



Policy Recommendations for Canada

- A. Canada must condemn Israel's attack on the Gaza aid flotilla as illegal and reckless. The Israeli blockade of Gaza violates humanitarian legal norms, as it arbitrarily prevents civilian and humanitarian supplies from entering Gaza. The United Nations and the Red Cross have judged the blockade to be illegal as it is a form of collective punishment. Supplies that clearly pose no security threat, such as pasta, crayons, books and chocolate are often banned. As a result, attempts to enforce the blockade against ships carrying humanitarian supplies cannot be justified.
- B. Canada must not allow the legal right of self-defence to be misused. The right of self-defence is codified in Article 51 of the U.N. Charter. However, any response to a perceived threat must be in accordance with the principles of proportionality and necessity. Canada should not allow Israel to repeatedly use the argument of self-defence to justify unprovoked acts of aggression.
- C. Canada must call for an international inquiry into the attack on the Gaza aid flotilla. Israel has so far rejected demands for an *international* investigation into what happened when Israeli commandos boarded aid ships from NATO countries bound for Gaza and killed nine activists. Several previous international incidents involving Israel suggest that a multi-national inquiry is necessary in order to have a credible investigation. For example, following its 2008-2009 War on Gaza, Israel absolved itself of wrongdoing, while the U.N. Fact Finding Mission, Human Rights Watch, Amnesty International and even Israeli human rights organizations found Israel guilty of multiple war crimes. If Israel has nothing to hide then it should not object to an international inquiry.

A: Canada must condemn Israel's attack on the flotilla as illegal and reckless

1. Canada must condemn Israel's attack on humanitarian aid ships. While international law permits the use of blockades by the UN Security Council, it is not a right granted to states. If Israel – as a state – seeks to justify its blockade of Gaza on the basis of “self defence” it must respect the norms of international humanitarian law, and allow unrestricted civilian imports. Unfortunately, Israel does not. Thus, Israel's attempts to block and takeover ships carrying humanitarian aid to Gaza are illegal, and Canada must condemn them.
2. Canada must condemn Israel's illegal boarding of ships in international waters. Israel's legal right to self-defence does not allow it to use force against foreign-flagged vessels, in international waters, which are not carrying military supplies to a belligerent party. The cargo of the aid ships was registered, and Israel could have verified the cargo without boarding the ships. Alternatively, Israel could have arranged to board the ships with non-military personnel and inspect the cargo with the consent and cooperation of the flotilla organizers.
3. Canada must facilitate the passage of future aid missions to Gaza. The aid ships commandeered by Israeli commandos had been inspected at their ports of departure. If the nature of the supplies onboard concerned Israel, it could have relied on diplomatic means to have a neutral, third party inspect the ships. Israel could then have escorted the flotilla to Gaza. Such an approach would have been legal, safe and better for Israel's long-term security. Canada could play a constructive role by serving as a neutral third party in ensuring that aid reaches Gaza.
4. Canada must condemn the reckless nature of Israel's attack. Even if Israel had been legally justified in boarding the aid flotilla ships, the Israeli commandos appeared entirely untrained for their mission. When the civilians on board the *Mavi Marmara* weren't immediately subdued, the commandos considered no option but to open fire on the crudely armed civilians. Had it been justified, Israel should have conducted a police operation, and not a military operation. Israel's trigger-happy recklessness led to the unnecessary death of nine civilians.

B: Canada must not allow the right of self-defence to be misused

1. Canada must insist that the use of military power be reserved for bona fide cases of self-defence. As a general rule in international law, the threat and use of force between states is prohibited. Self-defence

is the one exception to this rule, but it must be exercised with great restraint – notably necessity and proportionality – as required by legal interpretation. Necessity implies that the use of force must be limited to the attainment of legitimate military objectives. Proportionality requires that the harm caused to civilians or civilian property must be proportionate in relation to the military advantage anticipated by an attack on legitimate military objectives. Israel’s use of force against the Gaza aid flotilla did not satisfy either of these principles.

2. Canada must insist that Israel find less violent ways of addressing its security concerns. It is clear that the aid flotilla posed no *immediate* threat to the security of Israel; any claims to the contrary by Israel are not legally tenable. Nevertheless, Israel sent elite commandos to intercept aid ships in the dark of night. Activists and a journalist on board the *Mavi Marmara* say that Israeli soldiers fired live ammunition at the boat, wounding passengers on board, before even setting foot on deck. If this is true, it was in fact the activists who were acting in self-defence. There were diplomatic ways of ensuring that the supplies on board were strictly humanitarian, and Canada must insist that Israel make use of them.
3. Canada has a responsibility to uphold international law. Canada is bound as a signatory of the Geneva Conventions and as a member of the international community to pursue allegations of war crimes. Canada signed the *Rome Statute of the International Criminal Court* in 1998 and was the first country in the world to ratify it into domestic law. The legislation asserts that no one can expect to find safe haven from prosecution for war crimes or crimes against humanity. Canada must seriously consider its responsibility in the legal pursuit of individuals named as war criminals by international bodies. Canada is bound to its commitments in this regard by first referring cases to the U.N. Security Council.

C: Canada must call for an *international* inquiry

1. Canada must insist that Israel allow an impartial, *international* inquiry into the incident. Considering the disparate accounts of what took place and the implications of Israel’s attack, a transparent and credible investigation must take place. Canada, as one of Israel’s closest allies, has an moral obligation to ask the Israelis to cooperate. In the past, Israel has shown itself incapable of carrying out investigations which adhered to international standards (e.g. the War on Gaza of 2008-2009; etc.). During Israel’s war on Lebanon in 2006, it murdered a Canadian peacekeeper. The Israelis asserted it was an accident, and refused to launch an inquiry. A Canadian Board of Inquiry concluded that the incident was “tragic and preventable,” and held the Israeli army responsible for his death. Israel refused to cooperate as requested by the Canadian Forces investigation.
2. Canada should not support Israel’s inquiry, as the proposed inquiry does not adhere to international standards. Commentators in Israel have dismissed the Israeli inquiry as “not credible.” For one, the widely popular and mainstream *Yediot Aharonot* wrote, “It’s obvious that this commission is for external consumption. Its purpose is clearly not to inquire or examine the key decisions through political and military levels.” The Israeli commission is headed by Yaakov Tirkel, a retired Supreme Court judge who had voiced his opposition to sanctions against Israel for the attack before his appointment. The Israeli commission is not allowed to call witness from the military other than Chief of Staff Gaby Ashkenazi.

Israel’s inquiry into the incident will include two foreign observers. One of them, Lord Trimble, is a former head of the Ulster Unionists in the U.K., and only recently launched the “Friends of Israel” project to rally international figures in support of Israel. The second is Ken Watkin, former Judge Advocate General of the Canadian Forces. The role of the observers is extremely limited: they have no right to vote on the work and findings of the commission, and like the other members of the commission, will not be able to question the soldiers involved.

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