The Palestine Authority Does Not Have Clean Hands

On January 16, 2015, the Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, a Gambian lawyer, opened a "preliminary examination into the situation in Palestine." Her decision quickly followed the accession of the Palestinian Authority on January 2, 2015 to the Rome Statute, the founding treaty of the ICC.

A preliminary examination is not an investigation but the process used to ascertain whether there is a reasonable basis to proceed with one. According to ICC regulations the decision to conduct an investigation is made after information is collected and consideration of issues of jurisdiction, admissibility and the interests of justice are taken into consideration.

The first issue that must be addressed is the technical legal question of whether "Palestine" can be considered a state and therefore eligible to join the ICC.

The ICC reasoning was that on November 22, 2012 the UN General Assembly had approved, by a majority of 138 in favor, 9 against, and 41 abstentions, Resolution 67/19 granting Palestine "non-member observer State" status in the UN. The PA, it held, could therefore be considered a "State" for the purpose of accession to the Rome Treaty and joining the ICC. The PA will officially become a member of ICC on April 1, 2015.

The prosecutor has begun her "examination" because the ICC determined the PA had accepted the jurisdiction of the ICC over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem since June 13, 2014."

However, irrespective of the rules of the Rome Treaty, and the

ongoing examination by the ICC prosecutor, this case that would involve allegations that Israel committed war crimes or crimes against humanity should go no further. What should prevail is the legal doctrine of clean hands.

This doctrine is a rule of law that a party or individual bringing a lawsuit or motion before a court must be innocent of wrongdoing or unfair conduct on the issue of the claim in the lawsuit. Irrespective of any political or moral judgment of Palestinian actions in general towards the citizens of Israel, recent legal decisions have made clear that the Palestinian Authority does not come to court with clean hands. In two decisions by U.S. courts, the PA and other Palestinian groups have twice been found guilty of acting unethically and in bad faith because of their support of terrorism.

The first decision was made on September 22, 2014 in the case of *Linde v. Arab Bank* by the Brooklyn, U.S. District Court for the Eastern Division of New York. The second decision was made on February 23, 2015 in the landmark case, *Sokolow v. PLO*, in the Southern District Court of New York.

Linde v, Arab Bank was a civil lawsuit in a New York bank filed on behalf of American terror victims against a bank. Two incidents were involved. John Linde, a U.S. citizen from Texas, was murdered by a terrorist in Gaza on October 15, 2003, and four members of an American family were murdered by a Palestinian suicide bomber in a restaurant in Haifa. The lawsuit was brought under the U.S. Anti-Terrorism Act (ATA) of 1991 (signed into law in 1996) which gave U.S. courts jurisdiction over acts of terrorism that harm U.S. citizens abroad. Under that law the victims can seek damages for harm done to them.

The Arab Bank, with headquarters in Amman, Jordan, was held liable for the deaths and injuries resulting from the terrorist acts committed by Palestinian terrorist groups between 2000 and 2004. Hamas was responsible for 24 of these

attacks. The Arab Bank had knowingly provided financial services on behalf both of Hamas and its operatives and leaders and Hizb'allah. It had facilitated the transfer of millions of dollars to the families of suicide bombers and other terrorist operatives through the Saudi Committee for the Support of the Intifada and the al-Shahid Foundation. The court ruled that the activities of the Arab Bank went far beyond routine banking services in knowingly supporting terrorist acts, some of which killed American citizens.

The other case, *Sokolow v. PLO* was decided after an 11-year lawsuit begun in 2004 and a trial that lasted six weeks. The lawsuit was brought by ten families of victims (Sokolow was the main plaintiff) of Palestinian terrorist attacks between January 2001 and January 2004, the years of the second Intifada. The acts were committed by the al-Aqsa Martyrs Brigade of Fatah and by the armed wing of Hamas. The last attack took place on a crowded bus in Jerusalem. The PLO committed seven attacks in or near Jerusalem, killing 33 civilians and injuring more than 450, including American citizens. The families sought $350 million in damages from the PLO and the PA that continued to pay the security officials who organized the attacks, the terrorists who were imprisoned in Israel, and the families of the suicide bombers ("martyrs").

The Palestinians claimed the U.S. courts did not have jurisdiction, but their argument was rejected by the U.S. Second Circuit Court of Appeals. In addition, U.S. District Judge George B. Daniels in September 2008 rejected the PLO argument that the attacks were acts of war, not terrorism.

In holding the Palestinian groups guilty of helping to plan and carry out the attacks, the court awarded the families $218 million, a sum that was tripled to $655 million according to the rules of the Anti-Terrorism Act.

The decisions of the U.S. courts found Palestinian

authorities, which are still paying security officials behind the terrorist attacks and providing benefits for the families of terrorists and honoring them, responsible for the actions of terrorists. What is important is that those actions were seen by the courts not as acts of war as Palestinian spokespersons alleged, but as acts of terrorism. The courts also made clear that money is the oxygen for terrorists. The U.S. courts did not advance a political or ideological agenda. On the contrary, they sent a message to banks in the Arab world and elsewhere that support for terrorism will not be tolerated in the U.S.

Above all, the message is clear that the Palestinian Authority does not come to the ICC with clean hands. The U.S. courts have demonstrated that terrorism was official Palestinian policy during the second Intifada that was initiated by the PLO leader, Yasser Arafat. That policy embodied crimes against humanity and violations of human rights. The ICC Prosecutor, Fatou Bensouda, should be conscious of the fact that the U.S. courts have ruled that the Palestinian Authority has acted in bad faith, legally, and morally. On the basis of the "clean hands" doctrine, she should forthwith end her "examination."

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