

## Information Intervention: Bosnia, the Dayton Accords, and the Seizure of Broadcasting Transmitters

Monroe E. Price

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# Information Intervention: Bosnia, the Dayton Accords, and the Seizure of Broadcasting Transmitters

Monroe E. Price\*

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## Introduction

In the summer of 1997, as the first aggressive steps by the international community in Bosnia were being enacted, Jamie F. Metzl proposed that an “information intervention unit” be created within the United Nations.<sup>1</sup> The international community could use the information intervention unit to respond to broadcasting efforts that might be used to “incite widespread violence in crisis zones.”<sup>2</sup> Such a unit would have, in Metzl’s proposal, three primary functions: “monitoring, peace broadcasting, and, in extreme

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1. Jamie F. Metzl, *Information Intervention: When Switching Channels Isn’t Enough*, FOREIGN AFFAIRS, Nov./Dec. 1997, at 15.

2. *Id.* at 15, 17.

cases, jamming radio and television broadcasts.”<sup>3</sup> Metzl pointed to the explosive mobilizing role Radio Milles Collines had in Rwanda with its repetitious and explicit incitement for Hutu to slaughter Tutsi as one example where preventive intervention by the international community would have been suitable.<sup>4</sup> Metzl saw the techniques of information intervention as a way to broaden the range of intermediary opportunities available to the United Nations, NATO, or the United States during peacekeeping measures in ethnic and other conflicts.<sup>5</sup> “The world community’s failure to halt the genocide in Rwanda,” Metzl concluded, “exposed the weakness of an international system that forces states to choose between the extremes of massive, armed humanitarian intervention and mere symbolic action. . . . The time has come to develop, refine, and institutionalize information-based responses to incendiary mass communications.”<sup>6</sup>

For more than six months in late 1997 and early 1998, the NATO Stabilization Force (Sfor), under orders from the Office of the High Representative (OHR), controlled key broadcast transmitters for “security protection.”<sup>7</sup> Sfor’s seizure of the transmitters was said to be necessary to ensure that information transmitted to Bosnian Serbs met the objectives of the Dayton Accords.<sup>8</sup>

The active, directed, and explicit intervention in Bosnia raises to a new level the international debate about the appropriate role of media policy in preventing ethnic conflict and preserving peace-keeping processes. Bosnia-Herz. illustrates the full range of possible foreign assistance used to remold an indigenous media, from professional training to closing down of stations, all to improve the role of the information space in assuring a more democratic society. Bosnia-Herzegovina may be an exceptional case in the relationship between media and foreign policy. Examining the implementation of the Dayton Accords, however, is instructive for understanding approaches—especially in the most difficult of circumstances — by which the United States and the international community make decisions concerning the relationship between broadcasting and foreign policy. Bosnia provides a window into the debate over multilateral interventions justified in the name of obtaining objectivity and impartiality, avoiding ethnic conflict, and enhancing the right to receive and impart information.

There is growing recognition that threats to peace and to the international order now arise most often in bitter conflicts where words become

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3. *Id.* at 17.

4. *See id.* at 15-16 (“[S]imply jamming Hutu broadcasts and replacing them with messages of peace and reconciliation would have had a significant impact on the course of events.”).

5. *See id.*

6. *Id.* at 16.

7. *Statement by the Secretary General, Dr. Javier Solana*, Presswire, Oct. 1, 1997, available in LEXIS, ALLWRD Library, PRNEWS File.

8. Sfor controlled the transmitters from Oct. 1, 1997 until April 14, 1998. *See Serbs and Sfor Agree Return of TV Transmitters*, BBC Summary of World Broadcasts, Apr. 17, 1998, available in LEXIS, ALLWRD Library, BBCSWB File; *see also Statement by the Secretary General, Dr. Javier Solana*, *supra* note 7.

the prelude to slaughter. After actual conflict begins, military strategies are rendered far more complex due to inflamed emotions intensified by the tactical use of radio and television.<sup>9</sup> In a time of difficult and novel "peacekeeping" operations, disarming the media space has become a factor. It is against this background that the practices in Bosnia, demonstrating the complexities of refashioning a media and information space, become important to study.

In this Article, I focus on NATO's media policy during the first stages of its administration of Bosnia-Herzegovina. In particular, I examine the implementation of the Dayton Accords for instruction in understanding approaches that the United States and the international community make concerning the relationship between broadcasting and foreign policy. I describe NATO's media policy in Bosnia-Herzegovina, with special emphasis on the Bosnian Serb sector of Republika Srpska, and the seizure and control of broadcast transmitters there.

Part I of this Article provides a background on the role of the media in Bosnia, from the pre-war period through NATO's seizure of transmitters in Republika Srpska and post-seizure details. Part II explains the legal basis for information intervention. Part III covers the concept of information intervention at work in Bosnia-Herzegovina. Finally, the Conclusion offers a number of questions to consider while studying media and foreign policy.

## I. The Bosnian Example

### A. Bosnian Television and the Role of the Media in the Bosnian War

Media was used to spread terror and fan the flames of war in the former Yugoslavia.<sup>10</sup> Several months before anyone in the region outwardly bore arms, nationalist leaders in the various Yugoslav republics began laying the groundwork for war by planning media campaigns. For example, Serbian President Slobodan Milosevic, who is widely blamed for waging and instigating the war in Bosnia,<sup>11</sup> sent paramilitary troops and technicians to seize a dozen television transmitters in the northern and eastern parts of Bosnia in the spring of 1992.<sup>12</sup> These areas are close to Serbia and had substantial Serb populations. As a result, more than half the people in the

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9. See, e.g., PHILIP M. TAYLOR, *GLOBAL COMMUNICATIONS, INTERNATIONAL AFFAIRS AND THE MEDIA SINCE 1945*, at 132 (1997) (describing how the Bosnian government tactically gave foreign journalists access to their civilian population in an effort to portray themselves as victims of aggression).

10. See, e.g., Metz, *supra* note 1, at 17. See also Blaine Harden, *Serbia's Bid For Bosnia Alleged: Campaign Said to Target Areas of Newly Independent State*, WASH. POST, Apr. 11, 1992, at A13; Lisa Schmandt, *Comment: Peace With Justice: Is It Possible for the Former Yugoslavia?*, 30 TEX. INT'L L.J. 335 (1995); Maj. Michael J. Berrigan, *Book Review: The Fall of Yugoslavia: The Third Balkan War*, 151 MIL. L. REV. 282 (1996).

11. See, e.g., Warren Zimmerman, *A Baby Face and Cold Heart*, NEWSWEEK, Apr. 19, 1999, at 31; Henry Kamm, *Yugoslavs Astir Over Serbian's Rise*, N.Y. TIMES, Aug. 6, 1989, at 12.

12. See, e.g., *Fighting Around Mt. Vlasic Transmitter Sarajevo TV-Radio Asks for Relays Back* (Radio Slovenia broadcast May 1, 1992) (available in LEXIS, ALLWRD Library,

territory of Bosnia-Herzegovina began receiving the television signal controlled by Belgrade rather than the usual television from Sarajevo.<sup>13</sup> The idea of a unified Bosnia information space, with a national signal emanating from Sarajevo, was immediately fractured, and the stage was set to wage a fierce propaganda war that would precede any actual fighting.

With the airwaves firmly in his hands both in Serbia and in more than half of Bosnia, Milosevic broadcast fictitious reports that Serbs in Croatia and Bosnia were being massacred by Croat militiamen who drained the blood of Serb civilians before murdering them and that the main Muslim political party in Bosnia executed five of its own members for leaking word of a genocidal conspiracy against Serbs in the town of Bosanski Samac.<sup>14</sup> The propaganda countered the fact that Muslims, Serbs and Croats had co-existed side by side for nearly fifty years in Yugoslavia, particularly in Bosnia where there was a substantial intermarriage rate.<sup>15</sup> But the majority of Serbs seemed to embrace the propaganda. There are varying interpretations for the reasons why, including historic ethnic divides arising out of the two World Wars<sup>16</sup> and the fact that Yugoslavia was a country whose media had always been controlled by the state.<sup>17</sup> The false reports were laden with Serb symbolism and historical references to Serb struggles against Ottoman Turks and the Bosnian Muslims who cooperated with them, and German Nazis and the Croat fascists who cooperated with them. The emotional appeal of Serbian struggle was so strong that questioning the truthfulness of the news reports was almost akin to betraying Serb culture. Some independent journalists in Belgrade wrote about the pernicious and dangerous potential of Milosevic-controlled television, but their publications did not have mass readership and hardly made a dent in combating the powerful nationalist television.<sup>18</sup> The nationalist and inflammatory propaganda struck fear into the Serb population. When Belgrade television encouraged Serbs to arm themselves against the "enemies of the Serb people," most Serbs in both Bosnia and Croatia did as they were told.

The Serbs were not the only ones who understood that the key to power and influence was television. Well before any fighting began in Bosnia, Croatian television was airing nationalist broadcasts warning that the Serbs intended to exterminate the Croat population in order to form a

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BBCSWB File); Michael Montgomery, *Bosnia's Leader Appeals For Help From EC*, DAILY TELEGRAPH, Apr. 11, 1992, at 11.

13. See, e.g., *Fighting Around Mt. Vlasica Transmitter Sarajevo TV-Radio Asks for Relays Back*, *supra* note 12.

14. See Blaine Harden, *The Enemy Around Us: A Serb View, State Media, Age-Old Traditions Fuel Sense of Victimization*, WASH. POST, May 7, 1992, at A33.

15. See Remy Ourdan, *The End of a Dream: Vision of a Multi-Cultural Bosnia-Herzegovina Fades*, 42 WORLD PRESS REV. 29 (Jan. 1995).

16. See Ivo John Lederer, *Bosnia: Precedents of Peace*, WASH. POST, Dec. 17, 1997, at C7.

17. See Jill Smolowe, *Why Do They Keep on Killing?*, TIME, May 11, 1992, at 48; see also Cedric Thornberry, *Saving the War Crimes Tribunal*, 104 FOREIGN POLICY 72 (Sept. 1996).

18. See, e.g., Gordana Logar, *Light That Refused To Go Out*, THE GUARDIAN (London), Aug. 7, 1995, at T13.

"Greater Serbia."<sup>19</sup> These incendiary programs suggested to Croats that they were in mortal danger from the Serbs and that they should arm themselves before it was too late.<sup>20</sup>

Bosnian television in Sarajevo did not broadcast a similar degree of propaganda and incendiary remarks. It took a more conciliatory tone, reporting on and emphasizing efforts being made to diffuse crisis. It contradicted predictions heard on Serbian and Croatian broadcasts that war was inevitable. In spite of this more even-handed approach, the Sarajevo government already knew that war, were it to occur, would be driven by television. Bosnian leaders begged U.S. officials at the U.S. embassy in Belgrade to jam Serbian television broadcasts.<sup>21</sup> Both Serb and Croat television broadcasts incited the population to war, and throughout four years of fighting, nationalist programs continued to play a role in spreading the propaganda and hatred that fanned the war's flames.

In early 1992, the Bosnian Serb leadership left Sarajevo. Soon thereafter, the village of Pale became their self-styled capital.<sup>22</sup> Almost immediately, in April 1992, they began broadcasting their own television channel, Serb Radio and Television (SRT).<sup>23</sup> Firmly under the control of the nationalist leaders who would lead the war, SRT used the same tactics that Belgrade television had used before the war. Falsified reports of Serbs being slaughtered by Islamic fundamentalists and Croatian fascists (Ustashe) were the norm, as were false reports about Western conspiracies against the Serb nation.<sup>24</sup> Regardless of the content of the broadcasts, they were successful in stirring up hatred against Muslims and Croats. SRT also gave ample coverage to Serbs who had been killed by Croats allied with the Nazis during World War II. Ordinary Serbs came to believe that the "Turks" and the "Ustashe" were waging a war of aggression and that the Serbs needed to fight for the survival of their nation. They became convinced that if they did not begin "cleansing" Muslims and Croats from "their territory," the Muslims and Croats would harm them.<sup>25</sup>

During the first year of the war, the Muslims and Croats were allied together against the Serbs. However, after the Serbs were pushed back

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19. See *Krajina Serbs Appeal to Diplomats in Belgrade to Stop Croatian Aggression*, Tanjug News Agency, Sept. 11, 1993, available in LEXIS, ALLWRD Library, BBCSWB File.

20. See Andrej Gustincic, *Bosnia's Ethnic Leaders Fear Bloodbath If War Erupts*, Reuters North American Wire, Sept. 25, 1991, available in LEXIS, ALLWRD Library, REUNA File.

21. See *id.*

22. See, e.g., *Pale: From Sports Resort to War Headquarters*, AGENCE FRANCE PRESSE, May 26, 1995, available in LEXIS, ALLWRD Library, AFP file.

23. *Bosnian Media Guide: A Guide To Selected Sources Covering Bosnia*, BBC Summary of World Broadcasts, June 9, 1995, available in LEXIS, ALLWRD Library, BBCSWB File.

24. See, e.g., *Milosevic's and Other Serb Leaders' "Hypocrisy" Condemned in Radio Commentary* (Radio Bosnia-Herzegovina broadcast, Oct. 18, 1993), available in LEXIS, ALLWRD Library, BBCSWB File. See also *Poison from Pale*, TIMES (London), Aug. 25, 1997, Features.

25. See *Poison from Pale*, *supra* note 24.

from Croat territory in 1993, the Croats turned against their former Muslim allies. Again, television played a key role. The Croats, like the Serbs, wanted to carve out a piece of Bosnia for themselves to create a "Greater Croatia."<sup>26</sup> Croatian television from Zagreb began broadcasting reports claiming that Islamic fundamentalists were trying to create a state where Catholic Croats would be oppressed and subjugated.<sup>27</sup> The broadcasts portrayed Muslims as dirty, anti-Christians, who were intent on depriving the Catholics of their religion and heritage.<sup>28</sup> The strategy encouraged a sufficient number of Croats to fight against their Muslim neighbors.

Independent voices existed, taking views contrary to the official perspective, but they were routinely harassed, mostly unread or unheard, and did little to change public opinion. In Serbia, the radio station B-92 boldly criticized President Milosevic and opposed the war efforts. As a result, its editors were routinely harassed and its signals were frequently jammed.<sup>29</sup> While B-92 received critical praise in international circles, its broadcasting frequency only reached a small radius within Belgrade and its programming was ineffective in changing Serbian public opinion both during and after the war. Several Serbian independent newspapers and magazines, highly critical of the Serbian actions, were available throughout the war.<sup>30</sup> They painted an accurate portrait of the "ethnic cleansing" and fighting that was taking place in neighboring Bosnia, but they were read only by a small group of intellectuals and had almost no impact in changing public opinion. In neighboring Serb-controlled Bosnia, there were several independent newspapers that came out sporadically, but their journalists were harassed, jailed, and even killed, and some of their offices were bombed.<sup>31</sup> None successfully challenged the reach and effectiveness of the Bosnian Serb television station SRT.

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26. See Charles Lane & Tom Post, *Bosnia: An Unholy Alliance*, NEWSWEEK, July 12, 1993, at 33.

27. See *id.*

28. See, e.g., Robert Block, *Muslim Refugees Grow Uneasy in Croatia*, THE INDEPENDENT (London), June 18, 1993, at 12.

29. See, e.g., *Anti-Milosevic Protest Rolls On*, INTER PRESS SERVICE, June 29, 1993; Michael J. Jordan, *Alternative Stations Breaking State Media Control in Serbia*, PRAGUE POST, Aug. 27, 1997, at News; Colin McIntyre, *Serbia's Independent Media Battle Poverty, Apathy*, Reuters North American Wire, Sept. 7, 1993, available in LEXIS, ALLWRD Library, REUNA File. Jamming is a shorthand definition that encompasses a variety of external tools that preclude a transmission from reaching its intended audience. Jamming has been defined as "the deliberate use of interfering radio signals sent from one or more transmitters to garble emissions from other transmitters in order to make them unintelligible at reception." JOHN B. WHITTON & ARTHUR D. LARSON, PROPAGANDA TOWARDS DISARMAMENT IN THE WAR OF WORDS 210 (1964).

30. For example, *Republika* was published fortnightly out of Belgrade, the main Sarajevo daily *Oslobodjenje* was independent, and *Vreme* was published weekly in Belgrade. See *Balkan Media and Policy Monitor* (visited Jan. 20, 2000) <<http://MediaFilter.org/mff/MonIdx.html>>. The *Balkan Media and Policy Monitor* is a service from *MediaFilter.Org*, which gives a periodic analysis of independent media in the Balkans.

31. See, e.g., *Poison in Serbia*, INT'L HERALD TRIBUNE, Mar. 19, 1999, at 6. See also Peter Galliner, *Dashed Hopes for the Press*, WORLD PRESS REVIEW, Feb. 1993, Vol. 40, No.

In Croatia, the Feral Tribune, a newspaper that satirically criticized the Croatian government and Croatian President Franjo Tudjman's nationalist policies, was printed weekly during the war. However, its editors were routinely brought to trial.<sup>32</sup> Croatia's independent Radio 101 was also critical of the government and opposed the war efforts. Not surprisingly, the government tried to revoke its broadcasting license.<sup>33</sup> Only a massive protest and international appeals from press and human rights groups kept Radio 101 on the air.<sup>34</sup> In Herceg-Bosna, the Croat-controlled section of Bosnia, there was virtually no alternative press. The options were Croatian TV (HRT), Mostar TV, which was even more nationalistic and provocative than HRT, Radio Mostar, and newspapers loyal to the ruling Croatian Democratic Party (HDZ).

Bosnia-Herzegovina Radio and Television (RTBiH) remained as it was prior to the war. Its reporting was fairly accurate and truthful. It did not spread anti-Serb nor anti-Croat propaganda, but it did report facts about the war. It neither exaggerated nor underplayed the atrocities committed by the Serbs and Croats, nor the number of number of dead each day in Sarajevo. Moreover, there were two independent television stations, Studio 99 and Hayat in Sarajevo, as well as several independent radio stations, notably Radio Zid and Radio Tuzla in Sarajevo. All were at times critical of Bosnian President Alija Izetbegovic's policies.<sup>35</sup> *Oslobodjenje*, famous around the world for continuing to print even during the worst days of Sarajevo's siege, was less critical of the Bosnian leadership than several other independent newspapers that published throughout the war.

## B. The Dayton Accords

The war in Bosnia, a brutal combination of psychological manipulation and physical violence, ended with the Dayton Peace Agreement (the "Accords" or the "Dayton Accords").<sup>36</sup> By the summer of 1995, the United Nations mission to Bosnia was falling apart. Bosnian Serb leaders increas-

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2, at 10 (number of journalists killed far outstrips media casualties in any other conflict of recent times).

32. The editors were accused, among other charges, of criminal libel against Tudjman. See, e.g., *Croatian Satirical Magazine Protests At "Persecution" of Journalists*, HINA News Agency, Oct. 31, 1998, available in LEXIS, ALLWRD Library, BBCSWB File; *Croatia Rejects Claim Editor's Arrest Was Illegal*, Reuters World Service, Jan. 7, 1994, available in LEXIS, ALLWRD Library, BBCSWB File. A U.S. State Department dispatch covering human rights in Croatia in 1993 confirmed that "the International Federation of Journalists in March [1993] suggested that Croatia's admission to the Council of Europe should be delayed because it was 'very concerned' about freedom of the press in Croatia." *Fresh Croatian Media Trial Opens*, AGENCE FRANCE PRESSE, Dec. 22, 1997.

33. See *Radio 101 Views Its License Situation* (Independent Croatian Radio broadcast, Jan. 24, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

34. See *id.* See also *Croatia Extends License of Independent Zagreb Radio*, REUTERS WORLD SERVICE, Jan. 9, 1997.

35. See, e.g., *Muslims Criticize Sarajevo for "Abandoning" Mostar*, Tanjug News Agency, May 19, 1997, available in LEXIS, ALLWRD Library, BBCSWB File; Kati Marton, *Key to the Balkans: A Free Press*, WASH. POST, May 31, 1996, at A23.

36. The Dayton Peace Agreement was signed in Paris on December 14, 1995. See *General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes*, Dec.



ingly used tactics such as taking U.N. peacekeepers hostage and holding up U.N. aid convoys.<sup>37</sup> The Europeans threatened to withdraw their forces, effectively closing down the U.N. mission.<sup>38</sup> Months earlier, U.S. President Bill Clinton had agreed to commit American troops to assist with a U.N. pull-out from Bosnia. Faced with that disastrous scenario he dispatched Assistant Secretary of State Richard Holbrooke, a seasoned diplomat, to negotiate a peace settlement.<sup>39</sup>

Bosnian President Alija Izetbegovic, Serbian President Slobodan Milosevic, and Croatian President Franjo Tudjman came to Dayton, Ohio, where diplomats hammered out a peace settlement to end the war. The diplomats worked through the nights designing treaty boundaries acceptable to all parties and drawing the lines on the map. It was finally agreed that Bosnia would remain one country, but divided into two entities: Republika Srpska and the Muslim-Croat Federation.<sup>40</sup> That structure satisfied the Serbs because they were, in a sense, given the "republic" for which they were fighting, even though Republika Srpska is an "entity," not an independent state. The agreement satisfied the Muslims because it, in a sense, kept Bosnia whole. It offered little to the Croats, except that, as part of the Muslim-Croat Federation, they were able to form special ties with neighboring Croatia.

The military component of the Dayton Accords took weeks to plan and was stated in great detail. The Clinton Administration's main aim was to end the fighting in Bosnia, so special care was given toward that goal. Deadlines were set for the release of political prisoners,<sup>41</sup> for the separation of military forces,<sup>42</sup> and for weapons from all three armies to be put into barracks or destroyed.<sup>43</sup> The Accords called for heavily armed NATO troops, with a strong mandate to retaliate against any kind of attack against them, to be deployed for at least a year to enforce the military agreement.<sup>44</sup>

The civilian aspects of the Dayton Accords were not prepared with the same attention to detail as the military component. The Accords stipulated that the Organization for Security and Cooperation in Europe (OSCE) would organize elections;<sup>45</sup> that the United Nations would oversee creation of an unarmed civilian police force to oversee the police forces in each

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14, 1995, U.N. Doc. S/1995/999 (1995), 35 I.L.M. 75 (1996) [hereinafter Dayton Accords].

37. See U.S. Department of State, Dispatch, *Bosnia and Herzegovina Human Rights Practices 1995*, Vol 7, Mar. 1996 (55 U.N. troops taken hostage in a single day); see also Abba Eban, *The U.N. Idea Revisited*, FOREIGN AFFAIRS, Sept./Oct. 1995, at 39.

38. See *A Crisis of Conscience*, ECONOMIST, July 22, 1995, at 15.

39. See Michael Dobbs, *Three U.S. Diplomats Share Credit for Bosnia Deal*, INT'L HERALD TRIBUNE, Nov. 23, 1995, at News.

40. A map detailing the division of Bosnia can be found at: *Bosnia* (visited on Apr. 25, 1999) <<http://www.applicom.com/twibih/map.html>>.

41. See Dayton Accords, *supra* note 36, Annex 1A, art. IX.

42. See *id.* Annex 1A, art. III.

43. See *id.* Annex 1A, art. IV.

44. See *id.* Annex 1A, art. VI.

45. See *id.* Annex 3, art. I.

entity;<sup>46</sup> that the United Nations High Commissioner for Refugees (UNHCR) would oversee the return or resettlement of displaced peoples or refugees;<sup>47</sup> and that a High Representative chosen by the Contact Group would coordinate the activities of the different organizations.<sup>48</sup> The aim of these sections of the Accords was to reconstitute Bosnia's former multi-ethnic nature and create a Bosnian national identity against a backdrop of continuing ethnic hatred and loyalties.

The elections would be the international community's most crucial task, as well as the most rigorous test of the Accords' future success. Although the OSCE had never before staged an election, it was chosen to oversee the elections because the United Nations was held in low repute in the region.<sup>49</sup> The Accords specified that the OSCE would set up a Provisional Election Commission (PEC) to oversee elections at the federal, entity, and municipal levels.<sup>50</sup> The PEC was specifically empowered to adopt electoral rules and regulations concerning the registration of political parties, voter eligibility, international observers, and all other measures that "open and fair electoral campaigns" could take place.<sup>51</sup> The parties were required to obey the PEC rules stipulated in the Accords, as well as any rules and regulations the PEC would create pursuant to the agreement.<sup>52</sup>

### C. State of the Media After the Dayton Accords

The Dayton Accords were signed in Paris in December 1995 and immediately put into force. In addition to representatives from the United States, the Russian Federation, the Federal Republic of Germany, the United Kingdom, and France, the Accords were signed by the internationally recognized president of Bosnia-Herzegovina, Alija Izetbegovic, Serbian President Slobodan Milosevic, and Croatian President Franjo Tudjman.<sup>53</sup> The exclusion of informally recognized Bosnian Serb and Bosnian Croat leaders from the signing would later have consequences in terms of perceived obli-

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46. *See id.* Annex 11, art. III (The International Police Task Force assistance program is designed, among other things, to monitor, observe, and inspect law enforcement activities and facilities.).

47. *See id.* Annex 7, art. I ("The Parties call upon the United Nations High Commissioner for Refugees (UNHCR) to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees.").

48. *See id.* Annex 10, art. I. For a more detailed look at the Office of the High Representative (OHR), see *Office of the High Representative* (last modified Oct. 5, 1999) <<http://www.ohr.int./info/info.htm>>.

49. *See generally* Christopher A. Riley, *Neither Free Nor Fair: The 1996 Bosnian Elections and the Failure of the U.N. Election-Monitoring Mission*, 30 *VAND. J. TRANSNAT'L L.* 1173, 1192-1200 (1997).

50. *See Dayton Accords, supra* note 36, Annex 3, art. II.

51. *See id.* Annex 3, art. III.

52. *See id.*

53. *See id.* General Framework Agreement. *See also* Fionnuala Ni Aolain, *The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis*, 19 *MICH. J. INT'L L.* 957, 998-99 (1999).

gations to honor the Accords. For these nationalist leaders, although the fighting had been suspended, an underlying war was still underway. They conducted their war through the media, creating the potential for pent-up hostilities to explode into renewed conflict. To maintain control over their territories, nationalist Bosnian Serb and Bosnian Croat leaders clung to their party-controlled media. The Serb-held parts of Bosnia were still covered by broadcasts of the rabidly nationalist Serb Radio and Television (SRT) and the Croat-held parts of Bosnia continued to receive broadcasts from the rabidly nationalist Croatian Radio and Television (HRT). The Bosniak-controlled part of the country remained under the coverage of RTBiH.<sup>54</sup>

The three ethnic groups started vying for more effective use and control of the airwaves in their spheres of influence. Croats, Serbs, and Muslims all repaired war-damaged television transmitters on mountains in their respective territories, attempting to broadcast their frequencies as far and wide as possible.<sup>55</sup> The Serbian government in Belgrade set up a television transmitter in Serbia near the border of the newly-created Republika Srpska to broadcast Serbian television throughout the Serb-controlled entity.<sup>56</sup> In addition, the Serbian government aided the Bosnian Serbs in repairing war-damaged transmitters.<sup>57</sup> The Croatian government added additional transmitters in Croatia near the Bosnian border to broadcast Croatian television into Bosnian territory and aided the Bosnian Croats in repairing existing transmitters.<sup>58</sup> The Croatian government also helped Bosnian Croats add additional transmitters to increase the coverage of Bosnian Croat television.<sup>59</sup> The Bosnian government received assistance from Norway to renovate and repair some twenty-one television transmitters to enhance the coverage of the multi-ethnic voice necessary to facilitate reconciliation.<sup>60</sup> All parties in the war were clearly intent on continuing to spread their wartime doctrines during the peace brought about by the Accords.

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54. Although RTBiH had become more nationalistic over time, it was not as nationalistic as SRT or HRT.

55. See, e.g., *Foca Again Receiving Belgrade Television Signal*, BORBA, Aug. 9, 1996, available in LEXIS, ALLWRD Library, BBCSWB File; *Interview with Radovan Karadzic* (Bosnian Serb Television broadcast, May 17, 1996), available in LEXIS, ALLWRD Library, BBCSWB File.

56. See *Interview with Radovan Karadzic* (Bosnian Serb Television broadcast, May 13, 1996), available in LEXIS, ALLWRD Library, BBCSWB File.

57. See *id.*

58. See *Financial Plight of Radio-TV Bosnia-Herzegovina*, BBC Summary of World Broadcasts, Aug. 9, 1996, available in LEXIS, ALLWRD Library, BBCSWB File ("Although the Washington Agreement was signed more than two years ago, we have not managed to regain control of the transmitters in the territory controlled by the Croat Defense Council [HVO - Bosnian Croat army]. These transmitters are being used today to broadcast the programmes of Croatian Radio-TV." (brackets in original)).

59. See *id.*

60. See *Norwegians Help Renovate TV Transmitters in Central Bosnia* (TV Bosnia-Herzegovina broadcast, June 20, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

#### D. Dayton Implementation and the Media

Just days after the Dayton Accords were signed in Paris, Ambassador Robert Frowick, the American who headed the OSCE mission in Bosnia, arrived in Sarajevo to begin planning for the elections.<sup>61</sup> Aware of the media's role in the war, and the role it would continue to play in peace, Frowick and the other diplomats implementing the Dayton Accords realized that changing the state of the partitioned and nationalistic media was crucial for unifying the country. Because the Accords established a timetable for national elections to take place within six to fifteen months after the Accords were signed, it was clear that a massive effort was required to foster a more pluralistic press in Bosnia. Without this stronger multi-ethnic voice, Bosnians – Muslims, Serbs and Croats – could be limited to information from their respective fiercely nationalistic and separatist television programs. If alternative sources of information were not provided across the country, the same nationalist leaders who waged the war and still controlled the airwaves were likely to be voted back into power. For the elections to be a success in terms of the Accords, the international community needed to play a role in adjusting media practices to assure a fuller and freer debate before the elections.

The organizations involved in implementing the peace plan called on Bosnian politicians to soften their media's nationalist and provocative programming. The OSCE established a Media Experts Commission (MEC) as a sub-commission to the PEC.<sup>62</sup> The MEC issued a set of rules and regulations the media was expected to follow that included "providing true and accurate information," "refraining from broadcasting incendiary programming," and running OSCE and international election-related statements and advertisements.<sup>63</sup> It also ordered the three television systems controlled by the ruling parties in Bosnia's entities to provide opposition political parties with the same amount of advertising time as the ruling nationalist parties.<sup>64</sup> It then set up a monitoring group that could write citations for media violations of its rules and regulations.<sup>65</sup>

In addition to establishing rules governing the existing media, the OSCE helped finance a special broadcast network. The Free Elections Radio Network (FERN) was part of a project initially started by the Swiss government to provide "objective and timely information on the elections" to the people of Bosnia-Herzegovina in all entities.<sup>66</sup> The project envisioned reaching seventy percent of Bosnia-Herzegovina well before the elections, with signals equally split between the Muslim-Croat Federation and

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61. See *Head of OSCE Mission Arrives in Sarajevo to Start Work*, AGENCE FRANCE PRESSE, Dec. 29, 1995, available in LEXIS, ALLWRD Library, AFP File.

62. See *Bosnia and Herzegovina Elections Page* (visited Feb. 29, 2000) <<http://www.oscebih.org/mec/mecexperts.htm>>.

63. See *MEC's Goals and Responsibilities* (visited Feb. 29, 2000) <<http://www.oscebih.org/mec/mecexpert.htm>>.

64. See *id.*

65. See *id.*

66. See *OSCE to Launch Radio Network For Free Elections in Bosnia* (Radio Hajar broadcast, July 15, 1996), available in LEXIS, ALLWRD Library, BBCSWB File.

Republika Srpska.<sup>67</sup> But the Bosnian Serb leadership claimed they could not install the transmitters FERN needed because the roads leading to the mountain installation sites were mined.<sup>68</sup> The OSCE and the Swiss government did manage to get FERN on the air in Banja Luka, but within days, the Serb authorities blocked its transmission.<sup>69</sup> When FERN went on the air in July 1996, only two months before the vote, it reached only forty percent of the territory of Bosnia-Herzegovina, all within the Muslim-Croat Federation.<sup>70</sup> FERN thus had no impact in Republika Srpska, where the population was most in need of alternative sources of information.<sup>71</sup> However, though FERN was created to influence the first elections, it remains on the air in Bosnia-Herzegovina today.

#### E. Office of the High Representative (OHR) and the Open Broadcast Network (OBN)

Even before the creation of FERN, OHR proposed creating an independent television network to provide balanced information prior to the elections.<sup>72</sup> The network's aim would be to provide all Bosnians with "unbiased information" from both local and international journalists, as well as commercial programs from around the world.<sup>73</sup> The network came to be known as the Open Broadcast Network (OBN). Until the Accords were finally signed in January 1996, OBN remained in its conceptual stage, and it was not until March 1996 that activity commenced to bring about the network. Governments and NGOs committed to establishing the OBN included the United States Information Agency (USIA), the European Union (EU), and the Soros Foundation's Open Society Institute (OSI).<sup>74</sup>

In April 1996, the OSI sent media experts to conduct a feasibility and cost study.<sup>75</sup> The experts determined that for OBN to be effective, it would require an estimated \$17.6 million.<sup>76</sup> A donors' conference was held in

67. See *International Crisis Group, Media in Bosnia and Herzegovina: How International Support Can Be More Effective* (Mar. 18, 1997) <<http://www.crisisweb.org/projects/bosnia/reports/bh21main.htm>> (hereinafter ICG Media Report).

68. See *id.* See also *Radio FERN Only Heard Within Federation*, World Broadcast Information, Sept. 20, 1996, available in LEXIS, ALLWRD Library, BBCSWB File.

69. ICG Media Report, *supra* note 67; see also *Radio FERN Only Heard Within Federation*, *supra* note 68.

70. See ICG Media Report, *supra* note 67.

71. See *id.*

72. Civilian peace mediators working in advance of the Dayton Accords in September 1995 first proposed creating an independent network that could be used to combat the party-controlled nationalist programming of Serb, Muslim and Croat television. See Office of the High Representative, *More Information about OBN* (visited on Apr. 17, 1999) <<http://www.ohr.int/obninfo.htm>>.

73. See *Donors Discuss Development of TVIN Network*, *Oslobodjenje*, Oct. 7, 1996, available in LEXIS, ALLWRD Library, BBCSWB File; see also *More Information About OBN*, *supra* note 72.

74. See *U.S. Troubled by Harassment of Special Bosnian Election Network*, *DEUTSCHE PRESSE-AGENTUR*, Aug. 28, 1996. Of the EU countries, Sweden, Britain and Germany were particularly involved in the creation of OBN. See *Reprogramming a Country for Peace*, *FIN. TIMES* (London), Dec. 12, 1996, at 9.

75. See *Reprogramming a Country for Peace*, *supra* note 74.

76. See *id.*

May 1996, at which \$13.5 million was pledged, \$4 million short of the projected need.<sup>77</sup> The project was reconfigured and reduced in scope. Money came in slowly, making it increasingly unlikely that OBN would be up and running in time to make a difference for the September elections. However, the donors believed OBN could still have an impact on Bosnia-Herzegovina for the future.

Other problems with the project soon arose. Each donor country wanted its pledged money to go toward the purchase of specific pieces of equipment, often of its own manufacture. The money arrived late, and it often came with caveats. By August, just a month before the elections, OBN was still not on the air and both the peace mediators and the donor nations realized that the project's impact on the September elections would be negligible.

The OHR, OSI, USIA, and the EU continued with the project, finally creating a network of television stations that went on the air a few days before the election.<sup>78</sup> Only a handful of stations, all but one in the Muslim-Croat Federation, agreed to be a part of the OBN.<sup>79</sup> Only an estimated one-third of the Bosnian population could see it, with no coverage in Republika Srpska.<sup>80</sup> Further, for its debut, the opening credits were written on a piece of paper, crookedly held by a pair of visible hands.

FERN and OBN were not successful in their goal of creating a more pluralistic media across Bosnia-Herzegovina before the elections. Neither were other attempts to alter the media environment. UNESCO established a program bank in Sarajevo. It asked European countries to donate some of their national broadcasting about history, arts, and culture.<sup>81</sup> These programs would be broadcast on television stations across Bosnia-Herzegovina, helping to improve content and to avoid piracy. However, the effort had little success in producing more balanced broadcasts from the television stations. NATO troops also made an effort to spread alternative information. They created their own radio station, Radio Mir, or Peace Radio.<sup>82</sup> USAID sponsored election advertisements that called on Bosnians in every entity to utilize their right to vote to ensure "peace, democracy and the future of their country."<sup>83</sup> The OSCE ordered all three party-controlled tel-

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77. *See id.*

78. *See id.*

79. *See TVIN Reportedly Not Meeting Initial Expectations*, *Vjesnik*, Sept. 13, 1996, available in LEXIS, ALLWRD Library, BBCSWB File. The stations were: Hayat and Studio 99, both independent stations in Sarajevo; HRT in Mostar; Zetel, an independent station in Zenica; and TVTUZ, a public station in Tuzla.

80. *See id.*

81. *See YLE Supporting UNESCO's Bosnia Programme Bank* (Radio Finland broadcast, Nov. 24, 1996), available in LEXIS, ALLWRD Library, BBCSWB File. For example, Finland quickly donated 40 hours of Finnish films about the beauties of Nordic summers, the Finnish archipelago, and reindeer round-ups which were aired on BiHTV in Sarajevo.

82. *See International Forces Station, Radio Mir, Goes On Air*, BH Press News Agency, Jan. 23, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

83. *USAID-Sponsored TV Broadcasts Criticized*, *DNEVNI AVAZ*, Aug. 21, 1996, available in LEXIS, ALLWRD Library, BBCSWB File.

evision stations to air the advertisements.<sup>84</sup> However, according to local Bosnian newspapers, much of the population viewed the ads as condescending.<sup>85</sup>

Despite the negligible impact of the respective efforts of OBN, FERN, NATO, and other groups to provide the most ill-informed public with more objective information, and despite the fact that the nationalistic, party-controlled television stations in each entity continued to have the most influence over the respective ethnic populations, the OSCE went ahead with the September 1996 national elections.<sup>86</sup> Not surprisingly, the same nationalist leaders who led their respective peoples through four years of war were re-elected.

Although the national elections were over, the international community in Bosnia-Herzegovina continued to emphasize the importance of establishing an independent and pluralist media in the country, particularly before the September 1997 municipal elections. In October 1996, one month after the national elections, the donors reconvened in Brussels. They agreed to continue supporting OBN until it became profitable, which they estimated could take anywhere from three to five years.<sup>87</sup>

Even with the pledged support, the network was plagued with difficulties. The various sponsors started bickering with each other over how the network should be run. The Bosnian government began to feel threatened and became difficult. The Bosnia-Herzegovina state communications directorate sent a letter to the OHR accusing the international community itself of violating international law by, in effect, granting a license to OBN without coordinating with the legal authorities of Bosnia-Herzegovina.<sup>88</sup> The Bosnian government filed a complaint with the International Telecommunication Union, claiming interference with the existing frequencies.<sup>89</sup> The Bosnian Serbs, who had refused to take part in OBN, accused it of being pro-Muslim.<sup>90</sup> Even the stations participating in the network started getting angry. They expected funds and autonomy and got neither. They anticipated independence when producing programming for OBN, but a separate central OBN staff in Sarajevo was hired, vested with the power to

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84. *See id.*

85. *See id.*

86. Elections at the municipal level, which were also supposed to be held that month, were postponed because of suspected Serb voter registration fraud and a lack of freedom of movement throughout the country. *See Local Bosnian Election Postponed but Serbs Say They Will Go Ahead*, DEUTSCHE PRESSE-AGENTUR, Aug. 27, 1996, available in LEXIS, ALLWRD Library, BBCSWB File.

87. *See Donors Discuss Development of TVIN Network*, Oslobodjenje, Oct. 7, 1996, available in LEXIS, ALLWRD Library, BBCSWB File.

88. *See Bosnia Complains TVIN "Violated International Law"* (Radio Bosnia-Herzegovina broadcast, Oct. 1, 1996), available in LEXIS, ALLWRD Library, BBCSWB File.

89. *See id.*

90. *See Independent TV Network Under Fire in Bosnia*, Reuters World Service, Jan. 5, 1998, available in LEXIS, ALLWRD Library, BBCSWB File; *see also Serbs Protest Against Terms Used to Describe Bosnia-Herzegovina*, (Bosnian Serb Television broadcast, July 20, 1998), available in LEXIS, ALLWRD Library, BBCSWB File.

judge whether the programming offered by the participating stations met professional standards. More often than not, OBN central claimed the programming of the participating stations did not meet professional standards and much of it was never aired.<sup>91</sup> In consequence, OBN aired more internationally produced programs. All of the stations complained about their lack of independent control, and one of them, Studio 99, pulled out of the OBN.<sup>92</sup>

As the difficulties grew, it became clear that neither the Bosnians nor the donors were happy with OBN and that few people were watching it.<sup>93</sup> Finally, in April 1997, the OSI withdrew its money and support, dealing the biggest blow yet to the network.<sup>94</sup> There were rumors that the whole project would collapse. However, the donor nations and the EU vowed to continue financing the project,<sup>95</sup> and in August 1997, OHR hired a new team of Bosnians to run OSI.<sup>96</sup>

#### F. Direct Aid – USAID, Soros, EC/EU, and Others

In addition to the OBN, the USIA, USAID, and other groups used other means to create and develop a more pluralistic press. Europe and Newly Independent States (ENI), a part of USAID, was disbursing contracts to Internews and IREX to provide training and buy equipment for television stations other than OBN.<sup>97</sup> The Office of Transition Initiatives (OTI), another branch of USAID, established offices in Banja Luka, Sarajevo, Tuzla, and Zenica and began providing direct grants to independent media.<sup>98</sup> OTI disbursed \$6.3 million dollars to media in Bosnia-Herzegovina between February 1996 and November 1998.<sup>99</sup>

By the spring of 1997, the situation had changed somewhat. Several months before the municipal elections, the United States had decided to back Biljana Plavsic, a one-time Karadzic associate who had turned against the war-time leader and established a stronghold in Banja Luka. A tendency on the part of a local media source to favor Plavsic was likely to yield greater U.S. financial support. In the spring of 1997, OTI gave out \$4 mil-

91. See *TVIN Reportedly Not Meeting Initial Expectations*, *supra* note 79.

92. See *Sarajevo-Based Studio 99 Leaves TVIN Independent Stations Network*, DNEVNI AVAZ, Sept. 23, 1996, available in LEXIS, ALLWRD Library, BBCSWB File.

93. See, e.g., *Wartime Leaders Cling on to Media to Cling on to Power*, AGENCE FRANCE PRESSE, Jan. 31, 1997, at 5.

94. *Soros to Stop Financing TVIN Television*, Oslobodjenje, Apr. 23, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

95. See *TVIN Says It Will Continue Despite Soros Withdrawal*, Onasa News Agency, Apr. 25, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

96. As of late 1998, OBN covered 50 to 55% of the population. Of those who watch it, 76% say they watch it regularly and find it more credible than the available nationalist stations. See generally Open Broadcast Network, *Press Release* (Sept. 8, 1998) <<http://www.ohr.int/obn/p980908c.htm>>.

97. See generally U.S. Agency for International Development Mission in Bosnia and Herzegovina, *Media Program Fact Sheet* (visited Nov. 20, 1998) <<http://www.usaid.ba/information/sheets/medianov98.htm>> [hereinafter *Media Program Fact Sheet*]; see also *Internews Balkans* (visited Nov. 18, 1998) <<http://www.internews.ba/>>.

98. See *Media Program Fact Sheet*, *supra* note 97.

99. See *id.*



lion dollars in media grants to nineteen newspapers, twenty-seven radio stations and eight television stations.<sup>100</sup> Few, if any, independent sources of news and information had been available in Republika Srpska in the spring of 1996, but by the next year, television, radio and newspapers supported by OTI helped inform the public about the power struggle between Plavsic and Karadzic.<sup>101</sup> The alternative media financed by OTI attempted to uncover past instances of government corruption, economic distress and lost opportunities.<sup>102</sup> This laid the groundwork for Plavsic to consolidate power.<sup>103</sup>

In addition to these efforts by USAID, the EU and OSI, various governments gave direct grants, for training and equipment, to various independent media in both Republika Srpska and the Muslim-Croat Federation. For example, OSI set up a broadcast training school in conjunction with the BBC where young journalists were brought to Sarajevo from all over Bosnia-Herzegovina for six weeks to receive training from BBC journalists and producers.<sup>104</sup>

#### G. Seizure of Transmitters and Post-Seizure Details

In spite of these efforts to create alternative sources of information across Bosnia-Herzegovina, the media remained divided into three mutually antagonistic components based in Republika Srpska, Bosniak-controlled Federation territory, and Croat-controlled Federation territory. The respective party-controlled television stations remained the most influential media outlets and the main source of news for each of Bosnia's ethnic groups. The international community's attempts to create an alternative to the party-controlled media had not been sufficient to combat the nationalist television stations, which continued to stir up hostility. Indeed, the stations were not only hostile towards each other, but also towards the international community and Sfor. Sfor and the OHR felt that much of their work toward reconciliation was being jeopardized by the news and propaganda of nationalist television and radio.

On May 30, 1997, the members of the Steering Board (the Board) of the Peace Implementation Council (PIC) of the Contact Group had their semi-annual meeting in Sintra, Portugal, to review the progress of Dayton's implementation.<sup>105</sup> Regarding the relationship between the media and the Dayton Accords, the Board concluded that "[t]he promotion of [an]

100. See *id.*

101. See *Future of Bosnian Serb Media Assessed*, Beta News Agency, Feb. 12, 1998, available in LEXIS, ALLWRD Library, BBCSWB File.

102. See, e.g., Elizabeth Neuffer, *Media War in Bosnia Gives Serbs a Choice on Truth*, WASH. POST, Sept. 22, 1997, at A1.

103. See *Future of Bosnian Serb Media Assessed*, *supra* note 101.

104. For information on the BBC School of Journalism, see Soros Foundation, *Open Society Fund – Bosnia and Herzegovina* (visited Apr. 17, 1999) <[http://www.soros.org.ba/Programs/programs\\_media\\_center.html](http://www.soros.org.ba/Programs/programs_media_center.html)>.

105. See *Political Declaration from the Ministerial Meeting of the Steering Board of the Peace and Implementation Council* (visited Apr. 19, 1999) <<http://www.ohr.int/docu/d970530a.htm>> [hereinafter *Sintra Declaration*].

independent media is an essential step for developing democratic institutions."<sup>106</sup> This conclusion was formalized in the Sintra Declaration (the "Declaration"), which OHR treated as an extension of the Accords, though neither the elected Bosnian officials nor the original signatories to the Accords were required to sign the Declaration.

The Declaration attempted to encourage independent media in a variety of ways. In addition to calling for more support for the development of OBN, the Declaration called on the authorities of Bosnia-Herzegovina to "give every possible form of practical assistance with respect to licenses, frequencies, free access by the High Representative to news media, and the ability of the OBN and other independent media to broadcast."<sup>107</sup> This dramatic assertion called for granting a right of access to the international authorities thus according the right to acquire time on radio and television and possibly receive free space in newspapers without the editorial discretion of their editors. The Declaration then stated that the High Representative "has the right to curtail or suspend any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement."<sup>108</sup> This extraordinary provision of the Declaration established the right of Sfor and the OHR to block media outlets throughout Bosnia. It also provided the framework Sfor used to justify its later seizure of television towers in Republika Srpska.

In the months following the Sintra Declaration, Plavsic openly challenged Karadzic for power and accused him and his associates of war-profiteering and corruption. The fledgling independent newspapers and radio stations in Republika Srpska that had been receiving support from various international organizations and governments reported her condemnations.<sup>109</sup> Her message struck enough of a chord with the Serb people that she began building significant popular support. Desperate to find an alternative to Karadzic, the main impediment to successful implementation of the Accords, the United States and the other Western powers threw their backing behind Plavsic.<sup>110</sup> This support included a media-related strategy, with assistance from the international community.

By July 1997, Plavsic's popularity had grown almost to the point that Republika Srpska was split in two. She controlled the western half, centered around Banja Luka, and the politicians loyal to Karadzic in Pale governed the eastern half. Nonetheless, the Pale faction still had control of

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106. *Id.* ¶ 66. The Board stressed the importance of an independent media in promoting pluralism, free elections, and access to information. *See id.*

107. *Id.* ¶ 69.

108. *Id.* ¶ 70.

109. *See President Plavsic Hails Agreement On Elections, Renews Sleaze Charges* (Bosnian Serb Television broadcast, Sept. 27, 1997), available in LEXIS, ALLWRD Library, BBCSWB File; Vesna Peric-Zimonjic, *Bosnia-Herzegovina: TV a Weapon in Plavsic's War on Hardliners*, INTER PRESS SERVICE, Aug. 26, 1997.

110. *See* Steven Erlanger, *NATO at Crossroads in Bosnia: Serb Power Struggle Is Seen as 'Defining Moment'*, N.Y. TIMES, Aug. 31, 1997, Sunday Final Late Edition, Section 1, at 12 ("It's not about supporting Plavsic per se, or her own unsavory henchmen. But Plavsic, like her or not, is exercising legitimate authority.").

SRT, which was portraying Plavsic as a "traitor to the Serb nation" and a "pawn of the international community."<sup>111</sup> Unless Plavsic could more effectively reach the people receiving broadcasts from SRT, her chances of winning the electoral battle were slim.

On August 14, U.S. Senator Carl Levin, the ranking Democrat on the Senate Armed Services Committee, suggested that U.S. planes jam SRT signals while simultaneously transmitting "broadcasts that depict the true reasons for [the Serbian people's] isolation and poor standing in the international community."<sup>112</sup> Bosnian Serb leaders were furious. The Bosnian Serb information minister, Miroslav Toholj, stated that "[a]ny U.S. administration operation to jam SRT will be considered an act of war and will be treated as such."<sup>113</sup> Several days later, on August 18, OHR requested that SRT broadcast a statement intended to inform the Serb public about the content of the Sintra Declaration and the obligation of leaders on all sides in Bosnia to abide by it.<sup>114</sup> SRT refused. Instead, it ran a report comparing Sfor with the Nazis and referred to them as "occupying forces." With the logo "SS-for" instead of Sfor, the broadcast alternated images of Sfor soldiers with World War II German Stormtroopers.<sup>115</sup>

In a response on August 23, the new High Representative, Carlos Westendorp, sent a letter to Momcilo Krajisnik, the Serb member of the Bosnia-Herzegovian Presidency, demanding that SRT broadcast an OHR statement explaining the Sintra Declaration by 10 PM that day.<sup>116</sup> In the letter, Westendorp wrote, "[i]f this is not done, I am prepared to use my powers, including those stemming from the Sintra Declaration."<sup>117</sup> This was essentially a threat to impose a protectorate over SRT. Westendorp called the broadcast comparing Sfor to Nazis "absolutely unacceptable."<sup>118</sup> He suggested Sfor might take action by seizing television towers to stop the Pale media propaganda against the peace forces in Bosnia.<sup>119</sup> SRT promptly submitted to Westendorp's demand, and broadcast the statement before the deadline. However, immediately afterwards, SRT announced that the

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111. See, e.g., Tom Hundley, *Media Play the Messengers for Karadzic*, CHI. TRIB., Sept. 23, 1997, North Sports Final Edition, at 8; Alexandra Niksic, *Voters Go To Polls in Divided Serb Republic in an Attempt to End Split*, AGENCE FRANCE PRESSE, Nov. 22, 1997, at 12.

112. Carl Levin, *Broadcast the Truth to Bosnia*, WASH. POST, Aug. 11, 1997, at A17.

113. *Bosnian Serb TV Head Warns Against U.S. Jamming*, Dnevni Telegraph, Aug. 14, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

114. See *Bosnian Serb Radio-TV Reported to be Unrepentant About Editorial Policy* (Radio B92 broadcast, Aug. 23, 1997), available in Lexis, ALLWRD Library, BBCSWB File.

115. See *id.*

116. See Office of the High Representative, *Bulletin No. 58*, (Aug. 26, 1997) <<http://www.ohr.int/bulletins/b970826.htm>>. Krajisnik was the chairman of the managing board of SRT in Pale. See *id.*

117. *Id.*

118. *Threat To Use Force To Stop Bosnian Serb Broadcasts*, Beta News Agency, Aug. 23, 1997, available in Lexis, ALLWRD Library, BBCSWB File.

119. See *id.*; see also *Split In Bosnian Serb Media*, MONITORING RESEARCH, Aug. 28, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

High Representative's actions exceeded the bounds of the Dayton Accords and re-broadcast the clip comparing Sfor to the Nazis.<sup>120</sup>

Claiming that SRT management in Karadzic-controlled Pale was "stirring up political conflicts and engaging in an aggressive propaganda that [was] breaking up state unity,"<sup>121</sup> the SRT station in Banja Luka announced that it was cutting its ties with the SRT management in Pale. Until that time, the SRT station in Banja Luka only re-transmitted news from Pale and had very little of its own programming. The employees at the Bajna Luka SRT station, sympathetic to Plavsic, had been working for days to create their own programs. On August 24, SRT Banja Luka began airing its own programming.<sup>122</sup> Three days later, police loyal to Plavsic seized the Duge Njive transmitter near Doboj, one of the largest cities in the western half of Bosnia and the tower began broadcasting SRT programming from Banja Luka.<sup>123</sup> SRT's broadcast territory was now split in two, with SRT Banja Luka broadcasting to the western half of Republika Srpska, and SRT Pale to the eastern half.<sup>124</sup>

On August 22, U.S. troops seized a television broadcast tower in Udrigovo, a northeastern town, under the pretense that they were trying to prevent possible clashes between Plavsic's supporters and Karadzic's supporters. Chris Riley, a Sfor spokesman, stated that the seizure was not intended "to influence which programme will be broadcast via the transmitter. All we want is to prevent conflicts, but we will use any force deemed necessary at any attempt of violence."<sup>125</sup> Seasoned observers assumed Riley's statements were intended to mask Sfor's intent to hand the tower over to SRT Banja Luka.<sup>126</sup> On Sept. 1, the U.S. troops guarding the tower were attacked by a mob of more than two hundred and fifty Serbs who were presumed to be supporters of Karadzic.<sup>127</sup> Pale radio broadcast that Sfor had "occupied" an SRT transmitter and claimed Sfor was a "heavily-armed military force threatening courageous unarmed citizens."<sup>128</sup>

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120. See *Bosnian Serb Radio-TV Reported to be Unrepentant About Editorial Policy*, *supra* note 114.

121. *Split In Bosnian Serb Media*, *supra* note 119.

122. See *Banja Luka TV Splits From Pale*, Beta News Agency, Aug. 24, 1997, available in LEXIS, ALLWRD Library, BBCSWB File. See also *Split In Bosnian Serb Media*, *supra* note 119.

123. See *Pale-Controlled Media Carry Anti-Sfor Statements* (Bosnian Serb Television broadcast, Aug. 28, 1997), available in LEXIS, ALLWRD Library, BBCSWB File; *Doboj Resumes Transmitting Pale Programmes*, Tanjung News Agency, Aug. 27, 1997, available in LEXIS, ALLWRD Library, BBCSWB File. Sfor seems to have been working in some degree of cooperation with the police loyal to Plavsic. See *Split in Bosnian Serb Media*, *supra* note 119.

124. See *Split in Bosnian Serb Media*, *supra* note 119.

125. *Sfor Justifies Takeover of Transmitter*, HINA News Agency, Sept. 1, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

126. See *id.*

127. See NATO/SFOR, *Joint Press Conference* (visited Apr. 26, 1999) <<http://www.nato.int/sfor/trans/1997/t970902a.htm>> [hereinafter NATO/SFOR Briefing].

128. *Serb Broadcasts Resume in North After Sfor Handover* (Bosnian Serb Radio broadcast, Sept. 1, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

After the seizure, SRT Pale's signal could not reach the northeastern part of the Republika Srpska.

What followed was a negotiation between the Sfor and the Pale authorities, resulting in a document that became known as the Udrigovo Agreement (the "Agreement").<sup>129</sup> Pursuant to the Agreement, on September 2, 1997, Sfor handed the tower back to the SRT authorities in Pale.<sup>130</sup> Included in the Agreement were the following conditions: that the Republika Srpska media stop producing inflammatory reports against Sfor and the other international organizations implementing the Dayton Accords;<sup>131</sup> that SRT Pale would regularly provide an hour of prime time programming to air political views other than those of the ruling party;<sup>132</sup> that SRT Pale provide Westendorp with a daily half hour of prime time programming to introduce himself and talk about recent developments;<sup>133</sup> and that the Republika Srpska agree to abide by all the rules being established by the international community's Media Support Advisory Group (MSAG), which had not yet been formally declared but was in the process of being constructed.<sup>134</sup>

In the wake of the Udrigovo Agreement and the formation of the MSAG, the Serb leadership in Pale appeared to take a more conciliatory tone towards the Western diplomats implementing the Accords. On Sep-

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129. *Memorandum of Agreement for Release of Udrigovo Tower* (CQ334489) (Sept. 2, 1997) <<http://www.ohr.int/press/p970902a.htm>> [hereinafter Udrigovo Agreement]. See also NATO/SFOR Briefing, *supra* note 127. A summary of the Agreement is presented at Office of the High Representative, *Bulletin No. 59* (Sept. 5, 1997) <<http://www.ohr.int/bulletins/b970905.htm#5>>. The Agreement was formally signed by Commander of Multi National Division (North) Major-General David Grange, the SRT Editor-in-Chief, Drago Vukovic and the Deputy Minister of Interior (and Chairman of the Board for SRT), General Karisik. See *id.*

130. See *Serb Broadcasts Resume in North After Sfor Handover* (Bosnian Serb Radio broadcast, Sept. 1, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

131. See *Udrigovo Agreement*, *supra* note 129 (SRT would refrain from inflammatory reporting against SFOR and international organizations supporting the Dayton Peace Agreement.).

132. See *id.*

133. See *id.* SRT would provide the High Representative one half-hour during prime time to introduce himself and explain the events which took place in Brcko, Bijeljina and Banja Luka. Such time would be unedited and not commented on in advance or after airing by SRT commentators. The agreement also said that time would only be demanded for a short while. Presumably the short while would be just long enough for Westendorp to become known by Serbs. See *id.*

134. See *id.* Republika Srpska agreed to participate in a full and consistent manner in a Media Support Advisory Group (MSAG) conducted by the OHR to discuss and regulate the work of the media in accordance with the spirit and letter of the Dayton Peace Agreement. The MSAG consists of the OHR, SFOR, the OSCE, and the United Nations, the four principal organizations responsible for the implementation of the Accords. Established in late September 1997, MSAG's function was essentially to monitor and govern the media in Bosnia-Herzegovina to the extent that it could according to the Sintra declaration and the OSCE's MEC. The MSAG declared itself "the body that provided the executive mechanism to demand the level and type of access required in an outlet deemed in violation of the . . . MEC. If such demands were not complied with the MSAG would then recommend escalation as necessary" using the paragraph 70 powers of the Sintra Declaration giving the High Representative authority to "curtail or suspend" any media network or program whose output was in violation of the Dayton Accords. See *id.*

tember 4, the Bosnian Serb Ministry of Information agreed to allow OBN to broadcast from one of its transmitters on Mount Trebevic.<sup>135</sup> But that cooperation was short-lived. On September 8, the OHR and Sfor sent a letter to SRT Pale demanding ninety minutes of airtime to broadcast an OHR program that same evening, an hour of airtime the following day, and ten minutes of airtime for the High Representative on Thursday, September 11 and Saturday, September 13, all unedited.<sup>136</sup> SRT Pale contended that these demands were far in excess of the requirements of the Udrigovo agreement.<sup>137</sup>

SRT Pale refused to broadcast the material, and instead accused OHR and Sfor of violating "freedom and human rights."<sup>138</sup> The SRT Pale newscaster read a statement from the SRT Pale editorial board stating:

We publicly announce that under no conditions would we implement these requests. By doing this, we would trample on our moral integrity and our profession. In our radio and TV broadcast, we shall continue to ridicule orders like the one saying that video material must be broadcast in its entirety and with no changes . . .<sup>139</sup>

The announcer then invited the High Representative to appear live "as a guest on the programme and talk to journalists and the audience instead of cowardly squeezing into programmes and sending ultimatums to broadcast pre-recorded tapes."<sup>140</sup>

Against this background of increased conflict on the airwaves of Republika Srpska, and the raised stakes for political control of the SRT as the election drew nearer, the appeal for international jamming of SRT Pale gained currency. The United States dispatched three Air Force EC-130 Commando Solo planes capable both of broadcasting information and jamming existing radio and television signals.<sup>141</sup> These aircraft had been used for similar purposes in Haiti, Panama, and Grenada. U.S. officials claimed that the primary role of the electronic warfare planes would be to broadcast "fair and balanced news and information" to the local population,<sup>142</sup> but Voice of America (VOA) broadcasts to Bosnia-Herzegovina also stated that the planes had the capability to jam pro-Karadzic transmissions.<sup>143</sup> VOA reported the American belief that Karadzic supporters had violated the

135. See *Serbs Allow International TV To Use Transmitter* (Bosnian Serb Television broadcast, Sept. 4, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

136. See *Serbs Sever Links With International Envoys* (Radio B92 broadcast, Sept. 8, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

137. See *id.* SRT argued that giving in to OHR's and Sfor's demands would "trample on [their] moral integrity and profession." *Id.*

138. *Serbs Sever Links With International Envoys*, *supra* note 136.

139. See *id.*

140. See *id.*

141. See *Arrival of U.S. "Jamming" Aircraft Raises Controversy* (Voice of America broadcast, Sept. 13, 1997), available in LEXIS, ALLWRD Library, BBCSWB File. The Air Force EC-130 is an electronics warfare plane operated by the Pennsylvania Air National Guard. See *id.*

142. *Id.*

143. See *id.*

Udrigovo Agreement that mandated the supporters soften their rhetoric against Plavsic and NATO peacekeeping troops.<sup>144</sup>

The VOA broadcasts during this critical time also included an interview with Pentagon spokesman Dave Arlington who stated: "Commander Sfor controls the airwaves in Bosnia-Herzegovina, OK, so he is well within his mandate to be able to broadcast; and he will be the guy that's managing the frequencies and the broadcasts there within the theater."<sup>145</sup> This contention made clear what had been only obliquely suggested before, namely that Sfor had ultimate control of the airwaves in Bosnia-Herzegovina. This disturbed not only the Karadzic faction, but the other Bosnian factions as well, all of whom became more vocal against what they called "media colonization."<sup>146</sup> Western press freedom organizations also protested possible jamming.<sup>147</sup> The planes were not put into immediate service, but were held in readiness at bases in Italy.<sup>148</sup>

As the local elections loomed nearer, and the battle for the Republika Srpska's airwaves correspondingly grew more bitter, Western diplomats feared the media conflict could lead to more violence. Serbian President Slobodan Milosevic was urged to summon Plavsic and Krajisnik to Belgrade. That meeting, held on September 24, produced the Belgrade Agreement, an internationally brokered "fairness doctrine" for SRT Banja Luka and SRT Pale. The Belgrade Agreement stated:

President Biljana Plavsic<sup>149</sup> and President Momcilo Krajisnik<sup>150</sup> agree that the unified media environment of the Republika Srpska and free access to media by all participants in elections is vital for their being held in a democratic manner. They agreed that news programmes be broadcast daily from studios in Pale and Banja Luka alternately.<sup>151</sup>

Hope for a harmonious implementation of the Belgrade Agreement was immediately dashed. Only a day after it was signed, the MSAG "expressed concern about the editorial policies" of SRT Pale.<sup>152</sup> A news release from the OHR stated that SRT Pale continued to broadcast political announcements as news "devoid of any balance or alternative opinion."<sup>153</sup> Characteristically, SRT Pale refused to soften its editorial content.

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144. *See id.*

145. *Id.*

146. *Bosnian Radio Head: Proposed Media Bill "Entirely Unacceptable,"* DNEVNI AVAZ, July 30, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

147. *See* Editorial Desk, *Bosnia's Polluted Airwaves*, N.Y. TIMES, Sept. 6, 1997, at A22.

148. *See U.S. Jamming Aircraft Not Yet Used In Bosnia* (Voice of America Broadcast, Sept. 20, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

149. Plavsic was the President of Republika Srpska.

150. Krajisnik was the Serb representative to Bosnia's federal tripartite presidency.

151. Agreement on Resolution of R.S. Crisis, Sept. 24, 1997, ¶ 3, [hereinafter Belgrade Agreement] (on file with author). *See also* *Bosnian Serbs Resume Unified TV, Radio Broadcasts* (Radio B92 broadcast, Sept. 27, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

152. *See* Belgrade Agreement, *supra* note 151, point 3.

153. *Id.* *See* Office of the High Representative, *Press Release* (Sept. 25, 1997) <<http://www.ohr.int/press/p970925a.htm>>.

The following day, on September 26, the chief prosecutor of the International Criminal Tribunal for the Former Yugoslavia (the Tribunal), Louise Arbour, gave a press conference in Sarajevo, which was covered by SRT.<sup>154</sup> The Bosnian Serb leadership had always maintained that the Tribunal was not a legitimate juridical body, but rather a political body designed to denigrate the reputation of the Serbs. Consistent with this view, an SRT Pale announcer introduced Arbour's press conference with a commentary claiming that the Tribunal was a political instrument and that it was prejudiced against the Serbs.<sup>155</sup> The United Nations, which is a member of the MSAG, considered this a breach of prior understandings, including the Udrigovo Agreement, and demanded that SRT Pale make a public apology on television.<sup>156</sup> On September 30, SRT Pale did so, stating, "Serb-Radio-TV in this way wishes to apologize unreservedly for its misrepresentation of a news conference given by the prosecutor of The Hague Tribunal, Louise Arbour. We will read out a statement to this effect made by the prosecutor. The statement will be followed by the complete and unedited footage of the news conference given by Judge Arbour last Friday, during her visit to Bosnia-Herzegovina."<sup>157</sup>

In spite of SRT Pale's apology, Sfor troops seized control of certain SRT transmitters on October 1 and prevented SRT Pale from transmitting its broadcasts.<sup>158</sup> In addition to claiming that SRT Pale's commentary was a violation of the Sintra Declaration, Western governments also claimed that SRT Pale's repeated broadcast comparing Sfor troops to Nazis constituted a threat to the safety of the Sfor soldiers and therefore needed to be silenced.<sup>159</sup>

Whether out of conviction or from political need to state solidarity with those in Pale, Plavsic sent a letter to the High Representative, requesting him to allow SRT Pale to resume broadcasting. "Your Excellency," she wrote,

[o]n the occasion of your decision that Sfor take over and assume control of most relays in the Serb Republic, I urge you to enable the broadcasting of television programmes from the Banja Luka and Pale studios . . . . Your action is justified and there was indeed a violation of the [Udrigovo] agreement. . . . However, it is not in the interest of the Serb Republic that Pale television be excluded from the unified television network of the Serb Republic. I urge you to consider this.<sup>160</sup>

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154. See *Serb Radio-TV Apologizes "For Misrepresentation,"* Beta News Agency, Sept. 30, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

155. See *id.*

156. See *id.*

157. See *id.*

158. See *NATO-Led Forces Take Over Bosnian Serb Transmitters* Bosnia Serb News Agency, Oct. 1, 1997, available in LEXIS, ALLWRD Library, BBCSWB File; see also Office of the High Representative, *Press Release* (Oct. 1, 1997) <<http://www.ohr.int/press/p971001a.htm>>.

159. See *id.*

160. *Plavsic Urges Westendorp Not to Close Down Pale TV* (Bosnian Serb Television broadcast, Oct. 1, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.



Sensitive to the potential for condemnation of the seizure, Sfor and OHR announced that SRT Pale could regain access to the transmission network and resume operations, but only if strict conditions were met. SRT Pale would be obliged to agree to "criteria for its reconstruction and reorganization, as well as for editorial control of broadcasting, as suggested by the Office of the High Representative in Bosnia-Herzegovina and the international community."<sup>161</sup> To protest the silencing of their station, employees at SRT Pale went on strike. They then held a meeting with twenty local radio stations in Republika Srpska and sent an appeal to the international community to "lift the blockade of the SRT transmitters."<sup>162</sup>

In Banja Luka meanwhile, the Association of Journalists of Republika Srpska (UNRS) stated that they agreed with the demands of the striking journalists at SRT Pale and appealed for Sfor to return the four transmitters it had seized.<sup>163</sup> However, the association, which was loyal to Plavsic, also stated that it "would be wise" if the SRT board of management, headed by Krajisnik, were to resign" and if the Republika Srpska government "appointed an interim managerial board consisting of party representatives and non-party people until the new republican parliament [was] constituted."<sup>164</sup>

Several days after NATO seized the transmitters, Robert Gelbard, the U.S. special envoy for the Balkans, appeared in the region. He met with both Krajisnik and Westendorp. The same day, Simon Haselock, Westendorp's spokesman, announced that the OHR was "developing a strategy for solving the issue of political influence on the media in Bosnia-Herzegovina."<sup>165</sup>

The following day, Westendorp dictated the criteria SRT Pale needed to meet in order to go back on the air. He demanded that all politicians (including Krajisnik and information minister Toholj) withdraw from SRT's board of directors and give up their right to control the station.<sup>166</sup> In a letter to Krajisnik two days later, the High Representative went on to say that (1) a "transitory international director-general" and two deputies would be appointed by the OHR to head SRT Pale; (2) that the OHR would draft a statute and editorial charter for the station; (3) that SRT Pale would be obliged to broadcast programs requested by officials from the international community without editing or commentary; and (4) that a team of journalists and editors would be brought in to train personnel and super-

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161. *SRT Pale Studio Staff Strike Over Seized Transmitter* (Radio Bosnia-Herzegovina broadcast, Oct. 3, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

162. *Radio-TV Staff in Pale Go on Strike*, Tanjug News Agency, Oct. 4, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

163. *See Media Directors Appeal for Freedom of Expression and Information*, Bosnian Serb News Agency, Oct. 7, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

164. *Id.*

165. *High Representative Seeks to Cut Political Influence on Media*, HINA News Agency, Oct. 6, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

166. *See Changes in SRT Sought by High Representative* (Radio Bosnia-Herzegovina broadcast, Oct. 7, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

wise the programming of SRT Pale.<sup>167</sup> He added that SRT journalists and editors would be evaluated by the international representatives and that "only those who are positively evaluated will be able to get a job again."<sup>168</sup> This was an extraordinary assertion of power by the High Representative and it infuriated the Bosnian Serb leadership in Pale.

On October 10, the editor of SRT Pale announced, "the international community is planning to introduce a protectorate over Serb Radio-Television and to destroy it."<sup>169</sup> Both Krajisnik and the Bosnian Serb Prime Minister at the time, Gojko Klicovic, rejected Westendorp's demands and challenged the OHR's legal basis for seizing the TV transmitters and reorganizing the board of directors of SRT Pale.<sup>170</sup> In a twist of historical fate,<sup>171</sup> the Russians announced that the international community's blockade on SRT Pale was an untenable violation of the Belgrade Agreement.<sup>172</sup>

Meanwhile, the staff of SRT, deprived of their normal distribution methods and allegedly on strike, kept trying to devise ways to get around the NATO blockade.<sup>173</sup> Much to the chagrin of Sfor, the Serbs figured out how to broadcast by circumventing the TV transmitters Sfor had seized.<sup>174</sup> On October 16, twelve days after the NATO blockade began, SRT Pale began broadcasting again, using the same frequencies of SRT Banja Luka.<sup>175</sup> Suddenly, viewers could watch SRT Pale in the eastern parts of the Republika Srpska.<sup>176</sup> SRT Pale newscasters also announced the end of their strike but made no mention of the Sfor seizure.<sup>177</sup> A news bulletin stated that its viewers were satisfied at "again having the opportunity to watch programmes broadcast by Serb Sarajevo Studio."<sup>178</sup>

SRT Pale had disconnected SRT Banja Luka's signal from a critical TV transmitter (Veliki Zep) near Han Pijesak (the site of Ratko Mladic's mili-

167. See *High Representative to Appoint New Serb Radio-TV Head*, Beta News Agency, Oct. 9, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

168. *SRT Editor Rejects Attempts to Set Up "Protectorate,"* Beta News Agency, Oct. 9, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

169. *Id.*

170. See *Bosnian Serbs Reject Demands on SRT*, Beta News Agency, Oct. 10, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

171. See Mike O'Connor, *Defying NATO, Hard-Line Serbs Resume Broadcasting in Bosnia*, N.Y. TIMES, Oct. 16, 1997, at A12 (stating that officials from Eastern Europe felt that shutting down the Serb broadcast system "smacked of the authoritarian tactics used under Communism").

172. See *Russia Reportedly Opposed to Measures Against SRT*, Bosnian Serb News Agency, Oct. 1, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

173. See, e.g., *Alternative Pale TV Broadcasts Soon* (Bosnian Serb Radio broadcast, Oct. 13, 1997), available in LEXIS, ALLWRD Library, BBCSWB File (describing how the editor in chief of SRT was attempting to set up a new studio and use the local media to circumvent the NATO transmitter blockade).

174. See O'Connor, *supra* note 171.

175. See *SRT Pale Studio Reappearance "A Mystery,"* Beta News Agency, Oct. 24, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

176. See *id.*

177. See *SRT Workers End Their Strike*, Bosnian Serb News Agency, Oct. 16, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

178. *"Radio-T.V. Serb Sarjevo Studio" Resumes Broadcasting*, SRNA, Oct. 16, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

tary headquarters).<sup>179</sup> It was the only transmitter not under Sfor's control.<sup>180</sup> SRT Pale then used special military vehicles fitted with broadcasting and jamming equipment to transmit its programs in contravention of the NATO blockade.<sup>181</sup>

It took Sfor two days to figure out what had happened.<sup>182</sup> Intelligence reports initially indicated that the Veliki Zep transmitter was the source of the broadcasts.<sup>183</sup> However, when Sfor troops inspected the site, they found it stripped of equipment and incapable of transmitting anything.<sup>184</sup> On October 19, Sfor called the destruction of the Veliki Zep transmitter an act of sabotage designed to block the transmission of SRT Banja Luka into eastern Serbia.<sup>185</sup>

NATO responded immediately by deploying one of its Commando Solo electronic warfare planes to jam the mobile SRT Pale broadcasts.<sup>186</sup> The plane also transmitted a message to Serbs in eastern Bosnia that the Pale authorities were responsible for the interruption of regular SRT Banja Luka programming.<sup>187</sup> On the same day, a mysterious explosion destroyed a transmitter in Bijeljina that was key to SRT Pale's ability to circumvent the NATO blockade.<sup>188</sup> SRT Pale's broadcasting ability effectively was destroyed.<sup>189</sup> Several days later, Western diplomats in Sarajevo suggested broadcasting SRT Banja Luka to eastern Bosnia via U.S. satellite.<sup>190</sup> By October 31, this was done and Serbs in eastern Bosnia could watch only

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179. See *Bosnian Serb Radio Behaviour* (World Broadcast Information, Oct. 24, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

180. See *id.* OHR spokesman Simon Haselock responded to the Serb attempt to circumvent the NATO blockade by stating:

They were given the opportunity to restructure and to discuss the practicalities of how that might take place. They refused to engage in that process. What they've done was first of all try and [sic] circumvent it. There's nothing particularly brilliant about that. The second thing they've done is that when it's clear to them that they aren't going to be able to circumvent it, they sabotaged the system. This is the act of children.

*Id.*

181. See "Special Vehicles" Reportedly Used to Broadcast Pale SRT, DNEVNI AVAZ, Oct. 21, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

182. See Mike O'Connor, *NATO Says It Shut Serb Radio to Silence Propaganda*, N.Y. TIMES, Oct. 21, 1997, at A3.

183. See *Serb Transmitter in Eastern Bosnia to be out of Commission for Some Time* (SRNA Telephone Service, Oct. 21, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

184. See *id.*

185. See *Message Instead of TV Programmes Seen in Pale Area* (Serb Radio broadcast, Oct. 19, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

186. See *U.S. Aircraft Said to be Jamming Pale SRT Programmes* (Serb Radio broadcast, Oct. 20, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

187. See *id.*

188. See *Blast Damages Serb Transmitter*, WASH. POST, Oct. 21, 1997, at A15.

189. See *id.* There were all kinds of accusations about who was responsible for the blast, but nothing ever proved conclusive. See, e.g., *Democratic Party Behind Bomb at TV Transmitter*, Beta News Agency, Nov. 13, 1997, available in LEXIS, ALLWRD Library, BBCSWB File (accusing the leader of Republika Srpska's Democratic Party of destroying the Bijeljina transmitter).

190. See *Sfor Reportedly Ready to Beam Banja Luka TV Via Satellite*, VESTI, Sept. 23, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

SRT Banja Luka.<sup>191</sup>

Ever resourceful, Karadzic's faction in Pale discovered yet another way to continue broadcasting. On November 4, they set up an "electronic media" center in eastern Bosnia, this time in Foca.<sup>192</sup> This "technical and information center" had the capability of broadcasting SRT Pale programs to a significant portion of eastern Bosnia.<sup>193</sup> This time, because the action did not interfere with the transmission of Banja Luka television, NATO and the OHR did not take action.<sup>194</sup>

Meanwhile, the OHR started expressing dissatisfaction with Croat TV (HTV) in Mostar. Simon Haselock, the OHR spokesman, accused the studio in Mostar of "persistently resisting demands to tone down its reports" and of using "provocative language."<sup>195</sup> He took particular offense to a program aired by HTV Mostar that described Croats who wanted to co-exist with Muslims as "lunatics" and threatened that "NATO would take measures against HTV Mostar similar to those taken against Serb Radio-TV."<sup>196</sup>

The Croats reacted angrily. The editor-in-chief of HTV Mostar, Milan Sutalo, said that the station had never received any demands from the OHR to tone down its rhetoric and he called "the statement that HTV Mostar described those Croats who wanted to co-exist with Muslims as lunatics an unprecedented lie."<sup>197</sup> He challenged the OHR to produce a public recording of the statement, or present evidence of any other "provocative" statements issued by HTV Mostar.<sup>198</sup> He even went so far as to accuse the OHR of systematically attempting to destroy any independent Croat media.<sup>199</sup> He demanded an apology from the OHR and threatened to "approach international organizations for the protection of the freedom of the media and human rights, and possibly initiate court proceedings."<sup>200</sup>

191. See *Serb TV Beamed to Pale Via Satellite From Banja Luka*, Beta News Agency, Oct. 31, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

192. See *Serbs Open Electronic Media Centre in East*, Bosnian Serb News Agency, Nov. 4, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

193. See *id.*

194. See *Serb Local TV Stations Link Up*, VECERNJE NOVINE, Nov. 28, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

195. *NATO Threatens to Take Steps Against Croat TV Mostar* (Croat Radio Herceg-Bosna broadcast, Oct. 11, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

196. *Id.*

197. *Croat TV Mostar Chief Refutes Accusation* (Croat Radio Herceg-Bosna, Oct. 17, 1997), available in LEXIS, ALLWRD Library, BBCSWB File.

198. See *id.*

199. See *id.* Mr. Sutalo stated:

We are concerned that the unfounded accusations on the one hand and forced attempts to place Croat TV Mostar on the same level with Serb Radio-TV in Pale on the other aim to provide an alibi for something which has been decided in advance. The aim is to prevent Croat TV Mostar from broadcasting its programme, just as it was done with Serb Radio-TV, which is to say to eliminate the media of the Croat people, a sovereign and constituent people in Bosnia-Herzegovina, and weaken its position in this way.

*Id.*

200. *Id.*

On October 27, the international community put HTV Mostar to the test. After the station aired what was found to be a biased report on a car bombing in Mostar, the OSCE, which was monitoring the broadcast, ordered HTV Mostar to read a statement of apology in the first 15 minutes of primetime newscasts for five consecutive evenings.<sup>201</sup> Milan Sutalo refused to read the statement and declared that the international community's desire to eliminate HTV Mostar was "part of a broader strategy aimed at marginalizing and exerting pressure against Bosnian Croats."<sup>202</sup> On November 9, Sutalo resigned, citing his unwillingness to read the OSCE statement.<sup>203</sup> He said reading it would have besmirched his dignity.<sup>204</sup> When he left the station, many of his loyal staff members followed him, causing HTV Mostar to go off the air.<sup>205</sup>

Bosnian government officials and local journalists were thrilled that the international community finally shut down what they deemed Croat hate television.<sup>206</sup> However, they complained that the OHR, Sfor, and the OSCE were not doing enough about Mostar TV and the new Bosnian Serb network.<sup>207</sup> Haselock responded to these complaints by stating, "[w]hat we can do in this particular case is to monitor their programmes in order to establish whether they have been violating the rules and regulations of the Media Expert Commission. We cannot simply go and say 'we shall close you down' if you say something against Biljana Plavsic."<sup>208</sup> In addition he added,

[E]verything will be different from the New Year onwards, when a new media commission starts operating within the OHR (The Commission for Media Regulation and Licensing). All the media will have to possess an operating license, which they will obtain on the basis of their compliance with worldwide recognized media standards. A medium that fails to comply with those standards will lose its license, and consequently its right to operate. However, if they continue to operate, sanctions of a different kind will follow.<sup>209</sup>

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201. See *Mostar Chief Explains Rejection of OSCE Demand*, HINA News Agency, Oct. 28, 1997, available in LEXIS, ALLWRD Library, BBCSWB File. The apology statement required HTV Mostar to admit that its report had "intentionally deceived the audience, instigated violence and hatred against the Muslim (Bosniak) people, tried to divide the peoples in Bosnia-Herzegovina and used insulting language that stimulated the obstruction of the international community's work in implementing the Dayton Accords." *Id.*

202. *Id.*

203. See *Mostar HTV Chief Editor Resigns Over OSCE Statement*, HINA News Agency, Nov. 9, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

204. See *id.*

205. See *NATO/SFOR Joint Press Conference*, M2 Presswire, Nov. 19, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

206. See, e.g., *OSCE Welcomes Resignation of Mostar TV Chief*, HINA News Agency, Nov. 10, 1997, available in LEXIS, ALLWRD Library, BBCSWB File (stating that the Bosnian mission to the OSCE welcomed the resignation of Milan Sutalo).

207. See *Serb Local TV Stations Link Up*, *supra* note 194.

208. *Id.*

209. *Id.* When the New Year actually arrived, Sonja Karadzic and other SDS officials got together and launched another private television station called S-Kanal. See *New Serb TV's Alleged Link to Karadzic*, *VERERENJE NOVINE*, Jan. 13, 1998, available in LEXIS, ALLWRD Library, BBCSWB File. It began broadcasting on January 14, but could only be picked up in a small region surrounding Sarajevo. See *Serb S-Kanal Launched from*

The Commission for Media Regulation and Licensing (CMRL) was part of a comprehensive media reform package the OHR was planning to implement in Bosnia.<sup>210</sup> The OHR planned to establish two commissions.<sup>211</sup> The first commission's mission would be to "ensure that media standards are respected and would issue licenses."<sup>212</sup> This was the CMRL.<sup>213</sup> The second commission would be appellate in nature and deal with complaints on media treatment or media behavior in the communications process.<sup>214</sup> Haselock based this reform package on the allies' post-war experience reforming the German media system.<sup>215</sup>

## II. The Legal Basis for Information Intervention

### A. Introduction

Bosnia is an institutionally and legally complex case study of the phenomenon newly christened as "information intervention."<sup>216</sup> In the world of ethnic and regional conflict, whether it involves Zapatistas in Mexico, Kurds in Turkey, separatists in Ethiopia, or Tamils in Sri Lanka, terrestrial transmitters and signals from satellites can become elements in campaigns of violence by or against the state, and between communities with different views of the public order. Specific actors in the international community, however, see the use of media as a potential tool to reduce conflict or to increase the possibility of democracy.<sup>217</sup>

Bosnia experienced the use of almost all the instruments of information intervention.<sup>218</sup> The international community provided assistance to rebuild the infrastructure of the existing media, established an alternate media network, set requirements for the electoral regulation, forced "corrective" and official broadcasts, and created a legal framework for media performance. It also jammed broadcasts, seized transmitters, and trans-

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*Pale*, MONITORING RESEARCH, Jan. 14, 1998, available in LEXIS, ALLWRD Library, BBCSWB File. Two days after its launch, the OHR warned that "if S-Kanal makes one wrong move, we shall take appropriate action." *OHR Warns of Action If S-Kanal "Makes One Wrong Move,"* VECERNJE NOVINE, Jan. 16, 1998, available in LEXIS, ALLWRD Library, BBCSWB File. There were also allegations that the equipment used to launch S-Kanal was the very equipment stolen earlier in the year from the Veliki Zep transmitter. This allegation was potentially embarrassing to the international community because it was the loss of this equipment that forced the OHR to spend a half million dollars to broadcast SRT Banja Luka to eastern Serbia via satellite. *See id.*

210. *See High Representative's Plans to Reorganize Media*, DNECNI AVAZ, Oct. 30, 1997, available in LEXIS, ALLWRD Library, BBCSWB File (describing the methods the OHR would use to "fundamentally" reconstruct the media in Bosnia).

211. *See id.*

212. *See id.*

213. *See id.*

214. *See id.*

215. *See id.*

216. *See, e.g., Metzl, supra note 1, at 15* (coining the term "information intervention" to describe monitoring, countering, and blocking radio and television transmissions that incite widespread violence).

217. *See supra* Part I.

218. *See id.*

formed the staff and leadership of broadcasting entities.<sup>219</sup> Internationally designed and staffed media regulation bureaucracies, some tied to elections and some not, were all introduced in Bosnia.<sup>220</sup> Finally, the OHR attempted to rationalize the process by creating a comprehensive new regulatory scheme for a post-NATO, pluralistic, and unified multi-ethnic state.<sup>221</sup> If the international community is likely to use this type of intervention as part of its peacekeeping arsenal, greater attention must be paid to its legal framework, the circumstances in which it is justified, the extent to which it is multilateral as opposed to unilateral, the structure of standards and remedies, the relationship of the military to civilian authorizations, and the role existing international norms should play.

## B. The Law of Information Intervention

A fundamental question involves authority. What was the basis for the international community to intervene in Bosnia and reshape Bosnia's media and information space?<sup>222</sup> This is no minor problem and already there are debates about the sources of such authority.<sup>223</sup> If intervenors do not act pursuant to legal authority themselves, their moral claim that conflict participants must follow the rule of law loses its credibility. Various groups within Bosnia questioned whether the international community had the legal power to reshape the information space in Bosnia. Outside groups, including the World Press Freedom Committee, expressed grave reservations as to whether the international community's actions in Bosnia were consistent themselves with international norms.

The legal justification for media intervention in Bosnia is nowhere clearly stated; nor is it necessarily true that the United States and other parties sought or articulated such a legal justification at each step in the process as they constantly had to respond to practical realities. But the source of law matters. For example, if the United States and its Western allies acted as "occupiers," then a particular body of international norms

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219. *See id.*

220. *See id.*

221. *See id.*

222. *See* S.C. Res. 713, U.N. SCOR (1991) (declaring the situation in the former Yugoslavia to constitute "a threat to international peace and security" under Article 39 of the United Nations Charter); S.C. Res. 743, U.N. SCOR (1992) (noting that the Government of Yugoslavia requested a peace keeping operation be sent into the region and creating the United Nations Protection Force (UNPROFOR) to enter Yugoslavia to restore conditions of peace and security necessary to negotiate a settlement to the crisis); S.C. Res. 770, U.N. SCOR (1992) (authorizing the use of "all measures necessary" to ensure the delivery of humanitarian aid to areas of Bosnia); S.C. Res. 816, U.N. SCOR (1993) (authorizing Member States to take all measures necessary to ensure compliance with a previously established Security Council no-fly zone); S.C. Res. 1031, U.N. SCOR (1995) (reaffirming the OSCE's and Sfor's mandate to implement the General Framework Agreement); Dayton Accords, *supra* note 36, art. IX (stating that all parties agree to cooperate fully with all entities involved in implementing the peace agreement).

223. *See, e.g.,* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 1381 (2d ed. 1995) (claiming that the legal justifications for intervening in the former Yugoslavia have included at various times consent, transborder aggression, humanitarian needs, human rights abuses, and the impact of the situation on other states).

would govern their powers and the limits on them.<sup>224</sup> If they acted, on the other hand, under a consent regime, then the shape of their authority would be governed, in large part, by the conditions of their particular entry into Bosnia.<sup>225</sup>

Under current norms, which are subject to debate, the terms “occupation” and “belligerent occupation” do not describe the status of the international presence in Bosnia.<sup>226</sup> This is important because occupiers have the capacity to act in lieu of a sovereign, although those actions are constrained by the duty to serve as a surrogate for the local sovereign and to do so in accord with internationally established standards.<sup>227</sup> Indeed, in the Bos-

224. See generally EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* (1993) (tracing the evolution of the law of occupation and outlining its role in modern warfare).

225. See, e.g., I. RUKYE ET AL., *THE THIN BLUE LINE* 24-30 (1974) (describing how the role of U.N. peacekeepers is limited by the consent of the state that allowed their entry onto its territory).

226. See, e.g., Regulations Respecting the Laws and Customs of War on Land (annexed to the 1907 Hague Convention IV), Oct. 18, 1907, art. 42, 36 Stat. at 2306 (declaring that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army”) (emphasis added) [hereinafter Hague Regulations]. There has been a debate about the use of the term “occupation” to describe the activities of the international community in Bosnia and a debate, as well, over the use of the power of the occupier to justify media and information intervention. See, e.g., *id.* art. 43 (stating that the occupant shall take all measures to restore public order “while respecting, unless absolutely prevented, the laws in force in the country”) (emphasis added); BENVENISTI, *supra* note 223, at 12-20 (noting that “unless absolutely prevented” is subject to considerable debate when applied to the scope of power an occupier may exercise when it imposes a new legal, social, and political regime on an occupied country).

After World War II, the United States and its allies “belligerently occupied” Germany and Japan. Compare SHARON KORMAN, *THE RIGHT OF CONQUEST* 177 (1996) (arguing that the Allies did abide by norms consistent with the rights of a belligerent occupier with respect to the occupations of Germany and Japan), with BENVENISTI, *supra* note 224, at 91-93 (pointing out that in Germany, at least, the Allies were not occupiers in the sense conceived of by the Hague Regulations, but instead saw themselves as having assumed complete sovereignty over Germany). The Allies aimed, *inter alia*, to refashion the radio broadcasting systems in Germany and Japan. See Donna E. Arzt, *Nuremberg, Denazification and Democracy: The Hate Speech Problem at the International Military Tribunal*, 12 N.Y.L. SCH. J. HUM. RTS. 689, 727-31 (1995) (reviewing TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* (1993)). This objective was part of the larger mission of the Occupation in constructing a democratic society in the former Axis nations. See BENVENISTI, *supra* note 224, at 91. To do that, the United States and its allies imposed a legal regime that provided a mechanism to transform existing media outlets in both countries. See *Military Government Regulations*, tit. 21, pt. 5 (1949), reprinted in *THE DEPARTMENT OF STATE, GERMANY 1947-1949: THE STORY IN DOCUMENTS* 605 (1950) [hereinafter *GERMANY 1947-1949*].

In Germany, the Allies forever changed the structure of broadcasting. See Arzt, *supra*, at 731. They split up and decentralized the dominant media outlets in order to prevent a dominant national voice from arising. See *Military Government Regulations*, *supra*, at 605. In Japan, the U.S. government sought to eradicate all elements of militarism and nationalism from the national voice. See WILLIAM J. SEBALD & C. NELSON SPINKS, *JAPAN: PROSPECTS, OPTIONS, AND OPPORTUNITIES* 17 (1967). The first Memorandum of the Allies, in somewhat Orwellian words, claimed to reestablish freedom of speech and press. See Berlin (Potsdam) Conference, ch. II, sub. A. pt. 10 (1945), reprinted in *GERMANY 1947-1949*, *supra*, at 49. At the same time it required that news be true to facts, faithful to the policies of the Allied Powers, and refrain from skeptical criticisms of the Allied Forces. See *id.*

227. See Hague Regulations, *supra* note 226, art. 43. The article in its entirety states:



nian context, the limits of intervention start, as everything must, with the General Framework Agreement for Peace, the Dayton Accords themselves.

The significance of the Dayton Accords is that the Republic of Bosnia-Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia essentially consented to let the international community enter Bosnia.<sup>228</sup> In other words, the powers of NATO, the OSCE, and the OHR, to the extent they arise from the Dayton Accords, come from the Parties to the Accord, not from the use of force or from other international doctrines. Annex 6 of the Dayton Accords provides that the Parties “shall secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms,” including freedom of expression.<sup>229</sup> Restructuring the media, including displacing some media outlets and building new ones, might be termed, in a radical sense, the securing of freedom of expression.<sup>230</sup>

Many of the actions described in the narrative were taken at the order of the OHR.<sup>231</sup> Annex 10 of the Accords recognizes that fulfillment of each Party’s obligation under the terms of the treaty requires “a wide range of activities” including “the establishment of political and constitutional institutions in Bosnia and Herzegovina,” and the creation of a High Representative whose duties are “to facilitate the Parties’ own efforts and . . . coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement.”<sup>232</sup> This general architectural commitment could be read to include the kinds of powers that Sfor and NATO exercised in reshaping the media of Bosnia.

In Annex 1-A, the Agreement on the Military Aspects of the Peace Settlements, each Party recognized that NATO would establish a multinational military implementation force (first known as IFOR and then as Sfor) “composed of ground, air and maritime units from NATO and non-NATO nations, deployed in Bosnia . . . to help ensure compliance” with the Accords.<sup>233</sup> The Annex authorized IFOR to “take such actions as required, including the use of necessary force . . . to ensure its own protection.”<sup>234</sup> In Annex 3 the Parties agreed to ensure “free and fair elections in . . . a politically neutral environment” and, to that end, they pledged to uphold “freedom of expression and of the press.”<sup>235</sup> Additionally, the Parties invited the OSCE to “supervise, in a manner to be determined by the OSCE

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The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and [civic life], while respecting, unless absolutely prevented, the laws in force in the country.

*Id.*

228. See Dayton Accords, *supra* note 36, Annex 1-A, art. I., art. III, art. VI.

229. *Id.* Annex 6, art. I.

230. The Allies used this same justification during the de-nazification programs in Germany.

231. See *supra* Part I.

232. Dayton Accords, *supra* note 36, Annex 10, art. I, ¶ 2.

233. *Id.* Annex 1-A, art. I, ¶ 1, sub. a.

234. *Id.* Annex 1-A, art. I, ¶ 2, sub. b.

235. *Id.* Annex 3, art. I, ¶ 1.

and in cooperation with other international organizations the OSCE deems necessary, the preparation and conduct" for specific elections, including the elections involved in the post-Dayton media disputes.<sup>236</sup>

The Accords are a charter of authority, a specific and bounded invitation to particular actors in the international community to participate in the peace process in explicitly limited ways. They grant the international community three important fonts of power. The first font of power is election-specific and flows from Annex 3 of the Dayton Accords.<sup>237</sup> Many of the aspirations embodied in the Dayton Accords and much of the international community's involvement in Bosnia concerned the political process and the media's indispensable involvement therein.<sup>238</sup> The authority of the international community in this area lay with the OSCE.<sup>239</sup> On the other hand, the OHR, with its powers to "coordinate"<sup>240</sup> and to "facilitate"<sup>241</sup> had power, derivatively, to deal with media questions relating to elections.

For example, the PIC supported a comprehensive OHR media strategy because of "the importance of the role of objective media in the run-up to the 1998 elections . . ." <sup>242</sup> If a plural, multi-party Bosnia-Herzegovina was to emerge from Dayton, then, at least in the eyes of the OHR, a morphological unity between political party, ethnic group, and dominant channel had to be broken. The OHR saw the Bosnian media structure as antithetical to a multi-ethnic future polity. The seizure of the transmitters that serviced SRT Pale was therefore part of a strategic plan to break the hold of the SDS on the media and the electorate.<sup>243</sup>

In establishing the machinery for elections, the Parties agreed to put in place a set of election principles and a mechanism for deciding when those principles were violated.<sup>244</sup> For example, the PEC established rules and regulations ranging from professional and ethical standards for the media and journalists,<sup>245</sup> standards for fair reporting,<sup>246</sup> and standards concerning inflammatory language.<sup>247</sup> The international community also established a Media Experts Commission.<sup>248</sup> This entity had the basic

236. *Id.* Annex 3, art. 2, ¶ 2.

237. *See id.* Annex III. *See also* MARY FULBROOK, *THE DIVIDED NATION: A HISTORY OF GERMANY, 1918-1990* (1991); NIGEL FOSTER, *GERMAN LAW & LEGAL SYSTEM* 27 (1993).

238. *See, e.g.*, Dayton Accords, *supra* note 36, Annex III-IV (creating the necessary preconditions to hold elections in Bosnia and create a new constitution for the Bosnian Republic).

239. *Id.* Annex III, art. 2, ¶ 1-2.

240. *Id.* Annex III, art. 2, ¶ 1, sub. c.

241. *Id.* Annex X, art. 2, ¶ 1, sub. d.

242. Bonn Peace Implementation Conference, Conclusions, art. V, ¶ 1, Bonn, Dec. 10 1997 (visited Apr. 4, 1999) <<http://www.ohr.int/docu/d971210a.htm>> [hereinafter Bonn Statement].

243. *See supra* Part I.

244. *See* Dayton Accords, *supra* note 36, Annex III, art. 3, ¶ 2.

245. *See Provisional Election Commission, Rules and Regulations, Chapter 9, art. 9.5* (visited Apr. 4, 1999) <<http://www.oscebih.org/RulesRegs/chp9.htm>>.

246. *See id.* art. 9.15.

247. *See id.* art. 9.35.

248. *See id.* art. 9.100.

characteristics of an administrative bureaucracy and, through its Subcommissions,<sup>249</sup> heard complaints and issued decisions.<sup>250</sup>

The second font of power involves the authority of the military to accomplish its missions and to protect itself.<sup>251</sup> This power stems from Annex I-A and other portions of the Dayton Accords and is in some sense self-evident. However, its apparent simplicity masks difficult questions surrounding the authority of individuals and groups to take specific actions in Bosnia. In some instances NATO troops acted as a result of military command decisions.<sup>252</sup> NATO troops were not subject to the direct authority of the High Representative, though the OHR had coordinating responsibilities.<sup>253</sup> For example, the decision in 1997 to return the Udigrovo Tower to SRT Pale was made by Sfor and not by the High Representative.<sup>254</sup> Here, too, however, the High Representative gained authority to intervene in Bosnia's media regime because of his relationship to the military. He could request that Sfor take actions to enforce OHR or OSCE sanctions, but Sfor was not required to implement any OHR directives.<sup>255</sup>

The third font of power is the broadest. It stems from the executive power of the OHR itself and overlaps with the other two fonts of power.<sup>256</sup> The Accords granted few specific powers to the OHR and, as a consequence, the OHR's powers sometimes grew organically, due to broad interpretations of the Accords mandated by the circumstances on the ground.<sup>257</sup>

With respect to the media, however, the OHR emerged as an idealized "information intervention unit" backed by the support of the international community. It encapsulated the contradictions, the constitutional dramas, and the question of standards in determining what actions to take with respect to the media.<sup>258</sup> The OHR became the receptacle for international hopes.<sup>259</sup>

In the Bonn Statement, the PIC "reiterate[d] its firm commitment to establish free and pluralistic media throughout Bosnia and Herzegovina."<sup>260</sup> More importantly, it "support[ed] the High Representative's overall media and telecommunications strategy."<sup>261</sup> This broad focus on the OHR as manager of the Bosnian media strategy emerged from the Sintra Declaration.<sup>262</sup> The Contact Committee, the six-country coordinating

249. See *id.* art. 9.115.

250. See *id.* arts. 9.130-9.155.

251. See Dayton Accords, *supra* note 36, Annex I-A, art. IV, ¶ 5.

252. See *supra* Part I.

253. See Dayton Accords, *supra* note 36, Annex I-A, art. I, sub. b.

254. See *Serbs Sever Links with International Envoy*, Sept. 12, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

255. See Dayton Accords, *supra* note 36, Annex I-A, sub. b.

256. See *id.* Annex X, art. II.

257. See, e.g., *id.* Annex X, arts. I-II (outlining the powers of the OHR).

258. See *supra* Part I.

259. See *id.*

260. Bonn Statement, *supra* note 242, ¶ 1.

261. See *id.*

262. See Sintra Declaration, *supra* note 105, ¶ 70.

committee of NATO powers, expressed confidence in the OHR and its role in regulating media in Bosnia in the Sintra Declaration.<sup>263</sup> The Declaration is an example of the formulation of law as a post hoc clarification of power and extension of authority necessitated by circumstances on the ground.

The Sintra Declaration's grant of media intervention power to the OHR is quite extraordinary, both in terms of the standard for intervention and the remedies it authorized. The Declaration recognized that standard remedies such as fines, warnings, or even corrective broadcasts — the OSCE's remedies in the election context — may not be sufficient in other circumstances. Sintra consequently authorized the OHR to curtail, suspend, and close down media networks or programs.<sup>264</sup> These were dramatic remedies but they were remedies that the OHR and NATO had already employed.<sup>265</sup> The Sintra Declaration authorized not only punitive sanctions, but also expanded the OHR's capacity to develop a new architecture of media regulation.<sup>266</sup>

### C. Standards for Exercising Authority

For the rule of law to have meaning in the context of information intervention there must be clearly articulated standards and mechanisms to interpret and apply those standards fairly.<sup>267</sup> This generalization about administrative justice is particularly applicable to the Sintra standard, which allowed the OHR to curtail media actors engaging in "persistent and blatant contravention of either the letter or the spirit of the Peace Agreement."<sup>268</sup> Because only primitive media regulatory machinery (the MSAG, at most) existed,<sup>269</sup> there was no process for the OHR or the military to determine whether a particular act violated the standard. There was no process of review, nor any opportunity for SRT Pale to have a formal hearing to determine whether its actions violated the Sintra standard or whether the OHR's sanctions were appropriate given SRT's actions. The lack of a formalized process may have been necessary given the complexity of the media situation in Bosnia. On the other hand, post-Sintra events indicate that a standard in fact evolved to guide the SRT's actions in Bosnia.

Frequent statements by the OHR provide some sense of how the OHR read the Sintra Declaration.<sup>270</sup> Here, too, an important distinction should

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263. See *Contact Group Statement* (visited April 4, 1999) <<http://www.ohr.int/docu/d970904a.htm>>.

264. See Sintra Declaration, *supra* note 105, ¶ 70.

265. See *supra* Part I.

266. See Sintra Declaration, *supra* note 105, ¶ 68.

267. See generally LON FULLER, *THE MORALITY OF LAW* 33-44 (1969) (describing the story of a King Rex and his eight failed attempts at making law).

268. Sintra Declaration, *supra* note 105, ¶ 70.

269. *Media Group Worried About Bosnian Serb, Croat T.V. Editorial Policies*, Beta New Agency, Sept. 27, 1997, available in LEXIS, ALLWRD Library, BCSWB File.

270. See Statements by the High Representative (May 22, 1997) <<http://www.ohr.int/1997/stat97.htm>>; see also Statements by Mr. Carlos Westendorp (Oct. 27, 1997) <<http://www.ohr.int/1997/stat97.htm>>.

be made. The PEC, as administered by the OSCE, established and announced a mechanism that allowed the Media Experts Commission to develop, clarify, and apply the code.<sup>271</sup> Under the Sintra Declaration, on the other hand, there was a kind of common law development: the OHR or its spokesperson articulated standards that changed in indefinite ways. While the MSAG existed as an advisory group, it did not have the deliberative authority of the Media Elections Commission.<sup>272</sup> Penalizing actors for “persistent and blatant contravention of either the spirit or the letter of the Peace Agreement”<sup>273</sup> is a fairly open standard subject to the exercise of enormous discretion.

For example, the OHR viewed the seizure of four transmitters on October 2, 1997 as necessary following “the grotesque distortion of the press conference with Judge Louise Arbour” by SRT Pale.<sup>274</sup> Additionally, “[t]he distortion of the interview with Judge Arbour, a distinguished international judge, was the last straw” in a long catalogue of flagrant breaches by SRT Pale of agreements reached between it and the international community.<sup>275</sup> The remedy of seizure was appropriate because SRT’s broadcast apology, even though it predated the seizure, “was, although welcome, frankly too little, too late.”<sup>276</sup> Military action in response to another breach was inevitable, especially in light of the final warning issued by the OHR and General Shinseki in a letter to SRT Pale on September 10, 1997.<sup>277</sup>

The OHR also justified its action by referring to the Belgrade Agreement.<sup>278</sup> In the Belgrade Agreement, President Plavsic and President Krajisnik “agree[d] that the unified media environment of the Republika Srpska and free access to media by all participants in elections [was] vital for their being held in a democratic manner,” and that “news programmes [should] be broadcast daily from studios in Pale and Banja Luka alternately.”<sup>279</sup>

The Belgrade Agreement was important but not necessarily useful to justify the Sfor October seizure of SRT Pale’s transmitters. SRT Pale may have distorted the presentation of Judge Arbour, but that did not violate the provisions of the agreement calling for SRT studios in Pale and Banja Luka to alternate their broadcasts.<sup>280</sup> Those provisions were designed to insure that neither Pale nor Banja Luka monopolized the Bosnian Serb information space. However, the Udrigovo Agreement provided a more likely

271. See *supra* note 244.

272. See Defense Department Holds Regular Briefing, *supra* note 269.

273. Sintra Declaration, *supra* note 105, ¶ 70.

274. NATO/Sfor Joint Press Conference, M2 Presswire, Oct. 3, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

275. *Id.*

276. *Id.*

277. See Draft Paper by the High Representative, *Media in Bosnia and Herzegovina - The Way Forward*, Oct. 6, 1997, ¶ 2 (on file with author).

278. See *SRT Pale Studio to Opt Out of Alternate Broadcasting Deal*, Tanjug News Agency, Oct. 2, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

279. Belgrade Agreement, *supra* note 151, ¶ 3.

280. See *id.*

source of justification for the October seizure.<sup>281</sup> The Udrigovo Agreement was extremely important because it articulated specific standards to guide the actions of SRT Pale.<sup>282</sup>

In an October draft memorandum, the OHR also stated that it “intend[ed] to break the control of the SDS and those agents of the hard-line regime in Pale which are using the media, together with the police force, as the main tool to manipulate and control the [Republika Srpska] people.”<sup>283</sup> This was a separate and new standard for intervention that enabled the OHR to stop those practices of SRT Pale that “manipulate[d] and control[led] the [Republika Srpska] people.”<sup>284</sup> As a result, the OHR required “the removal of all direct party political influence” from SRT Pale and the transformation of the network into a station that “operates in a fashion that is consistent with Western democratic standards and in accordance with the spirit and letter of the Dayton Agreement” before returning the transmitters back to the Pale leadership.<sup>285</sup> This intervention took place not because of conflict between different ethnic groups but because of conflict between two factions of one ethnic group—Serbs from Pale and Serbs from Banja Luka.<sup>286</sup> In a sense, this was an election-related seizure of control, not a seizure directly related to ethnic conflict.

Because the standard for intervention articulated in the Sintra Declaration was so broad, it is difficult to determine when radical intervention—beyond monitoring—was justified. In examining the evolution of the stan-

281. See Udrigovo Agreement, *supra* note 129.

282. See *id.* (stating that the turnover of the transmitters to SRT Pale would occur when SRT Pale met four conditions). These conditions were:

1. RS [Republika Srpska] media, TV, radio, and print will refrain from making inflammatory reporting against SFOR and international organizations supporting the execution of the Dayton Accord.
2. RS TV will regularly provide one hour of programming during prime time each day without exception, during which other political views will be aired.
3. RS TV will provide Ambassador Westendorp 1/2 hour during prime time in the next few days to introduce himself and explain the events which took place in Brcko, Bijelina, and Banja Luka. Such time will be unedited and not commented on in advance or after airing by RS TV commentators.
4. RS agrees to participate in a full and consistent manner in a Media Support Advisory Group conducted by OHR to discuss and regulate the work of the media in accordance with the spirit and the letter of the GFAP.

*Id.*

Only the first of these clauses could have justified the OHR seizure of additional transmitters.

283. Draft Paper by the High Representative, *supra* note 277, ¶ 5, sub. ii.

284. *Id.*

285. *Id.* ¶ 7.

286. On October 17, the Contact Group reaffirmed the OHR’s action and stated that SRT Pale must follow these steps:

[T]he governing board of SRT must be restructured, with a new general manager; during the election campaign . . . there should be fair, regulated access to the media by RS political parties supervised by the OHR to ensure proper practice; rules of conduct should be drawn up for journalists and for the management of the media in Bosnia-Herzegovina.

Contact Group “Conclusions” on Serb Media, BBCSWB, Oct. 24, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

dard in subsequent statements, it became clear that the standard of objective and impartial reporting and the standard that justified the imposition of an international protectorate on SRT Pale shifted. Broadcasts that persistently and blatantly contravened Dayton became a new basis for OHR intervention in Bosnia.<sup>287</sup> While this justification did not deal with incitement to ethnic violence, the OHR considered contravention of Dayton to be a per se increase in the likelihood of ethnic conflict. The standard for ongoing behavior was presented as consensual and emerged from the parties to the potential conflict, not as a law of standards imposed by the international community itself. It was also clear that “contravention of the spirit of the agreement” was found when the Sfor’s authority was thought to be undermined,<sup>288</sup> or the media questioned the integrity of the Peace Process in ways considered inflammatory.<sup>289</sup>

#### D. Comprehensive Media Reform

The OHR may have recognized its failure to provide clear and consistent guidelines to the media actors in Bosnia when it decided to comprehensively reform the entire media regulatory regime in Bosnia.<sup>290</sup> It created an entire framework with objective standards and a mechanism to determine whether a media violation occurred and the proper sanction for each violation.<sup>291</sup> In terms of intervention, such a reform might be far more radical than isolated transmitter seizures. The seizures were episodic responses to unique and specific circumstances.<sup>292</sup> The reform, in contrast, sought to put into place a new legal system with tribunals, enforcement mechanisms, and licensing agencies.<sup>293</sup> It attempted to reshape the entire broadcasting system in Bosnia.

Unfortunately, “the control of the media by individual political parties,” an obstacle that “bedevil[ed] . . . efforts to re-establish civil society in Bosnia,” served to hamper the OHR’s reforms.<sup>294</sup> The OHR needed to reconstruct a fundamentally altered media that was neither “ethnically based” nor “directly or indirectly associated to the main mono-ethnic political parties.”<sup>295</sup> Ethnically-based media had resulted in “enmities which precipitated the war [being] fought out over the airwaves.”<sup>296</sup> Reforming

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287. See, e.g., Sintra Declaration, *supra* note 107, ¶ 70 (“[T]he High Representative has the right to curtail or suspend any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement.”).

288. See Draft Paper by High Representative, *supra* note 277.

289. See *supra* Part I.

290. See Bonn Statement, *supra* note 242, art. V, ¶ 2.

291. See Philip Shenon, *Allies Creating Press-Control Agency in Bosnia*, N.Y. TIMES, Apr. 24, 1998, at A8.

292. See *supra* Part I.

293. See Decision of the HR Independent Media Commission, Sarajevo, June 11, 1998 (visited April 5, 1999) <<http://www.ohr.int/mediaires/d980611a.htm>>.

294. Draft Paper by the High Representative, *supra* note 277, ¶ 3.

295. *Id.*

296. *Id.*

“the whole media landscape in [Bosnia-Herzegovina] was] a vital prerequisite for progress in the implementation of Dayton.”<sup>297</sup>

In terms of this element of intervention, the OHR statements provide a sense of the aims of the international community and the aims of the parties to the Dayton Accords. According to one document, the aims of the OHR included:

*[E]stablishing, country-wide, a regulatory regime equating to models operating in other democratic, plural societies. This will be responsible for establishing and enforcing arrangements for fair and equitable access to the electronic media for the full range of opinion. This will be a transitional arrangement, and will remain in place until the [Bosnia-Herzegovina] common institutions establish a satisfactory regulatory regime to replace it under the Media Law, now under consideration. (italics in original)*<sup>298</sup>

With respect to the wholesale reform, the OHR wanted to create a “single regulatory body,” chaired by an international judge and composed of representatives of the principal international agencies.<sup>299</sup> This body was granted the power to recommend sanctions (to be implemented by the MSAG) and to issue and withdraw licenses for all existing broadcasting entities.<sup>300</sup> The concept of wholesale reform was set forth in further detail by the OHR in early 1998 when the international community sought assistance in implementing the Bosnian media reform package.<sup>301</sup>

The OHR announced that it wanted to build an Intermediate Media Standards and Licensing Commission with the power to regulate all media in Bosnia.<sup>302</sup> This Commission was to absorb the election-related functions of the Media Experts Commission<sup>303</sup> and would require all broadcasters to meet a set of “internationally recognized standards of broadcasting” in order to obtain a license.<sup>304</sup> The OHR expected to create a judicial body with “powers of sanction to ensure compliance” with the

297. *Id.* One question is whether the “information structures” belong to the “entities” under the Dayton Accords or whether the national government can or should be an umbrella broadcaster. See, e.g., *Croats Accuse National TV of Being Partisan* (TV Bosnia-Herzegovina broadcast, Mar. 31, 1998), available in LEXIS, ALLWRD Library, BBCSWB File (discussing the Croat response to the possible creation of a Bosnian umbrella broadcast agency). On this issue the media and publishing department of Herceg-Bosna criticized Bosnia-Herzegovina television on the grounds that “[i]t is inadmissible and intolerable that in a federal entity one party, one nation has absolute political and all other monopoly over the media, which are called state media.” *Id.* The Croats called on “international officials” to “finally halt the media war and transform this television, in line with the needs of all constituent nations in Bosnia-Herzegovina.” *Id.*

298. Draft Paper by the High Representative, *supra* note 277, ¶ 3.

299. See *id.* ¶ 6.

300. See *id.* (declaring that the Commission would issue licenses to broadcasters “according to a set of internationally recognized rules and subject to them respecting a set of minimum of basic restructuring criteria.”).

301. See Bonn Statement, *supra* note 242, art. V., ¶ 2(b).

302. See Shenon, *supra* note 296.

303. See Bonn Statement, *supra* note 242, art. V, ¶ 2(a) (referring to the creation of an Independent Media Standards and Licensing Commission, subsequently entitled the Intermediate Media Standards and Licensing Commission).

304. *Id.*



rulings of the Commission.<sup>305</sup> International experts and Bosnian representatives from both the Federation and Republika Srpska would staff the Commission.<sup>306</sup>

This new reform was based on a December 1997 proposal to the OHR.<sup>307</sup> According to this proposal, the Intermediate Commission would remain in operation until institutions that could perform the functions of the Intermediate Commission were in place at the national entity or canton levels.<sup>308</sup> The proposal justified this comprehensive action because “monolithic control allowed broadcasting in Bosnia to be used as a means to divide the ethnic communities.”<sup>309</sup> Not only was it true that “the distribution of poisonous propaganda was a major contributor to the war,” but “it is still used to indoctrinate the communities.”<sup>310</sup> The OHR considered the Commission and comprehensive legal reform necessary to avoid a situation where the media “emphasiz[ed] separatism” and thus “h[eld] back the peace process.”<sup>311</sup>

Since the OHR felt that the systemic and structural problems of the existing media model in Bosnia were so pervasive, it observed that restructuring all media, particularly broadcast media, in accordance with internationally accepted standards was the only way to achieve “pluralism and inter-entity broadcasting.”<sup>312</sup> The new system would include “codes of conduct for program content,” modeled on “the established practice[s] in Western European democracies and in North America.”<sup>313</sup> The proposal provided that these codes would also apply to the press and the Internet.<sup>314</sup> Until state agencies were established (and approved), the Intermediate Commission would establish, regulate, and enforce the Codes.<sup>315</sup>

The Commission was to have three divisions.<sup>316</sup> The first division was an “all-media” complaints commission.<sup>317</sup> It would affirmatively monitor the press and broadcast media, investigate complaints regarding violations of the codes of practice, and recommend action on those complaints it found valid.<sup>318</sup> The second division was a licensing sub-commission that would “establish” and administer structural and editorial licensing stan-

305. Proposal to the Peace Implementation Conference, Bonn, Dec. 9, 1997, at 2 (on file with author) [hereinafter Proposal].

306. *See id.* at 1.

307. *See id.*

308. *See id.* at 2.

309. *Id.* at 1.

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.* at 4, pt. C.

314. *See id.*

315. *See Commission Seeks to Put Order in Bosnian Broadcasting*, AGENCE FRANCE PRESSE, May 8, 1998, available in LEXIS, ALLWRD Library, BBCSWB File.

316. *See Proposal*, *supra* note 305, at 2.

317. *See id.*

318. *See id.*

dards.<sup>319</sup> All broadcasters seeking a license would have to conform to the licensing commission's standards.<sup>320</sup> The third division was an intervention tribunal that would rule on disciplinary procedures and provide sanctions and penalties when appropriate.<sup>321</sup>

The tribunal would have the authority to require "one or more on-screen apologies," or "one or more apologies to be published in the press and on radio."<sup>322</sup> It could prohibit rebroadcast of an "offending programme or its content" and temporarily withdraw a license for access to the transmission system.<sup>323</sup> Additionally, it was empowered to curtail a license or revoke a license entirely.<sup>324</sup> Finally, it had the power to impose financial penalties on either the station or the directors or principals of the station regardless of whether the station was owned by the government.<sup>325</sup>

### III. Bosnia and the Idea of Information Intervention

The literature of "information intervention" is thinner than its practice. Jamie Metzl coined the term in a 1997 essay and called for the development of an information intervention unit at the international level that would monitor, counter, and block radio and television broadcasts that incite widespread violence in crisis zones around the world.<sup>326</sup> Metzl declared that the United Nations should empower the unit to engage in "peace broadcasting" and "jamming" in the event that an information crisis erupts.<sup>327</sup> The transmitter seizure in Bosnia indicates that Metzl's list of possible information intervention tools may not be exhaustive. Additionally, there are complex factors that any policy maker must take into account when deciding whether to use any of these tools as part of a general information strategy.

The most basic questions involve monitoring. Metzl thought that the international community should monitor broadcasts before taking other steps.<sup>328</sup> He considered media monitoring a form of anticipatory intelligence.<sup>329</sup> At the present time, there is active monitoring of the world's media, though not on a collective international basis. The B.B.C. and the U.S. State Department (through the Foreign Broadcasting Information Service) survey and review electronic media.<sup>330</sup> In the Bosnian context, the OSCE and its Media Experts Commission monitored Bosnian broadcasts to determine whether the Bosnian media abided by the OSCE's election

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319. *See id.*

320. *See id.*

321. *See id.*

322. *Id.* at 3.

323. *See id.*

324. *See id.*

325. *See id.*

326. *See Metzl, supra* note 1, at 17.

327. *See id.*

328. *See id.* at 18.

329. *See id.* at 17.

330. *See Broadcast Review of 1997*, MONITORING RESEARCH, Dec. 16, 1997, available in LEXIS, ALLWRD Library, BBCSWB File.

rules.<sup>331</sup> Additionally, the OHR monitored SRT broadcasts to determine whether SRT complied with the OHR's demands for corrective broadcasts.<sup>332</sup> The OHR also proposed that the Intermediate Commission have the power to monitor Bosnian broadcasts.<sup>333</sup>

Even monitoring presents some human rights issues. Broadcasting is, by definition, a public act,<sup>334</sup> so that on the surface, there should be little difficulty in monitoring an entity's broadcasts. The systematic monitoring of world broadcasts by the BBC and the Foreign Broadcasting Information Service (FBIS) generally is not monitoring with the purpose of intervention. Rather, these entities gather intelligence for policy-making purposes.<sup>335</sup> Monitoring may become problematic when the effective media is private. For example, monitoring encrypted web sites or closed list web sites presents significant privacy and free speech issues.<sup>336</sup> Monitoring in such circumstances may become more complex and intrusive.<sup>337</sup> The proposed Intermediate Commission in Bosnia included Internet communications within its sweep of supervision.<sup>338</sup> The apparent innocuousness of monitoring may turn on the nature of the agency that engages in it, but the international community needs to develop concrete standards to help any agency determine when such action is appropriate.

The second element—alternative or “peace broadcasting”—was evident, but not always successful in Bosnia. Peace broadcasting has many elements. Intervention to provide “more speech” is generally acceptable and widely applauded by guardians of the press and citizenship.<sup>339</sup> Acclaim, however, may be limited when those in power use peace broadcasting to force an entity to broadcast corrective statements or explanations of official positions. This type of information intervention took place in Bosnia.<sup>340</sup> The purpose, however, of the OHR's use of this intervention was to provide alternate voices to SRT Pale.<sup>341</sup>

The Bosnian case suggests further distinctions among efforts at peace broadcasting. In Bosnia, the international community established an alternative broadcast network and stitched together a network of existing independent stations to create an alternative to SRT Pale.<sup>342</sup> By reinforcing

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331. See *supra* Part I.

332. See *id.*

333. See Bonn Statement, *supra* note 242, art. V, ¶ 2(a).

334. See, e.g., WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 280 (1993) (defining broadcast to include “the act of making widely known” and “made public by means of radio or television transmission”) (emphasis added).

335. See *Broadcast Review of 1997*, *supra* note 330.

336. See, e.g., *id.* (describing the Internet monitoring efforts of various news services).

337. See *id.*

338. See Proposal, *supra* note 305, at 2, ¶ 1.

339. See, e.g., Nadine Strossen, *Regulating Racist Speech on Campus: A Modest Proposal*, 1990 DUKE L.J. 484, 484 (1990) (declaring that the antidote for hate speech is free speech “and more free speech!”).

340. See *supra* Part I.

341. See *id.*

342. See, e.g., *OSCE Official on Support for Independent Media* (World Broadcast Information, Jan. 3, 1997), available in LEXIS, ALLWRD Library, BBCSWB File (stating that

media independent of hard line voices, the international community ensures that views in accord with a plural and constitutional future are broadcast to the state in question. Finally, the Bosnian experience raises questions about the use of foreign governmental funds in creating alternate voices.<sup>343</sup> Many argue that support only goes to those portions of the press that are inclined favorably to the donor's point of view.<sup>344</sup>

Other issues are more specific. For example, should the international community have provided more assistance to Bosnian public service broadcasters? Dr. Reino Paasilinna, a media policy scholar and Member of the European Parliament for Finland, attacked the OHR for supporting commercial broadcasting at the expense of public service radio and television in Bosnia.<sup>345</sup> Dr. Paasilinna also criticized the international community for expending millions of dollars to create and support the OBN as a commercial competitor of TVBiH.<sup>346</sup>

On the information intervention scale, jamming represents a more severe form of intervention as compared to monitoring or peace broadcasting.<sup>347</sup> On the other hand, the international legal principles that would or would not authorize jamming may be quite different than those that deal with the seizure of transmitters or other steps to curtail or preclude broadcasts.<sup>348</sup> The Bosnian experience demonstrates the controversy and difficulty of jamming even when legally justified. Sfor and the OHR were subject to great criticism in their home countries for jamming SRT Pale broadcasts. As the SRT and HTV Mostar experiences indicate, however, an information intervention unit of the future would likely jam broadcasts by

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Radio FERN and the Open Broadcast Network were established "to enable political parties and candidates to present themselves throughout the entire territory of Bosnia-Herzegovina before the elections.")

343. See *Broadcast Review of 1997*, *supra* note 330. In January 1998, the European Commission representative to Bosnia-Herzegovina signed 18 contracts in which the EU provided about 2.4 million Ecus to support independent media organizations in Bosnia and Herzegovina. *Independent Media in Bosnia to Get 2.4m ECU From EU* (European Commission Spokesman Service, Jan. 22, 1998), available in LEXIS, ALLWRD Library, BBCSWB File. According to the official press release, assistance goes to those entities that "foster understanding, trust and cooperation between the different communities in [Bosnia-Herzegovina]." *Id.* The EU also supported RTB BiH because it "considers it more pluralist than the public televisions in other countries undergoing similar periods of transition." *Id.* The EU also favored projects that allowed media to extend their signal to the whole country. See *id.*

344. See, e.g., *Plavsic Favours Banja Luka/Pale Alternate Broadcasts* (Bosnian Serb Television broadcast, Oct. 24, 1997), available in LEXIS, ALLWRD Library, BBCSWB File (defending the actions of the international community against charges that it was unfairly favoring SRT Banja Luka).

345. See *MEP Attacks Commission for Neglecting Public Broadcaster in Bosnia*, M2 Presswire, Oct. 21, 1997, available in LEXIS, ALLWRD Library, BBCSWB File ("Democratization in the media cannot be guaranteed by letting the market have its way, by supporting a private network . . . and neglecting the public sector.").

346. See *id.*

347. See Metz, *supra* note 1, at 18. For definitions of the term jamming, see *supra* note 19.

348. See, e.g., Jamie F. Metz, *Rwandan Genocide and the Law of Jamming*, 91 *AM. J. INT'L L.* 628, 636 (1997) (detailing the international law precedents that guide the law of jamming).

affecting transmission paths rather than physically interfering with the facilities of an offending station.

There is one element of information intervention not apparent in the literature that was critical in the Bosnian context. In Bosnia, the international community reconstructed the media regime and relicensed all existing broadcasters. Ultimately, legal reform plays a key part in legitimizing change and, perhaps, in facilitating change. Law becomes the vehicle for articulating goals and establishing the machinery for meeting those goals. In Bosnia, the OHR found it necessary to develop a framework that was clear, transparent, and available to all the actors in the region in order to create a pluralistic media.<sup>349</sup>

The Bosnian experience also demonstrates that information intervention, like any aspect of international intervention, is a complex managerial undertaking that involves meshing the needs of conflicting international agencies and non-government organizations with the needs of the state and the various entities that comprise the state. It requires that the international community establish a bureaucracy that (1) can determine under what conditions an intervention is needed and (2) can designate and fulfill the intervention. The Bosnian experience demonstrated that such a bureaucracy needs individuals prepared to deal with the technical aspect of intervention to make sure that the intervention is not circumvented.<sup>350</sup>

## Conclusion

The restructuring of the Bosnian media helps us understand the context, limitations, and techniques of information intervention. It illustrates how the international community struggles to define and implement intervention policy and develops justifications for initiating an intervention or increasing the scope of existing interventions. The Bosnian experience also suggests that the parties implementing the Dayton Accords lurched towards definitions and standards in the process of forming an intervention strategy. The resulting standards were often shaped by ethnocentric criticism of international officials or media policies, and thus may increase the likelihood of violence in a post-conflict context. The Bosnian episode also underscores the limited machinery that exists to provide official accountability for those officials in charge of an intervention.

Because so many of the techniques of information intervention were applied in Bosnia, the Bosnian experience provides a unique perspective into the relationship between the intervenors and the domestic media. The international community took steps that ranged from the training of media professionals to the military seizure of transmitters. The comprehensiveness of those events provides a textbook opportunity to analyze the relevance of international law norms to information intervention. Other norms, such as U.S. First Amendment principles, might be used as guidelines particularly where American actions are implicated. However, it

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349. See *supra* Part II.

350. See *supra* Part I.

would be too easy to jump from the peacetime application of such norms within the United States to their applicability abroad in time of conflict. When not reinterpreted, even the most specific subcategories of First Amendment jurisprudence ring hollow when applied to a zone of international concern. Is advocacy of imminent lawless action in a troubled area enough to justify an information intervention?<sup>351</sup> Is the use of fighting words enough to justify an information intervention?<sup>352</sup> When do these types of speech pose a “clear and present danger” to the international community such that an information intervention is justified?<sup>353</sup> Must all information interventions be “narrowly-tailored” and “content neutral” to fit within the discourse of international information intervention?<sup>354</sup> Doctrines derived from the European Convention on Human Rights also must be taken into account in shaping policy.<sup>355</sup> Further, examining the implementation of the Dayton Accords is instructive because it sheds light on how the international community makes decisions regarding the scope of such concepts as objectivity, impartiality, avoiding ethnic conflict, and enhancing the right to receive and impart information.

The international mission, as U.S. and Western representatives saw it, was to reconstruct a viable multi-ethnic media, as well as to prevent further conflict.<sup>356</sup> NATO was seeking to build, under the Dayton Accords, a plural society out of pieces that seemed fractured beyond repair. The OHR believed that a pluralistic, peaceful media was an indispensable part of the rebuilding process.<sup>357</sup> The Office proclaimed its desire to “use the opportunity to remove one of the most serious obstacles bedeviling our efforts to re-establish civil society in Bosnia” — the fact that the media was ethnically based.<sup>358</sup> NATO and OHR actions must be judged after a reasonable period of time elapses to see if a more democratic Bosnia-Herzegovina, sup-

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351. See, e.g., *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (holding that advocacy of imminent lawless action that is likely to incite or produce such action is not protected speech under the First Amendment); see also *Schenck v. United States*, 249 U.S. 47 (1919) (declaring that the most “stringent protection of free speech would not protect a man in falsely shouting fire in a crowded theatre and causing a panic”).

352. See *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (holding that speech directed at or producing an immediate substantial evil is not protected speech under the First Amendment).

353. See *Schenck*, 249 U.S. at 52 (“The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.”) (emphasis added).

354. See, e.g., *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (holding that a government imposed time, place, or manner restriction on the exercise of free speech in a public forum could be justified if the restriction was “*narrowly tailored* to serve the government’s legitimate *content-neutral* interests”) (emphasis added).

355. See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 10, ¶ 2, 312 U.N.T.S. 221 (restricting the right of freedom of expression in instances “necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime”).

356. See *supra* Part I.

357. *Id.*

358. Draft Paper by the High Representative, *supra* note 277, at ¶ 3.

ported by the pluralism that comes from a free and independent press, emerges. Still, one of the great dangers of information intervention is that it provides apparent democratic justification for any nation to use its police power to close down media outlets. Each time the international community intervenes to shut down a media outlet that it does not like, the line between information intervention and censorship becomes blurred. The real test is not only whether an information intervention transforms a society but also whether the intervention comports with the spirit of democratic change. Ends can justify means, but it is helpful if the means themselves are compatible with those ends.

As with many complex undertakings, much criticism has attached to the idea that the post-conflict situation in Bosnia-Herzegovina was marked by chaos, too many actors, mixed objectives, and circumstances in which each country wanted its own signature of representation, even if that was inconsistent with a rationale whole. The OHR was also criticized for being too dictatorial, too directed, and inadequately responsive. Undoubtedly all of these criticisms are true to some extent. It is a characteristic of post-conflict interventions, especially multilateral interventions that involve both intergovernmental and non-governmental entities, that the perils of crisis management are present. Evolving political circumstances in the Balkans, including the maturing of institutions within Bosnia-Herzegovina, will alter the international community's perception of its role in indigenous media development. Political transformations in Croatia and, potentially, Serbia, could have as much influence on post-conflict media intervention in Bosnia as the direct actions of the OHR and Sfor. The international community itself may alter its perception of how to structure the relationship between the entities and Bosnia-Herzegovina and this will affect post-conflict media policy. And in the best of worlds, the building of an independent media sector and the growth of a comprehensive, increasingly autonomous public service broadcasting sector will combine to hasten the likelihood of a mature and stable democratic state.

On March 31, 1998, Sfor handed the seized towers to the newly elected Bosnian government. Sfor, however, reserved the right to reappropriate the transmitters at any time.<sup>359</sup> On April 14, 1998, the Serb Republic Prime Minister, Milorad Dodik, and Sfor Commander, Eric Shinseki, signed a memorandum of understanding in which Sfor agreed to stop "provid[ing] security protection for TV transmitters belonging to Serb Radio and TV."<sup>360</sup> The episode of transmitter seizure was over.

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359. See *MEP Attacks Commission for Neglecting Public Broadcaster in Bosnia*, *supra* note 345.

360. *Serbs and Sfor Agree to Return Transmitters* (Radio St. John, Pale, Apr. 14, 1998), available in LEXIS, News Library, BBCSWB File.