



Middle Power Lawfare

South Africa, International Justice, and the Gaza Crisis

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► Key Takeaways

- South Africa's ICJ case marks a shift from symbolic solidarity to active legal diplomacy.
- The case reflects frustration with traditional diplomacy and tests multilateral institutions in crisis.
- South Africa's actions are shaped by post-apartheid constitutionalism and deep ties to Palestinian self-determination.
- Compared to other Global South states, South Africa took a more assertive and public legal route.
- Domestic civil society mobilization and historical identity as a human rights state enabled this engagement.
- The move aligns with a broader trend of middle powers using international law to assert influence amid global polarization.

Introduction

The intensification of violence in Gaza following Hamas's 7 October 2023 Al Aqsa Flood attack and Israel's military response prompted a broader reassessment of global diplomacy. Longstanding geopolitical alignments were disrupted, and questions about humanitarian obligations, institutional accountability, and the limits of state conduct returned to the centre of international debate. Within this context, South Africa's response drew significant attention. It combined calls for a ceasefire, multilateral engagement, and proceedings at the International Court of Justice (ICJ) accusing Israel of engaging in genocidal acts, with the specific intent to destroy Palestinians in Gaza.¹ This initiative reflected not only a strategic use of international law mechanisms but also a symbolic assertion of moral leadership,² despite the likelihood of diplomatic and economic fallout.

The humanitarian toll in Gaza, including the deaths of thousands of civilians and the destruction of critical infrastructure such as hospitals, schools, and UN facilities,³ made international responses more and more urgent. As calls for accountability increased, the divergence between the West and the Global South became more visible. Many developing countries voiced support for institutional action, while key Western governments rejected external scrutiny of Israel's conduct.⁴

The move to take Israel to the ICJ did not come out of nowhere. It rests on South Africa's post-apartheid self-image as a defender of human rights, years of engagement with multilateral bodies, and a long record of solidarity with the Palestinian cause. A mobilised civil society, skilled international lawyers, and broad political buy-in made legal action possible at this moment, prompting the question of whether Pretoria's stance was altruistic, opportunistic, or a bit of both.⁵

Against that backdrop, this briefing argues that the ICJ case was neither a sudden departure nor a mere election-year gambit. Instead, it was a calculated intensification of South Africa's long-standing habit of using legal forums to project moral authority and diplomatic leverage.⁶ The analysis that follows shows how domestic politics, institutional capacity, and a polarising global order converged to make such a move feasible—and what this might mean for other middle powers navigating today's fractured multilateral landscape.

1. "SA stands by Decision to File Lawsuit against Israel", SAnews, March 13 2024, available at: www.sanews.gov.za.

2. P. Andrews, "Human Rights and Foreign Policy: South Africa's Genocide Complaint Against Israel at the International Court of Justice", *Minnesota Journal of International Law*, Vol. 34, No 2, 2025, available at: scholarship.law.umn.edu.

3. "Six-Month Update Report on the Human Rights Situation in Gaza", [s.n.], UN Office of the High Commissioner for Human Rights, 2024, available at: www.ohchr.org.

4. N. Popli, "Over 800 Western Officials Denounce Pro-Israel Policies", *Time*, 2024, available at: www.time.com.

5. "Orderson, Crystal. Altruism, Opportunism or Both: What Pushed South Africa to ICJ over Gaza?", *Al Jazeera*, 2024, available at: www.aljazeera.com.

6. P. Andrews, « Human Rights and Foreign Policy: South Africa's Genocide Complaint Against Israel at the International Court of Justice », op. cit.

The analysis is presented in three parts. The first section traces the evolution of South Africa's position on Palestine, from the tensions of the apartheid era to post-1994 policy consolidation. The second examines the architecture of its post-7 October actions, focusing on its use of multilateral platforms and coordination with other states. The third explores the domestic political drivers and external constraints, including party dynamics, civil society engagement, and the economic consequences of its international stance. The conclusion reflects on the broader implications for middle powers that seek to utilise international mechanisms to navigate a fragmented global order, particularly during a period of heightened regional instability.

Historical foundations: from strategic ambiguity to foreign policy consolidation

South Africa's judicial engagement following the 2023 Gaza crisis emerged from contested historical legacies, institutional development, and shifts in strategic orientation. During both the apartheid and post-apartheid periods, Pretoria navigated competing pressures between past international alliances and its post-1994 identification with global movements for political self-determination. These dynamics gradually shaped how South Africa approached multilateral forums and judicial instruments.

Apartheid-era contradictions to post-transition balancing (1948-1999)

During apartheid, South Africa maintained close economic and military ties with Israel, especially after 1967, as both regimes found common cause in resisting international isolation. By the 1980s, Israel was among Pretoria's top arms suppliers, deepening their strategic cooperation, including on nuclear issues.⁷ In contrast, the exiled African National Congress (ANC) forged ideological alliances with Palestinian liberation movements, particularly through the Non-Aligned Movement (NAM) and the Organisation of African Unity.⁸ These platforms fostered discourse of shared anti-colonial resistance, where ANC and Palestinian struggles were portrayed as parallel fights against racial domination.

The Mandela administration marked the first attempt to mediate between these divergent legacies. Publicly affirming Palestinian self-determination –famously stating that “our freedom is incomplete without the freedom of the Palestinians”⁹–, Mandela nevertheless maintained full diplomatic ties with Israel.¹⁰ However, structural asymmetries and limited global leverage restricted South Africa's options to largely

7. “Declassified: Apartheid Profits – Ties to Tel Aviv”, Blog Daily Maverick, 2017, available at: www.dailymaverick.co.za.

8. “Explainer: How S. Africa, Palestinian Struggles are Linked”, *The New Arab*, 2024. Available at: www.newarab.com.

9. “Address by President Nelson Mandela at International Day of Solidarity with Palestinian People”, 1997, available at: www.mandela.gov.za.

10. N. Jeenah, “Israeli Infiltration in South Africa”, Al Jazeera Centre for Studies, January 2010, available at: studies.aljazeera.net.

symbolic diplomacy, establishing a precedent for the more systematic strategies adopted by subsequent governments.

Policy consolidation: from advocacy to structured confrontation (1999-2018)

Under President Thabo Mbeki (1999-2008), South Africa's position sharpened through multilateral channels. Stronger emphasis on South-South cooperation and criticism of occupation policies coincided with the Second Intifada (2000-2005) and rising global awareness of Palestinian grievances.¹¹ Characterisations of Israeli practices as apartheid, once confined to activist discourse, became more prominent in official narratives, particularly within the UN and NAM.¹²

This trend intensified under President Jacob Zuma (2009-2018). Endorsement of the Boycott, Divestment and Sanctions campaign, engagement with Palestinian factions, including Hamas, and diplomatic downgrades signalled a shift toward open confrontation.¹³ The ANC's 2017 resolution to reduce diplomatic ties with Israel formalised the turn, transforming symbolic protest into institutional policy.¹⁴ Legal framings of Israeli conduct moved from moral critique to jurisprudential strategy, later serving as the conceptual core of South Africa's ICJ submission.

Institutionalisation and strategic litigation: Ramaphosa's foreign policy turn (2018-2023)

The Ramaphosa era marked further consolidation of South Africa's institutional capacity in foreign policy. Drawing on his constitutional background and Foreign Minister Naledi Pandor's rule-of-law orientation, Pretoria increasingly relied on international norms and judicial mechanisms to frame its global engagement on the Palestinian issue.¹⁵

Domestically, this legalist approach was embodied by high-profile commissions of inquiry, most notably the Zondo Commission, launched in January 2018 to investigate systemic state corruption and the influence of private actors ("state capture"). Despite exposing widespread misconduct and producing a multi-volume final report in June 2022, the Zondo Commission has been widely criticised for generating limited

11. I. Suder, "Mbeki Pledges Support for Palestinians", IOL, 2001, available at: iol.co.za.

12. N. Jeenah, "Israeli Infiltration in South Africa", op. cit.

13. "South Africa's Ruling Party Endorses Campaign to Boycott Israel", World Jewish Congress, 2012, available at: www.worldjewishcongress.org.

14. A. Essa, "ANC Resolves to Downgrade Embassy in Israel", *Al Jazeera*, 2017, available at: www.aljazeera.com.

15. "A Conversation With Minister Naledi Pandor of South Africa", Council on Foreign Relations, 2022, available at: www.cfr.org.

prosecutions or real reforms, with few high-level arrests resulting from its recommendations and significant public funds spent.¹⁶

Internationally, during the Ramaphosa years, South Africa grappled with a legacy of selective legal engagement inherited from the Zuma era, particularly around the Southern African Development Community Tribunal (SADC Tribunal) and the International Criminal Court (ICC). The Zuma-era decision to suspend the SADC Tribunal (2011-2014) was declared unconstitutional by the High Court in March 2018 and confirmed by the Constitutional Court in December 2018, reinforcing judicial oversight of international commitments under Ramaphosa.¹⁷ The ICC dilemma also resurfaced: after the controversial failure to arrest Sudan's Omar al-Bashir in 2015, tensions re-emerged in 2023 when the ICC issued a warrant for Vladimir Putin ahead of the BRICS summit. Although Putin did not attend, South Africa held extensive negotiations with the ICC, highlighting continued discomfort with enforcing obligations against powerful allies. In April 2023, Ramaphosa's government reaffirmed its membership in the ICC, signalling a renewed commitment to international justice.¹⁸

By late 2023, pursuing proceedings through international courts had emerged as both a viable and necessary course of action, enabled by accumulated institutional experience and consistent political positions on the Israeli-Palestinian conflict.

Legal diplomacy strategy: from multilateral advocacy to judicial confrontation

Pretoria used international courts as tools of foreign policy

Drawing on its constitutional commitment to international law,¹⁹ accumulated litigation expertise,²⁰ and established discourse of Palestinian solidarity, Pretoria used international courts as tools of foreign policy, seeking to reposition itself as a norm-shaping actor in an increasingly contested multilateral landscape. The 1996 Constitution's integration of international law to break from apartheid isolation, litigation expertise from decades of anti-apartheid advocacy, and post-1994 transitional justice mechanisms entrenched legal accountability and shaped its international posture to champion justice and the rule of law. The ICJ application, submitted on 29 December 2023, resulted from coordinated efforts between the Department of International Relations and Cooperation, the Office of

16. T. Makwakwa, "Commissions Without Consequences: Experts cite TRC, Zondo, Marikana as Missed Opportunities", *IOL*, July 14 2025, available at : <https://iol.co.za>.

17. "SADC Tribunal matter", Law Society of South Africa, available at: <https://www.lssa.org.za/>.

18. "Statement on the Cabinet Meeting", The Presidency of the Republic of South Africa, April 26, 2023, available at: <https://www.presidency.gov.za/node/7145>.

19. « Chapter 14: General Provisions - International Law » South African Constitution. [s.l.] : [s.n.], Available at: www.justice.gov.za.

20. C. Gevers, "The Right Side of History: SA at the ICJ, Again", *Advocate*, Vol. 37, No. 1, 2024, available at: gcbsa.co.za/law.

the State Attorney, and legal advisors.²¹ Drawing on precedents such as “The Gambia v. Myanmar”,²² the filing framed Israel’s actions as violations of the Genocide Convention. The ICJ’s initial ruling in January 2024 acknowledged the “plausibility” of genocide claims and imposed provisional measures, with subsequent rulings reinforcing the case’s ongoing traction.²³

This campaign was accompanied by informal outreach to states, legal scholars, and civil society actors. Parallel to the ICJ filing, Pretoria co-led a five-country referral to the ICC, calling for investigations into potential international crimes since 7 October.²⁴ The ICC’s issuance of arrest warrants for senior Israeli officials in November 2024 added a second track, resulting in one of the most coordinated state-led challenges through international judicial mechanisms in recent practice.²⁵

Pretoria’s assertiveness was enabled by institutional readiness, sustained public support, and a foreign policy approach willing to absorb diplomatic risks. While this strengthened South Africa’s position within Global South coalitions, it also placed the country at the centre of broader geopolitical debates about using international institutions to challenge dominant powers.

Coalition building and multilateral strategy

South Africa’s strategy gained momentum through deliberate multilateral coordination. Key platforms such as the African Union, BRICS, NAM, and the UN General Assembly helped validate its diplomatic arguments, framing the ICJ case as part of a broader Global South initiative rather than a singular national undertaking.

The African Union’s endorsement provided continental legitimacy,²⁶ while BRICS served as a key sounding board for political messaging under South Africa’s 2023 chairship.²⁷ NAM played a more explicit role. At its January 2024 summit, over 90 member states backed a resolution supporting the ICJ proceedings, lending broader political weight and challenging claims that South Africa’s move was diplomatically

21. “South Africa Institutes Proceedings against Israel and Requests the International Court of Justice to Indicate Provisional Measures”, International Court of Justice, 2023, available at: www.un.org.

22. R. Islam, “The Gambia v. Myanmar: An Analysis of the ICJ’s Decision on Jurisdiction under the Genocide Convention”, *Insights: American Society of International Law*, Vol. 26, No 9, available at: www.asil.org.

23. “The Court indicates provisional measures”, International Court of Justice, January 26, 2024, available at: www.un.org.

24. “South Africa, Along with Like-Minded States, Submits Joint Referral of the Situation in Palestine to the ICC”, South African Department of International Relations and Cooperation, 2023, available at: dirco.gov.za.

25. “ICC Issues Arrest Warrant for Israeli PM Netanyahu for ‘War Crimes’ in Gaza”, Al Jazeera, 2024, available at: www.aljazeera.com.

26. “The Court Authorizes the African Union to Participate in the Proceedings”, International Court of Justice, 2025, available at: www.un.org.

27. S. Lawal, “BRICS Condemns Israel War on Gaza in Signal to the West Israel-Palestine Conflict”, *Al Jazeera*, 2023, available at: www.aljazeera.com.

isolated.²⁸ India was a notable exception, as it did not officially back the NAM resolution supporting the ICJ proceedings, largely due to its strategic ties with Israel and a longstanding reluctance to engage in third-party legal disputes.

At the UN General Assembly, South Africa led efforts to connect humanitarian resolutions with the ICJ's interim measures. Although non-binding, actions such as Resolution ES-10/26, adopted with broad support from the Global South, reinforced the credibility of South Africa's position and positioned Pretoria as both a participant in international adjudication and a facilitator of broader consensus.²⁹

Yet this multilateral engagement exposed deepening geopolitical divisions. Western reactions revealed institutional consensus limits: the United Kingdom dismissed the ICJ case as "wrong and provocative",³⁰ while Germany filed a declaration supporting Israel.³¹ The two responses reveal that, when alliance interests are at stake, states prioritise strategic loyalty over judicial findings, and an ICJ ruling did not appear to have shifted that calculus alone.

This institutional impasse catalysed South Africa's transition from seeking multilateral endorsement to creating accountability mechanisms. Formed on 31 January 2025, the Hague Group represents a calculated effort by eight Global South states (Bolivia, Colombia, Cuba, Honduras, Malaysia, Namibia, Senegal, and South Africa) to institutionalise support for ICJ and ICC rulings through binding commitments rather than declaratory diplomacy.³² The coalition's formation directly builds upon South Africa's ICJ genocide case, transforming what began as an individual legal challenge into a multilateral accountability framework designed to address the historical gap between international court rulings and state compliance.

The group's inaugural statement commits members to three specific measures: implementing ICJ provisional measures and supporting ICC arrest warrants against Israeli officials, preventing arms transfers to Israel where violations of international law risk occurring, and blocking port access to vessels carrying military supplies to Israel.³³ This approach moves beyond traditional diplomatic coalitions that rely on consensus statements to require domestic legislative implementation with tangible consequences.

For South Africa, this initiative demonstrates that its ICJ case represents broader international concern whilst establishing practical frameworks for implementing court

28. "Final Outcome Document: 19th Summit of Heads of State and Government of the Non-Aligned Movement. Rapport NAM 2024/CoB/Doc.1", Non-Aligned Movement, 2024.

29. Ibid.

30. "International Court of Justice Interim Ruling on South Africa vs Israel: FCDO Statement", UK Foreign, Commonwealth & Development Office, 2024, available at: www.gov.uk.

31. S. Talmon, "Germany Rushes to Declare Intention to Intervene in the Genocide Case brought by South Africa Against Israel Before the International Court of Justice", Blog GPIL - German Practice in International Law, 2024, available at: gpil.jura.uni-bonn.de.

32. "Inaugural Joint Statement", The Hague Group, 2025, available at: thehaguegroup.org.

33. Ibid.

orders that traditionally lacked enforcement mechanisms. However, the group's effectiveness ultimately depends on sustained member commitment to implementing politically and economically costly measures against increasing pressures from major powers and business interests.

Domestic political enablers: consensus and competition

South Africa's action on Gaza was shaped by a domestic political environment marked by broad, though varied, support for the Palestinian cause. The ANC framed its position as consistent with its historical foreign policy outlook, whilst opposition parties largely avoided direct opposition.³⁴ The Democratic Alliance (DA), while declining to endorse South Africa's ICJ application, affirmed that the court was the appropriate forum to determine allegations of genocide and pledged to respect its eventual findings.³⁵ The Economic Freedom Fighters (EFF) adopted a more confrontational stance, with Julius Malema declaring Netanyahu a "warlord" whilst affirming that "Palestinians have a home in South Africa."³⁶ This political dynamic enabled the government to pursue its legal route with limited domestic opposition, though it also raised expectations that may prove difficult to sustain amid competing priorities.

This broad political alignment reflects how different ideological traditions converge around the Palestinian issue: the ANC draws on its liberation heritage to view Palestinian resistance through an anti-apartheid lens that reinforces its historical legitimacy; the DA's liberal democratic orientation emphasises legal processes whilst avoiding positions that might alienate key constituencies; and the EFF uses confrontational rhetoric to position itself as more authentically committed to liberation politics than the ANC whilst advancing its pan-Africanist and anti-Western agenda.

Civil society mobilisation significantly reinforced government policy, creating a mutually supportive dynamic that enhanced the domestic legitimacy of the government. Trade unions, religious groups, and community organisations orchestrated protests and campaigns that mirrored official discourse, particularly in drawing parallels with South Africa's apartheid experience.³⁷ Identity-based mobilisation further shaped these dynamics: the Muslim Judicial Council organised mass rallies invoking Gaza-apartheid parallels, whilst the South African Jewish Board of Deputies warned against fuelling antisemitic sentiment and Jewish Voice for Peace South Africa celebrated the ICJ

34. N. Jeenah, "The New South Africa and the Palestine Question: From Good Offices to Total Support", available at: www.palquest.org.

35. T. Feinberg, "DA Double Speak: Steenhuisen Trips over Gaza Question", Blog Jewish Report, 2024, available at: www.sajr.co.za.

36. "SA: Malema Renews Solidarity with Palestine at EFF Manifesto Launch", *Africanews*, 2024, available at: www.africanews.com.

37. "COSATU Statement on the Global Campaign Against Apartheid Israel for War Crimes – Advancing Working Class Internationalism and Concrete Solidarity", COSATU, 2023, available at: mediadon.co.za.

provisional measures.³⁸ These intersecting pressures both reinforced the ANC's strategy and compelled opposition parties to clarify nuanced positions, demonstrating how foreign policy intersects with domestic social identities.

However, the 2024 electoral outcomes revealed the limits of this apparent consensus. Despite widespread civil society mobilisation, Gaza emerged as only a notable but ultimately limited electoral factor, with political costs for parties perceived as insufficiently supportive largely symbolic and concentrated within specific Muslim communities.³⁹ The ANC's strong pro-Palestine stance failed to prevent its historic electoral defeat and loss of parliamentary majority, whilst the DA's cautious position did not significantly damage its performance. This demonstrates how foreign policy preferences in South Africa typically remain embedded within existing political loyalties rather than driving distinct voting behaviour.⁴⁰

Post-election coalition governance has introduced new institutional constraints on foreign policy autonomy; however, the ANC has successfully retained key levers of international engagement. The ANC's decline to under 50% of votes led to the formation of a Government of National Unity, with the DA creating new veto points through the coalition's "sufficient consensus" rule. However, the Department of International Relations and Cooperation as well as foreign policy portfolios were non-negotiable for the ANC during coalition negotiations, enabling them to maintain a degree of strategic autonomy in formulating South Africa's international positions.

International backlash and Western pressure

South Africa's pursuit of the ICJ case triggered notable economic and diplomatic backlash from key Western partners, most prominently through US President Trump's executive order of 7 February 2025 titled "Addressing Egregious Actions of The Republic of South Africa."⁴¹ Trump's administration accused South Africa of enacting racially discriminatory policies through its Expropriation Act, whilst simultaneously taking aggressive positions towards US allies, specifically citing South Africa's decision to accuse Israel of genocide at the ICJ and its developing relations with Iran.

38. M. Hirsch, "Thousands march in Cape Town in support of ICJ order against Israel", GroundUp, May 26 2024, available at: [groundup.org.za](https://www.groundup.org.za) ; "SAJBD's Statement on SA's Case at the ICJ: 'Inversion of Justice'", SA Jewish Board of Deputies, 2024, available at: www.sajbd.org ; "We Welcome South Africa's Win in the World Court Ordering Israel Prevent all Genocidal Violence against Palestinians — We Continue Calls for an Immediate Ceasefire", Blog Jewish Voice for Peace, 2024, available at: www.jewishvoiceforpeace.org.

39. Q. Hunter, "Will Israel's War on Gaza Sway South Africa's Election?", *Al Jazeera*, May 13, 2024, available at: www.aljazeera.com.

40. G. Imray, "After South Africa's Historic Election, what Now for Its Global Role on Issues Like the War in Gaza", AP News, 2024, available at: apnews.com.

41. "Addressing Egregious Actions of The Republic of South Africa", The White House, 2025, available at: www.whitehouse.gov.

The Expropriation Act was signed into law in January 2025, repealing the Apartheid-era Expropriation Act of 1975 and replacing it with a new legal framework for compulsory state acquisition of property, in line with constitutional principles and land reform objectives. The act drew backlash in 2025, with critics warning that its provisions for expropriation without compensation risked setting a precedent for unchecked state power, undermining constitutional property protections and threatening investor confidence.⁴² Supporters viewed it as a vital tool for land reform, essential to redressing historic racial injustices in land ownership. They argued it did not undermine private property rights, as it established clear legal procedures to ensure fairness and due process.⁴³

Congressional pressure had preceded the executive order, with bipartisan legislation introduced by Republican Congressman John James and Democrat Jared Moskowitz in February 2024, explicitly labeling the ICJ case as “politically motivated” and demanding a comprehensive review of US-South Africa relations.⁴⁴ These initiatives coincided with Israeli diplomatic efforts to lobby US Congress members, pressuring South Africa to drop the case. Israeli diplomats were instructed to seek statements warning that the ICJ case could lead to the suspension of US-South Africa trade.⁴⁵

The executive order framed these actions as unjust practices that undermine US foreign policy and pose national security threats, establishing a direct link between South Africa’s legal challenge against Israel and broader American concerns about Pretoria’s international alignment. By bundling the ICJ case with domestic racial policies and Iran relations, Washington portrayed South Africa’s genocide allegations not as legitimate legal proceedings but as part of what it characterised as an anti-American pattern warranting punitive economic measures. This reflected how economic linkages, previously insulated from political disagreements, now existed precariously, with trade policy increasingly being utilised to achieve political objectives.⁴⁶

However, South Africa’s legal strategy also attracted significant international support, revealing deep fractures within the Western alliance on Israel-Palestine issues. Fourteen countries announced intentions to intervene in the ICJ case, including Colombia, Mexico, Libya, and Spain, with European nations Belgium, Ireland, and Cuba expressing political support.⁴⁷ These episodes illustrated how the ICJ case exposed

42. K. Hamilton, “Legal Showdown for Land Rights: New Push to Scrap the Expropriation Act”, Bizcommunity, May 26, 2025, available at: <https://www.bizcommunity.com>.

43. “South Africa’s Expropriation Act 2025: A Balanced Legal Analysis”, Bishop Fraser Attorneys, 2025, available at: <https://bishopfraser.co.za/>.

44. L. Tandwa, “US Congress Receives Bill to Review SA Relations Following ‘Politically Motivated’”, *Mail & Guardian*, 2024, available at: mg.co.za.

45. B. Ravid, “Israel Asks Congress to Press South Africa to Drop ICJ Genocide Case”, *Axios*, 2024, available at: www.axios.com.

46. G. de Carvalho, “Practical Steps SA Can Take to Reset its Relationship in the Trump Era”, *Business Day*, 2025, available at: www.businesslive.co.za.

47. I. Rawoot, “‘Jolt to Reality’: Gaza War Shakes Up South Africa’s Election Campaign”, *Al Jazeera*, 2024, available at: www.aljazeera.com.

fundamental tensions regarding the challenge to Israeli actions through international institutions, with economic and diplomatic costs serving as both punishment and deterrent against using international law to hold strategic allies accountable.

Assessment: strategic choices and diplomatic positioning

South Africa's engagement following the 7 October Gaza crisis has produced notable diplomatic and normative effects. In the short term, Pretoria secured international recognition: the ICJ acknowledged the plausibility of genocide claims, and the ICC issued arrest warrants against senior Israeli officials. These developments brought visibility to South Africa's position and elevated its role within Global South activism. The coordinated mobilisation of regional and multilateral platforms helped frame South Africa as a norm entrepreneur capable of challenging prevailing hierarchies within international institutions.

Yet these milestones came with tangible risks. South Africa's decision to pursue formal proceedings has tested major economic partnerships and triggered political pushback from Western actors. Whether the approach yields long-term strategic gains or generates diminishing returns under economic pressure remains uncertain.

From an international law perspective, South Africa's approach reflects a calculated use of third-party litigation embedded within a wider diplomatic strategy. The formation of the informal "Hague Group" and expressions of support from several countries in the Global South point to growing interest in coordinated judicial action. However, the extent to which this model will be adopted more broadly depends on states' institutional capacity, foreign policy goals, and readiness to manage geopolitical consequences.

Strategic continuity, tactical adaptation

The ICJ application functioned as both a legal submission and a geopolitical message, placing South Africa in open opposition to key global powers and inviting increased scrutiny of its foreign policy consistency.

A key critique relates to South Africa's contrasting approaches to the Gaza and Ukraine conflicts. While Pretoria pursued assertive judicial action on Gaza, it maintained a non-aligned stance on Ukraine, avoiding high-profile interventions. This divergence reflects differing historical relationships: Palestinian solidarity has deep roots in South African political identity, whilst no comparable connection exists with Ukraine. Moreover, close ties with Russia, particularly within BRICS,

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added constraints. A decisive action against Moscow could have jeopardised Pretoria's strategic goal of maintaining diplomatic flexibility in a fragmented global environment.

Enabling factors and strategic calculation

The timing of South Africa's move was shaped by political opportunity and institutional readiness. The scale of destruction in Gaza, combined with heightened global attention and precedents from international courts, created conditions in which formal action became feasible. Domestically, broad cross-party agreement that the situation required a response gave the government room to manoeuvre, whilst civil society support reinforced the state's position. Internationally, South Africa's decision reflected a strategic effort to reshape its position in a more fragmented global order, setting itself apart from both traditional allies and other emerging powers whilst meeting expectations to move beyond rhetorical support.

Implications for middle power diplomacy

In a time when multilateral forums are showing clear signs of stress, South Africa's approach stands out. It reflects a broader trend among middle powers to move beyond simple cooperation and instead utilize international legal forums as arenas for political

challenge, rather than just diplomacy. This marks a calculated shift from traditional engagement to adjudicative tactics, though it remains to be seen whether that strategy will leave a lasting mark.

Few states have been willing to take on direct institutional confrontation to South Africa's extent. What sets Pretoria apart is its readiness to accept diplomatic and economic risks in pursuit of political messaging through international procedures. Whether this method will appeal to others is unclear; it requires specific conditions, including institutional capabilities, domestic political backing, and credibility on international justice issues.

South Africa's experience demonstrates both possibilities and risks of institution-based diplomacy for middle powers. These mechanisms can elevate the profile but offer no protection from economic pressure. For others considering similar strategies, the key question is whether such tools can be sustained amid global and domestic constraints.

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Conclusion: legal diplomacy amid strategic trade-offs

South Africa's post-7 October response to the Gaza crisis marked a significant shift in its foreign policy tactics. Turning to international courts was not entirely new, but the intensity and scope of this engagement were notable. Pretoria positioned itself as a Global South actor willing to use international mechanisms not only to express solidarity but to challenge the conduct of a powerful state within multilateral institutions.

This approach was built on long-standing support for the Palestinian cause and reflected South Africa's constitutional emphasis on international cooperation and rights-based diplomacy. Institutional capacity, domestic political backing, and a receptive global moment made this response possible. However, its sustainability remains uncertain. The decision triggered diplomatic pushback, economic risk, and growing pressure from key international partners, raising questions about the long-term feasibility of using such forums as a central foreign policy tool.

The broader strategy drew on precedents, such as The Gambia's ICJ case against Myanmar, and was supported by emerging coalitions, including the informal "Hague Group." Yet most countries with similar sympathies have avoided pursuing similar paths, often due to concerns over political exposure or limited institutional resources.

South Africa's experience also highlights the constraints facing middle powers that seek to influence global debates through international forums. While the move raised Pretoria's diplomatic profile, it also revealed the challenges of confronting entrenched power asymmetries through procedural means. The reliance on international rules does not necessarily shield states from backlash when interests clash.

Whether this approach yields tangible outcomes remains to be seen. The effectiveness of such strategies will depend not only on the outcomes of proceedings but also on domestic political resolve and the ability to manage strategic trade-offs. While South Africa's actions reflect a more assertive model of Global South engagement, it is not easily replicable. Many states may continue to prefer cautious diplomatic approaches over procedural confrontation.

In this sense, South Africa's case reflects both the ambition and the limitations of institution-focused diplomacy. It demonstrates how states with limited material power can attempt to shape global agendas, while also illustrating how easily these efforts can be constrained by economic interdependence, political fragmentation, and competing foreign policy priorities.

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