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Transitional Justice and Transitional Journalism: Case-Study on Kosovo

James A. Sweeney*, Kenneth Andresen**, and Abit Hoxha***

ABSTRACT

This article documents the findings of a ground-breaking empirical project combining socio-legal and media studies, which examined journalists' perceptions of their role in relation to transitional justice in Kosovo. Based upon the qualitative analysis of 30 semi-structured interviews with professional journalists in Kosovo during the summer of 2018, the article shows that key issues in the study of transitional justice appear in respect of what, building on notions of 'peace journalism', can be termed 'transitional journalism'.

Issues include the extent to which 'transitional journalism' is, or should be, a distinct 'field' at all; as well as debates about the relative priority to give to accountability, reconciliation, historical accounting, or victims' rights within the practice of 'transitional journalism' at any given time. Identifying and engaging with these issues will allow greater agency in, and ownership of, decisions taken about 'transitional journalism'.

KEYWORDS: Transitional justice, peacebuilding, non-state actors, journalism, Kosovo.

INTRODUCTION

This article documents the findings of a ground-breaking empirical project combining socio-legal and media studies, which examined journalists' perceptions of their role in relation to transitional justice in Kosovo. It is shown that key issues in the study of transitional justice appear in respect of what can be termed 'transitional journalism'¹ including the extent to which it is, in fact, a distinct 'field' at all.² As the project examined both transitional justice and transitional journalism, the term TJ² ('tee-jay squared') is used as shorthand for it.

*Professor of International Law, Lancaster University, UK. Email j.sweeney@lancaster.ac.uk

**Professor, Department of Nordic and Media Studies, University of Agder, Norway.

*** Researcher, Department of Nordic and Media Studies, University of Agder, Norway.

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¹ See Kenneth Andresen, Abit Hoxha & Jonila Godole, 'New Roles for Media in the Western Balkans,' *Journalism Studies* 18(5): (2017) 614-628. Although Howard had used the expression 'transitional journalism' back in 2002, he viewed it as synonymous with 'peace journalism': Ross Howard, *An Operational Framework for Media and Peacebuilding* (Vancouver: IMPACS, 2002), 11. These concepts will be unpacked further below.

² Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field,"' *International Journal of Transitional Justice* 3 (2009): 5-27.

It is commonly said that journalism is, ‘the first rough draft of history’ (although the origin of the phrase remains debated).³ Within the field of transitional justice, historical accounting and memorialisation are recognised as particularly important.⁴ Also within transitional justice scholarship there is increasing recognition of the importance of a more ‘bottom-up’ approach, with a greater emphasis on participatory principles, local ownership and the complementary role of non-state actors in delivering transitional justice.⁵ It is from this starting point that this project set out to examine whether and to what extent the news media (in Kosovo) sees itself as having engaged in ‘transitional journalism’, in the sense of taking on distinctive roles akin to those of formal transitional justice mechanisms; as well as to explore the use of concepts from transitional justice to identify and to categorise those roles.

This paper begins with a literature review that sets out its position in respect of key debates within ‘transitional justice’ and ‘transitional journalism’ – including how to define those concepts and to relate them to others. Following that there is a note on methodology, a presentation of the project findings, then a discussion and, by way of a conclusion, a set of implications of the findings. The remainder of this introduction presents some context for the project. It must, however, be noted that events in Kosovo’s past are still hotly contested,

³ Jack Shafer, ‘Who said it first’, *Slate*, 30 August 2010, <https://slate.com/news-and-politics/2010/08/on-the-trail-of-the-question-who-first-said-or-wrote-that-journalism-is-the-first-rough-draft-of-history.html> (accessed 27 April 2020).

⁴ Ruti Teitel, *Transitional Justice* (Oxford: OUP, 2000).

⁵ Patricia Lundy & Mark McGovern, ‘Whose Justice? Rethinking Transitional Justice from the Bottom Up,’ *Journal of Law and Society* 35(2) (2008): 265-292; Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Version of Transitional Justice,’ *Journal of Law and Society* 34(4) (2007): 411–440; Kieran McEvoy and Lorna McGregor, eds., *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008).

and thus it must be conceded that the sketch of events given here will be brief and distinctly reductive.⁶

Kosovo was an autonomous, majority ethnic Albanian, province within the post-WWII Socialist Federal Republic of Yugoslavia; but its relative autonomy was curtailed by the Serbian-nationalistic government of then Yugoslav leader Slobodan Milošević from 1989. After the brutal wars of the early 1990s Kosovo found itself within the 'Federal Republic of Yugoslavia' (FRY), which consisted of the republics of Serbia and Montenegro. As a province of Serbia, Kosovo's Albanian population suffered systematic discrimination and many other human rights violations. An insurgent 'Kosovo Liberation Army' (KLA) started to operate in 1993, targeting Serbian state institutions and perceived collaborators with them, with the ultimate aim of gaining independence for Kosovo. However, it was only after the Dayton Peace Agreement of 1995 (ending the conflict in what is now Bosnia and Herzegovina) that the KLA really intensified its campaign; and Serbia, still led by Milošević, started to conduct increasingly violent operations against it. The conflict had by now gained international attention and, in Resolution 1199 (1998), the UN Security Council expressed grave concern, 'at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army' and called upon all sides to seek a peaceful resolution.⁷ In March 1999, after peace negotiations in France collapsed, NATO intervened militarily in FRY ostensibly to protect the Kosovar

⁶ For more background see e.g. Tim Judah, *Kosovo: What Everyone Needs to Know* (Oxford: OUP, 2008).

⁷ UNSC Resolution 1199 (1998), UN Doc. S/RES/1199 (1998) 23 September 1998.

Albanian population of Kosovo – but controversially without first gaining express authorisation from the UN Security Council. By the time relative peace was restored there were over 13,500 war victims (from all sides),⁸ and over a million Kosovar Albanians had been displaced.⁹ A further 100,000 non-Albanians, mostly Kosovar Serbs, fled Kosovo after the cessation of the main hostilities.¹⁰ At the same time, there were also up to 400 ‘revenge’ killings carried out against predominantly Kosovar Serbs.¹¹

In the aftermath of the NATO intervention, Kosovo was administered by the United Nations Interim Administration Mission in Kosovo (UNMIK) without prejudice to its final status, until it declared independence from Serbia in 2008 (although the UN Security Council Resolution authorising the UN’s presence and authority in Kosovo is still in force).¹² Kosovo’s declaration of independence was declared internationally lawful by the International Court of Justice in 2010,¹³ and over 100 states have ‘recognised’ it as a state.¹⁴ Serbia

⁸ This is the figure and terminology used by NGO the Humanitarian Law Centre (HLC), and it includes all those killed or disappeared from 1 January 1998 to 31 December 2000: Humanitarian Law Centre, *Kosovo Memory Book*, <http://www.kosovskaknjigapamcenja.org> (accessed 28 April 2020).

⁹ The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: OUP, 2000), 96.

¹⁰ *Ibid.*, 119.

¹¹ *Ibid.*

¹² UNSC Resolution 1244(1999), UN Doc. S/RES/1244 (1999) 10 June 1999.

¹³ *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)* - Advisory Opinion of 22 July 2010 - Advisory Opinions [2010] ICJ 47.

¹⁴ Republic of Kosovo, Ministry of Foreign Affairs, *International Recognitions of the Republic of Kosovo*, <http://www.mfa-ks.net/en/politika/483/njohjet-ndrkombtare-t-republiks-s-kosovs/483> (accessed 27 April 2020). But note **that** Serbia is encouraging states to revoke recognition: Agata Palickova, ‘15 countries, and counting, revoke recognition of Kosovo, Serbia says’ *Euractiv* 27 August 2019, <https://www.euractiv.com/section/enlargement/news/15-countries-and-counting-revoke-recognition-of-kosovo-serbia-says/> (accessed 27 April 2020).

has not, and EU-brokered attempts to 'normalise' relationship between Serbia and Kosovo are going nowhere in a hurry.¹⁵

Formal transitional justice initiatives in Kosovo have been dominated by criminal justice, in the form of trials at the International Criminal Tribunal for the Former Yugoslavia as well as various domestic and hybrid trials.¹⁶ There is also a long-running civil-society campaign to establish a regional truth commission, but this has yet to yield results.¹⁷ A Kosovo Inter-Ministerial Working Group on Dealing with the Past and Reconciliation has been working on a National Strategy on Transitional Justice since 2012, but its work has been slow and opaque.¹⁸ In a separate move, in December 2017, the President of Kosovo and former KLA leader Hashim Thaçi, announced that he was to establish a Kosovo truth commission.¹⁹ The 'Preparatory Team for the Establishment of the Truth and Reconciliation Commission' has yet to complete its work.²⁰

As to the media context in Kosovo, it is worth noting that, for a population of around 2 million people it has a surprisingly large number of news media outlets with a plurality of loyalties: There are 20 licenced TV channels,

¹⁵ Balkan Insight, 'Serbia-Kosovo Relations,' <https://balkaninsight.com/serbia-kosovo-relations/> (accessed 29 April 2020).

¹⁶ Remzije Istrefi, 'From Peace Building to State Building: Human Rights and Transitional Justice Processes in Kosovo,' *European Yearbook on Human Rights* 16 (2016): 459-472.

¹⁷ RECOM, 'What is RECOM', <http://recom.link/about-recom/what-is-recom/> (accessed 27 April 2020).

¹⁸ Istrefi, supra n16.

¹⁹ Serbeze Haxhijaj, 'Can Kosovo's Wartime Truth Commission Achieve Reconciliation?', *Balkan Insight* (27 June 2018), <https://balkaninsight.com/2018/06/27/can-kosovo-s-wartime-truth-commission-achieve-reconciliation-06-25-2018/> (accessed 27 April 2020).

²⁰ Office the President of the Republic of Kosovo, 'Preparatory Team for the Establishment of the Truth and Reconciliation Commission', <https://president-ksgov.net/en/preparatory-team-for-the-establishment-of-the-truth-and-reconciliation-commission> (accessed 27 April 2020).

including a public radio and TV broadcaster; five daily newspapers; and in addition upwards of 80% of the population has access to the internet.²¹ Interestingly the WJS data Freedom of expression is protected in the Kosovo Constitution, but in its 2020 table the NGO Reporters Without Borders puts Kosovo in 70th place out of the 180 states where it monitors press freedom.²² The main inhibitors of freedom are financial instability and the threat of physical or verbal attacks.²³

LITERATURE REVIEW

TRANSITIONAL JUSTICE

The approach taken here to the notion of transitional justice is influenced by Ruti Teitel's observation that it is 'partial and non-ideal.'²⁴ 'Partial' in the sense of not *impartial* (because it is contextualised and informed by prior injustice); non-ideal in the sense that because transitional justice is, 'alternately constituted by, and constitutive of, the transition' it poses challenges for the rule of law.²⁵

For example the South African transitional justice practice of forgoing prosecution in favour of conditional amnesties tied to 'truth and reconciliation' is at odds with our normal expectations of dealing with criminal behaviour (and

²¹ BBC, 'Kosovo Profile – Media' (16 January 2018), <https://www.bbc.co.uk/news/world-europe-18328868> (accessed 27 April 2020).

²² Reporters Without Borders, 'Kosovo', <https://rsf.org/en/kosovo> (accessed 27 April 2020).

²³ *Ibid.*

²⁴ Teitel, *supra* n 4 at 215.

²⁵ *Ibid.*

arguably is contrary to international human rights law);²⁶ but punishing people for acts carried out under a regime in which those acts were lawful raises the problem of retroactive application of criminal law (which certainly is a human rights violation).²⁷ The challenges that transitional justice interventions pose for the rule of law are taken here as evidence that it exists as a phenomenon: that justice in times of transition is seen to operate differently to 'ordinary justice' and is, for that reason, worth examining.²⁸

It is also important to note that particular transitions may be underpinned by radically different and often competing conceptions of justice,²⁹ be they more restorative or more retributive; victim centred or perpetrator centred; and so it should not be assumed that 'transitional justice' is an internally coherent monolithic 'project'.

Where this project departs from, or at least enlarges upon, Teitel's delimitation of transitional justice is by examining the role of journalists as *non-state actors* in relation to it. The notion that non-state actors may engage in practices that, if they were carried out by the state, would be recognisable as

²⁶ As to whether the South African approach would violate international human rights law, it is interesting to note that South Africa only signed and ratified the African Charter on Human and Peoples' Rights, on 9 July 1996, *after* its Constitutional Court had heard the arguments in the *Azapo case (Azanian Peoples' Organization and Others v President of the Republic of South Africa and Others (CCT17/96) [1996] ZACC 16)*. The case was heard on the 30th May 1996, and the judgment was delivered on the 25th July 1996; in which the Constitutional Court famously ruled in favour of the Truth Commission having the power to grant amnesties.

²⁷ Although the question of whether a particular prosecution or conviction is actually retroactive is not as straightforward as it might seem: See James A. Sweeney, *The European Court of Human Rights in the Post-Cold War Era* (Abingdon: Routledge, 2012).

²⁸ Cf Eric A. Posner and Adrian Vermuele, 'Transitional Justice as Ordinary Justice,' *Harvard Law Review* 117 (2004): 761–825.

²⁹ Webber has made a similar point, although identifying different categories of concept: Jeremy Webber, '3 Forms of Transitional Justice,' *Nomos* 51 (2012): 98-128.

transitional justice is increasingly accepted.³⁰ In terms of transitional historical accounting, for example, this has led to observing a distinction between ‘official’ and ‘unofficial’ truths.³¹ An ‘official truth’ is the type of historical record produced by formal transitional justice institutions such as a truth commission or a court of law. However, there have been a range of ‘unofficial truth’ projects in which civil society actors have taken it upon themselves to document the past. In this regard it has been observed that non-state, ‘memory entrepreneurs’ are engaged in hidden, localised, microprocesses of ‘everyday’ memory-making.³²

At this point it should be noted that the position taken here is that transitional justice (and by extension ‘transitional journalism’) may be visible even a long time after the catalytic point (the cessation of active hostilities or the collapse of the previous regime). For example, West Germany was still grappling with the events of the Nazi era well into the 1980s, and indeed reunified Germany continues to do so today³³ – but no-one would argue that Germany is still in transition from Nazism. It is this position that explains why this piece examines ‘transitional’ justice and journalism over 20 years since the NATO intervention in Kosovo and the end of Milošević’s rule over it.

TRANSITIONAL JOURNALISM

³⁰ Christine Bell has likewise argued for ‘decolonising’ transitional justice from law’s grasp. Bell *supra* n 2.

³¹ Louis Bickford, ‘Unofficial Truth Projects,’ *Human Rights Quarterly* 29 (2007): 994-1035.

³² Kris Brown, “‘What It Was Like to Live through a Day’: Transitional Justice and the Memory of the Everyday in a Divided Society,’ *International Journal of Transitional Justice* 6 (2012): 444-466.

³³ Philip Oltermann, ‘Former Nazi camp guard to go on trial in Hamburg,’ *The Guardian* 16 October 2019, <https://www.theguardian.com/world/2019/oct/16/former-guard-93-at-nazi-concentration-camp-to-go-on-trial-in-hamburg> (accessed 28 April 2020).

It is well known that the news media can play a role in respect of armed conflict, via the transmission of propaganda or, at its worst, by inciting acts of violence. The latter was infamously seen in respect of the genocide in Rwanda, where broadcasters were eventually convicted not only of inciting genocide and crimes against humanity but also as perpetrators of those crimes.³⁴

The news media may also play a more subtle but more contested role. There have been moves to promote so-called, 'peace journalism' as an antidote to the way that much news coverage of armed conflict is said to focus excessively on violence. Building upon the work of Johan Galtung and others,³⁵ Lynch and McGoldrick have defined peace journalism as, 'when editors and reporters make choices - of what to report, and how to report it - that create opportunities for society at large to consider and value non-violent responses to conflict.'³⁶

The emergence of peace journalism is not without its critics. Loyn opened his critique of it thus:

Peace journalism is at best meaningless, and at worst a uniquely unhelpful and misleading prescription for journalism in general, and broadcast journalism in particular.³⁷

³⁴ See the Trial and Appeal Chamber judgments in *Nahimana et al.* (Media case) ICTR-99-52.

³⁵ In particular Johan Galtung & Mari Holmboe Ruge, 'The Structure of Foreign News,' *Journal of Peace Research* 2(1) (1965): 64-91; Johan Galtung, 'High Road, Low Road: Charting the Course for Peace Journalism,' *Track Two: Media and Conflict* 7(4): (1998).

³⁶ Jake Lynch & Annabel McGoldrick, *Peace Journalism* (Gloucestershire: Hawthorn Press, 2005), 5.

³⁷ David Loyn, 'Good Journalism or Peace Journalism,' *Conflict and Communication Online* 6(2): (2007).

His main criticisms are that 'peace journalists' are not objective; and that journalists should be 'observers not players.'³⁸ To this Hanitzsch would add that advocates of peace journalism overestimate the effect that the media can have on political decisions, whilst underestimating the structural constraints that inhibit individual journalists from having the freedom to pursue peace journalism in the first place.³⁹ If peace journalism were to be made viable it would simply have to become 'good journalism',⁴⁰ and thus, as Hanitzsch put it, it arrives as, 'old wine in new bottles.'⁴¹

There are striking similarities between the debates on peace journalism and those about the notion of transitional justice. It could be argued that by adjectively qualifying 'justice' in any way at all it becomes less than blind; it loses its necessary objectivity.⁴² Likewise, it has been argued that the dilemmas seen within transitional justice practice have been overstated; that they exist and are resolved routinely in established democracies.⁴³ To put it differently, and in the language used by Hanitzsch, it too is accused as arriving as, 'old wine in new bottles.'

Lynch had already argued within his advocacy of peace journalism that there should be a 'solution-oriented' approach to conflict which, after the cessation of active hostilities, should continue and focus upon resolution, reconstruction and reconciliation. Despite this call, the role of journalism in post-conflict or transitional environments has been the subject of comparatively

³⁸ Ibid.

³⁹ Thomas Hanitzsch, *Situating Peace Journalism in Journalism Studies: A Critical Appraisal* *Conflict and Communication Online* 6(2): (2007).

⁴⁰ Loyn, supra n 37.

⁴¹ Hanitzsch, supra n 39.

⁴² Pablo De Greiff, 'Theorizing Transitional Justice,' *Nomos* 51 (2012): 31-77, 60.

⁴³ Posner & Vermeule, supra n 28; and De Greiff, *ibid.*

little study.⁴⁴ In order to increase scholarly focus on the media in such contexts, Andresen *et al* have called for a new research agenda into the practice of what they term ‘transitional journalism.’⁴⁵

Andresen *et al* identified the existence of transitional journalism through their analysis of quantitative data gained through the ‘Worlds of Journalism’ (WJS) study. WJS was a major global study of journalism, based on data provided from questionnaires completed by some 27,500 journalists.⁴⁶ Focussing on Albania, Croatia, Kosovo and Serbia, Andresen *et al* found that the news media in those states see themselves as playing a different or, rather, extended role in comparison to ‘classical’ journalism. Crucially, they attribute the emergence of this extended role to the context of the transition from communism; and, in the case of Croatia, Kosovo and Serbia, also to the legacy of the armed conflicts of the 1990s.⁴⁷

⁴⁴ Those that have include: Antoine Buyse, ‘Media in Post-Conflict Transitions’ in eds. Matthew Saul and James A. Sweeney, *International Law and Post-Conflict Reconstruction* (Abingdon: Routledge, 2015); Refik Hodzic and David Tolbert, *Media and Transitional Justice: A Dream of Symbiosis in a Troubled Relationship*, (New York: International Centre for Transitional Justice, 2016); Lisa J. Laplante & Kelly Phenicie, ‘Mediating Post-Conflict Dialogue: The Media’s Role in Transitional Justice Processes,’ *Marquette Law Review* 93(1) (2009): 251–283; Monroe E. Price & Nicole Stremmlau, ‘Media and Transitional Justice: Towards a Systematic Approach,’ *International Journal of Communication* 6 (2012): 1077–1099. See also the online debate hosted by the International Centre for Transitional Justice, ‘Should the Media Actively Support Transitional Justice Efforts?’, <https://www.ictj.org/debate/article/should-media-actively-support-transitional-justice-efforts> (accessed 29 April 2020). On transitional justice and the media specifically in the former Yugoslavia see Amer Džihana, & Zala Volčič, eds., *Media and National Ideologies: Analysis of Reporting on War Crime Trials in the Former Yugoslavia* (Sarajevo: Mediacentar, 2011).

⁴⁵ Andresen *et al*, supra n 1.

⁴⁶ See ‘Worlds of Journalism’, <https://worldsofjournalism.org> (accessed 28 April 2020); Thomas Hanitzsch et al, eds., *Worlds of Journalism* (New York: Columbia University Press, 2019).

⁴⁷ Andresen *et al*, supra n 1.

The WJS participants were asked how important a series of activities were to their work. Andresen *et al* found that whilst journalists in the states that they studied the most important activity was ‘to report things as they are’, they ascribed comparatively higher value to ‘promote tolerance and cultural diversity’ and ‘support national development’.⁴⁸ Thus, whilst traditional values of objectivity remain significant, Andresen *et al* characterise transitional journalism as more activist and educational. They describe it as, ‘journalism that looks through the lenses of transitional justice’.⁴⁹

The TJ² project’s qualitative methodology, outlined further below, is designed to get behind the WJS numbers and to probe further how journalists (in Kosovo) view their extended roles. Specifically, it was employed in order to allow for greater granularity and ambiguity in the views to be expressed than had been possible for WJS.

The data presented here shows a great deal of variation in perceptions of the extended roles and the legitimacy of undertaking them. For this reason, in this piece, we do not present transitional journalism yet as a normative proposition in the sense of a form of journalism that ought to be practiced in times of transition. The conditions under which it could become so are discussed in the conclusion.

METHODOLOGY

The project team first re-examined the 2012-2016 WJS data on Kosovo. At the initiation of this project in January 2018 only summary data was publicly

⁴⁸ *Ibid*, 622.

⁴⁹ *Ibid*, 617.

available, with the full data to be published in 2019. However, because co-authors of this piece, Andresen and Hoxha, had been members of the WJS group of researchers, they had access to the full data ahead of it being made public.

The analysis of the quantitative WJS data informed lines of inquiry for qualitative research based upon semi-structured interviews with 30 journalists in Kosovo, which were carried out in the summer of 2018. Ethical approval, risk assessment and data management for the project were all addressed in accordance with Lancaster University's Code of Practice on Research Ethics and Research Governance.⁵⁰ Each interviewee was given information about the project and its aims; and each gave their informed consent to participate in the interview.

All the interviewees were professional journalists working in print, broadcast or online-only news media. The first ten interviewees were randomly selected from participants in the WJS study of Kosovo. The remaining twenty were identified via snowball sampling, whilst correcting for gender balance and types of news media. The sample of 30 included two from the Kosovar Serb media, but we accept that their views can hardly be taken as fully representative.

The interviewer had a rough script, which asked principally about whether the interviewees thought that the news media had played a special

⁵⁰ Ethical approval granted by Lancaster University FASS-LUMS Research Ethics Committee on 11 June 2018. Details of the Code of Practice and the review process are available here: <https://www.lancaster.ac.uk/arts-and-social-sciences/research/ethics-guidance-and-ethics-review-process/> (accessed 27 July 2020).

role in Kosovo, after the armed conflict. In doing so, technical and contested terms like 'transitional justice' or 'transitional journalism' were not used. The interviewees were, however, also asked directly about their experiences of reporting upon formal transitional justice mechanisms including criminal prosecutions and the various truth commission initiatives.

The interviews were digitally recorded, then professionally transcribed and translated into English (from Albanian and Serbo-Croat) subject to a confidentiality agreement. This new interview data was then coded into the NVivo qualitative data-analysis software for analysis. Even with the interviews anonymised, there is a great deal of sensitive and personally identifiable information in them and so they will not be made public.

Note also that the translation process was not as successful as had been expected and so fewer direct quotations than would be ideal are presented in the results below. Nevertheless, themes and anecdotes were clearly understandable.

RESULTS

This section begins by presenting the respondent journalists' perceptions of their role in reporting on transitional justice; and then examines those responses that bear upon the question of whether and how the news media views itself as having played an extended role, in the sense of 'affecting' or even 'effecting' transitional justice. Within the first category, the findings are presented by emergent theme. Within the second category it is shown that views about the extended roles can be grouped according to how they relate to established categories of transitional justice.

REPORTING ON TRANSITIONAL JUSTICE MECHANISMS

KOSOVAR ALBANIAN MEDIA: FREEDOM TO REPORT

There were mixed perceptions of the ability to write freely and objectively about transitional justice measures relating to the 1999 events and beyond. As noted above, the main formal transitional justice interventions relating to Kosovo have been through national, hybrid and international criminal trials. In relation to these trials several in the Kosovar Albanian media expressly stated that they had encountered no editorial pressure to report issues in a particular way,⁵¹ or to self-censor when it came to stories concerning the KLA or its leadership.⁵² This included in respect of the recently established 'Kosovo Specialist Chambers' – a special court within the Kosovo legal system but physically located in The Hague; and which has been established exclusively to examine allegations of crimes committed by the KLA.⁵³ Others suggested that if there was any failure to report adequately on the Specialist Chambers it was not down to self-censorship but due to inadequate access to information and time to process all the developments.⁵⁴

It is interesting that of those interviewees that *had* felt free to report on post-Milosevic transitional criminal justice measures, only one mentioned 'crimes against humanity' in addition to 'war crimes.'⁵⁵ War crimes are generally understood as 'grave breaches' of the Geneva Conventions of 1949 and their

⁵¹ TJ² Interviews 6, 13, 14, 16, 19.

⁵² TJ² Interviews 4, 6, 15.

⁵³ TJ² Interviews 4, 5, 6, 19, 26, 27, 29.

⁵⁴ TJ² Interviews 10 & 29.

⁵⁵ TJ² Interview 30.

Protocols, and other serious violations of the laws or customs of war.⁵⁶ Crucially, they can only be said to have been committed in the context of hostilities that have risen to the level of an armed conflict; whereas the contemporary law on crimes against humanity covers both peacetime and conflict-related crimes.⁵⁷ This is significant because crimes against humanity such as deportation, forcible transfer of population, and persecution on racial or religious grounds took place in Kosovo before the armed conflict as well as during (and after) it.⁵⁸

KOSOVAR ALBANIAN MEDIA: FEELING THE PRESSURE

Yet, others in the Kosovar Albanian media were equally clear that they *had* felt editorial pressure, leading to a situation where they would have to second-guess editors' views after stories were not published. A TV producer and former print journalist, still in their 20s at the time of the TJ² interviews, said that on one occasion a story they had written was subjected to so much editorial modification that they wanted their name removed from it.⁵⁹ They also detailed how they had nearly resigned from their role when a former KLA fighter, now their line-manager, prevented them from running two stories in particular about the KLA.⁶⁰

⁵⁶ See e.g. Arts 2 & 3, Statute of the ICTY, UN Security Council Resolution 827(1993), UN Doc. S/RES/827 (25 May 1993) ICTY statute.

⁵⁷ Note that the same underlying crime, be it e.g. murder or rape, may constitute both a war crime and a crime against humanity under some circumstances.

⁵⁸ This is clear from the jurisprudence of the ICTY.

⁵⁹ TJ² Interview 9.

⁶⁰ The stories related to the 'Veterans Law' and its modification to include victims of wartime sexual violence, discussed further below.

Another interviewee, now a TV editor and online journalist, recalled (from when, previously, they were working in the print media) an editor putting them under 'tremendous pressure' to report an incident of UNMIK soldiers having 'beat' a named former KLA fighter; when, in fact, it was clear that the former KLA fighter had instigated the events.⁶¹ Most strikingly, one interviewee alleged that journalists for a major Kosovo news organisation had been instructed to invent witnesses to contradict statements made by a former KLA fighter who, in order to gain a lesser sentence in relation to crimes of which he was found guilty, had agreed to testify against other former KLA fighters in future trials.⁶²

It is not only from editors that Kosovar Albanian journalists have felt pressure. Interviewees mentioned facing public pressure when reporting on 'heroes' of the conflict;⁶³ and knowing which person or institution cannot be written about negatively;⁶⁴ or knowing that they should respect an unstated 'red line.'⁶⁵

A journalist working in both print and broadcast media explained how a senior political figure walked out of an interview about suspicions that many people have falsely gained recognition as KLA 'veterans.'⁶⁶ It is alleged that they did this in order to benefit fraudulently from the pension and other benefits

⁶¹ TJ² Interview 24.

⁶² TJ² Interview 3.

⁶³ TJ² Interview 5.

⁶⁴ TJ² Interview 12.

⁶⁵ TJ² Interview 13.

⁶⁶ See LAW NO. 04/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims Of War And Their Families, Adopted 8 December 2011, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2793> (accessed 29 April 2020).

that such veterans receive in Kosovo.⁶⁷ After that incident, the journalist received death threats from unknown sources and ultimately did not publish the story out of fear for their life. They described this whole affair as their 'greatest career despair' and the only time they have felt compelled to suppress a story.⁶⁸

Similarly, a journalist attempted to find out for themselves what the real number of KLA veterans from a particular municipality was, by interviewing the mayor. The mayor gave a relatively low number (2000), but after other similar municipalities gave larger figures (around 5000) the mayor tried to compel the journalist to increase the number on the, wholly false, basis that either they had deliberately reduced the number or misunderstood what the mayor meant. This journalist interviewee stated that they stuck by their original number despite the pressure.⁶⁹

KOSOVAR ALBANIAN MEDIA: REPORTING UPON TRUTH COMMISSIONS

The interviewees were all asked their opinions about the various truth commission initiatives in Kosovo, and the journalists' perceptions of their own relationship to them are discussed further below. Only one Kosovar Albanian interviewee commented upon actually reporting about the truth commission initiatives.⁷⁰ This interviewee, a journalist at a significant online news portal and

⁶⁷ For the background see Fatos Bytyci, 'Kosovo indicts 12 people including government minister over war pensions fraud,' *Reuters*, 14 September 2018, <https://www.reuters.com/article/us-kosovo-crime/kosovo-indicts-12-people-including-government-minister-over-war-pensions-fraud-idUSKCN1LU2HL> (accessed 29 April 2020).

⁶⁸ All from TJ² interview 24. Several other interviewees alluded to the scandal: Interviews 18, 3, 9, 19.

⁶⁹ All from TJ² interview 19.

⁷⁰ TJ² Interview 8.

who specialises in human rights issues, said that the news media in general had failed to stimulate discussion of truth commissions and, as a result, consumers of the media do not have much information about them either. They commented that other journalists do not know what truth commissions are or why they are important.

The same interviewee was also familiar with the work of NGO the Humanitarian Law Centre (HLC), which has meticulously documented every single conflict-related killing or disappearance in Kosovo between January 1st, 1998 and December 31st, 2000 and published the details in the 'Kosovo Memory Book' and associated database.⁷¹ Interestingly they likened the HLC's project to the work of a truth commission.

KOSOVAR SERB MEDIA: ALSO FEELING THE PRESSURE

It is also clear that pressure is felt regarding the reporting of transitional justice mechanisms amongst the surveyed Kosovar Serb journalists. The editor of a Serbian-language online news portal, and freelance journalist, stressed that whilst they wanted to include in their work discussion of conflict victims from all ethnic communities, they would be welcomed as a 'hero' by the Serb community if they only reported on Serbian victims; but if they wrote about war crimes committed against any Albanian victims, then they would be treated as a 'traitor' to their community.⁷² Likewise a Kosovar Serb political TV host, and

⁷¹ HLC, *supra* n 8; See also Gëzim Visoka, 'Arrested Truth: Transitional Justice and the Politics of Remembrance in Kosovo,' *Journal of Human Rights Practice* 8(1) (2016): 62-80; Flora Ferati-Sachsenmaier, 'Postwar Kosovo: Global and Local Dimensions of Interethnic Reconciliation Processes,' *International Journal of Transitional Justice* 13(2) (2019): 310-327.

⁷² TJ² Interview 22.

director of a media NGO, said that they would be ‘crucified’ by the Serb communities of both Kosovo and Serbia if they were critical of the ‘Serb List’ political party in Kosovo.⁷³ They also added that Kosovar Serb politicians have consistently refused to appear on their TV show, instead appearing only in the Serbian media from Belgrade.

As to reporting on the truth commission initiatives the Kosovar Serb editor of the online news portal expressed dissatisfaction of how it had been handled: this was connected to their observations about reporting across ethnic lines, noted above.⁷⁴ They also called for further proactive investigative journalism to monitor the work of President Thaçi’s truth commission initiative, which they identified, positively, was a ‘start’; but noted that the Commission’s close connection to Thaçi, as a former KLA leader, was problematic.

‘AFFECTING’ AND ‘EFFECTING’ TRANSITIONAL JUSTICE

As noted above, without specifically using the expressions ‘transitional justice’ or ‘transitional journalism’, all the interviewees were asked in various ways if they thought that the media had played a special or extended role in addressing the legacy of the conflict(s) of the 1990s. The results were overwhelmingly that they *did* consider the media had played such a role.

Brief responses from the Kosovar Albanian media included, ‘yes’,⁷⁵ ‘absolutely yes’⁷⁶ and ‘undoubtedly.’⁷⁷ Several described the role has having

⁷³ TJ² Interview 7.

⁷⁴ TJ² Interview 22.

⁷⁵ TJ² Interview 24.

⁷⁶ TJ² Interview 27.

⁷⁷ TJ² Interview 11.

been 'important.'⁷⁸ Others went further. One eighties-born news editor said that the media had the, 'main role' in relation to raising or lowering tensions within inter-ethnic conflict.⁷⁹ Another, in their 20s, said that, 'I think the media ... has had an extraordinary role in the war and I think it is equal to the contribution of the people who have fought.'⁸⁰ A Kosovar Serb interviewee said that the media have a, 'huge role because they can also cause conflict and they can also suppress it, that is, to calm it.'⁸¹

Whilst there was agreement that the media had played a distinctive role, the data presented further below indicates that there was little agreement about what that role has actually *been* or what it *should have been*. As already noted, this mirrors debates about the existence and wisdom transitional justice. With that in mind we found that for analytical purposes the range of views on transitional journalism could be mapped on to established categories of transitional justice identified by Teitel: criminal justice (including the discussion of amnesties and the elusive notion of 'reconciliation'),⁸² historical justice, and reparatory justice.⁸³ Thus in the analysis below we shall explore views about

⁷⁸ TJ² Interviews 1,16, 19, 26.

⁷⁹ TJ² Interview 4.

⁸⁰ TJ² Interview 23.

⁸¹ TJ² Interview 7.

⁸² We accept that 'reconciliation' is a contested term. We employ it in Hayner's sense of, 'building or rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday': Priscilla Hayner, *Unspeakable Truths* (New York: Routledge, 2003), 161. See also Joanna R. Quinn (ed.) *Reconciliation(s): Transitional Justice in Postconflict Societies* (Montreal & Kingston: McGill-Queen's University Press, 2009) and for a particularly critical take, Matthew Evans, 'A future without forgiveness: beyond reconciliation in transitional justice,' *International Politics* 55(5) (2018): 678-692.

⁸³ We found no direct analogue of Teitel's categories of constitutional or administrative justice. See Teitel, *supra* n 4.

transitional journalism as seeking accountability, as self-censorship or reconciliation-focused, as historical accounting, and as advocacy for victims.

TRANSITIONAL JOURNALISM AS SEEKING ACCOUNTABILITY

The most obvious form of seeking accountability has been by the news media identifying instances of conflict-related crimes – although one interviewee was clear that not all cases had been subsequently acted upon by the authorities.⁸⁴

The TJ² data also shows that the interviewees were well aware that the media could go beyond merely seeking formal accountability and stray into more retributory territory.⁸⁵ One Kosovar Albanian interviewee said that they, ‘consider that in the post-war years there was hostile language against [the] Serbs.’⁸⁶ Another described ‘tendentious’ immediate post-war reporting.⁸⁷

The data also shows awareness that, at its worst, some of the post-war journalism instigated violence. The most notorious case, mentioned by several interviewees,⁸⁸ was the role of a particular broadcaster in fomenting the well-known March 2004 violence in which nearly 30 people were killed, 900 were injured, and a great many Serbian Orthodox religious sites attacked. The broadcaster had wrongly reported that three Kosovar Albanian boys who had drowned in the River Ibër were chased into it by Kosovar Serbs. As Judah put it, ‘The next day all hell broke loose.’⁸⁹ These events were expressly identified by several interviews across both the Kosovar Albanian and Kosovar Serb

⁸⁴ TJ² Interview 5.

⁸⁵ TJ² Interviews 10, 23, 25, 27, 29.

⁸⁶ TJ² Interview 23.

⁸⁷ TJ² Interview 10.

⁸⁸ TJ² Interviews 1, 4, 5, 7a, 10, 22a, 23, 26.

⁸⁹ Judah, *supra* n 6 at 110.

media as evidence of the need for caution in reporting⁹⁰ (discussed further in the next section in relation to self-censorship).

There was also recognition of the controversial practice of so-called 'vigilante journalism', in which the media identified alleged collaborators with the Milošević regime and published their details. In the worst case, this led to the murder of the alleged collaborator: the editor of an online newspaper in their 30s recalled the murder in 2000 of Petar Topoljski; a 25 year-old then working for the UN in Pristina; who was alleged in a major daily newspaper to have been a Serbian 'war criminal'; whose contact details were published; and who then disappeared, and was later found murdered.⁹¹ This led to the temporary closure of the newspaper in question, and was noted in the report of the Independent International Commission on Kosovo.⁹²

Many of the interviewees commented that the quality of journalism in Kosovo had improved over time, and that formal training by 'internationals' as well as working less formally as a 'fixer' for the international media had been beneficial.⁹³ Nevertheless there were isolated examples of apparent ethnic bias still continuing today. Two Albanian-language journalists (both in their 20s) expressed frustration about feeling the need to 'balance' the actions of the ethnic Serb forces and the KLA during the conflict,⁹⁴ in the sense of accepting that both sides committed crimes. For one of them, in relation to war crimes in general and sexual violence in particular, this was because rapes by the KLA

⁹⁰ TJ² Interviews 1, 4, 5, 7, 10, 26.

⁹¹ TJ² Interview 5.

⁹² [The Independent International Commission on Kosovo, supra n 9.](#)

⁹³ On journalists as fixers in Kosovo see Abit Hoxha & Kenneth Andresen, 'The Development of Roles in Kosovo: From Fixers to Journalists,' *Journalism Studies* 20(12) (2019): 1732-1746.

⁹⁴ TJ² Interviews 14, 23.

were allegedly less numerous and were not part of a, 'political agenda'; whereas, 'what Serbia did in Kosovo was a state plan.'⁹⁵ Whilst not admitting bias in their own practice, another conceded that non-Albanian victims of the conflict, 'are excluded from reportage', including those suspected to have been victims of the 'revenge-killings' after the fall of the Milošević regime, in the aftermath of the NATO intervention.⁹⁶

The data confirms that part of the problem is that the Kosovar media is split on ethno-linguistic grounds. The Kosovar Serb journalist and director of a media NGO said that their TV show, 'is the only one in Kosovo where we include both Serbs and Albanians on a weekly level.'⁹⁷ They said that,

You cannot see in almost any Albanian media a story about the Serb community, about how Serbs live, what their consumer basket is, what their problems are. On the other hand, you cannot either see in the Serbian media a story about the Albanian environment... with ordinary people, ordinary citizens.

They made the point that if you were to ask about the big political issues of the day, such as the ultimate status of Kosovo itself, Kosovar Serbs and Albanians will likely disagree; but that on regular 'life issues' such as corruption or economic development their own research shows that the ethnic groups are, 'more than 90%' in agreement.

Partisan journalism has not been confined just to different ethnic groups though. One interviewee, a print journalist editor in their 30s, said that because

⁹⁵ TJ² Interview 14.

⁹⁶ TJ² Interview 8.

⁹⁷ TJ² Interview 7.

two specific broadcasters exclusively supported one or the other of the two main Kosovar Albanian political factions after the conflict, the media had come close to inciting civil war within Kosovo.⁹⁸ Indeed, they went so far as to say that were it not for the presence of KFOR and UNMIK, ‘these two media would [have] put the people of Kosovo in war with each other for that I am 100% convinced [sic].’

TRANSITIONAL JOURNALISM AS SELF-CENSORSHIP OR RECONCILIATION

In this section we see a range of views about the extent to which the Kosovo news media view themselves as having played a role in the de-escalation of tensions, or even the common transitional justice goal of facilitating reconciliation.

Nearly all of the interviewees agreed that they would, or indeed have, on their own initiative, re-framed stories that might inflame ethnic tensions.⁹⁹ The data also shows that this ‘transitional self-censorship’ seemed to go further than being an abundance of caution stemming from knowledge of the March 2004 events, already noted, notwithstanding that those events loomed large. We shall see, however, that this does not *necessarily* mean that the Kosovo news media sees itself as actively playing a role in the process of reconciliation.

In respect of self-censorship, the Kosovar Albanian journalist who referred to near-civil war, quoted above, also told an anecdote about receiving

⁹⁸ TJ² Interview 1.

⁹⁹ A small number interpreted the question as being about journalistic diligence and the ethics of publishing personally identifiable details of e.g. of a rape victim: TJ² Interviews 18, 13, 23, 30.

allegations, again in 2004, that a Kosovar Serb actor in Kosovar TV show being filmed in Greece was a 'criminal.' They decided not to publish a story to that effect out of fear of further 'escalations.'¹⁰⁰ Back in the present day, the same journalist noted that now the vast majority of international peacekeepers and police had departed, it was even more likely that inflammatory reporting could lead to devastating consequences.

Another said that the media has, 'tried to do well, to try to rid of the insane and stimulating terms.'¹⁰¹ Others agreed with the idea of suppressing or softening a potentially inflammatory story, but could not give an example from their own practice.¹⁰²

One of the Kosovar Serb journalist interviewees went so far as to say that,

The journalists' job is to prevent tension or if they are not able to prevent it, they should try to minimize it or soften it. Media must not in any case ignite hate, or tension, or anything that could lead to any kind of conflicts and so on.

They also recalled the March 2004 events and said that then the media had, 'provoked chaos.'¹⁰³ This was echoed by another from the Kosovar Serb media who said that if they knew an article would 'produce big tension' then they would suppress it; and that they, personally, were, 'careful with [their]

¹⁰⁰ TJ² Interview 1.

¹⁰¹ TJ² Interview 29.

¹⁰² TJ² Interviews 4, 5, 20, 26, 28.

¹⁰³ TJ² Interview 7.

words' because they knew, 'what is sensitive for Albanians and what is sensitive for Serbians.'¹⁰⁴

A small number of the Kosovar Albanian interviewees answered to the effect that they had self-censored on ethnic or patriotic grounds rather than to lower tensions. This overlaps with the apparent bias on ethnic lines noted above.¹⁰⁵ One recalled that in the past the topic of war crimes had been 'taboo.'¹⁰⁶

Interestingly, all of those that said that they had engaged in some form of self-censorship *also* claimed commitment to impartiality. This included the journalist that distinguished between rapes by the KLA and Serb forces, who also said that impartiality is, 'the first step in journalism.'¹⁰⁷

Finally on the issue of transitional self-censorship there were a small number of interviewees that flatly rejected the idea that they should self-censor.¹⁰⁸ One, working in the broadcast media, said that they would, 'absolutely not' abandon a story voluntarily even if they thought it could create tensions.¹⁰⁹ Another, in the online media, said that they had never self-censored and explained that, 'If it is for the good of society and if it is about finding a bad thing that is happening, the job of the journalist is to go after it and not draw back.'¹¹⁰

The data was more mixed when it came to whether transitional self-censorship was part of a wider effort actively to play a role in societal

¹⁰⁴ TJ² Interview 22.

¹⁰⁵ TJ² Interviews 14 & 8.

¹⁰⁶ TJ² Interview 24.

¹⁰⁷ TJ² Interview 14.

¹⁰⁸ TJ² Interviews 3, 9, 21, 23.

¹⁰⁹ TJ² Interview 3.

¹¹⁰ TJ² Interview 21.

reconciliation. A Kosovar Albanian TV news editor in their late 30s said that they thought, ‘the media are the ones that can contribute to inter-ethnic reconciliation and can also contribute to building a rule of law.’¹¹¹ Another, working for an online news site, also identified the potential of the media to play a role in reconciliation, saying that it would be ‘noble’ to do so. However, they also said that they were not aware of any concerted effort to play such a role and that any effect upon reconciliation would therefore have been ‘accidental.’¹¹²

The Kosovar Serb news media interviewees seemed more consistently in favour of playing a role in reconciliation (albeit amongst a small sample). One said that, ‘media is key when it comes to the coexistence and ultimately reconciliation and so on [sic].’¹¹³ The other explained that they had published stories in Serbian, Albanian and English, and said that as a journalist it was important to reach both Kosovar Serb and Albanian audiences if there is to be reconciliation.¹¹⁴

TRANSITIONAL JOURNALISM AS HISTORICAL ACCOUNTING

The adage that, ‘journalism is the first rough draft of history’ was noted above. Despite this there were, yet again, very mixed views on actively embracing a role in contributing to transitional historical justice even in the absence of a functioning state-sponsored truth commission.

¹¹¹ TJ² Interview 27.

¹¹² TJ² Interview 30.

¹¹³ TJ² Interview 7.

¹¹⁴ TJ² Interview 22.

At one end of the spectrum there were those that both agreed that the media had played a role in historical accounting and that it was legitimate for them so to do. A Kosovar Albanian producer in their late 20s, already with 8 years' experience in the media, agreed that it was, 'absolutely the duty of the media' to find out the truth given that there was no truth commission in operation.¹¹⁵ The editor of a daily online newspaper said, regarding truth-seeking in the absence of a truth commission, that the media had worked, 'continuously in that direction'.¹¹⁶

A journalist for an online portal also alluded to the media having filled a gap, saying that, '[a] few years ago there was much less [in the way of state-sponsored interest in truth-seeking] so the media played that role to inform this part and about reported about this condition [sic.]'.¹¹⁷ Another, in a similar role, observed that without a truth commission, it was 'normal that if the state fails to do something often the media and journalists take a role that is not their primary role'.¹¹⁸ They explained, as we shall in more detail in the next section (in relation to victims' rights), that in their journalistic practice they had contributed to the recent greater acknowledgement of the legacy of conflict related sexual violence in Kosovo. This was echoed by an experienced broadcast news editor who said that, notwithstanding that the, 'media could have made a bigger contribution', and that the Humanitarian Law Centre (through the Kosovo Memory Book) had done much more, they had personally

¹¹⁵ TJ² Interview 9.

¹¹⁶ TJ² Interview 5.

¹¹⁷ TJ² Interview 20.

¹¹⁸ TJ² Interview 23.

researched and brought attention to conflict related sexual violence, including the predicament of children born out of rape.¹¹⁹

Still within those who were broadly in favour of playing a role in historical accounting, a Kosovar Albanian documentary film maker in their early 30s began by seeming to disagree that the media had stepped-in, in the absence of a truth commission. However, they then said that in their opinion the media had been more 'ruthless' than the Prosecutor's Office at investigating and acknowledging the misdeeds even of figures considered as heroes of the KLA. They then explained their intention to make a documentary about victims of the conflict, without prejudice as to whether the victims were Kosovar Albanians or Kosovar Serbs.¹²⁰

The Kosovar Serb journalist whose multi-language stories were noted in the previous section also observed that the media can have an, 'interesting role' in historical accounting and was broadly in favour of it; but this was also the interviewee that explained that a Kosovar Serb journalist writing about Kosovar Albanian victims and that a Kosovar Albanian journalist writing about Kosovar Serb victims risked being seen as a 'traitor' by their community.¹²¹

Somewhere around the middle of spectrum regarding the appropriateness of journalistic involvement in transitional historical accounting were those that did not object, but regretted that it had not happened. Recall here the interviewee that said it would have been 'noble' for the media to play a role in reconciliation in the absence of a truth and reconciliation

¹¹⁹ TJ² Interview 24.

¹²⁰ TJ² Interview 29.

¹²¹ TJ² Interview 22.

commission.¹²² Likewise in response to this line of questioning, several interviewees again said that whilst it would have been good for the media to play a responsible role in historical accounting it had, at several points, instead inflamed tensions.¹²³ This dovetails with, and also to extent overlaps with, the various observations about the media having played a retributive role, as noted above. Also within this loose middle place on the spectrum was a senior daily newspaper reporter who had tried to report on the events of and around 1999, via for example contacting the relevant government bodies, but said that, 'it was very difficult to have access to those documents of '99.'¹²⁴

Finally, at the other end of the spectrum, there were those that were opposed to the news media playing a role in transitional historical accounting. A Kosovar Albanian investigative reporter for a large online news site said, 'It is not the role of the media to do this job.'¹²⁵ Another, also working for an online platform replied bluntly, when asked if the media had played a significant role in revealing the truth, 'No at all [sic].'¹²⁶ A journalist working in television likewise downplayed the role of the news media in this regarding, saying that the they should focus on 'facts' and not on making 'judgements.'¹²⁷

TRANSITIONAL JOURNALISM AS THE PROMOTION OF VICTIMS'

RIGHTS

¹²² TJ² Interview 30, discussed above.

¹²³ TJ² Interviews 25 & 27.

¹²⁴ TJ² Interview 10.

¹²⁵ TJ² Interview 14.

¹²⁶ TJ² Interview 8.

¹²⁷ TJ² Interview 3.

The project did not specifically ask the interviewees to comment upon the extent to which they had actively sought to play a role in promoting victims' rights, but through the semi-structured nature of the interviews it emerged that several considered that they had, especially in respect of victims of conflict related sex and gender-based violence (hereafter CRSV). This manifestation of transitional journalism chimes with the notion of 'reparatory justice'.

In the aftermath of the conflict, Human Rights Watch conducted research that demonstrated that rapes had not been, 'rare and isolated acts committed by individual Serbian or Yugoslav forces, but rather were used deliberately as an instrument to terrorize the civilian population, extort money from families, and push people to flee their homes.'¹²⁸ Despite this, the relative number of prosecutions of CRSV crimes in respect of Kosovo has been much lower than in Bosnia and Herzegovina, in which there has been a CRSV element in over a quarter of all completed war crimes prosecutions resulting in a conviction.¹²⁹

With the relative lack of criminal justice-based responses to CRSV in Kosovo, other ways of addressing it have taken on especial significance. It is here where the media, alongside NGOs such as the Kosovo Women's Network, was able to bring attention to what had been a taboo subject.¹³⁰ Compensation schemes launched in 2000 and 2012 spectacularly failed to address victims of CRSV. It was not until 2014 that the 'Veterans' Law' was

¹²⁸ Human Rights Watch, *Kosovo: Rape as a Weapon of 'Ethnic Cleansing'*, 1 March 2000, <https://www.refworld.org/docid/3ae6a87a0.html> (accessed 29 April 2020).

¹²⁹ Amnesty International, *Wounds that Burn Our Souls: Compensation for Kosovo's Wartime Rape Survivors, But Still No Justice* (London: Amnesty International, 2017), 16.

¹³⁰ Ibid.

altered to allow some measure of compensation for them, in the form of a special pension – and claims could only be made from 2018 (the year of the TJ² interviews). One of the Kosovar Albanian interviewees recalled that in the past year the media had published a ‘cycle’ of testimonies regarding CRSV, saying reporting had spread from one online news portal to another, and another, and that it was, ‘a good thing that the reporting of these cases does not stop’ because of the importance of developing, ‘accurate data in collective memory [sic.]’.¹³¹

Another quite modestly asked whether the interviewer had read their May 2017 special report into CRSV and babies born as a result: modest because the interviewee had in fact won a prestigious prize for that very article, which had been published in a way that it was accessible in three languages and at a regional level.¹³² They also remained committed to the campaign for full parity between veterans and victims of CRSV, observing that at present the latter only have a pension whereas the former have a, ‘have a host of other benefits.’

DISCUSSION

The findings confirm that the Kosovo news media have some familiarity with the contours of transitional justice, and have with some degree of freedom been able to report upon the relevant formal mechanisms. The Kosovo media also claim to be less prone to ‘patriotic journalism’ than Džihana and Volčič found previously regarding media coverage of such issues in Bosnia and

¹³¹ TJ² Interview 23.

¹³² TJ² Interview 24.

Herzegovina, Croatia and Serbia (excluding Kosovo).¹³³ This TJ² finding also corroborates Andresen *et al*, who had found that journalists in Kosovo were statistically much more likely to see as important 'be an adversary to the government' than the other states they studied.¹³⁴

Access to relevant information from the Hague, be it about the former ICTY or the new Kosovo Specialist Chambers, however, has not been ideal according to the interviewees. This is troubling because previous studies have shown that successful outreach by courts and tribunals, especially those physically located in another state, is crucial to generating and maintaining legitimacy.¹³⁵

Regarding Kosovo specifically, previous research showed that the impact upon the media of ICTY cases about former KLA commander and Prime Minister of Kosovo Ramush Haradinaj was negligible.¹³⁶ This may well be because they resulted in acquittal (twice),¹³⁷ and therefore did not challenge the dominant narrative. It has also been argued that the limited impact could be attributed to the stage of the nation building process ongoing at the time.¹³⁸ It is significant therefore that the Specialist Chambers sought and received additional resources in 2018 to develop their outreach activities, presenting another opportunity to reflect upon alleged crimes by the KLA.¹³⁹

¹³³ Džihana and Volčič (eds.), *supra* n 44.

¹³⁴ Andresen *et al*, *supra* n 1.

¹³⁵ Džihana and Volčič (eds.), *supra* n 44.

¹³⁶ Klaus Bachmann *et al*, 'Like Dust before the Wind, or, the Winds of Change? The Influence of International Criminal Tribunals on Narratives and Media Frames,' *International Journal of Transitional Justice* 13 (2019): 368–386.

¹³⁷ ICTY, IT-04-84.

¹³⁸ Bachmann *et al*, *supra* n 136.

¹³⁹ Kosovo Specialist Chambers and Specialist Prosecutor's Office, 'KSC and SPO Launch a 2-Year Outreach Programme Supported by Switzerland,' 30 January 2018,

It is also the case that some important legal concepts are not consistently well understood. This is especially significant in respect of crimes against humanity, which to a lawyer are very different in kind to war crimes. Indeed, by focusing in the main only on war crimes Kosovo news media risk inadvertently downplaying the inhumanity of FRY's treatment of Kosovar Albanians in the run-up to the armed conflict. It could also lead to mischaracterisation of the 'revenge' attacks against Kosovar Serbs and perceived collaborators after the cessation of the main hostilities. As with the lack of knowledge about some criminal justice issues, several interviewees were doubtful of their or their colleagues' understanding of truth commissions.

More importantly the findings confirm that the news media in Kosovo view themselves as taking on an extended role in addition to merely reporting more or less objectively upon transitional justice measures – even if they cannot agree what it is or whether they should be doing it: As hypothesised, they *have* seen themselves as playing a role, indeed several roles, in 'affecting' or even 'effecting' transitional justice.

Applying categories from transitional justice, we have seen that at different times there has been transitional journalism viewed as seeking accountability, as self-censorship or reconciliation-focused, as historical accounting, and as advocacy for victims. However, these roles have not been universally embraced and many of the interviewees would not recognise this taxonomy themselves. This suggests a more complex picture than Andresen *et al* observed previously regarding the Kosovo news media, in the sense that

<https://www.scp-ks.org/en/ksc-and-spo-launch-2-year-outreach-programme-supported-switzerland> (accessed 10 July 2020).

the new TJ² data shows that there are those who either resist the idea of playing an extended role or disagree upon what such a role would entail.¹⁴⁰

The central tension is between objectivity and activism, where transitional journalism is understood, as Andresen *et al* posited, to be inherently more activist. It is submitted here that this tension is highly reminiscent of the 'rule of law dilemmas' found in transitional justice. These arise, as we noted above, because in transitional contexts law is not only constituted by, but also constitutive of the transition.¹⁴¹ Thus we can say that the tensions in *transitional journalism* arise because in such contexts journalism too is not only constituted by, but also constitutive of the transition.

CONCLUSION

Several implications flow from the data presented here. First, in a very broad sense, the Kosovo news media should be encouraged to learn even more about the idea and institutions of transitional justice in order to engage more accurately with the issues pertaining to it.¹⁴² This should *not* be of the, 'this is how you do transitional justice, and isn't it great?' kind. It needs to be more conceptual and critical.

Second, and flowing directly from the first, key conceptual and critical debates in transitional justice should begin to inform the practice of transitional

¹⁴⁰ Andresen *et al*, supra n 1.

¹⁴¹ Teitel, supra n 4 at 6.

¹⁴² Of course, there have been a great many international 'trainings' already, of varying degrees of quality (including several facilitated by the authors of this paper). Moreover, there is existing expertise in Kosovo that has been and could be further drawn upon in this regard such as the recently established, 'Justice Resource Centre of Kosovo' at the University of Pristina:

<https://eca.unwomen.org/en/news/stories/2018/05/press-release-the-first-transitional-justice-resource-centre-of-kosovo>

journalism, thereby allowing greater agency in, and ownership of, decisions taken about it. These include questions about the relative priority to give to accountability, reconciliation, historical accounting, or victims' rights within the practice of transitional journalism. They also include the crucial question of whether and to what extent to take a more activist approach, and what implications that would have for objectivity.

As to the latter, if transitional journalism is to move on from being an analytical framework to a normative proposition akin to peace journalism, then a methodology to measure the positive impact of it needs to be developed in order to influence choices about it. Solid evidence of the impact and effectiveness of transitional justice mechanisms is notoriously slim, and so transitional journalism should not be allowed to emerge with the same empirical vacuum.¹⁴³ This would also facilitate the justification of excluding certain practises from the rubric of 'transitional journalism', such as retributive or vigilante journalism.

Third, enriching transitional journalism in this way would unlock critical discussion of problems within the concept of transitional justice, such as that it often neglects root-cause issues like the violation of economic, social and cultural rights;¹⁴⁴ and often neglects certain categories of victim.¹⁴⁵ Removing

¹⁴³ See Bell, *supra* n 2 at 10; Tricia D. Olsen, Leigh A. Payne, & Andrew G. Reiter, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy,' 32(4) *Human Rights Quarterly* (2010): 980-1007.

¹⁴⁴ Amanda Cahill-Ripley, 'Reclaiming the Peacebuilding Agenda: Economic and Social Rights as a Legal Framework for Building Positive Peace - A Human Security Plus Approach to Peacebuilding,' *Human Rights Law Review* 16(2) (2016): 223-246.

¹⁴⁵ Bell, *supra* n 2 at 11 is amongst several to note the gender dynamics of transitional justice; see also Catherine O'Rourke, *Gender Politics in Transitional Justice* (Abingdon: Routledge, 2013).

these blind spots from transitional *journalism* could, in turn, beneficially influence approaches to transitional *justice*.

Finally, now that this study has confirmed that transitional journalism is empirically identifiable in the views of the Kosovo news media and that its contours can usefully be mapped on to existing categories of transitional justice, it is necessary to see whether and how it manifests in other transitional or post-conflict settings; and to develop the methodology for assessing its impact. Those are the next goals for the TJ² project team.