IDF’s top lawyer: ICC has no jurisdiction in Israeli-Palestinian conflict

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The military’s top lawyer on Tuesday said Israel does not believe the International Criminal Court has jurisdiction over its conflict with the Palestinians so long as the Jewish state remains a country ruled by law.

Maj. Gen Sharon Afek, the military advocate general, was responding to recent calls for the international court to investigate Israel for war crimes related to its use of live fire in response to riots by Palestinians along the Gaza border throughout the past year and a half.

“The position of Israel is that the International Criminal Court does not have jurisdiction to discuss the issue of the Israeli-Palestinian conflict. The State of Israel is law-abiding, with a strong and independent legal system, and there is no reason for its actions to be assessed by the court,” Afek said, speaking at an international law conference in Herzliya.

Afek said the attempts by Palestinian officials to get the ICC to investigate Israel are distracting the body from prosecuting far more important cases and allegations of crimes against humanity.

Since March 30, 2018, Palestinians in Gaza have participated in regular protests along the border, demanding Israel lift its restrictions on the movement of people and goods into and out of the coastal enclave and calling for the return of Palestinian refugees and their descendants to lands that are now part of the Jewish state.

The protests have included many acts of violence against Israeli security forces, and have seen at least 200 Palestinians killed.

Israeli officials maintain that the restrictions on movement are in place to prevent Hamas and other terrorist groups from smuggling weapons into the Strip. They also say the return of Palestinian refugees and their descendants would destroy Israel’s Jewish character.

Earlier this year, a United Nations Human Rights Council’s fact-finding mission into last year’s protests at the Gaza border prepared a full report on the matter and compiled a list of Israeli officials that it said were suspected of serious crimes. The list included not only IDF snipers and their commanders, but also, reportedly, military legal advisers who approved the rules of engagement by which they operated. It was not publicly released, but was made available to the ICC and other bodies.

Afek’s claim represents a long-held Israeli and American position on the jurisdiction of the ICC. Under its charter, the international court can only investigate crimes where there is no reasonable assumption that the violations will be adequately prosecuted within the country itself.

As both the United States and Israel boast of having independent legal systems, they consider themselves immune to international prosecution.

Like the US, Israel is not a member of the court, and thus its citizens are susceptible to court action only if they are physically present in countries that belong to the ICC.

Since its creation, the court has filed charges against dozens of suspects, among them former Libyan dictator Muammar Gaddafi, who was killed by rebels before he could be arrested, and Sudanese President Omar al-Bashir, who is accused of charges including genocide in Darfur and was ousted last week in a military coup. Ugandan warlord Joseph Kony, who was among the first rebels charged by the court in 2005, remains in power. The court has convicted just eight defendants.