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## LES INTELLECTUELS ET LES MÉDIAS : DIALOGUE EST-OUEST SUR LA DÉMOCRATIE POUR LES BALKANS

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## EMPIRE LITE AS A SWAMP

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### INTRODUCTION

In June 1999 the NATO bombing campaign ended, Serb troops withdrew, and Kosovo became an international protectorate that only formally remained under the sovereignty of the Former Republic of Yugoslavia. The United Nations Interim Administration in Kosovo (UNMIK) was established, with the goal of rebuilding the province and helping to develop institutions of self-government<sup>1</sup>. The office of the Temporary Media Commissioner (TMC) was established by UNMIK and the OSCE Mission in Kosovo (OMiK) for the temporary implementation of a media policy. Its mandate was to develop “independent and democratic media”<sup>2</sup>, by assigning frequencies and granting licenses to broadcasters, and by regulating media content according to a UNMIK Code of Conduct.

This article is based on my experience as the TMC from September 2001 through March 2003. I will take the TMC as a case to discuss the limits of the international transitional administrations’ two interlocking functions : the exercise of a temporary and benign authoritarian government and the implementation of a “modernizing” project, a conjunction that has been captured with the catchy term Empire Lite<sup>3</sup>.

While there is a growing awareness of these limits, most of the debate has remained focused on the general role of peacekeeping and its late mutation, humanitarian intervention. It is time not only to bring politics back to the center of attention<sup>4</sup>, but also to recognize that there could be no blueprint for reforming/improving transitional administrations, without recognizing the murkiness of the problem. This problem is by definition a “swamp”<sup>5</sup>. It defies technical analysis and solutions. It requires deep knowledge of the reality of the swamp and the ability to learn from experience.

Research based on ethnography in this field is more than illustrative : it does generate understanding and useful generalizations.

Partly inspired by the Interim Media Commission in Bosnia, the TMC had the unique task to respond to the international administration's alarmed concern with curbing what came to be known as vigilante journalism : the calls for inter ethnic killings inspired and instigated by inflammatory and libellous media. The idea was that the Kosovo post-conflict environment required an extraordinary body of rules, administered by an international office reporting directly to the Special Representative of the Secretary General. This intervention had two goals : stop the media from participating in a campaign of reverse ethnic cleansing (i.e. of Serbs from Kosovo), and push them to achieve "western standards" of independence and objectivity.

When I took over the position of TMC in Sept 2001 it became immediately apparent that I was confronting a very complex and messy task.

The TMC was seen as an authoritarian institution in the media world. Even the Representative of the Freedom of the Press, an OSCE office, was seriously critical<sup>6</sup>. The relationship with local media had never been good, and there were no signs of improvement. One month after my arrival in Kosovo, a journalist was killed in an ambush targeting someone else : his newspaper publicly accused the TMC of weakening the standing of the press and thereby creating the climate in which that murder could occur.

Violence was still an important factor in Kosovo society, but it was more connected with settling scores among rival political groups, as is common in countries emerging from wars of liberation, than with ethnic cleansing. Yet, the international administration downplayed this new reality as a normal occurrence in Albanian Kosovo, steeped in an ancient backward tradition of violence. It certainly missed the complexity of the situation, which had many faces. The OSCE monitors continued to check the media for speech inciting ethnic violence in the context of reverse ethnic cleansing. No serious attention was paid to the continuing hostility of the Serb media toward Albanians, which continued unabated after the fall of Milosevic<sup>7</sup>.

Most critically, the TMC was vulnerable to political pressure from the international administration and Kosovo leaders, the price that will be paid whenever governments are given even the smallest opportunity to exert control over media. In Kosovo this appears to be one aspect of a broader and particularly troubling problem, that is, the structural deficiency of democracy in the United Nations as "the surrogate state"<sup>8</sup>.

Last, but not least, I had inherited an understaffed, under-resourced office. The senior advisors, representatives of a migrant sovereignty<sup>9</sup>, lacked language skills and cultural or political knowledge of Kosovo.

The path that initially I decided to take was to amplify the work of my predecessor and make the TMC office as open and transparent as possible. In order to protect the audience from media abuses as well as shelter freedom of expression from political censorship, I turned the TMC into a complaint driven office. As often as possible, in as many cases as staff capacity could manage, the TMC began to refer prepared cases to the independent media review board, which had been created to protect the right to due process and transparent procedure. The public was given a forum where organizations

and individuals could air out their disagreements, have them adjudicated according to the law, and eventually submit to sanctions<sup>10</sup>.

Did the media become more educated about their responsibility and the public about its rights? Probably not. The unintended consequence of inviting the public into the decision-making process was that Kosovo local rival actors transported their political and individual fights into the TMC forum, but did not accept outcomes as justice. Each side purported to hold the “right” version of the truth, refused a victim status and felt the duty to seek vindication for a tort or loss in any possible way. Procedural rulings on privacy rights brought no satisfaction to anyone.

The risk inherent in this situation was to increase the distance between the TMC as a democratic institution and the local society, while at the same time involving the office – unwillingly – in local feuds. This awareness led to re-framing the TMC role and function. Greater effort went into becoming a mediator and an ombudsperson, instead of a mere disciplinary agency. This proved to be a much more satisfactory way of addressing the problems of libellous speech as well as intentionally false and deceptive journalism. It certainly proved to be more in tune with local notions of conflict negotiation and resolution, whose potential for stopping violence has not otherwise been exploited by the UN or OSCE offices.

This understanding is enough to rethink media intervention in Kosovo and propose that a media ombudsperson might be a more effective alternative to content regulation. Whether the same could be said of any post-conflict situation where an international administration is being set up is hard: there is no blue print for media intervention and the tool kit outsiders bring along with them should be as light as possible<sup>11</sup>. Local cultures and politics should be taken seriously by international administrations in planning and designing their architectures.

#### **WHAT IS THE TMC ?<sup>12</sup>**

The extraordinary nature of the TMC is mostly defined by its role in regulating the press, a highly controversial activity, which normally meets with the strongest resistance among publishers and editors in any democratic country<sup>13</sup>. In Kosovo it was officially justified by the state of emergency declared in the tense atmosphere of late 1999-early 2000. In the immediate aftermath of the NATO bombing campaign, a climate of lawlessness had allowed the desire for revenge to run unchecked. Every community, including Kosovo Albanians, was subject to violence and violation of human rights, although the group that suffered the most was the Kosovo Serbs<sup>14</sup>. The role of the media in this context was soon called into question.

The independence and professionalism of the Kosovo media has suffered not only on account of the conflict, but also on account of its history, which in great part left it isolated. Kosovo, annexed to the Serb Kingdom after the demise of the Ottoman Empire and then part of socialist Yugoslavia, has never had a tradition of free and democratic media. The situation worsened with the Serbian government’s dismissal of all Kosovo Albanians from Radio Television Pristina (RTP) in July 1990, when the independent Albanian-language broadcast abruptly ceased to exist. Kosovo Albanians mostly turned to foreign TV, thanks to the spread of satellite dishes.

Although never completely shut down, the Albanian-language press had a very difficult life. Some newspapers survived the Milosevic era and started taking sides in the internal political debate during the mid-90s<sup>15</sup>. All Albanian-language publications denounced Serb repression and advocated the independence of the province from Belgrade. During the same period, Kosovo Serbs continued to watch the programs of the official television of Yugoslavia, RTS, and read the official press, whose anti-Albanian propaganda contributed to foster fear and hostility.

By autumn 1999, the Albanian-language media scene was overcrowded, with seven newspapers, several magazines, ten registered television stations and 72 registered radio stations. There was no local Serb-language publication, although several radio stations started broadcasting Serb programs and RTS kept its audience<sup>16</sup>. While Serb-language media continued its destabilizing propaganda, the Albanian-language one was equally busy fuelling a high level of hatred and mistrust.

The international administration had focused its attention on the media quite early, during a highly publicized incident. The news service *Kosovapress* published vitriolic articles against Veton Surroi and Baton Haxhiu, respectively publisher and editor of the newspaper *Koha Ditore*. *Kosovapress* had been founded by the insurgent movement of the Kosovo Liberation Army (KLA), which at the time was the interim government. Surroi and Haxhiu, who had accused of “fascism” those Kosovo Albanians bent on exacting revenge on Kosovo Serbs, were in turn called “spies of the Serbs”. The news agency wrote that it would not have been surprising if they too “became victims of possible and understandable revenge attacks”<sup>17</sup>.

However, it was a single article, which gave urgency to the international administration’s intervention in the media. On 27 April 2000, the newspaper *Dita* published an article along with a photograph of Petar Topoljski, a Serb employee of UNMIK, accusing him of criminal activities against Albanians during the NATO action. On 15 May, Topoljski was found dead. The circumstances of his death are still mysterious. Police investigators have yet to make any progress in the case, and Topoljski’s name has yet to be cleared of the accusations levelled against him by *Dita*. Local journalists have reached no conclusions through investigations either, despite the spread of rumours pointing away from the motive of ethnic violence. The issue, then and now, is not the merit of Topoljski’s story, but the fact that a newspaper publicly identified an individual with the intention of inciting violence against that person.

With an executive order, the Special Representative of the Secretary General (SRSG) Dr. Bernard Kouchner closed down *Dita*’s office on 3 June 2000. The newspaper resumed publication only one week later. This handling of the case by the UN, which is not inappropriate to call imperial<sup>18</sup>, catalysed local journalists and editors against the international administration. It was not enough to unite them and pledge loyalty to a code of conduct<sup>19</sup>.

For the emerging institution of the TMC it was a defining moment. The first TMC had been appointed by the SRSG in October 1999, but the office gained teeth and institutional independence only after this case. On 17 June 2000, the SRSG Dr. Bernard Kouchner promulgated two regulations : UNMIK Regulation N° 2000/36 on the Licensing and Regulation of the Broadcast Media in Kosovo, and UNMIK Regulation N° 2000/37

on the Conduct of the Print Media in Kosovo, both described as temporary. The first provides the basis for the authority and the responsibility of the TMC, and establishes a Media Appeals Board. The second gives the TMC the power to impose sanctions on media operating in violation of the applicable law and codes of conduct. It also establishes the right to appeal. Finally, it includes special provisions to protect life or maintain civil law and order, by prohibiting the media to publicize the personal details of an individual if that would pose a serious threat to that person's life and safety. Two Codes of Conduct were also promulgated<sup>20</sup>.

The first TMC case against the press set the stage for a highly confrontational relationship between the office and the local media, with extreme negative publicity in the international scene as well. In July 2000 *Dita* published an article revealing personal information about three individuals, whose photos also appeared, and accused them of participation in war crimes. Two were Serb Orthodox priests from a named village, and three days later two other priests – one from the same locality – were shot and hospitalized. The TMC issued a letter of warning to Mr. Beqaj, the publisher of *Dita*, advising him that one or more sanctions might be imposed for the violation of Regulation N° 2000/37, and inviting a reply. A defiant answer to this invitation was published on 13 July. The TMC then decided to impose a fine of DEM 25,000 on *Dita*, with the threat of suspension in the event of non-compliance. Although *Dita* immediately filed an appeal to the Appeals Board, the TMC ordered Mr. Beqaj to suspend operation immediately as the DEM 25,000 fine had not been paid. The newspaper ceased operation for three days, but then restarted publication with the support of the entire Kosovo Albanian journalist community. Veton Surroi, publisher of *Koha Ditore*, offered its newspaper's facilities to *Dita* just in case UNMIK and OMIK did not allow the latter to continue operation.

The Media Appeals Board (MAB) ruled that the TMC had not paid scrupulous attention to due process. The Board observed that Regulation N° 2000/37 makes very little provision on the procedure to be followed by the TMC in determining the existence of a violation and imposing a sanction, “effectively making him judge in his own cause”<sup>21</sup>.

By referring to the procedural guarantees established by Article 6 of the European Convention on Human Rights, the Board noted that the principle of “equal arms” required the following : that decisions be taken by an impartial and independent tribunal, and that parties to proceedings be given an opportunity to present their case, to know and comment on the evidence and observations that might be brought before the decision maker. Since then, the Media Hearing Board (MHB), an independent panel of three members, one international and two Kosovo residents, exercises a review of every case before a sanctioning decision is formalized.

For the politics of media interference it was definitely a learning curve<sup>22</sup>, but the lessons had just begun for the TMC.

#### **INDEPENDENT INTERFERENCE**

By 2001, Kosovo society was undergoing yet another dramatic change. In November the first democratic election in the history of the province took place in a climate of exhilaration, but also heightened tension among parties.

Vigilante journalism referred mostly to calls for inter-ethnic violence *via* highly publicized extra-judicial indictments. In the election campaign, the case was different. Kosovo parties rely on strong allegiances based on locality. They are defined by political cleavages formed during the 90s and reinforced during the armed conflict against the Milosevic regime. Intra-ethnic rival political or interest groups used the media to settle old scores. By manipulating the patriotic rhetoric of wartime martyrs (the heroes) and collaborators (the villains), they attacked, discredited, and marginalized individuals, knowing well that isolation would weaken their defence.

I was first alerted to this new reality, very eloquently, by Veton Surroi. Surroi had received a warning letter from the TMC after the publication in his newspaper, *Koha Ditore*, of the name of a Serb returned to Kosovo to visit his home, a Serb alleged to be a war criminal. In an impassioned editorial, Surroi recognized that the newspaper had violated the UNMIK Regulation not just in the above case, but in others too, by attributing criminal behaviour to identifiable Kosovo Albanians. He sarcastically commented: “The prevailing perception is that the Regulation applies only to one ethnicity. We will engage, differently from you, in respecting the Regulation without any ethnic discrimination”<sup>23</sup>. He also pointed the finger against the “language of hate” used by political party press in intra-ethnic rivalries, as a precursor to real violence.

My predecessor Simon Haselock had dealt with two cases in which criminal accusations had been liberally levelled against Kosovo Albanians in the press<sup>24</sup>. However, international administrators were in general much less concerned about the corruption of public discourse taking place in the media and the widespread use of character assassination for political goals. Their attention remained fixated on making Kosovo a multi-ethnic society and reversing the process, which had seen virtually the whole Kosovo Serb population flee the province, below the river running across the northern city of Mitrovica. In the balancing off of press freedom against security concerns, this political focus sometimes tipped the scale in the wrong direction.

An example might illustrate the problem. When in November 2001 a crowd erupted in the Pristina/Prishtina city council chamber to protest the induction of one of the Kosovo Serb representatives<sup>25</sup>, alleging his guilt in war crimes, all the media covered the event. The same crowd paraded portraits of the accused in the main street and earned the attention of the passers-by, beside the TV cameras. Some international administrators argued with the TMC that by covering the event, the media had made themselves guilty of inciting ethnic violence and violating the media code of conduct.

I immediately issued a warning letter to all media as a press release, asking them to refrain from waging a campaign of vilification against the Kosovo Serb representative, in the absence of any serious investigation on his alleged crimes. I also tried to speak with this individual and offered him the possibility of defending his reputation through the same media. I obtained compliance from the media, but no collaboration from the Kosovo Serb, who refused to deny that he had donned a police uniform during the war and decided instead to drop out of the council. However, I did not think that it would have been right – or wise – to proceed against the media or ask them to practice self-censorship when covering such public events like city council sessions or protests. I could not comply in good faith with the pressure I received from international administrators to take action against the media.

A secondary, but not insignificant concern for the international administration was the defence of administrators themselves from media attacks. As I took over the position of the TMC, I found that international administrators would suggest, or explicitly request, that I act *ex-officio* when a public figure was vilified in the media. It happened in a few occasions, most notably involving the Commander of the NATO mission in Kosovo (KFOR) and a leading figure in the Serb Orthodox Church.

None of the above cases qualified as vigilante journalism, although they were based on allegations cast in hateful language. Hateful language is not the same as “hate speech”, and as the TMC I had decided to interpret the media regulation in the strictest possible terms to protect freedom of speech<sup>26</sup>. Acting *ex-officio* on such weak cases, as in others similar to them, would have jeopardized the independence of the TMC. I nevertheless contacted the media involved, in order to address the issue of libellous speech. None of the public figures accepted apologies from the editors who offered them, or the TMC invitation to write their replies for publication. No TMC action was thus required.

On a few occasions, I met Kosovo Albanian leaders who asked me to be more decisive against newspapers that had used incendiary agitprop campaigns against them. They wanted them shot down. It was not too surprising a request, given that those leaders were accustomed to a regime, which controlled and censored media. It was still disturbing. Very worrisome was also the rate of approval that I met among less public individuals, when I imposed sanctions on newspapers with which they disagreed. They also wanted to see the papers shot down. In the light of this widespread repressive culture and to avoid setting up a dangerous precedent, it became imperative to keep the option of acting *ex-officio* dormant as much as possible. Unless a most egregious violation of the law warranted a prompt decision, a judgment was made that a quasi-government structure with enormous powers, such as the TMC, needed to be transparent and cautious.

#### **THE PUBLIC VS. THE MEDIA**

Turning the TMC into a complaint driven office provided an effective way to relieve the political pressure. However, at first there were very few takers. It took the initiative of two editors, Baton Haxhiu and Blerim Shala, and the ensuing publicity of their cases, to spearhead a flow of complaints, which more than doubled the TMC caseload in one year.

Haxhiu and Shala had been the targets of a systematic campaign of attacks by *Bota Sot*. A newspaper very close to the leader of the Democratic League of Kosovo (LDK) and current Kosovo president Ibrahim Rugova, *Bota Sot* had and has a particular penchant for accusing people of collaborating with the Serbian authorities. Haxhiu and Shala, two well-known protagonists of recent Kosovo history, felt dangerously exposed by this unceasing smear campaign. As one of them said, “The language might not have teeth, but it may break bones”. One of them had received specific threats shortly after the publication of one of the articles, using similar accusations as those contained in it as the basis for the threats.



The Media Hearing Board found *Bota Sot* guilty of violating the Media Regulation. The panel stated that “spreading lies or deceptive information through hateful and inflammatory language is not only damaging to the character and reputation of the individual victims of such accusations, but can also result in dire consequences. This conduct is also damaging for the Kosovo society as a whole, by putting in danger its very future as a democratic, tolerant and law abiding member of the international community”<sup>27</sup>. The TMC fined *Bota Sot* €12,500<sup>28</sup>.

Turning the TMC into a complaint driven office was not an easy path to follow. As an interim, temporary office, the TMC was and remained under-resourced and under-staffed, with little chance to develop investigative functions: the language and the cultural barriers were a serious impediment for the non-Kosovo staff. More puzzling, was the insistence on the part of the OSCE that international staff be recruited without requiring that knowledge, and that Kosovo residents be hired only at the non-professional level.

There are some very debatable assumptions behind these choices. First, there is the belief that by being ignorant of the local culture, politics, and language, one would be more objective. The fact that I learned a modicum of Albanian in order to be able to read the newspapers and follow the TV programs that I had been asked to regulate was considered by the UN and OSCE international staff very suspicious. It was seen as the first step in a slippery slope toward going native. Second, though the rhetorical stress of the international administration was always on building self-sustaining institutions and local ownership, very little or no trust at all was given to Kosovo residents. They were implicitly judged incompetent to hold executive positions<sup>29</sup>. They could be translators, drivers and secretaries, but not analysts or advisors. The assumption that Albanian and Serb Kosovars could only be trusted as translators is paradoxical in itself, as the Italian term “*traduttore-traditore*” (translator-traitor) suggestively describes.

While I was thus never allowed to staff the TMC office with Kosovo media analysts, I had to rely extensively on contacts outside the office to decipher the media discourse, understand the political process, and test the eventual impact of executive decisions. It was indispensable work, but still did not contribute to building a locally owned institution.

## THE KOSOVO PUBLIC

The extraordinary increase in the volume of work was not the only unintended consequence of the higher public profile acquired by the TMC. The office found itself inevitably thrown into the most intense personal and political fighting in post-conflict Kosovo, as it became clear when a very highly politicised trial on war crimes opened in Pristina/Prishtina. Violent confrontations involving characters peripheral to the trial took place in the press as well as in the streets.

In June 2002, Daut Haradinaj, a high-ranking officer of the Kosovo Protection Corps (KPC) – the civil emergency organization born off the demobilization of the KLA – was arrested. With him, there were four other former KLA combatants known as the “Dukagjini group”. The charges were of having tortured and killed four people in 1999, after NATO entered the province. Their alleged four victims were members of

the Armed Forces of the Republic of Kosovo (FARK). Vesel Muriqi was a survivor of the killing and became the star witness at the trial of the group, run later by UNMIK.

The KLA had started the insurgency against the Milosevic regime in the mid-90s as a small group and had incurred the sharp criticism, if not outright hostility, of the dominant party LDK and the Kosovo government in exile led by Ibrahim Rugova<sup>30</sup>. FARK had formed during the massive Serb counterinsurgency campaign and before the NATO campaign, under the aegis of the Kosovo government. While there was some overlapping during the war, the two groups were bitter rivals and continued to be so in times of peace. The KLA has always held that FARK was a ploy to destroy the righteous insurgent war from the inside. FARK always maintained that the KLA was a criminal group with no legitimacy<sup>31</sup>.

That same summer of 2002, the TMC received three complaints against *24 Orë*, a newspaper owned by the Alliance for the Future of Kosovo (AAK), the party headed by Ramush Haradinaj, one of the three most prominent local politicians with Rugova and the ex-KLA leader Hashim Thaçi, but also Daut's brother and former KLA leader. The complainants were Tahir Zemaj, the former Commander of FARK, Sadik Musaj, brother of one of the alleged victims of the "Dukagjini group", Ramiz Muriqi, also FARK, and the survivor/witness Vesel Muriqi.

The TMC also received complaints from Xhavit Haliti; a member of the Presidency of the Parliament for Hashim Thaçi's Democratic Party of Kosovo (PDK) and one of the main KLA leaders, Ekrem Lluka, a wealthy businessman close to Haradinaj's party, and Ethem Çeku, administrator of Pec/Peja in the 1999 provisional government of the KLA, currently Minister of the Environment and Planning as AAK leader. These complaints were all against *Bota Sot*, the newspaper close to the LDK and Ibrahim Rugova.

In all these cases, a vitriolic campaign had been waged by the respective newspapers against the representatives of rival political groups. Haliti, Çeku and Lluka were openly accused by *Bota Sot* of having taken part in the murders debated at the Dukagjini group's trial respectively as mastermind, executor, and financial backer. Zemaj, Musaj and Muriqi were all accused by *24 Orë* of being leaders of an internationally organized criminal network and collaborators of the Serb regime.

The worst attacks targeted Tahir Zemaj, called "the most dangerous Mafioso in Europe"; a member of the Serb military club "Death Arrow" which allegedly liquidated about 50 political opponents of Serbia in Europe, Australia, the US and Canada during the 80s; a friend of the Serb paramilitary leader Arkan and the perpetrator of many murders of Albanian martyrs<sup>32</sup>. Zemaj first came to my office, a non air-conditioned room, on a hot summer afternoon. When he took off his jacket, a gun showed on his belt. A bodyguard had accompanied him, but in subsequent visits Zemaj came alone. His gun, however, never left him.

All these cases were debated by the Media Hearing Board. Some of the complainants had filed suit in criminal court<sup>33</sup>, but were looking for further public hearings. All of them expressed hunger for vindication and the desire to have their "truth" prevail. Paradoxically, the "defendants" felt exactly the same. It seemed not to matter to editors and reporters that nothing of what they had written had any base in research or evidence. It was impossible to make them recognize that what "everyone believes in Peja" about

an individual's involvement in a criminal act could not be printed as the "truth". Equally impossible seemed to make them understand that whatever they thought the "truth" was, there are fundamental rights to privacy to be respected.

In all those cases the MHB agreed with the assessment made by the TMC legal advisor that the articles published violated the Media Regulation and in particular they constituted a serious threat for the people targeted in the smear campaign. Stubbornly, the panellists and the TMC office tried to educate the media about the rights of the public to privacy and reputation and thus about its own responsibilities. However, what happened in one of the hearings confronted everyone with the harsh reality of the context.

In a paradoxical turn of events, the editor in chief of *24 Orë* felt so frightened when he was physically threatened by the body guard of one of his "victims", that I was asked by him for an escort back to his office. Because of the accusations and threats I had received in the media as the TMC, the UN had assessed my security as wanting and given me close protection. That afternoon I found myself escorting the very person who supposedly represented a threat to my own personal safety.

Finally, both *24 Orë* and *Bota Sot* were sentenced to pay pecuniary fines for their violation of the law, but they hardly relented. Certainly the violence did not.

One month after he had complained with the TMC, Tahir Zemaj was wounded in an attack. As he later recounted the incident in the TMC office, he was in Pec/Peja, accompanied by cousins and friends. They wanted to have lunch, but the restaurant where they went couldn't provide them with food. They were planning to leave, when two individuals armed with Kalashnikovs and Zola (an anti-tank weapon) attacked them. In the attack nine people were injured. He firmly believed that the newspaper's articles had something to do with the incident, and that the same people behind the articles had commissioned his murder. In a highly dramatic move, at the hearing on his case he took off his jacket and shirt to show the panellists his back wounds. He looked at the editor of *24 Orë* and said, "With these articles you have liquidated me". He was finally shot dead in January 2003 together with his son and nephew. In the highly tense aftermath of this murder, *24 Orë* suspended publication for fear of retaliation. This is not the end of the story. In November 2002, the Dukagjini trial ended. The defendants received a guilty ruling and prison sentences in criminal court<sup>34</sup>. However, as late as 2004 the Minister Ethem Çeku continues to be the target of verbal and physical attacks. While leaving a basketball game with friends in February 2004, he was ambushed and slightly wounded. To this date, there is no incriminating evidence and nobody has been indicted for any of these attacks.

Neither the sanctioning authority of the TMC had deterred the newspapers from their vicious character assassination campaigns nor had the debates on the finer points of the media law educated them. Why ?

First, in the context of post-conflict Kosovo the media do not have independent power to incite violence. While the journalists and the editors always cowered when confronted by the people they were attacking, the political leaders backing the media showed only the most unflinching self-confidence and stubbornness in using every possible mean to fight rival individuals or groups.

In order to stop this kind of behaviour, or curb it effectively, more draconian regulatory measures would have been necessary. Would that ever have been possible? We have already discussed how an intervention such as shutting down a newspaper would not have been politically right or feasible. Certainly, it would have met the strongest legal opposition.

In an interesting ruling by the Media Appeals Board drafted by Judge Agnieszka Klonowiecka-Milart in March 2003 on an unrelated case – but still after the murder of Tahir Zemaj – the freedom of political speech took precedence over other considerations. The Board rejected a MHB decision to consider viciously accusatory articles as life threatening. It did accept the TMC's contention that in the years 2001-2002 political killings were more characteristic than inter-communal violence and that the media was also highly political. The conclusion was different from the TMC's. Because of the politicisation of media, the Board argued, "the publications would appear to have been part of the same political strife as the killings, aimed to discredit the victims politically, rather than the cause thereof. A mere theoretical possibility that 'allegations would potentially serve as a direct or indirect catalyst to [unspecified] individuals and groups wishing/or desiring to harm or kill' is too remote to restrict political criticism, as it would apply to every form of it"<sup>35</sup>.

There was another issue that came to the fore during the debate of the difficult cases surrounding the Dukagjini trial. The public whose complaints landed on the desk of the TMC was not the anonymous media audience looking for protection of their rights, but individuals already engaged in violent fighting during the war and determined to continue fighting after the conflict had ended. The TMC idea of opening an arena of debate for the public and the media followed theories and practice of democratic governance. It took the public as a civil society, so often interpreted as the ideal type modelled after the Anglo-American experience.

The Kosovo public is very far from mirroring this model. It blends pre-modern worlds of exclusive kinship and clan loyalties with a more modern and urban life. Because of the history of poverty and repression of the past 20 years, isolated enclaves know about the outside world through their emigrant relatives and satellite television. Yet, even the most modern families in the cities still respond to blood ties and community solidarity in ways that appear pre-modern to the western observer. The constant interaction between Kosovo Albanians living abroad and those who stay, accelerated by modern means of communication of which the Internet is king, makes the society neither simply cosmopolitan nor simply local.

Opening the TMC office to the public meant facing the challenges of Kosovo reality, where the changes undergone since the early 80s and especially during the war and afterward, are still to be properly understood. While it was not too surprising to see that rival and highly politicised individuals used the institution of the TMC to exact some sort of retribution or vindication from each other, it was the mix of quasi-judicial procedures and the apparent practice of communal laws of vendetta which opened more questions than we could answer<sup>36</sup>.

## RE-FRAMING

When the TMC turned from quasi-judicial procedures to mediation, the possibilities for creative solutions were greater. In particular, playing the role of Media Ombudsperson provided an acceptable alternative to the seemingly insatiable yearning for vindication, often presented as justice, which is so common in Kosovo. It also offered an opportunity to those who did want a judgment, when resorting to the courts was and remains a slow and frustrating process.

Mediation was hard, “especially because some newspapers have not been willing to find suitable remedies to their violations of the press code, while the complainants themselves required an arduous work of education on what constitutes an appropriate reply. The TMC has been successful in some notable cases :

- when it managed that the radical newspaper *Epoka e Re* (the same newspaper which called the UN Administration UNMIKSTAN) publish a reply by the UN Department of Justice and an apology to the judges offended by their articles (case # 07/2002);
- when it negotiated an appropriate reply to the monthly magazine *Teuta* by the Parliamentary delegation of the Turkish Party TDPK (case # 40/2002);
- and when it obtained the broadcast of a correction regarding a documentary on a deceased KLA commander during the RTK prime time news (case # 34/2002)<sup>37</sup>.

The mediation between *Epoka e Re* and the Head of the Department of Justice is a good illustration of the process.

In March and April 2002 *Epoka e Re*, a former students’ newspaper close to the KLA and the PDK, published a series of highly critical and accusatory articles against two agencies : the Judicial Inspection Unit, responsible for investigating allegations of misconduct by local judges, prosecutors, and the the Kosovo Judicial and Prosecutorial Council, responsible for advising the SRSG on all matters related to the appointment and the discipline of judges. The articles questioned the professionalism and the integrity of those agencies and mentioned by name two of their members. They were Kosovo Albanian judges who had continued to be active during the 90s, while the overwhelming majority of Albanians had either been fired or left their posts in order not to pledge loyalty to the Milosevic regime. These judges were accused of having applied Serb laws, the same that had created a great number of political prisoners. The articles closed with what sounded like a very menacing greeting, “May God look after you”.

The Director of the Department of Justice complained with the TMC that the media law had been broken. He felt that the safety of his judges was jeopardized by *Epoka e Re*’s attack and asked that the newspaper be harshly punished with the highest financial sanction. He also sent a letter of explanation and protest to the newspaper, which never published it.

The TMC offered mediation in this case and both sides agreed to meet. What transpired in the meeting was a quite complicated situation, in which emotions ran high. The editor of the newspaper had been a student leader and supporter of Kosovo

independence from Yugoslavia in the 90s, and had been jailed for this activity. The very idea of finding the same members of the judiciary that sent him and many others to jail before the war, sitting at the Department of Justice of post-Milosevic Kosovo made him mad. Far from thinking that he was violating any law by pointing that fact out, he believed that he was informing the public of an injustice.

The Director of the Department of Justice had felt deeply outraged by the articles, both professionally and personally. An accomplished American prosecutor who had worked during the war with the International Criminal Tribunal for Yugoslavia, he was the architect of the new UNMIK-led Department of Justice. The criticism that he was not sensitive to the plight of Kosovo Albanian political prisoners hit him particularly hard : a few months earlier he had personally negotiated the release of hundreds of innocent Kosovo Albanians still in Serbian jail, two years after the end of the war.

He had come to the mediation meeting believing that the newspaper editor was just an angry propagandist. The editor thought of the prosecutor as yet another representative of "UNMIKSTAN". The first explained the daunting problems he was facing while rebuilding the judiciary after a disastrous decade of Albanian apartheid and repression. The second managed to articulate better his outrage at the lack of any UNMIK lustration plan of the former Yugoslavian establishment. They did not become friends, but changed their mind about each other. The outcome was successful. The newspaper published the Director's letter and also an apology for the damage that the articles might have caused to anyone. The Director declared that he was satisfied with this solution and did not press any more charges. The attacks against the Department of Justice subsided.

In another case, mediation revealed the further possibilities open by a more flexible use of the institution of the TMC.

It was 7:30 one October morning of 2002 when my phone rang. The caller identified himself as Gani Geci, a former KLA fighter but LDK member. He was in Germany, ready to board a flight to Pristina/Prishtina, and wanted an appointment with me by lunch time that same day. "Last night RTK (the Public Service Television of Kosovo) showed a documentary which is a call to kill me – he shouted – either you meet me or I go directly from the airport to RTK".

I knew of Gani Geci from the previous fall. He had been the target of an ambush from which he had emerged only slightly wounded, while his friend Rexhep Kastrati, a *Bota Sot* journalist who was travelling in the same car, had been killed. Both loyal to President Rugova and the LDK party, they were attacked while on their way to interview another former KLA fighter who belonged to a rival faction. That was the third time that Geci had been targeted by unknown assailants, believed to be the avengers of Abedin Rexha, the KLA-fighter better known by the nom de guerre of "Commander Sandokan", killed in 1998 during a shoot-out. Geci had been involved in that incident, but there has never been any indictment against him.

The documentary in question was a commemorative film four years after the death of Rexha. Waiting for Gani Geci to arrive from Germany, I contacted the director of RTK and asked him to arrange for a screening of the documentary that same afternoon in the TMC office. He professed total innocence of any wrong doing. The documentary did not mention Geci as the killer of Rexha.

Gani Geci did not come alone. He was accompanied by one of his six brothers, Halil, who like Gani showed signs of excitement and fear. During the very tense screening of the documentary, it became apparent what the problem was. True, the name of Gani Geci was never mentioned in the film. Rexha, however, was remembered by well known KLA combatants considered war heroes by many, as the victim of “an ambush while he was fighting the Serb oppressors”.

To the Geci brothers, this version of the truth was tantamount to an incitement to exact vengeance against Gani. It was a fact known to the whole of Kosovo that Rexha had not died in an ambush but in a shoot out, and Gani Geci had been one of the protagonists of the incidents. He could have never denied it, he had been wounded in the shoot out. RTK’s defence line was that the documentary had not violated any media code of conduct, not having publicized any name or attributed any guilt to any person. The TV director however submitted that he would be willing to broadcast a TMC criticism of the documentary for its non-professional presentation of the facts.

It was at this point that the temperature at the meeting, already quite high, rose to a higher level. Using a colourful language, which made the translator blush, Halil Geci shouted to the RTK director – I am paraphrasing here – “shame on you, asking that a foreign woman wash your dirty laundry”. He vividly and convincingly described a life lived in fear, where not only Gani was threatened, but their entire family. For years he had not been able to allow his children to play outside the house. None of his brothers travelled after dark anymore, for fear of being ambushed. The made-for-TV film had added fuel to this dramatic situation.

After hours of debate, which sometimes turned ugly, a solution was reached. The Television accepted to broadcast, at the end of the prime time news program, an apology for any harm caused by the wrong presentation of the events leading to Rexha’s death. The case was closed, as far as the TMC was concerned, but the lingering doubt that the mediation had only offered a palliative remained.

Circumstances were such that a very creative idea presented by Halil Geci during the discussion could not be realized. He asked RTK to produce and show a second documentary, in which an alternate version of Rexha’s killing could be seen and heard. According to them, Rexha had opened fire first and unexpectedly against Gani, after an altercation<sup>38</sup>. Most surprisingly, Halil offered to appear in the film in order to pledge his personal assistance to the family of the deceased, including financial support for Rexha’s young children’s schooling. In short, he had offered to broadcast blood reconciliation between the Geci and the Rexha.

Western media maintain an intense but sensationalist interest in the continuing practice of blood feuds among Albanians as a signifier of backwardness<sup>39</sup>. What is often overlooked is that the type of customary law of private and communal justice commonly known as blood feud is in fact a highly codified tradition with its own mechanisms for revenge but also peace building. That television could be used for the purpose of reconciling opposing families is of course new and an option not to discard. Halil and his brothers had previously used the media to launch their invitation to reconcile conflicts, when in 2001 they publicly denounced the attack on a bus carrying Kosovo Serbs<sup>40</sup>.

When RTK asked Halil Geci who would produce such documentary with the offer of reconciliation on screen he replied : “Why not the TMC ? She is an impartial observer”.

### CONCLUSION

The experience of the Kosovo TMC has been rich in lessons for media intervention, as one of the important aspects of contemporary nation building. As a swamp problem, it defies neatly designed solutions. As a model to be exported elsewhere, it teaches one thing : you have to know your swamp before you decide how to wade across it.

### NOTES

- \* I would like to acknowledge the support I have received during my tenure as the Kosovo Temporary Media Commissioner from my senior legal advisor Ewald Orf, with whom I had many disagreements but without whose intellectual abilities and competent work I would have been able to achieve very little. The very young and hard working Kosovo staff has also been indispensable : Iliriana Tahiraj and Naile Selimaj, who have been with me since the beginning, deserve a special mention. International Research Exchanges Board- Pro Media (IREX) Chief of Party Keith Hayes has been supportive beyond the call of duty. Fisnick Abrashi, Ardian Arifaj, Baton Haxhiu, Migjen Kelmendi, Garentina Kraja, Fron Nazi, Beni Qena and Blerim Shala, among others, helped me understand and empathize with the complex post-Milosevic Kosovo.
- <sup>1</sup> Security Council Resolution N° 1244.
- <sup>2</sup> UNMIK Regulation No. 2000/36 on the Licensing and Regulation of the Broadcast Media in Kosovo. For all Media Regulations see the web site of the OSCE Mission in Kosovo : [www.omik.org](http://www.omik.org).
- <sup>3</sup> IGNATIEFF, M. (2003), *Empire Lite, Nation Building in Bosnia, Kosovo and Afghanistan*, London, Vintage.
- <sup>4</sup> CHESTERMAN, S. (2004), *You the People. The United Nations, Transitional Administration and State-Building*, Cambridge, Oxford University Press.
- <sup>5</sup> I learned of this concept and its application to the analysis of public policy and leadership from SCHALL E., Dean of the Wagner School of Public Service at New York University and innovator in the field of public service leadership. See SCHALL, E. (1995), “Learning to Love the Swamp : Reshaping Education for Public Service”, *Journal of Policy Analysis and Management*, 14 (2) : 202-220. The concept itself is derived from Donald Schön, 1983, *The Reflective Practitioner : How Professionals Think in Action*, New York, Basic Books.
- <sup>6</sup> Often compared to a Ministry for Information, the TMC was seen as falling into the established tradition of media intervention started in post-war Germany by the Allied Forces. See PALMER, L. (2001), “A Very Clear and Present Danger : Hate Speech, Media Reform, and Post-Conflict Democratization in Kosovo”, *Yale Journal of International Law*, Winter, and SULLIVAN, S. (2000), “Kosovo,” in Price, Monroe (ed.), *Restructuring the Media in Post-Conflict Societies : Four Perspectives*, Background Paper for the UNESCO World Press Day Conference in Geneva, May. For criticism in the international press, see ERLANGER, S. (1999), “NATO Peacekeepers Plan a System of Controls for the News Media in Kosovo”, *The New York Times*, 16 August; 1999, “Kosovo’s Incipient Media Ministry”, *The New York Times*, 30 August; and KRAJA, G. (1999), “Kosovo Journalists’ Deep Suspicion of OSCE Media Controls”, *IWPR Balkan Crisis Report*, 6 September. I met Freimut Duve,



- Representative of the Freedom of the Media, in Sarajevo at a conference on media in the Balkans in September 2001 : he did not hesitate to talk about his strong reservations about the TMC.
- 7 While the OSCE monitors never detected any problem with Serb media, a recent independent analysis of the Serb press commissioned by the International Organization of Migration (IOM) reveals that the use of hate and racist speech in regard to Albanians has always been and remains very common : BJELICA, J. (2003), *Presentation and Representation of the Kosovo Protection Corps (KPC) in the Serb Print Media*.
  - 8 Ombudsperson Institution of Kosovo, 2003, *Third Annual Report 2002-2003*, p. 10. The Ombudsperson Report treats exhaustively and convincingly the issues of rule of law, human rights, and governance in the UN transitional administration.
  - 9 I take the definition of migrant sovereignty from PANDOLFI, M. (2000), "L'industrie humanitaire : une souveraineté mouvante et supracoloniale, réflexion sur l'expérience des Balkans", *Multitudes*, III; and 2000, "Disappearing Boundaries : Notes on Albania, Kosovo and the Humanitarian Agenda", *Psychosocial Notebook 1* : 27-39.
  - 10 I briefly touched upon these issues in 2002, "Building a professional media in post-conflict societies takes more than simple regulation" *IWPR Balkan Crisis Report*, 11 September.
  - 11 The idea of a tool kit for what has come to be known media intervention is presented in KRUG, P. and PRICE, M. E. (2002), "A Module for Media Intervention : Content Regulation in Post-Conflict Zones", in PRICE, M. E. and THOMPSON, M. (eds.), *Forging Peace : Intervention, Human Rights and the Management of Media Space*, Edinburgh, Edinburgh University Press, 148-176.
  - 12 In discussing the history and first developments of the TMC I draw heavily from my drafts of the TMC Annual Reports 2000-2001 and 2002.
  - 13 This article is not concerned with the regulation of broadcast media. A Kosovo Frequency Plan elaborated by the TMC's technical officer quickly became the framework for civilian broadcasting, without much controversy. These activities are normal undertaking in any democratic government seeking to optimise the use of the broadcast spectrum, a public good. Emil Blakaj, technical officer for the Kosovo TMC, went on to design the frequency plan for Albania and is currently doing the same in Iraq. The article is not concerned with the big debate and struggle on public service television, which went beyond the local broadcasters to involve European and American actors, and in which the TMC played a role.
  - 14 OSCE, 1999, *Kosovo/Kosova. As Seen, As Told, Part II. A Report on the Human Rights Findings of the OSCE Mission in Kosovo, June to October 1999*.
  - 15 Some Albanian-language programming continued, but it was produced in Belgrade and had no audience. A notable exception was the radio program called Radio 21 and narrowcast on the Internet. The Albanian newspaper *Rilindja* was allowed to be published by the Milosevic regime until 1993. In the West it continued to be published as *Rilindja*, while in Kosovo it was renamed *Bujku*, and became the official voice of the parallel system run by the Democratic league of Kosovo (LDK) and Ibrahim Rugova. There was a range of small publications that only erratically appeared. *Kosova Sot* (1998) and *Koha Ditore* (1997), which was a re-creation of the weekly *Koha* that began publication in 1993, had better fortune. Together with the weekly *Zëri* (1993), *Koha Ditore* distanced itself from Rugova and appealed to a younger, urban and educated readership.
  - 16 After the war, only the weekly *Jedinstvo* resumed publication in March 2000 as *Novo Jedinstvo* Newspapers and magazines from Belgrade were and are distributed by the OSCE in Serb enclaves.

- 17 See BORDEN, A. (1999), "Hate Speech in Pristina - The Kosovo Media Wars Could Start Here", *IWPR Balkan Crisis Report*, 8 October.
- 18 IGNATIEFF, *op. cit.*, p. 72.
- 19 Only in 2003 the Association of Professional Journalists of Kosova was established and started being operational, with its own code of ethics, thanks to the efforts of Baton Haxhiu and the support of IREX.
- 20 The Codes of Conduct were drafted in consultation with several international watchdog groups for the press. Both refer explicitly to the Universal Declaration of Human Rights (Article 19, freedom of opinion and expression, and Article 29, exercise of rights is subject to the limitations of law needed to secure recognition and respect for the rights of others). The Codes also refer to the European Convention on Human Rights, including Article 2 (right to life to be protected by law), Article 5 (right to liberty and security of the person), Article 6 (those accused of a crime are innocent until proven guilty), and Article 10 (right to freedom of expression, subject to restrictions of law necessary in the interests of society).
- 21 See the MAB on Belul Beqaj and *Dita* vs. the Temporary Media Commissioner, 16 September 2000 in *TMC Annual Report 2000-2001* : 9-10.
- 22 MERTUS, J. and THOMPSON, M. (2002), "The Learning Curve : Media Development in Kosovo", in PRICE, M. E. and THOMPSON, M. (eds.), *op. cit.*, 259-286.
- 23 SURROI, V. (2002), "A Vien Rregullorja Vetëm për Një Etni dhe për Një Rast?" *Koha Ditore*, 3 shkurt, 10.
- 24 Cases 2/2000; 3/2000.
- 25 The Kosovo Serbs had not participated in the municipal election, therefore their representatives were appointed by the international administration.
- 26 Annual Report 2002, p. 15, a discussion on legal issues drafted by the TMC senior legal advisor Ewald Orf.
- 27 MHB Decision on Cases no. 5/2002 and 6/2002, 1 July 2002, p. 111 in the TMC Annual Report 2002.
- 28 TMC Sanctioning Decision on Cases no. 5/2002 and 6/2002, 22 July 2002, p. 100 in the TMC Annual Report 2002.
- 29 While there is nothing new in this attitude across varying experiences of migrant sovereignty, in the case of Kosovo it was coloured by a negative image of Albanians. I have been alerted to this problem earlier on by Isa Blumi (1998, "The Commodification of Otherness and the Ethnic Unit in the Balkans : How to Think About Albanians", *East European Politics and Societies*, 2 (3), Fall) and discussed the same issue in DI LELLIO, Anna, 2000-2001, "Albanese Uomo Nero," *Liberal*, 3, Dicembre-Gennaio, pp. 164-167.
- 30 There are many accounts of this history. The most interesting, because told from inside the LDK, is by the writer Mehmet Kraja, during the 90s exiled in Tirana and representative of the Kosovo erstwhile government to that capital : *Mirupafshim në një luftë tjetër*, Pristina, Rozafa, 2002.
- 31 This story is partially recounted in the body of biographical books published after the war, with the intention of introducing the broader public to a "truthful" narrative. Among others, see HAMZAJ, B. (2000), *A Narrative About War and Freedom (Dialogue with the Commander Ramush Haradinaj)*, ZËRI, P.; SAFET, Z., 2001, *War for Kosova (Commander Remi Speaks)*, ZËRI, P.; AHMETAJ, ARBËR, A. and KRASNIQI, S. (2001), *Kështu Foli Tahir Zemaj*, Pristina, Mërgimi.

- <sup>32</sup> TMC Annual Report 2002, p. 16
- <sup>33</sup> Offence to honour remains a criminal offence, as in the former Yugoslavian criminal code, also in the new Kosovo Criminal Code (June 2003).
- <sup>34</sup> An international panel of judges sentenced Idriz Balaj to fifteen years, Daut Haradinaj and Bekim Zekaj to five years and Ahmet Elshani and Ramush Ahmeti to three years.
- <sup>35</sup> MAB decision on Cases 5/2002 and 6/2002 in the TMC Annual Report 2002, p. 129. It is worth noticing here that judge Klonowiecka-Milart is a criminal judge and conducted investigations and trials in various proceedings against former KLA leaders.
- <sup>36</sup> This mix of court and cultural justice is not peculiar to Kosovo Albanians. Even the role of the International Criminal Tribunal for Yugoslavia is rather ambiguous in this regard. As a legal scholar has noted, the Tribunal always experienced a tension between its work as a criminal court and the “efforts to construct truthful narratives”, TEITEL, R. (1999), “Bringing the Messiah Through the Law”, in HESSE, C. and POST, R. (eds.), *Human Rights in Political Transitions : Gettysburg to Bosnia*, New York, Zone Books, p. 182.
- <sup>37</sup> TMC Annual Report 2002, p. 17.
- <sup>38</sup> The argument is set forth, among others in the autobiographical book, GEÇI, G. (2001), *Lufta Pa Maska*, Pristina, Bota Sot.
- <sup>39</sup> The New York Times Sunday magazine devoted a cover story to Albanians’ blood feuds : ANDERSON, S. (1999), “The Curse of Blood and Vengeance”, 26 January. More recently : Bytyci, Fatos, 2004, “Blood Feuds Revive in Unstable Kosovo. Rise in ‘Honour killings’ blamed on collapse of respect for law and order”, *IWPR Balkan Crisis Report*, N° 481, 19 February.
- <sup>40</sup> GALL, C. (2001), “Doing the Right Thing in Kosovo’s Heartland,” *The New York Times*, 22 February.