Could the Settlement Regulation Bill Lead to An International Legal Battle for Israel?

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The Israeli-Palestinian conflict might be facing a legal escalation. Recent events surrounding the evacuation of the Israeli settlement of Amona have ignited a long-simmering debate within Israeli society regarding the construction of a small portion of settlements on privately-owned Palestinian land in Judea and Samaria.

The Settlement Regulation Bill, which has caused a firestorm of controversy in Israel, is aimed at addressing this issue. It stipulates that no demolition orders will be carried out for a period of one year, during which time efforts shall be made to ascertain the ownership of disputed plots of land. At the end of the period, land found to be privately owned will be expropriated from its owners in exchange for an appropriate financial compensation. Due to strong opposition by legal experts, the version of the bill currently under consideration will not apply to Amona and a small number of similar cases, regarding which a Supreme Court ruling to evacuate already exists.

The Regulation Bill faces some serious legal hurdles. Although the state of Israel asserts a claim of sovereignty over Judea and Samaria, it has never annexed the territories. Successive Israeli governments have sought to avoid conflict with the international community, and sidestep the necessity of giving millions of Palestinian residents of Judea and Samaria full citizenship rights.

As a result of this decision, Israel's control of Judea and Samaria is not grounded in the Knesset's civil authority, but rather in the IDF's military authority. According to international law, as long as the Israeli military controls the area, laws relating to belligerent occupation apply. Since 1967, the Supreme Court has used these laws of belligerent occupation in thousands of rulings to oversee Israel’s actions in Judea and Samaria.

Over the years, most of these rulings did not limit Israel's policies. The Supreme Court has not forbidden the establishment of Israeli settlements on land that is publicly owned. The high court has allowed the expropriation of privately-owned Palestinian land for security purposes (such as building the separation barrier) and even for public purposes (such as building roads). However, the Supreme Court has never allowed the state to expropriate privately-owned Palestinian land for the sole purpose of establishing an Israeli settlement.  
As such, the Regulation Bill creates a slew of legal and political problems for Israel.

First, the international community may interpret legislation by the Israeli Knesset concerning Judea and Samaria as a first step toward annexing those areas, without even considering the grant of full citizenship rights to Palestinian residents of those lands.

Second, by expropriating privately-owned Palestinian land for the purpose of establishing an Israeli settlement, the act undercuts Israel’s claim that the settlements do not deny Palestinians their rights. It also highlights the questionable legality of the Israeli settlement policy itself.

Finally, the expropriation of private land for the purpose of building settlements stands in stark contrast to the interpretation of international law adopted by the Israeli Supreme Court.

In this context, it is worth noting that the prosecutor of the International Criminal Court (ICC) has opened a preliminary examination regarding allegations filed by "Palestine" (which the prosecutor of the ICC has recognized as a state) against Israel. Among other claims, the complaints are directed against the expropriation of privately-owned land for the purpose of establishing settlements. The Regulation Law would increase the chances that the ICC's prosecutor will view the issue as a serious violation of international law, and opt for opening a full-fledged investigation. Even if at the end of the day no Israeli would be convicted, the mere fact that the ICC has initiated legal action could seriously damage Israel's legitimacy.

The eviction of people from their homes is certainly a serious, perhaps even cruel, act. However, we expect our decision-makers to take a broad view and consider the far-reaching ramifications of passing this bill. The Regulation Bill, which is opposed by Israel's Attorney General, reverses decades of Israeli policy making designed to preserve Israel's legitimacy and the rule of law. The bill undermines the legality of the entire settlement project, and might negatively affect Israeli interests in other areas. Even at this late stage in the legislative process, every effort should be made to find solutions that would not put Israel's interests and Israelis at such risks.