



**A cause of instability or  
Foundation of Democratic  
Development?**

# **Press Freedom Post-Conflict**

CONFERENCE REPORT

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# Preface

Since its launch in 2001, IMS has brought diverse partners together to discuss issues of common interest and concern. On each occasion, challenging issues are presented in relation to the IMS core mandate of helping media affected by conflict.

In 2003, IMS convened an international roundtable on conflict reporting in order to further international debate on new methodologies for journalistic practices in times of conflict. In 2004, our conference took a fresh look at some of the dilemmas facing media development in the wake of peacekeeping and humanitarian aid operations. We focused on the actors involved in a post-conflict media environment and highlighted contradictory objectives that often exist between the need for rapid and effective dissemination of information from aid organizations and peacekeeping forces and the need to develop a professional independent media sector in a volatile post-conflict environment.

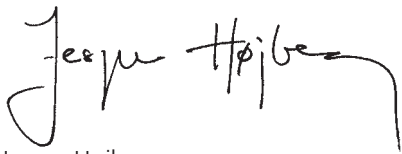
In 'Voices of War' – a publication prepared by deputy-chairperson of the IMS board, Andrew Puddephatt, in light of the 2004 Conference – several core principles emerged: every post-conflict is unique and must be dealt with accordingly; the local media must be engaged in moving from a violent to a non-violent phase and the international community must consider how they can adequately interact with the local media community. To this end, responsibilities must be divided and efforts coordinated, including the establishment of partnerships to apply lessons learnt and avoid mistakes of the past.

The 2007 IMS International Debate built on principles and challenges presented in "Voices of War". It focused on issues surrounding press freedom post-conflict and arguments for and against liberalizing media environments in post-conflict countries. The emphasis was less on actors and their information/media interests and more on three particularly controversial media development themes: regulation, transformation of state media structures and access to information in a post-conflict setting.

The clash of opposing positions prompted IMS to explore these issues, not only from an academic perspective, but also from a practitioner's point of view. This interest was further fuelled by the recent publications from the Crisis States Research Centre and Development Studies Institute (DESTIN) at the London School of Economics arguing for a reassessment in thinking on media support and development in post-conflict settings.

The 2007 debate was set up to pose tough questions, both from both a theoretical and operational perspective. Should advocates of media freedom stand on principles or pragmatism? Are media development actors too dogmatic about freedom of expression, applying it unyieldingly in circumstances where more nuanced approaches are needed? Is it a 'one size fits all' approach at its worst? And how should international community foster and support the appropriate blend of media related programmes in post-conflict settings?

We requested that participants come armed with an open mind and willingness to speak frankly. It was a plea that was reiterated, with characteristic flair, by our late Chairperson, Torben Krogh; a man who possessed both in abundance. We were not to know that the 2007 debate would be the last at which IMS staff and our many international partners could enjoy Torben as our Chair. We will remember him as he was during the opening session: unstintingly humorous, animated and always engaged. We have been extremely fortunate to work with Torben. He provided great inspiration and encouragement to others throughout his life as, We have no doubt, his memory will continue to do so for many years to come. We will miss him greatly.

A handwritten signature in black ink that reads "Jesper Højberg". The signature is written in a cursive style with a long, sweeping tail on the letter "g".

Jesper Højberg  
December 2007, Copenhagen

# 1 Introduction

The 2007 debate focused on a specific context: the post-conflict environment and media within it. An underlying theme of the conference was the nature of the state post-conflict and, corresponding to that, the extent to which media freedom required a supportive institutional environment.

In contrast to previous years, the 2007 conference was structured as a debate. The moderator of each panel was tasked with extracting a clear position from each panelist rather than neutral statements. The debate held off the record in order to allow maximum space for bold discussion and encourage participants to play devils advocate and challenge as much as they endorsed.

Introductory addresses set the scene of the debate: providing the theoretical framework, establishing the boundaries of discussion, outlining the core issues at stake and indicating how progress might be made towards tackling these challenges in practice. A summary of these presentations is provided here.

As outlined in the introductory presentation the paths to state failure are various. It is conceivable that corruption, inefficiency and the erosion of state control of the legitimate use of force could lead to the gradual erosion of state capacity. More common, as in the cases of Somalia, Liberia, Sierra Leone and DRC, is a situation in which armed conflict leads to the collapse of the incumbent regime and warlordism fills the vacuum that is left behind. In a more extreme case, the complete destruction of the state could be brought about, as has likely happened in Iraq since 2003.

In order to rebuild state capacity, it is necessary to provide infrastructure, re-establish law and order, reassert the state's monopoly on the use of force, make provisions for social services and, through all of these measures, regain political legitimacy. These are all considered to be necessary steps in helping a 'failed state' to become re-established in the wake of conflict.

The question at the centre of the three themes of debate was where the media should be placed among competing priorities in state and social reconstruction. In order to tease out core issues, IMS created the two categories of '*Media Purists*' and '*Media Pragmatists*' to articulate opposing arguments. The background paper for the conference provides a detailed description of both positions. Participants were requested to use these perspectives to identify clashes of opinion and orientate themselves between these positions.

Generally speaking, *Media Purists* would advocate against restrictions prescribed by the state and other bodies, whilst *Media Pragmatists* would see the need for regulation in order to create the desired media landscape over the longer-term.

*Media Purists* would contend that true democracy will not materialise unless media is pluralistic, editorially independent and unfettered by regulation. According to this perspective, media freedom is the foundation for stability in both democracies and fragile societies alike. It is there to ensure that

citizens are informed and are able to contribute to public life. Media becomes important as a conduit, a channel and a public platform that will (if executed according to sound professional standards) expose failures and malpractices. Moreover, in unrestrained environments, professional media will eventually rise to the top. Those propagating hate speech will eventually die away as local populations become bored of rhetoric and seek more 'trustworthy' information.

The *Media Pragmatists* argue that post-conflict settings have to address a broad variety of concerns. Media is only one and not necessarily the most important priority. In some instances, they would argue that rights of free expression must be carefully restricted. Whether the media like it or not these restrictions promote stability and this would actually be in the interest of the media in the long term. Pragmatists argue that the limits of free media must be acknowledged. The media is a powerful vehicle to expose injustice but citizens' welfare is best protected by institutional checks and balances. Therefore, paying attention to the contextual environment (in a post-conflict situation) might take precedence over guarantees of media freedom and freedom of expression.

At the outset of the conference, the artificiality of such a sharp categorization was acknowledged. In practice, few media professionals would find themselves consistently endorsing either the purist or pragmatist perspectives to their fullest extent. For some participants, the construct was far from benign:

*"Purism' is an euphemism for absolutism. The dice have been loaded in this debate. The other side, the 'pragmatists', are described by a word that has positive connotations. They should actually be called the 'restrictionists'."*

From an operational perspective, it was recognised that purists and pragmatists may not find themselves so far apart. Even from the perspective of security, the media is key. The military, not a body often associated with defending liberal media values, recognises that winning hearts and minds cannot be done solely by force. 75% of any counter insurgency is hearts and minds whilst only 25% relates to the use of force, it was stated.

Policies designed to assist states moving from the precarious stages of post-conflict reconstruction to long-term stability cannot ignore the media. No peace deal can last without public support, and that support ultimately has to be based on reality and be given willingly. Peace requires an open and independent media. Long-term stability must be based on public support, which needs to build on information not ignorance, and information has to be transmitted with authority and credibility. This requires trusted intermediaries beyond the state. A government-controlled media is not enough.

However, it should not be automatically assumed that the media consistently acts as a force for good, that it will respect other peoples' freedoms, be committed to impartiality, or even contribute to stability. So a central aim must be to build a professional media and harness different strands of international, national and local media to achieve this.

A mature media cannot exist in isolation. There needs to be a supportive environment – a firm legal basis, a transparent financial basis, responsible authorities to interact with and a cultural understanding of 'fair' and 'factual' reporting. Training media is only part of the mix and it is also important to train press officers and officials to cultivate complementary professional skills within official circles as well.

*'Knee-jerk 'politically correct' actions to give media immediate self-regulation can often be counter-productive. We do new governments no favours by expecting them to regulate the media too quickly. If there are not well trained judges and an institutional understanding of media regulation then it does not matter how good the law is, it cannot stand up on its own.'*

Whatever the means employed, it is therefore important that the international community sustains media that they have assisted to establish. As became clear throughout the subsequent debate, participants from both ends of the spectrum agreed that it is better that the international community provides long-term support rather than gives way to counter-productive vested interests that will compromise the solid development of professional media.



## 2 Session one

**Session one: Should media content be more tightly regulated in post-conflict settings and what, if anything, should the authorities be doing to control hate speech and incitement to violence?**

### 2.1 The framework

From a *purist perspective* the best possible intervention is one that promotes the establishment of free and independent media. The need to legislate against hate speech and incitement of violence would be unacceptable. For purists the appropriate response to hate media would not be 'heavy-handed' regulation, but a development programme that nurtured independence and objectivity. Even in fragile states, firm principles must be established respecting freedom of expression. Furthermore, as arose during the Danish cartoon crisis, there is a serious concern that regulation would set precedents that provide a basis for the introduction of strict censorship measures. Several cases are referred to as fright scenarios (Rwanda as the most illustrative example) where the threat of hate speech has been used as an excuse for introducing oppressive media policies. The purist would similarly reject any attempt by the international community to blur the boundaries between information interventions and censorship. Here Iraq, Bosnia and Kosovo come to mind.

From a *pragmatic perspective* the basic argument is that in a post-conflict environment the social fault lines are distinct and vulnerable to manipulation. It is important to build social-cohesion and the media should be regulated to bar hate speech and incitement to violence. It is a luxury to maintain absolute ideals of media freedom in communities recovering from conflict. Instead priority must be given to 'fair and honest information' and this might only be possible to provide thorough control and regulation. Stability, security and a functioning state come before fostering the idealized role of the independent and competing media.

In between those two positions falls the argument for some degree of content regulation. Such regulation is contingent on a clear demonstration that the media has been deliberately used as a weapon of abuse. The difference between Ivory Coast and Rwanda serves to illustrate this point. Rwanda provides a clear example of the media being used as a tool in the arsenal of conflict.

### 2.2 The discussion

Panel One unravelled the arguments for and against regulation in a post-conflict setting. The debate pivoted between those who believed that the conditions for an independent media were cultivated through regulation in the first instance and those who contended that regulation posed an inherent threat to media freedom whenever it was imposed. While most participants recognised the danger of incitement to violence through the media, there were strong arguments put forward for not seeing regulation as a solution in itself. The following summary charts the themes that emerged during the panel and group discussions.

## Why regulation?

Various arguments were expounded in favour of regulation. Together they built a case for regulation that centred on the need for security as a basis for social reconstruction and media development. In this, the threat of hate speech and incitement to violence was curbed through prompt regulation and, as in the case of rebuilding the judiciary and other national institutions, efforts would then be made over the longer term to reinstate full media freedom.

In the first phase after conflict, violence is suspended but latent. In this situation there is a need to prioritise essential information about the situation, facts that citizens need to know, and to prevent the media inciting hatred and violence. This can be done while encouraging a diversity of coverage and ensuring that opposing voices are given space. This would also help establish a secure environment for the media to operate without fear of attack.

In contrast to mature democracies, post-conflict situations do not require the fullest media freedom. The population needs facts and basic information more than analysis. In fact, it is easier to build sustainable media freedom on a platform of excessive regulation than through premature liberalisation. Taking one step at a time helps cultivate a professional media culture rather than leaving the media unsupported, inevitably to be engulfed by partisan politics and sectarian agendas. As one speaker noted,

*"Media can fulfil liberal aims, but liberal aims cannot be achieved in an illiberal context using liberal means."*

In addition to the practical argument for regulation, was the contention that media freedom should be placed in the same context as basic human rights. There is no reason why media freedom should attain priority status or be introduced more rapidly than the right to life, shelter or access to justice. The argument for immediate and absolute media freedom could only be defended if it was a precondition for the realisation of other human rights. But the reverse is true; it is impossible to cultivate a mature and responsible media without the foundations of civic liberty and security. One participant suggested that, if we can have transitional justice there is no reason why we should not develop theories and policies of transitional journalism.

Along similar lines, the interdependent relationship between the media and other institutions was highlighted. The media can prompt important corrections when deviations occur from judicial redress, accountable government or the responsible use of power, but it cannot provide the solution alone. Robust institutions are needed and their development must be given equal, if not greater, weight than that of media freedom. Together they provide a mutually reinforcing system of checks and balances. In many ways, the media provides the glue but not the structure.

*"Can a real broad-based local media environment grow spontaneously? We don't expect democratic governments to grow overnight, so why expect the media to do so?"*

One participant argued that, in the interim, self-regulation can provide the way forward. It avoids the need to have mature supporting and functioning government institutions and is instead based on a code of conduct that is supported by journalists themselves. However, others disagreed, arguing that in post-conflict societies self-regulation is not the solution. Those who cooperate are those who are already behaving more responsibly. The real

question is how to involve those who are not. So a media regulator needs to be independently established and financed and have sharp enough teeth to be effective, but not too sharp to alienate the media community. Only then can it play its part in ensuring the media does not violate appropriate codes of conduct.

### **The risks of regulation**

In contrast to those panellists and participants who espoused the arguments above, were those who warned of the potential risks of regulation. The case made against regulation rested partly on the belief that free speech was essential to diffuse tensions post-conflict and partly on warnings that regulation, once instated, was likely to be abused.

In post-conflict situations, frustrations are acute and they need an outlet, the best of which would be a robust debate. Without this, it is likely that frustrations would intensify and boil over. Strict regulation of media, including draconian fines and suspension, introduces a punitive culture that will never be seen as treating all media in an impartial fashion. Freedom of speech entails that offensive material can be published and, often, there is some truth in the grievances that are aired. To stifle this necessary outpouring after the trauma of conflict can be both counter-productive and dangerous.

The arguments for regulation ignore the fact that it is not neutral; it can be manipulated and used as a political tool by those in power. If the government is itself a perpetrator of hate speech and incitement to violence, there is little reason to believe it can be trusted to oversee and abide by legislation against the same acts in which it readily engages. One should be sceptical about the idea of 'a little bit of temporary regulation' as there are no precedents of governments giving up media control without a struggle, after all remarked one speaker, 'nothing is so permanent as the temporary'. In this sense, it is illogical to argue that the media must be regulated until robust institutions emerge to support it because, without these, regulation will itself be impossible.

There is also a danger in positing a role for the press that goes above and beyond its function to relay information and impartial analysis. The press should not provide social cohesion per se and nor should the regulatory framework in which it's situated be set up with that end in mind. As soon as the press is assigned a social function it becomes subordinated to a broader agenda and will not be able to withstand a gradual erosion of independence.

Several participants pointed out that regulation alone was insufficient. The danger is that free media is seen as dictators saw 'the golden bullet' in the 1940s, they imagine that somehow individuals will be fundamentally reformed by exposure to free media alone. In fact, it's a small part of a much larger whole. It has to be complemented by the development of a professional culture and skills that enable journalists to pursue governmental accountability, ask the right questions, analyse accounts and assess policy. Regulation can set boundaries, but it cannot develop and assist those who need practical, professional support.

Overall, opponents of media regulation argued that it is not about banning regulation altogether but, with an eye to protecting cherished media independence, ensuring that appeals for its use do not become excuses for oppression. Those wary of regulation are not necessarily against viable defamation laws or broadcasting regulatory authorities. They recognise that an independent and well-functioning judiciary provides a stable and

complementary framework for the media. But they are not blind to the risk that temporary regulation becomes permanent, illegitimate restriction.

### **The Temporary Media Commission in Kosovo - an example of tailored regulation**

One speaker presented the Temporary Media Commission in Kosovo (TMC) as an example of the challenges of instigating a regulatory system.

Following the 1999 conflict in Kosovo, there was no media regulation at all. A rapid proliferation of media occurred over which there was no real control and no regulating body to assign frequencies to broadcast media. It was in this chaotic environment that the TMC was established. The conditions meant that it may not have been an optimal set up and, surviving for six years, it wasn't the most 'temporary' of organisations. Nevertheless, over time, it took a more and more hands off approach.

At the start, a key problem was that the Commission had one figurehead, one individual who made the decisions and those decisions became personalised and were seen as that individual's whims. It made it very difficult for the TMC to operate with perceived neutrality and even-handedness. In response to this, the subsequent 'Independent Press Commission' was consultative and inclusive, and therefore avoided the association of regulation with one individual and their own agenda.

A continuing objection to the TMC was not that it was not doing its job, but that it was setting a dangerous precedent for intervention. It is arguable that, by 2004, the TMC was doing very little in the way of direct intervention. Its work had become geared towards protecting against government attempts to censor rather than imposing any kind of regulation itself.

One example from 2004 illustrates the shift that had taken place towards more tailored regulation. In March 2004 3 children drowned in a river. It was reported that Serbs had chased them into the river with dogs, but there was no evidence of this. The PSB gave voice to these claims and broadcast provocative film clips that helped provoke public riots. The question for the TMC was how to respond to the PSB. The objective of intervention was not to beat the PSB into submission, but to move towards more responsible journalism. It could have been a clear case for a large – USD 3000 fine – but to what end? If the PSB was to pay that money, tax payers would lose. TMC wanted the PSB to recognise its mistakes and ensure it would not happen again. In the end there was no sanction, the PSB signed a statement in which it acknowledged that the codes had been violated – e.g. by failing to check sources and inciting violence. It paid USD 1000 towards targeted training in post-conflict reporting, inter-ethnic tolerance and breaking news.

The TMC saw this as a fair settlement and one that was well directed towards the objective of building more responsible journalism. It was criticised by some as being too weak, but others saw it as an important public acknowledgment of wrongdoing that contributed towards a better culture of journalism.

In 2005, the 'Independent Press Council' was formed and the TMC was phased out of regulation all together. It might have been a slow process but the Commission did 'exit'.

An overview of the TMC illustrates that regulation paved the way for responsible, independent regulation illustrating how, over the longer-term, good regulation maximises the chances of producing good journalists.

## **The importance of context**

The importance of avoiding generalising and acknowledging the unique aspects of each post-conflict situation arose repeatedly in discussions. To talk of 'conflict' without context is impossible. The cases of Bosnia, Kosovo, Afghanistan and Iraq cannot be discussed as one. There are different roots to the conflict, different actors and different starting environments. Too often this is ignored.

In Kosovo, the international community jumped in, assuming it was a blank sheet. They ignored the fact that 10 years before there had been an independent print media and civil society. They ignored the fact that conversations about the appropriate response to incitement took place between various media actors. Instead, the international community created its own media community, which conflicted with and suppressed the existing civil society.

Another example raised was that of Iraq in which indirect incitement, incitement by inference, was a key problem. In Iraq, Shia media have not openly called on people to kill Sunni – or vice versa – but they focus on Shia victims and grievances and only show Shia suffering. While stopping short of direct incitement, this is extremely provocative, actively fuelling grievances and exacerbating divisions. Conventional regulatory set-ups cannot address these grey areas. This again points to the importance of contextualising each and every response and identifying the appropriate measures of each situation.

One undercurrent to discussion was the relationship between press freedom and regulation in terms of its impact on security. For example, in September 1997 the seizure of 4 Bosnian Serb transmitters by NATO forces – on the basis that images of SFOR forces would incite violence and undermine stability – was seen as an aggressive measure at the time. It was widely condemned for censoring criticism of NATO as well as for being unnecessarily heavy-handed. In hindsight, the longer-term impact on security is seen as positive. In this regard, some argue that the costs and benefits of regulation have to be weighed up under a long-term perspective in order to ascertain their true weight. It is not only the environmental context that must be considered.

## 3 Session two

### **Session two: Should state media be transformed into public services media or privatised? What, if any, successes have there been in introducing public service models in post-conflict countries?**

Strong disagreements exist over how media structures should be reconfigured post-conflict. Broadly speaking, there is the American free market approach and a European mixed model allowing some state intervention. Common in Europe is the classic three-tier electronic media structure – state or public broadcasting, private media and community media.

### **3.1 The framework**

According to the purist/pragmatist dichotomy, there are different assessments of which tiers should be dominant.

*Purists* would typically hold a deep-rooted suspicion against centralized structures. For the purists, PSB is a cumbersome model open to abuse. Only considerable competition among private media can provide safeguards against both dominant private and state players. Post-conflict, it is difficult to reconfigure vested interests and particularly those interests associated with parties to the conflict and their control of state media. This presents bleak prospects for cultivating public faith in the impartiality of the broadcaster. Instead, a fresh start is needed in which a plethora of private media outlets are allowed to provide the pluralism and diversity needed to enhance democracy.

In contrast, from the *Pragmatist perspective*, some elements of PSB must be maintained precisely to ensure diversity of opinion. The belief is that only through a PSB can you ensure impartiality and objectivity as opposed to the commercial imperative of private media. Content is prioritized over commerce. The perception is that post-conflict environments require a forum for mediation between opposing beliefs. PSB can contribute to peace building and underpin the period of state-building and social reconstruction by bringing together an otherwise fragmented audience and build up a national identity rather than reinforcing dangerous stereotypes. Privatized media are unable to guard against fragmentation and deregulation alone cannot counterbalance previous power structures.

### **3.2 The discussion**

Through discussions in the first panel, the importance of the broader culture in which media would develop had been articulated clearly. In the second panel, debate turned to whether state media provided the optimal framework. Views ranged from a resolute commitment to a PSB structure, with an emphasis on programming rather than delivery, to a defence of private media structures as inherently superior.

## Transformation of state structures

Those petitioning for a reform of state structures focused on the importance of reforming state media apparatus in line with broader social transformation. State broadcasters provided ready infrastructure and manpower and, through a gradual transition towards impartial and objective coverage, this could have a knock-on effect to other areas of state administration. In Sri Lanka the process of media reform was similar to that of the transformation of broader society and mirrored many of the same changes.

In post-conflict situations, countries are impoverished, their institutions have been decimated and their populations are deeply insecure. Information is critical to communities emerging from conflict, particularly humanitarian related information, and it is equally critical who provides that information. Rebuilding the state broadcaster into a trusted conveyor of much needed information can assist the broader process of institutional reform.

Transformation of a state media machine cannot happen instantaneously but it must be the goal. It is impossible to generalise, the state of the media is vastly different among countries that have suffered conflict; by the end of the conflict in Liberia the state media had been destroyed; in Sierra Leone, the state broadcaster remained active but at a low level whereas in Cote d'Ivoire the media continued to play a divisive role. Each of these situations would require a different approach.

Policy has to be formulated as a pragmatic response to the facts on the ground. In Iraq, the state broadcaster was highly inefficient but to dismantle it would have created enormous problems. It is politically important to consider the consequences of disbanding so many government employees and, if that goes ahead, to find ways of using them elsewhere. In Afghanistan, the need for sustained, long-term support was clearly demonstrated. Although transformation of the state broadcaster looked like it was taking root in 2007, there has been a marked deterioration in which acute propaganda has resurfaced. There are two lessons here: do not exit too quickly and do your utmost to set up systems in the first place that can resist political pressure.

The biggest challenges to a successful transformation are obstacles to legislative reform, inadequate finance and a lack of training for journalists, technical staff, management and, importantly, government officials in the values of independent journalism.

*"It is very important to look at the mission of a broadcaster: who is the owner? What is the firewall between its governance and those in power? What are the complaints procedures? At base, is the organisation at arms length from government and is that environment supported by rule of law?"*

It was conceded that it is important to acknowledge that both public broadcasters and private broadcasters can succumb to pressure. The question is whether it is possible to build a PSB that is at arms length from government and whether its environment is supported by the rule of law. This, not the fact that it is a public or private broadcaster, will determine its resilience and success. Most important, as detailed below, is an emphasis on editorial values.

## An emphasis on Public Service Programming

In a post-conflict setting it is not the medium that it is important, but the quality of information. In this sense, priority should be with working with

media professionals to produce quality programmes that may or may not be broadcast on state channels.

Supporting public service programming entails support for an ethos that underpins journalistic balance, quality news and trustworthy information. In the aftermath of conflict, during which propaganda has been a dominant force, there is unlikely to be trust in the state broadcaster for information provision. Concentration on the programming circumvents the need for a trusted broadcaster and seeks instead to draw on audiences' good judgement to build trust in programming strands. Quality programming can create the right platform for various actors to explore differences without falling back into violence. It creates neutral space no matter where it is broadcast and this can diffuse any further catalysts to conflict and contribute to building an inclusive national identity.

If programming is the first priority, regardless of who is transmitting it, then there can be no argument for waiting for the state broadcaster to be transformed. The drive has to be towards the creation of a public service ethos, and this requires a cultural shift to take place. By immediately engaging in programming, this will build up an appreciation of the public service ethos without posing a direct challenge to the status quo. Over time, decades even, it will help transform the media both inside and outside of the state broadcaster through visible quality programming.

Moreover, a society accustomed to state-controlled media is liable to expect and accept that the media and the airwaves are the domain of the government. The notion that they are publicly owned is not recognised. So a shift among the audience is necessary, as well as reform within the media itself. For this to happen in practice, there has to be a change in donor policy from expecting transformation to take place within a few years, towards supporting sustained engagement and programming support for at least 5-10 years. Legislative reform will not produce the shift necessary by itself unless it is complemented by working directly with practitioners.

*"It is important to build understanding among practitioners and not just to express good intentions for change on paper. Such understanding and confidence will only develop as result of cultural shift, which take decades to occur."*

Regarding the distinction between public and private programme provision, the issue is not with a private broadcaster per se, but a question of whether it would have an organisational and editorial ability to deliver public service programmes. In a post-conflict situation, it is more likely that national reach, financial backing and political resolve will be found in the state broadcaster and not among smaller, fragmented private outlets.

In post-conflict society, there is also the risk that, far from bringing diverse and independent voices to the fore, fledgling outlets are more likely to serve powerful private interests. Unless more thinking is done on how to protect emerging media from manipulation and politicised control, there is a real danger that power inequalities will be exacerbated and not ameliorated as intended. By providing long-term support to those media outlets and practitioners that are committed to public sector programming, there is an opportunity to build genuine editorial independence and resilience.

Community radio should also be an important part of the mix, as it provides a different function to PSB and can support public service programming by providing important outlets at a more local level.



### **The benefits of private provision**

There has been a long-standing and fundamental disparity between the trust vested in private broadcasting structures by the US and that vested in public structures by European donors. From the US perspective, this rests not only on a mistrust of centralised control, but also on a belief that a privatised media environment is more democratic.

By contrast, private media opens space for diversity of interests and opinions and erodes any central grip over information provision. The profit imperative means that private outlets operate efficiently and act as an engine of economic growth. With economic development moving firmly in the direction of continued privatisation it makes better sense to go with the tide rather than trying to resuscitate an obsolete media model. Furthermore, it is private not public outlets that tend to act as better watchdogs given their separation from government and related institutions. So on both economic and journalistic counts, they are preferable to state set ups.

However, just as participants expressed concern over the sustainability and financing of public sector broadcasters post-conflict, many also highlighted the need to regulate ownership and block monopolies over private media. It was generally accepted that private media outlets were prone to being manipulated for particular agendas. Moreover, from the point of view of encouraging public service programming, it was not obvious how to reconcile the profit motive of private ventures with the provision of socially beneficial content.

For many participants, the answer did not lie with any one particular model, but in a hybrid of private, public-sector broadcasting and community media. This was seen as a means to fuse the beneficial elements of the various models: the economic engine and diversity of private enterprise, the overarching structure and inclusivity of national broadcasters and the tailored local programming of community media. Using the various models in tandem would enable democratic participation to develop at all levels; not only in terms of building a national identity, but also through cultivating civic participation and integration at grass-roots, an essential step along the road to post-conflict recovery.

## 4 Session three

### **Session three: Should the right to information be a priority in post-conflict situations, or is this the preserve of wealthy, stable countries?**

In post-conflict settings, provisions for access to information are seen as a necessary means to corrode obscure decision making procedures and open legislative processes to public scrutiny. Access to information is also a key issue in relation to peace processes. Since The Dayton Agreement, it has been assumed that you need to sequester combatants away from their constituencies, get them signed up to a deal in secret and then announce it to the world. However, the outcome of the Oslo process for Sri Lankan civil war undermined this assumption, as it could be argued that without public consent no peace process is enduring. Nevertheless, some argue that talks need to be secret at least in the early stage. Northern Ireland is also a good example of how secret discussions led to public breakthroughs, posing the question of whether access to information is actually a hindrance to progress.

### **4.1 The framework**

From the *Purist perspective*, access to information underpins democratic development. It forms part of the checks and balances that provide public oversight of government. In its absence, accountability is easily lost. Without transparency and accountability in post-conflict environments, it will not be possible to build trust in new government institutions. Similarly, access to information plays a vital role in the fight against corruption. If media are to play the key role of "watchdog", journalists must be in a position to access information of public interest. If they are unable to do so they are consigned to being suppliers of opinion. Finally, access to information allows individual citizens to guard against illegitimate use of personal information. This is particularly important in countries where information has often been misused as an instrument of oppression.

For *pragmatists*, access to information is not placed high up the hierarchy of reforms. Over and above access comes the establishment of rule of law and the need to guarantee stability and institutional predictability. From this perspective, access to information becomes a luxury that can wait. In addition, a legal right of access adds an institutional and financial burden to public structures that lack the necessary sophistication to apply exemptions and considerations of public interest. In a politicized society, it is conceivable that a right to access will be used for personal and political vendettas. The cost of having to service questionable requests for information would undermine the development of strong public institutions. In this sense, access to information legislation only makes sense once you have an environment supportive of its purpose.

The third panel exposed interesting rifts between those who believed that, as a right enshrined in the universal declaration of human rights, access to information had to be secured from the outset and those who saw it as a secondary, longer-term goal. For many, it represented a question of establishing citizens' rights, of which the right to information was a constituent part.

## 4.2 The discussion

### A human right to information

Those who stood by a human right to information argued that it was consistently violated. The post-conflict context was characterised as one of information starvation in which individuals had no means of securing access. Without an established right to information, weak institutions would fail to disclose needed information voluntarily.

In addition to practical needs, a principled argument arose. The right to information is clearly established; it is articulated in international human rights standards and, as such, should be adhered to and protected by the international community. It includes two facets: the right to receive information imparted by others, to be well informed, and the corresponding obligation on states to disclose this information. In this sense, censorship violates an audience's rights as much as it violates that of the media.

States have to release information without being prompted. Of course, there are limits to this obligation, but they are very clearly defined along strict lines of national security, defence and international relations, public safety, privacy and the prosecution of criminal activity. In these cases, there has to be a reasonable prospect that disclosure would harm the interest in question and this can be overridden if the public interest in making the disclosure outweighs the harm to one of these legitimate interests. This structure provides the necessary exceptions for governments in volatile situations, as well as the guarantees required by its population.

*"There is a right to look for information and a right to receive information. But there is no right to information per se."*

This characterisation was seen as too broad by some participants, who argued that there is a right to look for information and a right to receive information, but no right to information per se. Also, in times of conflict, derogations are permitted, including against any right to information. So, it was argued, it would not stand as an absolute right in many of the conflict situations discussed.

Moving away from the definition of a right to information, was the contention that an appeal to human rights standards alone is not an effective strategy. One practitioner argued that the way to get things done in post-conflict settings is to demonstrate that it's in the parties' own self-interest. An appeal to a human rights charter is not persuasive; what is needed is proof that it will work and a pragmatic justification to illustrate the case. Even if the end goal is the same, namely transparent and accountable government, it is crucial to employ the right methods to achieve it.

This proved unacceptable to many; the rule of law was seen to provide the framework by which to assess whether a state is behaving properly or improperly. In a post-conflict setting, the aim is to move towards national institutions based on democracy and rule of law. So there is a need to start pushing these messages from the start and embed them.

### Peace negotiations and information disclosure

The case of peace negotiations posed an interesting exception to the rule. There was broad agreement that, in situations of delicate negotiations, it can be vital to have minimal disclosure of information. For example, during

the Israeli-Syrian negotiations over the Golan Heights information was heavily regulated as it was understood that too much disclosure would have undermined chances of finding a deal and had dangerous security implications.

Again, in Macedonia talks were going on that, if leaked, would have been destroyed by the public reaction. In the preparatory stages the public was over-excited and extremists were vying for power; too much disclosure would have been disastrous.

While the need for discretion was accepted, it was felt that vigilance was required to ensure that this was not exploited. The instinct in public institutions towards secrecy should not be opened to wide abuse. Secrecy during peace talks can be needed, but too much could be damaging. There is still a need to build information and media structures during the peace talks; both to guard against a level of impunity unacceptable to the population and to build broad support for an eventual agreement.

A paucity of information surrounding peace negotiations would alienate communities and fail to engender the commitment and support needed to sustain peace. The optimal strategy would be to keep filtering through general information, particularly pertaining to the long-term goals of the agreement, to build a public constituency of support. This is also essential to counter harmful rumours and disinformation. However, it was recognised that a parallel track of secret negotiations can be useful to deal with highly sensitive issues.

*"In the real world, the media knows what people want it to know. As the old saying goes, the state is the only ship that leaks from the top."*

Against general agreement on the need to exercise particular caution in the case of peace-talks, were instances in which donor policy precluded optimal information flows. Media organisations working in conflict areas may not be able to deal with 'political issues' in order to secure humanitarian funding and, as a consequence, information about peace talks could not be disseminated. It was thought important to address this dynamic to enable practitioners to respond adequately to the situation at hand.

### **A necessity or luxury?**

Despite disagreement on how soon the right to information should be operationalised, there was broad agreement on a bottom line to restrictions on access to information: Even in times of acute crisis, provisions are made in the Geneva conventions for information flow, such as notification of bombing, information on prisoners and their families, and information regarding access to health and food.

Above and beyond this basis, research was sited to illustrate how those in conflict need information to move forward.

*"People with experience of conflict want information to reconstruct their lives. In Abkhazia, people are aware that the limits are there for their own sake (i.e. in order to preserve the prospects for talks) but they need information to increase their feeling of security. To often, information is left to rumour."*

Against this were considerations of appropriate timing and capacity. In a post-conflict situation, there is a lack of generational and institutional memory. Governments have small budgets and professions have little

developed expertise. One government representative confirmed that it would be financially impossible to instate an information disclosure system; it was simply unrealistic.

Similarly, in many post-conflict situations, journalists lack professional attributes and too often fall prey to scandal and manipulation. There is a danger that journalists will exploit freedom of information legislation to investigate frivolous matters, placing unnecessary strain on state institutions, rather than serving the public interest by the nature of their requests. It was argued that the right to information can only be operationalised once both state institutions have started to mature and media professionals have reached a level of professionalism that lends itself to responsible practise.

Counter to this, several participants argued that fundamental rights cannot be compromised on practical grounds. There must be ways to find simple and inexpensive systems to introduce access to information and build on it over time. Importantly, it is not only governments who are subject to the obligation to disclose information. It is also important to consider international organisations, corporations, NGOs and so forth. In post-conflict situations, it is often these actors that have great bearing on communities day to day lives and transparency from among their ranks is also critically important.

The third session did not end in any resolution of the tension between pragmatism and the motivation to promote and protect human rights. Consensus did emerge around the importance of reliable information in a post-conflict setting; both to give communities an opportunity to assess their own security, to access vital humanitarian information and to build commitment to peace. Ultimately, there was no agreement as to whether this need is best served through the introduction of freedom of information legislation or is adequately addressed by quality public service programming, as described in session two.

## 5 Concluding considerations

As anticipated, the set-up of the debate prompted widely divergent opinions and views on the best means to attain the same ends, namely, a professional and independent media. A clear fault-line appeared between those participants who saw an objective value in media freedom and freedom of expression and those who saw it as one of various instruments needed to achieve broader aims of democratic development.

In so far as this took place, the exaggerated distinction between purists and pragmatists proved useful in demarcating initial boundaries and agitating discussion. However, as reflected in this paper, participants soon took leave of this dichotomy and infused thematic debates with grey shades of empirical complexity. Discussions turned again and again to the importance of context and, as such, resisted the suggestion that an ideological perspective would inform media development policy consistently in every instance. While it was recognised that practitioners had repeatedly failed to pay sufficient heed to local context and particularities, the acknowledgement of this failure was seen to be an important lesson learnt from the evolution of media development over the past two decades.

For each participant, whether an advocate of strict regulation in post-conflict situations or a proponent of media freedom in its fullest sense, there was an understanding that, depending on the particularities of the situation at hand, there could not be 'one rule fits all'. There was broad agreement on the need for the international community to respond to each situation with flexibility and aim to nurture media and civil society that already exists. In practical terms, this necessitates quick and targeted assessments that give international actors a grasp of the situation at hand.

Throughout the three panels, a strong undercurrent emerged; the need to provide sustained assistance to develop the important editorial values of impartiality, objectivity and accuracy. Whether from the perspective of building a professional media or from a security perspective in which a trusted intermediary is needed to cultivate public trust and hope for the future, the importance of these traditional editorial values were made clear. The implication of this was that audiences themselves are the best judges of quality balanced programming versus insidious propaganda.

Timing was also agreed to be critical. What may be appropriate and acceptable at one point may be excessive at another. This was equally pertinent from the perspective of security and responding to the threat of renewed violence. For this reason, it would be important for programme staff to constantly review measures in liaison with local actors to reassess their viability and legitimacy at various stages.

In the first panel, the majority of participants appeared to feel comfortable with some degree of regulation under the right conditions. However, the theoretical acceptance of the potential benefits of regulation was accompanied by sizeable practical caveats. Regulation does not regulate itself; it becomes a tool in the hands of the power-holders. There is no guarantee that the guardians of media regulation, whether domestic or international, will act benignly and the threat of incremental clampdown must be tackled in all

situations. Here, the importance of a supportive environment for the media was heavily underlined. The media can only serve its function of contributing to the checks and balances exerted over state control if it too is protected. The rule of law, financial transparency, legislation providing for equitable ownership and protection from intimidation and persecution are all essential facets of such an environment.

In the second panel, an interesting emphasis on public service programming over the nature of the broadcaster provided additional illustration of this point. There was a strong sense that public, private and community media providers may all have a role to play in disseminating quality programming and trustworthy information at both the national and local levels. This appears to mark a move away from a more traditional focus on characteristics of media infrastructure towards a more flexible approach that can incorporate public service programming into various structures even when, in a post-conflict setting, they are likely to be imperfect.

The third panel provided the most fertile terrain for the more pragmatically inclined. Though several participants argued a strong human-rights case for the immediate recognition of and support for access to information, many others conceded that, on the grounds of administrative burden and financial drain, freedom of information could be superseded by more pressing concerns in the immediate phase post-conflict. Discussion was animated on the issue of access to information during peace negotiations. Here, there was near unanimous recognition that sensitive political negotiations were likely to be impeded by the glare of maximum disclosure. That said, the dangers of imposing an information vacuum were powerfully presented and the need to satiate the enormous appetite for information post-conflict became clear. While discretion might be needed for the duration of negotiations, it was agreed that work had to be done on a parallel track to build up public support for and belief in the end objectives of any deal. Coming back to the emphasis on editorial values, this would require a trusted intermediary to communicate the facts but also to translate how they would impact upon everyday lives.

Across the three panels, the debate was vibrant and, with case studies introduced from every corner of the world, each position was tested from diverse perspectives and experience. The rejection of the usefulness of the purist-pragmatist paradigm in practise was itself an indication that, despite differences in approach, fundamental disagreement did not abound. Media was acknowledged to be part of a broader context and it was conceded that acknowledging this would necessitate flexibility and, at some points, compromise. However, what came out very clearly was that the media should not be subordinated as a tool for social reconstruction. Its stated purpose, to provide reliable and quality information, should not be eroded and media development policies, all be it situated in broader programmes of reconstruction, must retain a focus on fostering editorial values and building the skills needed among journalists to put these into practice. Orientating media development in this direction could well benefit political progress and democratic development but, ultimately, to protect cherished independence and vitality it must be furthered as an end in itself.

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