Israel’s Contribution to the Modern Evolution of International Law

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### Introduction

The uniqueness of the State of Israel in virtually every possible sphere and aspect – historic, religious, social, legal, political, and strategic – has dictated, and continues to dictate, its special character and place in the community of nations.

This is typified by the following:

* A country that came into existence in realization of the internationally accepted and acknowledged historic right of the Jewish People to reestablish its historic homeland;
* A people that raised itself from the ashes of the Holocaust that decimated the Jewish communities of Europe, successfully built a viable, vibrant, multi-cultural and multi-religious state and society, and absorbed mass immigration, yet is still faced with the same age-old anti-Semitism;
* A country that upon its establishment was formally accepted as a full member of the family of nations, yet is denied to this day its basic UN Charter right of sovereign equality;
* A country that from the moment it came into existence was denied recognition and rejected by its neighbors and has since been faced with existential threats, military aggression, and constant terror;
* A country that from its establishment and up to the present day faces continuous international, regional, economic, and cultural boycott;
* A country that has constantly been and continues to be illogically and discriminately singled out by international and regional organizations and by many  states, out of all logical proportion to issues plaguing the world and in utter disregard of such issues;
* A country that despite all the above figures as a major actor in the international community, contributing to civilization and humanity through technological and cultural innovation in all spheres of daily life.

All the above, and the ongoing need to cope with such situations and challenges, have rendered Israel’s character, stature, and contribution to humanity as unique and special.

### International Law

In the specific spheres of international law and practice, Israel’s unique character and its need to deal with the constant challenges and difficult realities that it has faced have generated the need to devote particular and active attention to and involvement in the development of international legal norms and instruments.

* From even before the establishment of the Israeli state, Jewish and Israeli international lawyers and experts played a leading role in enhancing Holocaust awareness within the international community. Their involvement included active participation in the drafting of the Genocide Convention and relevant international resolutions, as well as in the development of a permanent, international juridical body to judge the gravest crimes.
* In the aftermath of World War II and following the Nuremberg Tribunals dealing with Nazi war criminals, Israel was one of the few founding countries that initiated and developed the idea of a permanent international criminal court to deal with genocide, the gravest war crimes, and crimes against humanity. The aim was to prevent situations in which major war crimes and war criminals go unpunished.
* Due to Cold War polarization of political and legal positions, no such general judicial body could be established based on the work done. Thus, prior to the recent establishment of the International Criminal Court, specific instances of war crimes and war criminals were dealt with by the establishment of temporary, ad-hoc tribunals, limited in time and with limited mandates (former Yugoslavia, Rwanda, Sierra Leone, Lebanon, ). After the dismemberment of the former Soviet Union, work on a permanent juridical body resumed, with active participation by Israeli experts. This activity subsequently developed into the 1998 Rome Statute of the International Criminal Court.
* The development of international maritime and sea law, including the 1958 International Conventions on the laws of the sea and international straits, was widely influenced by the need to devise a solution to the problem of states locked out of the high seas and dependent on international straits. Israel’s geographical situation rendered it subject to the whims of hostile coastal states bordering the straits of Gibraltar, Tiran, Bab-el-Mandeb, and the Suez Canal. Hence, Israel actively participated in the negotiation and drafting of the first International Convention of the Law of the Sea which contained provisions guaranteeing rights of unhindered passage by shipping through international straits.
* Israel was also heavily involved in the negotiation and drafting of the subsequent 1982 International Convention on the Law of the Sea, which replaced the 1958 conventions and widened the rights of unhindered and unimpeded passage through international straits and other waterways.
* On the basis of Israel’s battlefield experience, Israeli legal and military experts participated in the prior – and ongoing – development and codification of the laws of armed conflict and international humanitarian law, including the negotiation and drafting to the 1977 Additional Protocols to the Geneva Conventions, international humanitarian law and human rights instruments, conventional weapons conventions, mine protocols, and non-conventional weapons conventions.
* Through Israel’s battlefield experience during several wars and military actions, and in facing the tactical and technological challenges posed by today’s terror, Israel has developed combat techniques to deal with modern-day terror, while at the same time seeking to avoid incidental loss of life by innocent individuals. Such techniques (such as precision targeting of terrorists) have become accepted international practice in modern armed conflicts and have been adopted by the armed forces of the major powers.
* International justice, including the functioning of the International Court of Justice at The Hague, benefited from the expertise of several prominent Israeli international lawyers. Prof. Shabtai Rosenne’s seminal work on the International Court has served as one of the pillars of the day-to-day functioning of the Court and its judges. In addition to wide international acclaim as one of the world’s greatest international lawyers, Rosenne (1917-2010) was honored by Israel, which presented him with the prestigious Israel Prize for this work.

Regrettably, because of their Israeli nationality, Rosenne and other prominent and highly regarded international lawyers including inter alia Prof. Ruth Lapidot, Prof. Yoram Dinstein, and Prof. Yehuda Blum, could never be elected as judges to the international court, nor to any other international body.

* Through participation as Israel’s representative on the International Law Commission (up to his forced removal due to Arab opposition) and in the UN General Assembly’s Legal Committee, Prof. Shabtai Rosenne was instrumental in the development and drafting of the International Convention on the Law of Treaties and many other instruments of international law.

Subsequently, Rosenne served as Israel’s representative to the negotiation and drafting of the Convention of the Law of the Seas, and as one of the senior interpreters of the convention.

* As the state of the Jewish People, Israel has been involved in developing inter-religious contacts, including international resolutions furthering peaceful and cooperative relations between the major religions through cultural and inter-religious diplomacy.

### Israel’s Failures in the Sphere of International Law

* Israel has never been accepted into the UN regional group system and has thus never been elected to such bodies as the Security Council and the International Court of Justice. As such, Israel is denied its Charter-guaranteed right to sovereign equality and equal membership of major international institutions and bodies.
* Due to the politicization of the process for election of international judges and the inherent politicization of international bodies, Israel has been prevented from playing an equal part in the work of the ICJ and other international juridical institutions.
* Despite the centrality of Israel’s historic and principled contribution to the establishment of the International Criminal Court, Israel was unable to accede to the Rome Statute in light of political manipulation of the Statute’s provisions. As such, Israel has been prevented from realizing its just place within the ICC.
* Due to political opposition by Arab and Muslim states, as well as the reluctance of Western states to accommodate Israel in the regional elections processes, Israel has been prevented from full and equal participation in human rights and other international and regional committees and bodies.
* Despite active involvement in humanitarian assistance throughout the world, including playing a leading role in saving victims of natural and other disasters, Israel’s humanitarian assistance organization – the Magen David Adom (“Red Star of David”), and the Israeli national emblem – the Red Star of David – have never, during their more than 80 years of existence, been recognized or accepted internationally. Thus, on the basis of political discrimination and anti-Semitism, Israel is the only state that has not been welcomed into the world Red Cross organization.

### Conclusion

Seventy years since it was established, Israel plays a central role as one of the leading nations in the international community.

However, with all that Israel has achieved and contributed to humanity, the same elements of hostility, discrimination, singling-out, and anti-Semitism that have existed since Israel’s establishment – and even before – remain a major stumbling block to its total acceptance and acknowledgment in the international community.

After 70 years, it is time that these stumbling blocks be removed.