Israeli judges send tacit message to ICC: ‘We respect international law’

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By Tovah Lazaroff

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Israel’s High Court of Justice sent a strong but tacit message on Tuesday to the International Criminal Court that the Jewish state is still one that respects international law.

Technically speaking, the issue at hand was whether or not some 4,000 illegally built settler homes on private Palestinian property could be retroactively authorized.

According to a controversial 2017 Knesset law, those homes could be legalized, as long as system of monetary compensation was in place.

But the timing here is everything. It cannot be a coincidence that the High Court issued this ruling now, just as the pre-trial chamber is adjudicating whether it has the jurisdiction to hear war crimes suits with regard to Israeli actions against Palestinians in the West Bank.

This would include issues relating to settlement activity, which Palestinians hold is a war crime under the Fourth Geneva Convention, which speaks against the transfer of population.

Among the issues the ICC will consider is whether or not Palestinians can find redress within the local court system, in this case, the High Court of Justice.

In ruling on Tuesday that the laws of belligerent occupation apply to the territories and that the rights of the Palestinians are protected there, the court let the ICC know that international intervention was not needed here, because the Israeli court system was willing to make rulings that went in accordance with international law.

But in so doing, the High Court of Justice inadvertently gave the Israeli Right added ammunition by which to pressure Prime Minister Benjamin Netanyahu to advance the application of sovereignty to the settlements.

It also goes a long way to undo some of the revolutionary measures put in place by former Justice minister Ayelet Shaked with regard to the legalization of settlement activity.

The law was put in place in part to halt the left-wing petitions to the court to pressure the IDF to enforce the prohibition against unauthorized settlement construction on private Palestinian property.

At issue were some 4,000 settler homes, which the right-wing were vulnerable under such lawsuits. A law authorizing such construction, would of course, have made such lawsuits irrelevant.

In the aftermath of the passage of the law, the presumption that it reflected Israeli legal opinion, allowed for the authorization of projects that involved private Palestinian property, under the idea that the concept of eminent domain could be applicable. In other words, the positive impact on Jewish settlement could outweigh the negative impact on private Palestinian landowners.

The court said that such an equation could not be made, as the law unduly harmed Palestinians.

Now that the High Court of Justice has ruled that the law is unconstitutional, that decision by necessity impacts existing and future settlement projects.

It also, however, leaves unresolved the initial dilemma that led to the law in the first place: how does one resolve the issue of the illegal settler homes on private Palestinian property? For the most part, these homes are located within existing settlements.

While it may be possible for the Israeli legal system to find other venues to resolve the issue, the most obvious path would be doing so as part of the overall annexation process.

The settlers in recent weeks have argued that the Trump map imperils some 15 settlements and have pushed Netanyahu to move forward with sovereignty, without taking into consideration that map.

Now they will further argue that failure to apply sovereignty now would also lead to the eventual demolition of 4,000 settler homes.