Finding of the Editorial Standards Committee of the BBC Trust

Panorama: Death in the Med
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remit of the Editorial Standards Committee</td>
<td>1</td>
</tr>
<tr>
<td>Panorama: Death in the Med, BBC One, 16 August 2010</td>
<td>3</td>
</tr>
</tbody>
</table>
Remit of the Editorial Standards Committee

The Editorial Standards Committee (ESC) is responsible for assisting the Trust in securing editorial standards. It has a number of responsibilities, set out in its Terms of Reference at bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html.

The Committee comprises six Trustees: Alison Hastings (Chairman), Mehmuda Mian, David Liddiment, Elan Closs Stephens, Richard Ayre and Anthony Fry. It is advised and supported by the Trust Unit.

In line with the ESC’s responsibility for monitoring the effectiveness of handling editorial complaints by BBC management, the Committee considers appeals against the decisions and actions of the BBC’s Editorial Complaints Unit (ECU) or of a BBC Director with responsibility for the BBC’s output (if the editorial complaint falls outside the remit of the ECU).

The Committee will consider appeals concerning complaints which allege that:

- the complainant has suffered unfair treatment either in a transmitted programme or item, or in the process of making the programme or item
- the complainant’s privacy has been unjustifiably infringed, either in a transmitted programme or item, or in the process of making the programme or item
- there has otherwise been a failure to observe required editorial standards

The Committee will aim to reach a final decision on an appeal within 16 weeks of accepting the request.

The findings for all appeals accepted by the Committee are reported in this bulletin, Editorial Complaints: Appeals to the Trust.

As set out in its Terms of Reference, the Committee can decline to consider an appeal which in its opinion:

- is vexatious or trivial;
- does not raise a matter of substance;
- relates to the content of a programme or item which has not yet been broadcast;
- concerns issues of bias by omission in BBC news programmes unless the Chairman believes that it is plausible that the omission of an item could have led to a breach of the guidelines on impartiality;
- has not been made within four weeks of the final correspondence with the ECU or BBC Director on the original complaint; and
- relates to matters which are the subject of or likely to be the subject of, or relevant to, legal proceedings.

The Committee will not generally reconsider any aspects of complaints that have already been adjudicated upon or considered by a Court.

Any appeals that the Committee has declined to consider under the above criteria are reported in the bulletin.
In line with its duty to consider topics of editorial concern to the Committee, whether or not such concern arises from a formal complaint, and to commission information requests from the Trust Unit or Executive to support such consideration, the Committee also from time to time requests the Executive to report to the Committee regarding breaches which have been accepted by the Executive and are therefore not subject to appeal to the Committee. The bulletin also may contain findings relating to such cases.

The bulletin also includes any remedial action/s directed by the Committee.

It is published at bbc.co.uk/bbctrust or is available from:

The Secretary, Editorial Standards Committee
BBC Trust Unit
180 Great Portland Street
London W1W 5QZ
Panorama: Death in the Med, BBC One, 16 August 2010

Summary

The Programme

At its meeting on 17 March 2011 the Editorial Standards Committee (the “Committee”) considered together appeals from 19 complainants in relation to Death in the Med, a programme in the weekly current affairs series Panorama. Death in the Med was broadcast on 16 August 2010 on BBC One. It relates to the boarding at sea by Israeli commandos of the Mavi Marmara, which was part of a flotilla attempting to break Israel’s naval blockade of Gaza. Nine activists on board the Mavi Marmara, the largest ship in the flotilla, were killed and more than 50 passengers and nine Israeli soldiers were injured.

The Committee’s Finding

The consolidated appeal raised 51 points of issue; the Committee upheld three of those points (two in relation to accuracy and one in relation to impartiality) but decided not to uphold the remaining 48 points. Despite finding three instances where the Editorial Guidelines had been breached the Committee nonetheless concluded that, in tackling this highly divisive subject, Death in the Med had achieved due impartiality and due accuracy overall.

The Committee regrets any breaches of the Editorial Guidelines and apologises for them on behalf of the BBC. Whilst it expects the BBC to consider seriously any lessons to be learnt in respect of its findings, the Committee wishes to make it clear that it commends the BBC for having tackled this most controversial of issues. In the Committee’s view, the programme was an original, illuminating and well-researched piece of journalism. The Committee remarked it is unlikely that a current affairs programme such as this, covering such a contentious issue, would be found to be entirely flawless if it were subjected to the level of deconstruction and analysis that Death in the Med has undergone. However, the BBC is committed to the highest journalistic standards, and programme-makers must be prepared to face the most rigorous scrutiny when covering such contentious issues.

To summarise, with regard to the three upheld matters, the Committee concluded:

- In the absence of clear video footage of anyone being shot, material from the preliminary autopsy reports would have given a broader picture and added to the programme’s description of how the activists died. The Committee decided the information about the volume and nature of the gunshot wounds detailed in the preliminary autopsy reports gave a fuller picture of the manner in which the Israelis killed nine people and the level of force deployed by the Israeli commandos. The inclusion of some reference to the preliminary autopsy findings would have enabled the programme to achieve due accuracy as required by the Editorial Guidelines. Accordingly, the Committee concluded that in this respect the programme had breached the Editorial Guidelines on accuracy (Point S).

- As regards the treatment of casualties by the Israelis, the imagery and the accompanying script line (“The Israelis evacuated the badly wounded to hospital”) would have left viewers with the impression that the badly wounded were all promptly and appropriately cared for. The Committee noted that,
although not proven, there are detailed allegations of mistreatment of at least some of the casualties. The Committee decided that to achieve impartiality on the issue the programme was required to verify that the Israelis took proper care of the badly wounded. In the absence of such confirmation the programme was obliged to reflect the views of those who allege that the Israelis mistreated some of them. The Editorial Guidelines on impartiality provide that we must ensure we avoid “an imbalance of views on controversial subjects”. Accordingly, the Committee decided that in this respect the programme had breached the Editorial Guidelines on impartiality (Point AI).

- The programme accurately described some of the aid on board the flotilla (mobility scooters, hospital beds and medicines, two thirds of which the reporter said she had found to be out of date). However, the facts show that this was just a tiny proportion of a consignment which had consisted of thousands of tons of aid, including large quantities of much-needed building materials. As a result, the Committee concluded that the programme was not clear and precise in its presentation of the full extent of the aid on board the flotilla. Accordingly, the Committee decided there had been a breach of the Editorial Guidelines on accuracy (Point AR).
The Committee’s Finding in Full

The Programme

The Editorial Standards Committee (the “Committee”) considered together 19 appeals in relation to Death in the Med at its meeting on 17 March 2011 (the “Consolidated Appeal”). Death in the Med is a programme in the weekly current affairs series Panorama. Death in the Med was broadcast on 16 August 2010 on BBC One and relates to the boarding at sea by Israeli commandos of the Mavi Marmara, which was part of a flotilla attempting to break Israel’s naval blockade of Gaza. Nine activists on board the Mavi Marmara, the largest ship in the flotilla, were killed and more than 50 passengers and nine Israeli soldiers were injured.

Israel was widely criticised by the international community and was accused of acting unlawfully and using disproportionate force. Israel for its part argued its soldiers were acting in self defence and released video which showed its commandos being attacked with a variety of makeshift weapons as they rappelled onto the ship.

Panorama was given access to Major General Eiland (retired) who was carrying out Israel’s internal military investigation, as well as to the commander of the unit which boarded the Mavi Marmara and some of the soldiers who had been involved that night. The programme also spoke to a number of key players amongst the activists, including the head of the Turkish humanitarian organisation, The Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH) which owned the Mavi Marmara. The presenter stated the aims of the programme in his introduction:

““It all started in the calm blue waters of the Med but three months on the global storm over Israel’s blockade of Gaza is still continuing. Israel was accused of breaking international law by seizing a Turkish ship in an action in which nine people died. Now Israel says they were terrorists but Turkey insists they were innocent victims. With several inquiries underway Panorama’s Jane Corbin has important new evidence from both sides to piece together the real story – for the first time.”

The reporter expanded on the context in the opening sequence:

““They called it Operation Sea Breeze but what these Israeli naval commandos encountered on the Mavi Marmara was anything but a breeze. It caused a storm of international condemnation. But did Israel fall into a trap and what was the real agenda of some of those people who called themselves ‘peace activists’ on board the Free Gaza flotilla?”

The Complaints

There was a considerable amount of feedback received about Death in the Med. In all there were more than 2,000 audience contacts following the programme. Of the majority which expressed a view (as opposed for example to requesting more information), about 28% were positive and 72% were negative. A review of both sets of complaints logs was undertaken by the independent editorial adviser, appointed by the BBC Trust, who read in full about 50% of the comments. 25% of the negative feedback was identical or virtually identical in content and represented the wording recommended by the Palestine Solidarity Campaign website, which encouraged supporters to contact the BBC to complain about the programme. (To avoid any doubt, the 19 appeals included in the Consolidated Appeal

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1 İnsan Hak ve Hürriyetleri ve İnsani Yardımcı Vakfı
were not identical or virtually identical). There were six broad allegations common to many of the complaints:

- a lack of even-handedness in the presentation of the respective narratives of the activists and the Israelis
- the misrepresentation of the humanitarian aims of the flotilla and of the Turkish humanitarian organisation, the IHH
- a lack of detailed discussion about the legality of the blockade of Gaza and of the interception, boarding and takeover of the ship
- insufficient context in relation to the situation in Gaza and the broader Israeli/Palestinian conflict
- insufficient detail about the circumstances of the nine deaths
- the omission of allegations about Israeli mistreatment of the passengers after the flotilla was taken over.

With certain additions, these were the same broad issues raised in appeals to the Trust.

There are three stages to the BBC’s complaints and appeals process. The Stage 1 responses came from either BBC Complaints or from the Deputy Editor of Panorama, depending where contact was first made. All Stage 2 responses were handled by a Complaints Manager in the BBC’s Editorial Complaints Unit (ECU) which is independent of the programme-making divisions. The ECU conducted its own investigation but did not uphold any of the points raised by any of the complainants.

**The Appeal**

Appeal to the Editorial Standards Committee of the BBC Trust is the third and final stage of the BBC’s complaints procedure. In all, the BBC Trust received 30 appeals against the decision of the ECU not to uphold complaints relating to Death in the Med.

The Committee varied its usual editorial appeals process for appeals regarding Death in the Med to consolidate and consider together all appeals concerning Death in the Med that were received before 5pm on 10 December 2010. The 19 appeals considered by the Committee were the appeals received before 5pm on 10 December 2010. The Committee adopted this approach to ensure that appeals regarding Death in the Med are dealt with in a fair and efficient manner.

**The complainants raised the following points in relation to the impartiality and accuracy of this programme**

**Point A** – regarding the allegation that the programme should have stated that the blockade and the siege of Gaza is illegal

**Point B** – regarding the allegation that the legality of the IDF’s (Israel Defense Forces) interception, boarding and takeover of the flotilla was a core issue and should have been more fully explored
Point C – regarding whether the programme should have mentioned Israeli attacks on Gaza

Point D – regarding whether the programme misrepresented the humanitarian situation in Gaza

Point E – regarding the complaint that the programme should have heard first-hand from the ordinary citizens of Gaza

Point F – regarding whether it was inaccurate to say Turkey supports Hamas

Point G – regarding whether it was inaccurate to say Hamas refuses to recognise Israel

Point H – regarding whether there was evidence to support the allegation that the IHH has links to terrorism

Point I – regarding whether it was misleading to describe a morale-raising session by Bulent Yildirim (the Head of the IHH) as “raising the rhetoric” and then to follow it by describing the meeting with Mr Yildirim “in the most Islamic area of Istanbul”; the word “Islamist” is derogatory

Point J – regarding the allegation that there is little evidence to support the claim that the IHH has links with the Turkish Government

Point K – regarding whether the programme underplayed the international nature of the flotilla

Point L – regarding the allegation that the programme presented the activists as extreme Islamists; the claim that the IHH invited “fellow Islamists” to join the boat was untrue

Point M – regarding the allegation that the programme misrepresented the humanitarian aims of the flotilla

Point N – regarding the allegation that the opening sequence of the programme was framed from the Israeli viewpoint, setting the tone for the entire programme

Point O – regarding the allegation that the programme did not say that the Israelis shot anyone dead

Point P – regarding the allegation that the Israeli commando was not challenged when he claimed to have shot at people’s legs

Point Q – regarding whether Israel’s allegation that activists used live fire was sufficiently tested for its veracity

Point R – regarding the allegation that the programme failed to report there was live fire from the helicopters before any commando descended onto the ship

Point S – regarding the allegation that the manner in which nine of the passengers were killed is fundamental because of what it might say about the motivation of the IDF, yet there was no mention of the preliminary autopsy findings

Point T – regarding the allegation that it was inaccurate to say people were thrown overboard
Point U – regarding the allegation that a still picture of a knife being held near Captain R was misleading: it was his own knife

Point V – regarding the allegation that it was inaccurate to state “all three Israeli commandos were rescued”

Point W – regarding the allegation that it is inaccurate to refer to paintball and stun guns as “non-lethal weapons”; the correct term is “less-lethal weapons”

Point X – regarding the allegation that the programme reported that axes and chainsaws were used by the activists but there was no evidence to support this

Point Y – regarding the allegation that there were three detailed interviews with injured Israelis and only one with an activist who had been injured

Point Z – regarding the allegation that no air time was given to the fears of the passengers on the Mavi Marmara

Point AA – regarding the allegation that none of the Israelis interviewed were challenged about claims the activists were terrorists

Point AB – regarding the allegation that the programme used an audio recording which the Israelis admit had been doctored; the impression left by the script was that the programme accepted the Israeli version of events

Point AC – regarding the allegation that the programme created the impression that the Israelis had handed over all the footage to Panorama; it did not explain that the Israelis confiscated all recordings made by activists and selectively chose what to release

Point AD – regarding the allegation that the programme failed to question the Israelis about the theft of cameras, video equipment, money and other possessions

Point AE – regarding the allegation that the programme did not clearly set out the sequence of events on the ship; the footage exaggerated violence by the activists and underplayed the nature and ferocity of the Israeli attack

Point AF – regarding the allegation that the programme gave the impression that at least one activist had intended to die; this was misleading because it implied that it was his intention rather than a possible outcome

Point AG – regarding the allegation that the figures given for the number of casualties were underestimated by 25%

Point AH – regarding the allegation that footage was shown purporting to be Israeli pictures of violence from the boat but this footage was shot on another, similar ship before the attack

Point AI – regarding the allegation that the programme showed images of some of the injured being airlifted but failed to mention that many did not receive treatment for hours and that many of the passengers were seriously mistreated

Point AJ – regarding the allegation that the programme failed to mention the abuse and humiliation of detainees on the ship
Point AK – regarding the allegation that the Chief Engineer’s statement was cut to give a deliberately misleading impression; it was filmed secretly but the programme did not state this; his evidence that activists had taken control of the ship is not corroborated

Point AL – regarding the allegation that the programme omitted to mention that the “weapons” put on display by the Israelis were general hardware tools from the ship and knives from the ship’s six kitchens

Point AM – regarding the allegation that the interview with Bulent Yildirim had a leading question added during the edit which was not present in the original recording

Point AN – regarding the allegation that the programme should have interviewed Hanin Zoabi who was an eyewitness to the events on the Mavi Marmara and Sarah Colborne of the Palestine Solidarity Campaign who was also on the ship

Point AO – regarding the allegation that the programme’s failure to interview any British passengers

Point AP – regarding the allegation that the programme failed to mention or to interview anyone from any of the other boats in the flotilla

Point AQ – regarding the allegation that the programme should not have dismissed the medicines as out of date

Point AR – regarding the allegation that the programme failed to mention the valuable items which were impounded by the Israelis; by highlighting the out-of-date medicines it suggested the rest of the aid was worthless

Point AS – regarding the allegation that Panorama acted with unseemly haste in screening the programme before inquiries had taken place

Point AT – regarding the allegation that the programme did not uncover “important new evidence” as claimed in the introduction

Point AU – regarding the allegation that it was misleading to say the Israeli Government is cooperating with the UN inquiry, when it failed to mention it was only cooperating with one of the two UN inquiries

Point AV – regarding the allegation that the programme did not explain that the co-producer Israel Goldvicht comes from a strong pro-Israeli position and is unlikely to take a balanced viewpoint

Point AW – regarding the allegation that it was inaccurate to say that “Naval Commando 13” has never been filmed by the media in action before

Point AX – regarding the allegation that the footage of commandos in training portrayed them in a positive light ... conferring legitimacy on the Israeli Navy’s activities

The Committee also finally considered the following question:

Point AY – taking into account the Committee’s decisions on all of the foregoing points it considered whether the programme as a whole met the Editorial Guidelines for impartiality and accuracy.
Applicable Editorial Guidelines

Below is a summary of the sections from the Editorial Guidelines which were considered relevant to the Consolidated Appeal. Please note that a new version of the Editorial Guidelines came into force on 18 October 2010. As Death in the Med was broadcast on 16 August 2010, before the new version of the Editorial Guidelines came into force, the 2005 version of the Editorial Guidelines are applicable to Death in the Med and the Consolidated Appeal. A copy of the 2005 version of the Editorial Guidelines can be found at:


Accuracy

- all the relevant facts and information should be weighed to get at the truth. If an issue is controversial, relevant opinions as well as facts may need to be considered.

- the output should be well sourced, based on sound evidence, thoroughly tested and presented in clear, precise language.

- the BBC aims to achieve accuracy by corroborating claims and allegations made by contributors wherever possible.

- the BBC should not distort known facts, present invented material as fact, or knowingly do anything to mislead its audiences. The BBC may need to label material to avoid doing so.

Impartiality

- the BBC exercises its editorial freedom to produce content about any subject, at any point on the spectrum of debate, as long as there are good editorial reasons for doing so.

- the BBC must ensure it avoids bias or an imbalance of views on controversial subjects.

- contributors expressing contentious views during an interview must be rigorously tested whilst they should be given a fair chance to set out their full response to the BBC’s questions.

- due impartiality requires the BBC to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in its approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.

The Decision

The Committee considered the complaint against the relevant editorial standards, as set out in the BBC’s Editorial Guidelines. The Editorial Guidelines are a statement of the BBC’s values and standards.
The Consolidated Appeal raised 51 points of issue; the Committee upheld three of those points (two in relation to accuracy and one in relation to impartiality) but decided not to uphold the remaining 48 points. Despite finding three instances where the Editorial Guidelines had been breached the Committee nonetheless concluded that in tackling this highly divisive subject, Death in the Med had achieved due impartiality and due accuracy overall.

The Committee regrets any breaches of the Editorial Guidelines and apologises for them on behalf of the BBC. Whilst it expects the BBC to consider seriously any lessons to be learnt in respect of its findings, the Committee wishes to make it clear that it commends the BBC for having tackled this most controversial of issues. In the Committee’s view, Death in the Med was an original, illuminating and well-researched piece of journalism. The Committee remarked that it is unlikely that any current affairs programme covering such a contentious issue would be found to be entirely flawless if it were subjected to the level of deconstruction and analysis that Death in the Med has undergone. However, the BBC is committed to the highest journalistic standards and programme-makers must be prepared to face the most rigorous scrutiny when covering such contentious issues.

**Advice provided by the independent editorial adviser**

The Committee noted that the independent editorial adviser appointed to investigate the issues raised in the Consolidated Appeal for the Committee adopted a proportionate approach to reflecting the variety of ways in which the complainants articulated the points they wished to appeal. The Committee noted that on occasion the adviser quoted directly from the appeal of an individual complainant, particularly where, in the adviser’s opinion, that complainant had comprehensively and clearly represented the views of their fellow complainants, and where their wording accurately encapsulated the spirit of the point being raised. The Committee noted that the adviser had sought to keep the argument proportionate to the point under consideration to enable the Committee to focus on the issue and had not sought to exclude the reasoning of the parties.

**The UNHRC Mission, the Turkel Commission and the Turkish Commission reports**

At the time Death in the Med was broadcast on 16 August 2010, a number of inquiries into the incident were underway, but none had reported. Subsequent to the programme, the United Nations Human Rights Council published its findings on 27 September 2010. On 23 January 2011 Israel’s Turkel Commission published its report. Also, on 11 February 2011 the Turkish Government produced its report.

A number of complainants whose appeal is included in the Consolidated Appeal referenced the United Nations Human Rights Council report about the flotilla, and

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4 Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza on 31 May 2010, Turkish National Commission of Inquiry, February 2011 (link to Turkish Government site not available)
requested the Trust take the findings into account in reaching its conclusions. The UNHRC report was published at the end of September, six weeks after the programme was broadcast. However, one complainant argued:

“It is irrelevant that the UN human rights mission findings were published after the release of Death in the Med. The point I am making is that two teams of seasoned professionals, one composed of BBC journalists, the other made up of diplomats and jurists attached to the United Nations, examined the same events and drew quite different conclusions.”

The Committee noted that there may have been valid reasons why each reached different conclusions about some of the events. The UNHRC had no first-hand access to anyone from the Israeli side, as Israel refused to cooperate with the inquiry. It was also not clear whether the UNHRC Mission spoke to any of the official representatives of the IHH, which the programme identified as the key party (in addition to the Israelis) in relation to the events of 31 May. The Trust Unit asked the UNHRC Mission about this point, but the UNHRC said it could not reveal the identity of the sources and witnesses interviewed by the UNHRC Mission.

The Committee noted that the UNHRC Mission had a different remit from Panorama. The terms of reference of the UNHRC Mission were to examine violations of international law, including human rights law. In addition, the UNHRC did not have the space limitations of a 29 minute programme; the UNHRC report is the equivalent of eight Panoramas in length.

The programme could not take account of the findings of a report not yet published. Nonetheless, because both the programme and the UNHRC team had access to much of the same information, the Committee noted that the editorial adviser considered that the UNHRC's conclusions and the reasoning behind them might help illuminate points raised in the Consolidated Appeal. The Committee’s attention was therefore drawn to the UNHRC report as appropriate.

Likewise the programme-makers could not take account of the findings of Israel’s Turkel Commission, which were published at the end of January 2011. Therefore the Committee was not asked to test the points raised in the Consolidated Appeal (set out below) against evidence contained in the Turkel Commission report. However, the Committee’s attention was drawn to passages in the Turkel Commission’s report where, as with the UNHRC, it was felt the Committee might benefit from some additional background.

The UNHRC spoke to many activists but had no access to the Israeli narrative. The Turkel Commission had virtually no access to the activists, but considerable access to Israeli decision makers and, via written statements, to those commandos and other military personnel who took part in the operation. The Committee noted that their respective findings reflected that access to some extent.

The Committee noted that critics of Israel’s investigation argue it was inherently biased and that no reliance should be placed on its finding, and that this view was shared by some of the parties to the Consolidated Appeal. The Committee noted that although some would consider otherwise, Israel has a strong tradition of an independent judiciary, which has been critical of the government and some of its actions in the past. In the case of the Turkel Commission, the Committee noted that two legal scholars were consultants to the Commission. Both were acknowledged to be experts in the field of international law and specifically law relating to warfare. According to the Turkel Commission report, both lawyers supported fully the findings of the Commission. There were also two international observers, who participated in all the sessions, including those held in camera. The Committee noted that although the independence of the international observers has been
questioned, the international observers have stated they agree with the findings of the
Turkel Commission. The Committee noted that the Turkel Commission report is almost
300 pages long and contains detailed information which has not previously been available
relating to what happened on the Mavi Marmara.

On 11 February 2011 the Turkish Government published the report of its Commission of
Inquiry (the "Turkish Report"). The Commission comprised senior civil servants from a
number of Turkish ministries. The Turkish Report states that it solicited verbal and written
evidence from key witnesses, spoke to the relevant authorities and also had access to the
work of international law experts of renown. The Turkish Report was compiled by the
Turkish Government for submission to the UN Secretary General’s Panel of Inquiry.

The Turkish Report was published after the editorial adviser’s report on the issues raised
in the Consolidated Appeal was finalised. Some of the comments received from
complainants concerning the editorial adviser’s report suggested that the Turkish Report
should be brought to the attention of the Committee. The editorial adviser reviewed the
Turkish Report and considered that it contained some supplementary background
information which should be drawn to the attention of the Committee in the same way as
information concerning the Turkel and UNHRC reports. The editorial adviser suggested
that the same proviso applied as for the UNHRC and Turkel reports, namely that the
programme could not be expected to have taken into account the findings of a report not
yet published. The editorial adviser prepared a note, explaining which parts of the Turkish
Report contained background information which would be brought to the attention of the
Committee. The editorial adviser’s note on the Turkish Report was provided to the
Committee to ensure that the Committee had access to a wide range of views on the
issues raised in the Consolidated Appeal. The editorial adviser’s note on the Turkish
Report was also provided to the parties to the Consolidated Appeal. The supplementary
background information contained in the editorial adviser’s note on the Turkish Report
was noted by the Committee where relevant during its discussion of the issues raised in
the Consolidated Appeal.

The Committee was reminded that its role was not to decide the rights and wrongs of
what happened in the events portrayed by Panorama, but whether the programme was
duly impartial and duly accurate given the facts that were available to the programme
team at the time of broadcast.

**Point A - regarding the allegation that the programme should have stated that
the blockade and the siege of Gaza is illegal**

1. **Context**

The Committee noted that since Hamas took control of the Gaza Strip in mid 2007, Israel
and Egypt have severely restricted the movement of goods into the area, essentially
allowing in only humanitarian supplies and tightly controlling the movement of people in
and out of the Gaza Strip (in mid June 2010 Israel announced it would “liberalise” the
blockade in relation to civilian goods). The action – which Israel says is for security
reasons – has been condemned by the United Nations as constituting “collective
punishment” for the 1.5 million occupants, which is illegal under international law. Israel
has consistently argued there are no shortages in Gaza.

The Committee noted that from mid 2008 Israel instituted a maritime closure of the
waters around Gaza, with the aim of prohibiting foreign ships from entering the area. In
January 2009, during its offensive on Gaza, Israel announced an indefinite naval blockade
extending to 20 miles off the coast of Gaza.

2. **Relevant Script**
The Committee noted that the relevant extracts from the programme for point A were:

Jeremy Vine: It all started in the calm blue waters of the Med but three months on the global storm over Israel’s blockade of Gaza is still continuing...

Commentary: When the Mavi Marmara left Istanbul its mission was to break the Israeli naval blockade of Gaza and bring aid to the Palestinian enclave...

Commentary: The media was a crucial part of the plan to focus the world’s attention on the blockade...

Ken O’Keefe: ... the real problem here is the occupation, the blockade: that is the problem ... it must end now...

Commentary: Here in Gaza the problem’s not so much a lack of food or medicine – there’s no easy access in and out, no economic life because of the Israeli embargo ... People are forced to recycle rubble to rebuild houses. Israel allows in hardly any cement and steel – in case they’re used to make weapons and bunkers.

3. Allegation

The Committee noted that one complainant expressed the allegation thus:

"It is precisely the illegal nature of the blockade and the assault on Gaza that has prompted the launch of numerous flotillas ... The failure to refer to these issues as not essential whilst referring to outgoing rockets from Gaza, obligingly accommodates Israeli political objectives at the expense of the flotilla’s.”

4. BBC Response

The Committee noted that the BBC said the programme’s objective was to set out what happened on the Mavi Marmara, not to go into detail concerning the highly contested legality of the situation in Gaza. It was not clear that the UN had explicitly declared the blockade “illegal”. The Committee noted that Navi Pillay, the UN High Commissioner for Human Rights, said on 5 June 2010:

"even if the blockade is proven legal under international law, Israel's military operation against the flotilla on Monday must be analysed from the perspective of Israel's obligation to allow humanitarian aid into Gaza”.

5. Consideration

The Committee noted that there is no specific discussion about the legality of the blockade in the programme, but the fact it exists and that it is controversial is made clear. It is also stated that the aim of the flotilla was to break the blockade, and the reporter explains why.

The Committee noted that there has been considerable discussion in legal circles of the legality of the blockade post the events of 31 May 2010, but experts have reached different conclusions about it: for example, the UNHRC Mission report and the Turkel Commission report reach wholly different conclusions, whilst largely basing their
discussions on the same international laws. As the Editorial Complaints Unit (ECU) argued in its response to some complainants at Stage 2 of the appeals process, the status of the blockade has not been subject to a decision of a competent court.

6. The Committee’s Decision

The Committee acknowledged the allegation that the weight of legal opinion says the blockade is illegal and the allegation of the illegal nature of the blockade prompted the flotilla. But the Committee decided that the inclusion of that information was not essential to understanding the story, which was about the specific event of the boarding of the Mavi Marmara. The Committee therefore concluded it was not required that the programme should include this information to achieve due accuracy.

The Committee decided that, as there is no definitive legal ruling on the blockade, it was not necessary, in order to achieve impartiality, for the programme to have reflected the widespread international criticism of the manner in which Israel was operating the blockade. Likewise, the Committee considered that in the context of this programme it was unnecessary for the programme to have stated that the United Nations considered the blockade to be unjust collective punishment. The Committee agreed with the programme makers that it was not essential information in order to understand what happened on the Mavi Marmara.

The Committee concluded that the programme made it completely clear that the aim of the flotilla had been to break the blockade and bring aid to Gaza. Due impartiality was achieved in that there is no requirement in the Editorial Guidelines to represent every facet of every argument.

Finding: Not Upheld

Point B: regarding the allegation that the legality of the IDF's (Israel Defense Forces) interception, boarding and takeover of the flotilla was a core issue and should have been more fully explored

7. Relevant Script

The Committee noted that the relevant script for this point was as follows:

Commentary: Israel was accused of breaking international law by seizing a Turkish ship in an action in which nine people died...

Commentary: Turkey accuses Israel of an act of piracy...

Bulent Yildirim: If we organised another boat and Israel attempted to illegally invade it, we'd use our right to passive resistance. We'd throw them into the sea.

8. Allegation

Legal discussions tend to focus on the “San Remo Manual”, which is not legally binding in the way that a treaty would be but whose contents are legally recognised and can be cited in a court of law. It aims to codify an understanding as to the present international law as applied to naval conflicts.
The Committee noted that one of the complainants whose appeal is part of the Consolidated Appeal explained his allegation thus:

“When a massacre (takes place) of the kind that occurred on board the Mavi Marmara, a military action perpetrated by state actors against civilians in international waters, is not the BBC obliged to provide a legal – if not moral – framework for its viewers?”

The Committee noted that another complainant thought it a core issue, because viewers were not told that a lawful defence of an unlawful act could involve using reasonable force. And that a third complainant quoted a resolution passed by the EU Parliament on 17 June which stated the attack was a breach of international law. The same complainant said just because Israel considered its action legal did not make the programme balanced.

9. BBC Response

The Committee noted that the programme-makers responded:

“We set out to try and explain what happened on the MM and why, not to pass judgement on the morality of the actions of either the IDF or the IHH activists. Throughout the film we hear from those who felt that the Israelis had behaved illegally.

“This is a highly contested area and one which we decided not to explore in detail... The legal position itself rests on one’s interpretation of the San Remo Manual.”

The Committee noted that the ECU agreed with the programme-makers that it was legitimate to refer to the matter in passing rather than explore the legal issues in more depth bearing in mind the stated aims of the programme.

10. Consideration

The Committee noted advice that in the San Remo Manual⁶, there are a number of passages that could be interpreted to support Israel’s interception of the flotilla but they largely rely on the blockade itself being legal in the first place, which as discussed in Point A, remains a controversial issue. It also recognised that both the UNHRC report and the Turkish Report concluded the interception was illegal but that Israel has published its understanding of the international law which, it says, supports its action.

The Committee also noted that the programme did not ignore the issue, but neither did it discuss the issue in any detail.

11. The Committee’s Decision

The Committee decided that the omission of detail on the legality of the interception did not amount to a breach of the Editorial Guidelines on impartiality. The Committee concluded that such an omission would only constitute a breach if the effect of excluding the information might alter a viewer’s perception of the issue under discussion and that this was not the case in this instance.

The Committee agreed with the ECU that, in the absence of a decision by a competent court, the arguments are all about interpretation of the San Remo Manual and discussing

⁶ See note 5 above.
the interpretation of the San Remo Manual was not central to the stated aim of the programme.

The Committee was not asked to and did not decide whether the interception was illegal – that is not its role – but did appreciate the complexity of the arguments on either side and then decided it was not material to the viewer’s understanding of what happened that night for the audience to hear those arguments. The Committee agreed that this was a controversial issue – within the meaning of the Editorial Guidelines. However, the Committee concluded that all the relevant facts and information were weighed to get at the truth and that it was unnecessary for the programme to have dealt with the legality or otherwise of the interception apart from to reflect, as it did, that Israel stands accused of breaking international law. The Committee concluded that there was no breach of the Editorial Guidelines on accuracy or impartiality.

Finding: Not Upheld

Point C - regarding whether the programme should have mentioned Israeli attacks on Gaza

12. Relevant Script

The Committee noted that the relevant script for point C was as follows:

Commentary: Here in Gaza the problem’s not so much a lack of food or medicine – there’s no easy access in and out, no economic life because of the Israeli embargo.

Hamas which rules here refuses to recognise Israel’s right to exist. Militants have fired thousands of rockets at civilian targets in Israel in the past few years.

People are forced to recycle rubble to rebuild houses. Israel allows in hardly any cement and steel - in case they’re used to make weapons and bunkers.

13. Allegation

The Committee noted that the complainants alleged:

“(the reporter) referred to the ‘thousands of rockets’ fired from Gaza into Israel. She did not say over what time period these were fired. Not a single reference was made to Israel’s continuous attacks on Gaza for example the bombs, rockets and white phosphorus dropped by Israel on Gaza during its three week assault in 2008/9 which killed 1400 Palestinians.”

“I appreciate the programme was about what happened on the Mavi Marmara, but to talk about the rockets fired from Gaza with scarcely an acknowledgement of the disproportionate suffering of Gazans does seem to intentionally mislead viewers as to the nature of the conflict and therefore the motivation for the flotilla.”

14. BBC Response

The Committee noted that the programme response points out that it did state a time frame for the rockets “in the past few years”, and that the section on Gaza was of
necessity relatively brief in a 29 minute documentary whose stated aim was to explain what happened on the Mavi Marmara.

The Committee noted the programme-makers’ response: that they mentioned the rockets in order to explain why Israel claims the blockade is in place – and in turn the programme outlined the devastating impact this has had on Gaza. For example, the programme showed images of rubble in Gaza and explained that “people are forced to recycle rubble to rebuild houses” as well as explaining that there was “no easy access in and out, no economic life because of the Israeli embargo”.

The Committee noted the programme interviewed Hamas in this section and that the programme-makers believed that overall, within the confines of the time available, they described the situation in Gaza accurately and impartially. The Committee noted that the ECU agreed sufficient information was given to ensure that viewers would have understood the context of the flotilla and the subsequent reaction of both the Israelis and the activists.

15. The Committee’s Decision

The Committee decided the inclusion of this one fact – about Israeli attacks on Gaza – was not material to achieving impartiality in the programme. It considered it was not essential even though the commentary mentioned rocket attacks into Israel. The Committee concurred with the programme-makers that the section about Gaza was intended to explain why the blockade was in place and the effects on the population of Gaza, and that this was sufficient information in the context. The Committee decided that the mention of rockets was central to understanding the rationale for the Israeli blockade in a cause and effect manner, whereas Israeli attacks on Gaza were not.

Finding: Not Upheld

Point D - regarding whether the programme misrepresented the humanitarian situation in Gaza

16. Relevant Script

The Committee noted that the relevant script for point D was as follows:

Commentary: Here in Gaza the problem’s not so much a lack of food or medicine, there’s no easy access in and out, no economic life because of the Israeli embargo.

People are forced to recycle rubble to rebuild houses. Israel allows in hardly any cement and steel – in case they’re used to make weapons and bunkers.

17. Allegation

The Committee noted that a complainant alleged:

“To say that shortages of food and medicine are not a problem in Gaza is simply untrue.”

The Committee noted that the complainant cited Islamic Relief USA which says on its website that 80% of Gazans rely on foreign aid for survival, and a second reference to a
website quoting the UN Food and Agriculture Organisation, which says 70% of Gaza’s population is “food insecure”.

18. BBC Response

The Committee noted the programme’s response:

“Jane Corbin has been to Gaza twice this year alone and several times in the past few years ... According to her research people in Gaza are particularly concerned about their lack of freedom of movement in and out of the Strip and also the lack of economic opportunity. This was reflected in the script. This fact was highlighted time and again in our research, rather than a lack of food or medicine.”

“We did not say there is no problem with food and medicine just that this was not the most serious problem there. Jane also spoke to a highly placed UN source on this trip who reiterated that lack of movement and lack of economic opportunity is what the majority of Gazans feel most acutely. She was told the same two years ago on a previous trip by John Ging, the UNRWA Director of Operations in Gaza who highlighted the lack of economic activity and construction materials (covered in the script a few lines later) as the most insidious effects of the blockade.”

The Committee noted the ECU’s conclusion, that viewers were made aware of the consequences of the blockade sufficient to ensure that the programme achieved the necessary balance in that respect.

19. Consideration

The Committee noted the editorial adviser was given access to the unedited interviews carried out for the Panorama programme. The issue was raised with Dr Ahmed Yousef the Hamas official in Gaza:

Interviewer: Now what is the situation with regard both to the humanitarian side of things here, the aid in terms of food and medicine and also the wider economic picture?

Ahmed Yousef: If you look at ... the last issue of foreign policy there is a report about the blockade of Gaza ... you will find figures how it’s a disaster that kind of a blockade on the Palestinian life. It is not just the food available or not available on the market ... it is the freedom of the people. It’s the people that we need ... to treat them outside ... we can’t handle here... Many people have died because the lack of medical supplies, or because there is no chance for having surgery here. And there are hundreds who still suffering and waiting to travel to Egypt, or to Turkey or to any place who can give them ... medical treatment.

20. The Committee’s Decision

The Committee agreed that it is normal and accepted practice in factual output for a programme to choose to summarise in commentary facts it has discovered in an interview with a contributor rather than necessarily using an interview clip. The Committee decided that the programme’s explanation, that it did not say food and medicine were not in short supply, only that those are not necessarily the most pressing issues for Gazans, was a correct one. The Committee decided the reporter reached a professional judgement based on her experience and knowledge, as allowed for under the Editorial Guidelines on impartiality. The Committee concluded that the content was based on sound evidence,
was well sourced and corroborated and was precisely expressed as required under the Editorial Guidelines on accuracy. The Committee thought the commentary could have given slightly more emphasis to the lack of food and other supplies but that it was not in breach of either the Editorial Guidelines on accuracy or impartiality in what it did say.

**Finding: Not Upheld**

**Point E - regarding the complaint that the programme should have heard first-hand from the ordinary citizens of Gaza**

21. Allegation

The Committee noted that a complainant had said:

“"There were no interviews with ordinary Palestinian civilians in Gaza who were eagerly waiting for the flotilla to deliver wheelchairs and medical supplies, or building materials for them to rebuild their houses and schools which had been destroyed by Israel ... There were shots of Palestinians walking in the streets or breaking up pieces of rubble, but these people were given no voice. Why not?""

22. BBC Response

The Committee noted the ECU’s response, in which the ECU said that it did not believe that it was necessary to interview Palestinians in Gaza. Further, the ECU said that the programme explained the conditions in the area and why many of those involved in the flotilla wanted to deliver humanitarian aid.

23. The Committee’s Decision

The Committee noted that this is an allegation of bias by omission and that it would only be an issue under the Editorial Guidelines if the effect of not interviewing ordinary Palestinians in Gaza gave a misleading impression of the facts which led to bias. The Committee decided that the manner in which the programme chose to reflect the humanitarian situation was otherwise a matter for editorial judgement. The Committee noted that the programme included a sequence filmed in Gaza where the reporter walked amid the rubble of destroyed buildings and talked about Israel severely restricting the supply of cement and steel. In this sequence she interviewed a local Hamas official. The Committee noted that the programme also spoke to Lubna Masarwa, one of the flotilla organisers and herself a Palestinian who spoke of how the goal was to open a way to Gaza.

The Committee noted there were interviews with a number of the activists, all of whom stressed in different ways how important it was that the blockade was broken and that relief was brought to the people of Gaza. These included Fatih Kavakdan, one of the IHH volunteers:

Kavakdan: Anyone with a conscience – not just Muslims – needed to take some aid to Gaza.

The Committee concluded that the programme was focussed on a specific issue – the boarding of the Mavi Marmara – and that it had deployed a proper use of editorial discretion in deciding who to interview and how to cover the issue of bringing relief to the people of Gaza. The Committee decided there was no breach of the Editorial Guidelines on impartiality.
Finding: Not Upheld

Point F - regarding whether it was inaccurate to say Turkey supports Hamas

24. Relevant Script

The Committee noted that the relevant script was:

Commentary: The Turkish government and many Turkish charities support Hamas.

Dr Ahmed Yousef, Hamas Official:

Wherever you go you find the Turkish flag, everywhere because these people showing their appreciation for the support from Turkey, we are in the strong position of the government ... supporting the Palestinians.

25. Allegation

The Committee noted that a complainant alleged:

“Turkey was misrepresented as supporting Hamas ... whereas the Hamas interviewee acknowledged Turkey’s support of Palestinians, and Palestinians’ support for Turkey. There was no Turkish government opinion offered.”

26. BBC Response

The Committee noted the programme’s response:

“The Turkish prime minister recently gave his views of Hamas to Al Jazeera. He said:

‘(They) are resistance fighters fighting for their land. They are Palestinians. They won an election and now they are in Israel’s prisons. I told this to the Americans, that I do not accept Hamas as a terrorist group.’

“This is entirely in accordance with the programme’s statement.”

27. Consideration

The Committee noted that the statement above in support of Hamas was made by the Turkish Prime Minister, Recep Tayyip Erdogan on 4 June 2010, a few days after the flotilla was boarded by Israeli commandos.

28. The Committee’s Decision

The Committee decided that the programme-makers are entitled to rely on evidence not presented in the programme to support what is said in the script, so long as it is well sourced. The Committee decided that there is no requirement for the programme to have specifically put a question to the Turkish Government in order to make a statement that accurately reflects their views. The Committee agreed that, while the reference to the Turkish Government’s support of Hamas preceded an interview clip which spoke of the country’s support for the Palestinians, that did not preclude Turkey’s support for Hamas.
The Committee concluded that the programme’s statement that Turkey supports Hamas was accurate and that it was well sourced and based on sound evidence.

**Finding: Not Upheld**

**Point G - regarding whether it was inaccurate to say Hamas refuses to recognise Israel**

29. Relevant Script

The Committee noted that the relevant script was as follows:

Commentary: Hamas, which rules here, refuses to recognise Israel’s right to exist.

30. Allegation

The Committee noted that a complainant alleged:

“(The ECU) stated that the BBC’s position is that Hamas does not recognise the state of Israel. The real situation is far more nuanced and that standalone statement is so incomplete as to be substantially untrue. The Hamas charter was written in 1988 by one individual ... and has never been approved by the whole movement ... Reuters reported on December 1 that Mr Haniyeh had just stated that:

‘Hamas would accept a Palestinian state on the borders of 1967, with Jerusalem as its capital, the release of Palestinian prisoners and the resolution of the issue of the refugees.’”

The Committee noted that another complainant stated that Hamas recognised Israel in 2006.

31. BBC Response

The Committee noted that the programme response said:

“Hamas is doctrinally opposed to the existence of Israel and regards all of historic Palestine as land given to Muslims by God. Its 1988 charter calls for Israel's destruction and in effect says it is every Muslim's duty to 'liberate' Palestine.”

"In 1994 the group suggested it would accept a long term ceasefire, or armistice, if Israel fully withdrew from 1967 territories and recognised Palestinian refugees’ right of return. In March 2005 it agreed in principle to join the Palestine Liberation Organization and participate in Palestinian legislative elections, which suggests it may be readying itself for a more political as opposed to military role in the future.”

“But at no stage has it recognised Israel.”

“Further, (a complainant) refers to an agreement between Hamas and Fatah in 2006. There have been many developments in their relationship since then including the take-over of Gaza by Hamas from Fatah in 2007. However, even at
the time of the agreement, it was clear that Hamas had not decided to recognise Israel. Issa Ali Nashar, a founder of Hamas, said at the time:

‘The recognition is in the document, it is not Hamas saying it directly recognises Israel.’”

32. Consideration

The Committee noted that the statement by Issa Ali Nashar quoted in the BBC response was taken by many commentators at the time to be implicit acceptance of Israel’s right to exist. But in a fuller extract the Hamas founder says:

“This is not a direct recognition of Israel. The recognition is in the document, it is not Hamas saying it directly recognises Israel. There is recognition of resolutions by the UN (that recognise Israel) in the document. We accept this because we want to change the lives of the Palestinian people.”

The Committee noted it was true, as the BBC response also says, that a lot has occurred in the region since that statement was made.

The Committee noted that, for instance, Al Jazeera reported on 23 June 2010 that the Hamas Political Leader Khaled Meshaal said at a rally in Damascus:

“Hamas will keep rejecting the occupation and refuse to recognise the legitimacy of the Zionist entity.”

And that in December 2010 the Hamas Leader Ismail Haniyeh addressed a rally in Gaza City. The arabnews.com website reported that he said:

“We said it five years ago and we say it now ... we will never, we will never, we will never recognise Israel.”

The Committee noted that, although this speech was made after the programme was broadcast, it is clear from the text that Haniyeh did not believe that Hamas had ever recognised Israel.

33. The Committee’s Decision

The Committee considered the statement: “Hamas refuses to recognise Israel’s right to exist” to be well sourced, based on sound evidence and presented in clear precise language. Given recent statements, it was fair of the programme to say that Hamas refuses to recognise Israel’s right to exist.

The Committee noted that a complainant clearly feels that the programme should have reflected in some way the broader issue about whether a future agreement with Israel might be possible based on pre-1967 boundaries, as mooted in 2006. But the Committee agreed with the programme-makers who argued that the intention of Death in the Med was not to give a detailed political history of Gaza, and that, in the context of a programme which set out to tell the story of what happened on the Mavi Marmara, it was not essential to go into the detail of a possible future two-state solution.

The Committee concluded that there was no breach of the Editorial Guidelines on accuracy.

Finding: Not Upheld
Point H - regarding whether there was evidence to support the allegation that the IHH has links to terrorism

34. Relevant Script

The Committee noted that the relevant script for point H is as follows:

Commentary: The IHH isn’t just known for their humanitarian work. Western authorities have accused them of having links to terrorist organisations. They strongly deny this.

35. Allegation

The Committee noted the complainants’ argument that the programme repeated allegations that the IHH is a terrorist organisation but presented no evidence to support the claim. It noted too the complainants’ concern that the programme did not mention the US State Department has not designated the IHH a “foreign terrorist organisation”. And the Committee noted a complainant’s statement about the IHH’s links with Hamas:

“There are good reasons why IHH might be linked to Hamas – the elected government of Gaza will presumably have some say in the distribution of this and previous aid; and why shouldn’t they have links to Islamic organisations? What is (the reporter’s) motivation for identifying these links without proper context?”

The Committee noted the complainants’ argument that the “Western authorities” referred to in the script amounted to one man, French Judge, Jean-Louis Bruguiere and their criticism is that his allegations about links between the IHH and terrorist groups are years old. The Committee noted too that Bruguiere had been criticised in the French press because of controversial investigations in Rwanda and into the bombing of a UTA flight over the Sahara Desert.

36. BBC Response

The Committee noted the BBC’s response:

“It is a statement of fact that a number of western authorities have accused the IHH of having links with terrorist organisations. We clearly and definitively state that the IHH strongly denies these allegations ... It would not have been appropriate to have spelled out the detailed evidence in this programme.”

The Committee noted the information regarding this point which was provided by the programme-makers:

- The IHH are members of an umbrella Islamic group the “Union of Good”, which has very close links to Hamas and other organisations. The Union of Good is banned in the United States.

- The IHH has many links with Hamas which is designated a terrorist organisation by Israel, the US and the EU.

- A research paper for the Danish Institute for International Affairs in 2006 outlined the role of the IHH in terrorist recruiting and finance.

- The French judge, Jean-Louis Bruguiere, gave evidence at the 2001 trial of the man who planned to bomb Los Angeles Airport on the Millennium. Bruguiere
testified about past links between al-Qaeda and the IHH; the judge in an interview with the Israeli newspaper Ha’aretz in June 2010 said he believed the IHH are continuing on the same track.

- Erdinc Tekir, an IHH activist wounded when the Mavi Marmara was boarded by Israeli commandos was sentenced to eight years in prison for his role in the 1996 hijacking of a Russian ferry for the purpose of releasing Chechen prisoners held in Russia.

The Committee noted the ECU’s conclusion that allegations of the IHH’s links to Hamas were well founded and that it was also reasonable to allege that Western authorities claim the IHH has links to terrorist organisations. It noted a quote from a US State department briefing of 2 June 2010 supporting the claim that the IHH has links to terrorist organisations.

37. Consideration

The Committee noted the evidence for links between the IHH and Hamas. It noted that in an unbroadcast section of an interview conducted by Panorama, Dr Ahmed Yousef, the Hamas official in Gaza said that Hamas had good relations with most humanitarian relief organisations, but as Palestinians not as Hamas. The Committee noted that a similar sentiment was expressed in an unbroadcast section of Panorama’s interview with the head of the IHH, Bulent Yıldırım.

However, the Committee also noted that there have been a number of well-documented meetings between senior IHH representatives and Hamas leaders, in Gaza and elsewhere in the Middle East. It noted that in February 2009 Mr Yıldırım gave a speech at a Hamas rally in Gaza and that the IHH website reported the visit of Mr Yıldırım to Gaza in 2009.

The Committee noted the formal link between Hamas and the IHH through the “Union of Good”, an umbrella organisation of Islamic charity funds which has been designated a terrorist organisation by the US Treasury. It noted that governments in Europe and in the United States believe the funding is not used primarily for humanitarian purposes, but to help fund Hamas military activities.

The Committee noted that, outside of its alleged links with Hamas, the IHH has separately been accused of providing logistical support to terrorist cells. It noted the testimony given to a US court in 2001 by the French Judge Jean-Louis Bruguière:

“The IHH is an NGO, but it was kind of a type of cover-up ... in order to obtain forged documents and also to obtain different forms of infiltration for Mujahideen in combat ... And finally, one of the last responsibilities that they had was also to be implicated or involved in weapons trafficking.”

The Committee noted too a newspaper interview Judge Bruguiere gave (following the boarding of the flotilla by Israeli commandos) in which he summarised the evidence against the IHH in the late 1990s:

“My investigation revealed a broad and global terror network that reached Bosnia and Afghanistan, whose centre was at the Turkish IHH quarters ... We had recordings of telephone conversations and documents from people who explicitly testified that this is a terror group. Turkish authorities raided the group’s headquarters for good reason and discovered weapons, explosive materials and forged documents.”
The Committee noted the IHH’s acknowledgement that a raid had been conducted on their offices in 1997 and their claim that this raid was politically motivated.

The Committee noted that in a Virginia court in 2003 a US Customs Agent gave evidence of links between the IHH and a number of US-based Islamic charities in a case involving money laundering and the channelling of funding to Hamas and al-Qaeda. The Committee noted the link in this case was that one of the charities involved had made donations to the IHH.

Finally, the Committee noted that the Danish paper referred to in the BBC response largely took its information on the IHH from Judge Bruguiere’s earlier research.

38. The Committee’s Decision

The Committee noted that the IHH is a registered charity which undertakes humanitarian work around the world. The Committee accepted the programme-makers’ argument that it was not appropriate to spell out the detailed evidence in the programme for the statement that western authorities have accused the IHH of having links to terrorist organisations. However, the Committee agreed that it was incumbent on Panorama to ensure the allegation was demonstrably well sourced and based on sound evidence, and therefore the Committee considered the material which was produced by Panorama in support of the allegation.

The Committee considered it valid that the programme relied for supporting evidence on the IHH organisation’s links to Hamas, which has been designated a terrorist organisation by a number of Western governments, and also on the evidence of the French Judge Jean-Louis Bruguiere. Whilst the Committee noted the allegation by some complainants that Judge Bruguiere’s conclusions on unrelated matters had been discredited, no challenge had been made to his conclusions regarding the IHH. It noted that the judge remains in a senior position in relation to tracking terrorist funding within the EU. The Committee noted too that the evidence suggesting possible links between the IHH and terrorist organisations dated back some years. The Committee also noted that the allegation had been attributed and that the script reported that the IHH strongly denied the allegations.

The Committee decided that the requirements of the Editorial Guidelines in relation to accuracy had been fulfilled on this occasion. In deciding not to uphold a breach, the Committee nevertheless said programme-makers should be reminded to take particular care when scripting highly damaging allegations relating to controversial issues.

Given that the suggestion that the IHH was a terrorist organisation was immediately rebutted by a reference to the strong denial by the IHH in the programme the Committee concluded also that there had been no breach of the Editorial Guidelines on impartiality.

Finding: Not Upheld

Point 1 - regarding whether it was misleading to describe a morale-raising session by Bulent Yildirim (Head of the IHH) as “raising the rhetoric” and then to follow it by describing the meeting with Mr Yildirim “in the most Islamic area of Istanbul”; the word “Islamist” is derogatory
39. Relevant Script

The Committee noted that the relevant section begins with video footage from the Mavi Marmara before it was boarded by Israeli commandos; the commentary states that some of these speeches made by those on deck were against Israel:

Commentary: The IHH invited fellow Islamists from across the Arab World – several of them made speeches against Israel on board.

Natural Sound: *Chanting megaphone*

Commentary: Then the head of the IHH – Bulent Yildirim – turned up the rhetoric.

Mr Yildirim (Subtitles): We’re going to defeat the Israeli commandos – we’re declaring it now. If you bring your soldiers here we will throw you off the ship and you’ll be humiliated in front of the whole world.

Natural Sound: (Cheering, Allah Akbar)

Commentary: I went to talk to Mr Yildirim at the charity’s headquarters in the most Islamic area of Istanbul.

40. Allegation

The Committee noted the complainant’s argument that the combination of the commentary saying the head of the IHH had turned up the rhetoric, coupled with the description which followed directly, of the charity’s headquarters “in the most Islamic area of Istanbul” suggested bias on the part of the programme, reinforcing the “Islamophobic” tone of the programme. The Committee noted the complainant’s allegation that rhetoric is a loaded description, and the Fatih area (where the IHH offices are sited) is not ostensibly more Muslim than the rest of Istanbul. The Committee noted too the complainant’s allegation that the word “Islamist” is derogatory and denotes fundamentalism or extremism.

41. BBC Response

The Committee noted the BBC’s rejection of the suggestion that to describe the area as Islamic is derogatory, and their belief that it is merely descriptive. It noted the programme’s claim that a source had described the area as the most Islamic in the city.

The Committee noted the programme’s explanation for the use of the word “Islamist”:

“’Islamist’ is actually the BBC’s preferred usage and in fact, we use it specifically to avoid smear words or ‘conflating varied phenomena’. This is because other than in direct quotations we try not to use the terms Muslim/Islamic terrorist, Islamic fundamentalist or Islamic extremist, all of which imply a link between Islam and extremism.

“The term Islamist has simply come to refer to those who derive a political course from Islam, so we can talk in terms of, say, ‘extreme Islamists’ or ‘radical Islamist groups’.”

The Committee noted the ECU’s comments on whether it was biased to describe Mr Yildirim’s speech as “raising the rhetoric”:

“Rhetoric is generally considered to be the art of using speech to persuade or influence effectively and bearing in mind what Mr Yildirim said (and the reaction of those listening to him), I think (the reporter’s) description was accurate. I do not believe the word is generally considered to have a negative connotation.”

The Committee noted the ECU’s comments on the programme’s description of the area as “the most Islamic”:

“Since the IHH is a Muslim charity which is a member of the Union of NGOs of the Islamic World and many members spoke openly about their faith on board the Mavi Marmara, it was neither inaccurate nor misleading to draw attention to the charity’s religious roots.”

The Committee noted the ECU’s comments on the programme’s use of “Islamic” and its variations:

“‘The most widely accepted definition of the word... is that it refers to the Muslim world, both in a religious and a political sense.’

“‘There are many organisations which include the word in their title such as The Union of NGOs of the Islamic World, the Islamic Society of Britain or the Islamic Human Rights Commission.’”

42. Consideration

The Committee noted that the Fatih area (where the IHH headquarters is located) contains some of the most important historical monuments in Istanbul and is sometimes called the “real Istanbul”. It noted too the information from the editorial adviser’s source in the city that most of the religious institutions are headquartered in Fatih and that, in the source’s opinion, this was a “fairly accurate description”.

The Committee noted the contents of an academic paper on the use of the word “Islamist”, which had been published in the respected Middle East Quarterly in 2003. It noted the article’s claim that the word was in a state of flux and that as time passed it could increasingly be considered pejorative, because of the associations with violence the word had begun to provoke in people’s understanding.

The Committee noted that the BBC does not generally ban the use of specific words, and will always consider the context when employing words which some of the audience might find biased in particular circumstances.

43. The Committee’s Decision

The Committee decided that describing Mr Yildirim’s speech as “raising the rhetoric” was a fair description and that it did not carry any negative connotations.

The Committee decided that describing the Fatih area in which the IHH headquarters is located as “the most Islamic area of Istanbul” was a fair description of the area. The statement was well sourced and based on sound evidence. The Committee did not accept in the context that it carried any negative connotations.

The Committee considered the BBC had provided a well-thought out explanation of the circumstances under which it was considered appropriate to use the word “Islamist”. The
Committee noted the different contexts in which the word had been used in the programme:

“The IHH has close ties to politicians and to the government in Turkey which is led by a former Islamist party.”

“The IHH invited fellow Islamists from across the Arab world – several of them made speeches against Israel on board.”

The Committee did not consider that the context in which the word “Islamist” was used in the programme could be considered to be pejorative or to have negative connotations. The Committee considered that although the passengers on the boat represented a number of constituencies, the programme concentrated on the actions of one group. The programme was able to demonstrate, through footage and interviews as well as background research, a religious basis to that group’s intentions, as well as a desire to take on a more active role – a political role in addition to the humanitarian objective. The Committee concluded that to refer to some of those as “Islamists” in this context was well founded and based on sound evidence. Accordingly, the Committee decided that no breach of the Editorial Guidelines had taken place. However, the Committee considered there is also some evidence that the word “Islamist” can, in some circumstances, carry negative connotations. The Committee therefore reminds programme-makers to be aware of that possibility and to consider the changing implications of using the word “Islamist” on each occasion.

The Committee concluded that its finding that the use of the word “Islamist” had been a duly accurate description and had not been pejorative also applied to the commentary line “I went to talk to Mr Yildirim at the charity’s headquarters in the most Islamic area of Istanbul” and the description of Mr Yildirim’s speech as “raising the rhetoric”. In the absence of a pejorative opinion there was no need to present other views and it was the Committee’s view that due impartiality had been achieved in respect of these matters.

**Finding: Not Upheld**

**Point J - regarding the allegation that there is little evidence to support the claim that the IHH has links with the Turkish Government**

44. Relevant Script

The Committee noted the relevant script for Point J as follows:

**Commentary:**
The IHH has close ties to politicians and to the government in Turkey which is led by a former Islamist party.

The charity bought the Mavi Marmara from a government-owned ferry company. Turkish MPs planned to join the ship – they were only warned off after diplomatic pressure from Israel.

**Giora Eiland (Head of IDF Inquiry):**
The Turkish warship was escorting this flotilla for days in a very close range, listening to what is happening, observing what is happening ... it could not happen unless the Turkish government gave a certain green light to this kind of activity.
Commentary: Turkey denies accusations that it had any involvement in the Mavi Marmara’s mission.

45. Allegation

The Committee noted the complaints:

“Although there are well-established personal links between IHH and government members, the organisation remains essentially a charity.”

“(the reporter) made a rather poor attempt to link the IHH to the Turkish government and to characterise the Turkish government as semi-Islamist... the present Turkish government is not fundamentally anti-Israeli: Erdogan has tried to play honest broker, and his moral objections to Israeli’s behaviour in Gaza do not come from Islamic fundamentalism...”

46. BBC Response

The Committee noted the programme’s response to the questioning of the statement that the ruling party has Islamist roots:

“The government in Turkey is led by a former Islamist party is a statement of fact, and there has been plenty of press coverage of this in recent months and widespread discussion about how the background of the AKP Party may or may not have contributed to the shift in Turkey’s stance from west to east before and after the Mavi Marmara incident.”

47. Consideration

The Committee noted the additional information supplied by the reporter regarding the programme’s statement that the IHH has close ties to the Turkish Government:

“I spoke to two sources off the record in Turkey – one a well placed government official and the other a well regarded political journalist with excellent connections. They both told me there were strong links between the IHH and the government and that there was also a personal friendship between Bulent Yildirim of IHH and President Erdogan who relied on Yildirim to deliver support from the Islamic sector to the government particularly in the run up to a referendum on the constitution (which occurred after the programme was broadcast) and elections expected in 2011. I was told that Yildirim had political ambitions and was well plugged in to the political scene particularly to the ruling party, the AKP.”

The Committee noted an article in the New York Times published in July 2010 which details links between the government and the IHH, and that the writer’s conclusions are similar to those reached by the programme. The article quotes one of Turkey’s leading political columnists saying the charity is a “GNGO” – a “governmental-nongovernmental-organisation”. The Committee noted the programme’s assurance that the columnist is not the same off-the-record source as they used.

The Committee noted that the editorial adviser had not found any formal links between the government and the IHH, and that in public each party strenuously denies any special relationship.
The Committee noted that in November 2010 the Star newspaper in Turkey asked the IHH leader whether he had a "special relationship" with the Turkish Foreign Minister, Ahmet Davutoglu. Mr Yildirim said:

"Everyone knows Ahmet Davutoglu but we also appreciate him a lot. We do not have a special relationship with Davutoglu. The Foreign Ministry stated their views [implying their views are different than IHH’s] to us. When the government decided to defend us, in some circles it was considered as if I had a closeness and a lot of cooperation with the minister. But I am asking: After such an attack, did we expect our government not to stand up for us?"

(This was translated for the editorial adviser and the phrase in square brackets is the translator’s comment.)

The Committee noted that when a previous overland convoy organised by the IHH sought to cross into Gaza via Egypt it ran into difficulties; the Turkish Foreign Minister Davutoglu went to the Egyptian embassy in Ankara to negotiate on behalf of the convoy.

The Committee noted that links with individual members of the governing AKP party can be substantiated. Three members of the board of the IHH are either current or former AKP politicians.

The Committee noted too that a number of AKP members of parliament had planned to travel on the Mavi Marmara but were advised not to by the Turkish Foreign Ministry.

The Committee considered whether the statement that:

"the IHH has close ties to politicians and to the government in Turkey"

was well sourced, based on sound evidence and presented in clear, precise language.

The Committee noted that the commentary clearly stated Turkey’s denial of any involvement in the Mavi Marmara mission.

48. The Committee’s Decision

The Committee decided the programme had relied on credible sources in making its statement and that there appeared to be independent support for the conclusions reached. The Committee did not consider that “close ties” necessarily required that a formal association be demonstrated between the IHH and the Turkish Government. Accordingly, the Committee found the programme duly accurate on this point.

Finding: Not Upheld

Point K - regarding whether the programme underplayed the international nature of the flotilla

49. Relevant Script

The Committee noted that the script relevant to point K was as follows:

Commentary: The ship sailed under the banner of the Free Gaza Movement – the largest vessel in a flotilla of six. There were 600 activists aboard – including 28 from the UK and many more from Europe.
Unidentified: ...they know and the world knows that we are a peaceful mission...

Major General Eiland: These 40 people were people who were prepared to do this kind of violence and the rest of the people – many of them, hundreds of them, were quite innocent people ... who could not have a clue that this was what was planned.

50. Allegation

The Committee noted that the complainants alleged:

“[The programme did not see fit at any stage to inform viewers that the flotilla comprised five ships, and 450 passengers drawn from a wide range of countries including Canada and Scandinavia. Moreover the passenger lists included Jews, Christians, atheists, an Auschwitz survivor, former US Ambassador, European parliamentarians, and Nobel prize winner, and that the Mavi Marmara also reflected that mix.”

“The Panorama team’s failure to portray the diversity of the passengers led them to ignore (the) presence of Jewish people on board and invisibilising them in order to leave their construct – the entrapment of Israeli commandos by a boat load of Islamic terrorists – intact.”

51. BBC Response

The Committee noted that the ECU pointed out the script stated the number of ships involved and gave a broad outline of the origins of the passengers; the ECU added:

“The inclusion of contributions from activists such as Ken O’Keefe and footage from the media centre on board the ship which showed people of different nationalities would also have ensured that viewers were aware of the cosmopolitan nature of those involved in the flotilla.”

52. The Committee’s Decision

The Committee considered that this allegation goes to the heart of the difference of opinion between complainants whose appeal is included in the Consolidated Appeal and the BBC. The programme explored a specific aspect of the story which Panorama considered key to understanding why events turned out the way they did on the Mavi Marmara.

The Committee noted that, in relating that narrative, the programme focussed on what it called a core of 40 activists who were affiliated to the Turkish charity, the IHH. The Committee agreed that the programme did not go into detail about the other passengers and that the programme-makers argue that such detail was not essential to the story being told.

The Committee decided that choosing what to include is generally a matter for editorial judgement and only becomes an issue under the Editorial Guidelines if, by omitting specific information, the viewer is misled in some way. The Committee appreciated that that could lead to a breach of the Editorial Guidelines on accuracy and/or impartiality.

The Committee decided the script had clearly described the number of boats in the flotilla accurately and also stated that the Mavi Marmara was the largest in the flotilla.
The Committee decided that, by choosing to focus on the confrontation between a small group of activists and the Israeli commandos, the programme did not give a false impression of the international make-up of the flotilla as a whole, and the Mavi Marmara in particular, which would have misled viewers in any way.

The Committee did not consider that further detail about the other passengers on board was essential in this case to ensure due impartiality.

The Committee accepted that the combination of the commentary, the detail in the narrative and the contribution from Major General Eiland made it clear that the programme was largely focussing on the IHH core group of activists – though acknowledging there were a large number of other people on board from a range of backgrounds – and that, as the Editorial Guidelines require, it demonstrated good editorial reasons for focussing on the smaller group.

**Finding: Not Upheld**

**Point L - regarding the allegation that the programme presented the activists as extreme Islamists; the claim that the IHH invited “fellow Islamists” to join the boat was untrue**

53. Relevant Script

The Committee noted how the programme first introduced the passengers on the Mavi Marmara:

Commentary: The ship sailed under the banner of the Free Gaza Movement – the largest vessel in a flotilla of six. There were 600 activists aboard – including 28 from the UK and many more from Europe.

The Committee then noted how the IHH was first introduced:

Commentary: The Mavi Marmara’s mission was organised by the IHH, a Turkish humanitarian organisation. There were ninety IHH volunteers on board – from all over Turkey. Amongst them was Fatih Kavakdan and a friend.

Fatih Kavakdan: Anyone with a conscience – not just Muslims – needed to take some aid to Gaza.

Ergun Trabzon: There’s an enforced embargo on Gaza and I believe the whole world keeps silent about it.

Commentary: The IHH invited fellow Islamists from across the Arab world – several of them made speeches against Israel on board.

The Committee noted the footage in the programme showing organisers making speeches against Israel; they noted too the footage of people saying their prayers. The Committee noted that, when the programme described the sequence of events, it made clear who it understood those involved in resisting the Israelis to be:

Commentary: Late that night it was clear to the crew of the ship that a core of IHH organisers had taken control of the Mavi Marmara.
The Committee noted the script’s claim was supported with a clip of the Israeli interview with the Chief Officer of the Mavi Marmara in which he says that around 40 IHH operatives controlled movement on the ship. The programme also used a clip of the retired Israeli Major General in which he stated that most of the passengers were not involved in the resistance:

Major General Eiland: These 40 people were people who were prepared to do this kind of violence and the rest of the people – many of them, hundreds of them, were quite innocent people ... who could not have a clue that this was what was planned.

The Committee noted that when the programme showed footage of activists engaged in the resistance it identified them in the script as “IHH men”. It noted that Ken O’Keefe was the only non IHH member identified as taking an active part in the defence of the ship.

The Committee noted that the programme reflected in script and in interview that not all of the IHH members on board engaged in violence.

Commentary: Video shows Murat trying to protect a commando from angry people.

Murat Akinan: Understandably, having seen wounded and dead friends some people were saying ‘we should do to them what they did to us’. I calmed them down saying that according to our religious beliefs we ought to treat them and take them back.

Captain R: I realised there were two opposing forces there – one that wanted to kill us, and more moderate people. They tried to pull away those trying to escalate the situation and finish us off.

54. Allegation

The complaint alleges that the programme was inaccurate and lacked balance in its portrayal of the activists, giving the impression that they were militants motivated by “Islamist” concerns. The complaint further alleges that there is no truth in the statement that “fellow Islamists” were invited to join the flotilla.

55. BBC Response

The Committee noted the programme’s assertion that it made it clear that only a small group were involved in resisting the Israelis. The Committee noted too the BBC’s argument that several contributors, including IHH volunteers, were heard stating that their aim was to bring aid to Gaza.

The Committee noted the programme’s response on the issue of whether it was accurate and balanced to reflect the Islamic character of the IHH volunteers. The response referred to the footage recorded by a passenger saying if he died as a “shaheed” [or martyr], he wanted to tell his children that he died for a really good cause. Also, the response referred to the programme’s background research which, it was claimed, showed that at least seven others who died had either left wills expressing their wish to die as a “shaheed” or had told relatives they wanted to die for the cause of Gaza. The Committee noted that the editorial adviser had independently verified this information.
The Committee noted the programme’s claim that the IHH’s participation in the flotilla was the result of a conference in Turkey in January 2009 attended by 90 radical Muslim scholars and clerics:

“According to Bill Law, a BBC reporter who was at the Istanbul conference at the time of the declaration, ‘speaker after speaker called for jihad against Israel in support of Hamas’.”

“Mohammed Sawalha, a former high ranking commander of the military wing of Hamas, now based in London, was a key figure in the Istanbul Declaration. Next time, said Sawalha,

‘the confrontation will be directly with the Zionist enemy itself on the high seas’ (Al-Intiqad, Hizbollah’s website Jan 2010)

“Sawalha was also a key figure in organising the flotilla. He did not sail himself but was co-ordinating back on land.”

56. Consideration

The Committee noted the following comments (which were translated for the editorial adviser) published in a book written by Turkish journalist, Sefik Dinc, who had been a passenger on the Mavi Marmara:

“Of course we cannot condone or accept the fact that Israeli soldiers have descended onto the ship fully armed and started raining bullets on the people there. On the other hand, most of the passengers on the Mavi Marmara – at least most of the Turks – had the belief that they were going to jihad and they were going to become martyrs if they were to die. The words one heard were jihad and martyrdom.”

The Committee noted the extract provided some corroboration of the claims that some of the activists believed they might die in the process.

The Committee noted too that Mr Sawalha, who the programme claims was a key organiser of the flotilla, was amongst the handful of official speakers at the ceremony marking the return of the Mavi Marmara to Turkey on 26 December 2010.

In relation to the claim that the IHH invited fellow Islamists to join the flotilla, the Committee noted that the editorial adviser had seen a copy of the invitation posted on the IHH website in April 2010. The Committee noted that no mention was made in the invitation of religion, and that volunteers were invited to join a humanitarian mission to bring aid to the Gaza Strip.

The Committee noted that 60% of the passengers on the Mavi Marmara were of Turkish origin and that the ship was owned by the IHH. They noted too evidence cited by the editorial adviser that passengers were selected through the IHH website, by attending an IHH conference, by answering adverts in Turkish newspapers or by seeing flyers. The Committee further noted the information on an Israeli website which said it had analysed the countries of origin of the passengers and that 487 were from Islamic countries, and

74 were from non-Islamic countries. They noted too that passengers from Islamic countries were mostly affiliated to Islamic charitable organisations.

The Committee noted that there were a number of prominent Muslims from Arab and non-Arab countries on board the Mavi Marmara, including Sheikh Raed Salah from the “Israeli Islamic Movement” and leaders of Muslim religious parties in Yemen, Kuwait, Egypt and Jordan.

The Committee noted the editorial adviser’s observation that there was no evidence of any written invitation aimed specifically at “fellow Islamists”, but that recruitment was probably targeted at supportive organisations in Islamic countries, given that 90% of those who eventually sailed with the ship came from Islamic countries.

It was noted that none of the dead were from Western countries and that eight of the nine people killed were either IHH members or members of other Turkish Islamic organisations.

57. The Committee’s Decision

The Committee decided that the programme accurately reflected the origins of the passengers on the ship. It concluded that the programme clearly distinguished between those who had decided to confront the Israelis and the majority of passengers. It was the view of the Committee that the IHH contingent were also described in a fair and even-handed manner, and that not all IHH volunteers were represented as being part of the confrontation.

Noting that the programme did not describe any of those on board as “extreme Islamists”, the Committee concluded that the various roles played on the night were described by individuals in their own words and accompanied by video footage where it was available. Therefore the Committee did not agree with the complainants that viewers may have been left with the impression that all those on board were extremists.

The Committee acknowledged that a literal interpretation of the script line that the IHH “invited fellow Islamists” might require that a physical invitation had been issued which was addressed to a recognisable constituency. The Committee accepted there was no evidence that this was the case. However, the Committee concluded that the script line did not imply that only Islamists were invited. It also concluded that an invitation did not have to be in written form and that there were other ways that individuals could be asked to join the voyage. The Committee decided that the determining factor in whether the script was duly accurate was the fact that there were hundreds of observant Muslims on the Mavi Marmara, including a number of well-known Islamic political leaders.

In deciding not to uphold the complaint relating to the invitation to fellow Islamists, the Committee acknowledged that, while the wording could have been more explanatory, it nevertheless fulfilled the requirement for due accuracy and due impartiality in the Editorial Guidelines.

Finding: Not Upheld
**Point M - regarding the allegation that the programme misrepresented the humanitarian aims of the flotilla**

58. Relevant Script

The Committee noted that the relevant script for point M was:

**Commentary:** At the end of the day the bid to break the naval blockade wasn’t really about bringing aid to Gaza. It was a political move designed to put pressure on Israel and the international community. The price was high – nine people died but the outcry ensured the flotilla achieved its aim.

59. Allegation

The Committee noted that the complaints were:

"(the Panorama programme) insinuated that having political aims somehow renders insincere the humanitarian aims... The Israelis too had political aims which were to deny the convoy a political victory and divert public attention away from the blockade of Gaza. By emphasising the political aims of the one, and allowing the other to present itself as politically neutral is to undermine balance to the advantage of the Israeli narrative"

"A major aspect of Panorama’s message was that the mission was political, not humanitarian. In fact ... the flotilla had both an immediate humanitarian objective and a political objective to open Gaza to maritime traffic. But I say that this is a false distinction: the flotilla had both objectives and the driving force for political action was humanitarian. The political objective was not an end in itself: it was a means to the humanitarian end of restoring all human rights, including access to food, medicine, other essential commodities, education, and freedom of movement to the people of Gaza. Therefore the ultimate aim of the project was humanitarian."

60. BBC Response

The Committee noted that the programme response was as follows:

"In saying that the flotilla achieved its aim (the reporter) was simply explaining that the flotilla did manage (despite the high human cost) to bring the issue of the Israeli blockade to the world's media."

"Since the attack on the Mavi Marmara, there has indeed been enormous coverage of the maritime blockade of Gaza."

The Committee noted that the programme-makers cite internal documents seen from the Free Gaza Movement which state the minimum goal is to generate a lot of media about the blockade:

"According to the document a secondary goal is to take legal and political action including jail stays to push foreign governments to take punitive action towards Israel. The mission strategy is described as: ‘we will not turn back. The only way for Israel to stop us is to use force’."

61. Consideration
The Committee noted what the UNHRC said in its report:

"The Mission notes a certain tension between the political objectives of the flotilla and its humanitarian objectives. This comes to light the moment that the Government of Israel made offers to allow the humanitarian aid to be delivered via Israeli ports but under the supervision of a neutral organization. The Mission also notes that the Gaza Strip does not possess a deep sea port designed to receive the kind of cargo vessels included in the flotilla... Whilst the Mission is satisfied that the flotilla constituted a serious attempt to bring essential humanitarian supplies into Gaza, it seems clear that the primary objective was political."

The Committee noted that, in its conclusion, the UNHRC commented on the need to distinguish humanitarianism from humanitarian action:

"A distinction must be made between activities taken to alleviate crises and action to address the causes creating the crisis. The latter action is characterized as political action and therefore inappropriate for groups that wish to be classified as humanitarian. This point is made because of the evidence that, while some of the passengers were solely interested in delivering supplies to the people in Gaza, for others the main purpose was raising awareness of the blockade with a view to its removal."

The Committee noted that in the programme, Lubna Masarwa of the Free Gaza Movement spoke of the media being a tool in the group’s campaign to “open a way to Gaza”. In an untransmitted section of the same interview she talks about the aims of the flotilla:

"What’s our purpose? First to put the attention in the humanitarian situation in Gaza, to speak about the collective punishment of 1.5 million Palestinian in Gaza. Second to take this action as civilians who can’t wait any more for the governments to do anything to support the people of Gaza."

The Committee also noted that Dr Ahmed Yousef, the Hamas official in Gaza told Panorama, in an untransmitted section of interview, that in his opinion the flotilla achieved its objective:

Yousef: Everybody, even the Americans start talking about lifting the sanction and ending the siege of Gaza ... I do believe that Israel under heavy pressure from the world community, sooner or later they have to abide by the international law.

Interviewer: So the flotilla worked, the violence worked...

Yousef: Of course, of course.

Interviewer: The whole thing worked?

Yousef: Of course those people who sacrificed their lives, sacrifices for a good cause and this is the cause, ending the siege of Gaza.

The Committee noted that on 27 May before the flotilla sailed, one of the organisers, Greta Berlin was quoted by the news agency AFP:

"This mission is not about delivering humanitarian supplies, it's about breaking Israel’s siege on 1.5 million Palestinians."
But the Committee also noted, as one complainant stated, there were 10,000 tons of aid supplies on board the ships in the Flotilla including 750 tons of iron, 100 pre-cast homes and 3,500 tons of cement.

62. The Committee's Decision

The Committee decided there was ample evidence that the programme was accurate in stating the flotilla was really about putting international pressure on Israel to end the siege.

The Committee decided the statement at issue in Point M was well sourced, based on sound evidence, presented in clear, precise language and avoided unfounded speculation.

The Committee noted one complaint also alleges that

"(the Panorama programme) insinuated that having political aims somehow renders insincere the humanitarian aims…"

But the Committee agreed with the programme-makers who said that the script line “it was not really about bringing aid to Gaza”, did not include a comment on whether or not the political aims were humanitarian. The Committee decided that there was no insinuation that political aims were not honourable or right nor that these were not legitimate. The Committee decided there was no impression given that the humanitarian aims were not sincere.

Therefore, the Committee concluded that there was no breach of the Editorial Guidelines on accuracy.

The Committee decided the programme fulfilled the requirement in the Editorial Guidelines on impartiality, which requires the BBC to be:

“fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in (its) approach to (the) subject.”

Finally the Committee considered the allegation that:

“By emphasising the political aims of the one, and allowing the other to present itself as politically neutral is to undermine balance to the advantage of the Israeli narrative.”

The Committee decided that although the programme did not spell out that Israel too had political aims, i.e. to prevent the convoy reaching Gaza, it did not breach the Editorial Guidelines on impartiality. The programme made it clear that Israel’s stated aim in enforcing the blockade was to prevent weapons reaching Gaza and control the amount of cement and steel allowed into Gaza in case they were used to make weapons and bunkers. Accordingly the Committee decided there was no breach of this clause in the Editorial Guidelines on impartiality:

“"We must ensure we avoid bias or an imbalance of views on controversial subjects.”

**Finding: Not Upheld**
Point N - regarding the allegation that the opening sequence of the programme was framed from the Israeli viewpoint, setting the tone for the entire programme

63. Relevant Script

The Committee noted that the relevant script for Point N was:

Reporter to camera: They called it Operation Sea Breeze but what these Israeli naval commandos encountered on the Mavi Marmara was anything but a breeze. It caused a storm of international condemnation.

But did Israel fall into a trap and what was the real agenda of some of those people who called themselves ‘peace activists’ on board the Free Gaza flotilla?

64. Allegation

The Committee noted that some complainants considered the words “storm of international condemnation” might be taken to apply to the actions of the activists. It noted other issues raised by the complainants in relation to the opening sequence:

“‘The tone of the programme was set... the suggestion that heavily armed commandos who travel 75 miles out to open sea in the middle of the night to attack a flotilla of cargo and passenger ships, fell into a trap, and the innuendo of ‘who called themselves peace activists’—adding a shade of scepticism to that description—gives the programme’s agenda an unmistakeable bias, regardless of what followed.”

“‘What these commandos encountered’ ... indicates to the viewer from the outset that the commandos ‘encountered’ difficulties, including violence, rather than initiating the problems themselves.”

“‘Why is the programme trying to portray Israel as the victim right from the start? ... the seeds of doubt and suspicion against ... the activists ... are planted in the viewers’ minds from the outset.”

“‘did Israel fall into a trap and what was the real agenda of those that call themselves peace activists?’ was prejudicial and suggested, without evidence, that the activists intended to ‘trap’ the Israelis.”

65. BBC Response

The Committee noted the programme’s response:

“It is totally accurate to say that: ‘what these Israeli naval commandos encountered on the Mavi Marmara was anything but a breeze’. It is also accurate to suggest that: ‘it caused a storm of international condemnation’. There is no blame attributed to either side in these statements.”

“It was made clear from the start of the programme that the film would examine the motivation of ‘some of the people who called themselves peace activists’ in order to understand the chain of events that night. It was made clear in the script there were 600 people aboard whose mission was to deliver aid to Gaza: ‘When the Mavi Marmara left Istanbul its mission was to break the Israeli naval blockade
of Gaza and bring aid to the Palestinian enclave.’ It was also made clear that only a group of about 40 took part in the violence. Indeed, Giora Eiland said: ‘these 40 people were people prepared to do this kind of violence and the rest of the people – many hundreds of them were quite innocent people ...’"

[Did Israel fall into a trap?] “This was not prejudicial but a question posed at the beginning of the film, which the programme then went on to explore in considerable detail. Evidence from both Israeli eyewitnesses – who stated they had been attacked by passengers who had prepared for violence – and activist eyewitnesses, who described acting in self defence against a violent Israeli assault helped inform the viewer as to the answer to the question. Posing provocative questions at the beginning of a film is an accepted film making technique and not prejudicial.”

The Committee noted the ECU’s response:

“‘This is a technique frequently used by documentaries and current affairs programmes and one which I imagine is generally understood by viewers.”

“I can see why you think that (the reporter’s) question might lead viewers to believe the activists set out to trap the Israelis but bearing in mind the evidence that there was undoubtedly a small group of activists who were prepared (both mentally and physically) to resist the Israeli commandos by force, I think it was legitimate to begin the programme by questioning the version of events which had been widely reported at the time.”

66. The Committee’s Decision

The Committee decided that the question “did Israel fall into a trap?” was a legitimate journalistic device to use in a programme that was taking a counter-intuitive approach to the generally understood story of what had happened that night. The Committee said it was clearly a deliberate tease, signalling to the viewer that they were going to be hearing something different from what had already been aired on the issue. The Committee also decided that the phrase could apply equally whether Israel had right on their side or not or whether the activists had right on their side or not – and that therefore the phrase was not in itself prejudicial.

The Committee acknowledged that in seeking to answer the question “did Israel fall into a trap?”, the programme was required to be objective and even handed in its approach and to weigh all the material facts (of whether Israel did indeed fall into a trap), but that the Editorial Guidelines allow for it to be achieved over the course of the programme and not in any one segment of it. The Committee decided that the overall impartiality of the programme was addressed elsewhere in the considerations (Point AY) and did not require to be considered here.

The Committee considered next this section of commentary:

“They called it Operation Sea Breeze but what these Israeli naval commandos encountered on the Mavi Marmara was anything but a breeze. It caused a storm of international condemnation.”

The Committee decided it was a statement of fact that what Israel encountered was “anything but a breeze”, as it was made clear in the programme that the Israeli commandos had not expected the degree of resistance they faced. Whether Israel’s
actions were justified or not, there was no doubt they were surprised by what they encountered. The Committee did not agree with the complainants that the phrase apportioned blame on the victims.

The Committee agreed with the ECU that the phrase "storm of international condemnation" was a play on words, a reference to the outcome of the unexpected resistance the Israelis faced, i.e. that Operation Sea Breeze caused a storm of international condemnation. The Committee acknowledged "the storm of international condemnation" could also have been interpreted to refer to the actions of some of the activists. However, the Committee decided that interpretation would not make sense with all that been said in the previous few minutes where the script had referred to the “global storm over Israel’s blockade” and that “Israel was accused of breaking international law by seizing a Turkish ship in an action in which nine people died”.

Accordingly the Committee decided the opening sequence was not framed from an Israeli viewpoint, but was signalling a counter-intuitive approach to an already well-known story and that this would have been obvious to a viewer at the time. The Committee therefore decided that the programme achieved due accuracy and due impartiality on this aspect of the Consolidated Appeal.

Finding: Not Upheld

Point Q - regarding the allegation that the programme did not say that the Israelis shot anyone dead

67. Allegation

The Committee noted the allegation:

"The programme did not say that the Israelis shot anyone dead, all reference to the deaths of the activists were in the passive tense: ‘nine people died’ ‘nine Turks died’ ‘people were being killed’.”

68. BBC Response

The Committee noted the programme’s response:

"We made it clear that the Israelis had killed nine people and that fifty people had been seriously wounded. Eyewitnesses described the severity of the casualties – ‘dead bodies were piling up’ and seeing ‘friends covered in blood’. We showed pictures of these victims as far as was possible with pre-watershed rules on taste, including a wide shot of a dead person being carried on a stretcher.”

"At the time of making the film we sincerely believed we had been sufficiently clear that the Israelis had shot dead the nine activists. However, in hindsight perhaps we should have included more detail about the injuries and the level of violence, shots at close range etc in order to give greater emphasis to the fatalities.”

"But it must be remembered that the programme came after a great deal of coverage of the incident very much from the perspective of the people on the flotilla. This media coverage had given details of the shootings and the allegations of brutality made against the Israelis and had covered what had happened to the injured and dead. This information was out in the public domain but our
programme took a new and more controversial look at what happened and aired exclusive interviews with Israeli commandos which had never been heard before. It was a new perspective on the story.”

The Committee noted the following comments from the ECU finding:

“There were a number of verbal and visual references during the programme to the dead. (The reporter) asked one of the commandos directly whether he had killed anyone:

Lieutenant A: I used my hand gun only when I got up on the ship also to defend myself from the people that tried to assault me, only then did I use my hand gun.

Interviewer: Do you know if you killed [anybody] or injured anyone?

Lieutenant A: I don’t know. I think I probably injured people because I shot them in the legs. I aimed at the legs.

[Commentary]: But people were being killed [and] the dead and wounded were carried down below.”

The Committee noted that the ECU quoted the interview with Fatih Kavakdan and the description of his injuries, and Bulent Yildirim saying the Israelis were “firing non-stop”; the ECU also cited a number of other occasions where references were made to victims of the Israelis’ actions.

69. The Committee’s Decision

The Committee decided that it would have been clear to Panorama viewers that it was the Israelis who had killed nine people and wounded 50 others. The Committee did not agree that the language used implied the Israelis’ role was less active than was the case.

In reaching this conclusion, the Committee decided that a viewer’s perception of what had happened that night would be formed by a combination of commentary, interview and images. The Committee considered it relevant that the programme was broadcast pre-watershed and was obliged to observe pre-watershed guidelines on editorial standards in order to protect children and that it therefore excluded some of the more graphic pictures that were available.

The Committee also noted that the programme-makers focussed on providing new information concerning the events on the Mavi Marmara. There had already been considerable coverage of events on the Mavi Marmara, and substantial imagery from the night was already in the public domain along with allegations that Israel had used disproportionate force.

Therefore, the Committee concluded that there had been no breach of the Editorial Guidelines on accuracy and impartiality in relation to Point O.

**Finding: Not Upheld**
**Point P - regarding the allegation that the Israeli commando was not challenged when he claimed to have shot at people's legs**

70. Relevant Script

The Committee noted the relevant script for Point P as follows:

**Lieutenant A:** I used my hand gun only when I got up on the ship also to defend myself from the people that tried to assault me; only then did I use my hand gun.

**Interviewer:** Do you know if you killed anybody or injured anyone?

**Lieutenant A:** I don’t know. I think I probably injured people because I shot them in the legs. I aimed at the legs.

**Commentary:** But people were being killed. The dead and wounded were carried down below.

Amongst the casualties was Fatih – hit in the chest by paintball pellets, in the arm by a live round.

71. Allegation

The Committee noted that the complainant said:

"The programme did not challenge the statement by an Israeli commando that he ‘aimed at the legs’. This gave the misleading impression the commandos aimed to minimise injuries.”

72. BBC Response

The Committee noted the programme’s response:

"We decided to include the commando’s testimony as it was one of the first times that anyone had heard, first-hand, from a commando involved in the action. We challenged him about his comments and made it clear in script immediately following that despite his claim people were being killed.”

The Committee noted the ECU’s comments:

"The commando confirmed he used his hand gun but denied killing anyone. (The reporter) immediately pointed out that despite his denial ‘people were being killed’. She went on to refer to other activists who had been shot (and drew attention to the fact they were not shot in the legs).

"I imagine the vast majority of the audience would have understood that the commando was offering his version of events, a version which was then juxtaposed with (the reporter’s) clarification that people were being killed and a subsequent reference to an activist who was shot twice, once by live fire in the arm.”

73. Consideration

The Committee noted the relevant section from the unbroadcast rushes of the interview with Lieutenant A, viewed by the editorial adviser:
Interviewer: Do you know if you killed anybody or injured anyone?

Lieut A: I don’t know. I think that I probably injured people because I shot them in the legs. I aimed at the legs. And I have to tell you that also the fighters that were on the roof and were being assaulted and their lives were in danger, the order that their commander told them was shoot them at the legs. Even though they were attacking them with knives and axes and metal rods...

Interviewer: So as not to kill anyone?

Lieut A: Yeah, they didn’t want to kill them and when they were away from them and actually, you know, one metre from them...

Interviewer: But obviously nine people were killed

74. The Committee’s Decision

The Committee noted that there is no requirement in the Editorial Guidelines for every statement to be challenged on every occasion. The Committee noted the fuller response from the commando in the unedited interview and that the interviewer clarified that despite being ordered to shoot at peoples’ legs people were being killed. The Committee noted that whilst the clarification did not appear in the film, the commentary which did, accurately reflected the interview exchange.

The Committee decided the audience would not have been misled by the inclusion of the soldier’s testimony and that the commentary made it absolutely clear that people were being killed. The Committee decided the viewer would be able to make up their own mind as to how much reliance to place on the soldier’s assurance that he only shot people in the legs.

Accordingly the Committee found there had not been a breach of the Editorial Guidelines on accuracy in respect of this Point P.

Finding: Not Upheld

Point Q - regarding whether Israel’s allegation that activists used live fire was sufficiently tested for its veracity

75. Relevant Script

The Committee noted the relevant script:

Commentary: The Israelis say it’s not possible to fire while abseiling from a helicopter. They insist their audio shows the commandos didn’t use live rounds until they were shot at.

Israeli Military Audio: Do they have real weapons?

(from the night) Yes real weapons, they are firing on us. There is live fire here
Interviewer: But they were civilians...

Sergeant Y: They were not. They may be a civilian Turkish people but they were terrorists plain and simple. They tried to attack us. They tried to kill each and every single one of us. And we were just defending our lives.

Gen Eiland: We have very clear evidence that at least in four cases the other side did use live fire. In some of them they did use the Israeli weapons that were stolen from our soldiers but at least in one case they did use their weapon because we found bullets and shells of weapons that is not in use in the Israeli forces.

Ken O'Keefe: What I do know for sure is that I had one of their guns... And if I wanted to use that gun I could easily have used it... But I didn’t do that and I did not see anybody from IHH use a weapon. If we wanted to we could have used weapons and killed some of their soldiers. That is a fact.

Commentary: The question of who shot first remains disputed and unresolved.

76. Allegation

The Committee noted the complainants’ allegations:

“Claims by the Israeli military that the passengers had firearms are allowed to pass unchallenged by (the reporter) despite the fact that there is not a shred of evidence for this.”

“Far too much space is given to the pronouncements of Major General Giora Eiland, and hardly any attempt is made to challenge his allegations... (the reporter) should have challenged those claims directly during her lengthy interview with him.”

“The allegations of firing from the ship have always been strenuously denied by people on the flotilla, including all of the journalists ... Since the matter is in dispute (the reporter) should not have said ‘who shot first remains disputed’... this demonstrates a tacit assumption that the passengers did fire... and this exhibits serious bias.”

The Committee noted that one complainant wrote on appeal that he had correspondence with academic and filmmaker, Professor Haim Bresheeth, who said that the Israeli audio stating the commandos were coming under live fire was “of a very different sound quality and type from everything else in the programme, and sounded like a clear addition and recreation in studio with effects”.

The Committee noted one complainant’s contention that, in the absence of clear evidence that the activists had live weapons and had used them, the bullet wounds sustained by the Israeli commandos might have been the result of friendly fire.

77. BBC Response

The Committee noted the ECU said Ken O’Keefe’s contribution served to directly rebut Major General Eiland’s allegation:
“Mr Eiland said he had evidence that the activists fired live rounds. Ken O'Keefe said the activists did not use live ammunition. I think the viewer would understand that both of these comments cannot be correct and so would draw their own conclusions. I do not believe it was necessary to challenge Mr Eiland to produce his evidence any more than it was necessary to challenge Mr O'Keefe to prove the validity of his claim; due impartiality was achieved by including both comments.”

78. Consideration

The Committee noted the fuller exchange between the reporter and Major General Eiland as recorded in the rushes:

Major General Eiland: We have a very clear evidence that at least in four cases the other side did use live fire. In some of them they did use the Israeli weapons that were stolen from our soldiers, but at least in one case they did use their weapon – because we found bullets and shells of weapons that is not in use in the Israeli forces.

Interviewer: But did you find a gun?

Major General Eiland: No - um - we did not ...

Interviewer: So how can you prove it?

Major General Eiland: We can prove it very easily because the bullet and the shells were taken to laboratory and it can be verified very easily. More than that, when the captain was – er – when the captain met our soldiers in the first time the first sentence that he said that they – and I'm quoting, "They had weapons and they threw it to the water."

Interviewer: He said that?

Major General Eiland: Yes.

The Committee noted that the IDF has produced no material evidence to support the claims it has made.

The Committee noted that there is no interview in the public domain of the Captain of the Mavi Marmara saying that the activists had weapons.

The Committee noted the Israeli military recording where voices are heard (in translation) saying that they are coming under live fire. It also noted that a complainant questioned its authenticity for this appeal by quoting Professor Bresheeth. The Committee noted the Professor describes himself on his website as an activist and that he supports the academic boycott of Israel and says he is “opposed to Zionism and Israeli oppression and occupation”.

The Committee noted the reporter had told the editorial adviser about an interview she had conducted off camera in an Israeli hospital with one of the wounded commandos:

“This person had a badly fractured arm and a gunshot wound to the knee. I saw the signs of both and confirmed with medical staff that this is what had happened
to him. The commando described what had happened to him as well in detail. He and the staff had not had advance notice of my visit. We had been supposed to see him the previous day but he had been very anxious and the interview had been cancelled.

"I just turned up at the hospital the following day without notice and leaving the crew in the car (and my Israeli fixer) I went alone to try and see him and he agreed. His English was good so I did not need a translator."

The Committee noted the following extract from the rushes of the Panorama interview with Sergeant Y in which he was asked about the allegation of live fire:

**Interviewer:** Did you hear the order go out to use live fire...?

**Sergeant Y:** Yeah. Yeah. That was after I... first ...got my pistol out, er, this is when we saw we have two injured people, two injured soldiers, with gun shots. They were wounded by gun shots, and then we heard people, we heard, we saw a terrorist with a gun in his hand and we heard some gun fire. So we say, OK, this is not, we have to defend ourselves, we're going to live firearms... cos we are facing terrorists now.

The Committee noted the UNHRC’s conclusion in its report published in September 2010 that there was no credible evidence that activists had used live fire:

“"The Mission has found no evidence to suggest that any of the passengers used firearms or that any firearms were taken on board the ship. Despite requests, the Mission has not received any medical records or other substantiated information from the Israeli authorities regarding any firearm injuries sustained by soldiers participating in the raid. Doctors examined the three soldiers taken below decks and no firearm injuries were noted. Further, the Mission finds that the Israeli accounts [sic] so inconsistent and contradictory with regard to evidence of alleged firearms injuries to Israeli soldiers that it has to reject it."

The Committee noted Israel’s refusal to cooperate with the UNHRC investigation. The Committee noted that the relevant footnote in the UNHRC report did not appear to conclusively prove that the Israeli account was inaccurate.

The Committee noted that a group of around 40 IHH members boarded the Mavi Marmara in Istanbul and that it is alleged they were not subject to the same stringent searches as the majority of passengers who boarded in Antalya (a large ceremonial dagger carried by a Yemeni sheikh who boarded in Istanbul was not confiscated).

The Committee noted that Israel’s Turkel Commission, which reported in January 2011, found no conclusive evidence that any firearms had been brought onto the Mavi Marmara by activists. The Committee noted the Turkel Commission’s finding that the bullets that Major General Eiland referred to in his interview with Panorama were in fact in use in the Israeli Army up until 2007 and so may have found their way into the IDF ammunition on 31 May. The Committee noted the Turkel Commission’s conclusion that two of the
commandos were shot by activists, possibly using weapons confiscated from commandos who had been captured.

The Committee noted the Turkel Commission report includes detailed written testimonies from the two commandos who sustained bullet wounds and that the Commission also received medical reports from the hospitals where the two men were treated. The Committee noted the Turkel Commission received written statements from 38 soldiers who were involved in events that night, including some who reported seeing activists brandishing weapons:

“There were other incidents in which IDF soldiers reported seeing IHH participants use weapons or where they observed the effects of gunfire. For example, soldier no. 33 fired at the legs of an IHH participant who was firing a revolver at the soldiers. What was described in military terminology as ‘long guns’ or rifles, were also seen on the bridge deck level. Soldier no. 9 stated that he fired at an IHH participant when he saw a gun barrel, whose length and caliber corresponded with a rifle, protruding from an opening of the floor. Another soldier stated that he saw a ‘long firearm’ being thrown over the side of the ship. Another soldier stated that he saw both a ‘long gun’ and a pistol being fired by IHH participants, albeit the latter sighting was made from a distance of 40 to 50 meters. Those weapons were never located.”

“The Commission has taken into consideration that the melee on board the Mavi Marmara, especially during the initial stages on the roof, was a situation of considerable confusion. The use of slingshots with metal and glass balls added to that confusion because some soldiers believed they represented pistols and gunfire, although other soldiers stated that they differentiated between the sound of gunfire and marbles fired by slingshots. In addition, iron bars were sometimes mistaken for the barrels of rifles. For a considerable period of time, the soldiers thought soldier no. 5 had been shot in the head, when his head injuries actually resulted from physical assaults. Such confusion is a normal part of conflict; often termed the ‘fog of war’. However, the physical evidence of gunshot wounds; the statements of numerous soldiers operationally experienced in the use of firearms who gave accounts of seeing weapons in the hands of IHH activists; and the fact that IHH activists had access to captured IDF handguns and mini-Uzis, supports the conclusion that the IHH used firearms against Israeli military personnel.”

The Committee noted the Turkel Commission had access to considerable amounts of video material from the night which has not been publicly released. The Committee noted that nowhere in the Turkel Commission’s report is it stated that any of the images depict any activists holding or firing a lethal weapon.

79. The Committee’s Decision

Central to the Committee’s decision was the material available to the programme at the time of broadcast in August 2010. The Committee noted that neither the UNHRC report nor the Turkel Commission report had then been published. The Committee noted that at the time of broadcast, the programme relied on four sources of evidence relating to the allegation that activists had used live fire: a challenging interview with the Israeli Major General conducting the inquiry, the first-hand account from one of the commandos who
had sustained gunshot wounds, the Israeli audio recording of soldiers claiming they were coming under live fire and the Sergeant who described the situation under which they were given the order to move to live fire.

The Committee considered whether it was duly impartial and duly accurate to present Israeli allegations of live fire by the activists. The Committee noted that it was not the Committee’s role to decide whether the activists actually deployed live weapons.

The Committee agreed that it had not been clearly established at the time of broadcast whether the activists had used live fire and if so, had fired first. The programme-makers had access to a body of evidence which strongly implied that some of the activists may have used guns of which the most compelling evidence was the research interview with an injured Israeli soldier and the comment by Major General Eiland that the Israelis had found bullets and shells of weapons not in use by the Israeli forces. The Committee noted one complainant’s closely argued suggestion that it was also possible that injuries to Israeli soldiers may have been caused by friendly fire.

The Committee noted that proving a negative – that the activists did not use live fire and did not possess live weapons – was not a reasonable expectation.

The Committee decided that, in the context of the programme, the allegations concerning live fire by the activists constituted a “controversial subject” within the meaning of the Editorial Guidelines. In the view of the Committee, the correct way to approach this point was to consider whether the programme had made it clear that there was more than one view as to whether some of the activists had been armed with guns.

The Committee decided that the denial from Ken O’Keefe, one of the activists who had been involved in the resistance, constituted an adequate response in that it immediately followed the allegation and was a clear rebuttal of the claims made by Major General Eiland.

Finally, the Committee considered the commentary which concluded the section:

“the question of who shot first remains disputed and unresolved”.

The Committee acknowledged the complainant’s argument that the statement was a tacit assumption by the programme that the activists did use live fire. The Committee noted the Editorial Guideline requirement on accuracy that “If an issue is controversial, relevant opinions as well as facts may need to be considered”. The Committee concluded that Panorama had weighed the information and opinions available to them at the time and had presented the arguments accordingly. This was duly accurate based on the information and opinions available at the time of broadcast.

The Committee decided that of primary importance was what the viewer would have understood from the section overall: that the Israelis alleged live weapons had been used by the activists, that the activists strenuously denied it and that the issue remains in dispute. The Committee took the view that the overall treatment of the issue was duly accurate and duly impartial. Nevertheless, the Committee agreed that programme-makers should be reminded that when an issue is in dispute, it is extremely important in scripting to minimise the possibility of some viewers concluding that the programme has accepted a particular point of view.

**Finding: Not Upheld**
Point R - regarding the allegation that the programme failed to report there was live fire from the helicopters before any commando descended onto the ship

80. Relevant Script

The Committee noted the script relating to Point R:

Commentary: The IHH claim they were acting in self defence. They say the Israelis started using live fire right from the start of the operation.

Yildirim Live: At this moment they’re firing non-stop. And every time one of our friends is being injured. They’re firing at us, they’re throwing bombs...

Reporter: This is not passive resistance – this is fighting, you see the bars.

Yildirim interview: At this point it had gone beyond passive resistance because the Israelis had been firing from the start...

Commentary: The Israelis says it’s not possible to fire while abseiling from a helicopter. They insist their audio shows the commandos didn’t use live rounds until they were shot at.

81. Allegation

The Committee noted the following summary of the complainants’ points (as well as noting the more detailed extracts of the complaints provided to the Committee):

“The programme never reported that there was live fire from the helicopters before any commando even attempted to descend onto the ship, nor did the programme point out that this live fire began without any warning.”

“The live fire came from at least two of the four helicopters and so the action represented a clear decision and probably a specific order, to escalate the situation in disregard to the safety of civilians on the ship...”

“Live fire (possibly lethal fire) from the helicopter could have provoked the extreme reaction against the commandos in which iron bars and staves were used to knock down soldiers and hit them as they lay on the deck. Activists on the upper deck had seen comrades shot in cold blood and had good reason to expect the same treatment. In that situation the level of proportionate violence that can be employed in self-defence rises. In this context the actions of militants on the ship were far more reasonable than the way Panorama described or depicted them.”

82. BBC Response

The Committee noted the programme’s response:

““The programme very clearly explored the issue of whether or not there was live fire from helicopters before commandos abseiled onto the deck.

“The main organiser and witness to what happened on the ship, Bulent Yildirim twice made it clear that he believed shooting started at the beginning of the operation.”
“Reports from Israeli commandos however, say that the live fire did not begin until they were on deck, and had been fired on by activists. This is also reflected in the programme.

“There are clearly conflicting accounts over the issue of when and where live fire occurred and by no means is it at all conclusive that live firing began before the commandos had landed.

“It is undeniable that the Israelis were firing paint-ball guns at the ship before the commandos landed, but there is no conclusive evidence from our research that they started firing live bullets until later in the operation.”

The Committee noted the ECU’s response:

“I accept that there was no specific reference to the activists’ claim that the Israelis open fire from their helicopters before abseiling down to the deck of the Mavi Marmara. This is one claim which I think would have given viewers a clearer picture of what the activists say took place, since it challenges the Israeli version that its commandos only opened fire in self-defence. However, I think the omission of this point has to be balanced against the other information that was included in the programme. There were two separate contributions from Bulent Yildirim in which he made it clear that he believed the Israelis opened fire from the start of their operation.

“I therefore think viewers would have been aware that the activists say the Israelis used live fire from the beginning of the operation. Whether that was understood to be the initial attempt to board the ship from Zodiac8 inflatables or the subsequent attempt to abseil from helicopters, it was clearly the view of the activists that the Israelis used live ammunition before their commandos were placed in any serious or immediate personal danger.”

83. Consideration

The Committee noted that much of the footage in the public domain has been released by Israel and it is possible that evidence that might cast doubt on Israel’s version of what happened has been withheld. But the Committee also noted the footage released directly by the IHH and by the Cultures of Resistance crew which has never been in the control of the Israelis, as well as off-air recordings of live satellite news feeds from the ship. The Committee noted there is no visual evidence from any of these sources of live fire from a helicopter before any commandos landed and the footage is therefore inconclusive.

The Committee noted that at 39’10” in the material released by Cultures of Resistance the sound of individual “pops” can be heard on the audio, and a Norwegian activist, Espen Goffeng, is filmed saying in English:

“I think they’re using some paintball looking stuff. It’s not live ammunition”

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8 The high speed inflatable boats which were used by the Israeli Navy in the takeover of the flotilla are referred to throughout as Zodiacs. According to the Turkel Commission, they were actually American-made Morena speedboats.
The Committee noted he was not on the top deck, but appears to be on the deck immediately below.

The Committee noted this comment from Iara Lee, the director of the Cultures of Resistance material, in an essay published in the book ‘Midnight on the Mavi Marmara’:

“None of the videos the IDF has released answer the crucial question of whether passengers trying to defend themselves against the assault had already been fired upon... My own footage shows that they had begun firing on the ship well before boarding creating fear among passengers that we were under possibly fatal attack; soldiers obviously did not inform passengers what type of ammunition, lethal or ‘non-lethal’ they were using – nor when they would decide to switch between the two.”9

The Committee noted that a number of passengers from the Mavi Marmara allege live ammunition was used before any soldier landed on the deck of the ship. The Committee noted in particular the testimony of Fatima Mohammad who stated that live ammunition was being used prior to commandos landing on the ship. They noted too the interview Al Jazeera news producer Jamal Elshayyal gave to his channel in Istanbul after he was released from detention:

“There’s no doubt from what I saw that live ammunition was fired before any Israeli soldier was on deck.

“One of the helicopters at the front of the ship you could almost see the soldiers pointing their guns down through some sort of hole or compartment at the bottom side of the helicopter and firing almost indiscriminately without even looking where they were firing.”

The Committee noted that whilst the IHH website contains an interview with the Captain of the Mavi Marmara claiming live fire from the start, Panorama say the IHH refused them access to conduct any of their own interviews with the crew of the Mavi Marmara.

The Committee noted the editorial adviser’s comments that few of the witness accounts (claiming the Israelis fired with live weapons from a helicopter before any of the commandos landed) contain any detail of what the witnesses say they saw. The Committee noted that, while there are claims that two people died before any commando was on deck, the editorial adviser could not locate any detail of these incidents, nor any information as to who specifically the two victims were of the nine who died that night.

The Committee noted that although there are claims that commandos were shooting as they abseilled, this is not seen on either the Cultures of Resistance footage or the clearer footage released by the Israelis. The Committee noted that the UNHRC concluded that it was not plausible that soldiers were holding their weapons and firing as they descended on the rope.

The Committee also noted the UNHRC’s conclusion that

“live ammunition was used from the helicopter onto the top deck prior to the descent of the soldiers.”

It noted the UNHRC report did not reference any evidence to support its conclusion.

The Committee also noted evidence offering the alternative view, that a number of passengers say that the Israelis began using live fire only after they were attacked and some of their colleagues taken hostage. The Committee noted that the passengers who say this is what happened were members of the media, rather than activists.

The Committee noted the comment from Andre Abu-Khalil, a cameraman with Al Jazeera, who was not on the rooftop but on a deck below:

“First they tried to come by helicopter and tried to come down on the main deck. But the Turkish people were gathering on the rooftop and they managed to grab three of the soldiers, which led to a second helicopter to come and start shooting live bullets on the people.”

And the Committee noted the comments by Mohamed Vall, a reporter with Al Jazeera, who said:

“The first soldiers on the ship were not killed, they were not shot at, they were captured by the defenders of the ship. Moments later another bigger helicopter landed more troops and this time they fired immediately at people and killed as many as they could so that they could reach the cabin and take control of the ship.”

The Committee noted similar testimony from Sefik Dinc, a reporter with Turkey’s Haberturk newspaper.

The Committee noted the allegation made by one complainant that preliminary autopsy evidence showed “some of those killed had bullet trajectories indicating they had been shot from above”. The Committee did not consider it relevant to their consideration here because the allegation is specifically about shooting from a helicopter before any commandos landed, and the preliminary autopsy evidence does not indicate when in the sequence of events the individual victims were killed. Nor does being “shot from above” necessarily mean this was from a helicopter.

The Committee noted the Turkel Commission’s view:

“The Commission has reached the conclusion that the Israeli army did not fire any rounds from the helicopter. The only force that was used on the helicopters were 3-4 ‘flash bang’ grenades that were deployed from the first helicopter in the initial stages of the fast roping to attempt to stop IHH activists from interfering with the ropes. The accurate use of firearms from a helicopter requires both specific equipment and specially trained personnel, with which the helicopters were not equipped.”

The Committee also noted the material contained in the recently published Turkish Report. It noted that the report concluded there was live fire from the speedboats before the helicopters were overhead and that it also concluded there was live fire from the helicopters. The Committee noted that the annexes which might have indicated how their conclusions were reached were not available to the editorial adviser.
84. The Committee’s Decision

The Committee noted that the programme reflected the activists’ claim that live fire was used from the beginning. But the Committee acknowledged that this was not accompanied by any detail of that claim, i.e. that it came from helicopters before any commando was on deck.

The Committee considered whether the evidence for live fire from the helicopters was so compelling that omitting to include the specific allegation would mislead viewers. The Committee acknowledged that if the claim of live fire before any commandos were in harm’s way were true, it would have a significant impact on Israel’s claim of only using live fire in self defence.

But the Committee was not persuaded that compelling evidence existed at the time of broadcast that required the programme to explore the possibility in any greater depth. In reaching its decision the Committee noted that the preliminary autopsy evidence did not bring any certainty to the issue and that none of the available video footage supported the allegation: there was no footage for instance of the activists reacting to shots, falling back or shrinking, as might have been expected if live, lethal ammunition was being fired from the helicopters onto the deck. The Committee found that no clear account existed to support the contention that two people died before any commando was on deck.

The Committee decided that it reached the same view as the ECU, that whilst the programme did not explore the specific allegation, it nevertheless made clear the activists’ view that the Israelis used live ammunition before their commandos were placed in any serious or immediate personal danger. The Committee considered this was as far as the available evidence went and that therefore this was all the programme was required to reflect. The programme met the clause in the Editorial Guidelines on impartiality stating:

“It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.”

Finding: Not Upheld

Point S - regarding the allegation that the manner in which nine of the passengers were killed is fundamental because of what it might say about the motivation of the IDF, yet there was no mention of the preliminary autopsy findings

85. Allegation

The Committee noted the complainants’ points:

"Isn’t it important to state how they died if you want to find out what really happened? The information in the autopsy reports suggest that the dead were not only ‘shot at close range and were hit a number of times’, but were also killed in a manner that cannot constitute self-defense as the Israelis claim, ... So with all due
respect, the programme-makers’ statement, ‘the manner of killings was immaterial to the issue of how a situation of violent conflict arose’ is both ridiculous and outrageous.”

“At the time of (the Panorama) investigation there was already a suspicion of summary execution of some of the activists which, as you will know, has been confirmed by the UNHRC report. If the autopsies were to support a claim of summary execution, that would have been evidence of a grossly disproportionate response.”

“The autopsies reveal that the majority of those killed were shot in the back or the back of the head, which can't be claimed as self-defence by Israeli commandos... from this the viewer could extrapolate that these are violent people who used a massive degree of violence and were prepared to fire even when not being attacked. Therefore, could they have started the violent conflict?”

“If the Panorama team had gathered hard evidence and referred to autopsy reports, (the reporter) would have been better equipped to challenge Giora Eiland.”

86. BBC Response

The Committee noted the programme's admission that:

“In hindsight perhaps we should have included more detail about the injuries and the level of violence, shots at close range etc in order to give greater emphasis to the fatalities.”

The Committee also noted the programme-makers’ explanation that they were trying to shed fresh light or add new information to the already well-established facts. The Committee noted the efforts the team say they made in Turkey to try to interview the pathologists whose names were on the preliminary autopsy reports and that they were told that they were not available and the hospital had nothing more to say. The Committee noted the programme’s statement that the preliminary autopsy report did not change any of the relevant facts:

“It does not explain and cannot explain when the IDF started to fire and there is no substantial evidence from the preliminary autopsy report that suggests that the IDF fired from the helicopters. The preliminary autopsy does however explain that some of the nine killed were shot several times and from close range, but this does not, in our opinion, change the facts that, as we reported, the IDF started using live fire and killed nine people. We repeated this on a number of occasions and we used evidence from eyewitnesses and footage filmed on the ship which accurately reflect the preliminary autopsy.”

The Committee noted the ECU’s view on the subject:

“I appreciate that the information ... certainly suggests that most of the activists who were killed were shot at close range and were hit a number of times. I think it would have given viewers a fuller picture if there had been some reference to that information in the programme. With hindsight, the programme-makers agree, but they make the point that the manner of killings was immaterial to the issue of
how a situation of violent conflict arose, which was the primary focus of the programme.”

“No one except those directly involved is in a position to state as a fact that the victims were deliberately killed.”

87. Consideration

The Committee noted that the editorial adviser had obtained in full copies of the preliminary autopsy reports carried out by the Department of Forensic Medicine of the Turkish Ministry of Justice. These were in existence at the time of broadcast.

The preliminary autopsy reports were obtained for the purpose of trying to ascertain whether the autopsies actually said what the media was reporting they said (execution-style killings, firing when the victim posed no threat and shooting from helicopters) – or whether those conclusions were in fact interpretations of the autopsies.

The Committee noted that the editorial adviser did not conduct a comprehensive analysis of all of the preliminary autopsy findings, but instead conducted proportionate research by selecting the preliminary autopsy reports of two of the victims, Ibrahim Bilgen and Furkan Dogan, for translation into English. Mr Bilgen and Mr Dogan’s autopsies had been widely quoted in support of allegations concerning the specific circumstances of their deaths by those claiming Israel had used disproportionate force.

The Committee noted media reports relating to the death of the 19-year-old American high school student, Furkan Dogan, allege he was shot five times “at very close range”. However, the Committee noted:

- the preliminary autopsy report concludes that in only one case was it determined the bullet was fired at close range, in a second case it was stated the wound was sustained from firing at long range, and the range of the other three could not be determined. (The Committee noted that the definition of long range in pathology terms is 70-100cm+)

- the UNHRC report states that all bar one of Furkan Dogan’s wounds were on the back of his body, however, this is not consistent with the information in the preliminary autopsy report, which states that two of the wounds were to the back and three of the wounds were to the front of his body (one in the face, one to a toe on his left foot and one on his left leg)

- The Committee noted that there is evidence from Mr Dogan’s preliminary autopsy report to support the allegation that he was shot in the face at point blank range whilst lying injured.

The Committee noted claims made in the media and elsewhere that Ibrahim Bilgen was one of the first fatalities, and that he was probably shot from a helicopter before the first commandos were on the deck of the ship. The Committee noted the conclusion in the UNHRC report that:
“the wounds are consistent with the deceased initially being shot from soldiers on board the helicopter above and receiving a further wound to the head while lying on the ground, already wounded.”

The Committee noted:

- the autopsy on Mr Bilgen states he was shot four times: once in the chest, once in the middle of the back, once through the right hip and once to the side of his temple
- the head shot appears to have been received whilst he was on the ground and that one of the wounds, to his chest, showed a trajectory that indicated firing from above
- the forensic evidence of the shots (apart from the shot to the side of his temple) suggests Mr Bilgen would have sustained those wounds in a standing position and that this would not be possible in the case of the wound to the back and hip if he had already fallen from a shot from the helicopter before soldiers arrived on deck and had engaged with the activists
- the evidence from the preliminary autopsy suggests that if Mr Bilgen’s chest wound originated as live fire from a helicopter it could not have been at the very start of hostilities as most of the other gunshot wounds he sustained were received at ground level when he would have been standing up
- it is possible that he was shot from a higher deck or from a helicopter once the activists and troops were engaged.

The Committee noted that the preliminary autopsy reports reveal that the victims in most cases were shot several times from a number of angles. The Committee noted a complainant’s allegation that the majority of those killed were shot in the back, when they were posing no threat to the commandos and therefore could not have been shot in self-defence. The Committee noted the autopsies show that all five victims who were shot in the back, were also shot from the front and that it is therefore not possible to conclude that they posed no threat based on the preliminary autopsy evidence alone.

The Committee noted what the UNHRC said in their report:

“The circumstances of the killing of at least six of the passengers were in a manner consistent with an extra-legal, arbitrary and summary execution. Furkan Doğan and İbrahim Bilgen were shot at near range while the victims were lying injured on the top deck. Cevdet Kiliçlar, Cengiz Akyüz, Cengiz Songür and Çetin Topçuoğlu were shot on the bridge deck while not participating in activities that represented a threat to any Israeli soldier.”

The Committee noted that the Israeli authorities refused to talk to the UNHRC Mission. The Committee noted that in an unbroadcast section of his interview with Panorama, the retired Major General conducting Israel’s military inquiry insisted all those killed were shot in self-defence.

The Committee noted the allegation in the appeal that Panorama should have challenged the Major General with “hard evidence and referred to the autopsy reports”. The
Editorial Standards Findings/ Panorama: Death in the Med

Committee noted this unbroadcast section from Panorama’s interview with the retired Major General:

Interviewer: We know from the Turkish forensic evidence that there was almost execution style killing, that's what they say?

Giora Eiland: I fully deny these kind of words of execution. You execute someone who is passive, who cannot respond; who cannot cause any threat and this is very different from the real picture that took place.

The Committee noted that after examining video material and receiving testimonies from soldiers the Turkel Commission concluded the force used was justifiable.

88. The Committee’s Decision

The Committee felt that in the absence of clear video footage of anyone being shot material from the preliminary autopsy reports would have given a broader picture and added to the programme’s description of how the activists died.

The Committee decided the information about the volume and nature of the gunshot wounds detailed in the preliminary autopsy reports gave a fuller picture of the manner in which the Israelis killed nine people and the level of force deployed by the Israeli commandos; the inclusion of some reference to the preliminary autopsy findings would have enabled the programme to achieve due accuracy as required by the Editorial Guidelines.

The Committee decided that, as the preliminary autopsy reports were not mentioned in the programme, the programme lacked some relevant factual context. Therefore, the Committee concluded that the programme had not fulfilled the requirement of due accuracy in relation to Point S as all relevant facts and information were not weighed to get at the truth.

However, the Committee decided that the preliminary autopsy reports did not on their own bring certainty to the most controversial allegations: when live fire started, whether there was live fire from helicopters, whether any of the victims were “executed” and whether Israel’s claims of self-defence are valid. As a result, the Committee did not consider that the preliminary autopsy reports contained material facts which had to be weighed to achieve due impartiality. The Committee concluded that the programme was duly impartial in relation to Point S.

Finding: Upheld on accuracy. Not Upheld on impartiality

Point T - regarding the allegation that it was inaccurate to say people were thrown overboard

89. Relevant Script

The Committee noted the script relevant to Point T:
Commando:  
Several of our commandos got taken. We saw people being thrown overboard.

(video shows IDF infra-red footage of a soldier being thrown over the railings of one deck and landing on the deck below)

Later in the programme:

Captain R:  
They caught me by the arms and legs to throw me to the deck below. I fought back wildly and caught hold of the side. They beat my hands with clubs and I fell.

90. Allegation

The Committee noted the complainant’s allegation:

"Three injured commandos were thrown from the upper deck onto the captain’s deck. However despite allegations from both sides nobody was actually thrown overboard. Some militants had tried to throw a commando into the sea but had been restrained by other passengers, while two soldiers had later jumped overboard voluntarily.

"I think there is an important distinction here. Dropping a person approximately three metres onto a deck is a violent assault, but it has much less serious implications than throwing an injured person 12 metres into the sea at night more than 70 miles from land."

91. BBC Response

The Committee noted the ECU’s finding at Stage 2:

"The accompanying footage clearly showed a person being thrown over the railings and falling to the deck below. I think this is an occasion when viewers would have understood that the commando was recounting his personal experience of what happened, which included his colleagues being taken, some being hit and some being thrown overboard. It may be that events did not occur precisely as he described them (in that at least one commando was thrown over the deck railings but not off the ship), but I do not believe this would have given a materially misleading impression to the audience. I think viewers understand that contributors express their own opinions and there is no requirement for programme-makers to challenge or correct such opinions on every occasion."

"The programme did clarify that one commando was thrown down to a lower deck and two commandos jumped off the ship and so I think this would have further guarded against any potentially misleading impression."

92. The Committee’s Decision

The Committee accepted there was no evidence that any commando was thrown overboard into the sea. However, it was not contained in commentary, but in a comment clearly attributed to an Israeli commando. The issue for the Committee in considering whether it was duly accurate was what impression a viewer would have formed.
The Committee considered that as the statement was made unchallenged at the top of the programme it carried a particular potency and therefore placed a particular responsibility on the programme-maker to ensure it was duly accurate. Had it been made in the context of the narrative the viewer would have been more easily able to appreciate that the commando was stating what he was seeing from his viewpoint.

However, the Committee also considered that the footage accompanying the commando’s statement clearly showed a soldier being thrown from one deck to a lower deck, but not into the sea and that it was likely therefore that the viewer would assume this was the incident the commando was describing. The Committee also considered the possibility that in relation to the possible harm to the commando it was potentially as dangerous for him to be thrown onto a hard surface, even one only a few metres down, as into the sea.

The Committee decided that the audience would have understood the commando was stating what he thought was happening from where he was standing and that the pictures used by the programme at this point gave the audience more information as to what actually happened. The Committee further decided that the Captain’s testimony later in the programme reinforced the impression that overboard in this context meant to the deck below. The Committee therefore decided the programme had fulfilled the requirement for due accuracy and accordingly no breach of the Editorial Guidelines had occurred.

**Finding: Not Upheld**

**Point U - regarding the allegation that a still picture of a knife being held near Captain R was misleading: it was his own knife**

93. Allegation

The Committee noted that there were complaints about a still frame:

“A still photograph is featured showing the captain (commando) after he has been taken below deck, but before he had arrived in the medical area where he was seen by a doctor and given first aid. The picture zoomed in on a knife being held near the soldier and the shot was held for three seconds. The implication was that the soldier was at risk or being threatened by the knife.”

“In reality the knife was part of the commando’s own equipment. Before being taken below all three captives had all their weapons and equipment removed. The knife is clean and has not been used and in the picture it is being held between thumb and index finger and is pointing down. That is to say it is not being held in a threatening posture, it has simply been taken away from the commando for safety.”

“The programme did not make the situation clear, and by deliberately focusing on the knife without explaining who it belonged to it created a false impression of a physical threat to the commando.”

94. Consideration

The Committee noted that Panorama did indeed choose to zoom in on the knife as the complainant alleges, but that, as the complainant says, the knife is clean and is pointing down, and is not being held in a threatening manner. The Committee noted that the sound over the picture is of Captain R relating what happened when he felt himself being
The Committee noted that Captain R was stabbed with a knife and it is possible that Panorama chose to focus in on the wrong knife. The Committee decided that even if it was the wrong knife, the audience would not have been misled. The Committee decided it made no difference to its understanding of what happened to Captain R that a knife was featured in the still photograph, which may not have been the knife used. The Committee noted that a complainant says the image:

“created a false impression of a physical threat to the commando”.

But the Committee decided that at the time the picture was taken, the commando remained in some danger, according to the contribution from Murat Akinan, the activist who was protecting him. The Committee concluded that as Captain R had been stabbed by a knife, was still a prisoner and was, or felt himself to be, still in genuine danger the focus on the knife would not change the viewer’s perception of the threat faced by Captain R.

Therefore, the Committee concluded that there was no breach of the Editorial Guidelines on accuracy.

**Finding: Not Upheld**

**Point V - regarding the allegation that it was inaccurate to state “all three Israeli commandos were rescued”**

The Committee noted the relevant script for Point V:

**Captain R:** I realised there were two opposing forces there – one that wanted to kill us and more moderate people. They tried to pull away those trying to escalate the situation and finish us off.

**Commentary:** Then Captain “R” was taken back upstairs. He didn’t know if he was a hostage or what would happen to him.

**Captain R:** The moment we got on deck we heard a shot – from an Israeli stun gun. They hit my guard and he ran back inside. Me and another soldier found ourselves alone and we just jumped off the bow into the water.

**Commentary:** All three Israeli commandos were rescued.

The Committee noted that the complainant was one of the passengers on the Mavi Marmara:
“Our voluntary release of the soldiers took place in front of dozens if not hundreds of passengers ... I ... know the guard who was with the soldiers. What happened is that it was decided to release the commandos captured, and they were taken out to the soldiers who were waiting outside the cabin doors. They were handed over there, plain and simple. There was no shooting by an Israeli stun gun, no running of the guard back inside, no soldiers jumping into the water, etc... But even if we look at this narrative, it falls flat on its face. There were three soldiers. Let us assume that the Israeli narrative is true, and let us assume that the dot(s) that we may or may not see in the 11-second grainy black and white footage released by the Israeli military are indeed 2 soldiers who jumped into the water, where is the third Israeli soldier in our custody? Rescued as well?”

98. BBC Response

The Committee noted the ECU’s comments at Stage 2:

“I cannot agree that the programme was materially misleading. The programme explained that some activists offered medical assistance to the commandos and stopped others from assaulting them. Murat Akinan said: “I calmed them down saying that according to our religious beliefs we ought to treat them and take them back”. This would have ensured that viewers understood that some activists were committed to helping injured commandos.” [The ECU then recount the sequence of events as per the script above]...

“(the reporter) then said “all three commandos were rescued” over black and white Israeli military footage of commandos in the water being picked up by a navy boat. I therefore think that at least one reasonable interpretation of what (the reporter) said was that the commandos were rescued from the water by colleagues.”

99. Consideration

The Committee noted the following section from the unbroadcast rushes of the Panorama interview with the former US marine, Ken O’Keefe in which he states:

“the sensible decision was made, which some probably did disagree with to release these commandos... They were released and ultimately they were able to regroup with their fellow soldiers”

The Committee noted a report on the IHH website which stated that the wounded Israeli soldiers were handed over in the hope that the Israelis would stop shooting:

“One or two of the participants and a doctor hand over the three wounded soldiers. After taking the soldiers the Israeli soldiers opened fire on the people who had handed them over, shooting the doctor who had provided the soldiers with first aid in the arm.”

The Committee noted a section from the unbroadcast rushes of the Panorama interview with Captain R in which he states in detail why he was not clear what was going to happen to him, so corroborating the commentary in the programme.

“From there at some point they just started taking us – not up, it was simply that they took us along the – along the hall lengthwise, into some corridor, and the entire corridor is filled with hundreds of people, while we are going according to the order – the order of movement (progress) of the three of us – while the
people are... grasping us. As to me, the one who was guarding me – he was replaced with someone – another terrorist, who along the entire time that we are moving towards the front of the ship – towards the bow – throughout this entire time he was whispering to me, in my ear, all sorts of things in Arabic, 'Allah WuAkbar' and all sorts of things of that kind and the other, and during this entire time he was trying to strangle me. The whole time he is pressing on my throat and I am about to lose my air in a second – I give a shout – and someone else comes and pulls him <away>, But he makes his way back to me – several times over – until the moment when... up to the moment that we get to the end of the hall, they come to sit us down on some sort of armchairs, that were at the very front of the ship. At this point they take one of the fighters outside, and then I follow (am led out) right after him...”

The Committee noted that video footage released by the Israelis shows what they claim to be the release of the three soldiers, including a shot of the injured soldier left on the bow to be “rescued” by his colleagues after the other two soldiers jumped in the water.

The Committee noted that Israel’s Turkel Commission included detailed extracts from the testimonies of all the soldiers who had been held below decks, from soldiers who were on the Morena speedboats and also from the soldiers who shot at the IHH activists who were with them on the bow of the ship. The Committee noted that some of their statements corroborate the claim that warning shots were fired at the activists who were with the wounded commandos, and also to the fact that two jumped into the sea and were rescued by the speedboats (they were rescued also in the sense that it was claimed one of them was too weak from his injuries to board the boat without help), and that a third was left on the bow, semi-conscious and was spotted by fellow commandos and then “rescued”.

100. The Committee’s Decision

The Committee decided it was clear from the context that “rescued” meant rescued from the water. That applied to two of the commandos; the third was “rescued” from the deck.

The Committee decided there was evidence from both activists and from the Israeli testimony corroborating Captain R’s statement in the programme that one of those holding him captive was hit.

The Committee decided that the commentary had appropriately reflected the comments made by Captain R in the interview.

The Committee therefore decided that this section of the programme was duly accurate.

The Committee then considered whether in order to achieve due impartiality the programme should have reflected the possibility that the commandos were being released by the activists and that not to do so unfairly favoured the Israeli viewpoint. The Committee accepted that there was well-sourced and corroborated evidence that the activists were voluntarily taking the commandos upstairs to be released.

The consideration was whether an unfair impression of the activists’ intention resulted from the omission of the information. The Committee decided that the programme had made it clear that there were two opposing factions and that some of the activists had protected the commandos in their custody. The Committee concluded that the sequence clearly reflected both perspectives and that due impartiality had been observed.

**Finding: Not Upheld**
Point W - regarding the allegation that it is inaccurate to refer to paintball and stun guns as “non-lethal weapons”; the correct term is “less-lethal weapons”

101. Relevant Script

The Committee noted that the relevant script was as follows:

Commentary: The first helicopter hovered over the top deck of the ship – the commandos inside were armed with non-lethal weapons, paintball and stun guns. But each man also had a pistol.

102. Allegation

The Committee noted that a complainant thought it:

“incorrect to refer to paintball and stun guns as ‘non-lethal weapons’. These are correctly termed ‘less-lethal weapons’ as there are recorded deaths associated with the use of both types of weapon. During this raid Ibrahim Bilgen was seriously injured, perhaps mortally so, by a soft baton charge fired at close range at his head.”

103. Consideration

The Committee noted that the editorial adviser’s research suggests that "non-lethal weapons" has traditionally been the preferred terminology in a military context. NATO defined them in a press statement released in 1999:

“Non-Lethal Weapons are weapons which are explicitly designed and developed to incapacitate or repel personnel, with a low probability of fatality or permanent injury, or to disable equipment, with minimal undesired damage or impact on the environment...

“Non-Lethal Weapons shall not be required to have zero probability of causing fatalities or permanent injuries. However, while complete avoidance of these effects is not guaranteed or expected, Non-Lethal Weapons should significantly reduce such effects when compared with the employment of conventional lethal weapons under the same circumstances.”

The Committee noted that an information sheet issued by the European Working Group on Non-Lethal Weapons in April 2010 cites the NATO definition from 1999.

The Committee noted that the term “less-lethal” appears primarily to be used by police forces in relation to riot control. However, it is the term preferred and used by the IDF, and is the term used in the written rules of engagement for the operation to take control of the vessels in the flotilla. Hence, throughout the Turkel Commission report the commentary refers to “less-lethal weapons”.

The Committee noted a website wordiq.com explained the debate:

"Because different parts of the body differ in vulnerability, and because people vary in weight and fitness, any weapon powerful enough to incapacitate is likely to be capable of killing under certain circumstances. Thus ‘non-lethal force’ may have some risk of causing death: in this context ‘non-lethal’ only means ‘not intended’ to
"kill’. For this reason, two new terms, ‘less than lethal’ and particularly ‘less-lethal’, were coined and are now being used in place of "non-lethal" by many weapons manufacturers and law enforcement agencies (and even those who oppose their common use in riot control).”

The Committee noted that many passengers on the Mavi Marmara were hit and injured by the “non-lethal” weapons described in the programme. All the fatalities were the result of wounds from live ammunition, with the exception of Ibrahim Bilgen. The preliminary autopsy concludes that the head wound sustained by Mr Bilgen from a bean bag loaded with pellets entering his skull would have killed him, regardless of the other gunshot wounds he received from live ammunition.

104. The Committee’s Decision

The Committee decided that although “less-lethal” may be the more strictly accurate term in the sense that it better describes the capabilities of such weapons, the term has not yet found its way into common usage in the UK. The Committee decided that, just as a “lethal weapon” does not always kill, so the effects of a non- or less- lethal weapon may be lethal. The accepted definition of “non-lethal” includes the possibility that the effects can sometimes be lethal.

The Committee decided that the term was accurately used in this context and that it was well sourced, based on sound evidence and presented in clear, precise language. The Committee acknowledged that “non-lethal” and “less-lethal” may be words in transition and that the BBC might want to consider their use in future broadcasts.

Therefore the Committee decided that the Editorial Guidelines on accuracy had not been breached.

Finding: Not Upheld

Point X - regarding the allegation that the programme reported that axes and chainsaws were used by the activists but there was no evidence to support this

105. Relevant Script

The Committee noted the relevant script for Point X:

Lieutenant ‘A’: They carried metal rods and chainsaws, they carried knives and axes and they used all of them.

Lieutenant ‘A’: We came close. We put our ladder up to the side of the ship. A man with a chainsaw cut the ladder off. And they were banging on the railing and they were throwing at us stones, and I don't know junk that they had already on the ship. Several soldiers got hurt from that.

106. Allegation

The Committee noted the detail of the complainant’s allegation:
"To the best of my knowledge there were no chainsaws anywhere on the ship, and no evidence was produced to support the claim that fire axes were ever used as weapons. Angle grinders were on board and were used to cut the scaling ladders used by commandos trying to board from the zodiacs. There is no evidence that they were ever used to attack soldiers and this is almost certainly false. This statement exaggerates the violence used by militants, and gives it quite a frightening aspect…"

"I do not understand how the audience was supposed to know that axes and chainsaws were not used if the programme-makers did not clarify this. I accept... that every point does not have to be directly balanced by a contrasting opinion. However I believe the programme-makers are ultimately responsible for seeing that erroneous statements are corrected so that their audience is given a true account."

107. BBC Response

The Committee noted the programme’s response:

"We set this up in the context that the programme would seek to uncover what ‘really’ happened... As we subsequently go through each section of the night we use other sources and video to illustrate what we think really happened... It is clear that the activists did have staves, chains, bars and knives, all of which we show and describe later in the film."

The Committee noted the ECU’s comments at Stage 2:

"It is reasonable to allow contributors to put forward their point of view and I think the audience would have understood in this case that the commando was recounting his version of events, based on his personal experience.

“They would therefore have judged his comments accordingly (just as they would have judged other comments made by activists). The programme did not present his comments as factually accurate or endorse what he said and so I do not believe the commando’s comments would have misled the audience.”

108. Consideration

The Committee noted that while there was no evidence that axes were deployed as weapons, the Force Commander in his testimony to the Turkel Commission stated he saw two activists wielding clubs and axes trying to prevent his men reaching the bridge. The Committee noted that other commandos testified that activists carrying axes faced them as they descended from the helicopter. The Committee noted the section of script in which Lieutenant "A" describes the angle grinder he saw as a chainsaw. An angle grinder, also known as a side or disc grinder, is a handheld power tool used for cutting, grinding and polishing.

109. The Committee’s Decision

The Committee decided that had the quote been allowed to stand without further explanation, it would have had the effect of leaving viewers with the impression that all of the items listed were used as weapons. The Committee noted that in a later clip the same commando made it clear that the item he described as a chainsaw was used to cut a ladder and not to attack a commando.
The Committee considered next that the statement was not part of the commentary, and that it was said by an Israeli commando. The Committee decided that it was clearly used, along with commentary and a soundbite reflecting the activists’ narrative, as an opening “tease” to grab audience attention. The Committee further decided that there was clear evidence that knives and iron bars had been used, and that axes may have been wielded, even if not actively used to attack people.

The Committee decided that over the course of the programme the level of violence deployed by the activists was accurately and fairly presented, and that the early contribution from the commando would have been weighed by the viewer in that context. The Committee decided that it was not a significant inaccuracy to confuse a chainsaw with an angle grinder, which the activists say was used, albeit not to attack the commandos.

The Committee found that these statements were duly accurate and impartial and so did not uphold this part of the complaint.

Finding: Not Upheld

Point Y - regarding the allegation that there were three detailed interviews with injured Israelis and only one with an activist who had been injured

110. Allegation

The Committee noted that a complainant alleged:

“The lack of impartiality in this area is ... evident in the interviewing: 50 activists and 9 IDF were injured in the fighting. (The reporter) interviewed only one out of the 50 and seemed to have chosen one who she could point out had been shot with a paint ball gun before mentioning an arm wound from live ammunition. In no case did she ask about the manner in which they had been shot. Contrast that with the interviews with 3 of the injured IDF (out of a total of 9), which give clear accounts of how they sustained their injuries.”

111. BBC Response

The Committee noted the programme’s response:

“There were a number of interviews in the film with both Israeli eye witnesses and passenger eye witnesses; both were given substantial screen time to give their account of what happened. There were four interviews with people from an Israeli viewpoint and six from the IHH/Free Gaza viewpoint. The accounts by passengers, together with footage that showed the violence and the wounds inflicted by Israeli soldiers, certainly challenged the Israeli accounts.”

And the Committee noted that the reporter added:

“During a three day trip to Turkey (and on the phone beforehand) I repeatedly requested the IHH to make available people who had been on the top deck and had been involved in or witnessed the fiercest fighting. I was told there were no such people available. There were various explanations – they were all dead or badly wounded or that Bulent Yildirim was the best person to talk to as he ‘was
everywhere and knew everything’. After interviewing Fatih and Ergun I repeated
the request and was again told there was no one else I could talk to. I later
interviewed Murat (again not on the top deck) and another man who was also on
a lower deck and whose interview we did not use.”

112. The Committee’s Decision

The Committee decided that it is the programme-makers’ choice how they reflect the
relevant issues, as long as due impartiality is achieved. The Committee noted that the
Editorial Guidelines state there is no requirement to represent every argument or to give
an equal division of time for each view. The test is whether the programme was objective
and even handed in telling the story of what happened to each side. The Committee
decided that the programme-makers had properly exercised their editorial discretion.

The Committee decided that, in totality, the programme conveyed the information on
activist casualties in an impartial manner (although the Committee had found that the
Editorial Guidelines on accuracy had been breached in relation to Point S above). The
Committee decided that this did not rely solely on what or how many interviews the
programme carried. The Committee decided that the programme had, according to the
reporter, tried to interview more of the IHH wounded but had been denied access and,
even so, had duly weighed the evidence between the two sides.

Therefore the Committee concluded that the Editorial Guidelines on impartiality had not
been breached.

Finding: Not Upheld

Point Z - regarding the allegation that no air time was given to the fears of the
passengers on the Mavi Marmara

113. Allegation

The Committee noted the complaint that:

“No air time was given to the fears of the passengers on board the Mavi Marmara
of their likely fate at the hands of Israeli commandos, especially after the dead
and wounded were carried down into the hold of the ship – only what the Israeli
commandos apparently thought.”

114. BBC Response

The Committee noted that the ECU cited the occasions where activists are heard reacting
to the Israeli assault and images. This included Ken O’Keefe describing the chaotic
situation with “grieving women lying over the bodies of men”, Fatih Kavakdan describing
the panic below decks and Lubna Masarwa of the Free Gaza Movement who said:

“We saw many Israeli vessels full of dozens of soldiers very close to the ship
helicopters up and gas bombs and sound bombs start to be thrown from
everywhere”

and
“I was scared and really scared when I saw the blood and I don’t want anyone to die but there is no resistance, there is no freedom without paying a price.”

115. Consideration

The Committee noted that Point Y above contained the programme’s account of its unsuccessful attempts to secure interviews with more of those who had been close to the fighting.

The Committee noted that Ken O’Keefe relates his fears of what would have happened had he not relieved one of the commandos of his gun and disposed of it safely.

The Committee noted that there were images from below decks which reveal the tension, particularly when the injured soldiers are brought down. Murat Akinan is shown trying to protect a commando:

Murat Akinan: Understandably, having seen wounded and dead friends some people were saying “we should do to them what they did to us”. I calmed them down saying that according to our religious beliefs we ought to treat them and take them back.

The Committee noted there are also detailed accounts from the Israeli commandos of what happened to them and their fears of what might happen to them; the activist Murat Akinan also relates what he sensed the captured Israelis were thinking.

116. The Committee’s Decision

The Committee agreed that the programme has stated elsewhere its intention was to look at the story afresh, with the advantage of new material not available elsewhere and with access to the soldiers who took part in the operation, who hadn’t been heard on camera before. The Editorial Guidelines allow a programme to look at a specific aspect of an issue, so long as in doing so opposing views are not misrepresented.

The Committee decided there was no bias by omission because the audience were not given a misleading impression of the danger to the passengers. The Committee decided there were several clips from the passengers about how frightened they were and that this was sufficiently covered. There was no lack of due impartiality.

Finding: Not Upheld

Point AA - regarding the allegation that none of the Israelis interviewed were challenged about claims the activists were terrorists

117. Relevant Script

The Committee noted that the relevant script for point AA was as follows:

Presenter: Now Israel say they were terrorists but Turkey insists they were innocent victims...

Sergeant Y: These people came as peace activists. And now we’re facing them as terrorists...
Interviewer: But they were civilians...

Sergeant Y: They were not. They may be a civilian Turkish people but they were terrorists plain and simple. They tried to attack us; they tried to kill each and every single one of us.

118. Allegation

The Committee noted the complainants alleged:

“The failure of the interviewer to challenge this... creates an atmosphere where the Israeli narrative is offered uncritically for the viewers’ consumption.”

“Israel is fond of calling anyone who disagrees with it a terrorist. But balance cannot be created by counting the number of times that the passengers were called terrorists by Israelis and subtracting the number of times that the commentator says that perhaps they were not. The fundamental point is that there was no evidence to support the Israeli accusation; yet again the Panorama team reported unsupported assertions without corroboration.”

“Surely the fact there was clearly not any evidence to justify the detention of those who survived the attack proves that they were not, in fact, terrorists and is therefore information that viewers should have been given?”

119. BBC Response

The Committee noted the programme response:

“Each use of the word is clearly attributed. In the introduction to the programme (the presenter) stated there are two views as to the nature of some of the activists:

‘Israel says they were terrorists. Turkey insists they were innocent victims.’

“When we return to the commando’s allegation that they were “terrorists”, (the reporter) challenges the Israeli commando:

‘But they were civilians...’

The Committee noted that the ECU added:

“I think it is reasonable for programmes to allow contributors to put forward their views and indeed, the Editorial Guidelines on Accuracy make it clear that if an issue is controversial, relevant opinions as well as facts may need to be considered. I think most regular viewers of a current affairs programme such as Panorama are aware that contributors will express a personal point of view and therefore judge such comments accordingly.

“I therefore cannot agree that viewers would have been misled; it was clear that the Israelis were accusing some activists of being terrorists. (The reporter) offered an alternative view on this point. Viewers would have been able to draw their own conclusions as to the veracity of the Israeli claim.”

120. Consideration
The Committee noted that Point H discussed whether it was reasonable for the programme to report the allegation that the IHH has links to terrorist groups. This complaint is not about the IHH organisation but about the passengers on board the Mavi Marmara and how the programme allowed Israeli contributors to describe those who they say confronted them. The Committee noted that one of the complainants argues:

"The fundamental point is that there was no evidence to support the Israeli accusation."

The Committee noted that there is indeed no evidence that any of the nine who died had been involved in terrorist activity. But the Committee noted it is known that one passenger on the Mavi Marmara, who was injured in the confrontation, had served a prison sentence for his involvement in a hijacking of a Russian passenger ferry. The Committee noted that Israel has alleged that 50 individuals who were on the Mavi Marmara have connections to what it describes as "global jihad-affiliated terrorist organizations".

The Committee noted that on two of the three occasions in the programme in which the terrorist label is used, it is by Sergeant Y. Both occasions are from the same section of the interview, but were used at separate points in the programme. The relevant section of the unedited transcript:

Sergeant Y: ...it was crazy, because these people came as peace activists.

And now we’re facing them as terrorists and it was...

Interviewer: They were civilians

Sergeant Y: They were not. They may be civilian Turkish people, but they were terrorists, plain and simple. They tried to attack us, they tried to kill each and every single one of us. And we were just defending our lives... There were 700 people on that boat, OK. And only nine of them were killed. OK? Nine terrorists that came to kill Israeli commanders and Navy soldiers.... People that were killed... those are terrorists that the soldier who killed that was in a life threatening situation.

The Committee noted that in the testimony from the Commander of the Takeover Force to the Turkel Commission he states:

"As far as I am concerned terrorists are an armed group dressed for battle – protective vests, masks and facial covers."

The Committee noted that in testimonies to the Turkel Commission, soldiers say that a number of the men on board were dressed and equipped in a particular manner and that is what separated those who violently resisted the takeover from the rest of the passengers.

121. The Committee’s Decision

The Committee noted that the programme does not use the label “terrorist” itself without attribution and the attribution is clear as the Editorial Guidelines require. The Committee decided that the programme complied with the Editorial Guidelines by making a direct challenge to the contributor expressing the contentious view.
The Committee decided that those labelled by Israelis as terrorists are heard and seen throughout the programme and the audience would be able to make a judgement based on more than the personal point of view of the Israeli contributors. The Committee decided that the context in which the Israeli commando describes those who were attacking him as terrorists clearly relates to the threat he felt he was facing at the time, rather than any specific knowledge of his attackers’ backgrounds.

The Committee decided that the programme was not obligated to exclude the allegation – given it was clearly attributed and challenged by the programme.

The Committee decided that the programme had not breached the applicable Editorial Guidelines on accuracy and had not misled the audience.

Finding: Not Upheld

Point AB – regarding the allegation that the programme used an audio recording which the Israelis admit had been doctored; the impression left by the script was that the programme accepted the Israeli version of events

122. Relevant Script

The Committee noted that the relevant script for point AB was as follows:

Commentary: The Israelis released what they said was the radio response from the flotilla. Part of it was defiant and abusive.

Israel Military Recording: Shut up – go back to Auschwitz... We’re helping Arabs going against the US. Don’t forget 9/11 guys...

Commentary: The recording’s authenticity has provoked controversy. The flotilla’s organisers insist they did not hear these comments being made.

For the Israelis it was a warning sign things wouldn’t go that smoothly.

123. Context

The Committee noted that on 31 May 2010, (less than 24 hours after the Mavi Marmara was boarded by Israeli commandos) the IDF released 1’05” of video footage in which an Israeli naval officer is heard and seen issuing a warning to the Mavi Marmara not to enter the area under Israeli blockade; the abusive comments above do not feature in the footage.

The Committee noted that on 4 June 2010 the IDF released a 27” audio recording of what it said was a radio transmission between the Israeli Navy and the flotilla in which unidentified voices are heard making the anti-Semitic comments featured above. The picture accompanying the audio was a freeze frame image from the 31 May video. The subtitled audio was new material of the same officer speaking to another ship in the flotilla, the Defne Y.
The Committee noted that on 5 June 2010, after questions were raised as to the authenticity of the 4 June recording, the IDF released what it said was a clarification/correction:

"The audio was edited down to cut out periods of silence over the radio as well as incomprehensible comments so as to make it easier for people to listen to the exchange. We have now uploaded the entire segment of 5 minutes and 58 seconds in which the exchange took place and the comments were made.

"This transmission had originally cited the Mavi Marmara ship as being the source of these remarks, however, due to an open channel, the specific ship or ships in the ‘Freedom Flotilla’ responding to the Israeli Navy could not be identified."

124. Allegation

The Committee noted the complainants said:

"(The reporter) stated that the comments were controversial. She did not accurately state that the flotilla organisers deny that they were ever made, merely that they had not heard them."

"The voice in the recording was of someone apparently from around mid-America, cowboy country... despite admitting that the Israelis had given up trying to pass this off as genuine, (the reporter) goes on to say, 'For the Israelis it was a warning sign things wouldn’t go that smoothly'. If we accept that the recording was a fake, we cannot in the same breath allege that it would have been perceived as a warning."

"This (the commentary) is tacit acceptance of the Israeli story ... since this could only be a warning to the Israelis if the transmission had been made. This in turn reflects a bias in ... reporting."

125. BBC Response

The Committee noted that the programme responded:

"The IDF stand by the actual verbal content of the tape.

"The script accurately reflected what the Israeli’s had released in the statement:

‘The Israelis released what they said was the radio response from the flotilla. Part of it was defiant and abusive.’

"We accept that there is controversy surrounding these tapes and therefore we clearly pointed this out:

‘The recording’s authenticity has provoked controversy. The flotilla’s organisers insist they did not hear these comments being made.’

"The press release issued by the Free Gaza Movement at the time – June 6 2010, said:

‘According to our Captain of Challenger 1, Denis Healey, a man with 25 years of experience on the sea, there would be no way that anyone could
communicate with each other without the entire fleet hearing the exchange... “there was no exchange like this by anyone on any boat during the entire time I was piloting the boat” said Denis.’

“The programme script accurately reflected the FGM’s (Free Gaza Movement) denial.

“We were told by the Israelis that the range of the radio/audio meant that it came from the flotilla. They could not confirm from which ship but were clear it came from somewhere in the flotilla.”

The Committee noted the ECU’s response:

“(the reporter) assured me that she was conscious of the general tenor of what the Free Gaza Movement and other activists were saying about the VHF recording and as a result of her research and interviews (both on and off the record) concluded that the debate centred around the question of whether activists would have heard the comments. This seems to me reasonable since it is possible that the comments could have been made from a VHF transmitter and not been picked up by some of the other craft in the area.

“I don’t accept that the wording used by (the reporter) gave the impression she tacitly agreed with the IDF version that the comments were genuine. Her comment could, I suggest, equally be seen as a straightforward summary of what the Israelis said to her to support their view that the activists intended to provoke a confrontation with Israel.”

126. Consideration

The Committee considered three separate issues:

- Did the programme use material that the IDF had admitted was doctored without telling the audience?
- Should the script have stated that the organisers deny the statements were made?
- Did the wording in the script suggest the programme’s “tacit acceptance” of the recording’s authenticity?

The Committee noted that the first issue relates to some confusion as to which audio recording the clarification on 5 June related. The IDF website states the 5 June clarification was to the release of the 4 June recording, and was unrelated to the 31 May release. As the quote from the IDF website demonstrates, the IDF did not “admit” the 4 June release had been doctored; the clarification explained it had been edited for clarity.

The Committee noted that the discussion about this tape has focussed on the activists’ denial that the comments were ever made. The activists base their certainty that it is a fraud on the claim that the voices did not match those of any of the Captains (and it was only they and Huwaid Arraf, Chair of the Free Gaza Movement) who had access to the radios), and that no-one heard the comments.

The Committee noted that (if it is accepted the comments were made) it is not known from which ship the comments originated, and the ECU argues that it is possible that
comments made from one transmitter would not necessarily be picked up by all the craft in the flotilla. The ECU concluded therefore that the programme accurately reported that the organisers insist they did not hear the comments because it was not possible for the organisers to state with certainty that the comments were not made.

127. The Committee’s Decision

The Committee considered whether the BBC had complied with the Editorial Guidelines on accuracy. The Editorial Guidelines note that accuracy "is often more than a question of getting the facts right". The Guidelines include the statement that “All the relevant facts and information should be weighed to get at the truth”. In addition, if an issue is controversial, the Guidelines say relevant opinions as well as facts may need to be considered.

The Committee decided the programme accurately reflected the content of the audio recording. The Committee did not accept the complainants’ argument that the audio recording had been proven to be fake, neither did the Committee find any evidence that Israel had said it was. The Committee considered that the programme had taken care to reflect fairly that which it could corroborate, i.e. that the flotilla organisers claim they did not hear the statements being made. The Committee decided the evidential base for the claim that the recording was a fake was not so strong that it obliged the programme to report that allegation too. The Committee considered the programme achieved due impartiality and due accuracy in stating the “recording’s authenticity has provoked controversy”.

Next the Committee considered whether, despite reporting the organisers’ denial that the comments were made and also reflecting that the authenticity had provoked controversy, the sentence below nevertheless implied the programme accepted the recording was genuine:

“For the Israelis it was a warning sign things wouldn’t go that smoothly.”

The Committee noted that the programme had made it clear that there was more than one view as to whether the radio transmission had been made. The programme-makers explained the Israeli point of view (i.e. that the audio recording was a radio response from the flotilla) and also the view of the flotilla’s organisers (i.e. that they did not hear the comments in the audio recording being made). As mentioned above, the programme specifically stated that the recording’s authenticity provoked controversy.

The Committee acknowledged a complainant’s argument that the statement “For the Israelis it was a warning sign things wouldn’t go that smoothly” was a tacit acceptance of the Israeli story. However, the Committee decided that this statement could also be interpreted as a summary of the Israeli position as described to the reporter rather than a tacit acceptance of the Israeli story. The Committee noted that the issue of whether or not the audio recording was a radio response from the flotilla was a controversial issue. The Committee concluded that Panorama had weighed the information and opinions available to them and had scripted accordingly. As a result, the Committee concluded that this was duly accurate based on the available information and opinions.

The Committee then tested the same sentence for impartiality. The Committee decided that the programme presented both the views of the Israelis and the views of the flotilla’s organisers regarding the authenticity of the audio recording. The Committee decided that the viewer would have understood from the section overall: that the Israelis claimed that the audio recording came from the flotilla; that the flotilla organisers denied hearing the
comments in the audio recording being made; and that whether or not the audio recording was actually a radio response from the flotilla is disputed.

The Committee concluded that the overall treatment of this issue was duly accurate and duly impartial. Nevertheless, the Committee agreed that programme-makers should be reminded that when an issue is in dispute, it is extremely important in scripting to minimise the possibility of some viewers concluding that the programme has accepted a particular point of view.

**Finding: Not Upheld**

**Point AC** - regarding the allegation that the programme created the impression that the Israelis had handed over all the footage to Panorama, it did not explain that the Israelis confiscated all recordings made by activists and selectively chose what to release

128. Context

The Committee noted that the Israelis attempted to cut all satellite communications to and from the flotilla about half an hour before the attack, but a broadcast link continued to operate, feeding pictures and live two-ways to the outside world.

The Committee noted the first news and pictures of the Israeli attack were transmitted on that satellite feed from the ship, which at that point was under the control of the activists. The Committee noted that this material consisted of a series of live two-ways with various reporters and their TV networks, interspersed with some video material. The images show the Morena speedboats, the first helicopter landing commandos and images of some of the first wounded being carried downstairs. Some individual gunshots can be heard at points. The Committee noted that the live feed appears to have stopped shortly after a reporter from Al Jazeera said the white flag had been raised and the passengers had all been told to go inside by the organisers.

The Committee noted that after the Israelis took control of the ship, they confiscated passengers’ property, including video and still cameras, mobile phones and laptops. They also took the cctv recordings from cameras on the ship.

The Committee noted that the next images were released by the Israelis within hours. Mostly they were from their own cameras, but there was also some of the cctv footage and also some IHH material.

The Committee noted that for about 72 hours, while the passengers were held by Israel, Israel’s version of events dominated the headlines.

Then the Committee noted that, after they were released from detention, many passengers and media on board gave press conferences and interviews in Istanbul and elsewhere. In addition, a number of passengers had managed to smuggle at least some of their material out. The Committee noted that Israel still holds both confiscated and Israeli material which has not been released.

129. Relevant Script

The Committee noted the relevant script is as follows:

**Commentary:** We’ve got hold of new Israeli military video of the operation.
Caption “Military Footage”

Commentary: And cctv and other pictures from the ship, some seized by the Israelis, others given to us by those on board.

Caption “Ship Footage”

Commentary: There were TV reporters and a camera team from a group called Cultures of Resistance, making a film. Their footage is key to understanding what really happened.

Interviewer: You said that if they the Israelis board the ship we will throw them into the sea – isn’t that a provocation saying that to your followers on the ship? (showing video images)

Bulent Yildirim, Head IHH: I spoke correctly there – I spoke beautifully – I watched it again afterwards. Israel stole these images from us but we’re not denying it...

130. Allegation

The Committee noted that complainants said:

“The Israelis confiscated all footage that they could get their hands on... It was critical that the programme explain that the Israelis confiscated all the footage and challenge the Israelis on this, because the footage shows what really happened that night (which the programme claims it wanted to do)... yet the programme failed to do so and this affected the programme’s credibility, accuracy and impartiality.”

“We’ve got hold of new Israeli military video of the operation’ seems a phrasing designed to disguise the fact that it was footage released by the Israelis.”

“(The reporter) made no reference to the fact that there is no footage showing activists actually being shot; such footage must have been filmed but she makes no reference to its absence and therefore does not have to draw our attention to the likely explanation: that the Israelis refused to release it to her.”

“The programme never made any reference to the Israeli seizure of all photographic, computer, audio and written records, nor did it explain that journalists were held incommunicado for 72 hours while the story broke worldwide. Nothing was said about communications to the ship being cut before the raid in order to prevent the story being broadcast live on world news media. It is ironic that a major news outlet such as the BBC would overlook this deliberate attempt to stifle all press reports of human rights abuses that occurred during the raid and it was misleading for the programme to overlook and suppress this part of the story.”

The Committee noted one complainant’s allegation that the programme should have stated that Israel “stole” material from the passengers rather than saying it “seized” material.
131. BBC Response

The Committee noted the programme’s response:

“The footage that was used in our programme came from a variety of sources. Most of the non IDF military (black and white) footage came direct either from the IHH or an independent film maker ‘Cultures of Resistance’ or from other activists onboard the Mavi Marmara... None of the footage was controlled by the Israelis in any way.

“We were entirely honest about the source of the footage we obtained:

‘We’ve got hold of... cctv and other pictures from the ship, some seized by the Israelis, others given to us by those on board.’

“This makes it clear that only some of the pictures we showed were seized by the Israelis, the rest was given to us freely by passengers.”

The Committee noted the ECU’s response:

“I accept that the Israelis may have controlled the release of some of the footage that was seized from the activists but I don’t think it follows that this led to a lack of due impartiality in the programme. The programme-makers have assured me that they saw unedited footage from two separate Israeli cameras covering the entire period of the operation to board the Mavi Marmara and were given free access to all that footage and all the CCTV footage from the ship.”

132. Consideration

The Committee noted that the media who were on board the ship say they have yet to have their material or their equipment returned. The Committee noted that it is not known if any material incriminating to Israel or which might contradict Israel’s version of events has been held out of the public domain by the Israeli Government. The Committee further noted that the editorial adviser was not aware of a specific allegation by any passenger that material confiscated from them would have shed new light on the sequence of events.

The Committee noted the complainant’s suggestion above that the Israeli material had to have been censored otherwise there would have been images showing activists actually being shot. In addition to viewing the programme, the Committee reviewed for the Consolidated Appeal a compilation of screenshots from the programme which depict Israeli commandos brandishing weapons. The first clearly shows one to be holding a paint ball gun and the other possibly a pistol. This was from footage supplied by Israel. Shortly afterwards, Israeli-supplied footage clearly shows an Israeli soldier firing a weapon; the image is circled and the sound of a gun being fired is heard. The third and fourth images seen by the Committee were colour screenshots of two Israeli commandos with weapons aimed from cctv footage which was released by the Israelis. The Committee was also reminded of the ten second sequence which follows of black and white Israeli footage showing commandos on the top deck fighting and firing at activists. Gunfire can be heard. The script line says:

“They fought their way forward along the sides of the ship.”
The Committee noted the absence of a large quantity of clear close-up material of the confrontation. All the Israeli footage of action on the decks is shot from a distance using infra-red cameras, giving it a surreal black and white texture; it is not easy to tell which side is which, nor who is attacking who and with what consequences. The cctv footage is obviously taken only from positions where cameras were sited: as there was no camera operator, the footage taken by the camera is effectively random. And it is clear from the footage that was smuggled out (particularly the Cultures of Resistance material) and the off-air recordings of the live news satellite feed that most of the media were not on the deck where the majority of the fighting took place and where most of the fatalities occurred.

The Committee noted that one of the last fatalities was Cevdet Kiliclar, a photographer employed by the IHH. Witnesses say he was shot while attempting to photograph soldiers on the top deck. It is not known what happened to any of the images he might have taken before he fell.

The Committee noted that Israel’s Turkel Commission report reveals the existence of many more hours of video material than has so far been released into the public domain. In the introduction to the Turkel Commission report, the commentary notes:

“The Commission received... documentary material that directly documented the events that occurred on the flotilla vessels, and the manner in which the flotilla participants were treated after IDF servicemen took control of the vessels, which have a very high level of credibility. Thus, for example, the Commission received thousands of video and audio clips containing hundreds of hours of audio and video recordings, which were assembled from various sources. IDF authorities submitted to the Commission material from a variety of sources, including video recordings from the security cameras on the Mavi Marmara, the results of recordings made by various video devices, video recordings that were made by cameras installed in the helmets of the IDF combat personnel who operated on the Mavi Marmara, recordings of radio reports during the incident and photographs and video recordings that were made by participants in the flotilla when they were on board the Mavi Marmara, by personnel from the IDF spokesperson's unit, etc.”

The Committee noted that a later section of the Turkel Commission report discusses the legality of the use of force by IDF soldiers:

“On several occasions, the Commission asked the IDF whether all of the media that was seized had been furnished to the Commission. On December 23, 2010, the Commission received the response that all of the magnetic media that had been collected on the Mavi Marmara and which was technically sound had been examined by the IDF, and that the relevant files had been copied and given to the Commission, with the exception of one video in which IHH activists are seen beating and videotaping the soldiers who had been abducted inside the ship.

“On December 30, 2010, however, the Commission received another file of videos from the IDF authorities, containing another copy of said video, as well as five additional videos in which IHH activists are seen beating and videotaping the IDF soldiers who were abducted inside the ship, and which were not previously in the Commission's possession.

“That said, several hundreds of hours of video evidence was reviewed. Unfortunately, the vast majority of it was not helpful in resolving the incidents involving the use of force and not all of the events recorded by the magnetic
media can be matched with the soldiers’ testimonies. A number of the events documented in the magnetic media could match more than one of the events described by the soldiers, whereas, regarding other events, it is not clear whether they are in fact described in the soldiers’ testimonies. Thus, for example, after analyzing one of the videos in which a soldier is seen firing at an IHH activist armed with an iron bar who was attacking him, the Commission was unable to relate this incident to a specific event described in the soldiers’ testimonies (this incident could possibly correspond to a number of different events that were described).”

The Committee considered the following background information provided by the Turkel Commission report:

- it confirms the existence of several hundreds of hours of video evidence, far in excess of that which has so far been released
- it reveals the existence of video material showing an IDF soldier firing a weapon at a specific activist; nothing of this nature appears in any material in the public domain
- it reveals that some of the commandos had video cameras attached to their headgear; there has been no material of that nature released into the public domain
- as noted in discussion of Point Q, despite the Commission drawing the conclusion that there is reliable evidence that the activists had possession of live weapons and used them on at least two occasions, in none of the hundreds of hours of video material referred to in the Commission’s report is it mentioned that any of the images depict any activists holding or firing a lethal weapon.

133. The Committee’s Decision

The Committee considered the main issues:

- did the programme make it clear that Israel controlled a lot of the footage of the events – both its own material and the material it confiscated from those on board?
- is there evidence that the material which was available to Panorama at the time of broadcast may not have been representative of what happened and that what was consequently broadcast may not have given the audience a balanced picture?
- if so, should Panorama have reflected that fact in the way it framed the material it used?

The Committee noted that the programme stated that it received some material from the Israelis that was not filmed by them, and that it had been taken from the passengers. The Committee did not consider that the audience would have been misled into thinking that Israel had released all the material in their possession. The Committee did not think it was necessary for the programme to say the material was “stolen” rather than “seized”. The Committee considered the audience would have understood that the material was taken without the owners’ consent.
The Committee considered that as a substantial amount of footage used in the programme did not come from the Israelis and had not been censored by them in any way, the programme fulfilled the requirements in the Editorial Guidelines by labelling and explaining the provenance of the material it used. There was no evidence that the material used in the programme was unrepresentative of what had been filmed that night.

The Committee did not consider the programme omitted a material fact in not highlighting that Israel had confiscated all the material it found, nor was it a material fact (in the context of the programme) that Israel may not have released all the footage in its possession.

Therefore, the Committee concluded that there was no breach of the Editorial Guidelines on accuracy or impartiality.

**Finding: Not Upheld**

**Point AD – regarding the allegation that the programme failed to question the Israelis about the theft of cameras, video equipment, money and other possessions**

134. Allegation

The Committee noted that a complainant alleges:

“The ECU defends this as a ‘legitimate editorial decision’ as if it were just a matter of selecting what aspects of the story to include; and again, the ECU misses the crucial point (it) deprived the activists of the opportunity to put their own version across... Quite apart from the ethics of receiving stolen property, there was no guarantee that the images had not been manipulated.”

135. BBC Response

The Committee noted the ECU response:

“There were many aspects of the Israeli operation which could have formed a legitimate basis for an investigation but it was a legitimate editorial decision to focus on the chain of events leading to the deaths and injuries on board the Mavi Marmara. I am unable to conclude that the failure to question the Israelis directly... amounted to a breach of editorial standards.”

136. Consideration

The Committee noted that the Israelis confiscated the possessions of all of those on board, including large sums of money, and that in its report the UNHRC Mission said the action was a violation of the rights of the passengers.

The Committee noted that there are a number of ongoing damages claims, particularly from journalists and that the Turkel Commission report says that, in September 2010, the photographic equipment which had been confiscated was transferred to the Chairman of the Journalists Association in Israel, who is described in the Turkel Commission report as a "representative of the journalists”. The Committee noted that all the journalistic material (video, audio, written) remains with the IDF. The Committee noted the Turkel Commission report also states that suitcases and other personal belongings were returned
to Turkey and that criminal investigations were initiated against 16 soldiers for theft of property belonging to flotilla participants, mainly the theft of laptops.

137. The Committee's Decision

The Committee noted that it had already considered the use made of the confiscated footage in Point AC above.

The Committee decided that omitting to mention the confiscation of all possessions did not mean the programme was in breach of the Editorial Guidelines.

The Committee decided that the action of the Israelis in this regard was not a material fact, and that the audience was not left with an inaccurate or unbalanced impression of what happened.

The Committee decided that the ECU had reached the correct conclusion that it was legitimate for the programme to focus on the chain of events which led to the deaths and injuries, and that the confiscation of possessions had no impact on that.

The Committee concluded that there was no breach of the Editorial Guidelines on impartiality.

Finding: Not Upheld

Point AE - regarding the allegation that the programme did not clearly set out the sequence of events on the ship; the footage exaggerated violence by the activists and underplayed the nature and ferocity of the Israeli attack

138. Allegation

The Committee noted the complainants’ views:

"Considering the force ranged against them (which had included fire from Uzi submachine guns) there was nothing in the activists’ behaviour that might be considered unreasonable. The legitimacy of Turkey’s claim of innocent victims was never stated or explained. Instead the vivid imagery of the Israeli infrared footage of activists hitting commandos with iron bars was repeatedly shown. The sequence of the soldier being rolled over the parapet and dropped onto the deck below was shown four times, but Panorama never zoomed in on the detail to show seized weapons being thrown into the sea by militants. (This can be seen at normal speed by the watchful viewer.) Nothing was said about the fire hose which is recommended practice for the repulsion of pirates, and which was used most effectively to repel the attempted boarding from the zodiacs.”

"Although the programme clearly mentioned the number of people killed and wounded it did not indicate the sheer brutality of the Israeli soldiers. Despite the fact that one activist was shown with a paintball wound to the chest and a bullet wound in his arm the general picture was of a commando unit under attack, fighting for its life, and responding in restrained fashion.”

(relating to the omission of video footage allegedly showing the shooting of Furkan Dogan) "The inclusion of this material would of course have completely
undermined the carefully constructed Israeli narrative of restraint and self defence which the Panorama team uncritically bought into.”

139. BBC Response

The Committee noted the programme’s response:

“We made it absolutely crystal clear that there is no doubt that 9 people were shot dead by the Israelis and 50 injured. We stated this on several occasions and showed images that made this clear, including the most vivid picture we saw of an IDF commando firing his pistol on deck.”

“There was also a significant amount of footage showing passengers, injured, bleeding and in distress, including a wide shot of a dead activist on a stretcher.”

“We were able to view a vast amount of footage from a number of sources. The most vivid image of the commandos firing on activists we could find was the side shot of the boat (black and white) of a commando clearly firing live bullets at people from close range. We used this picture. In addition we used the top-shot black and white pictures of the Israelis on the top deck fighting and firing at the activists. We were not aware of any other material from any source which showed activists being attacked more clearly than this.”

(re the footage purporting to show the shooting of Furkan Dogan):

“No one is identifiable in the clip, and we also believe that this actually showed a commando firing a paintball gun rather than a firearm.”

“There are a number of stills and pictures of the nine dead activists. The IHH gave us access to some particularly graphic images from the aftermath, however these pictures would not be broadcast pre-watershed. We did, however, use a shot of a corpse, which we clearly described as someone who’d just been shot dead.”

The Committee noted the ECU’s response:

“The programme … made specific reference to the nature of the attack by the Israeli commandos. Bulent Yildirim was seen speaking from the boat on the night of the attack explaining what was happening:

‘At this moment they’re firing non-stop. And every time one of our friends is being injured. They’re firing at us, they’re throwing bombs... At this point it has gone beyond passive resistance because the Israelis had been firing from the start. These people are defending themselves while being fired at.’

‘Lubna Masarwa spoke about what happened on two separate occasions:

‘We saw many Israeli vessels full of dozens of soldiers very close to the ship helicopters up and gas bombs and sound bombs start to be thrown from everywhere.’

‘Ken O’Keefe described the fear and chaos:

‘You had a chaotic situation where we all did the best we could. The dead bodies were piling up, you had grieving women lying over the bodies of
men, you had people frantically trying to stem the flow of blood from injured people.”

140. Consideration

The Committee noted that the Turkish Report, published after the editorial adviser’s report on the issues raised in the Consolidated Appeal had been circulated to complainants and the BBC, concluded the Israelis had used disproportionate force. Allegations in the Turkish Report included:

- live fire continued after passengers raised the white flag resulting in two deaths
- the paintball guns on the Morena speedboats had been specially adapted:
  “There was also widespread use of paintball guns by soldiers on the zodiacs. While Israel minimizes the impact of paintballs, these are military variants specifically adapted for use in close quarter assaults by Special Forces. The pellets contain not only paint but are usually filled with compressed gases and other chemical irritants to debilitate human targets. They are intended to sting sharply and shock the recipient, so as to give assailants the initiative. Reports were given that the Israeli soldiers used the largest size pellets to inflict the greatest injury. Evidence further shows the magnitude of actual injuries received from paintballs.”
- multiple wounds sustained by those who died.

The Committee considered Point AE as a consolidation of the allegations made in Points N to AD above in relation to how the programme represented the 45 minutes of confrontation between the Israeli commandos and some of the activists.

The Committee considered the overall allegation that the narrative presented by the programme was a construct to support its theory of what happened, and that it omitted material facts that would have questioned that theory, with the result that the programme breached the Editorial Guidelines on both accuracy and impartiality.

The Committee was reminded of some of the issues considered in Points N to AD:

- whether the programme was accurate and impartial in how it presented allegations of live fire by the activists
- whether the programme was even handed in considering the material facts about when the Israelis began live fire
- whether the omission of detailed evidence of the nature of the wounds sustained by those who died was a breach of impartiality
- whether interviews with Israeli contributors were conducted with due impartiality
- whether the description of the provenance of the video and audio footage omitted material facts or was in some other way misleading.

The Committee was mindful that its consideration of this point was to some extent based on the decisions it had already reached on individual points. But the Committee also
noted that of particular concern to many complainants was the impact of individual editorial decisions on the viewer’s overall perception of the confrontation between some of the activists and the Israelis. The Committee tested Points N to AD against the clause from the Editorial Guidelines on impartiality and the requirement for “due impartiality”:

“It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or facet of every argument on every occasion or an equal division of time for each view.”

The Committee noted that it had upheld one breach of the Editorial Guidelines in Points N to AD: a breach of accuracy in not introducing any detail from the preliminary autopsy findings.

141. The Committee’s Decision

The Committee noted that the programme makers were entitled to use editorial discretion in choosing what footage to use, who to interview and what aspects of the story to highlight. For a programme broadcast some weeks after the news event which prompted Panorama’s investigation, the audience would not expect to be shown a complete rundown of the night’s events, but equally the programme was obliged to reflect with due accuracy and due impartiality what had happened and to supply sufficient context so that all of the main perspectives were appropriately represented. The Committee appreciated that the programme had to make some difficult choices about how much detail to include about that which was already in the public domain.

The Committee considered the complainants’ argument that some of the choices made by the programme had the effect of favouring Israel’s viewpoint. The Committee did not reach the same conclusion. They found no evidence that the programme’s selection of footage, or choice of interview clips exaggerated the violence on one side and underplayed it on the other. The programme appeared to have made use of the most explicit footage available depicting Israeli commandos on the offensive; the programme included a number of sequences showing the injured (within the pre-watershed guidelines which protect children from violent images) and included soundbites from a number of activists describing what was happening. The Committee noted that the programme devoted considerable space to the story of how the Israeli Navy command had misjudged the situation and the consequences of their decisions. The Committee noted that the programme put the allegation of disproportionate force directly to Major General Eiland.

The Committee acknowledged the complainants’ allegation that the programme lacked detail and texture which might have shown the ferocity of the Israeli attack but decided that the programme had properly exercised editorial discretion in choosing what to include and what to exclude (with the exception of the breach of the Editorial Guidelines on accuracy at Point S in relation to the preliminary autopsy findings). The Committee considered that prior to the Panorama programme the coverage had overwhelmingly focussed on allegations of a disproportionate response by the Israelis and by including more on that issue the programme would not necessarily have had anything new to say; it was one of the roles of current affairs to attempt to explore aspects of a story or issue that added to the perspectives already in the public domain. The story of the film was the organised resistance to Israeli commandos and the shocking consequences of the decisions taken by each side.

The Committee considered whether by focussing on the new angle to the story the audience was left with a misleading impression of the key facts. The Committee decided
that it would not: a viewer would not come away from the programme believing the Israelis were the heroes and the activists were all terrorists. A reasonably intelligent person would weigh up contributions from the Major General and from the commandos and reach their own conclusions as to how much their statements could be relied upon. Similarly a viewer would not necessarily have formed an unsympathetic impression of the activists, including those who took part in the confrontation. The programme showed clearly that the ship was boarded in international waters, that the activists were armed with improvised weapons, that they suffered disproportionate casualties and that the majority of the passengers were peaceful people on a humanitarian mission to deliver aid and to draw attention to the blockade on Gaza. The Committee concluded that the viewer would be clear that the events on the Mavi Marmara occurred after the Israelis had initiated military action, but at the same time what was largely a peaceful protest had a dimension that had not been fully explored prior to the Panorama broadcast. In explaining the new angle to the story it was inevitable that the programme focussed on the core group and that as a result the recounting of the broader story of what happened was not as comprehensive as the complainants would have liked. But the Committee decided that all main views and perspectives were reflected and that in legitimately choosing to focus on a specific aspect of the issue, opposing views were not misrepresented.

The Committee concluded that there was no breach of the Editorial Guidelines on impartiality.

**Finding: Not Upheld**

**Point AF - regarding the allegation that the programme gave the impression that at least one activist had intended to die; this was misleading because it implied that it was his intention rather than a possible outcome**

142. Relevant Script

The Committee noted that the relevant script for point AF was as follows:

**Commentary:** On the Mavi Marmara that night at least one man openly boasted he’d be prepared to die as a “shaheed” a martyr, fighting the Israelis.

**Unnamed man:** If Israelis dare and try to fight us we’re going to give them a really good fight ... But if I die as a shaheed I just want to tell my children, my wife, that I love them a lot ... their father died for a really good cause.

143. Allegation

The Committee noted that a complainant who was on the Mavi Marmara said:

“"That statement is certainly not a death-wish boast of any kind, and there was no justification for (the reporter) to describe it as one. Until about ten years ago there was a chance that the Israeli military might hold fire in the presence of foreign observers for PR reasons but since the deaths of people like Rachel Corrie and Tom Hurndall, we know that they will shoot anyone and anything. And those of us who made sure our wills were up-to-date before leaving on the Mavi Marmara did not wish or plan for death in any way.”"
144. BBC Response

The Committee noted the programme’s response:

“The context in which the term ‘martyr’ was used was very clear – that some of these people were willing to die in fighting against the Israelis for the cause of Gaza.”

The Committee noted that the ECU added:

“I think that viewers would have understood from this that some of the people on board the Mavi Marmara were willing to die in any conflict that might take place with the Israelis. The man in question clearly linked the concept of fighting on the ship with death and martyrdom in the cause of Gaza. My research suggests that there were many other people on the ship who also left wills expressing their wish to die as a ‘shaheed’ or had told relatives they wanted to die for the same cause. Untransmitted footage from the ship includes a woman saying ‘either we will die as martyrs or we will reach Gaza’. The widow of Cevdet Kiliclar, one of the activists killed, told the programme-makers that he died as a martyr bringing the world’s attention to the blockade of Gaza. Arab media reports have also said that other victims, such as Cetin Topcuoglu and Fahri Yaldiz, were regarded as martyrs by their families. Finally, I note that the IHH’s website refers to the ‘Flotilla Martyrs’.”

145. Consideration

The Committee noted that Sefik Dinc, the Turkish journalist who travelled with the Mavi Marmara, said the following in his book (which was translated for the editorial adviser):

“... most of the passengers on the Mavi Marmara – at least most of the Turks – had the belief that they were going to jihad and they were going to become martyrs if they were to die. The words one heard were jihad and martyrdom.”

The Committee noted that the editorial adviser has seen the transcript of the interview conducted by Panorama with Cevdet Kiliclar’s wife; she says she is proud that he died for such a good cause.

The Committee noted a report broadcast on Al Jazeera on 28 May 2010 a few days before the flotilla left, in which one of those due to sail said:

“We are now waiting for one of two good things – either to achieve martyrdom or to reach Gaza.”

The Committee noted that The Guardian reported how some of those killed had apparently declared their willingness to become martyrs:

“...Turkish newspapers reported that three of the four Turks killed in the onslaught had declared their readiness to become martyrs.”

“I am going to be a martyr. I dreamed about it,’ Ali Haider Banjinin, 39, from Kurdistan, told his family before leaving to join the flotilla, according to one report.”

“The brother-in-law of retired engineer Ibrahim Bilgen, 61, told another paper that ‘martyrdom suited him very much. Allah gave him a death he desired.’"
“A third Turkish casualty, Ali Akbar Yertilmis, a father of four from Ankara, had ‘dreamt of becoming a martyr’, a friend was quoted as saying.”

146. The Committee’s Decision

The Committee decided that the programme had been neither inaccurate nor biased in reflecting that one of those on board had expressed a willingness to die as martyr. The Committee decided his words were representative of the feelings of at least some of his fellow activists, for which there is well-sourced and sound evidence that they too were prepared to die in a fight with the Israelis.

The Committee noted the complainant’s argument that it was not a “death-wish boast” of any kind, and related the man’s statement to the fact that many of those on board had prepared wills. The Committee considered the word “boasted” was acceptable in this context and that the script had not said “death-wish”. The Committee agreed with the ECU conclusion that it was because

“the man in question clearly linked the concept of fighting on the ship with death and martyrdom in the cause of Gaza.”

The Committee decided the content would not have misled viewers as to the man’s thoughts and intentions. The Committee decided this did not distort known facts, present invented material as fact or knowingly do anything to mislead the audience. The Committee decided that this was a controversial subject and that the BBC had not breached the Editorial Guidelines on accuracy or impartiality.

Finding: Not Upheld

Point AG – regarding the allegation that the figures given for the number of casualties were underestimated by 25%

147. Relevant Script

The Committee noted that the relevant script was as follows:

Commentary: Nine Turks died. 50 passengers were wounded and 9 Israeli soldiers.

148. BBC Response

The Committee noted that the programme responded:

“The claim that casualty figures were under-estimated by 25% appears to come from a complaint about the supposed inclusion in the programme of the line: ‘Fifty passengers were wounded including nine Israeli soldiers’.

“This line does not appear in the programme. The programme states: ‘50 passengers were wounded and 9 Israeli soldiers’. In addition, one of the activists Fatih Kavakdan, later referred to ‘50 people were badly wounded’. So the figure of 50 injured (not including soldiers) was the one clearly given in the film. Jane Corbin was given the figure of 50 injured by the IHH in Turkey.”

149. Consideration
The Committee noted that the Eiland Report released by Israel stated that 55 activists were wounded. The Free Gaza Movement states 50 wounded on its website.

150. The Committee’s Decision

The Committee decided that there is a clear consensus around the figure of 50 passengers injured, that this was what the script actually said, that it has been properly sourced and is duly accurate and that there is therefore no breach of the Editorial Guidelines on accuracy.

Finding: Not Upheld

**Point AH** - regarding the allegation that footage was shown purporting to be Israeli pictures of violence from the boat but this footage was shot on another, similar ship before the attack

151. Allegation

The Committee noted that the complainant alleged:

“The black and white footage from which clips were taken has been well-circulated in full on the internet, before and after the programme, and it shows the entire ship side – but with salient parts being only similar rather than the same, including the funnel; and writing on the side of the Mavi Marmara but missing in the film.”

152. BBC Response

The Committee noted the ECU response:

“At the start of the programme, Jeremy Vine asked

‘Self defence or excessive force? What really happened that night?’

“The footage which covered this included just over a second of colour footage from the Mavi Marmara showing activists and a commando abseiling to the deck, just over a second of black and white footage shot by the IDF showing an Israeli commando (highlighted) firing a weapon and a clip of similar length filmed by the IDF showing activists wilding clubs or sticks on the upper deck. The programme-makers have assured me that the colour footage was provided to them by both the IHH and the IDF.

“In addition, they saw unedited footage from two separate cameras (the black and white IDF footage) which allowed them to check the authenticity of other material available from alternative sources.”

153. Consideration

The Committee noted that, throughout the programme, black and white footage is intercut with colour footage. On a number of occasions distinctive features, such as the funnel, can be seen on the black and white footage.

154. The Committee’s Decision
The Committee decided that the images are of the same ship, and that the events taking place suggest those pictures were taken more or less concurrently. The Committee accepts that some pictures were colour, others black and white, and that they came from a variety of sources. The Committee found no evidence of any problems or discrepancy with this footage. Accordingly, the Committee decided there had been no breach of the Editorial Guidelines on accuracy.

**Finding: Not Upheld**

**Point AI** - regarding the allegation that the programme showed images of some of the injured being airlifted but failed to mention that many did not receive treatment for hours and many of the passengers were seriously mistreated

155. Relevant Script

The Committee noted that the relevant script was as follows:

Commentary: The Israelis evacuated the badly wounded to hospital. (accompanying picture of casualty being winched onto a helicopter)

156. Allegation

The Committee noted that a complainant said:

"The cruel, callous and sadistic treatment of casualties was ignored, but the transport of some of the casualties to hospital was mentioned. This presented an untrue narrative of this aspect of the Israeli behaviour."

157. BBC Response

The Committee noted the programme's response:

"The film was intended to look at the boarding of the Mavi Marmara and the violence that took place that night. The narrative of the programme ended once the Israelis took control of the ship. It is true that there have been a number of allegations made against the Israelis based on their maltreatment/treatment of casualties and also of those arrested. However the main focus of both the controversy and also the subsequent outcry was the events and deaths of those on board the ship."

The Committee noted that the ECU agreed.

158. Consideration

The Committee noted that there is a significant amount of first-hand evidence from passengers on the Mavi Marmara that at least some of the injured may not have received appropriate or timely treatment. This includes the allegation that at least one of those who died may have been saved if pleas for medical help from the organisers had been heeded by the Israelis. The Committee noted two accounts which are representative of many read by the editorial adviser. The first is from an essay by the Free Gaza Movement organiser, Lubna Masarwa, which appears in the book 'Midnight on the Mavi Marmara':
“It was 5:00 a.m. when I took the speaker at the Marmara reception and started calling the Israelis to allow medical help. The soldiers surrounded the floor where we were sitting. I could see them... Despite the fact that they had taken control of the ship, the Israeli Navy didn't allow medical access to the wounded. People died because of this. At about 7:00 a.m. we were ordered to go one by one to the exit floor, which was controlled by many soldiers who came with dogs... I went to the soldiers and asked them if we could keep the doctors with the injured people. They said, ‘Shut your mouth’. Later they called me and said, ‘Tell the injured people that if they want to stay alive they should come one by one.’”

The Committee noted that in the same book, Kevin Ovenden, organiser of the Viva Palestina group, writes:

“...an Israeli Knesset member, an Arab who speaks fluent Hebrew... went forward to the windows with a sign explaining who she was, and that we had many, many injured.

“We had managed to get as many as we could to the makeshift emergency room – some of which became a makeshift mortuary.

“For more than an hour and a quarter, we were appealing for help in a situation where quite literally we had people who were bleeding to death. According to the medics, at least one of those people who died may well have had their life saved if more sophisticated medical assistance of the kind that’s on board an Israeli vessel had been to hand.

“But we were not allowed to evacuate any wounded over to the Israelis for more than an hour and a quarter, during which one person died.

“... The Israelis were not at all sensitive in handling them. We had them on stretchers, but they were rudely bundled up upstairs. These are people with abdominal and serious leg wounds. The medics were taken, thoroughly body-searched, handcuffed, and not allowed to be with the wounded.”

The Committee noted that the recently published Turkish Report included a number of first-hand accounts from wounded passengers describing their alleged mistreatment once Israel took control of the Mavi Marmara.

The Committee noted that the Turkel Commission report is the first account the editorial adviser has seen which includes the testimonies of Israelis involved in the medical treatment of the wounded. The Committee noted that this gives another perspective on the narrative:

“At any given time, there were about six or seven doctors on the roof... Providing medical treatment on the roof were also six paramedics, four medical teams and the soldiers from the rescue and airlift evacuation unit 669, all of whom are trained medics... Fourteen field operations were performed on the deck of the Mavi Marmara. By 11:40 a.m., 31 wounded flotilla participants had been evacuated, 20 of whom were in critical condition and the rest moderately or lightly injured. The doctor stated that, around 12:00, he personally conducted a search inside the ship, during which he identified himself as a doctor and asked whether there were any more wounded... At this stage, the medical team believed that there were no more wounded aboard the vessel. Retrospectively, it was understood that there were an additional 14 passengers in the hall who had
bullet wounds. These wounds were discovered during the physician's examination which was conducted at the port of Ashdod.”

The Committee noted that the Turkel Commission report quotes medical personnel stating that some of the injured resisted medical treatment. One doctor said:

“While performing a chest drain (thoracostomy), the wounded pulled the drain out himself, and tells me: 'I want to die like a shaheed.' Nonetheless, we insisted on treating him and hoisting him up to the helicopter for treatment. There were many other incidents like that, including pulling out intravenous infusions, etc.”

The Committee noted the same doctor stated that not one of the wounded died of his injuries once medical treatment began. The Turkel Commission report includes testimony from soldiers who described how they helped treat the wounded, and also the Commander of the Takeover Force who reported that a number of those wounded did not want to be evacuated nor to receive treatment. The Committee noted the existence of some video footage sourced to the IDF and available on You Tube in which the Israeli-Arab MP, Hanin Zoabi and an unnamed English speaker are seen telling an Israeli doctor that some of the wounded did not want to be treated in an Israeli hospital. The Committee noted that the You Tube footage was only sourced by the editorial adviser a few days before the Consolidated Appeal was considered by the Committee. An oral summary of the comments received from the parties to the Consolidated Appeal was presented to the Committee. For example, the following comments were drawn to the attention of the Committee:

- the You Tube clip should be excluded from consideration as it had not been professionally translated
- the You Tube clip does not show how long passengers had to wait for treatment
- the You Tube clip does not show what happened before or after the footage was recorded
- the You Tube clip only includes a few of the 50 injured passengers on board
- the You Tube clip was posted by someone who did not necessarily have an independent perspective.

159. The Committee’s Decision

The Committee accepted that the focus of the programme was primarily on what happened before and during the confrontation between the Israelis and the activists.

But the Committee concluded that having chosen to introduce the issue, by showing a wounded passenger being winched onto a helicopter, the programme was then obliged to ensure due impartiality in how it reflected that aspect of the story. Based on the available evidence, primarily testimony from the passengers and from Israeli commandos, the Committee concluded that the issue is clearly controversial.

And the Committee noted the following clause relating to “due impartiality”:

"It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject. It does not require the representation of every argument or
facet of every argument on every occasion or an equal division of time for each view.”

The Committee concluded that the imagery and the accompanying script line ("The Israelis evacuated the badly wounded to hospital") would have left viewers with the impression that the badly wounded were all promptly and appropriately cared for. The Committee noted that although not proven there are detailed allegations of mistreatment of at least some of the casualties. The Committee decided that to achieve impartiality on the issue the programme was required to verify that the Israelis took proper care of the badly wounded. In the absence of such confirmation the programme was obliged to reflect the views of those who allege that the Israelis mistreated some of them.

Accordingly the Committee decided that in this respect the programme had breached the Editorial Guidelines on impartiality which state that the BBC must ensure that it avoids “an imbalance of views on controversial subjects”.

The Committee decided that the material included had being accurate with regard to the airlifting of some badly injured passengers. Therefore the programme had not breached the Editorial Guidelines on accuracy.

**Finding: Upheld on impartiality. Not Upheld on accuracy**

**Point AJ - regarding the allegation that the programme failed to mention the abuse and humiliation of detainees on the ship**

160. Allegation

The Committee noted a complainant said:

"Israeli abuses of human rights continued after the ship had been seized. Passengers were detained and abducted to Ashdod. Many were made to kneel on the deck in the sun with the result that 13 suffered first-degree burns. All were handcuffed and many suffered medical problems resulting from the cuffs being deliberately over tightened. Some were deprived of their medications. Many were denied access to toilet facilities, with the result that some were forced to urinate in their clothes. The guards were consistently abusive and threatening.

"I consider this to have been an important part of the story, the omission of which gives a misleading version of events and a distorted view of the behaviour of Israeli personnel. The omission of this information exhibits bias. The programme had asked if the Israelis had fallen into a trap. The gratuitous violence and humiliation of the detainees showed that the Israelis had indulged in barbarous behaviour without any provocation or excuse. This does not represent entrapment.”

161. BBC Response

The Committee noted the ECU’s response:

"This was another instance where the programme makers were entitled to use their editorial judgement and where the omission of certain facts or opinions was not, in my view, materially misleading in the context of the programme.”

162. Consideration
The Committee noted that, as with the allegations regarding the mistreatment of the injured, there is substantial first-hand evidence of the way in which many of the detained passengers were treated, both before they reached Ashdod and later, during their arrival, detention and departure from Israel. The Committee noted the allegations include physical and mental degradation, verbal taunting and other behaviours which would amount to infringements of human rights. This is the activist Ken O'Keefe, who featured in the documentary, in an essay he wrote for the book Midnight on the Mavi Marmara:

“While in Israeli custody I, along with everyone else, was subjected to endless abuse and flagrant acts of disrespect. Women and the elderly were physically and mentally assaulted. Access to food and water and toilets was denied. Dogs were used against us, and we ourselves were treated like dogs. We were exposed to direct sun in stress positions while handcuffed to the point of losing circulation of blood in our hands... We were abused in just about every way imaginable, and I myself was beaten and choked to the point of blacking out... and I was beaten again while in my cell.”

And the Committee noted that Lubna Masarwa, coordinator of the Free Gaza Movement, who also appears in the documentary, described what she experienced after she disembarked in Ashdod:

"I was with a group of women... The soldiers made lewd sexual jokes about us to each other... When they learned that I have Israeli citizenship they treated me much more roughly and separated me from the others. For more than 36 hours my three Palestinian colleagues... and I were not allowed to see a lawyer...this is against Israeli law.”

The Committee noted that Sumeyye Ertekin is a Turkish journalist and in the essay he wrote for Midnight on the Mavi Marmara he stated that:

“All the men were handcuffed and made to sit on the wet floor. One of the volunteers asked for my help, saying, 'My hands are cuffed so tight, can you please loosen them a little bit?’ I told this to the Israeli soldiers, but could not get a response. When I insisted, they loosened his handcuffs. His hands had gone black.”

“They kept us waiting on the deck for around six hours. In the meantime there was a helicopter on the ship. When it left... its propeller threw up water from the sea onto us. We were freezing... For a long time we were not allowed to use the toilet.”

The Committee noted that Paul McGeough, Chief Foreign Correspondent of the Sydney Morning Herald was among the media who travelled on the flotilla. He was on another boat, the Challenger I. McGeough interviewed some of those from the Mavi Marmara whilst he was being held alongside them in detention in Israel. This is what he wrote on the Sydney Morning Herald website:

“(An) activist, a Turk, lifted his shirt to reveal 10 puncture marks in a rough and black-bruised circle about the circumference of a teacup. He said the marks were inflicted when he was bitten by an Israeli security dog – while he had been assisting the Israelis by acting as a translator.”

The Committee noted that the Israeli Turkel Commission report quotes the Force Commander:
“The soldiers were instructed to handcuff people who were acting wild or constituting a danger or threat to the soldiers, and they were instructed that they should not handcuff women, children, or the elderly, and this is what was done.”

The Committee noted that the Turkel Commission report states that according to testimony from combat personnel and other Israeli officials, passengers were treated with decorum, allowed back inside the ship once they had been searched, were transported in air-conditioned buses to various prisons and were given clean clothing, shelter, food and water on arrival. The Turkel Commission report does not discuss allegations of mistreatment such as those described above, other than to state that on occasion guards were required to use force because of the behaviour of those they were guarding, and that a disturbance at the airport when some were departing resulted in six activists needing medical treatment.

The Committee noted that the Turkel Commission say that video material handed to them by the IDF which was filmed after the takeover and before anchorage in Ashdod supports the claim that not all flotilla passengers were handcuffed. Neither the Committee nor the editorial adviser has seen this footage.

163. The Committee’s Decision

The Committee acknowledged the detailed allegations of ill-treatment of some of the detainees at the hands of the Israeli authorities. The consideration was whether omitting to mention the allegations led to an imbalance of views on a controversial subject. The Committee noted that unlike the previous point relating to the treatment of the wounded, the programme did not raise the issue of what happened to the passengers after Israel took control of the ship. Therefore the Committee decided that the exclusion of the information was a matter of editorial judgement, it was not a material fact which was required to be reflected in the programme.

The Committee concluded that there was no breach of the Editorial Guidelines on impartiality.

Finding: Not Upheld

Point AK – regarding the allegation that the Chief Engineer’s statement was cut to give a deliberately misleading impression; it was filmed secretly but the programme did not state this; his evidence that activists had taken control of the ship is not corroborated

164. Relevant Script

The Committee noted that the relevant script for point AK is as follows:

Commentary: Late that night it was clear to the crew of the ship that a core of IHH organisers had taken control of the Mavi Marmara. Crew members later described the scene to the Israelis.

Israeli interview with Chief Officer: The IHH definitely didn’t let people they didn’t know move around
(unidentified voice of Israeli interviewer): How many IHH operatives were there on the upper deck?

Chief Officer: Forty

Israeli interviewer: The same forty all the time or did they change?

Chief Officer: The same forty... more or less

165. Allegation

The Committee noted that a complainant said:

“The four minute clip that this sequence comes from has certainly been cut and edited at least five times. This suggests that the evidence is unreliable and I think Panorama should have treated it with more discretion. I am unaware of any other testimony from any crew member to support these allegations, and none has been produced by the BBC.”

“The Al Jazeera producer Jamal Elshayyal said that passengers had been asked to remain below deck, but there is no evidence that this was enforced. Journalists were given complete freedom of movement at all times prior to the Israeli takeover. There is no video record in the public domain to back up the statement that anyone from IHH took control of the ship, interfered with any of the activities of the crew or restricted the movement of any passengers.”

“The Cultures of Resistance footage from the Mavi Marmara, some of which was used in the Panorama programme, has a sequence filmed on the captain’s deck beginning at 3:04 minutes. This shows a small crowd of 20 to 30 people freely assembled on the deck. Prominent amongst them is Matthias Gardell the Swedish academic and historian who was not involved in any of the fighting with the commandos. Many of the passengers are wearing their life jackets, which indicate that this is shortly before the raid began, when passengers were advised to don this apparatus. There is obviously no restriction on access to this deck and it is extremely doubtful that there would be any restriction on access to the upper deck since it is a working area to which passengers would not normally have access anyway.”

166. BBC Response

The Committee noted the response from the programme:

“The statement of the Chief Engineer simply made the point that the IHH took total control of the top deck of the Mavi Marmara during the night of the 31st. This point has been reinforced by a lot of extra evidence, both video and testimony and was not misleading.”

“(The reporter) went to some lengths to interview senior crew from the Mavi Marmara when she was in Turkey, but was told (by the IHH) that they were not available.”

“Interviews in custody suites are generally recorded as a matter of course. There is nothing on the video to indicate it was made under duress...”

The Committee noted the ECU responded:
“I believe the use of a visual mix between the two responses included in the programme would have made it clear that the officer's comments had been edited. I do not consider it was necessary to inform viewers that the version of the interview published on the internet had been edited. The clips used by the programme came from sections where the question and answer were unedited and do not appear to have been used in a way which changed or distorted the meaning of what the officer said.”

“Off-the-record evidence was provided to the programme-makers by reliable and informed sources ... it was their opinion that the upper decks of the vessel were effectively out of bounds to the vast majority of passengers who were not part of the group of IHH activists.”

167. Consideration

The Committee noted that sections of the interview with the Chief Officer of the Mavi Marmara, Gokkiran Gokham were released by the IDF (and is available to view on YouTube). The Panorama clips are taken from the same footage.

The Committee noted the review of the footage undertaken by the editorial adviser. There is an in-vision edit between the section where the Chief Officer says that the IHH did not let people they didn’t know move around the ship, and when he states how many IHH operatives were on the upper deck. That is the only edit in the sequence shown. A fuller version is on You Tube. It does not appear that any of the clips shown in the programme have been edited to give a misleading impression.

The Committee noted the commentary in the Panorama programme introducing the clip of the Chief Officer’s interview states that crew members, in the plural, described the scene to the Israelis. The only other interview which exists is with the Captain, Mehmut Tuval. The Committee noted that nowhere in the sections of interview that have been released does he say anything about the IHH controlling the ship. The clips on You Tube are of him talking about the activists cutting the ship’s railings to use as makeshift weapons, and making other preparations to defend the ship against the Israelis.

The Committee noted that there was clearly a great deal of organisation amongst those activists who chose, in Ken O’Keefe’s words to “defend the ship”. This included the preparation of makeshift weapons, as seen on the video and a request for those not involved to stay on the lower decks. Some of the key activists, including the IHH leader Bulent Yıldırım had walkie-talkies.

The Committee noted that Panorama told the editorial adviser:

“"IHH controlled access to the Captain and First Mate and despite several requests to interview them I was told they were not available and then that they did not wish to be interviewed. The only other interview I am aware of is on the IHH website.”

“I had an off record conversation with a key person on the ship who was not from the IHH group but the FGM (Free Gaza Movement) side. They made it clear to me there had been one group who controlled the deck and access to the deck area after the operation started.”

The Committee noted that, although the circumstances under which the Chief Officer was interviewed would give any journalist reason for caution, there is significant corroboration
of what he says in the video footage available of the crucial 35-40 minutes of the attack, and the fact that most of the dead and injured were IHH activists.

The Committee noted that the complainant has pointed out that a prominent Swedish national is visible on the upper deck in the Cultures of Resistance footage wearing a life jacket, suggesting to him that the IHH cannot have been in control of the upper deck as claimed on the programme. There is no indication when the video was filmed, but assuming the Cultures of Resistance footage has been released in chronological order, later in the footage the same man is seen being interviewed and talking calmly about the aims of the flotilla which might suggest this was filmed some time before the fracas itself. The Committee noted that the Al Jazeera reporter Jamal Elshayyal is then seen reporting that the organisers had advised people to put on life jackets when Israeli aircraft and ships had been spotted. The Committee noted the editorial adviser’s research suggests this was between 11pm and midnight on 30 May, at least four hours before the attack began.

The Committee noted that at no point has the IHH denied that it mounted organised resistance against the Israeli attack; the opposite is evident from video footage and interviews conducted for the programme with contributors like Ken O’Keefe, Murat Akinan and Bulent Yildirim. An effective resistance would have required the kind of organisation which would include ensuring that those not involved were kept away from the action. The Committee noted however that the complainant argues that Jamal Elshayyal only said passengers were asked to remain below deck, and that the request was not enforced.

168. The Committee’s Decision

The Committee concluded that the clips from the Israeli interview with the Chief Engineer were clearly labelled. The Committee noted the large caption at the top left hand corner of the screen, which remained on screen throughout the clip, saying “Israeli interview with Chief Officer”.

The Committee concluded there was no evidence that the interview had been edited to give a misleading impression of what the Chief Officer said. The Committee decided the programme had made legitimate use of the material made available to it.

The Committee concluded that the programme’s evidence that a core group of IHH had taken control of the Mavi Marmara satisfied the requirement in the Editorial Guidelines for due accuracy: it was well sourced and based on sound evidence. The programme had taken adequate steps to corroborate the claim and had used first-hand sources. The Committee considered that the impression viewers would have taken from the statement was that the IHH had “effective” control, in that it was generally understood that they were entitled to ask passengers to follow their instructions. The Committee did not consider it necessary for the programme to also evidence that all passengers adhered to the requests made by the IHH.

Finding: Not Upheld

Point AL - regarding the allegation that the programme omitted to mention that the “weapons” put on display by the Israelis were general hardware tools from the ship and knives from the ship’s six kitchens

169. Relevant Script

The Committee noted that the relevant script for point AL was as follows:
Commentary: They tried to counter criticism of their military operation (pix of “weapons”) by displaying the weapons they found on the ship. Proof they said that this had been a premeditated attack by the IHH.

170. Allegation

The Committee noted that the complainant alleged:

“The programme did not point out that the large display of knives were general hardware tools from the ship or kitchen knives from the ship’s six kitchens. The large-bladed knife that the camera focused on for nearly three seconds is a traditional ornamental Yemeni knife that was packed away at the time of the raid. None of the knives has any trace of blood on them and they are all clean. The gas masks were part of the fire-fighting breathing apparatus that was on the ship. It is not clear what the blue vests with the red crescent are. Israeli sources have suggested that these are bullet proof vests, but this is unlikely as they most certainly came from the ship. There is no footage showing anyone wearing the vests during the raid.”

“Nothing was said on the programme to put all these items in their correct context or to correct the propaganda that was issued about these legitimate tools taken off the ship.”

171. BBC Response

The Committee noted the ECU response:

“I think that viewers would have been aware that the items displayed had been presented by the Israelis as weapons used by the activists. Although the footage included gas masks and flak jackets I cannot conclude that the script was materially misleading bearing in mind the other items on display. I also think it is worth noting that the claim any of these items were used as weapons was clearly attributed to the Israelis in an attempt to ‘counter criticism of their military operation’.”

172. Consideration

The Committee noted that the relevant footage includes knives which clearly do come from a kitchen, and an array of switchblade style knives, not associated with anything one would find in a ship’s kitchen but which may have been the personal possessions of some of the passengers.

173. The Committee’s Decision

The Committee noted the programme clearly attributes the display as put on by the Israelis in order to “counter criticism of their military operation”. The Committee decided that, as it is known that knives were used against the commandos, it was not misleading to show these pictures. The Committee noted that it is not necessarily the case that the knives on display were used as weapons and that it is not known with certainty where the knives came from, but it is known that the activists armed themselves with makeshift weapons using materials found on the ship, which could of course include knives from the kitchen.
The Committee decided that the inclusion of the images, in the context they were presented in the programme, did not give a misleading impression of what happened on the ship.

The Committee decided that, in attributing the “photo opportunity” to Israel, the programme met the guideline requirement to “label material” which may otherwise be misleading. The Committee decided that there was enough information in the script for the audience to have been able to make up its own mind how much weight to give this display of weapons.

The Committee concluded that there was no breach of the Editorial Guidelines on accuracy.

**Finding: Not Upheld**

**Point AM** - regarding the allegation that the interview with Bulent Yildirim had a leading question added during the edit which was not present in the original recording

174. Relevant Script

The Committee noted that the relevant script for point AM was as follows:

**Reporter:** You said that if they the Israelis board the ship we will throw them into the sea – isn’t that a provocation saying that to your followers on the ship?

**Bulent Yildirim:** I spoke correctly there – I spoke beautifully – I watched it again afterwards... Israel stole these images from us but we're not denying it.

175. Allegation

The Committee noted that a complainant alleged:

“The following interview with Mr Yildirim, (the reporter’s) back to camera, had her very leading question overdubbed

‘You said that if the Israelis board the ship we will throw them into the sea. Isn’t that a provocation to the followers on the ship?’

“suggesting that his morale-boosting talk to the seaborne civilians feeling threatened by Israeli presence was a provocation, may well have been itself a provocation, if that was what she had said to the nodding and smiling Bulent Yildirim. But her voice was, quite obviously added later.”

176. Consideration

The Committee noted that the editorial adviser has viewed the original rushes of the interview. The editorial adviser saw that the audio of the question was brought forward to cover the time lapse between the reporter asking the question in English and the translator communicating it in Turkish to Mr Yildirim and then him replying in Turkish. The Committee noted that it is usual practice to do this when the interview is not live, to avoid the audience sitting through what would have been at least 20 seconds of question and
answer in Turkish. The Committee accepted the editorial adviser’s assurance that the question asked by the reporter is the same question put by the translator to Mr Yildirim, who answered as shown in the programme. The Committee accepted that his smiling and nodding was in response to the question and that there has been no deception.

177. The Committee’s Decision

The Committee decided that the complaint in Point AM had occurred as a result of a misunderstanding of the editorial processes involved in conducting an interview through an interpreter. The Committee decided that the programme had not breached the Editorial Guidelines in respect of Point AM.

Finding: Not Upheld

Point AN - regarding the allegation that the programme should have interviewed Hanin Zoabi who was an eye-witness to the events on the Mavi Marmara and Sarah Colborne of the Palestine Solidarity Campaign who was also on the ship

178. Allegation

The Committee noted the complaint:

“"The civilian activists on the boat are apparently considered to be equivalent to the Israeli navy commandos involved in the raid, creating the impression that both parties are equally violent. The members of the IHH on board ... were a minority, yet very little space is given to the majority: people such as Mrs Hanin Zoabi, a Palestinian member of the Israeli Knesset who acted as a translator between the passengers and the Israeli navy during the raid. Why was she not interviewed?"

"The programme-makers should have considered it highly relevant that appeals by Mrs Zoabi to allow treatment for seriously wounded and dying passengers, for over 100 minutes, was ignored by Israeli commandos."

"As the BBC will be well aware, Sarah Colborne of PSC (Palestine Solidarity Campaign) was on the ship. PSC is the UK’s most widely known organisation campaigning for Palestinian rights and would under no circumstances associate itself with terrorists. It seems a surprising omission that Ms Colborne was not asked to contribute to the programme."

179. BBC Response

The Committee noted the BBC’s response:

“"The focus of the programme was on events on board the Mavi Marmara and so it was reasonable to give priority to those who were eye-witnesses to those events. Mrs Zouabi could have been interviewed and included in the programme but I do not consider her exclusion to have given the audience a misleading impression... the programme included contributions from those who were directly involved in events on board the Mavi Marmara."
The Committee noted that the majority of the interviews transmitted from each side were used to guide the viewer through the images that were being shown, using their own impressions of what they saw and did at the time.

The Committee noted that the programme-makers had access to a wide range of interviewees and would be entitled to make an editorial judgement as to which voices in their view made the strongest contribution to the programme.

The Committee noted that the programme interviewed many more passengers, both on and off the record than they used in the programme, and did indeed interview Sarah Colborne of the PSC. The production team then selected who they would film, and then, as is very often the case, not all of the interviews they filmed were featured in the final edit. The Committee noted that this is standard for a programme of this nature.

The Committee noted that information and opinions the team were given in interviews which did not make the programme itself, often found their way into the script in the form of the reporter’s commentary.

181. The Committee’s Decision

The Committee decided that, although the exclusion of a particular named interviewee could give rise to a breach of the Editorial Guidelines if, in the interests of fairness, that interviewee was entitled to a right of reply to something said or shown about them in the programme, this was not the case here. The Committee decided that although the exclusion of an interviewee might also in some circumstances lead to bias by omission, this again did not happen in this instance.

The Committee decided that the exclusion of Ms Zoabi and Ms Colborne did not give the audience a misleading and/or biased impression of the events which the programme reflected.

The Committee concluded that there was no compelling reason to broadcast an interview with either of these two people in this programme and that the programme-makers were properly making use of their editorial discretion in deciding who to interview and which interviews to transmit.

The Committee concluded that there was no breach of the Editorial Guidelines on accuracy or impartiality.

**Finding: Not Upheld**

**Point AO - regarding the allegation of the programme’s failure to interview any British passengers**

182. Allegation

The Committee noted the complainants’ allegations:

““There were no interviews with any British passengers on board the flotilla contrary to the usual practice of seeking British eye-witnesses to world events.”
"None of the 26 British people on board the boat were interviewed. My partner, for instance, is a very mild character who was shocked by the attack and would have given a very different impression."

"At least two of the British contingent were present at the violent end of the ship, and one, Sakir Yildirim, held the head of one of those shot as he died. (Another) was at the centre of the ad hoc emergency ward. I was hit by a rubber bullet or a ‘bean-bag’. We would have welcomed an opportunity to speak. We were not asked.”

183. BBC Response

The Committee noted that in the course of their research before filming began, the programme said it had spoken to five UK activists who had been on the Mavi Marmara.

"None of them were as well placed to discuss the incident as the people we ended up using in the film... These were journalistic decisions not based on nationality. We also spoke to Ken O'Keefe, who's based in London and was an important eye-witness.”

The Committee noted the ECU response:

"I do not believe the fact none of those interviewed were British can be considered as evidence of bias or that this was likely to give a misleading impression of what the activists say took place. The programme chose contributors who were well placed to explain what happened; it would be inappropriate to select interviewees purely on the basis of their nationality where such a criteria is not relevant to the subject matter.”

184. The Committee’s Decision

As above the Committee agreed that, although the exclusion of a particular named interviewee could give rise to a breach of the Editorial Guidelines if, in the interests of fairness, that interviewee was entitled to a right of reply to something said or shown about them in the programme, this was not the case here. The Committee decided that although the exclusion of an interviewee might also in some circumstances lead to bias by omission, this again did not happen in this instance.

The Committee respected the programme’s right to choose who to interview and what to include, acknowledging it is a matter for editorial judgement and not a breach of the Editorial Guidelines.

The Committee decided that the BBC is required to be objective and even handed in its approach to a subject, and in its use of interviewees. The Committee decided that there was no evidence that this was not the case here and that there was a proper exercise of editorial discretion in the selection of interviewees and that their nationalities had not been as important an editorial consideration as what they had witnessed on the night.

The Committee decided that the programme had not breached the Editorial Guidelines on impartiality.

**Finding: Not Upheld**
Point AP - regarding the allegation that the programme failed to mention or to interview anyone from any of the other boats in the flotilla

185. Allegation

The Committee noted that complainants said:

"The IDF claim that they used violence against the Mavi Marmara only in response to resistance from its passengers is patently contradicted by the fact that they used violence on all the other boats too, where there was no resistance. Why was nobody from any of the other boats interviewed about their experiences?

"The testimony of passengers on the other boats should have been included because it gives the lie to Israeli claims that they only used violence, and only confiscated possessions, in self-defence."

186. BBC Response

The Committee noted the programme response:

"The film was intended to look at the boarding of the Mavi Marmara and the violence that took place on board.

"We did not intend to describe what happened on the other boats in the flotilla, on which no one died. There have been ten attempts to ship supplies to Gaza by the Free Gaza Movement and five shipments were allowed in before 2008/2009. None of these missions gained much press coverage. No-one has been killed on any of them. The outcry and political pressure was entirely focussed on the events aboard the Mavi Marmara."

The Committee noted the ECU response:

"The programme sought to examine events on the Mavi Marmara and therefore interviewed activists who were on board that ship.

"The programme did examine the actions of the Israeli commandos and question whether it was proportionate to the resistance faced."

187. Consideration

The Committee noted that the remaining five ships in the flotilla were boarded between 04:30 and 05:30 on 31 May. Two of the ships were boarded simultaneously with the Mavi Marmara. None of the other vessels were boarded before the Mavi Marmara and therefore the boarding parties will have been aware either at the outset or very shortly after their operation began, that their colleagues were facing significant resistance from those on board the Mavi Marmara.

The Committee noted that there appears to be conclusive evidence that only passive resistance at the most faced the soldiers on the other ships and on three of the ships there is evidence the Israeli soldiers used similar tactics to those initially employed on the Mavi Marmara. Paint ball guns, stun grenades and plastic bullets all appear to have been deployed to some degree.

The Committee noted that the point made in the Consolidated Appeal is that the behaviour of the IDF on these occasions undermines Israel's argument that force was only used in self-defence. However, the Israelis would argue the use of "non-lethal
weaponry” is standard procedure in the boarding of a vessel at sea without the consent of its crew.

The Committee noted that the Turkish Report, which was published after the transmission of the programme and after the editorial adviser’s report on the issues raised in the Consolidated Appeal had been finalised, includes some detail about what passengers allege happened on the other ships as they were boarded. This is similar to detail in the UNHRC report. Detailed allegations are on pages 31-35 of the Turkish Report.

The Committee noted that the programme argues that its focus was on what distinguished events on the Mavi Marmara from the other ships in the flotilla, and from previous flotillas – i.e. that people died during the interception and takeover of the Mavi Marmara. The issue was not whether the IDF used some force or not, but why on the Mavi Marmara it decided to use live weapons, with the result that nine activists were killed.

188. The Committee’s Decision

The Committee decided that, in the context of this programme, omitting to describe what happened on the other ships in the flotilla did not result in a misleading impression of the motivation and action of the Israelis.

The Committee did not consider it a material issue that on this night the Israelis were prepared to use some force on other ships in the flotilla even in instances where no resistance was being offered.

The Committee concluded that the programme had properly decided to focus exclusively on events on the Mavi Marmara, where the boarding led, uniquely, to nine fatalities and that there was no breach of the Editorial Guidelines on impartiality in not covering the method of boarding used on other ships in the flotilla.

**Finding: Not Upheld**

**Point AQ - regarding the allegation that the programme should not have dismissed the medicines as out of date**

189. Relevant Script

The Committee noted the relevant script was as follows:

**Commentary:** So what about the aid the IHH said was the reason for their mission? Some of it’s arrived in Gaza from Israel and it’s sitting in a warehouse. Mobility scooters, hospital beds and drugs. But I found that two thirds of the medicines are out of date and useless.

190. Allegation

The Committee noted that the complainants said:

“On what grounds did she pronounce them ‘useless’. Was she told that unequivocally by a qualified medic?”

“The US FDA says 90% of drugs are still usable 15 years after expiry, (the reporter) was unnecessarily pessimistic.”
“I feel that (the reporter's) disdainful dismissal of the donated medicine because it was out of date was particularly offensive. I appreciate that such donations may in fact prove unhelpful, but it was unfair to imply that donating such goods had been part of some kind of dishonest ploy.”

191. BBC Response

The Committee noted the programme say they had a non-Israeli source in Gaza:

“This person ... told her that the aid from the IHH had not been 'well-organised' and that the IHH had not 'engaged in targeting the donations with local donors'; it was only in the final stages... after the Mavi Marmara was apprehended and the aid ended up in the port of Ashdod and the Israelis consulted them about it that they knew what was coming.”

The Committee noted what the ECU said:

“(The reporter) was shown round by a highly placed official involved in managing United Nations aid in Gaza. She inspected a number of pallets of drugs and medicines during a visit which lasted more than one hour. On the basis of her own inspection and conversations with her source, she concluded that the majority of medicines had exceeded their expiry date (the boxes shown in the programme were marked 02/2010).”

192. Consideration

The Committee noted that the editorial adviser had viewed the transcript of an on-the-record interview with Mahmoud Daher of the World Health Organisation in Gaza, which was conducted for the Panorama programme but not used. In the interview Mr Daher says the out-of-date medicines are a problem because there are no facilities in Gaza to dispose of them safely, some items that were sent are needed but others are not. He highlighted the need for better coordination.

The Committee also noted that in August 2010 Al Jazeera reported from Gaza that out-of-date medicines are dumped in landfill. In the news item, one interviewee said that a lack of consultation meant that even if the medicines were still current, they often were not the ones that Gaza needed.

193. The Committee’s Decision

The Committee decided that the commentary stating that two thirds of the drugs were out of date was well sourced and based on sound evidence. The reporter had first-hand evidence that some of the drugs were out of date, which was supplemented by an interview with a reliable source. The Committee then considered whether it was accurate for the reporter to state that the medicines were therefore useless. The Committee acknowledged the complainant's point that the reporter was unnecessarily pessimistic, given that a study by the Food and Drug Administration in the United States had found that some drugs are still usable 15 years after expiry. However, the Committee concluded that there is verifiable evidence that the donation of out-of-date drugs is a serious problem for Gaza. Both from the World Health Organisation interview for the programme, and from information in the Al Jazeera broadcast (which was independently researched by
the editorial adviser for this appeal) it is clear that Gaza lacks the facilities to dispose of medicines that are deemed unfit for use. Interviews with professionals involved in healthcare in the territory suggest that drugs beyond their expiry date are disposed of, and therefore in the context of the situation in Gaza they can be considered “useless”.

The Committee considered the complainant’s point that the manner in which the medicines were “disdainfully dismissed” by the reporter implied that the aid was part of “some dishonest ploy”. The Committee noted that Point M above discussed the conclusions the reporter reached about the political aims of the mission, and whether the programme was duly impartial in this respect. The Committee also noted that Point AR below considers how the programme framed the sequence showing the aid in the warehouse, and that the complainant’s point would be better considered there.

The Committee was therefore satisfied that the statement was duly accurate and duly impartial within the context of the programme.

**Finding: Not Upheld**

**Point AR - regarding the allegation that the programme failed to mention the valuable items which were impounded by the Israelis; by highlighting the out-of-date medicines it suggested the rest of the aid was worthless**

194. Allegation

The Committee noted that the complainant alleged:

“Jane Corbin never described the cargo and never told her viewers that it amounted to 10,000 tons, mostly comprised of goods which are virtually unobtainable in Gaza because of the closure policies. Her sole reference to the aid at the end of the programme only mentioned mobility scooters, hospital beds and out of date medicines, which in total comprised a small and unimportant part of the cargo. The building materials, medical equipment, desalination units, education materials and the aid in cash which in total comprised the largest and most important items of the cargo were not mentioned.

“Israel’s disruption and diversion of the greater part of the cargo was not even hinted at...This false assessment overlooked the fact that the cargoes were equal in quantity to about 20 per cent of contemporary monthly traffic volume allowed into Gaza by Israel.”

195. BBC Response

The Committee noted that the programme says it made it clear throughout that the flotilla was carrying aid.

The Committee also noted that the stated intent of the programme was to find out why events turned out the way they did on the Mavi Marmara and the programme says it was therefore not necessary to go into detail about the aid itself, or what happened to it after the boats were boarded and taken to Ashdod.

196. Consideration

The Committee noted there was no detailed inventory made by the programme of the aid carried by the ships which were intercepted and boarded on 31 May. But there were
numerous references both in the script and from contributors that humanitarian aid was being carried by the flotilla.

The Committee noted that after some delays in the early weeks Israel claims that most of the material aid did eventually reach Gaza. The Turkel Commission report states that 114 trucks have entered the Gaza Strip in coordination with UN agencies, out of a total of 200 trucks unloaded from the ships in the flotilla. The Committee noted an allegation by one complainant that many of the trucks which reached Gaza were lightly loaded and that the majority of aid is still to arrive. The editorial adviser was not in a position to verify the accuracy of Israel’s claim or the complainant’s counter-claim.

The Committee noted that a Lebanese TV station reported that Israel had buried some of the aid (tinned food and crockery) and some of the activists’ personal belongings at a landfill site in the Negev Desert.

The Committee considered the following section of the script:

Commentary: So what about the aid the IHH said was the reason for their mission?

Some of it’s arrived in Gaza from Israel and it’s sitting in a warehouse. Mobility scooters, hospital beds and drugs. But I found that two thirds of the medicines are out of date and useless.

The Committee also considered the following earlier section of the script:

Commentary: Here in Gaza the problem’s not so much a lack of food or medicine – there’s no easy access in and out, no economic life because of the Israeli embargo...

People are forced to recycle rubble to rebuild houses. Israel allows in hardly any cement and steel – in case they’re used to make weapons and bunkers.

197. The Committee’s Decision

The Committee acknowledged that the selection of which information and facts to include or exclude in a programme would not generally be an issue under the Editorial Guidelines but a matter of editorial judgement, which is properly a decision taken by content producers.

The Committee noted the programme makers’ stated intent was to establish why events turned out the way they did on the Mavi Marmara and that it was therefore not necessary to go into detail about the aid itself, or what happened to it. But the Committee decided the content of the aid became relevant when Panorama chose to raise the subject at the end of the programme. From that point on it was incumbent on the programme to be duly accurate in its presentation of the aid.

The programme described some of the aid on board the flotilla in the context of commenting on: (i) the reason the IHH had given for their mission; and (ii) the programme’s conclusion that the bid to break the naval blockade was not really about bringing aid to Gaza.

The Committee decided that the programme accurately described the aid on board the flotilla (mobility scooters, hospital beds and medicines, two thirds of which the reporter said she had found to be out of date). However, the Committee felt that the facts show
that the aid described by the programme was just a tiny proportion of an aid consignment which had consisted of thousands of tons of aid, including large quantities of much-needed building materials. The programme highlighted the out-of-date medicines and medical equipment "sitting in a warehouse" and did not specifically mention the other aid items on board the flotilla. The programme was not clear and precise in its presentation of the full extent of the aid on board. The Committee did not, however, consider that the omission undermined either the impartiality of the programme or the conclusion reached by the programme. This was that the attempt to breach the blockade was not really about bringing aid but was a political move designed to put pressure on Israel and the international community.

Accordingly, the Committee decided there had been a breach of the Editorial Guidelines on accuracy.

**Finding: Upheld on accuracy. Not Upheld on impartiality**

**Point AS – regarding the allegation that Panorama acted with unseemly haste in screening the programme before inquiries had taken place**

198. Allegation

The Committee noted that a complainant said:

"Why if the BBC knew that several inquiries were underway, did they not wait for the outcome of those inquiries before finalising and broadcasting their programme? With all due respect to (the reporter) and her 20 years of experience, did the BBC really believe that she was capable of conducting a more thorough investigation than, for instance the UN Human Rights Council? A cynical viewer might conclude that the BBC was exploiting a narrow ‘window of opportunity’ to put across a pro-Israeli construction of events which would become insupportable once documents like the UNHRC report were in the public domain.”

199. The Committee’s Decision

The Committee decided that the requirement of the editor of a programme like Panorama would be that Death in the Med shed new light on a current topic, regardless of what other inquiries were underway relating to the flotilla.

The Committee decided that there is no evidence that the BBC’s motivation in screening the programme when it did was to exploit a “window of opportunity” to put forward a version of events that would differ from what any of the expected inquiries were likely to report.

The Committee noted that it is not a foregone conclusion that inquiries, whether conducted by the UN or any other body, will necessary cover the same ground as the BBC chose to cover here, or necessarily reach the same conclusion as to the facts and how they should be interpreted.

The Committee noted the UNHRC announced the make-up of its panel of inquiry on 23 July 2010, at which point the programme was already well in production, that the Turkish Report has only just been published in early 2011 and the UN Panel of Inquiry has not yet (at the time of the consideration of this appeal on 17 March 2011) reported.
The Committee noted that the programme-makers have vigorously defended the programme they presented and reject the allegation that it puts across a pro-Israeli construction of events.

The Committee decided that it was the role of the BBC and the programme-makers to screen a topical current affairs programme in a timely manner. The editorial and creative direction of the BBC including scheduling was a matter for the Director-General and the programme makers who reported to him as long as the Editorial Guidelines were not breached. There was no evidence of such a breach of the Editorial Guidelines.

The Committee decided that the BBC was observing its conventional editorial freedom to seek to broadcast as soon as the BBC was satisfied with the content of the programme.

Therefore, the Committee decided that the programme had not breached the Editorial Guidelines on impartiality or accuracy.

**Finding: Not Upheld**

**Point AT – regarding the allegation that the programme did not uncover “important new evidence” as claimed in the introduction**

200. Relevant Script

The Committee noted that the relevant script for point AT was:

Presenter: With several inquiries under way Panorama’s Jane Corbin has important new evidence from both sides to piece together the real story — for the first time.

201. Allegation

The Committee noted that a complainant said:

"It was irrelevant whether or not the interviewees who appeared in the programme had spoken to the media before. Given the findings of the UNHRC report, the autopsy report and eye-witness statements, it is incomprehensible that an experienced journalist ... failed to identify execution-style killings and considered them immaterial... (the commando’s) claims to have been shot with live rounds have been totally discredited, yet (the reporter) did not press them on this issue... Therefore, I stand by my complaint that no significant new evidence came to light as a result of probing by the Panorama team and therefore its claim to have uncovered ‘important new evidence’ is false.”

202. BBC Response

The Committee noted that the ECU had responded:

"The programme obtained the first UK interview with Bulent Yildirim and the first television interview with Giora Eiland. The programme was also the first to get on the record interviews with Israeli commandos who took part in the operation.”

203. The Committee’s Decision
The Committee agreed there was considerable detail in the programme about the events of 31 May that had not been heard before.

The Committee decided that the programme had uncovered important evidence that had not hitherto been in the public domain.

The Committee decided that it was duly accurate and impartial to say that the programme had uncovered new evidence.

**Finding: Not Upheld**

**Point AU - regarding the allegation that it was misleading to say the Israeli Government is cooperating with the UN inquiry, when it failed to mention it was only cooperating with one of the two UN inquiries**

204. Relevant script

The Committee noted that the relevant extracts from the programme were as follows:

**Commentary:** The Mavi Marmara didn’t break the blockade of Gaza but it did spark international outrage. The Israelis set up their own investigations and they’re cooperating with a UN Inquiry...

**Presenter:** And that crucial UN investigation is due to deliver its verdict next month.

205. Allegation

The Committee noted that the complainants said:

“I assume (the reporter) is referring to the UN Panel of Inquiry set up by the UN Secretary General, but there is also the UN Fact-finding Mission set up by the UN Human Rights Council which Israel absolutely refused to cooperate with when the programme was prepared and broadcast. So why be selective in the facts you choose to show the viewers unless it is to portray Israel in the best possible light?”

“Regarding the UN Panel of Inquiry into the incident, the Israeli government is submitting evidence to this Panel but has made it clear that it will not permit any interrogation of military personnel... I do not think (the reporter’s) assessment fairly reflected the facts.”

206. BBC Response

The Committee noted that the programme responded thus:

“Israel is co-operating with the UN Secretary General’s Inquiry. It is not co-operating with the UN Human Rights Council Inquiry. We did not say Israel was co-operating with ‘the UN Inquiry’ but with ‘a UN Inquiry’ which is a statement of fact.”

The Committee also noted the response from the ECU:
“As you know, Israel has agreed to co-operate with the United Nations Panel of Inquiry set up by the UN Secretary-General. It’s also true that it refused to co-operate with the recent UN Human Rights Council report and I therefore think the script could have been clearer on this point. However, I do not believe this was a material inaccuracy that would have given a seriously misleading impression.”

207. Consideration

The Committee noted that there were two United Nations inquiries set up following the boarding of the Mavi Marmara by Israeli commandos on 31 May. The first was convened by a subsidiary UN body, the UN Human Rights Council to investigate any violations of international law. Its report was published on 27 September 2010. The Committee noted that Israel refused to cooperate with the Mission: Israel argued the Human Rights Council should delay its deliberations pending the outcome of investigations by the national governments of Turkey and Israel, and the recommendations of the UN Secretary-General’s Panel of Inquiry.

The Committee noted that, in addition, the UN Secretary General announced a Panel of Inquiry on 2 August 2010 and that it has yet to report (March 2011). Its mandate is

“to examine and identify the facts, circumstances and the context of the incident, as well as to avoid future incidents.”

The Committee noted that the announcement of the UN Panel of inquiry followed two months of negotiations between the UN and the governments of Israel and Turkey. The Committee noted that Israel’s cooperation is considered significant; it is the first time the Israeli Government has taken part in a UN inquiry into actions involving the country’s military.

And the Committee also noted that it is this UN Panel of Inquiry which was referred to in the Panorama programme in the line:

“they’re cooperating with a UN Inquiry.”

208. The Committee’s Decision

The Committee noted that the script did not specify which inquiry, but said Israel was cooperating with ‘a UN Inquiry’. But the Committee considered that the audience would be unaware from the script that there were in fact two UN inquiries.

The Committee acknowledged that of the two UN inquiries, the one the programme said it was referring to is expected to be the definitive inquiry on the Mavi Marmara. The Committee noted that in the programme’s response to the editorial adviser’s report on the issues raised in the Consolidated Appeal, it is alleged the UN Human Rights Council inquiry did not have political credibility and that sources on the Council told the programme the report was regarded as “biased” and “pre-judged”. The programme noted too that none of the Western nations voted in favour of accepting the findings of the UN Human Rights Council report, with 15 abstentions and 1 vote against.

The Committee concluded, as did the ECU, that the programme could have made it clearer that it was talking about the UN Panel of Inquiry. However, the Committee was confident that because the UN Panel of Inquiry was perceived as having greater significance than the UN Human Rights Council investigation, the audience would not have been misled on a material fact and that therefore there had been no breach of the Editorial Guidelines.
The Committee also noted the complainant’s contention that it was inaccurate to state that Israel was cooperating with the UN Panel of Inquiry because it was not being allowed to interrogate military personnel. Whilst the Committee acknowledged that the UN Panel of Inquiry would not have direct access to interview Israeli commandos who were involved in the assault, the Committee noted that the UN Panel of Inquiry would have access to the same testimonies that had been available to Israel’s own Turkel Commission.

The Committee noted that Israel has a member on the UN Panel of Inquiry. The Committee considered that how the Panel gathered its information was a separate issue and it was not for the Committee to decide that no direct access to soldiers meant that Israel was not cooperating. Accordingly the Committee did not consider that the audience had been misled on the issue of whether Israel was cooperating with a UN inquiry. Therefore, the Committee concluded that there had been no breach of the Editorial Guidelines on accuracy.

The Committee did not consider that either of these allegations were of such significance that they had to be included in the programme in order to achieve due impartiality. Therefore, the Committee concluded that the programme had fulfilled the requirement of due impartiality in the Editorial Guidelines.

Finding: Not Upheld

Point AV - regarding the allegation that the programme did not explain that the co-producer Israel Goldvicht comes from a strong pro-Israeli position and is unlikely to take a balanced viewpoint

209. Allegation

The Committee noted that a complainant said:

“I accept that, although Israel Goldvicht is an Israeli documentary maker I do not have further evidence to support my claims here, except that a previous documentary he produced, The Siege of Bethlehem, by all accounts covered the siege and month-long curfew exclusively from the point of view of the invading IDF and made no effort to look at it from the Palestinian side.”

210. BBC Response

The Committee noted the ECU response:

“The programme was written, produced and directed by Jane Corbin. Mr Goldvicht was credited as the co-producer. The main production team included a Turkish journalist and a Palestinian journalist based in Gaza. However, the final editorial control rested with the Panorama team in London and so even if your assumption about Mr Goldvicht were to be true, responsibility for what was broadcast remains with the Panorama team.”

211. Consideration

The Committee noted that the editorial adviser asked Panorama for a short resume of Mr Goldvicht’s credentials as a producer:
“Israel Goldvicht has been a co-producer on many BBC, C4 and PBS documentaries, many of them award-winning, that often involve access to the IDF or Israeli authorities to some degree. His credits include BBC2 This World's 'The Tea Boy of Gaza' (Gaza ER for PBS) which won a Foreign Press Association award and was nominated for a BAFTA and a Grierson Award, WGBH Frontline's 'The Battle for the Holy Land', the BBC's 'Inside Israel's Jails', and the last film he helped with for Panorama: Jeremy Bowen's Prix Bayeux-winning 'Gaza - Out of the Ruins'. Israel was also a co-producer with Raw TV on C4's 'Gaza - The Fight for Israel' - which was an access film with the last Israeli settlers in Gaza as they were forced to leave by the Israeli authorities in 2005.”

The Committee noted that it is common practice when working at the level of a Panorama documentary, for the UK based team to engage local expertise, both for translation purposes and to help with access to contributors in the region. In relation to this documentary it is unlikely the programme would have been given the level of access it secured with the IDF without the assistance of an established Israeli journalist/fixer such as Israel Goldvicht, who would have the necessary contacts and credibility to negotiate that access. The Committee noted that Israel has a reputation for a healthy free press, which is often critical of the government, and therefore having an Israeli on the production team would not automatically suggest any undue pressure on the programme to push the government’s line. The Committee noted that the editorial responsibility for the broadcast remains with the BBC regardless of what local assistance it might receive from freelance journalists or others.

212. The Committee’s Decision

The Committee agreed that Mr Goldvicht is an experienced journalist and fixer with numerous credits from major television companies, and is the recipient of awards and nominations from prestigious international bodies.

The Committee decided that the presence of Mr Goldvicht on the team is not in itself a breach of the Editorial Guidelines.

Finding: Not Upheld

Point AW – regarding the allegation that it was inaccurate to say that “Naval Commando 13” has never been filmed by the media in action before

213. Relevant Script

The Committee noted that the relevant script for point AW is as follows:

Commentary: The elite Israeli force which seized the Mavi Marmara, is training for its next operation.

I’ve had unique access to this top secret unit. Naval Commando 13 has never been filmed by the media in action before.

214. Allegation

The Committee noted that a complainant said:

“The raid was filmed by a number of crews including some from Press TV and Al Jazeera. This footage was broadcast live and may well have been seen by millions
of viewers worldwide. This was two and a half months before the Panorama programme was broadcast in August and probably before the Panorama material was even filmed. Cultures of Resistance film showing Naval Commando 13 firing at the Mavi Marmara from inflatable dinghies and helicopters was shown publicly on Democracy Now! in June. Film of the same commando unit attacking the Rachel Corrie on 5 June had also been shown publicly before the Panorama programme went on air.”

215. BBC Response

The Committee noted that the ECU responded:

"I think the comment... has to be considered in the context of the footage that was included in the programme at this point... I think viewers would have understood that the material showed commandos involved in training manoeuvres and that this was the ‘unique access’ to which the reporter was referring. I therefore do not believe that her comment was materially misleading or inaccurate.”

216. The Committee’s Decision

The Committee considered that the “unique access” mentioned in the programme referred to access to the training manoeuvres that the commando unit undertook with the BBC present, not to the boarding of the Mavi Marmara. The Committee felt that the sentence "The elite Israeli force which seized the Mavi Marmara, is training for its next operation" makes it clear that the “unique access” the reporter witnessed was the Israeli force "training for its next operation". Therefore, the Committee decided that this did not lead to a breach of the Editorial Guidelines on accuracy.

Finding: Not Upheld

Point AX - regarding the allegation that the footage of commandos in training portrayed them in a positive light... conferring legitimacy on the Israeli Navy’s activities

217. Allegation

The Committee noted that a complainant alleged:

"The programme opened with establishing shots of (the reporter), her back to Israeli soldiers running around a ship deck on exercise – ‘unprecedented access’ – and putting us, the viewers, irrevocably with the troops as ‘us’ versus the unknown, unseen threat out there. Regardless of what was actually being said, the picture put us on one side: Israel’s side. It is at this point that (the reporter) speaks the above innuendo. Given such a scenario, the BBC appeared to be giving tacit approval to the Israeli attack.”

The Committee noted the complainant refers also to the shot of the navy patrolling off the coast of Gaza and the commentary, “their mission to intercept enemies at sea”:

"This was conferring legitimacy on the Israeli navy’s activities.”

218. BBC Response
The Committee noted that the ECU responded:

"The programme did include footage of the Israeli commandos involved in training but I do not agree that this was an attempt to portray them in a positive light... viewers would have been aware of their activities on board the Mavi Marmara and I think the conclusion of the programme was clear. The Israelis admitted they misjudged the situation and were let down by their military intelligence regarding the intent of certain activists on board. Giora Eiland told the programme:

'Certain mistakes were made by the Israeli forces, both by the intelligence and by the commanders of the navy. There was under estimation of the potential resistance on the ship.'"

219. The Committee's Decision

The Committee decided that even in a programme dealing with a controversial subject, there is no requirement for balance within a specific section of a programme, however, overall due impartiality should be observed.

The Committee decided that the programme was duly impartial here in how it presented the role of the Israeli Navy. The Committee rejected the allegation that the presentation of commandos in training alongside the wording in the commentary "conferred legitimacy" on the Navy's activities. The Committee decided that in the context of the Navy's overall profile in the programme, this had not been the case and that there had been no breach of the Editorial Guidelines on "due impartiality" which says:

"It requires us to be fair and open minded when examining the evidence and weighing all the material facts, as well as being objective and even handed in our approach to a subject."

Finding: Not Upheld

Point AY - taking into account the Committee's decisions on all of the foregoing points it considered whether the programme as a whole met the Editorial Guidelines for impartiality and accuracy.

220. Allegation

The Committee noted some of the points made by complainants in relation to the overall programme:

"Undue weight was given to pro-Israel speakers and the reasons for activists’ participation in the flotilla were not clearly presented. The activists’ version of events was not fully shown. I believe that viewers are likely to have formed the impression that participants were not really peace activists but were terrorists or terrorist sympathisers intent on violent confrontation with Israel. This damages the reputation of those killed and injured on the flotilla and of all campaigners for Palestinian rights and hurts the interests of the Palestinian people."

"I am not arguing that every little detail should have been included but that a crucially important aspect was deliberately excluded. And balance is affected not only by accuracy and completeness but also by the tone and manner of presentation. I allege failure in each of these aspects, resulting in unacceptable
bias and the failure of the programme to explain why events turned out as they did.”

“The programme had a responsibility to clarify disputed points made by contributors, to correct false statements or indicate if any statement was suspect, particularly since the programme had said it intended to investigate ‘the real story’. I do not think that viewers should have to deduce facts, nor should they have to consider opinions against points aired earlier or later in the programme.”

“The incomplete examination of facts means that Panorama did not achieve its stated aim of showing the ‘real story’, but instead, it showed the ‘Israeli story’.”

“In the eyes of the supporters of the attack, Death in the Med exonerated the IDF by suggesting that the responsibility for the execution-style deaths on board the Mavi Marmara lay with the victims themselves.”

221. BBC Response

The Committee noted the programme response:

“We totally understand the strength of feeling that this subject provokes and we have tried to answer each specific point in some detail. However we also recognise that this is extremely unlikely to satisfy those ... who simply disagree with the narrative we told. We however stand by that narrative. As you can see the film was based on a huge amount of detailed and rigorous research and underpinned by some crucial off-the-record conversations with key figures, several of whom were on the Mavi Marmara on the night of the incident. In addition the hours of video that we were able to view, from many different sources, support the findings of the film.

“We note that the programme has not received any complaints from the IHH, nor from the Free Gaza Movement co-ordinator on the boat, Lubna Masarwa, who actually witnessed the violence first-hand.

“Jane Corbin is an extremely experienced correspondent. Her films have often won distinguished awards. She has been attacked in the past by pro-Israeli lobby groups and she is well aware of the highly charged and entrenched positions on both sides.

“In the final analysis it is our strong view that there has to be space in the mainstream media for experienced journalists in the Middle East arena, like Jane, to be allowed to do original journalism, even when the subject is highly contested and controversial.”

The Committee noted what the ECU said (in response to one of the complainants):

“I appreciate that the programme addressed some controversial aspects of the events on board the Mavi Marmara and that there are those who do not agree with its conclusions or the manner in which they were presented. As I have acknowledged previously, there were aspects of the events which could have been included and aspects which could have been treated in a different way. However the role of the ECU is to consider whether the programme as a whole, or elements within the programme met the requirements of the Editorial Guidelines when considered within that context. It presented an appropriately even-handed and balanced review of its subject matter and represented the diversity of opinion on the issues.
"I believe it was clear that the programme sought to examine the role and motivation of some of the activists on board, an element of the story which had not been considered in any great detail, certainly compared with the widespread international condemnation of the Israeli commandos...

"I accept the exact agenda of the programme may not have been specified as clearly as you would have liked and I also accept that material which you regard as necessary to provide the necessary balance was excluded. However, I don’t believe the failure to set out precise boundaries as you claim could be considered to amount to a serious breach of editorial standards; viewers were able to draw their own conclusions from the range of evidence presented.”

222. The Committee’s Decision

The Committee decided the programme contained timely and insightful revelations into what happened on the Mavi Marmara. Panorama presented new material which demonstrated that the explosive combination of poor Israeli military intelligence and operational strategy coupled with a core group of activists intent on violently resisting the Israeli assault, resulted in nine activists being killed and dozens of serious injuries.

The Committee decided it was editorially justified for the programme to focus on exploring this new evidence and not to reflect in any detail other equally important aspects of the wider story. In reaching its conclusion, the Committee was especially mindful that the majority of issues which complainants argued should have been included were those which had already been exhaustively debated in the media in the weeks between the assault on the Mavi Marmara and the Panorama broadcast.

The Committee noted that it had decided the omission of relevant views was material and had led to a breach of the Editorial Guidelines on impartiality in respect of Point AI (the failure to mention allegations that Israel mistreated some of the wounded). The Committee also noted that it had decided that there was a breach of the Editorial Guidelines on accuracy in respect of Point S (the exclusion of any reference to the preliminary autopsy findings) and Point AR (concerning the aid on board the flotilla).

The Committee noted too those occasions where it had decided the Editorial Guidelines had not been breached but where the viewer could have been better served; occasionally the content was not as clear as it might have been.

Collectively these were flaws which meant that in parts, the programme did not fully comply with the BBC’s editorial standards. But the Committee decided that those three instances, where there had been breaches of the Editorial Guidelines, and the occasions where the programme had not included fuller explanations, did not amount to a failure overall of the programme to achieve due impartiality and due accuracy.

The Committee concluded that Death in the Med was an original, illuminating and well-researched piece of journalism. It had achieved exceptional access to key players from both the Israeli and the activists’ side. Voices were heard that had not previously spoken and in presenting their story Panorama performed a valuable public service.

Finding: Not Upheld