



South Africa and the Claim Israel Is Committing Genocide in Gaza

Arthur Lenk

South Africa initiated a legal proceeding against Israel at the International Court of Justice on December 29, 2023, claiming that Israel violated its obligations under the Genocide Convention. This action should not come as surprising, given the history of South Africa in its relations with Israel and the Palestinians over the years and given South Africa's domestic and foreign policy needs and priorities entering 2024. This article reviews South Africa's history of relations with both the Palestinians and Israel and how it has responded to them since the Hamas massacre of October 7, 2023. It also looks at some trends in South African foreign policy and reaches a number of conclusions regarding the benefits and risks for South Africa in submitting the case before the court.

Keywords: South Africa, International Court of Justice, genocide, lawfare, Gaza, Palestine, Israel, international law

Introduction

South Africa initiated a [legal proceeding](#) against Israel at the International Court of Justice on December 29, 2023, claiming that Israel violated its obligations under the Genocide Convention. This action should not be seen as surprising given the history of South Africa in its relations with Israel and the Palestinians over the years and given South Africa's domestic and foreign policy needs and priorities entering 2024.

Although there is certainly a significant amount of cynicism and opportunism in the action, taken on behalf of the Palestinians, the step fits with the positions and statements of South Africa since the beginning of the current war between Israel and Gaza, which began with Hamas's massacre in Israel on October 7, 2023.

It is almost certain that the procedure was undertaken at the request of the Palestinians, as Palestine has not joined the Genocide Convention. The documents were likely prepared by an international legal team that

works with the Palestinian Negotiation Affairs Department (NAD) with many locally sourced quotes, details, and numbers and only lightly edited with South African touches. South Africa does not have any meaningful local presence or inside knowledge to have been able to develop such a filing. A similar tactic of using a replacement plaintiff occurred in 2013 when the Union of Comoros made a referral against Israel to the International Criminal Court (ICC) after the Mavi Marmara incident, because Turkey could not do it, as it is not an ICC State Party. In addition, in November 2023, five countries—including South Africa—filed a referral against Israel to the ICC regarding the current war in Gaza.

Even if the claim may seem bizarre and even frivolous to many Israelis and their supporters, there is an internal logic to the action from the perspective of the South African government, despite the real reputational risks involved. This article will attempt to explain the historic and

policy considerations that led to South Africa's submission of a document that it did not have the resources to create but acted as a proxy for the Palestinians in its lawfare with Israel.

Historical Relations With Palestine

The African National Congress (ANC), the primary South African liberation movement established in 1912 and banned in 1960, engaged in foreign relations during much of the period as it fought against apartheid in the country. It built relations with allies and supporters across Africa and the globe, such as the Soviet Union, China, and Cuba, which offered training, political support, and funding. The ANC also found common cause with other liberation movements around the world, including the Palestine Liberation Organization (PLO).

Much of the ANC's foreign policy has preserved relations with its historic allies, including with the PLO. One of the first meetings Mandela held after his release from prison was with PLO Chairman Yasser Arafat, who joined a delegation of leaders. Despite pressure from many in the West and from South Africa's Jewish community, Mandela continued to preserve and develop that relationship. South Africa formally recognized Palestine as an independent state in 1995.

For years, the ANC was known around the world for its fight against apartheid in South Africa. Key steps in South Africa's post-apartheid transformation included the unbanning of the ANC and the release of Nelson Mandela after 27 years in prison, both in February 1990. Four years later, democratic elections led to the ANC becoming the ruling party in South Africa, and it has held an absolute majority in every election since, even as its reputation has been deeply damaged due to corruption and ineffectiveness in many spheres.

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An iconic Mandela quote from a [speech in Pretoria in December 1997](#) marking the International Day of Solidarity with Palestinian People promised, "But we know too well that our freedom is incomplete without the freedom of the Palestinians; without the resolution of conflicts in East Timor, the Sudan and other parts of the world." Over the years, the semicolon was replaced by a period and the second half of the sentence disappeared, with the quote commonly cited as only referring to the Palestinians.

South Africa's government [funds the Palestinian embassy in South Africa](#) (it did the same for the partially recognized Sahrawi Arab Democratic Republic, supporting it against Morocco over the disputed territory of Western Sahara). It has long had a diplomatic representative to the Palestinian Authority, formally a staff member of the South African Embassy in Israel, but who acts independently and is considered in South Africa as its ambassador to Palestine. Certainly, South Africa's legacy of civil society activism for the Palestinians goes back to the controversial 2001 Durban World Conference against Racism, another important South Africa–Palestinian connection.

Relations With Israel

In the early 1960s Israel actually supported the ANC in [anti-apartheid votes in the United Nations](#). This position was consistent with Israel's early period outreach to Africa in the [1950s and 1960s](#). In fact, the vote at the UN against South Africa drew [aggressive protests from Hendrik Verwoerd](#), the South African prime minister. After the Six-Day War in 1967

and especially the Yom Kippur War in 1973, Israel found itself isolated in Africa with most countries cutting off relations; it saw the connection with South Africa as a path to alleviate that challenge. Israel's relations with the apartheid government grew, and the two sides developed [significant economic and military ties](#).

Israel eventually ended those ties under pressure from the international community and its boycott of South Africa, and particularly at the request of the United States—the Reagan administration and the US Congress. The heyday of the Oslo peace process in the early 1990s provided an opening to relations between Israel and the newly democratic government led by Nelson Mandela. In fact, President Ezer Weizman was a guest at Mandela's historic presidential inauguration ceremony in May 1994 and attended a [private meeting with Mandela](#)—later joined by Yasser Arafat—immediately following the ceremony.

During the presidency of Mandela's successor, Thabo Mbeki, [a private meeting was arranged between Palestinians and Israeli peace activists](#) in 2002 at a presidential retreat at Spier Farm, near Cape Town. Mbeki and then deputy Israeli Prime Minister Ehud Olmert developed a personal relationship, and ties between the two countries [grew in the short term](#). Some of these developments were due to South Africa's hope that it could play a role in a renewed peace process between Israelis and Palestinians based on that meeting at Spier Farm.

Nevertheless, for the most part, South Africa saw itself both as a leader in the non-aligned movement and an ally of the Palestinians. Although it regularly called for a two-state solution, South Africa increasingly tilted its relationship toward the Palestinians and away from any engagement with Israel. It has left behind any aspirations of Mandela or Mbeki to positively impact a Middle East peace process. For the past decade, at least, Israeli and South African ministers have not held any public meetings. From 2013–2017, when I served as Israel's ambassador to South Africa, the then

minister of international relations would not meet with me, even once. In 2018, South Africa [recalled its resident ambassador](#) to Israel and has not replaced him.

South Africa's Reaction Since the Events of October 7, 2023

On October 7, South Africa's Department of International Relations and Cooperation (DIRCO) issued a statement calling for an immediate ceasefire, even as the Hamas massacre in Israel was still happening. It made no mention of Hamas, the killing of 1,200 Israelis, or the taking of hostages. [That statement](#), in fact, blamed Israel for the events of that day: "The new conflagration has arisen from the continued illegal occupation of Palestine land, continued settlement expansion, desecration of the Al Aqsa Mosque and Christian holy sites, and ongoing oppression of the Palestinian people."

In mid-October, South Africa's Minister of International Relations Naledi Pandor had a controversial phone conversation with Hamas leader Ismail Haniyeh. After Hamas released a readout thanking South Africa for calling and expressing support, [DIRCO issued a "clarification"](#) and claimed that the conversation occurred in response to a "request to call" Haniyeh and that "Minister Pandor reiterated South Africa's solidarity and support for the people of Palestine and expressed sadness and regret for the loss of innocent lives [of] both Palestinians and Israelis."

Regardless of the exchange during that conversation, in late November, a delegation of [Hamas officials visited South Africa](#), apparently as guests of the ANC. This was not the first time Hamas officials had visited the country, and there are even claims, denied by South African government officials, that Hamas has opened an office in the country. Earlier that month, South Africa recalled its remaining diplomats and temporarily shuttered its embassy in Israel. As South Africa's Parliament prepared to vote to call for the closure of Israel's Embassy (a non-binding resolution was passed with a significant

majority), [Israel recalled its ambassador](#) for consultations, criticizing South Africa's aggressive statements made against it.

Another change has been playing fast and loose with international human rights. Mandela's South Africa was once considered a shining example to the world, having overcome apartheid with a new constitution and having undertaken a mostly peaceful transformation to a democracy. More recently, however, South Africa's global reputation has been challenged by its being rebuked by the ICC for refusing to arrest Sudan's Omar al-Bashir, wanted for crimes against humanity, war crimes, and genocide in Darfur, and instead spiriting him out of South Africa and for having a more realpolitik view of international law.

In mid-December, President Cyril [Ramaphosa met with a delegation](#) from South Africa's Jewish Board of Deputies where both sides aired their concerns, but very little common ground seemingly was found. Interestingly, the board noted that Ramaphosa stated that although the government did not plan to break off relations between the two countries, South Africa's diplomats would only return to Israel at the end of the war. This meeting was another example of the complicated situation of South Africa's small but vibrant Jewish community, which has existed for well over 180 years. The majority of the community remains loyal citizens while deeply identifying with Israel.

[South Africa's application to the ICJ](#), submitted on December 29, lists many of its own public statements and speeches that express its views on the question of genocide. The application even includes a condemnation of Hamas's attack on Israelis, sent quite belatedly to Israel:

South Africa unequivocally condemns the targeting of Israeli and foreign national civilians by Hamas and other Palestinian armed groups and the taking of hostages on 7 October

2023, as expressly recorded in its Note Verbale to Israel of 21 December 2023.

Some Trends in South African Foreign Policy

South Africa is quite proudly the "S" in the BRICS international grouping, an acronym for Brazil, Russia, India, China, and South Africa. Since joining BRICS in 2010, one year after the organization was formed to expand economic ties between the countries, South Africa has deepened its relations with the other members, especially Russia and China. As the smallest of the primary group of countries, before welcoming five additional members earlier this month, South Africa sees BRICS as a forum where it can be seen as a large, successful international player.

One of South Africa's key international positions has been its [support of Russia in the war](#) against Ukraine. Similar to its relationship with the Palestinians, the friendship with Russia is a legacy of the ANC's earlier era of struggle and the movement's connections to the Soviet Union. The fact that Ukraine was also part of the Soviet Union has not deterred South Africa from actively voting and working behind the scenes in support of Russia at the United Nations and other international fora.

This pro-Russia policy has rankled the United States in its attempt to build an international coalition to support Ukraine. The US–South Africa relationship came to a head in December 2022 after the *Lady R*, a sanctioned Russian ship carrying military cargo, docked at a naval port in the city of Simon's Town, near Cape Town. The American ambassador to South Africa accused the South Africans of secretly supplying arms to Russia. While the two sides seem to have smoothed over the issue after an [investigation](#), for awhile it seemed that South Africa could lose its preferred trade relationship with the United States within the African Growth and Opportunity Act (AGOA).

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Conclusions

Many South Africans may know that screaming claims about “genocide” and “apartheid” in reference to Israel and not making similar claims against Sudan or Iran sound cynical and hypocritical to some in the West. It seems that South Africa has prioritized its benefits in organizations such as BRICS in recent years over its former “rainbow nation” reputation. South Africa's continued movement toward BRICS and its drift away from the United States and Europe fit with a one-sided position regarding Israel–Palestine and is certainly not a model for peacemaking. By moving in that direction, it joins other, more realpolitik countries, such as China and Russia.

South Africa will be holding elections this year. Recent polling has shown that [support for the ANC continues to decline](#), as it has in recent years, with some political commentators believing that the party may not have an absolute majority for the first time. Some members of the ANC hope that the government's vocal, international effort to show a radically pro-Palestinian position may be a [nod toward the one million Muslims](#) in the country who

primarily live in the Western Cape—the one province not controlled by the ANC. Although the Muslim population has not traditionally voted for the ANC, there is little to lose in trying to reach these middle-class voters.

The ANC cadres are nostalgic for the heroic days of the freedom struggle. Seeing themselves as standing behind claims of international law and justice against the suffering of their Palestinian comrades fits that narrative nicely, even if it is a rose-colored memory of glorious bygone days. Given the elections, the ANC may also be trying to change the public narrative, which has focused on the usual domestic stories of entrenched corruption, massive electricity shortages, violent crime, infrastructure failures, and an unbreakable cycle of unemployment.

South Africa is open to putting its name on the process at the ICJ and in joining with others in a complaint to the ICC against Israel. The action can serve as a counterbalance to South Africa's opposing the use of international law against Russia or past discussions that it made about leaving the ICC. It also serves as an attempt to reframe South Africa as a protector of international humanitarian law while possibly giving South Africa some international credence. Even if the ICJ rejects the claim, South Africa will remain a loyal champion of the Palestinian cause with very little risk or downside despite the myriad of ways South Africa could gain from more responsible Western gazing leadership.

Although the United States may seem overburdened in preserving friends and allies, it should push back. Some in South Africa feel that it is free to move even closer toward BRICS without repercussions in terms of AGOA benefits or American HIV assistance. As the United States seems to have backed down regarding its Lady R threats, then perhaps South Africa faces even less risk in acting against Israel. However, the Americans could potentially influence South Africa if they are willing to use issues like access to AGOA trade benefits as a lever.

Israel and South Africa share very few strategic interests and have almost no direct

interaction, making the price of leading this action quite low for South Africa. The South African government has shown no interest in promoting bilateral trade, despite the existence of meaningful business-to-business (B2B) contacts between the two countries and a significant South African expat community in Israel. Part of this may be due to the fact that the Jewish community in South Africa is small and aging and does not support the ANC in any meaningful way, neither as voters nor economically.

Therefore, Israel should not necessarily focus on grievances with South Africa until that country revisits its decision regarding friendly bilateral relations. Israel has a wide range of important and friendly partners across

Africa, and it does not share any critical national priorities with South Africa, other than its South African Jewish brothers and sisters. As for the ICJ case, Israel's focus should be on its legal arguments, as its legal team impressively did on January 12, 2024, presenting before the Court in a convincing manner why the South African claim of genocide has no merit, even if there might be room for criticism during the war in Gaza.

Arthur Lenk was Israel's ambassador to South Africa from 2013–2017. He also served as ambassador to Azerbaijan and as director of the Department of International Law at Israel's Ministry of Foreign Affairs.