The ICC has become a tool of Palestinian lawfare

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Benjamin Franklin famously said, "There are only two things certain in life: death and taxes." Today we can add a third: There is hardly a single multilateral organization that the Palestinians have not hijacked as part of their campaign of political warfare against the Jewish state.

Enter "Exhibit A": Fatou Bensouda, the chief prosecutor of the International Criminal Court (ICC).

Last week, Bensouda submitted her long-awaited opinion that "Palestine" is a state for the purposes of transferring jurisdiction to the ICC. Her opinion will potentially open the door to Israel being prosecuted for "war crimes" relating to its defensive actions against Hamas and Palestinian terror groups.

A panel of judges at the ICC Pre-Trial Chamber must now either affirm (or throw out) her decision.

The ICC was created with honorable intentions. Established in 2002, the ICC was meant to end the impunity of those accused of committing the most heinous of crimes, including war crimes, genocide and crimes against humanity. The ICC functions on the basis of the criminal jurisdiction of the member "states," delegated to the court.

However, by ignoring a tidal wave of legal opinion and ICC member state positions that "Palestine" is not a state for the purposes of ICC jurisdiction, Bensouda has just willingly become a pawn in this Palestinian lawfare campaign against Israel, thereby politicizing the court and bringing its very legitimacy into question.

"Palestine" is of course not a state since there is no such entity that meets the internationally recognized Montevideo Criteria for statehood. No matter how Bensouda spins it, highly politicized, biased resolutions adopted by the United Nations General Assembly, in which the anti-Israel forces have a guaranteed automatic majority, cannot invent a "State of Palestine." Bensouda's further attempt to justify the existence of "Palestine" using the 1993 Oslo Accords is similarly erroneous. As clearly stated and stipulated, the Oslo Accords cannot in any way be read as creating a state.

Even if Bensouda were to twist the text and intentions of the Oslo Accords to invent "Palestine," she should have found that those same accords deny the Palestinian entity any criminal jurisdiction over Israelis. Accordingly, that Palestinian entity could not delegate any of its non-existent jurisdiction to the ICC as is required for the basic assumption of jurisdiction by the ICC.

During the proceedings, at least eight countries, including Germany, Australia, Brazil, Canada, Hungary, Uganda, Czech Republic and Austria, submitted "amicus briefs" calling on the ICC to throw out the proceedings on the basis that "Palestine" does not meet the most elementary criteria of statehood and therefore the court does not have jurisdiction.

However, it would appear that no amount of factual or legal arguments can sway Bensouda from her open collusion with the Palestinians, including Hamas and the PFLP, both internationally designated terrorist organizations that played a role in the Palestinian submission to the court, as recently exposed by Palestinian Media Watch. Bensouda, it would appear, is content being the hapless pawn of Palestinian terrorists.

It is notable that among the countries which made submissions to the court was Germany, the second-largest financial contributor to the ICC. Having just days ago taken the principled decision to ban all of Hezbollah and deem the Iran-backed group a terrorist organization, Germany ought to consider revoking its contributions to the ICC should it proceed further with the case.

The United Kingdom, another ally of Israel, is the fourth largest financial contributor to the ICC. Although the U.K. did not make a submission to the court, it is itself the subject of a possible investigation arising out of alleged war crimes by British forces in Afghanistan.

Meanwhile, last year, the United States (which like Israel is not a member of the ICC) revoked the entry visas of Bensouda and ICC staff investigating allegations against U.S. forces or their allies over counter-terrorism actions in Afghanistan.

Given that reason and legal persuasion seem to have had no effect on the ICC prosecutor if the case against Israel is allowed to proceed Israel's allies must think outside the box and consider political/diplomatic steps. One such measure could be the threat of withdrawing financial contributions to the ICC, whose 2020 running costs are expected to reach $160 million. Revoking entry visas of ICC staff or even threatening to leave the now clearly politicized and biased court should also be considered.

The ICC should have a meaningful and indispensable role to play in upholding justice and ending impunity for those accused of committing the gravest of crimes. However, it can only do so by maintaining strict adherence to the law, instead of allowing itself to become a politicized tool in the Palestinian lawfare campaign.

Israel is the front line in the war on terror. If the case against the Jewish state is allowed to proceed, it will significantly curtail the West's ability to prosecute the broader war on radical Islamic terrorism.

If the ICC wishes to salvage its credibility, it must unequivocally reject Bensouda's decision and throw out the Palestinian case.