Analysis: Azaria Verdict May Pose Far-Reaching Global Implications for Israel

January 4, 2017

By Yonah Jeremy Bob

The Jerusalem Post

http://m.jpost.com/Israel-News/Politics-And-Diplomacy/Analysis-Azaria-verdict-may-pose-far-reaching-global-implications-for-Israel-477448#article=6020M0QyMzUwNDBCNkVFQTQ4OTdFNjhFNjgzMDcyM0E0RjM=

A court case that reverberated across the country on Wednesday may see even greater ripple effects beyond its borders, as far as the International Criminal Court and Israel’s legitimacy are concerned.

At the ICC, Hebron shooter Elor Azaria’s manslaughter conviction may affirm the credibility of Israel’s apparatus for prosecuting its own soldiers.

This is important because it is the decisive issue affecting whether the ICC will dive deeper into the Israeli- Palestinian conflict.

If Chief Prosecutor Fatou Bensouda finds that the IDF properly prosecutes its own for alleged war crimes, then she is barred from intervening, as the ICC is only a court of last resort when a country fails to prosecute its own.

If she finds that the IDF does not properly prosecute its own, she can decide to move to a full criminal investigation.

Many countries have failed to seriously prosecute their own, especially when politicians and the general public rally around the accused soldier. In the Azaria case, many politicians and the general public rallied behind him.

Military Advocate-General Brig.-Gen.Sharon Afek and the Jaffa Military Court have been subjected to heavy pressure and criticism for indicting and convicting Azaria, and yet they did.

The conviction of Azaria is the strongest move Israel has made to date which could get the ICC to back off.

But will it be enough? The Jerusalem Post has reported in the past that the ICC team probing Israel has closely followed the case. But the case is only one, and the ICC could view it as a sideshow compared to the hundreds of incidents it is probing from the 2014 Gaza war.

That said, if the recent UN Security Council Resolution against Israeli settlements was an indecisive but possible major blow to Israel in its defense against any ICC charges relating to the settlement enterprise, the Azaria verdict is a major if indecisive blow to Israeli critics who argue that all IDF probes are a whitewash.

One can already see critics having to tactically adjust to Israel’s legal reality in the aftermath of the Azaria verdict. They can still claim Israel whitewashes too often, or that senior officers get off and only rankand- file soldiers are prosecuted. But that is a world away from being able to claim that Israel never convicts its soldiers of serious crimes for shooting Palestinians.

It says something that Azaria was convicted of manslaughter not for shooting a skinny teenage rock thrower, but for shooting a dangerous Palestinian attacker who had stabbed an IDF soldier with a knife.

For critics of Israel, whether in the legal sphere or in the Boycott, Divestment and Sanctions movement, this conviction will stand as an inconvenient, immovable fact that diminishes their chance of convincing neutral parties.

For the ICC, if it invalidates Israeli prosecutions, it will have to explain away this case to the US, Europe and others.

The recent UN Security Council Resolution still hangs as a cloud over Israel’s legal community and legitimacy. And internally, those against the verdict will cry foul that Israel’s lawyers and courts care more about world criticism than about its own soldiers.

But if there were ever an answer to defang the damage caused by the Security Council resolution in the legitimacy battle, Israel’s military courts just gave one.