



The Hill Times (Ottawa, ON)

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Page 14

## South Africa's sad demise

Adam Dodek

With its ICJ case against Israel, South Africa is making a mockery of the rule of law, one of the foundational principles of our constitutional order.

There was a time when South Africa was the toast of the international order. After Nelson Mandela's release from prison in 1990, the country was seen as full of democratic promise. Those days have long passed. South Africa today is more closely aligned with Russia, China, and other authoritarian regimes than with the democratic West. South Africa's complaint against Israel for alleged genocide at the International Court of Justice (ICJ) is the most recent egregious demonstration of South Africa's moral and democratic demise.

It is notable that those who most strongly supported South Africa's complaint and the ICJ's interim order included Hamas, Iran, and Qatar. They are hardly bastions of international law and democracy. And what about Canada? Canada has not spoken with clarity against South Africa's perverse recourse to international law. It should, because Canada has the moral and political legitimacy to call out South Africa.

Canada has long had a special relationship with South Africa. In 1961, then-prime minister John Diefenbaker stood with newly independent African countries against apartheid South Africa's readmission to the Commonwealth. Similarly, in the 1980s, then-prime minister Brian Mulroney was a leader within the Commonwealth for sanctions against apartheid South Africa, crossing swords with the United Kingdom's then-prime minister Margaret Thatcher on this issue.

Canada supported South Africa's democratic transition in multiple ways. And the Canadian Charter of Rights and Freedoms and Supreme Court of Canada jurisprudence were important models for South Africa's new constitution and its new Constitutional Court.

All of this helps to explain why Mandela visited Canada in June 1990, only several months after his release from prison after 27 years. Canada made Mandela an honorary citizen in 2001.

But South Africa has long ceased to be Mandela's country. Mandela departed the presidency in 1999, after having served only a single term as his country's president.

Nelson Mandela, left, with then-prime minister Brian Mulroney in 1990. Canada has long had a special relationship with South Africa, and it should use that moral and political legitimacy to speak with clarity against South Africa's perverse recourse to international law, writes Adam Dodek. Photograph courtesy of Library and Archives Canada

The leaders who have followed have burned through the moral and political capital that Mandela bequeathed them. They have moved their country closer to the orbit of anti-democratic, authoritarian, and even terrorist regimes.

Then-South African president Thabo Mbeki was an HIV/AIDS denialist whose policies are blamed for the preventable deaths of approximately 350,000 of his citizens who died of AIDS. He was followed by Jacob Zuma, who is currently on trial for corruption, having previously stood trial for rape. After the Zuma years, there was great hope when Cyril Ramaphosa became president in 2018, but his tenure has been marked by disappointment as Ramaphosa ducks accusations of corruption and inability to manage a failing electricity grid.

All of this brings us to South Africa's

complaint against Israel at the ICJ. Clearly, it is not motivated by South Africa's respect for international law or concern over alleged genocide. South Africa brazenly flaunted international law when it hosted indicted Sudanese then-president Omar Hassan Bashir in 2015. The International Criminal Court (ICC) issued international arrest warrants for Bashir in 2009 and 2010 for crimes against humanity, war crimes, and genocide committed between 2003 and 2008 in Darfur, Sudan, where 300,000 people were reportedly killed, and more than 2.7 million were displaced during this time.

The ICC ruled that South Africa violated its obligations under international law by not arresting Bashir.

South Africa risked similar censure with its desire to host Russian President Vladimir Putin, who has also been indicted for war crimes in Ukraine by the ICC. Ramaphosa avoided this by going to visit the indicted war criminal in Russia.

South Africa openly embraces Hamas, a terrorist organization that is banned under Canadian law. South African politicians warmly welcomed a visiting Hamas delegation in December, which included stops at the South African parliament and the offices of the ruling African National Congress.

In bringing Israel to the ICJ, South Africa is shilling for Hamas and, by extension, for its sponsor, Iran. At the very least, South Africa's complaint against Israel to the ICJ is hypocritical, as the Economist recently put it.

Even Al Jazeera—certainly no supporter of Israel—has acknowledged that Ramaphosa's decision to bring the case

to the ICJ may be motivated by opportunism, specifically to deflect attention from domestic politics, and also attacks from his left flank with a view towards upcoming national elections later this year.

South Africa is making a mockery of the rule of law, one of the foundational principles of our constitutional order. A bedrock principle of the rule of law is the idea that everyone is subject to the law. South Africa and its supporters take the position that they are exempt from the same legal order that they now wish to subject Israel to.

This is the most cynical type of exceptionalism. Canada should have no part of it. In the proud tradition of prime ministers Diefenbaker and Mulroney, Prime Minister Justin Trudeau should speak clearly and forcefully against South Africa's unprincipled and contemptuous case against Israel.

Adam Dodek is a professor of constitutional law at the University of Ottawa.

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