Analysis: Will Trump, court save Israel from int'l law suicide bill?

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Cogent arguments can be made for whether the international community and its legal institutions have been fair or biased against Israel regarding the settlements enterprise.

But with the “settlement regulation bill” expected to become law on Monday, the main question is not whether international law as most of the world understands it is fair, but what consequences Israel faces, especially with the International Criminal Court, for passing legislation that flies in the face of world opinion? Sources close to Attorney- General Avichai Mandelblit have said that even from an Israeli law perspective, the bill could be called “the law for legalizing the infiltration of criminals” on to others’ lands, since it deals with appropriating Palestinian private property.

(Again: whether that term is fair or not, it is the world’s term.) They ask: How could it be that the State of Israel would do such a thing and whether it can cope with such lawbreaking? This is not to mention the international law implications of the bill, which sources close to Mandelblit say amounts to suicide.

And while some attack Mandelblit as part of a leftish legal establishment, he is about as conservative and in favor of letting the Knesset push the envelope legally as an attorney-general gets.

All of this right after the UN Security Council just voted 14-0 in December to declare the settlements illegal and a “flagrant” violation of international law (though a “grave” violation would have been much worse in legal jargon).

In an alternative reality, passing this bill might have a chance of changing the world’s mind on the issue.

In the reality we live in, it would seem certain that the law would push ICC Prosecutor Fatou Bensouda into diving deeper into the Israeli-Palestinian conflict to go after Israelis for war crimes relating to the settlement enterprise.

At this point, Israel could have two saves.

One, and probably the reason why Prime Minister Benjamin Netanyahu is finally giving the bill a green light, is that US President Donald Trump has finally taken power and appears to support Israeli settlement policy far more than the Obama administration.

Can Trump save Israelis from the ICC? Nope.

Maybe on some indirect level, his pro-settlement position might deter the ICC prosecution from going after the settlements, but formally the US has no influence over the ICC.

It is not an ICC member and pays no dues, so it can’t even threaten to withhold anything from the budget.

Further, while Trump will probably veto future anti-Israeli UN resolutions, he cannot undo the resolution that already passed.

That leaves the High Court of Justice.

The second the bill passes, one or multiple petitions will be filed to strike it down as unconstitutional.

Every expectation is that it will be struck down as unconstitutional based on a line of precedents preventing Israel from taking Palestinian land.

The bill adds a twist of offering financial compensation, but that probably will not cut it with the court.

Presuming the court annuls the law, the ICC prosecutor will have nothing to complain about and Israeli lawyers will even be able to argue to it that the ruling was proof of the independence of the court system.

Has this been Netanyahu’s plan all along – use this process to get the courts to step in to show the ICC how independent they are? Unlikely. It is far more likely that he is allowing the bill through knowing the High Court will strike it down and wanting to reap the political benefits on the Right of voting for it, while being able to blame its failure on the court.

Whatever the reason, the country is close to the equivalent of international law suicide before the ICC, and only the High Court stands to stop it from falling over the precipice.