

United States (U.S.) Court of Appeals for the First Circuit: *Efrat Ungar et al v. The Palestine Liberation Organization et al.* (March 31, 2005)

The U.S. Court of Appeals for the First Circuit upheld the default judgment entered against the Palestine Liberation Organization (the "PLO") and the Palestine Authority (the "PA") by the Rhode Island district court, **finding, *inter alia*, that Palestine was not a state and therefore the PLO and PA could not assert sovereign immunity.**

The background to the case concerns a terrorist attack which occurred in Israel on June 9, 1996, resulting in the death of Yaron Ungar (a citizen of the United States), his wife and infant son. The victims were leaving a wedding when they were shot by members of Hamas Islamic Resistance Movement. The Israeli authorities apprehended the assailants and an Israeli court convicted all of them.

On March 13, 2000, the administrator of the estates of Mr. and Mrs. Ungar filed suit in the U.S. District Court for the District of Rhode Island pursuant to the Anti-Terrorism Act (ATA), 18 USC §§2331-2338. The statute sets forth a cause of action in favor of any "national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors or heirs." The statute further provides that venue may be in any district court where the plaintiff resides and the plaintiff may recover treble damages, costs and attorney fees.

The defendants asserted that the court could not entertain the suit as it concerned a non-justiciable political question, and further contended that they were immune from suit under sovereign immunity. In regard to the non-justiciable argument, the Court noted that "it is the relationship between the judiciary and the coordinate branches of the Federal Government...which gives rise to the 'political question'" and further observed that not "every case or controversy which touches foreign relations lies beyond judicial cognizance." It found that the defendants were organizations that allegedly violated the ATA, and that it was within its jurisdictional mandate to determine the defendant's liability.

In terms of sovereign immunity, the Court noted that neither the Foreign Sovereign Immunities Act ("FSIA") nor the ATA defined "foreign state" as it relates to a sovereign power, nor was there any precedent in the first circuit as to the attributes of statehood in this context. It examined **the standard set forth in the Restatement (Third) of Foreign Relations which deems a state to be "an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, formal relations with such other entities."** It observed that political recognition, typically thought of as "a formal acknowledgment by a nation that another entity possess the qualifications for nationhood" is not a prerequisite for finding statehood. It further concluded that the Palestinian Authority has not yet exercised sufficient governmental control over Palestine to satisfy the Restatement test.