

# Working Paper

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**VLADIMIR BRATIĆ**

**Comparative Analysis  
of Regulatory Media  
Assistance:  
Lessons from Bosnia  
and Herzegovina  
and Kosovo**



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# Comparative Analysis of Regulatory Media Assistance

Lessons from Bosnia and Herzegovina  
and Kosovo

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Democracy for Development  
Demokraci për zhvillim  
Demokratija za razvoj



**Albanian Media Institute**  
**Instituti Shqiptar i Medias**



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# 1.

## Introduction

Generally, international media assistance can help any media system with the positive and negative interventions.<sup>1</sup> Positive interventions, on the one hand, provide incentives and support the forces in the desired direction. Negative interventions, on the other hand, suppress unwanted practices which inhibit the desired outcome. Peace building is not any different and post-conflict media strategies are concerned with both positive and negative role of media in reconciliation. Most of the projects described in the literature deal with positive interventions – orchestration of positive media practices that contribute to peace: development of professional journalism, building media institutions and promotion of content in support of lasting peace.<sup>2</sup>

Nonetheless, negative interventions are often necessary to curb media practices that enable the continuation of conflict discourse. Even though the cessation of direct violence marks a decisive step in transforming conflict, sustainable peace depends on the eradication of other forces that are destructive to peace development. The majority of conflicts since the Cold War have been reinforced through carefully orchestrated media machines.<sup>3</sup> Even after political agreements bring an end to physical violence, propaganda and inciting messages tend to prolong the culture of violence. Violence often continues to exist in a non-tangible form – cultural violence – as aspects of culture (e.g. religion, language, art) which function as the symbolic sphere of our existence.<sup>4</sup> Cultural violence continues to exist most prominently in the media and as such represents a major obstacle to the peaceful transformation of conflict.

Hence, the critical component of peace building media strategy that has been widely underreported concerns the regulation of residual violence-inciting, conflict-promoting media environment. While the intervention with peace-oriented information in conflict is necessary, “intervention against certain kinds

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<sup>1</sup> Kurt Lewin, “Group decision and social change,” in *Readings in Social Psychology*, eds. Theodore M. Newcomb and Eugene L. Hartley (New York: John Wiley, 1958), pp. 330-344.

<sup>2</sup> Ross Howard et al., eds., *The Power of the Media: A Handbook for Peacebuilders* (2003).

<sup>3</sup> Mark Thompson, *Forging War: The Media in Serbia, Croatia, Bosnia and Hercegovina* (UK: University of Luton Press, 1999).

<sup>4</sup> Johan Galtung, “Cultural Violence,” in *Violence and its Alternatives*, ed. Manfred B. Steger and Nancy S. Lind (New York: St. Martin’s Press, 1999), pp. 39-56.



of information”<sup>5</sup> has not been a priority of most media interventions. Therefore, this chapter deals with the regulation process that centers on the development of legal environment which protects free speech and democratic media discourse while preventing inflammatory language, hate speech and verbal incitement. While the two approaches may appear to be in opposition, a more complementary practice developed over the last two decades.<sup>6</sup>

Nowhere else has this duality of media assistance been prominent as in the post-conflict recovery in Bosnia and Herzegovina (B&H) and Kosovo. In both of these cases, the initial media projects centered on journalism reform because at the time of the first post-Cold War conflicts, a quick model for news media improvement in conflict societies did not exist.<sup>7</sup> A model of the media development at the time existed in the former communist countries in democratic transition (e.g. former Soviet bloc, Latin America and parts of Asia) and it focused on elimination of censorship and careful nurturing of independent press.

However, years after the peace agreements were signed in both countries, the professionally-run, independent media were slow to make visible changes because they could not compete with the old, nationalist media sources (i.e. national broadcasters).<sup>8</sup> The audiences stuck with the coverage of nationalist media which was frequently biased and often even hateful. Moreover, the new, independent media failed to attract larger audiences, despite their professional and objective journalism. The international administrators in charge of the media strategy believed that, when presented with the appropriate options, people would make the right choice (i.e. choosing objective media over biased ones) but the success of the nationalist media negated such assumption. The media strategists failed to understand that pluralism requires more than the saturation of the environment with new media outlets.

This is when the reform of the regulatory environment became the focus of the media assistance in the region. However, the model of what regulatory reform of a conflict media needed to be was an enigma at this point. This chapter argues that the two experiences from the conflicts in B&H and Kosovo provided the answer of what regulative practice in conflict zones must contain. Not only have the two case studies established the variety of practices necessary for a comprehensive regulatory reform; they also came at the time when policy makers

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<sup>5</sup> Monroe Price and Mark Thompson, eds., *Forging Peace: Intervention, Human Rights and the Management of Media Space* (Edinburgh: Edinburgh University Press, 2002), p. 42.

<sup>6</sup> Vladimir Bratic, “Examining Peace-Oriented Media in Areas of Violent Conflict,” *International Communication Gazette* 70, no. 6 (2008), pp. 487-503.; Howard et al., *The Power of the Media: A Handbook for Peacebuilders*.

<sup>7</sup> David Rhode, *“All Successful Democracies Need Freedom of Speech”: American Efforts to Create a Vibrant Free Press in Iraq and Afghanistan* (Cambridge, Mass.: Harvard University Press, 2005).

<sup>8</sup> For a full account of media development efforts in Bosnia and Herzegovina and Kosovo, see this working paper series.

and academics came together to label this area of media assistance as “enabling environment” in one of the most influential studies for the USAID by Price and Krug.<sup>9</sup> A decade later, many experts would agree that regulation efforts were possibly the best practice of media assistance<sup>10</sup> and the basis for post-conflict intervention regulation paradigm.<sup>11</sup> As such, the model of regulation from the Balkans will be seen as instrumental in the entire field of peace building media and a baseline for the future intervention in the conflicts in Iraq and Afghanistan.

The chapter is structured as follows: The rationale for the production of positive media promoting peace building (e.g. journalism training, professionalization and development of peace-oriented media) is easily understandable and widely acceptable. The rationale for regulation of conflict media has not been as popular or easily understood. Therefore, it becomes highly important to understand the history of regulatory practices, provide the justification of its usefulness while remaining cognizant of the signpost issues surrounding the regulation (e.g. free speech v. hate speech). Finally, the two case studies of regulation from B&H and Kosovo are presented with the focus on implementation of regulation strategies (i.e. protection of free speech, suppression of incendiary media and development of regulatory authorities) that will serve as a basis for the media development known as “enabling environment” or the process of building media laws and institutions that support free and independent media.

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<sup>9</sup> Monroe Price and Peter Krug, “The Enabling Environment for Free and Independent Media,” in *Media Matters: Perspectives on Advancing Governance & Development from the Global Forum for Media Development*, ed. Mark Harvey (Paris: Internews Europe, 2006), pp. 95-103.

<sup>10</sup> Vladimir Bratic, “In Search of Peace Media: Examining the Role of Media in Peace Developments of the Post-Cold War Conflicts” (PhD diss, Ohio University, 2005).

<sup>11</sup> Kristina Irion and Roxana Radu, “Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift Through the Lens of Regulatory Theory,” in *The Independence of the Media and its Regulatory Agencies. Shedding New Light on Formal and Actual Independence against the National Context*, ed. Wolfgang Schulz, Peggy Valcke, and Kristina Irion (Bristol: Intellect Ltd, 2013).

## 2.

# History of the Regulatory Process

The history of regulation has been one of reactive responses by states to communication technology and innovation of commercial/industrial enterprises.<sup>12</sup> In the beginning, most countries developed ad hoc regulation practices in response to their emerging technological issues within national media systems. Different countries focused on divergent areas of regulation based on the specific circumstances of their media environment; the US championing the forces of free market while Europeans envisioned their media as more of a public utility.<sup>13</sup> Nevertheless, most regulatory systems at one time or another faced the problems of access, standards of performance and, at the most elementary level, issues of licensing.

## 2.1 Regulatory Authority

Government quickly became involved in the regulatory business of most states because the electromagnetic spectrum used for radio and television broadcast was considered to be a scarce public resource.<sup>14</sup> Allocation of the spectrum to the individual stations had to be handled by an authoritative body and most countries looked to their government for a fair arbitrage. Governments intervened either directly by imposing monopoly on broadcasting (authoritarian, communist, and even some European democracies) or, later on, through their agencies for regulation (e.g. FCC in the US).

With time, different states became accustomed to the different degrees of content regulation. On the one hand, there was minimal regulation of market forces favored by the US, on the other hand, there was heavy censorship as the only regulation principle favored by the authoritarian (e.g. Middle East) and communist societies (e.g. former USSR) and exercised through direct ownership and editorial control of media.<sup>15</sup>

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<sup>12</sup> Jan van Cuilenburg, and Denis McQuail, "Media Policy Paradigm Shifts: In Search of a New Communications Policy Paradigm," *European Journal of Communication* 18, no. 2(2003), pp. 181-207.

<sup>13</sup> *Ibid.*

<sup>14</sup> Irion and Radu, "Delegation to Independent Regulatory Authorities in the Media Sector."

<sup>15</sup> Van Cuilenburg and McQuail, "Media Policy Paradigm Shifts."

Somewhere in the middle there was the European approach, resting on the public service paradigm.<sup>16</sup> A major issue in the 1980s was a growing concern over direct government oversight of media due to the obvious desires for political manipulation of the regulator. Public service model of regulation was a response to the need to insulate broadcasting content from the direct influence of the state, while maintaining accountability to public interests. A call for independency of the regulator was further bolstered by the need to regulate increasingly diverse and growing audiovisual industry because media ownership rules were liberalized and new outlets were mushrooming.<sup>17</sup> This is how the creation of the politically independent and legitimate authority became a central value of the regulatory efforts.

In contrast to broadcast media, newspapers in most countries have managed to avoid direct government regulation. In many instances, print media have agreed to establish self-regulatory professional associations (e.g. Press Complaints Commission in the UK) that process all the public complaints. Extreme regulatory violations are meant to be handled by customary legal policies in the civil courts (e.g. defamation laws), which is a practice that applies to online content as well. However, not all of the countries advanced to self-regulatory practice and civil legal framework, and regulatory practice remains highly controversial because, if not done properly, it can quickly cross into censorship.

## 2.2 The Signposts of Regulatory Practice: Free Speech and Hate Speech

Predictably, any attempt to regulate media automatically evokes a concern for protection of freedom of expression. Regardless of state borders, freedom of expression is a fundamental individual right protected by Article 19 of the Universal Declaration of Human Rights as the right that “includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>18</sup> Furthermore, the US Constitution is often cited for its First Amendment which guarantees freedom of speech and the press. Therefore, freedom of expression is conventionally understood as a cornerstone

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<sup>16</sup> *Ibid.*

<sup>17</sup> Irion and Radu, “Delegation to Independent Regulatory Authorities in the Media Sector.”

<sup>18</sup> “The Universal Declaration of Human Rights,” The United Nations.

of International law, as well as being formally binding legal treaty ratified by 167 states in the International Covenant on Civil and Political Rights (ICCPR).<sup>19</sup>

However, the freedom of speech is not absolute but a subject to limitations and must be considered in conjunction with various other, sometimes conflicting rights, i.e. the rights to equality, privacy and reputation. Hence, freedom of expression is one of many rights which require balancing procedure to carefully weigh them up. The Article 19(3) of the ICCPR provides general exception to freedom of speech in case when it is provided by law due to legitimate interest and remains absolutely necessary; the process known as the three-step test.<sup>20</sup> Most explicit call for restriction of freedom of speech is included in the Article 20(2) that calls for limitation of freedom of expression in order to protect equality. This particular provision provides for the limitations to a) propaganda for war and b) any speech that advocates hatred which “constitutes incitement to discrimination, hostility or violence.” Commonly known as “hate speech,” this provision aimed to restrict offensive expression that dehumanizes groups and individuals and harms particular racial, ethnic, or other minority groups.

Many states have explicit laws and regulations that deal with hate speech even though their definitions of what constitutes hate speech differ. Despite its offensive nature, hate speech is permitted under the First Amendment of the U.S. constitution unless it creates “clear and present danger.” Free speech can lose its democratic benefits if it is likely a) to cause action, b) which is imminent, c) lawless and d) intended by the speaker to produce the action.<sup>21</sup> In other words, free expression loses its democratic rights only if it is likely to cause violence or harm.

But in the European Union, restrictions on speech apply even in case of abusive and insulting speech which might disturb the public order. Many European countries restrict the freedom of the media in the interest of other legitimate aims; however, justifications and legal standards vary by country. This is because the European Court of Human Rights does not provide a definition for hate speech, instead the Council of Europe instructs its member states with parameters to help them determine the expression amounting to hate speech, suggesting prohibition of speech “likely to produce the effect of legitimizing, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance.”<sup>22</sup> Furthermore, the freedom of expression provision in the

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<sup>19</sup> Toby Mendel, “Reflection on Media Self-Regulation: Lessons for Historians,” *Storia della Storiografia* 59-60 (2011), pp. 50-65.

<sup>20</sup> *Ibid.*

<sup>21</sup> C. Edwin Baker, “Genocide, Press Freedom and the Case of Hassan Ngze,” *University of Pennsylvania Law School, Public Law and Legal Theory Research Paper Series. Research Paper no. 46*, January 2003.

<sup>22</sup> Council of Europe Committee Ministers, Recommendation No. R. (97) 20 of the Committee of Ministers to Member States on “Hate Speech” (Council of Europe Committee Ministers, October 30, 1997).

European Convention on Human Rights has been interpreted to allow states to prohibit such speech. These two European developments have made the restriction on speech in Europe distinctive, and more permissible than in the US.

Additional rights in the ICCPR, namely the right to privacy and reputation, are not legitimate grounds for restricting freedom of speech. Instead they function based on the positive protection in the Covenant and in democratic societies they are handled by the civil law (e.g. defamation laws – libel for written words and slander for spoken words). Council of Europe recommends that member states develop legal framework of civil, criminal and administrative law, thus allowing for additional administrative and civil regulatory guidelines that can handle provisions like those against racist speech.<sup>23</sup> Administrative laws like codes of conduct and standards of operation represent another positive as well as preventive dimension to regulation.

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<sup>23</sup> Mendel, “Reflection on Media Self-Regulation.”

### 3.

## Regulation in the Conflict Environment

Regulative practice is especially important in the reforms of societies that experienced violent conflict. At minimum, providing specific set of rules and laws, regulation tends to contain the disorder, which is so common to the conflict environment. In a weak legal environment, and in the absence of elementary security, lawlessness becomes a factor that exacerbates conflict. By enforcing the laws among the media outlets, regulation indirectly contributes toward an orderly and stable society. Regulation of conflict media usually entails a delicate balance along the spectrum of free speech protection and hate speech prevention. It is very hard to execute the appropriate balance of regulation, as too much regulation amounts to censorship and too little can lead to a chaotic and incendiary environment. A conflict environment only accentuates the importance of the problem and emphasizes the delicacy of its implementation.

Unfortunately, media regulation can easily be abused for political purposes. Under the guise of preventing incendiary speech, governments can censor domestic media and repress the oppositional messages. For example, immediately after the assassination of Benazir Bhutto, President Musharraf, invoking hate speech provisions, imposed a virtual blackout on Pakistani media, banning “anything which defames or brings into ridicule the head of state, or members of the armed forces... [and] material that is likely to incite violence or hatred or create inter-faith disorder or be prejudicial to maintenance of law and order.”<sup>24</sup> In 1988, a ‘Broadcast Ban’ was introduced in the UK requiring all British broadcasters to restrict their reporting on paramilitary organizations and to use subtitles or an actor’s voice instead of the voices of paramilitary officials.<sup>25</sup> A similar rule existed in the Republic of Ireland, going even further to ban the voices of Sinn Fain and IRA members in order to restrict their access to the media.

Developed regulatory framework for media in conflict was not existent at the end of the Cold-War. Even though the major conventions of the international law

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<sup>24</sup> Human Rights Watch, “Pakistan: Media Restrictions Undermine Election,” *Human Rights Watch*, February 17, 2008.

<sup>25</sup> Gregory McLaughlin, “Changing Hearts and Minds: Television, the Paramilitaries and the Peace Process,” in *Public Diplomacy, Cultural Interventions & the Peace Process in Northern Ireland: Track Two to Peace?*, eds. Nicholas J. Cull and Joseph J. Popiolkowski (Los Angeles: Figueroa Press, 2009), pp. 31-44.

described above were on the books at the time, most individual states outside the Global North monopolized their media system and felt no obligation to develop independent regulatory practice.<sup>26</sup> Once ignited, the ethnic conflicts of early 1990s used media much more centrally in promoting conflict goals. Unsurprisingly, firmly under control of conflict actors, media became another powerful tool of war. In Rwandan conflict from 1994, Hutu controlled radio and a newspaper used abundance of derogatory language and incendiary speech in reference to the Rwandan Tutsi population. The Rwandan radio *Radio-Télévision Libre des Mille Collines* (RTL) and newspaper Kangura explicitly called for the murder of the Tutsi population and therefore were believed to have contributed to the massacre.<sup>27</sup> The Rwandan newspaper Kangura presented bigoted cartoons to circumvent the obstacles of illiteracy and interpretation. They often used explicit language openly calling for “purging the internal enemy” and “leavening no survivors who could later accuse them.”<sup>28</sup> Similarly, the newspaper and later radio spread the so-called “10 commandments of Hutus,” an article that provided ten reasons to hate Tutsis. Both the cartoon and the article spread rumors and misinformation, carefully embedding a hateful context that would later be used to ignite the militants to kill.<sup>29</sup>

Reemerging “hate media” in the Rwandan war confirmed the malicious effects of media in conflict comparable to the brutal Nazi propaganda. The impact of the Nazi media to incite hatred provided a justification for prohibition of incendiary speech in most societies today. Nuremberg trials of the war criminals in 1945 helped paved the way for the incitement legislation.<sup>30</sup> The decision in the case against Julius Streicher who published, spoke and wrote inciting content against Jews concluded that his incitement to murder constituted Crimes against Humanity.<sup>31</sup> After the conflict in Rwanda, the International War Crimes Tribunal for Rwanda in Arusha, Tanzania, formally charged and arrested the owner and employees of radio RTL and the Kangura newspaper because of their contribution to the massacres. This case centered on the indictment of Hutu journalists for their hateful propaganda during the conflict. The two founders of RTL and the editor of Kangura were

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<sup>26</sup> Irion and Radu, “Delegation to Independent Regulatory Authorities in the Media Sector.”

<sup>27</sup> Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999); Jamie Metz, “Information Intervention: When Switching Channels Isn’t Enough,” *Foreign Affairs* 76, no. 6 (1997), pp. 15-20; Linda Kirschke, *Broadcasting Genocide: Censorship, propaganda & state-sponsored violence in Rwanda 1990-1994* (London: ARTICLE 19, 1996); Tim Allen and Jean Seaton, eds., *The Media of Conflict: War Reporting and Representations of Ethnic Violence* (New York: Zed Books Ltd, 1999).

<sup>28</sup> “Two sentenced to life imprisonment in hate media trial,” Reporters Without Borders, December 4, 2003.

<sup>29</sup> Allan Thompson and Kofi Annan, *The Media and the Rwanda Genocide* (London: Pluto Press, 2007).

<sup>30</sup> Baker, “Genocide, Press Freedom and the Case of Hassan Ngze.”

<sup>31</sup> *Ibid.*



convicted by the International Criminal Tribunal.<sup>32</sup> The court, set up by the United Nations, cited the Nuremberg decision in finding the journalists guilty of inciting ethnic hatred thus contributing to the killing of hundreds of thousands of people.

The malicious impacts of the Rwandan media served as a cautionary tale in most forthcoming attempts to reform media in conflict zones. The negative impact of Rwandan media confirmed a need for a regulatory system that can identify hate speech in conflict. It also established that a decade long legal process took effect long after the crimes have been committed and therefore it brought into consideration principles of “responsibility to prevent” atrocities which are invoked in the Genocide Convention.<sup>33</sup> No short-term prevention strategies were available short of jamming the signal – purposefully blocking the signal of objectionable media outlets – even though such actions were considered against RTLM in 1994.<sup>34</sup> Instead, this case confirmed the need for a more proactive, preventive regulatory system that can deter the occurrence of negative media practice.

One of the most influential positive regulatory proposals for an entirely comprehensive system was that of Monroe Price and Peter Krug contracted by the USAID in 2000. In this document the authors “identify components of the complex legal process that contribute to an environment that enables media to advance democratic laws.”<sup>35</sup> Price and Krug argue that essential reform must entail development of laws as well as the institutional structures that administer the law. They call for reform that will result in “enabling environment” combination of the rule of law and the legal environment in which news media operate. Rule of law must be clear and accessible, based in legal norms, supported by the administrative processes that are fair, impartial and objective and, finally, supported by the judiciary. In the reform to the legal environment for news media, the authors outline four aspects of interest: Newsgathering, content based regulation, content-neutral regulation and protection of journalists.

Most instructive to the environments without previously established regulatory practice (often the case of countries in conflict zones) are these four aspects of the legal environment for news media: newsgathering laws that ensure public access to information, protection of privacy, crime prevention, and licensing of journalists. Another set of laws are those that deal with content-based regulation, allowing public authorities to regulate who can broadcast and what can be broadcast,

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<sup>32</sup> Charity Kagwi-Ndungu, “The Challenges in Prosecuting Print Media for Incitement to Genocide,” in *The Media and the Rwanda Genocide*, eds. Allan Thompson and Kofi Annan (Ottawa: International Development Research Centre, 2007), pp. 330-342.

<sup>33</sup> Irwin Cotler, “State-Sanctioned Incitement to Genocide,” in *The Content and Context of Hate Speech: Rethinking Regulation and Responses*, eds. Michael E. Herz and Peter Molnar (Cambridge: Cambridge University Press, 2012), pp. 430-455.

<sup>34</sup> Metzl, “Information Intervention.”

<sup>35</sup> Price and Krug, “The Enabling Environment for Free and Independent Media.”

and outline punishment methods for violators. A third set of reforms regard the indirect influence of content, and the last one deals with protection of journalists in both physical environment and in the internal relationship between journalists and media owners. In a similar paper aimed exclusively at post-conflict zones, the authors call this framework a module, a system of laws to respond to abusive content and safeguard fundamental rights.<sup>36</sup> Krug and Price admitted that their perspective on the module first appeared in B&H and was later developed in Kosovo, and they suggested that it could likely be used in future post-conflict settings.<sup>37</sup> When professionally executed, enabling media environment can serve as a foundation of a system that protects freedom of speech and prevents hate speech while safeguarding other media principles that ensure human dignity.

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<sup>36</sup> Monroe Price and Peter Krug, "A Module for Media Intervention," in *Forging Peace: Intervention, Human Rights, and the Management of Media Space*, eds. Monroe Price and Mark Thompson (Bloomington: Indiana University Press, 2002), pp. 148-176.

<sup>37</sup> *Ibid.*

## 4.

## Case Studies: B&H and Kosovo

Immediately after the break in violence (in the B&H in 1995 and in Kosovo 1999), the international community begun with extensive media assistance program; it was of unprecedented proportion and scale for a post-conflict society.<sup>38</sup> Series of reforms in all media sectors were primarily top-down approaches, designed to recreate the Western model of pluralistic media system (a system lacking political affiliation, embodying professional values of impartiality and objectivity, and including public but editorially independent media systems). With time and under the pressure of practice, the international community adjusted its approach to include partnership with local media producers and consumers, and eventually turned the reform process over to the local authorities and civil society. While a number of media reforms, assistance projects and the methods of implementation will remain controversial subjects, most of the regulatory practices remain a stable contour of post-conflict regulatory reform, not only in the region but for the future conflict settings as well.

The B&H and Kosovo were not so far ago parts of the federal state of Yugoslavia. B&H of was one of the six republics of the former Yugoslavia, and Kosovo had a status of autonomous province within republic of Serbia. After the fall of communism, the two republics (Slovenia and Croatia) declared independence from the federal union, B&H followed suit in 1992. B&H was ethnically the most diverse and composed of three major ethnic groups: Bosniaks (Muslim), Serbs (Orthodox Christians) and Croats (Catholics). However, the Serbs and the Croats in B&H each wanted to split from the country and join their “mother-states,” Serbia and Croatia. The Bosniaks fought against those secessionist movements while trying to preserve the union of all three ethnic groups in one state.

The most recent phase of conflict in Kosovo began in the 1980s during the communist regime of the federal Yugoslav state. At the time when Kosovo was

<sup>38</sup> See: Tarik Jusić and Nidžara Ahmetašević, “Media Reforms through Intervention: International Media Assistance in Bosnia and Herzegovina,” Working Paper Series on International Media Assistance in the Western Balkans, Working Paper 3/2013, prepared in the framework of the Regional Research Promotion Programme in the Western Balkans (RRPP) (Sarajevo: Analitika – Center for Social Research, 2013) and Naser Miftari, “Starting from Scratch: The Role of Media Assistance in the Establishment of Independent Media Institutions in Kosovo,” Working Paper Series on International Media Assistance in the Western Balkans, Working Paper 4/2013, prepared in the framework of the Regional Research Promotion Programme in the Western Balkans (RRPP) (Sarajevo: Analitika – Center for Social Research & Prishtina: D4D – Democracy for Development, 2013).

constituted as a province of the Serbian federal republic, great majority of its population was ethnically Albanian. When Albanians requested more constitutional control over their province, the Serbian regime removed their autonomy, beginning with cultural oppression and police brutality. In 1995, the Albanian Kosovo Liberation Army (KLA) organized violent attacks against the government and the local Serbs. Failure to reach a political settlement culminated in 1999 when the Serbs refused to sign the agreement sponsored by the international community. In response, NATO conducted a bombing campaign of Serbia. The Serbs responded by ethnic cleansing of a large number of Albanians from Kosovo. Both countries returned to a relatively peaceful state; B&H after the Dayton Peace Accords in 1995 and Kosovo soon after the NATO military intervention in 1999.

Electronic and print media in former Yugoslavia were exploited for a number of years before the violence began in B&H. Most conflict parties in the former Yugoslav republics began promoting the ideology of nationalism, Serbian media being at the forefront of propaganda war.<sup>39</sup> The situation became grave so that at one point a major International law committee on Elimination of Racial Discrimination urged the Serbian government to ban racist activities and propaganda.<sup>40</sup> While the explicit broadcast of hate speech was rare, the cumulative impact of biased coverage fuelled the hatred over a long period of time.<sup>41</sup> The nationalist media in those conflicts can best be described as war facilitators. The media of all parties in the conflict simply followed textbook propaganda principles.

All sides in the conflict utilized radio and television broadcasting to advocate their own patriotic causes and demonize their opponents.<sup>42</sup> During the previous regime, media served the authorities and once the nationalists came into power, media transitioned from serving communists to serving nationalists.<sup>43</sup> Extremely biased coverage of all media emphasized the discourse of 'us versus them.' Extreme divisiveness of the coverage fuelled the nationalistic hatred and managed to legitimize violence as a means of achieving national goals. Most studies agree that the media in the former Yugoslavia effectively facilitated the war among the ethnic groups.<sup>44</sup> Therefore it is not a surprise that media heavily involved in the war rhetoric in B&H and Kosovo encountered the historically established regulatory

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<sup>39</sup> Kemal Kurspahic, *Prime Time Crime: Balkan Media in War and Peace* (Washington DC: United States Institute of Peace Press, 2003).

<sup>40</sup> Thompson, *Forging War*.

<sup>41</sup> Ahmed Buric, "The Media War and Peace in Bosnia," in *Regional Media in Conflict*, ed. Alan Davis (London: Institute for War and Peace Reporting, 2000), pp. 64-100; James Sadkovich, *The U.S. Media and Yugoslavia, 1991-1995* (Westport CT: Praeger, 1998).

<sup>42</sup> Kurspahic, *Prime Time Crime*.

<sup>43</sup> Thompson, *Forging War*.

<sup>44</sup> Maureen Taylor and Michael Kent, "Media Transitions In Bosnia: From Propagandistic Past to Uncertain Future," *International Communication Gazette* 62, no. 5 (2000), pp. 355-378.

problems: insufficient protection of free speech, abundance of incendiary speech, and strife for legitimacy of the regulatory authority.

## 4.1 Incendiary Language and Hate Speech

Unlike in Rwanda, in the Balkans conflict media rarely broadcasted explicit calls for murder or violence, but propaganda and hate-inciting speech was pervasive in more subtle tones. The peace agreements in both conflicts did not change the vitriol of arguments in the media under control of warring sides, not even after the cessation of violence. However, an influx of financial donations and grants made it easy for citizens to establish and run a plethora of new media outlets. Such media environment allowed breathing room for all kinds of media content. The newly established pluralized media system removed the problem of authoritarian control over scarce media. On the other hand, the post-war B&H media operated roughly two times more radio and TV stations per capita than the United States, with most of them unlicensed and illegal.<sup>45</sup> At the end of 2000, the media in Kosovo was crowded with 24 television channels and some forty radio stations.

In the conflict environment, this often means the recurrence of journalistic practices saturated with political bias, partiality and, often, blatant propaganda. Propagandistic media systems with vitriolic and often inciting language – though pluralistic – further contributed to polarization of both societies.<sup>46</sup> At the point when propaganda remained dominant, it became clear that it could not be counterbalanced by pluralized voices or peace-promoting media, and this is why the international administrators in both conflicts focused on curbing the impact of incendiary media even before any legitimate regulatory framework was in place. The first two cases of intervention against incitement in each conflict elevated the importance of regulation and brought the problem of hate speech into the spotlight.

Firstly, in B&H two year after the DPA, the B&H regulatory laws were yet to become a priority, the only regulatory provision was the single article from the agreement featured in the Annex 7 that compelled the signatories to “the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred.”<sup>47</sup> Without the laws in place or regulatory legitimacy, the Office of the High Representative (OHR) has managed

<sup>45</sup> Zoran Udovicic et al., “The Media at a Turning Point: A Media Landscape of Bosnia-Herzegovina” (Media Online, 2001).

<sup>46</sup> Buric, “The Media War and Peace in Bosnia”; Taylor and Kent, “Media transitions in Bosnia.”

<sup>47</sup> Mark Thompson and Dan De Luce, “Escalating to Success: Media Intervention in Bosnia and Herzegovina,” in *Forging Peace: Intervention, Human Rights and the Management of Media Space*, eds. Monroe E. Price and Mark Thompson (Edinburgh: Edinburgh University Press, 2002), pp. 201-235.

to insert a paragraph 70 in the Sintra PIC declaration giving the right to “curtail or suspend any media network or program whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement.”

With such broad powers, OHR first targeted SRT Pale (Srpska Radio Televizija Pale / Serbian Radio Television Pale). Controlled by the party of Radovan Karadzic, SRT held a monopoly within the airwaves in the Serb section of B&H. Consequently, the OHR had already approached SRT and received assurances that SRT would refrain from inflammatory language and provide broadcasting time for alternative political views. It did not. In fact, confronted with the potential for the erosion of their monopoly, SRT executives reacted with an aggressive media campaign against the international community, against NATO, and against the upcoming elections comparing them to the Nazi and fascist regimes.<sup>48</sup> At the request of the High Representative in September of 1997, the NATO troops occupied four SRT transmitters. Without the transmitters, the SRT lost the ability to broadcast over the majority of its territory. To emphasize that such inflammatory activities would not be tolerated, the OHR transferred ownership of SRT to more moderate Serb politicians operating from Banja Luka. Subsequently, Karadzic’s extremist political party collapsed, and moderates came to dominate Bosnian Serb politics.<sup>49</sup>

Similarly in Kosovo, two years later, the United Nations empowered the UN peacekeeping force to enter Kosovo to stabilize the country under the title United Nations Administrative Mission in Kosovo (UNMIK). Most prominent in the UN’s list of concerns was the potential for reprisals by the Kosovar Albanians against the now disempowered Serbian minority. Uncertain about how exactly this would manifest itself, the UNMIK administrators responsible for democratization of the newly autonomous region emphasized that newly passed regulations against hate speech would be strongly enforced.<sup>50</sup> In February of 2000, in a rush to prevent inflammatory language in the print media, the new law on Prohibition against Inciting to National Racial, Religious and Ethnic Hatred, Discord and Intolerance was promulgated by the UNMIK. The new law never referred to media specifically. This was an amendment to the criminal law procedure with penalties of up to 10 years in prison.<sup>51</sup>

To test this resolve, in May 2000 a minor Kosovo newspaper called *Dita* accused Petar Topoljski, a Serb employed by the UNMIK, of being a war criminal and of

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<sup>48</sup> Thompson, *Forging War*.

<sup>49</sup> Bratic, “In Search of Peace Media.”

<sup>50</sup> Daan Everts, “Speech on the occasion of the opening of new studios in Radio Television Kosovo (RTK), February 16, 2000,” in *The Evolution of Ownership*, Special Paper, ed. Simon Haselock (US Institute for Peace, Center of Innovation for Media, Conflict and Peacebuilding 2010), p. 7.

<sup>51</sup> Julie Meturs and Mark Thompson, “The Learning Curve: Media Development in Kosovo,” in *Forging Peace: Intervention, Human Rights, and the Management of Media Space*, eds. Monroe Price and Mark Thompson (Bloomington: Indiana University Press, 2002), pp. 259-286.

complicity in crimes against Albanian Kosovars. Giving detail of his home and work address, the article provided the place and motive for someone to commit a crime. Within three weeks, Topoljski was found in his apartment stabbed and strangled to death. Shortly after the discovery of Topoljski's body, the editor of *Dita*, Behlul Beqaj, affirmed his intention to continue publishing the names and details of Serbs who had been "involved against Albanians." The Head of the UNMIK mission, Bernard Kouchner, recognized the act as a case of incitement and suspended publication of the paper for eight days.<sup>52</sup> In the absence of specific legal guidelines, without due process and citing a violation of the "letter and spirit of Security Council resolution 1244" Kouchner had overstepped his bounds, setting what could be a dangerous precedent limiting freedom of expression for local media.

Rather than accept this regulation and sanctions, the newspaper community as a whole rose up and sided with *Dita*. Beqaj argued, "Ethnic tolerance cannot be created by asking Albanians to turn a blind eye. You who came to Kosovo to establish justice should stop the crime and criminals, and not the press that publishes facts about them."<sup>53</sup> For many other journalists, larger issues were at stake. Hacif Muliqui of the Kosovo Journalist's association took issue with what he perceived as the arbitrary application of power. On July 4, 2000, a headline in *Koha Ditore*, a major independent newspaper in Kosovo, sympathized, "*Dita* is closed by decree, not through normal procedure." Veton Surroi, the editor of the main independent daily *Koha Ditore*, offered to make space available for *Dita*'s editorial pages to be published in his newspaper until *Dita* was reopened.<sup>54</sup> Even the OSCE mission sent a letter to Kouchner suggesting an apology or a retraction would have been a preferable approach in such a situation.

## 4.2 Strife for Legitimate Regulatory Authorities

The two cases of aggressive reprisal against incendiary media highlighted a problem that proved endemic for the both peacekeeping missions: in order to prevent violence, the international community often executed regulation without previously established legal framework and transparent regulatory rules. Top-down decision by the OHR and UNMIK were perceived as authoritative implementation,

<sup>52</sup> Steven Erlanger, "Death of Serb Named in Newspaper Sets off a Battle Over News Media Restrictions in Kosovo," *The New York Times*, July 13, 2000.

<sup>53</sup> Nicholas Woods, "In Kosovo, newspaper exposés of war criminals leads to murder," *The Guardian*, July 31, 2000, p. 4.

<sup>54</sup> Monroe E. Price and Mark Thompson, "Forging Peace: Intervention and the Management of Media Space (2002)," in *The Evolution of Ownership*, Special Paper, ed. Simon Haselock (US Institute for Peace, Center of Innovation for Media, Conflict and Peacebuilding 2010), p. 7.

and though they may have temporarily blocked the incendiary media, they created a perception of a heavy-handed resolve without legitimacy. The regulatory vacuum of early peace building missions allowed the two international governing bodies to quickly implement their will, but it also left an impression of colonial rule.<sup>55</sup> It was criticized by both local as well as international press.<sup>56</sup>

This should not have been a surprise considering that the agreements that had ended the wars in both countries, providing a governing framework, effectively a protectorate, in which the OHR or UNMIK backed by NATO forces would undertake a series of agreed civil and political reforms. In 1996 the OHR and OSCE initiated reform of B&H's media sector relying on not much more than barely applicable media intervention in Japan and Germany following the World War II.<sup>57</sup> At this time, there were few precedents of regulatory framework implementation that could be implemented quickly and effectively. In the rest of Europe at this time, political independency of the regulator only became an important regulatory issue a few years prior to these wars. The path to establishment of the independent and at the same time locally legitimate regulator was long and tumultuous, and can be best described as a process of trial and error.

It began in 1997, when, OSCE established The Media Experts Commission (MEC) to bring order out of chaotic media environment in B&H. MEC was a provisional solution as a prelude to the municipal elections held in B&H in September 1997. Backed by the OHR diplomats and NATO military force, the Commission had a goal of ensuring that Bosnians get the necessary information to make an informed decision in the coming elections. The effectiveness of the Media Experts Commission whose mandate expired on October 31, 1998, and the OHR's intervention to block inflammatory media activities in B&H, pushed the OHR to establish a permanent regulatory authority over broadcast media in June 1998, in the form of Independent Media Commission (IMC). Tasked with regulation, the IMC had a goal to rein in the B&H media by requiring all of the existing broadcasters to register with the agency, and to apply for operating licenses. From the very beginning, the IMC was envisioned as a long-term solution, and by 2003 it was completely transformed into indigenous Communication Regulatory Agency (CRA).<sup>58</sup>

In December 1998, the OHR formalized these different media initiatives at a meeting of the Peace Implementation Council held in Madrid. The result was a three pronged framework to create a media sector independent of government and party politics. The Madrid meeting promulgated three objectives:

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<sup>55</sup> Gerhard Knaus and Felix Martin, "Travails of the European Raj," *Journal of Democracy* 14, no. 3 (2003), pp. 60-74.

<sup>56</sup> Thompson and De Luce, "Escalating to Success."

<sup>57</sup> Simon Haselock, "The Evolution of Ownership," Special Paper (US Institute for Peace, Center of Innovation for Media, Conflict and Peacebuilding, 2010), pp. 2-3.

<sup>58</sup> Thompson and De Luce, "Escalating to Success."



1. removal of direct party political control from all media;
2. establishment of a legal and regulatory framework to maintain media standards consistent with Western democratic best practice, ensure media freedom, and raise journalistic and broadcasting standards; and
3. adoption and full implementation of Western public service standards at all public broadcasters.<sup>59</sup>

Intended as an outline for reform in B&H, the Madrid framework would also motivate the organization for media intervention and reform when NATO entered Kosovo in late 1999. Crucially, though, at the Madrid meeting, OHR and its partners in the international community still viewed the media reform process as a top-down process in which the international community was responsible for organizing best practice on the Western model. Although international experts in theory recognized the importance of working with local experts, they had not as yet accepted that such collaboration was more important to credible and ongoing media reform than complete exclusion of all experts who had worked in the prior regime.<sup>60</sup>

The response of the media community in Kosovo to the Dita incident shows the frustration with perceived lack of legitimacy. The Albanian Kosovars wanted justice, and in a country with a dysfunctional judicial system dominated by the international community, they did believe that it was possible.<sup>61</sup> Local laws and institutions were not set up yet, and the laws imposed by UNMIK (like the one against hate speech) appeared rather draconian. More importantly, however, the media sector opposed the arbitrary way in which the UNMIK's authority had been applied. To the Kosovars, having just escaped the rule of Slobodan Milošević, it appeared as if they had replaced one petty dictator with another. Kouchner did not, however, have any intention of ruling in this fashion. As the incident potentially spun out of control, UNMIK established the Temporary Media Commission to manage media regulation in Kosovo. Bringing three years of experience managing media reform in B&H, Kouchner appointed Simon Haselock, the former head of OHR media department in B&H, to act as the first commissioner.<sup>62</sup>

Believing that the core of this dispute was the lack of legitimacy, UNMIK and OSCE, apart from the Temporary Media Commission, also established the Media Appeals Board (MAB) as a safeguard against its own power. Haselock saw the *Dita* case as an opportunity to create legitimacy not only around regulation of incendiary speech but also for the entire program of media reform that UNMIK had planned. Undertaking a broad investigation of the views of media sector leaders, of the

<sup>59</sup> Peace Implementation Council (PIC), "PIC Madrid Declaration" (Madrid: PIC, Office of the High Representative, December 16, 1998).

<sup>60</sup> Haselock, "The Evolution of Ownership," p. 6.

<sup>61</sup> Woods, "In Kosovo, newspaper exposés of war criminals leads to murder."

<sup>62</sup> Haselock, "The Evolution of Ownership," p. 8.

Kosovar media audience, and of media experts (local and international), Haselock determined that the Kosovars viewed UNMIK's decision as lacking legitimacy because it was made without due process. "They understood the reasons why hate speech and incitement were so poisonous to the rehabilitation of Kosovar society in the aftermath of war, but felt that they should be included in the formulation of the mechanisms that would regulate it".<sup>63</sup> The independence and legitimacy of the system was demonstrated when, in reviewing the *Dita* case, the Media Appeals Board found that although the editor had been sufficiently irresponsible to be liable, UNMIK had acted without the due process required by international law. Consequently, the MAB nullified the UNMIK's decision.<sup>64</sup>

### 4.3 Attempts to Institute Protection of Free Speech

Freedom of speech is the foundational principle of all regulatory efforts, and while it applies to all citizens, none need it more than media and journalists. In order to perform their routine functions, journalist must know that their work will be protected. The protection of their activity entails at least two components. One component concerns physical security. Journalists in conflict are often targets of physical violence, intimidation, and other threats. The other component is the matter of the legislative framework that protects freedom of speech by a delicate balance of laws that affirm this right (e.g. freedom of information act) as well as set the boundaries (e.g. defamation laws) and professional standards (e.g. codes of conduct) of such freedom.

At the most fundamental level, the violence against journalists remained the main problem several years after the peace agreement was in place in B&H. The most infamous case was the attack on the prominent voices of independent journalism in Republika Srpska, the Serbian part of B&H. The Serbian journalist Željko Kopanja was an editor-in-chief of *Nezavisne Novine*, one of the few independent newspapers. He was not only a very prominent critic of the corruption in the government, but also the first one to write about the war crimes committed by Serb forces. Given that threatening phone calls did not stop his investigative reporting, a bomb planted in his car exploded as he entered it. Even though he lost both of his legs in the attack, Kopanja continued to write, pledging to stay "on the right track."<sup>65</sup>

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, pp. 8-9.

<sup>65</sup> Jerome Aumente, "CPJ Dangerous Assignments: Profile in Courage," Committee to Protect Journalists, December 15, 1999.

Different types of harassment against journalists, though less violent, persisted throughout the 1990s. The OCSE quickly realized that the protection of journalists was an indispensable condition of freedom of media in B&H. To address the issue, the OCSE worked closely with the major international NGOs in field. Committee to Protect Journalists, Reporters Sans Frontières / Reporters without Borders, and the International Federation of Journalists worked along the OHR and the OCSE in a strategic plan to protect journalists. The Helsinki Committee and the OSCE established a “hotline” to identify incidents of harassment of journalists. The OCSE launched a mass media campaign publicizing the attacks on journalists. It also encouraged the journalist to report the incidents of intimidation.

In Kosovo, even after the TMC was in place, the pressure on journalists continued. The most serious cases were the murders of two Kosovo journalists – Shefki Popova in 2000, and Bekim Kastrati in 2001. An example of non-violent harassment was the case of journalist Jeta Xharra who wrote about the lack of freedom of expression and subsequently received death threats.<sup>66</sup> Other forms of threats against journalists also persisted. In 2000, almost 40 percent of journalists said that they had been threatened while performing their jobs.<sup>67</sup> With time, the visible violent crimes against journalists became rare, while the pressure became more subtle. The authorities, both government and other political party members, exerted pressure on editors, journalists and even owners, to cease with critical reports and investigative journalism that threatened the status quo. The main tool of intimidation in Kosovo became the financial pressure. Because the government was the biggest employer and contractor, the media critical of the authorities were threatened with the cancelling of advertisements.<sup>68</sup> Political pressure was evident especially in the public service broadcaster (RTK) which remained closely controlled by the ruling party.<sup>69</sup>

Another indispensable component in protection of free speech concerns the provisions in the legal system that outlines and ensures media professionalism. While the major legal protection of free speech fall within the domain of law experts, a few fundamental principles still remain the purview of the media regulation. The hate speech and freedom of expression provisions are usually purview of either criminal or civil law, but also parts of administrative legal practices, as preventive measures along the same lines. Needless to say, none of these regulatory mandates existed prior to the start of the peace implementation in B&H and Kosovo.

The essential components of administrative legal practices are Codes of Conduct or guidelines of proper practice. These codes deal with standards of best practice

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<sup>66</sup> IREX, Media Sustainability Index Kosovo 2010 (IREX, 2010).

<sup>67</sup> “Kosovo journalists under threat,” OSCE Mission in Kosovo, June 13, 2002.

<sup>68</sup> OSCE - Department of Democratization, “Circulation and Politicization of the Print Media in Kosovo” (OSCE - Department of Democratization, March 2010).

<sup>69</sup> Miftari, “Starting from Scratch.”

and they are formal and legally binding, usually only for broadcasters. In B&H, the first guidelines, titled Standards for Professional Conduct for the Media and Journalism, came from the MEC in March of 1997. Modeling the ideal of the European press model, these standards called for fair reporting – “accurate, complete, fair, equitable and unbiased information” – the avoidance of inflammatory language – “which encourages discrimination, prejudice, or hatred, or which encourages violence, or contributes to the creation of a climate in violence can occur” – and accurate and balanced information.<sup>70</sup>

In 1988, these standards were formalized by the IMC into a Broadcasting Code of Practice, and slightly amended in 1999 and 2000. The broadcasting Code of Practice set out the rules for broadcasters particularly focusing on incitement, standards of decency, non-discrimination, fairness and accuracy.<sup>71</sup> On this basis, the IMC issued numerous executive orders to B&H broadcasters and publishers to block incendiary speech.<sup>72</sup> Kosovo’s Broadcasting Code of Practice was introduced by an UNMIK Regulation in June of 2000. Modeled on the B&H predecessor, it also outlined an extensive set of sanctions for the violators (correction, apology, warning, fines, warning, suspension, and denial of entry, seizure of equipment, closedown or termination of license).<sup>73</sup>

But the most controversial was the accompanying UNMIK’s regulation, because it also introduced the Print Code of Conduct, a law applicable to print media in Kosovo. At the time, incendiary speech was firmly embedded in the print media, and the UNMIK resolution gave TMC the authority over newspapers and outlined almost identical set of sanctions. This procedure was contrary to the self-regulative model of press regulation which has become a European standard practice. On the other hand, the B&H print journalists followed the European standard and established Press Council as a self-regulatory model. In 2005, the Kosovo newspapers got their own self-regulatory Press Council. The council was set up as a voluntary organization owned by the media outlets. At the same time it was invested with strong regulatory rights to issue fines and to force newspaper to issue correction, and a right to reply.

The final components of the comprehensive regulatory framework are the explicit laws that affirm the professional position of journalists. Some of the standard laws of practice include licensing of broadcasters, defamation law, freedom of

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<sup>70</sup> Vladimir Bratic, Susan D. Ross, and Hyeonjinand Kang-Graham, “Bosnia’s Open Broadcast Network: A Brief but Illustrative Foray into Peace Journalism Practice,” *Global Media Journal* 7, no. 13, article number 6, (Fall, 2008); Haselock, “The Evolution of Ownership,” p. 6.

<sup>71</sup> “Bosnia-Herzegovina Code: Bosnian Broadcasting Code,” Donald W. Reynolds Journalism Institute, <http://www.rjionline.org/MAS-Codes-Bosnia-Herzegovina-Broadcasting> (Accessed on October 8, 2013).

<sup>72</sup> Bratic, “In Search of Peace Media.”

<sup>73</sup> Mertus and Thompson, “The Learning Curve.”

information act, etc. Licensing of the media was an essential component of the post-conflict media reform in B&H, because the pluralization strategy created one of the most prolific media environments in the world. The only way to impose order in the environment where media outlets were broadcasting over each other's frequencies was the identification and licensing of all media outlets. Once registered, to maintain the license, the broadcasters were required to abide by the Broadcasting Code of Practice. This turned out to be a crucial strategy in taming the frequent incendiary source, the Bosnian Croat television Erotek. In February of 2000, the transmitters of this TV station were seized and its programs were cut off the air because their rebroadcasting of the Croatian HRT was a violation of the licensing agreement.<sup>74</sup>

After the initial sets of laws were put in place, journalists rarely faced physical pressure; however, their safety was now threatened by new nuisances – harassment and intimidation. In addition to threatening encounters and harassing phone calls, subtle pressure on journalists through the harassing libel suits, in biased courts, were recorded frequently. In order to eliminate such pressures, changes in the judicial sector were needed that affirmed free speech protection. The journalist greatly benefited from passing and the decriminalization of the defamation law which protected them from politicized law suits.<sup>75</sup> Another insurance mechanism was added to the judicial reform and focused on training for judges and prosecutors in media law. The Freedom of Information Act and Copyright Law were part of series of media laws that are necessary in the reform, but most of these reforms took significant time to develop.

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<sup>74</sup> Thompson and De Luce, "Escalating to Success."

<sup>75</sup> IREX ProMedia, "At Risk: Political Intimidation of Journalists and Their Media in Bosnia and Herzegovina Sources, Effects and Remedies" (Committee to Protect Journalists, October 29, 2000).

## 5.

# Comparative Developments and Lessons Learned

The preceding stories of media regulation in the cases of B&H and Kosovo share a number of commonalities and very similar model of development. Some of these similarities are due to the parallel geography and history that these countries share. Another influence is the customary regulatory practice in most of the European domestic systems at that time. Finally, and most importantly, the reason these models of media development resemble one another are the people and organizations that helped establish the lessons in B&H, and applied them to Kosovo. Both countries shared almost exact governing structure of the internationally imposed, interim-governing administrators (OHR and UNMIK), while other organization such as OSCE and various UN departments conducted a number of very similar civil reforms in both countries. An example of lesson-sharing between the two countries was the OSCE decision in 1999 to, when commissioned to propose the objectives for media in Kosovo, asked the IMC in Sarajevo for a plan to replicate in Pristina.<sup>76</sup> Unsurprisingly, the people who worked in B&H for the first few years, soon after found employment in Kosovo. The two Temporary Media Commissioners of Kosovo, Simon Haselock and Robert Gillette, were both instrumental in designing media development in B&H before they came to Kosovo.

Due to such similarity in implementation of regulatory model, both countries share the identical criticism. It is hard to argue against the local and international criticisms that the implementation of peace agreements in both countries was dominated by international administrators and consultants with little or no input from the domestic experts. B&H was indicative of this top-down approach especially during the first half a decade of the regulatory process. Due to the fact that Kosovo Mission was launched around the time when the critique was being articulated, the situation in Kosovo meant a slight improvement to B&H in this regard. A few years after the initial, authoritarian, decisions, the creation of the Kosovo regulatory system was driven by the desire of the international community to engage in partnership with the Kosovo media community.

Since a regulatory framework is a complex, long-term process, its development necessitates a close cooperation between the international experts and the local

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<sup>76</sup> Robert Gillette, "Media Matters: Professionalizing and Regulating Media in Post-Conflict Bosnia and Kosovo" (2007).

civil society. Kosovo lacked the strong involvement of civil society in the beginning, but by the end of 2005, the international community realized that some components of the regularity framework, as they existed in B&H and internationally, were not present in Kosovo. But instead of passing the laws quickly by a decree, it had to wait for the political and civil society to mature and take the leadership on the issue. At this time, in 2005, five years into rebuilding, Kosovo had “no defamation law, no copyright law, no public broadcasting law, and no law enabling the establishment of an independent broadcast media regulator... and no self-regulatory institution for the print media.”<sup>77</sup> Since then, these complex sets of laws have been passed, but not as fast as it could be done if it had been pushed through a top-down approach, the way it was mostly done in B&H.

In the first 10 years of 21<sup>st</sup> century, as the center of gravity for peace building activities shifted from the Balkans to the Middle East, the international community’s role in nation building changed from a peacekeeping one in a post-conflict societies, to an occupier’s role in a society at war. What did not change much was the approach to media assistance; it still rested on the major elements of development from B&H and Kosovo (i.e. professionalized journalism, development of public broadcasters and regulatory guidelines).

Therefore, when it came to implementation of the regulatory practice, the model developed in B&H and Kosovo became the underpinning foundation of the next two conflict crises – in Iraq and Afghanistan. The two proposals for the regulatory media assistance in these two conflicts more or less mimic the models developed in B&H and Kosovo. This is evident in the decisions reached in a meeting of international experts (including Simon Haselock) in Athens in June 2003, resulting in a white paper – known as the Athens Framework – which embodied the state of the art in the design of an Iraqi media regulatory environment, and heavily relied on the experience in the Balkans. Similar are conclusions reached in the Afghan seminar held in 2002, which brought together 120 major players in the field of media development, titled “Promoting Independent and Pluralistic Media in Afghanistan.”

Therefore, the model initially implemented in B&H, and later particularized in Kosovo, provides a wealth of experiences, while its stages and recurring practices now seem to stand out, to some extent, as a standard for future regulation initiatives. Hence, documenting the practices of these early regulatory efforts might be of great importance for the future practice. Looking at the experience from both of these countries, there appears to be three essentially recurring practices common to both of the regulation initiatives: 1) development of laws and guideline against incendiary media, 2) creation of a legitimate and independent regulatory agency and 3) development of laws and guidelines on protection of free speech. This is instructive considering the similarity of the best practice and the module

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<sup>77</sup> Cees Van Zweeken, “The State of the Media In Kosovo,” *Helsinki Monitor* 18, no. 2 (2007), pp. 138-149.

proposed by the “enabling environment” by Price and Krug. Though the language and terminology considerably differ in the theoretical proposals, as these are much broader and extensive, there is a significant overlap which warrants the conclusion of significant confluence of theory and practice.

## 5.1 Development of Laws and Guidelines against Incendiary Media

Right after the signing of peace agreements, both B&H and Kosovo were barely functioning post-conflict states, unprepared to focus on the media laws and guidelines; mostly because of imminent post-conflict disarray, lack of expertise, and absence of independent legal structures. To put it bluntly, in the country coming out of the genocidal violence, with state institutions in physical and metaphorical ruin, and a huge number of internally displaced persons and refugees, media regulation laws had to wait their turn.

When the time came to regulate the media, it became clear very early that B&H and Kosovo were likely to rely on the European model of regulative practice. Firstly, the geographical position puts the two countries in the European cultural context. Secondly, the implementers of regulatory practice were predominantly European officials who relied on the European practice and legislature, like the Convention for the Protection and Human Rights and Fundamental Freedoms and European Court of Human Rights.<sup>78</sup> Finally, the European regulatory standards allowed for a stricter approach to incendiary speech, which was aligned with the thinking of the international administrators.

Hence, the prosecution of incendiary speech dominated the early phase of intervention. It is not surprising that the laws focusing on prosecution were prioritized. Fortunately, the regulation of incendiary speech is a provision of almost every modern domestic legal system, and is well established in the Convention on the Elimination of Racial Discrimination (ICERD) and the Civil and Political Rights Covenant. This is why the response to hate speech in both countries combines criminal penalties and civil and administrative remedies. It invokes all three types of laws (criminal prosecution as well as administrative preventive measures) in hope of preventing incendiary speech, as well as prosecuting it.

Over time, regulators in both countries have cultivated multiple strategies (criminal penalty, code of conduct, and ascending sanctioning system) to address such violations. Based on the violations’ severity and frequency of occurrence, the following sanctions (parts of administrative rules) were used in both B&H and Kosovo as a part of codes of practice: 1) corrections of coverage, apologies, and

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<sup>78</sup> Price and Krug, “A Module for Media Intervention.”



rights reply, 2) fines, and 3) suspension or closure of operations. Both countries followed the model of most democratic states which reserved the right to elevate hate speech incidents to a serious infraction handled by the criminal code.<sup>79</sup>

There seems to be little disagreement about the fact that all media outlets often commit mistakes and will probably continue to do so. The established preference in the procedure from the two conflicts seems to be the administrative sanctioning. However, conflict zones are much more sensitive environments, where the errors against the code in conflict can lead to loss of life; and this is why the international administrators opted to run the gamut of the administrative sanctions which they deemed was more effective way to stifle those media. The example of the Kosovo newspapers *Dita* and *Bota Sot*, or the Serbian TV SRT, made no secrets about the intent of their writing. They were all notorious for their vicious attacks and propagandistic coverage, counting on the controversy surrounding such writing, which resulted in appropriate and severe sanctions against them.

## 5.2 Legitimate, Independent Regulatory Agencies

The B&H regulator, the Communication Regulatory Agency (CRA) provides an exemplary model of an independent regulator in a post-conflict society, despite the critiques. Its predecessor MEC, and its first incarnation IMC, managed to control highly polluted media system and eliminate hate speech almost entirely from the B&H broadcast media. Although their development process might be best described as trial and error, the accomplishments of regulation are significant especially when the number of broadcasting stations in B&H is taken into account. At one point in 2001, B&H had reached the world's highest number of broadcasters per capita; 210 radio and 71 television stations were registered in a country of four million people.<sup>80</sup> It is astounding that such a prolific and often incendiary media environment was put under control in a relatively short period of time.

Considering the success of the B&H regulator, international mediators replicated the Communication Regulatory Agency in Kosovo. The lessons from B&H were taken into account, which can be seen by the fact that – while it took three years to establish a regulator in B&H – in Kosovo the same happened within the first year. Five years later, TMC was transformed from a temporary institution to a permanent Independent Media Commission for Kosovo. Conforming to the standards of international law, system of regulation that emerged in Kosovo was legitimated both

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<sup>79</sup> Albany Associates, "An Overview of Broadcast & Media Regulation," Albany Associates, 2008.

<sup>80</sup> Udovicic et al., "The Media at a Turning Point."

by participation of Kosovo's media professionals and by understanding that the right to freedom of expression must be tempered with responsibility. Local buy-in into Kosovo's media regulation process substantially simplified regulatory enforcement. Accepted as legitimate by those it regulated, the TMC decisions upheld by MAB – whether retractions or fines – were all published or paid without comment. Furthermore, following establishment of a transparent system of regulation and enforcement, incidents of incitement dropped. Those that did occur were quickly resolved through negotiation, without having to resort to formal hearings.<sup>81</sup>

The two biggest obstacles to the development of a regulatory office were two kinds of assaults on legitimacy/independence of the regulatory agency: the first one was the overbearing control by the international administrators, and the second one the ongoing political pressure of the local political forces.

The former was the principal problem of the regulation in the first five years in both peace processes. However, a legitimate transfer of power into the hands of local authorities occurred even though this process may have been clumsy and drawn-out. It was bolstered by the introduction of “checks and balances” provisions, decentralizing the power into two different branches: the power of the executive position is balanced by the multimember council serving as an appellant for the decisions imposed by the executive branch.<sup>82</sup> In order to prevent the role of a single judge and jury, the council (e.g. the Council of the Agency in B&H and the Media Appeals Board in Kosovo) was required to affirm any enforcement action of the executive. Additionally, in order to remain legitimate, effective regulation, although led by the government, involves strong participation from the different stakeholders, the government itself, the media, and the public (or its representatives). In case of B&H, the regulatory process was far from participatory because the international community rushed to implement laws in order to impose order. The Kosovo process was only slightly better; it eventually became more participatory, as more stakeholders took active role in developing guidelines and policies. This appears to be another consequence of the lessons learned in the B&H implementation.

The second problem of political pressure is still an unresolved issue that will likely plague both societies for some time to come.<sup>83</sup> While it may seem a straightforward process, establishing independently functioning regulatory agency has not been easy. The B&H agency became de facto paralyzed when the government failed to appoint replacements to the co-executive council. In the meantime, both governments were using political pressures to strip the agencies of their

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<sup>81</sup> *Ibid*, p. 9.

<sup>82</sup> Adin Sadic, “History and Development of the Communication Regulatory Agency in Bosnia and Herzegovina 1998 – 2005” (PhD diss, Ohio University, 2005).

<sup>83</sup> See Jusić and Ahmetašević, “Media Reforms through Intervention” and Miftari, “Starting from Scratch.”

power. Therefore, it is not surprising that in most societies in conflict, government ministries and agencies continue to have a grip over media regulation. Most governments try to exert pressure in order to ensure preferable treatment of the broadcast media. In authoritarian societies, government's interference is blatant, but even modern democracies have been known to meddle with regulatory policies and procedures (e.g. Czech Republic, or Turkey).

### 5.3 Development of Laws and Guidelines Protecting Free Speech

While the provisions for protection of free speech were assumed to be the core of regulatory practice, as well as international law, the execution ensuring its protection was lacking in both countries. Journalists were continuous targets of physical violence, intimidation and other threats. The legal system had to go beyond the constitutional protection of free speech to ensure that journalists are protected, by an enabling legal environment. And in some cases it did, for example in 2000, when the OHR removed two public officials in response to their implicit support of the attacks on *Radio N*.

But a wider attempt to ensure that “those who seek to act violently against news media representatives will not be able to do so with impunity”<sup>84</sup> was not there in the beginning. Journalists cannot perform their jobs professionally if the authorities do not use all of their power to prosecute those who intimidate journalists; and these actions came rather late in both cases. Therefore, protection of journalists should have been at least on equal footing with the introduction of incendiary speech provisions, and defined more comprehensively. It should have entailed a much earlier intervention that would protect journalists, and a parallel effort that would strengthen the rest of legal rights.

Most countries develop regulation law and guidelines in response to emerging problems with their media systems rather than in a proactive way. However, regulatory practice and infrastructure in many countries (especially in conflict zones) do not develop as fast as media systems and technologies. In the meantime, countries rely on the authority of the state and its legal system to regulate the media without paying the attention to the delicate differences between the criminal code, civil law and administrative regulatory practice. The societies that do not go through the democratic institution-building processes are unlikely to have gone through development of comprehensive regulatory laws and guidelines. When the wars happen in this type of environment, the regulatory system is either non-existent or ill-prepared to deal with the problems that conflict can cause in the media.

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<sup>84</sup> *Ibid.*

Additionally, once the regulator was established it became overwhelmed with a very large and complex set of policies and laws (e.g. frequency allocation, ownership rules, regulating telecommunication traffic and wireless traffic). In the background, and with much less fanfare, there was a development of a whole new set of laws equally important for a comprehensive reform. These laws took time to set up due to the absence of pre-existing regulatory model for societies in conflict, so the practices had to be brought out from the different domestic legal system and existing international instruments. It took time to establish elementary media laws like defamation law, libel law, even the law that establishes freedom of information. In addition to the laws, codes of practice for broadcast and print media, a lot of time and effort, and even more follow-through, was required for their implementation. However, in less than a decade after the peace agreement, laws like broadcasting code of practice, licensing of broadcasters, defamation law, copyright law, freedom of information law became legally binding while press codes and association of print journalists are on a path to become a strong self-regulatory framework for print journalism, in both countries.

## 6.

# Conclusion

There is no doubt that the development of media practices in peace building ought to be concerned with media techniques and practices that best facilitate proactive reconciliation (i.e. journalism, peace-oriented media content and peace advocacy). On the other hand, the elimination of media practices that incite conflict prevents the violence from reoccurring. If the cessation of direct violence is achieved by a political agreement, the cultural and structural violence is best addressed through a comprehensive media strategy that also includes regulating media that promotes violence. Furthermore, the establishment of new media outlets and structures usually requires a significant time commitment. In contrast, a violence-ridden society often needs a quick response that stabilizes the media and society in general.

The cases from B&H and Kosovo show that three straightforward regulatory practices can make a significant impact in a relatively short time. What is needed is an independent and legitimate regulator, a set of laws and guidelines against incendiary media, and an accompanying set of laws in protection of free speech. Obviously, this three-pronged framework does not constitute an entire regulatory regime for media. It cannot guarantee peace, but it can enable individuals at all levels of society to make better decisions about whether or not to support or participate in a conflict.

The scope of regulatory practice in conflict, described above, must be seen as a long term process. On one hand, media regulation exists to prevent the escalation of conflict. On the other hand, it exists to maintain a media environment conducive to promotion of a functioning democratic society. Media democratization is a long-lasting process of legal reform and a purview of legal experts, and it usually evolves with the rest of the democratic processes. It requires legal, technical and even engineering expertise. The end goal of the process is to develop a modern regulatory framework for the media which supports and protects general media freedoms. In the short term, the initial phase of the media democratization process must be concerned with the prevention of conflict escalation and protection of media and their rights and freedoms.

Therefore, before other media can be organized to facilitate peace proactively, minimizing the impact of violence-inciting conflict media and protection of free speech may be the best possible short-term goals. An example of a regulatory success in a relatively short time is the reform of the B&H media. In 1999, more than 100 sanctions were issued against different B&H media outlets for a variety of violations. Four years later, the number of sanctions dropped to only 16 for the entire

year.<sup>85</sup> Few countries benefited more from the implementation of strict regulatory practices than B&H did. Most of the local media experts and practitioners in B&H still point to the regulation of the media environment as the most significant strategy of the post-conflict media development.<sup>86</sup>

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<sup>85</sup> Interview with Amela Odobasic, Communication Regulatory Authority, personal communication, July 13, 2003.

<sup>86</sup> Bratic, "In Search of Peace Media."

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