

# A MISTRA Briefing Paper

## DEMOCRATIC SOUTH AFRICA'S RELATIONS WITH ISRAEL AND PALESTINE

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# ABSTRACT

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South Africa's December 2023 application for the International Court of Justice to determine whether Israel was guilty of genocide against the people of Gaza surprised many people. However, it was not as sudden an action as some seem to believe. Rather, it followed almost three decades of South Africa's engagement with the issue of Israel's occupation of Palestine, with both Israelis and Palestinians, as well as almost a decade of the South African government incrementally downgrading its relations with Israel. This paper traces and examines these complex relations and South Africa's attempts, at different times, to play some role in the resolution of the Palestinian-Israeli question.

## Introduction

At the end of December 2023, South Africa surprised the world when it was announced that the country had applied to the International Court of Justice to rule that Israel's actions in the Gaza Strip constituted genocide. Many observers – in South Africa and beyond – have asked why South Africa would 'suddenly' undertake such strong action against Israel. In reality, the ICJ case was not a sudden action; it followed more than a decade of incremental escalation in tensions between South Africa and Israel.

It is true, however, that the three-month period before 29 December 2023 saw frenetic civil society and government activity in South Africa on international relations matters, particularly regarding the ongoing Israeli-Palestinian conflagration. The position taken by the South African government on the Israeli-Palestinian issue had come under much scrutiny – and, in some cases, severe condemnation – both from the local Palestinian solidarity movement and the pro-Israeli lobby (including the Israeli embassy). Particularly noteworthy is that President Cyril Ramaphosa and South Africa's foreign minister, Dr Naledi Pandor, have been heavily criticised by the pro-Israel lobby, with the minister especially being referred to as anti-Semitic, an 'Islamist', a supporter of terrorism, and as 'tak[ing] instructions from Hamas and Iran' (Gruzd, 2003). At the same time, she has been applauded by the pro-Palestinian movement. South Africa's stance on the Palestinian-Israeli issue is often, as has been the case since October 2023, presented one-dimensionally, and portrayed as if it has remained unchanged for almost three decades. This is far from the truth.

In 1994, the new, democratic South African government inherited a set of international relations that it in the main retained, with the view that it served South Africa better to engage with different states than to isolate (or be isolated from) them. The one exception was that it terminated diplomatic relations with Taiwan, after it adopted a ‘one-China’ policy, and commenced relations with China. Among these inherited relations were the strong ties that apartheid South Africa had had with Israel, in sectors including military, intelligence and nuclear weapons cooperation (Rabie, 1988; Polakow-Suransky, 2011). Recognising and acting on decades-old ties between the ruling African National Congress (ANC) and the Palestinian Liberation Organization (PLO), the South African government then also initiated ties with the ‘State of Palestine’.<sup>1</sup>

In the three decades since the ANC came to power its diplomatic and trade relations with Israel and Palestine have not remained constant, with changes driven by several different sets of considerations. This paper will examine these relations and how they changed over time and will consider what the South African government and the ruling party – separately – hoped to achieve from these changing relations. The paper will also consider the October 2023 attack on Israel by the Palestinian resistance in Gaza, the subsequent Israeli onslaught on that territory and the West Bank, and the views of the South African government on this crisis. The ICJ case is an integral part of this crisis.

## **Inherited relations**

When South Africa’s African National Congress-led ‘Government of National Unity’ moved into the Union Buildings in May 1994 it inherited a set of international relations from the outgoing apartheid government. Among these, the ANC government ‘inherited strong bilateral relations with Israel that have been constructively transformed and built upon’ (DFA, undated). Except in one case, all relations with foreign states were maintained, and in general South Africa’s international relations were expanded. The exception was Taiwan, with President Nelson Mandela being determined to pursue a ‘Two-China policy’ that would recognise both Taiwan and China. However, after much debate, South Africa announced in December 1996 that it would terminate relations with Taiwan. The decision took effect in January 1998. Almost three decades after South Africa’s first democratic government was installed, it hosts the second-largest number of foreign missions in its capital of any country (after the United States of America).

According to Shimoni (1977), an ardent Zionist, bilateral relations between South Africa and Israel began in May 1948, nine days after Israel’s Declaration of Independence, when the government of the Union of South Africa, led by the Prime Minister, Field Marshal Jan Smuts, extended de facto recognition to Israel, the seventh state to do so (Lowenberg, 1950: 394). The National Party (NP) government that succeeded Smuts upheld this

recognition and, in May 1949, granted de jure recognition of Israel (Shimoni, 2003: 23). Diplomatic relations began months later, with the opening of the first Israeli diplomatic mission in South Africa. South Africa sent its first diplomatic representative to Israel in 1972. It might seem odd that the National Party (NP) moved so quickly to establish relations with Israel given its earlier anti-Semitism and support for Nazi Germany against the Allied forces (Rubin, 1957). Perhaps this was because it viewed Israel as a kindred state. In the words of Prime Minister H. F. Verwoerd, the leader of the NP and widely regarded as the architect of apartheid: 'Israel, like South Africa, is an apartheid state' (Clarno, 2009: 66-67).

Thus began a more than four-decade period of close relations between apartheid South Africa and Israel. This included cooperation in intelligence and military sectors, and in the development of nuclear weapons that Israel still possesses, and which South Africa possessed until it chose to voluntarily destroy the weapons in 1991 (Polakow-Suransky, 2011). Israel also assisted South Africa with sanctions-busting – including sanctions imposed by the UN relating to the arms industry (Cawthra, 1991: 41). Israel was also the only state to extend recognition to the Bophuthatswana bantustan as an 'independent state', and hosted a Bophuthatswana embassy in Tel Aviv (Lissoni, 2015). This was despite the UN call to governments to neither recognise nor deal with apartheid bantustans (United Nations, 1977).

In the years between the unbanning of the South African liberation movements in 1990 and South Africa's first democratic elections in 1994, the Israeli ambassador to South Africa, Alon Liel, made it his special mission to develop and strengthen relations with the ANC in preparation for that party taking power.<sup>2</sup> It seemed to have been a worthwhile investment. The ANC-led government of national unity did not interfere with diplomatic, trade or any other relations between South Africa and Israel. While the National Conventional Arms Control Committee (NCACC) had previously claimed that all weapons trading with Israel had ended by 1998, questions have been raised about the sales of arms to Israel by South African companies. The NCACC and state arms manufacturer Armscor insist there have been no sales (DefenceWeb, 2023; DefenseMirror, 2023), but at least two South African companies seem to be currently selling weapons to Israel while bypassing the NCACC (Adam, 2023).

In a major break with this past, however, the ANC, which had maintained close ties to the Palestinian Liberation Organization (PLO) for decades, decided to balance South Africa's relations with Israel by setting up links with the State of Palestine. South Africa established full diplomatic links with Palestine in February 1995, ten months after Nelson Mandela was inaugurated as president.

## **Basis of South African foreign policy**

South Africa's foreign policy, according to government spokespersons and documents, is based on its national interest which includes the values contained in its constitution. Politicians—and many commentators—are fond of referring to a comment Nelson Mandela made, a few months before he was inaugurated as President, as the encapsulation of what should guide South Africa's foreign policy. 'Human rights,' he said, 'will be the light that guides our foreign policy' (Mandela, 1993: 86). Until 2022, however, the 'national interest' had not explicitly been spelt out by any of the five previous ANC administrations. This does not imply that there was no conception of what the national interest was, only that it wasn't clearly articulated in a single document (Maimela, 2019).

The conceptualisation of the national interest was finally coherently articulated in October 2022, in a document published by the Department of International Relations and Cooperation, the 'Framework Document on South Africa's National Interest and its Advancement in a Global Environment' (DIRCO, 2022). The document defines South Africa's national interest as: 'The protection and promotion of its national sovereignty and constitutional order, the well-being, safety and prosperity of its citizens, and a better Africa and world' (DIRCO, 2022: 9). South Africa's 'normative posture', the document claims, is derived from its values of human dignity, equality, human rights, non-racialism, non-sexism, and democracy, which are derived from the 1996 Constitution of the Republic of South Africa (DIRCO, 2022: 15).

Referring to foreign policy, the document asserts that South Africa's national interest 'favours human rights, the peaceful settlement of disputes, transitional justice, respect for international law and norms and collective action through multilateral organs' (DIRCO, 2022: 15). This approach has guided much of South Africa's foreign policy formulation, including its policy towards Israel and the Palestinians. ANC and government officials regularly trumpet 'the South African experience' when referring to conflict situations. They argue almost dogmatically that conflicts must be solved through political processes, through negotiations, and reconciliation. They seem to say that because these measures worked in South Africa, especially at the time of the transition from apartheid, they must work everywhere.

While such an approach is a valuable one and helpful in the resolution of many disputes, there is also the possibility that it could contradict the intention to promote human rights, transitional justice and adherence to international law. South African policymakers seem to have ignored the possibility that weaker parties might accept a negotiated but unjust solution. Or, this possibility seems to not have been articulated as a regular cautionary note in relation to the agenda of promoting 'the South African experience'. Further, another factor that is often ignored is that 'the South African experience' was not simply about negotiations and reconciliation but also included centuries of struggle. To suggest

to a colonised people, for example, that they should simply end their struggles in favour of negotiations could undermine, rather than help realise, the search for human rights, justice, and even respect for international law. This tension was also present in the manner in which South Africa sometimes approached the question of the Palestinian people and relations with Israel.

## **A Blunt Spier: The desire to mediate**

South Africa has played, or attempted to play, central roles in several mediation initiatives, particularly on the African continent, including in Burundi, the Democratic Republic of the Congo (DRC), Zimbabwe, Sudan and South Sudan. One of the earlier such initiatives, with somewhat spectacular results, was Mandela's role in smoothing relations between Libya – under Gaddafi – and Western powers. It resulted in sanctions against Libya being lifted, greater cooperation between that country and Western nations, and Gaddafi handing over an alleged Libyan intelligence officer, Abdelbaset al-Megrahi, to Scottish authorities for the Lockerbie bombing.<sup>3</sup> Particularly under Thabo Mbeki's presidency, the government believed it could also mediate between Israel and the Palestinians.

In 2002, the presidency launched the Presidential Peace Initiative, also referred to as the Spier Initiative. It echoed the desire to use 'the South African experience' for the resolution of other disputes. A former Speaker of the National Assembly, Dr Frene Ginwala, told a 2004 United Nations conference on the Inalienable Rights of the Palestinian People, held in Cape Town, that the Spier Initiative 'was created as a vehicle by which South Africans could share their experience of bringing about a peaceful resolution to the conflict and a successful post-conflict reconciliation' (United Nations, 2004). The initiative began with a meeting in January 2002 at the Spier wine farm in Stellenbosch (DIRCO, undated: 41). The government believed that South Africa's 'experience of negotiating a comprehensive, just and lasting peace' implied that it had 'credibility with those Israelis and Palestinians who are genuinely committed to forging their own peace agreement' (DIRCO, undated: 40).

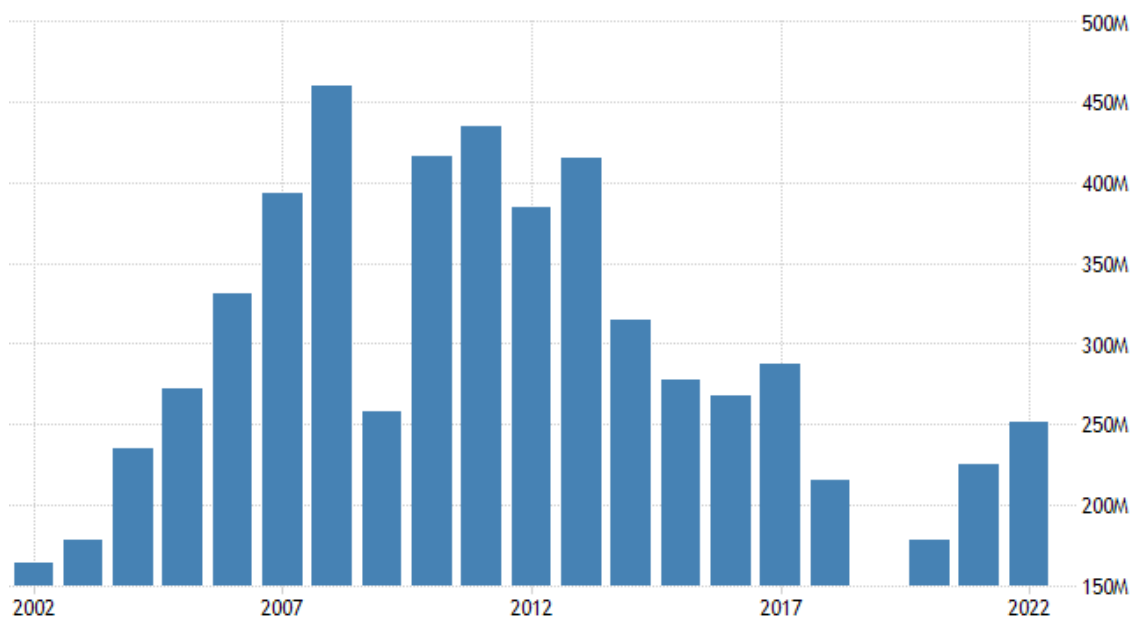
The initiative included visits to South Africa by members of the right-wing Israeli Likud party, visits to Israel by South African government officials – such as the Director-General of Foreign Affairs, Dr Ayanda Ntsaluba (DFA, 2005: 120) – and meetings between Palestinians and Israelis. As part of the process, South Africa also hosted former generals from the Israeli Defense Forces<sup>4</sup> and arranged meetings for them with former generals of the apartheid-era South African Defence Force.<sup>5</sup> There was a dramatic increase in official visits between the two countries in the period 2003 to 2005.

In general, the Spier Initiative achieved nothing in terms of 'Palestinian-Israeli peace'. Indeed, it would not be an exaggeration to suggest that South Africa was strung along by the Israelis in order to extract benefits for Israel but with no intention of having South

Africa broker any deal with the Palestinians. One consequence of the initiative was the repeated refrain by the pro-Israeli lobby in South Africa, whenever the Department of Foreign Affairs (DFA) issued a statement critical of Israel's violations of human rights, that such a statement was 'unhelpful' to South Africa's role as a mediator. The objective appeared to have been rather to use South Africa's intention to be a mediator as a stick to dissuade the government from being in any way critical of Israel and its actions. The South African government was called upon, repeatedly, to demonstrate its even-handedness and to leave behind its support for the Palestinian struggle for self-determination.

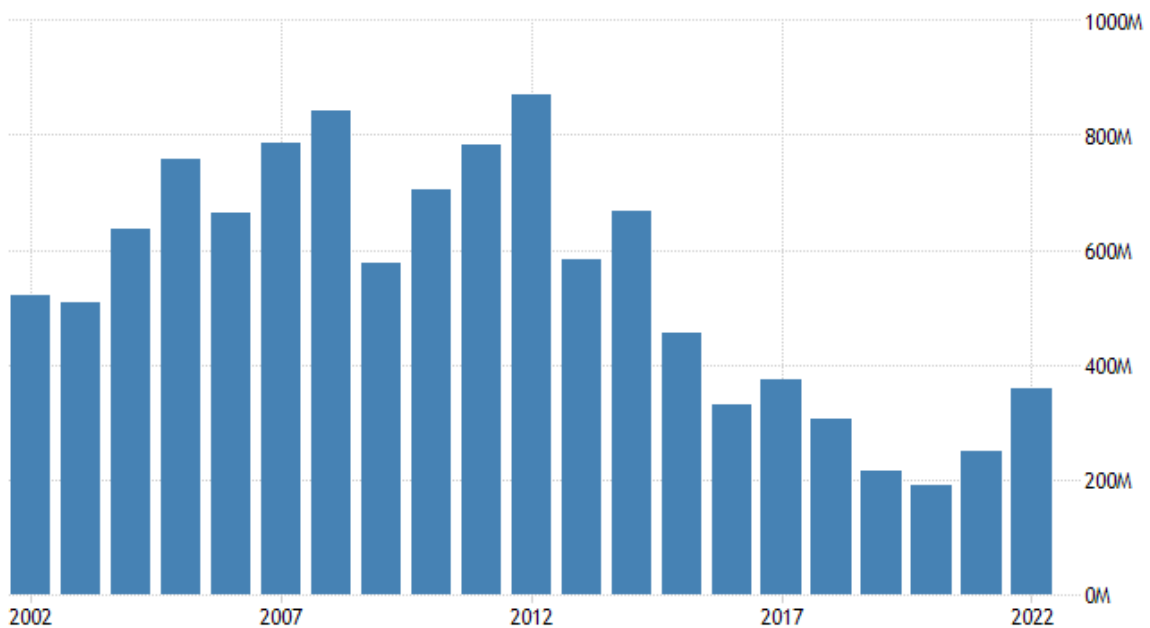
The tone of DFA statements criticising Israeli atrocities changed in this period. Previously these statements, which were issued quite regularly, focused on specific Israeli violations. But, increasingly, there seemed to be an attempt to 'balance' them, with statements first criticising the violation, then criticising Palestinian resistance operations such as 'suicide bombings'. The Department also issued statements criticising such Palestinian operations and asserting that they were 'counterproductive to peace' or 'fuel[ed] the never-ending cycle of violence' (South African Government, 2006a). The solution that the government pushed was adherence to the 1993 Oslo Accords (UN Peacemaker, 1993) and the 'Road Map' of the Quartet (US State Department, 2003), consisting of the USA, European Union, Russia and the UN (South African Government, 2006b).

The push from the pro-Israeli lobby reached a high point in 2004 with the visit to South Africa of Ehud Olmert, Israel's deputy prime minister and Minister of Trade and Industry. Olmert and his counterpart, South Africa's then-Minister of Trade and Industry, Mandisi Mpahlwa, signed a trade agreement (Urquhart, 2004). According to then-Deputy Minister Aziz Pahad, Olmert's visit was undertaken 'in the context of ongoing efforts by South Africa to assist Israelis and Palestinians to find a long-lasting resolution to the political crisis currently affecting the Middle East' (*Mail & Guardian*, 2004). That agreement had a significant impact on relations between the two countries. Bilateral trade increased each year between 2005 and 2012 by almost seven per cent in each direction (Graphs 1 and 2). But still, Israel did not allow South Africa to facilitate any agreement between it and the Palestinians. Indeed, even in the meetings between Israelis and Palestinians that South Africa hosted, the Israeli delegations consisted of former politicians who had little or no influence on their government, while the Palestinian delegations included officials from the Palestinian Authority or the PLO.



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1 Israel's exports to South Africa (Trading Economics, 2024a)  
 Note: Graph as in the source – no details for 2019.



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2 South Africa exports to Israel (Trading Economics, 2024b)

The Spier Initiative was, therefore, a failure. It is not possible to mediate when one party in a conflict is uninterested in mediation. Spier was also a reflection of another element in South Africa's foreign policy focus: the determination to privilege negotiations and mediation – as per 'the South African experience' – over other foreign policy objectives.



Despite this failure, however, the notion that South Africa could mediate between Israel and the Palestinians has occasionally continued to be punted by government and ANC officials over the years. It also continues to be used by pro-Israeli elements – and some liberal pro-Israel commentators – in attempts to get South Africa to moderate (read: be more sympathetic to Israel) its stance.

For example, former Israeli ambassador to South Africa, Arthur Lenk, as recently as mid-October 2023, spoke of ‘the role [South Africa] potentially could have played in terms of brokering peace in the Middle East’, even as he asserted that ‘South Africa doesn’t matter’ (Klawansky, 2023). Recently, in the context of South Africa’s hardening position towards Israel because of the onslaught on Gaza, international relations commentator and former US diplomat Brooks Spector said South Africa could not maintain a ‘neutral position’ because it was already compromised by its support for the Palestinians: ‘It’s very hard to be a mediator or an arbitrator or an influencer in that kind of way if you have already stated [sic] your flag to one pole’ (Lekabe, 2023). Ironically, the US, which has hegemonically maintained a role as a ‘mediator’ since the Oslo Agreement in 1993, remains blatantly and unapologetically one-sidedly pro-Israel. While Spector’s statement in itself is correct, it also suggests that South Africa should be playing a mediating role. Similarly, a *Sunday Times* editorial, on the eve of the parliamentary vote about whether to call for the closure of the Israeli embassy in South Africa, said: ‘South Africa has a lot to offer both Israel and the Palestinians once they decide to talk to each other’ (*Sunday Times*, 2023).

These pro-mediation comments ignore a critical factor: as the Spier Initiative and the past few years of Netanyahu’s premiership have shown, Israel is not interested in talking to the Palestinians. And, as recent events related to the Gaza onslaught show, Israel is also not interested in listening to the United Nations, its Secretary-General (whom Israelis have accused of being a terrorist sympathiser), or UN officials (who have been targeted and murdered by the Israeli military in Gaza). The lack of clarity is sometimes compounded by South African government statements, such as Ramaphosa’s recent comment that South Africa was ‘ready to mediate’ (Winning, 2023).

Some Palestinian civil society groups severely criticised the Spier Initiative, referring to it by the term that former US president Ronald Reagan coined to describe the USA’s relationship with apartheid South Africa – ‘constructive engagement’ (Stop the Wall Campaign, undated: 46-49).

## **Focus on the Palestinians**

The failure of Spier did not end the political or economic benefits that Israel gained from its relationship with South Africa. The pro-Israeli lobby (though rarely Israeli government

officials) continued to speak of South Africa as a possible ‘mediator’, attempting to use that rhetoric to keep South Africa ‘neutral’, and to ensure that the benefits of the 2004 trade agreement continued accruing. That reality, however, experienced a turn in the period 2012 to 2013.

Until the first half of 2012, Israel had launched two large-scale operations against Gaza: Operation Cast Lead (2008-2009) and Operation Returning Echo (March 2012). The mood globally, including in South Africa, was one of increasing anger against Israel, especially after its declaration that it needed regularly to attack Gaza in what later became known as ‘mowing the lawn/grass’ (Inbar and Shamir, 2014). In South Africa, there was a great deal of agitation by the Palestinian solidarity movement, leading to suggestions that the ANC Conference in December 2012 should support the global campaign for boycotts, divestment and sanctions (BDS) against Israel. In November 2012, Israel launched its ‘Operation Pillar of Defense’ against the Gaza population, further increasing anger across the world. More than 170 people were killed, hundreds were wounded and hundreds more were displaced (UN Human Rights Council, 2013). In December, the ANC conference resolved to support the BDS campaign (South African History Online, 2012). That year saw trade between South Africa and Israel peak at \$1.19 billion, with a trade imbalance in South Africa’s favour (World Bank, 2012). The next year, that figure dropped to \$871.7 million (World Bank, 2013), and dropped further to \$407.7 million in 2019 (World Bank, 2019).

But the changed mood of the South African government in 2012 was not a sudden affair. It followed at least half a decade of engagement with a range of Palestinians. Although the South African government officially recognises the State of Palestine and recognises the Palestinian Authority (PA) as the ‘government’ of that ‘state’, by the late 2000s there was a growing feeling within the ANC and the government that this was inadequate. Many had begun to question the notion that the PLO, and, through it, the PA, was the ‘sole and legitimate representative’ of the Palestinian people – especially after Hamas won the 2006 parliamentary elections. Although the party had received just over 44 per cent of the Palestinian vote in the Occupied Palestinian Territory (the West Bank, including Jerusalem, and Gaza), it did win the majority (54 per cent) of parliamentary seats. Within days of Hamas leader Ismail Haniyeh being elected Prime Minister of the PA, President Thabo Mbeki publicly invited him for an official visit to South Africa. The election seems to have convinced Mbeki that South Africa should begin developing relations with Palestinian factions outside the PLO and remain equidistant from them. He was likely motivated by a recommendation in the report of the South African observer mission to the election, which specified that channels should be opened with Hamas and the Popular Front for the Liberation of Palestine (PFLP).<sup>6</sup> Mbeki’s public invitation to Haniyeh was not followed up, however. The PA president, Mahmoud Abbas, who had

not accepted Mbeki's invitation to visit since Abbas had been elected the year before, quickly sent a representative to South Africa to convince Pretoria not to host Haniyeh. The matter was quietly forgotten.

That approach to the other factions, it was decided, should happen through the South African embassy in Damascus, where all Palestinian political factions had offices. Thus, the South African ambassador in Damascus, Mohammed Dangor, opened channels of communication with the various Palestinian factions that had offices in Damascus. These included Hamas; Palestinian Islamic Jihad; the PFLP; the PFLP – General Command; and the Democratic Front for the Liberation of Palestine. In early 2008, then-secretary-general of the ANC, Kgalema Motlanthe, visited Damascus, accompanied by Ebrahim Ismail Ebrahim, then-chair of the ANC's International Relations Subcommittee. They met the leaders of some Palestinian factions, including Hamas. Two other senior government officials, then-Minister of Intelligence Ronnie Kasrils and then-Deputy Foreign Minister Aziz Pahad, also visited Damascus and met with representatives of these factions. Three years after his first visit, in October 2010, Motlanthe travelled to Syria on a working visit as Deputy President and met representatives of the bigger factions in his official capacity (Presidency of the Republic of South Africa, 2011).

In 2011, Ebrahim – then a Deputy Minister of International Relations and Cooperation – met with Mustafa Barghouti, the head of the Palestinian National Initiative, another party that was, at the time, outside the PLO. Ebrahim met him twice: in Pretoria in his role as Deputy Foreign Minister (with a delegation from his department), and with other ANC members at the ANC headquarters in Johannesburg, as head of the party's International Relations Subcommittee (AMEC, 2011). These meetings highlighted the government's new position: that it recognised all Palestinian political factions and desired to hear all their views on the situation of the Palestinian people. The ANC was highlighting its intention to develop relations with these factions. A culmination of this approach was the visit to South Africa, in 2015, of a Hamas Politburo delegation led by Khaled Mesh'al. The delegation was hosted by the ANC and, in a meeting with the ANC's 'Top Six' leaders, a letter of intent was signed by the two delegations.

The focus on Palestinian political groups led, later, to government encouraging non-governmental efforts at fostering reconciliation between the different Palestinian factions and fostering a discussion about the revival of an inclusive PLO. These efforts included Palestinians from within Israel, the West Bank, Gaza and refugees from outside Palestine, and it included representatives of Fatah, Hamas and other political groups. Government officials and ANC members attended a number of meetings and fora in which these discussions took place, in Lebanon (2015) and in South Africa (2016 and 2017), organised by different NGOs. These initiatives have not yet borne fruit.

This was partly because Egypt has considered the issue of Palestinian reconciliation as its domain and Palestinians had therefore noted that any attempt that showed a promise of success would have to be discussed with the Egyptians. It was also partly because Abbas, as the head of Fatah, continually vetoed attempts to proceed beyond simple meetings and conferences and prevented decisions from being taken. Neither of these factors, however, exists in the same way. Following Egypt's role in the current ongoing Israeli onslaught on Gaza, it seems that most of the bigger Palestinian political factions – except Fatah – no longer trust Egypt to play such a role and could look to other role players. Some Palestinian groups have indicated they would welcome a South African role. Secondly, Abbas and his PA have become quite irrelevant in Palestinian politics in the recent past – despite his being the head of Fatah, the PLO and the PA. Indeed, it is his autocratic dominance over the three bodies that has contributed to his irrelevance, as well as the fact that most Palestinians now regard the PA as more of a security contractor for Israel than as an element of their eventual liberation from occupation. That irrelevance was confirmed in the Palestinian attitude to the PA and Abbas in the past weeks as Palestinians in Gaza and the West Bank were confronted by the brutality of the Israeli occupation forces.

## **Slow downgrade of relations with Israel**

It was, perhaps, to be expected that as the South African government focused more of its attention on internal Palestinian matters its appetite waned for expending resources to keep the Israelis satisfied.

In 2010, a convoy of six ships that was named the 'Freedom Flotilla' attempted to break Israel's siege of Gaza by delivering food and medical aid to the territory. One South African participated in the flotilla. It was attacked by Israeli commandos on 30 May 2010 and ten activists – all Turkish citizens – were killed as a result. Turkey immediately withdrew its ambassador from Israel, and South Africa followed suit (*Al Jazeera*, 2010). The South African ambassador, Ismail Coovadia, returned about two months later, but the Israelis regarded the action as unfriendly (IOL, 2010).

Two years later, there were numerous reports – and agitation from the Palestine solidarity movement in South Africa on the basis of these reports – that there was a stream of South African groups visiting Israel as guests of the Israeli government or government institutions, including delegations from the ANC Youth League, Metro police from certain municipalities going for training, and businesses sending staff for management training. Ebrahim, then Deputy Minister of International Relations and Cooperation, announced a new government policy that prohibited state officials from visiting Israel unless it was for their diplomatic duties or to 'further the peace process'. Over the next year, the

stream of people visiting Israel from the ANC and various tiers of government became a trickle. Trade between the two countries also began to decrease from 2013, signalling a deteriorating relationship that led to the current tense ties. The 2004 trade agreement between Israel and South Africa expired in 2014 and was not renewed, resulting in a further drop in trade, as indicated in Graphs 1 and 2.

At the ANC Policy Conference in June 2017, delegates proposed that the party's conference in December that year should call on the government to 'downgrade' the South African embassy in Tel Aviv to a 'liaison office'. The December Conference resolved to make that call on the government (Pather, 2017) resulting in a great deal of debate within government circles, particularly within DIRCO. A few months later, in May 2018, Israel killed scores of Palestinians in Gaza who had been participating in the 'Great March of Return', a protest on the Gaza side of the fence that Israel had built to confine Gazans (Fayyad, 2019). In total, Israel killed 234 Palestinians during the Great March of Return demonstrations (Noy, 2020). In protest, South Africa condemned 'in the strongest terms possible the latest act of violent aggression carried out by Israeli armed forces' and recalled its ambassador in Tel Aviv, Sisa Ngombane, 'until further notice' (South African Government, 2018).

The Minister of International Relations and Cooperation at the time, Lindiwe Sisulu, later said that the recall of the ambassador was the first step in the process of downgrading the embassy (Fabricius, 2019). The ambassador was never returned and, since then, the South African Embassy in Tel Aviv has operated without an ambassador and increasingly junior staff. Until that is, November 2023, when the Minister in the Presidency, Khumbudzo Ntshavheni, announced a cabinet decision to withdraw all diplomats from the Tel Aviv embassy (Mkhwanazi, 2023). After Ngombane's recall in 2018, the government – especially Ramaphosa (Thale, 2021) and Pandor (Myeni, 2022) – increasingly referred to Israel's 'apartheid' practices. This was particularly so after the 2021 reports published by B'Tselem (B'Tselem, 2021) and Human Rights Watch (Human Rights Watch, 2021) and the 2022 report by Amnesty International (Amnesty International, 2022), which said that Israel was guilty of the crime of apartheid.

South Africa's pushback against Israel also played out in the African Union (AU). In July 2021, the AU Commission Chair, Moussa Faki Mahamat, granted Israel observer status to the continental body (Mahamat, 2022). Within days, South Africa publicly opposed the decision on both procedural and substantive grounds (Al Jazeera, 2021), and subsequently led a lobby within the AU to revoke Israel's accreditation (Al Jazeera, 2022). According to South Africa's foreign minister Naledi Pandor, the matter was serious enough that it could 'make us consider whether we can be in the African Union' (Pandor, 2023). The matter remained contentious, with an Israeli delegation being removed from the AU Summit in February 2023 (Times of Israel, 2023), and Mahamat subsequently saying

that Israel's observer status was 'suspended' until a committee appointed by a previous Summit could deliberate on the matter and make recommendations to AU heads of state (Al Jazeera, 2023a).

## **'Al-Aqsa Flood' and the South African response**

Since 7 October 2023, the South African government and the ANC have paid a great deal of attention to the question of relations with Israel, and the conditions of the Palestinian people. That was the day that around 1,500 fighters from various resistance groups in Gaza – Hamas's Al-Qassam Brigades, Palestine Islamic Jihad's Al-Quds Brigades, Al-Nasser Salah al-Deen Brigades of the Popular Resistance Committees, the Abu Ali Mustapha Brigades of the Popular Front for the Liberation of Palestine, the National Resistance Brigades of the Democratic Front for the Liberation of Palestine – led by the Al-Qassam Brigades, broke through the hi-tech fence surrounding the strip and swept into southern Israel. According to Hamas, the operation, called Al-Aqsa Flood, was primarily directed at Israeli military installations in the area around Gaza, 'and sought to arrest the enemy's soldiers to put pressure on the Israeli authorities to release the thousands of Palestinians held in Israeli jails through a prisoners exchange deal' (Hamas Media Office, 2024: 7). The military installations that were attacked included the Beit Hanoun border crossing (called Erez Crossing by Israel), the Zikim military base, and the headquarters of the IDF's Gaza division at Reim (Al-Jazeera, 2023). A number of military personnel were killed or captured in these attacks.

Over the period of about 48 hours, around 1 350 people were killed in Israel, according to official Israeli sources (AFP, 2023). About 200 of those were Gazan fighters (New Arab, 2023), 71 were foreigners, the rest were Israelis. Of the Israelis killed, 373 were military personnel. Of the civilians, some were killed by the resistance fighters, and others by Israeli soldiers and pilots, using tanks (Abunimah and Sheen, 2023) and at least one Apache helicopter (Breiner, 2023). The Gazan fighters (from different resistance groups) also took around 240 people captive, most of them being military personnel (including officers). Since then, Israel has been bombarding Gaza virtually non-stop, from the air, ground and sea, targeting hospitals, UN schools, Christian and Muslim places of worship, and residential buildings, with little concern for civilian deaths or the destruction of civilian infrastructure (Abraham, 2023). By the time of writing, just over five months after Israel's attack on Gaza had begun, more than 32 000 people had been killed in the Gaza Strip and the West Bank, about 75 per cent of them being children and women, and including a few hundred Palestinian resistance fighters; more than 460 000 homes have been destroyed or damaged; 670 Christian and Muslim places of worship had been destroyed or damaged; 30 of 35 hospitals have been rendered completely non-functional and the other five only partially functional; and all the universities have been destroyed (AJLabs, 2024).



The South African government's initial response, within hours of the Hamas-led attack, expressed concern at the 'devastating escalation in the Israeli-Palestinian conflict', and blamed it on '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' (DIRCO, 2023). To the chagrin of Israel, the statement did not condemn the Gaza resistance groups. Nor did a subsequent statement five days later, which quoted Ramaphosa (DIRCO, 2023b), or one a day after that (DIRCO, 2023c). These statements drew immediate and harsh, even malicious, responses from the pro-Israeli lobby in South Africa (Haripersad, 2023)<sup>7</sup> and the Israeli ambassador to South Africa.

Subsequently, no doubt in response to the enormous pressure that government had been subjected to, Cabinet slammed what it described as 'the cowardly attack by Hamas that killed and injured innocent people'. However, the focus of the statement remained on Israel's attack and its 'genocide against the people of Palestine' (Sokutu, 2023). The South African stance hardened quickly over the next weeks, as the death toll and destruction in Gaza increased rapidly. It included strong statements from both Ramaphosa and Pandor calling for a ceasefire and condemning the killings of civilians, and a phone call between Pandor and Hamas leader Ismail Haniyeh in which she expressed South Africa's desire to assist people in Gaza at a humanitarian level (DIRCO, 2023d). The frenetic activity in government on this issue reached a peak on 6 November with Ntshavheni's announcement of the Cabinet decision to withdraw diplomats from Tel Aviv. She said that Cabinet had taken note of 'disparaging remarks' made by the Israeli ambassador and that his position was 'becoming very untenable' (Chimombe, 2023). A week later, the opposition Economic Freedom Fighters tabled a motion in parliament calling on government to expel the Israeli ambassador and shut down the Israeli embassy. The motion was voted on a few days later and the ANC supported it, resulting in it being adopted as a parliamentary resolution. Even though a cabinet meeting on 29 November did not accede to Parliament's call, the point had been made that both the executive and legislature strongly opposed Israel's action. On the same day as the parliamentary debate, Ramaphosa hosted a special BRICS meeting to discuss the onslaught on Gaza (Lawal, 2023).

As a result, relations between South Africa and Israel reached their lowest level ever. The tensions intensified when Ramaphosa announced, from Doha where he was on an official visit, that South Africa was one of six countries that had referred Israel to the International Criminal Court (ICC) to be investigated for war crimes, and that the Israeli Prime Minister, Benjamin Netanyahu, and other Israeli politicians should be tried by the ICC (Patel, 2023). Subsequently, DIRCO announced that South Africa would also refer Israel to the International Court of Justice (ICJ) for an opinion about whether

Israel practises apartheid – as per the International Convention for the Suppression and Punishment of the Crime of Apartheid (Gerber, 2023).

## **South Africa vs. Israel in the World Court**

However, none of these measures by South Africa matched its action at the end of 2023. A media statement of the International Court of Justice, issued on 29 December 2023, announced that South Africa had ‘filed an application instituting proceedings against Israel before the International Court of Justice (ICJ)... concerning alleged violations by Israel of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”) in relation to Palestinians in the Gaza Strip’ (ICJ, 2023a). South Africa’s application ‘concerns acts threatened, adopted, condoned, taken and being taken by the Government and military of the State of Israel against the Palestinian people, a distinct national, racial and ethnical group, in the wake of the attacks in Israel on 7 October 2023.’ Although the application ‘unequivocally condemned’ the actions of Palestinian resistance groups against civilians, it emphasised that: ‘No armed attack on a State’s territory no matter how serious — even an attack involving atrocity crimes — can, however, provide any possible justification for, or defence to, breaches of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (‘Genocide Convention’ or ‘Convention’), whether as a matter of law or morality. The acts and omissions by Israel complained of by South Africa are genocidal in character’ (ICJ, 2023b).

Based on the Genocide Convention, South Africa accused Israel of a number of acts that the Convention describes as acts of genocide, and added, ‘[T]he acts complained of — which Israel has committed and is committing — are capable of being characterised at the very least as plausibly “genocidal”’ (ICJ, 2023b). While the investigation to determine whether Israel was guilty of genocide could take years to conclude, South Africa asked the Court to indicate provisional measures against Israel, ‘to protect the Palestinian people in Gaza by calling upon Israel immediately to halt all military attacks that constitute or give rise to violations of the Genocide Convention... To that end, the Court should order Israel to cease killing and causing serious mental and bodily harm to Palestinian people in Gaza, to cease the deliberate infliction of conditions of life calculated to bring about their physical destruction as a group, to prevent and punish direct and public incitement to genocide, and to rescind related policies and practices, including regarding the restriction on aid and the issuing of evacuation directives’ (ICJ, 2023b).

The matter was heard by the ICJ on 11 and 12 January 2024, and the Court handed down its order on 26 January 2024. The order essentially accepted all the claims that South Africa had levelled against Israel and rejected all of Israel’s counterclaims (ICJ, 2024a). It



did not, however, grant the provisional measures in exactly the manner that South Africa had requested. Crucially, while South Africa had requested the Court to indicate ‘The State of Israel shall immediately suspend its military operations in and against Gaza’, the Court ordered that Israel should ‘take all measures within its power to prevent the commission of all acts within the scope of Article II of [the Genocide Convention]’ (ICJ, 2024). South Africa subsequently twice applied to the Court for additional provisional measures against Israel: on 12 February 2024 (ICJ, 2024d) and 6 March 2024 (CIJ, 2024e).

South Africa’s ICJ application and its oral arguments in the Court evoked a number of different responses globally. First, Israel, the USA and other Israeli allies attacked South Africa. The Israeli foreign ministry accused South Africa of ‘functioning as the legal arm of Hamas’ (Israel Ministry of Foreign Affairs, 2024). The US Secretary of State, Antony Blinken, and the White House national security spokesperson, John Kirby, called the 84-page application ‘meritless’ (Mitchell, 2024) and Germany said the application had ‘no basis whatsoever’ (Attiah, 2024). Relations between South Africa and Israel have certainly reached their lowest point ever.

Second, there has been an outpouring of support for South Africa’s case from the public across the world – both in the Global North and the Global South, and from various Global South governments (Pillay, 2024; Jacobs, 2024).

Third, many commentators have suggested that the case makes the point that international law has not favoured countries of the Global South and that this case is an attempt to change that (Schwöbel-Patel, 2024). This is also indicated by the fervour with which Global South states are approaching the ICJ to pursue related cases. Some 52 states participated, for example, in the ICJ hearing regarding the legality of Israel’s occupation, which took place at the end of February 2023, with the vast majority of them arguing that the occupation was illegal. South Africa too added its voice at the Court. The hearing followed a request from the UN General Assembly for the ICJ to issue an advisory opinion on the matter (ICJ, 2024b). Thereafter, Nicaragua instituted ICJ proceedings against Germany ‘for alleged violations by Germany of its obligations deriving from the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”), the Geneva Conventions of 1949 and their Additional Protocols, “intransgressible principles of international humanitarian law” and other norms of general international law in relation to the Occupied Palestinian Territory, particularly the Gaza Strip’ (ICJ, 2024c).

In general, South Africa’s prestige on the global stage has been enhanced by this case – especially among public and civil society across the world. This has manifested in various ways. Since January 2024, for example, South African flags have begun appearing alongside Palestinian flags in demonstrations across the world. Social media became

replete with praises for the South African government, South African people, and, after the ICJ hearing, the South African legal team from social justice activists around the world. Video clips of speeches by Minister Pandor and by South Africa's lawyers presenting their arguments at the ICJ went viral, and there are numerous anecdotes of South Africans who have travelled abroad since January 2024 reporting that when people hear they are South African, they want to afford them special treatment. However, a cautionary note for the South African government is that this kind of public support – including in Arab states – is not a reflection of the relevant governments. Informal conversations with role players indicate that some Arab governments, as well as the Palestinian Authority, have become nervous about the assertiveness with which South Africa took on the ICJ case and the fact that it maintained secrecy around it and did not consult them. This nervousness is, in part, reflected by the muted response from Arab states to the ICJ announcement, and the fact that none of them supported South Africa's action in the Court.

## **Conclusion**

The relations between South Africa and Israel have become extremely heated since 7 October 2023, and risk descending into the worst relations that South Africa has with any country. These deteriorating relations occur against the background of, since South Africa's first democratic elections in 1994, the government trying to maintain good relations with Israel, while also developing formal relations with the State of Palestine. The South African government also tried to mediate between Israel and the Palestinians. However, those attempts failed, resulting in South Africa then attempting to foster reconciliation and unity between Palestinian political factions. South Africa has been well-placed for the latter role since it has the respect of all Palestinian political factions, and the two major ones – Hamas and Fatah – have official party-to-party links with the ANC. Further, after the current conflagration in Gaza, it seems likely that most Palestinian factions will be unwilling to accept a role in this regard for Egypt, which has previously maintained that this is its responsibility. Nor will they be pleased about giving such a role to any other Arab state – after what they see as the current complicity of most Arab states with Israel. Qatar is viewed favourably by most Palestinian factions, but it seems keener to play the crucial mediating role between Israel and the Palestinians. The other state that is attempting to facilitate Palestinian reconciliation is Russia. The most recent meeting of Palestinian factions held in its capital, Moscow, took place on 29 February 2024 (Reuters, 2024).

As with many other issues, the South African government finds itself in a position where it has to play a fine balancing act. On the one hand, it is driven by South Africa's constitutional values of freedom, democracy, and justice, and by its stated national

interest that ‘favours human rights, the peaceful settlement of disputes, transitional justice, [and] respect for international law’ (DIRCO, 2022). While severing relations (diplomatic and trade) with Israel will not have a significant negative impact on South Africa, government is concerned about relations with Western states, particularly the USA, South Africa’s second-largest trading partner. Furthermore, Cabinet is also concerned that severing diplomatic relations with Israel could result in the South African mission in Ramallah being shut down by Israel, thus hampering South Africa’s relations with the Palestinians. Although South Africa recognises Palestine as a state, Palestinian territory remains occupied. Thus, all foreign missions in Ramallah, while being accredited by the Palestinian Authority, are also accredited by Israel as missions linked to their respective embassies in Israel. From the Israeli perspective then, the South African mission in Ramallah is a consular office of the embassy in Tel Aviv. The South African government has accepted this arrangement since the establishment of the Ramallah mission. Thus, if South Africa were to sever diplomatic links with Israel and shut down its Tel Aviv embassy, Israel would demand that the Ramallah mission also be closed. South Africa could, of course, defy that order. But that would result in Israel either ejecting all the diplomats and thus, effectively, shutting it down, or preventing diplomats at the mission from operating normally – including restricting their general freedom of movement, as well as their entrance into and exit from Palestine, since Israel controls all Palestine’s borders.

Since the second week of October 2023, however, South Africa has embarked on a new path in its relations with Israel, from which it will be difficult to backtrack. This path includes the withdrawal of South African diplomats from Israel; the withdrawal of the Israeli ambassador from Pretoria; Pandor’s call for an international protection force to defend Palestinians (Harper, 2023); South Africa pursuing an ICC case against Israeli politicians, as well as other measures that were discussed above. Most significant in this regard has been South Africa’s genocide case against Israel at the ICJ, which has already given South Africa a significant and enhanced role on the global stage.

After the adoption of these strong positions and actions by the executive and the legislature, there are now increasing calls –from both South African civil society and the ANC’s Palestinian partners – for the National Prosecuting Authority to pursue those South Africans who serve in the Israeli Defense Forces, in violation of South Africa’s Regulation of Foreign Military Assistance Act. With the massive sentiment against Israel’s attack on Gaza in the Global South, this issue also offers South Africa an opportunity to provide leadership on this matter. Starting with its BRICS partners, South Africa could begin galvanising a global front that forces a change in the Palestinian-Israeli dynamic towards a lasting and sustainable resolution, premised on international law, self-determination and peace for all people living between the Jordan River and the Mediterranean Sea.

The ICJ case has already catapulted South Africa back onto the global stage and garnered significant support for South Africa's foreign policy position – both from supportive states and from a broad section of the global public.

South Africa's action at the ICJ, and its generally uncompromising position on Israel's genocidal actions in Gaza since October 2023, also suggest a deliberate refocusing of South Africa's foreign policy to one that seeks to revive the Mandela dictum that the country's foreign policy should be guided by 'the light' of human rights. That is also a major thrust in the 'Framework Document on South Africa's National Interest and its Advancement in a Global Environment' (DIRCO, 2022).

# NOTES

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- 1 While the 'State of Palestine' is recognised by South Africa as such, and has been a non-member observer state at the United Nations since November 2012, its status as a state is questionable. Because of the Israeli occupation, the 'State of Palestine' – which supposedly includes Gaza and the West Bank (including East Jerusalem) – is not contiguous or sovereign, has no control over its borders, water resources, land, electromagnetic spectrum, coastline, or airspace. Gaza has been under a siege imposed by Israel in 2007; the West Bank is, effectively, an Israeli colony under military occupation where the 'government', the Palestinian Authority, has virtually no power over any of its territory. By definition, the 'State of Palestine' is not a state. References to 'Palestine' in the current context are therefore made reluctantly, and should not be taken to mean that there exists a Palestinian state.
- 2 Liel was also a director-general of the Israeli foreign ministry. Subsequently, he and another Israeli ambassador to South Africa, Ilan Baruch, resigned from the foreign ministry and began campaigning for the recognition of a Palestinian state. Both former ambassadors believe that Israel practises apartheid against the Palestinians. See, for example, Hearst, 2023 and Baruch and Liel, 2021.
- 3 The Lockerbie bombing refers to the bombing of Pan Am Flight 103, flying from Frankfurt to Detroit, on 21 December 1988. The bomb exploded over the Scottish town of Lockerbie; 270 people were killed.
- 4 'Israeli Defense Forces' is the exact official designation.
- 5 See list of activities that were 'undertaken in relation to the Spier Presidential Peace Initiative', Parliamentary Monitoring Group. 2005. Also see the list at Stop the Wall Campaign. Undated (circa 2007).
- 6 Interview with Garth le Pere (27 November 2023, Johannesburg), a member of the observer mission and one of those who drafted the subsequent report.
- 7 See also, numerous articles in the *South African Jewish Report*, from 7 October 2023, <https://sajr.co.za>.

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