Analysis: Will Lower Sentence Cost Israel on Legitimacy and at ICC?

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In Israel, many will see the 18-month sentence imposed on Sgt. Elor Azaria – the so-called 'Hebron shooter' – as too long and too severe.

But in much of the world and in the International Criminal Court, those who have followed the case mainly after watching a viral B’Tselem video that showed Azaria shooting Abdel Fatah al-Sharif in cold blood, the sentence will seem too short.

Critics will ask why Palestinian minors have received far longer sentences for attempted murder, yet an Israeli soldier got only 18 months.

In the world of global legitimacy and public opinion, the manslaughter conviction and 18-month sentence begs the question of whether Israel sufficiently prosecutes its own.

On one hand, Azaria was indicted and convicted for shooting a Palestinian.

Not only was he convicted for shooting a Palestinian, but one who had just attacked Israeli soldiers.

And the conviction was for manslaughter, not merely negligent homicide. That cannot be called a whitewash.

A whitewash would have been no indictment or an acquittal.

On the other hand, critics will say Palestinians still get harsher sentences, and Israel will respond that a Palestinian attacking or killing an Israeli civilian is not the same as an Israeli soldier killing a Palestinian attacker.

That certainly will not satisfy critics who focused on the video.

Israel will say that those critics only saw the one damning video, not others with which IDF prosecutors had to contend and which helped Azaria’s case. Add to that other evidence that was presented, including disputed medical reports indicating Azaria’s shot may not have even been the kill shot.

In that sense, the main issue of global critics will not be with the IDF court’s decision, but the original decision by the prosecution to indict for manslaughter instead of murder. That early action meant punishment would never be more than 5 to 10 years, based on Israeli case law trends.

Eighteen months will also likely be viewed by the ICC Prosecution as low. Technically, the ICC Prosecution can second-guess more than just decisions not to indict, they can also do so with jail sentences, but generally that is not the focus.

This case is also unconnected to the big issues for the ICC Prosecution: the settlement enterprise and the 2014 Gaza war.

The ICC Prosecution may not have grounds to second-guess Israel on those issues either, but it will certainly have stronger arguments in cases where no indictment is filed than with the Hebron shooter case, which had both an indictment and a jail sentence.

Further, unlike some media critics, the ICC Prosecution looks at evidence. Even if it concludes that the court should have indicted for murder, or that the Israeli military court could have imposed a longer sentence, stronger counter-evidence for Azaria in the case record will be hard to ignore. That includes dozens of witnesses who said they felt in danger at the scene. But that is only if you go beyond that one video.

Such judgment calls are not the types the ICC Prosecution likely wants to debate. There is another issue, that of nations differing widely on their own punishment schemes for manslaughter, which makes the argument for the existence of a universal punishment standard a hard one to make.

Finally, the overall impact of the Azaria conviction and sentence should add credibility to the Israeli justice system.

If Israel once told the ICC Prosecution it would prosecute its own where the evidence justifies such action, but had no example to show, now it has one, and it’s one in which the ICC Prosecution knows the Israeli legal system went after Azaria, despite domestic public support in his favor.

This does not mean the ICC Prosecution will not go after Israeli soldiers for alleged war crimes from the 2014 Gaza war. But – along with the settlements law and the UN Resolution condemning settlements – it moves the ICC Prosecution’s dial closer to non-intervention or to a focus on the settlements, as opposed to saying Israeli soldiers have not been properly investigated for killing Palestinians.