle.

This is not what Judge Bergman of the Israeli Tribunal did. He did not waste much time in checking – let alone grappling with – the way other international law actors interpreted Article 1D. He explicitly rejected UNHCR's 2009 Revised Note on this very matter of Article 1D's interpretation, by merely pointing to the fact that it carries no binding force, and completely overlooked the manner in which other jurisdictions (such as the European Court of Justice)[19] interpreted the Article. In this sense, the Tribunal went a step further than the Jerusalem District Court, which several years earlier, in the *Tebeka* case, wrote: "[I]t seems that Israel's particular circumstances, taking under consideration, among other things, the immigration flows which wash it, may influence the interpretation of the [Refugee] Convention's provisions by Israeli Courts... It is certainly so, when there is no accepted and agreed upon position under international law."[20] In that case, the Jerusalem Court restrained its freedom

of interpretation thesis (and the "Israel's unique circumstances" thesis, to be discussed below) to cases where there is no broadly agreed-upon interpretation of a Refugee Convention provision among the Contracting States. The Tribunal, on the other hand, did not stop there. It instead set the freedom of interpretation thesis almost completely on the loose, arguing that – regardless of how the rest of the world tends to construe a treaty provision – if Israel's unique interpretation is reasonable, it is legally valid.

The Chevron Argument

At some point, the Tribunal shifts from a claim regarding legal interpretation to a claim regarding *judicial review*(of the executive agency's legal interpretation), and employs a *Chevron*-type test[21] of judicial review on PIA's interpretation of Article 1D of the Convention[22]. The Tribunal's *Chevron*-type argument, while slightly milder than the freedom of interpretation argument, is also flawed. It should not come as a shock that "executive agencies are... representatives of an interested contracting party with strong incentives to distort international agreements for domestic political gain".[23] Hence, giving executive agencies interpretive deference would be tantamount to letting the cat guard the cream. Indeed, "*Chevron* deference thus draws U.S. treaty jurisprudence into conflict with international treaty law's foundational principle, *pacta sunt servanda*".[24] It should be added, that the Tribunal's *Chevron*-type argument is also surprising, since the Israeli Supreme Court never clearly adopted the *Chevron* doctrine or its reasoning in administrative law, let alone in international law.[25]

A focus on one general characteristic of treaties and on one unique characteristic of the Refugee Convention would be useful here. The general point is that the Refugee Convention, as any convention, is a contract among states. A contract is, by nature, a matter of give-and-take: each party bears obligations to the other parties in a reciprocal manner. Who would inspect that the parties do, indeed, keep their promises and perform their respective treaty-based obligations? Here the more idiosyncratic point kicks in: unlike (some) other treaties, the Refugee Convention does not have any authoritative international enforcement mechanism. While Article 38 to the Refugee Convention provides that "[a]ny 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", so far not a single case has been referred to the ICJ under this provision. Moreover, Article 38, in accordance with Article 34(1) of the Statute of the International Court of Justice, allows signatory states only – not asylum seekers – the right of petition to the ICJ. However, many (putative) infringements of the Refugee Convention, while harming asylum seekers and refugees, bear no harm

to States, which would therefore have no incentive to petition the ICJ. To relate this point to the previous general point on the nature of treaties, the Refugee Convention is (at least in part) a contract *in favor of a third party* (asylum seekers and refugees), but the third party bears no access to the instance, which – according to that contract itself – bears the (final and authoritative) responsibility to construe and enforce the contract.

Hence, in practice, domestic (or, in certain cases, regional) courts have the final authoritative say on the Refugee Convention's interpretation, binding on their own respective countries or regions. Under such circumstances, it seems pertinent to reject *Chevron*-type doctrines, and stick to the Correctness Principle (or, at least, to the Harmony Principle), which would reify and respect the concept of a contract. Under a contractual regime, it is unacceptable for party A to adhere to one (reasonable) interpretation of a contract's provision, while party B adheres to another (reasonable) interpretation of it. A reasonable account of contract law is that, in such a case, one of the parties breaches the contract – intentionally or not. Under domestic law, in a democratic regime, a disinterested court would be the forum for resolving such a dispute. The court would authoritatively decide which party is right and which is wrong. In regards to the Refugee Convention, as explained above, no international forum exists (at least de facto) for making such an authoritative decision, binding on all parties to the Convention. The closest we can get to a disinterested international forum is domestic courts bona fide implying the Correctness Principle.

To sum up the objection to the *Chevron*-type argument, judicial deference to the way the executive branch interprets a treaty might end up with each signatory party advancing its own self-interest, at the expense of the other parties (and the individuals it was supposed to protect, in the case of human rights treaties). This would conflict with the VCLT Article 31's command that "a treaty shall be interpreted in good faith". Even if we constrain the judicial deference to instances of "reasonable interpretation" by the executive branch, this might still lead to the problematic result – in conflict with the very idea of a contract – in which different parties to the same treaty (i.e. contract) interpret its provisions differently. True, without an authoritative decision-making body governing the international refugee law regime, this might still happen in refugee law even under the Correctness Principle, as different domestic courts might truly disagree about what is the true interpretation – based on VCLT's Article 31-32 – of a provision of the Refugee Convention. However, the risk of such a scenario is much higher under a*Chevron*-type doctrine of treaty interpretation, providing deference – whether complete or limited – to the States' own executives in interpreting treaties. The Institut de Droit International (IDI) attempted to avoid this

very scenario of a multitude of treaty interpretations by domestic courts around the world when it resolved that "national courts should have full independence in the interpretation of a treaty, making every effort to interpret it as it would be interpreted by an international tribunal and avoiding interpretations influenced by national interests".[26]

Unique Circumstances

This naturally leads me to the Tribunal's final and most unordinary argument, in which it bluntly takes Israel's unique foreign affairs considerations as a standard for interpreting a multilateral treaty to which Israel is a party. According to this reasoning, the Israeli-Palestinian conflict is a relevant factor in "interpreting" Article 1D as excluding all Palestinians from the Refugee Convention.[27] This is an invalid reasoning. The difference between international law and international relations is that the former is based on universal (or multi-lateral) *rules*, not on the notion of promoting the country's own self-interest; and those rules should be interpreted and enforced in good faith, not in a self-serving or idiosyncratic way. Putting aside the substantive argument, which clearly supports the idea that an "enemy national" can nevertheless be recognized as a refugee in the beleaguered country, a state cannot simply claim that it interprets a treaty in a certain way because it better serves its foreign affairs policy, and the Tribunal did not offer any argument beyond that.

Conclusion

There are obvious undercurrents and problems when it comes to discussing a Palestinian asylum seeker in Israel in that Israeli officials seem to associate the recognition of a Palestinian as a refugee (when he might endure harm from fellow Palestinians in the OPT) as somehow related to the right of return of Palestinians to the territory of present day Israel. In fact, Israel seems to impose on Palestinian asylum seekers a separate and unequal asylum regime, which is more of a national security strategy (rewarding collaborators) than a protection of human rights (assisting people who fear persecution). This problematic background, and the panic that seems to soar whenever a Palestinian enters an Israeli courtroom, might very well be the cause of the Tribunal's very perverse opinion, from an international law perspective.

However, as can be seen in the *Tebeka* case,[28] Israel's tendency towards freedom of interpretation regarding the Refugee Convention has surfaced in other scenarios as well. Moreover, national courts in other parts of the world have also wrongly interpreted treaties in an independent, idiosyncratic or self-serving manner. Precisely because international refugee law has, so far, enjoyed relative inter-judicial cooperation, and because the present refugee crisis might tempt countries to abandon universal interpretation of the Refugee Convention in favor of a nationalistic

interpretation of it, this article – which criticizes the separatist notion of treaty interpretation – is timely.

[1] The Appeals Tribunal for the Regularization of Status and Residence Pursuant to the Entry into Israel Law (hereinafter: the "Tribunal"). On the Tribunal see: https://perma.cc/BXK8-LL3U

[2] Appeal (Tel Aviv) 2250-14 Doe v. Ministry of Interior, decision of 7 March 2016 (Judge Bergman) (in Hebrew). The decision seems to uphold the Population and Immigration Authority ("PIA")'s policy to exclude all Palestinians from the Convention under Article 1D (which provides, "[t]his 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"). The Appellant submitted a letter from the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") confirming that he was not registered with the agency, and claimed that he was not under UNRWA's mandate, as he and his parents were originally from the West Bank, and therefore were never displaced due to the Israeli-Palestinian conflict. The Tribunal ruled "the letter does not indicate that the appellant asked to register with the agency and was refused, or that there is any impediment that UNRWA would assist him. In addition, it was not proved that the appellant is not entitled to UNRWA's services, and this claim (which the appellant bears the burden to prove) was unsupported, and was not mentioned in the agency's letter" (section 21 to the decision). The argument that a proof of non-registry with UNRWA is insufficient (and that the appellant should have also proven that he actively applied for registry and was denied) and the argument that the Palestinian asylum seeker bears the burden to prove that he cannot obtain UNRWA assistance are both dubious. The Tribunal disregarded the questions of whether the appellant could obtain UNRWA's assistance *in Israel*, and whether UNRWA – an agency which mainly provides welfare relief – could provide the appellant protection from persecution in the West Bank. Furthermore, the Tribunal overlooked the fact that the reasoning of the PIA's decision to reject his asylum claim, as cited below (and which the Tribunal found "reasonable") spoke of overall exclusion of "Palestinians" under Article 1D of the Refugee Convention. The Tribunal at least tacitly supports this position.

[3] Hathaway and Foster argue that Article 1D applies only to Palestinians who already received UNRWA assistance in 1951. James C. Hathaway & Michelle Foster, The Law of Refugee Status 513-15 (2nd ed. 2014). Other scholars and Courts, who rejected this position, hold the view that only Palestinians who *personally* obtained (or can obtain) UNRWA's assistance are excluded from the Refugee Convention under Article 1D. Finally, others hold the view that only

Palestinian who can obtain UNRWA's assistance *in the country of asylum* are excluded under Article 1D. *See id.* at 515-17.

[4] Appeal (Tel Aviv) 2250-14 Doe v. Ministry of Interior, decision of 7 March 2016 (Judge Bergman), at Section 26.

[5] HCJ 9482/11 (in Hebrew) (translation to English by the author). Israeli law provides that in certain matters an individual can petition against a decision of an administrative body directly to the Supreme Court in its capacity as a High Court of Justice.

[6] See: the PIA's "Procedure for Handling Political Asylum Seekers in Israel".

[7] The Refugee Convention was never legislated as a statute by the Knesset (Israeli parliament), and the (partial) implementation thereof is by internal PIA regulation (ibid). Article 7(f) of these regulations provides: "Should the Interior Minister decide to recognize him as a refugee, the Applicant will be granted a residency license of the a/5 type..." This type of license grants a foreigner a temporary renewable status with basic civil and social rights (including employment, welfare and health benefits).

[8] Article 10 of the PIA's "Procedure for Handling Political Asylum Seekers in Israel", dealing with "Subjects of Enemy Hostile States", provides as follows: "The State of Israel reserves the right not to absorb into Israel and not to grant permits to stay in Israel to subjects of enemy or hostile states – as determined from time to time by the authorized authorities... Israel appreciates the UN Refugee Agency's [UNHCR] notice according to which until a comprehensive political settlement is reached in our region it will make every effort to find refugees asylums in other countries". While Sudanese nationals can currently file asylum applications, and are processed by the regular RSD system in Israel – despite the fact that Sudan is an enemy state of Israel, it was well known by immigration lawyers, for years, that the PIA would refuse to handle Palestinian asylum seekers under the same system; *see* Michael Kagan, *Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East*, 38 Colum. Hum. Rts. L. Rev. 263, 308-17 (2007); Michael Kagan and Anat Ben-Dor, *Nowhere to Run: Gay Palestinian Asylum Seekers in Israel*, 40-45 (2008). For an English summary of HCJ 466/07 MK Zahava Gal-On (Meretz-Yahad) et al v. Attorney General et al, the latest Supreme Court case dealing with the constitutionality of an Israeli law exceedingly limiting the ability to grant status to enemy nationals in Israel, seeAdalah's Newsletter, Volume 91, March 2012.

[9] Cited in the Supreme Court's second decision on this matter, HCJ 5553/14 **Doe v. PIA** (in Hebrew), in which the Court decided that judicial review of the PIA decision should be performed by the Appeals Tribunal, rather than by the Supreme Court itself.

[10] Regarding the second argument: As I sketchily mentioned above, the RSD path and the Threatened Persons Committee path are "separate and unequal", and this seems like a good enough reason to reject the argument. I think, however, that a good case can also be made against a "separate but equal" regime. Article 3 of the Refugee Convention would lie at the heart of the argument.

[11] The Tribunal made three remarks regarding the issue of treaty interpretation, which will be accordingly analyzed in the following sections: (a) The PIA's stance lies "within the scope of reasonableness and therefore there is no ground for [judicial] interference in it" (section 20); (b) "The State is entitled to interpret the Refugee Convention as it wishes, as long as its interpretation is reasonable and logical" (section 25); and (c) "The State's stance, according to which the Refugee Convention should not be applied to Palestinians, when they are in Israel...is more compatible with the 'refugee' definition in the Refugee Convention, taking into account the complexity of the relations between the State of Israel and the Palestinian Authority and its inhabitants" (section 26).

[12] *See, e.g.*, Territorial Dispute (Libya v. Chad), 1994 ICJ 4, 16 (Feb. 3); Golder v. United Kingdom, 18 Eur. Ct. Hum. Rts. (ser A) No. 18 (1975).

[13] Regina v Home Secretary for the Home Department, Ex parte Adan (HL) [2001] 2 AC 516-517 (Lord Steyn).

[14] As the House of Lords explains in the *Adan* case at 516-17: "If there is disagreement on the meaning of the Refugee Convention, it can be resolved by the International Court of Justice: article 38. It has, however, never been asked to make such a ruling. The prospect of a reference to the International Court of Justice is remote. **In practice it is left to national courts, faced with a material disagreement on an issue of interpretation, to resolve it. But in doing so it must search, untrammeled by notions of its national legal culture, for the true autonomous and international meaning of the treaty. And there can only be one true meaning.**" (Emphasis added).

[15] Ronald Dworkin's imaginary judge of superhuman intellectual power, see Ronald Dworkin, Taking Rights Seriously, Chapter 4 (1977).

[16] Ronald Dworkin, Judicial Discretion, 60 J. Phil. 624, 624–38 (1964); Dworkin, *supra* note 15, at 31-39.

[17] H. L. A. Hart, Concept of Law, Chapter 7 (1961).

[18] Hathaway and Foster, *supra* note 3, at 4-5; Eyal Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, 102 Am. J. Int'l L. 241, 262-67 (2008); *see also NBGM v. Minister for Immigration and Multicultural and Indigenous Affairs,* [2006] FCAFC 60 (Aus. F.F.C., May 12, 2006) ("Considered decisions of foreign courts, in particular appellate decisions, should be

treated as persuasive in order to strive for uniformity of interpretation of international conventions... It is desirable that obligations of the host states under an instrument such as the Convention be consistently interpreted in order that there be uniformity of approach not only as to host state rights and obligations, but also as to the derivative legal position of refugees thereunder");*Fornah v. Secretary of State for the Home Department*, [2006] UKHL 46 (U.K.H.L., Oct. 18, 2006, at para. 10 ("Since the Convention is an international instrument which no supranational court has the ultimate authority to interpret, the construction put upon it by other states, while not determinative... is of importance.")

[19] Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal (2012). For decisions of other Courts around the world – all incompatible with Judge Bergman's interpretation of Article 1D – see Hathaway and Foster, *supra* note 3.

[20] 53025-07-11 Fantaye Meraga Tebeka v. Ministry of Interior (the author represented the petitioner) (in Hebrew).

[21] In Chevron U.S.A., Inc. v. Natural Defense Council, 467 U.S. 837 (1984), the U.S. Supreme Court ruled that when Congress delegates authority over a particular statute to an administrative agency, courts will defer to the agency's reasonable interpretation of that statute.

[22] Compare citations (a) and (b) from the Tribunal's decision, *supra* note 11.

[23] Evan Criddle, *Chevron Deference and Treaty Interpretation*, 112 Yale L. J. 1927, 1930 (2003).

[24] Evan Criddle, *The Vienna Convention on the Law of Treaties in U.S. Treaty Interpretation*, 44 Va. J. Int'l. L. 431, 481 (2004).

[25] In fact, most of Israel's Supreme Court jurisprudence runs against this type of doctrine, stressing that the interpretation of legal norms lies at the core of judicial power and responsibility, where deference to the administrative branch is not due. For Supreme Court decisions opposing *Chevron*-type reasoning, see, e.g.: HCJ 142/89 Laor v. Knesset Chairperson, PD 44(3) 529, at 559 (in Hebrew), where Judge Barak quotes the following passage from Jaffe's book: "The question in each case of consistency with statutory purpose is addressed to the judge. The rule of law imposes on him the duty to curb and correct action contrary to law. If to him the meaning is clear it matters not that the contrary in 'reasonable'... A judge may say: there more than one sensible construction of this statute, but this construction appears to me to be the correct one; If this is what he thinks, he should not defer either to his colleagues or to the agency" (L. L. Jaffe, Judicial Control of Administrative Action (Boston and Toronto, 1965) 575-576); the same reasoning and the same quotation also appears in HCJ 399/85 Kahana v. Israel Braodcast

Authority, PD 41(3) 255, at p. 305; see also: HCJ 2355/98 Stamka v. Minister of Interior, PD 53(2) 728, at 743-746. For a Supreme Court decision tending to endorse *Chevron*-type reasoning see: CA 976/96 Marom v. Income Tax Authority (Judge Jubran) (in Hebrew).

[26] "The Activities of National Judges and the International Relations of their State", Article 5(3).

[27] *See* citation (c) from the Tribunals' decision, *supra* note 11.

[28] *Supra* note 20.

- See more at: http://www.reflaw.org/can-israel-freely-interpret-the-refugee-convention-when-it-comes-to-palestinian-asylum-seekers/#sthash.R5yoLJ9h.dpuf