

# Major Challenges in Prosecuting Israeli Nationals before the International Criminal Court.

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- **Abstract:** On 5 February 2021, the International Criminal Court confirmed, by majority, that the Court has the jurisdiction to investigate the suspected crimes perpetrated on the territory of Palestine which includes Gaza and the West Bank together with East Jerusalem. It was also ruled that Palestine's accession to the ICC Statute was lawful; accordingly there is no need to determine Palestinian statehood under general international law. This study seeks to shed light on the importance of determining Palestinian statehood under general international law considering Rome Statute's inability to provide particular meaning to the term "State." Moreover, the ICC was founded on the principles of complementary and delegated jurisdiction whereby the Court can only prosecute the perpetrators when the domestic criminal courts are "unable or unwilling" to carry out the prosecution. The territory of Palestine remains undefined and consequently there can be no delegation of jurisdiction by Palestine. Since Israel has not signed and ratified ICC Statute its nationals cannot be prosecuted by ICC for the crimes perpetrated on the territory controlled by Israel. It would also violate the first principle of treaty norms that "a treaty can only create rights and obligations for states who are parties to the treaty." Considering the unsettled statehood, undefined territory and the contravention of treaty norms, the ICC should abstain from exercising its jurisdiction.
- **Keywords:** Criminal, jurisdiction, perpetrated, Jerusalem, complementary, Palestine, ICC, exercising.