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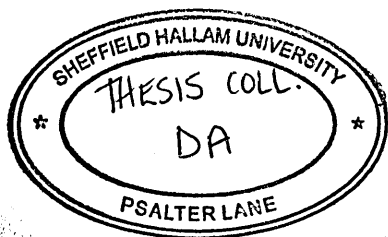
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**Ending the War?**  
**The Lebanese Broadcasting Act of 1994**

Dima Dabbous-Sensenig

A thesis submitted in partial fulfilment of the requirements of  
Sheffield Hallam University  
for the degree of Doctor of Philosophy

January 2003



## ABSTRACT

### Ending the War? The Lebanese Broadcasting Act of 1994

Soon after the end of the Civil War, Lebanon witnessed the birth of its first audio-visual law: the Broadcasting Act of 1994. This Act was, according to the Document of National Reconciliation that ushered in the end of the Civil War, considered to be crucial in ending civil strife in Lebanon. The 1994 Act was also the first legislation for private broadcasting to be passed in the Arab world.

The introduction of the Act created great political upheaval. The present study documents the controversy created by the Act and seeks to understand the extent to which vehement criticism of the Act and of the government behind it were justified. I will seek to do so by examining the various phases of the Act: its inception as a draft; its final wording and the economic and political forces that shaped it; and its implementation, mainly through the creation of a new regulatory body, the National Audio-visual Council (or NAC) responsible for studying license applications.

The present study will document the various stages of the new broadcasting law by relying almost exclusively on primary sources: i.e., archival material, most of which is inaccessible to the general public (e.g., application files); and personal interviews with high ranking government officials and media representatives. Finally, by relying on elite theory and an “evolutionary” theory of policy analysis, I will attempt to interpret the findings of the primary research, and to add to our understanding of media, law, and change in post-Civil War Lebanon.

## Acknowledgements

I am indebted to many people who helped support, in one way or another, this work. My strongest feelings of gratitude go first to those closest to me who had to suffer with me the most. My beloved husband, without your 'reign of terror' I don't think I would have finished my work in any foreseeable future. I am very happy I entrusted you with the task of 'terrorising' me into finishing. I owe you a lot. My beloved daughter Farah, thank you for your valuable help and companionship during those very long boring hours that we spent retrieving books and making photocopies in libraries. Please forgive me for all the time lost, and all the fun things we couldn't do together during all those years. By your age standards, work on this dissertation must have felt like eternity, stretching over half of your existence on this earth. I promise I will make it up for you. My beloved Dad, I am forever indebted to you for having taught me, very early on, that when there is a will, there is a way. My loving Mom, you made sure I had everything I needed so that I could concentrate all my energy on my work. Your help and belief in me, all along, finally paid off. My brothers Ghassan and Wissam, my sisters-in-law Faten and Rania, my nephews and nieces, my friend Farid... please forgive me for not having been part of your lives the way I should have been in the last few years. Marina, I am especially remembering you, because you made my repeated stays in Sheffield feel like being home. You are so precious.

On a more professional note, I would also like to extend my deepest gratitude to my Director of Studies, Professor Sylvia Harvey. She was the best supervisor I could have had. Her expertise, meticulousness, and dedication contributed to this work in more ways than I can express. I would also like to extend my gratitude to my three examiners: Graham Murdock, Naomi Sakr, and David Waddington. As much as I hated having to work extra long hours in order to incorporate their comments into the final version of my dissertation, I recognise that the quality of this work would not have been the same without those comments. Special thanks also go to Fawaz Traboulsi, my 'surrogate' supervisor when I was in Lebanon. His work on the political economy of Lebanon was truly a mind-opener and an invaluable source of information for my study.

There are many other people without whose generous help this dissertation would not have been written. To them, also, my warmest thanks.

Last, and most particularly, I would like to thank my former professors Janet Hyde Clark and Bill Gilsdorf. You set the hoop very high. I love you for it.

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## INTRODUCTION

### THE CONTROVERSIAL BROADCASTING ACT OF 1994

The passage and implementation of the 1994 Broadcasting Act created political upheaval in a country barely recovering from a 16-year-old Civil War. Protesters - from opposition MPs to laid-off media employees, trade unionists and university students - vehemently criticised the Act, and questioned the legitimacy of the government behind it, accusing it mostly of bias in the granting of licenses. According to these protesters, only television stations affiliated in one way or another to a major governmental official were licensed. Not only that, it had also become obvious that the licensed stations were the ones that represented or belonged to the major confessional groups in the country, leaving out any smaller or weaker political, secular or confessional groups.

The licensed stations were: the Lebanese Broadcasting Corporation International or LBCI, originally financed and controlled by the (Christian Maronite) Lebanese Forces; Future Television (FTV), largely associated with Sunni Prime Minister Hariri; the National Broadcasting Network or NBN, whose major shares were held by relatives of Speaker of the House Berri (a Shi'ite Muslim), and several Druze leaders; and Murr Television or MTV which belonged mostly to the Greek-Orthodox Murr family, headed by Gabriel Murr, brother of Michel Murr - Minister of the Interior during Hariri's government.

The implementation of the Act,<sup>1</sup> moreover, was going to dramatically lower the number of operating radio and television broadcast stations (from over two hundred to a little more than a dozen). By doing so, it threatened to create a wave of unemployment that would have only exacerbated the already existing economic crisis and the political controversy surrounding the Act. Indeed, thousands of media workers protested,<sup>2</sup> joined

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<sup>1</sup> The 1994 Broadcasting Act will be more briefly referred to in this study as the "1994 Act" or the "Act". Officially, it is also referred to as Law No. 382/1994.

<sup>2</sup> There is no accurate assessment of the number of lay-offs. The estimates vary between 3,000 (according to the Ministry of Information) and 8,000 (according to the private media lobby). *Al-Shark al Awsat*, 30 January 1996.

by trade union representatives already disgruntled by the poor living conditions of post-war Lebanon and by university media students who saw their prospects for future employment in the media sector disappearing. Indeed, shortly after the passage of the 1994 Act in parliament, the country witnessed a wave of demonstrations in protest to the worsening economic condition of the country. Led by the Lebanese confederation of trade unions, these demonstrations culminated with a call for a general strike on 29 February 1996. In anticipation of the “national security problem” that such a large scale strike would have entailed, the Hariri government threatened to deploy the army in the capital of Beirut in order to prevent demonstrators from taking to the streets.<sup>3</sup> Unabated, the trade unions went ahead with the strike, adding two new demands to their original list: that the government abstain from using the army to enforce internal security, and that it halt the implementation of the 1994 Act.<sup>4</sup> The Hariri government ignored both demands. Worse yet, on the same day that the major general strike was announced (i.e., on 29 February 1996), the army intervened in order to restore law and order by preventing participants from carrying on with the demonstrations. The Council of Ministers, for its part, issued decree No. 7997 (or the Guidebook of Operating Conditions for licensed radio and television stations). Both decisions only served to fuel the fire of the spiralling crisis.

In the present study, I intend to analyse the Lebanese Broadcasting Act of 1994 (hereafter also referred to as the 1994 Act or the Act). The Act, at the time of its passage in 1994, was the first broadcast legislation of its kind, not only in Lebanon but also in the Arab world. Throughout the different stages, from its passage to its implementation, the Act continued to spark a series of crises which seriously threatened “national reconciliation” in post-war Lebanon, and which put the very legitimacy of the “new”

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<sup>3</sup> The Prime Minister is also reported to have considered resigning from his office. *Al-Hawadeth* weekly, 8 March 1996.

<sup>4</sup> *Al-Hawadeth* weekly, 8 March 1996.

state into question. Unquestionably, however, the 1994 Act marked an important period in the modern, post-Civil War history of Lebanon.

The present analysis has several objectives. First, it will seek to elucidate the controversy that surrounded the 1994 Act from its inception till the final stages of its implementation. Second, it will examine the extent to which official criticisms of the Act and public protests against it were justified. In the process of doing so, it will seek to document, analyse, and understand an important historical period and a media system in transformation in the newly emerging Second Republic of Lebanon. Finally, through an in-depth analysis of the 1994 Act as the clearest manifestation of a *new* media policy for post-Civil War Lebanon, the study also hopes to contribute to the debate on the more general relationship between the state, society, law, media, and change.

It should be noted from the outset, however, that the major difficulty in undertaking such research, beside the more immediate problem of access to information and archives in Lebanon,<sup>5</sup> was finding an appropriate conceptual framework for the study. As will be argued in Chapter 1, not only is there a lack of systematically developed theories of communication policy analysis that can account for the *complexity* of and *change* in policymaking in general, this lack is also exacerbated when conducting research about non-First World countries, especially the Arab world.

Still, I will argue in Chapter 1 and Chapter 2 that, of all research fields related to any of the (often interconnected) research topics of concern to this study (i.e., communication, policymaking, development and the Third World), the field of policy analysis seems to offer the most adequate conceptual and methodological tools for the present analysis. To start with, the Broadcasting Act of 1994 is indeed an example of one of the various types of policies that the literature on policymaking directly deals with.<sup>6</sup> It falls under the category of “regulatory” policies. As opposed to distributive policies, for instance, where resources are not limited and “most demands can be met by parcelling

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<sup>5</sup> These problems will be elaborated on in Chapter 1.

<sup>6</sup> For a typology of public policies, see Lowi (1972), Doern (1971, p. 19), and John (1998, p. 7).

out what is available,”<sup>7</sup> in the case of regulatory policies, “options are considered limited and cannot be distributed to all individuals or groups desiring them”.<sup>8</sup> This situation leads to “overt competition between several groups to achieve something all cannot share.”<sup>9</sup> The regulatory decision, in the end, “involves a direct choice as to who will be indulged and who deprived”.<sup>10</sup> In the case of broadcasting policy, specifically, the choice of the policy’s type has been, at least up until the recent revolution in communications technology,<sup>11</sup> dictated mostly by the limited (physical) nature of the publicly owned resource of the airwaves. However, by the end of the 20<sup>th</sup> century, the traditional scarcity argument had become quite obsolete, and certainly not sufficient on its own to justify regulation.<sup>12</sup> Other concepts could be relied on more to justify regulation, such as the concepts of “public interest” or “media differences”.<sup>13</sup> It should be remembered here that this “obsolescence” of the scarcity argument can only effectively apply to those countries rich enough and willing to introduce and effectively carry on the conversion to new technologies. These are usually affluent First World democracies that are *also* committed to pluralism and liberal capitalism. This means, in other words, that the availability of state of the art communication technology cannot be taken for granted in many Arab countries. Even if they wanted to, these countries, many of which have very limited resources, simply cannot benefit from the (expensive) satellite, digital, or fibre optic

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<sup>7</sup> Doern, 1971, p. 19.

<sup>8</sup> Doern, 1971, p. 20.

<sup>9</sup> Doern, 1971, p. 21.

<sup>10</sup> Lowi as quoted in Doern, 1971, pp. 19-20.

<sup>11</sup> The technological development and proliferation of broadcast technologies, in addition to satellite communication and the hundreds of channels that can be broadcast, make it possible, for instance, for the same cable to carry several channels (fibre optic cables) or to increase the number of channels that can be accommodated in the existing frequencies allocated for air-to-air broadcasting (digital compression).

<sup>12</sup> Francois, 1994, p. 507.

<sup>13</sup> For a detailed discussion of the different rationales used to justify regulation of the broadcast media, especially when such regulation runs head on against the First Amendment in the USA, see Francois, 1994, chapter 12.

technology. Even in those countries that can afford the new technology, the ruling elites are often adamant about restricting proliferation of the media (the broadcast media in particular) and tightly regulating them for reasons of political hegemony and control. A case in point is that of Saudi Arabia, being simultaneously the richest Arab country and the one with the most restrictive media system.<sup>14</sup>

In the case of the Lebanese Broadcasting Act, despite general awareness, early on, among experts and private media owners, of the broadcasting possibilities offered by the newest communication technologies,<sup>15</sup> debate – mostly at the decision-making or ministerial level - was limited to “over-the-air” broadcasting. This was done to the exclusion of any discussion about digital technology, cable, or satellite. Consequently, this (physical and economic) determinant of airwaves scarcity had a significant bearing on the *type* of policy that was to be introduced to regulate private broadcasting. With a limited spectrum and over 50 operating television stations and 200 radio stations applying for frequencies in Lebanon,<sup>16</sup> it was obvious that the competition for frequencies was going to be fierce, and that, inevitably, there were going to be far more losers than winners in the battle over the airwaves. This also made the implementation of the Act, in particular the allocation of frequencies, a matter of highest political sensitivity. The government had to demonstrate that it could be equitable in its allocation of the spectrum, in keeping with the spirit of “national reconciliation” promoted by the peace accord (i.e., the Taef Agreement) which brought the 16-year long civil strife to an end.

It is a main objective of the present study, in this respect, to answer the following question: how “equitable” was the Lebanese government in its allocation of frequencies to the hundred of operating (unlicensed) broadcast stations? Though major criticisms of the Hariri government (which took it upon itself to introduce and implement the Act)

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<sup>14</sup> Thompson, 1997, p. 127.

<sup>15</sup> See details in Chapter 5, Part One.

<sup>16</sup> See Chapter 4 on the history of the media in Lebanon for a discussion of these “unlicensed” broadcast stations which mushroomed during the Civil War and continued to operate until the implementation of the 1994 Act in 1996.



centred mostly around this issue, it will not be the only one the present research will deal with. Applying the methodology of public policy analysis to the 1994 Act, all the stages of the Act will be dealt with, from problem definition, through policy formulation and adoption, to policy implementation.<sup>17</sup> The purpose of such an inclusive approach to the 1994 Act is to understand, beyond the specific question of fairness in the treatment of applications, how policymaking in the (crucial) private broadcasting sector in Lebanon works. Explaining what policy research is about, John writes that it “seeks to understand *how the machinery of the state and political actors interact to produce public actions*” and to “*explore the variety and complexity of the decision-making processes*.”<sup>18</sup> The present study hopes to achieve, however modestly, this objective concerning policymaking in Lebanon.

### ORGANISATION OF THE STUDY

The purpose of the present study is basically twofold: first and foremost, it will try to document an important period in the history of post-Civil War Lebanon. Only secondarily, with the help of Kingdon’s “policy streams approach”, will the study seek to explain why change in the Lebanese media sector happened the way it did. It should be noted here that documenting the stages of the 1994 Act had to take precedence over explanation and analysis for the simple reason that such documentation had initially not existed at all. Indeed, beside the (major) problem of finding a suitable conceptual framework for the analysis, the study suffered from a serious lack of both Arabic and English secondary sources dealing with the Act.<sup>19</sup> Already more than a decade ago, Rugh – one of the very few Western scholars to write about media in the Arab world – complained that “no systematic analysis of the mass media in the Arab world exist[ed]” to date.<sup>20</sup> Unfortunately, the situation has not changed for the better by the beginning of the 21<sup>st</sup> century. The present study therefore hopes to fill a gap in that respect, delving in detail into the intricacies

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<sup>17</sup> For details on the various stages of policymaking, see Chapter 2.

<sup>18</sup> Peter John, 1998, p. 1, emphasis added. John further argues that it is precisely by seeking to explain the “operation of the political system as a whole” that public policy analysis mostly contributes to political science (pp. 1-2).

<sup>19</sup> See Chapter 1.

<sup>20</sup> Rugh, 1987, xxii.

of media regulation in what may be considered the most “aberrant” case in the Arab world (i.e., Lebanon).<sup>21</sup> By doing so, it hopes to give insight into original and largely inaccessible (Arabic) documents, and to contribute to the increasing body of knowledge on media change and regulation in societies in transition (specifically in the Arab world).

The methodological necessity *and* choice – of separating as much as possible the documenting of a historical period from the commenting on it – will indeed dictate the organisation of the present study.<sup>22</sup> Chapter 1 will outline the major theoretical issues and methodological problems involved in research on communication policy in the Third World in general. Chapter 2 will review the major theories of policy analysis, arguing that Kingdon’s policy streams approach, coupled with elite theory, is best fit to explain policy change in Lebanon. Chapter 3 serves to introduce the reader to the general social, historical, and political context of Lebanon, emphasising the dominant political culture of confessionalism in the country. Chapter 3 is followed by a review of media development (press and broadcasting) in 20<sup>th</sup> century Lebanon (Chapter 4). This review concludes with what is referred to in the literature on policy analysis as the *problem formation* or *problem definition* phase. These two chapters (i.e., 3 and 4), besides their immediate function of familiarising readers with the Lebanese context,<sup>23</sup> play an important role in the present analysis: *new policy analysis*<sup>24</sup> stresses the importance of political culture and its influence on the policymaking process. Indeed, as I will argue, this influence is quite visible in the case of the 1994 Act, though certainly not the only influence on it. Chapters 5 and 6 constitute the major original contribution of this study. They are based almost entirely on first hand access to original official documents (published and non-published), daily monitoring of major Lebanese newspapers and other political publications between 1994 and 1996, various personal interviews with high-ranking political figures involved in the 1994 Act, and the relevant secondary Lebanese sources. These two chapters will seek to document the various important phases of the policy process concerning the 1994 Act. Chapter 5 documents the *policy design* or *policy formulation* phase (from the earliest

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<sup>21</sup> Just a quick overview of the literature on the state of Arab media and Arab media systems can show to what extent Lebanon (and only secondarily Morocco and Kuwait) is truly an exception. Not only was it the first country to introduce commercial television in the Arab world, it continues to enjoy this unique status at the beginning of the 21<sup>st</sup> century, with the majority of Arab countries lagging significantly behind. See Amin (1996), Rugh (1987), and Boyd (1993).

<sup>22</sup> Such methodological choice will be defended in detail in Chapter 2.

<sup>23</sup> Readers already familiar with the Lebanese context may only want to glance over chapters 3 and 4, and possibly skip reading them altogether.

<sup>24</sup> See Chapter 2 for a distinction between “old” and “new” policy analysis.

draft proposals or alternatives to the authoritative choice of the final text of the 1994 Act). Chapter 6 focuses on the *implementation* phase of the Act. As the reader will notice, these two chapters, which are based on original research, will try, as much as possible, to be *descriptive*: i.e., they will emphasise more *what* happened and *how* than *why* it happened. For instance, in Chapter 6, a detailed comparative analysis of the published opinions of the National Audio-visual Council (NAC)<sup>25</sup> concerning the licence applications will be made. By going over the various published justifications offered by the NAC and by looking for inconsistencies in those justifications, a case will be made that the NAC did apply double standards in processing the dozens of broadcast applications. However, no attempt in Chapter 6 will be made to explain the NAC's motives, or why it proceeded the way it did with the study of applications in 1996. At this stage, any explanation of motives would appear more like speculation, in my opinion. Only after having documented the various phases of the Act, and after having provided the historical, political, and economic contexts of its passage and implementation, i.e., only in the last chapters of the study (Chapter 7 and Chapter 8), will I truly venture into an analysis of the 1994 Act. In these chapters, I will make use of the "evolutionary theory"<sup>26</sup> of policy analysis to make (coherent and logical) sense of my independent, original findings in chapters 5 and 6. In other words, I will use the method of triangulation or of verifying a claim (government bias, double standards applied by NAC, etc.) from different perspectives using different approaches throughout the various chapters,<sup>27</sup> before I finally, i.e., toward the very end (chapters 7 and 8), attempt to explain *why* the policy process in the case of the 1994 Act happened the way it did. Only through such a multi-dimensional approach or triangulation, I will argue, will the reader be able to understand the complex policymaking process related to the 1994 Act and the true (often invisible) forces that shaped it.

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<sup>25</sup> The National Audio-visual Council (or the NAC) is the newly installed regulatory body introduced by the 1994 Broadcasting Act to study licence applications and to monitor the operation and content of the broadcast media in Lebanon. See chapters 5 and 6 for details.

<sup>26</sup> This is the term used by Kingdon to refer to his model of policymaking (Kingdon, 1984).

<sup>27</sup> These different research methods include a comparative textual analysis of the 1994 Act, both with the various early proposals and the French Broadcasting Act of 1986; a study of the ownership and interlocking control of some of the applicant stations; and a comparative study of the published results of the National Audio-visual Council.

## CHAPTER ONE

### POLICY ANALYSIS, COMMUNICATION, AND THE THIRD WORLD

#### INTRODUCTION

Considering that the Lebanese Broadcasting Act of 1994 marks the beginning of a new policy for the media in post -Civil War Lebanon, a detailed analysis of the Act is best carried out using theories and methods of analysis able to account for and explain *how and why that policy change happened*, and not just what kind of policy change took place. Moreover, the analysis should be able to go beyond both the wording of the legal text itself and the way it compares to other media acts as a means of assessment: it should also explain *why* those differences or similarities exist in the first place. This necessarily entails an (additional) careful examination of the political, historical, economic, and social contexts of the new legislation. Finally, a suitable analytical framework has to be adopted to best carry out this multiple task. This being stated, finding a suitable theoretical and methodological framework for the present study on the new broadcast policy in Lebanon proved to be much harder than anticipated, even quite frustrating, as we are going to see in chapters 1 and 2. Still, in the end, I will argue, the field of policy analysis, more than any other field of relevance to the present analysis (e.g., communication-based research in the area of policy or of development and the Third World) seemed capable of offering both a methodological and analytical framework for the present study of the 1994 Act.

Before I start a review of the theories of policy analysis (Chapter 2), I would like to delineate, in the present chapter, some of the broader issues and problems encountered in those research areas of concern for the present analysis, namely research related to communication, to analysis of policymaking, and to the Third World (including research on communication in societies in transition). The purpose of such mapping is mostly meant to describe the parameters of the multi-dimensional research on *communication policy in the Third World* and to show the extent to which such research is indeed underdeveloped, scarce, and suffering from major conceptual and methodological problems. The present chapter, therefore, deals with some of these major problems and issues related to this study. To start with, there is the

difficulty of finding a unified definition of the field of policy analysis and the problematic political or partisan dimension of policy analysis which has been increasingly under attack since the rise of the post-positivist critique of science. Other problems concern the ethnocentrism of Western fields of research in general, including in the area of policy analysis and communication research. As I will argue below, for instance, such ethnocentrism is evidenced by the inapplicability of several of the Western tools for academic research in an Arab context. Finally, this chapter will introduce and briefly discuss the validity of claims to “indigenous” values as an initiative meant to challenge ethnocentrism in the field of communication research.

### Defining public policy analysis

To start with, there is no existing, generally accepted single definition of *public policy* in academic literature. However, in its most general sense, public policy refers to the specific action chosen by a government to address a given problem in an area of concern to the political system.<sup>1</sup> Considering the 1994 Broadcasting Act in light of this broad definition, the Act can easily be identified as the written embodiment of a *new* governmental policy or choice of action regarding the problem of unregulated broadcast media in Lebanon, since no such policy existed prior to the Act. As stipulated in the Taef Agreement that ushered in the Second Republic and the end of the Civil War:

All the information media shall be reorganised under the canopy of the law and within the framework of responsible liberties that serve the efforts of reconciliation and the objectives of ending the state of war.<sup>2</sup>

The above-mentioned (general) definition of public policy, moreover, includes key terms such as “problem”, “choice”, “action”, and “public authorities” that encapsulate the major stages of policy making or *the policy process*. This policy process, in the case of Lebanon,

<sup>1</sup> Pal (1992, p 2); Doern and Aucoin (eds) (1971, p. 22).

<sup>2</sup> Taef Agreement, Section A, Paragraph III, Article F. This document ushered in the rise of the Second Republic of Lebanon and paved the way for national reconciliation and the end of the Civil War. It was signed by Lebanese representatives of the various major Lebanese confessional groups, upon meeting in the city of Taef in Saudi Arabia in 1989, and later on integrated, as an amendment, into the Lebanese constitution. For more details, see

started with the Lebanese *public authorities* - hence the qualification of the policy as “public”<sup>3</sup> - identifying as a *problem* the proliferation of dozens of illegal broadcast stations in Lebanon. The proposed *solution* to the problem was to be the “reorganisation” of the media, in the shape of the Broadcasting Act of 1994. Still, according to some scholars, this definition remains incomplete:

This popular concept of policy, however, usually does not distinguish between what governmental policymakers intended, what the output of the policy process actually is, what the outcomes or consequences of the policy output are, nor how outputs and outcomes are perceived by the policymakers themselves, groups opposing them, public opinion, or even analysts.<sup>4</sup>

Not only is there a lack of consensus on what the term “policy” exactly refers to, but an equal lack of definition continues to characterise the field of policy analysis itself. Reviewing the literature on policy analysis, it seems as if it is often easier to describe what policy analysts do or have done than to define what policy analysis actually is about.<sup>5</sup> Some writers even reject altogether what they consider to be a futile or counterproductive attempt to come up with a definition for policy analysis, and suggest instead “ways of thinking about public policy”.<sup>6</sup> For some, better yet, it is an “art” – the art of “solving problems that cannot be expressed until they are solved”.<sup>7</sup> Summarising this lack of a definition – if not confusion - characterising the state of the policy analysis field, Lynn wrote:

The Jurisdictional boundaries are murky and ill-defined; there is neither consensus about nor hegemony over the core intellectual turf; and there are no protections in the form of credentialing or professional regulation. In the current literature, a wide variety of conceptions of the field can be found: Policy analysis is “counsel”, “applied political philosophy”, “research brokerage”, “the production of political judgements”, “rhetoric”, “literary criticism”, “ethics”, “the application of historical judgement”, “what policy analysts do”, and even a “social activity”. The corps of practitioners is highly fractionated among disciplines, substantive interests, and ideologies.<sup>8</sup>

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<sup>3</sup> It should be noted here that the specific reference to policy as “public” is meant to designate the *origin* of the policy and to emphasise that it stems from governments or other “public” authorities (i.e., the legislative or executive branch), regardless of its target (i.e., the public or its impact on it)(Pal, 1992, p. 3).

<sup>4</sup> Doern and Aucoin (eds) (1971, p. 22).

<sup>5</sup> Hawksworth, 1988, p. 34.

<sup>6</sup> Wildawski, 1987, p. 15.

<sup>7</sup> Piet Hein as quoted in Wildawski, 1987, p. 15.

<sup>8</sup> Lynn, 1996, p. 110.

The lack of a single definition (sometimes of any definition at all)<sup>9</sup> may be due, largely, to the fact that public policy analysis is still not a unified field of study. According to Portney, for instance, it “consists of pieces of many other fields of study that, when aggregated, *seem to approach* a field of public policy analysis”.<sup>10</sup> Although political science played an important part in the development of policy studies,<sup>11</sup> one can identify several other policy analysis camps, each with its own unique research interests and methodologies. These include, in addition to the political scientists whose stress is on the policymaking process, researchers trained in economics or operations research, and those who see policy analysis as a branch of applied microeconomics concerned with costs, benefits, maximising benefits minus costs, and so on. Psychology which “stresses the relevance of rewards and punishments in motivating people to do right, and... provides a research paradigm that features pre-tests and post-tests of experimental and control group”, can also be included in the list.<sup>12</sup> Anthropology, geography, and history are also often integrated in order to offer broadening perspectives. This list is far from exhausting the various fields that come under the larger umbrella of “policy analysis”. Interestingly enough, the wide divergence within the academic fields involved in policy analysis is seen as an advantage (even a necessity by some), and a drawback by others. According to Nelson, for instance, although policy analysts from different disciplines can join together in one professional association, they are not able to “understand each other very well”. In his assessment, “they do not speak the same language, much less share a common basic understanding of what the field is about”.<sup>13</sup> Indeed, the very attempt to review all literature that falls under “policy analysis” confirms Nelson’s criticism: one has to have training and expertise in a handful of sometimes unrelated disciplines simply to be able to read (i.e., understand) the literature on policy analysis. By contrast, Putt defends the interdisciplinary character of the field, arguing that “the pluralistic nature of public policy requires a pluralistic research

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<sup>9</sup> See Wildawski, 1987.

<sup>10</sup> Portney, 1986, xiii, emphasis added.

<sup>11</sup> According to John, the field of modern policy studies was created due to the belief that “the discipline of political science left out the most significant aspects of public life” (1998, p. 3). Economists naturally prefer to emphasise the contribution of economics to the field of policy analysis. Heineman, for instance, argues that “there are historical and theoretical reasons for the influence of economics” (1990, p. 45).

<sup>12</sup> Nagel, 1984, p. 2.

<sup>13</sup> Nelson, 1997, p. 176.

approach.”<sup>14</sup> He even goes further, maintaining that the field *has to be interdisciplinary*,

because

None of the policy-relevant disciplines – including philosophy, history, economics, political science, law, sociology, psychology, and the biological and physical sciences – has precisely [the policy research] frame of reference, although each has something positive to contribute.<sup>15</sup>

Not only is it difficult to find a single definition of policy analysis, but it is equally difficult to find agreement on the different categories of analysis, often within one and the same field. It should be noted here, for instance, that the terms “policy research”, “policy analysis”, “policy sciences” and “policy studies” are often used interchangeably in the existing literature, though fundamental differences between these terms do exist according to some policy analysts.<sup>16</sup>

According to Majchrzak, *policy research* is defined as follows. It is:

The process of conducting research on, or analysis of, a fundamental social problem in order to provide policymakers with pragmatic, action-oriented recommendations for alleviating the problem.<sup>17</sup>

In her extended definition, moreover, she asserts that what makes policy research “unique” is its focus on “*action-oriented* recommendations to *fundamental* social problems.”<sup>18</sup> By contrast, she describes *policy analysis* as “the study of the policymaking process... typically performed by political scientists interested in *the process by which policies are adopted* as well as the effects of those policies once adopted”.<sup>19</sup> In her typology of different research processes, *policy research* is given prominence due to its concern both with *action* and *fundamental* problems.<sup>20</sup> Majchrzak further distinguishes between *evaluation research* and *policy research*: though both are concerned with social policies and programmes, the first “attempts to judge the utility of *existing social programs*”, while the second “examines a particular social *problem* and

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<sup>14</sup> Putt and Springer, 1989, p. 21.

<sup>15</sup> Brewer and deLeon as quoted in Putt and Springer (1989, p. 21). Halloran also defends the need for “pluralism in this arena”, a necessity mostly stemming from the complexity of the subject matter and “the embryonic stage of development” of the related research (Halloran, 1996, p. 175).

<sup>16</sup> Majchrzak, 1984, p. 12.

<sup>17</sup> Majchrzak, 1984, p. 12.

<sup>18</sup> Majchrzak, 1984, p. 12, emphasis in original.

<sup>19</sup> Majchrzak, 1984, p.13, emphasis added.

<sup>20</sup> See Majchrzak’s typology of different research processes, 1984, pp. 12 and 13.



seeks out alternative ways to *solve* the problem”.<sup>21</sup> In other words, evaluation research is *descriptive* in that it is meant to explain how a problem has come about and how and why certain attempts were made to solve it, while policy research is action-oriented, and therefore *prescriptive* because it aims to “give advice on what *should* be done”.<sup>22</sup>

Wildawski distinguishes in yet another way between various policy research categories. To start with, he argues that analysis is *both* prescriptive and descriptive.<sup>23</sup> He also makes a distinction between *evaluation* and *analysis*. While evaluation looks for errors in existing programmes and tells “people they have not achieved intended objectives”, it “does not necessarily help them discover what should be done” - a task that *analysis* is more apt to address.<sup>24</sup> This distinction, which stresses the “action-oriented” or “error-correction” nature of policy *analysis* (as opposed to the “error-detection” function of *evaluation*), makes Wildawski’s understanding of policy analysis the exact opposite of Majchrzak’s understanding, as seen earlier.

Majchrzak and Wildawski’s categories – which are not always mutually exclusive but often confusingly overlapping – in no way capture the complexity of the task of categorising subdivisions within the field. Thus, whereas Majchrzak divides the two areas of research along the action/process axis,<sup>25</sup> this distinction is expressed differently elsewhere. Pal, for instance, divides the field along a completely different axis, and comes up with two general categories of analysis (and *not* research): academic vs. applied policy analysis.<sup>26</sup> According to Pal, *academic* policy analysis seeks to explain “the nature of policies” and “their characteristics” – “an orientation common to political science, history, and sociology”. It does so by focusing on the relationship between what he calls “policy determinants” (i.e., the general political, economic, and cultural context, etc.) and “policy content”, and in the process tries to “explain specific instances in terms of general forces, which themselves are identified through general theories”.

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<sup>21</sup> Majchrzak, 1984, p. 14, emphasis added

<sup>22</sup> Wildawski, 1987, p. 14, emphasis added.

<sup>23</sup> It is also *selective*, *retrospective*, *prospective*, *inventive*, often *objective*, and necessarily *subjective*. See Wildawski (1987, p. 14) for a definition of these terms.

<sup>24</sup> Wildawski, 1987, p.7.

<sup>25</sup> Another axis she uses concerns the *technical* (or narrow) vs. *fundamental* social problems (Majchrzak, 1984, p. 13).

<sup>26</sup> Pal, 1992, p. 20.

*Applied* policy analysis, by contrast, he argues, addresses different questions altogether. By focusing on the relation between policy content and policy impact (or the intended and unintended consequences of a given policy on the economy, culture, and political system), *applied policy analysis* addresses questions of *evaluation* for the purpose of *improvement* or effecting *change*. According to Pal's typology, *applied policy analysis* is unavoidably "action-oriented". In other words, what distinguishes the categories of analysis is not whether they are "evaluative" or not, as Wildavski argues, but whether this "evaluation" is done within an *academic* or *applied research* context. It is thus the *use* to which analysis is put that determines more accurately its nature, and not the *content* or method of the research itself (i.e., evaluation of programmes).

Some other definitions of policy analysis do not even attempt to categorise or define the field and instead focus on an objective common to all policy analyses, or "the search for error all along the way".<sup>27</sup> As Dery argues, this approach to the field is more fruitful than trying to find a single definition because, it (i.e., policy analysis) is not a "specialty in the same sense that error is not a specialty".<sup>28</sup> This approach, moreover, does not in any way preclude the need for scientific methodology and "an open spirit of inquiry and a tendency to be systematic or methodical in the gathering and presentation of information".<sup>29</sup>

Perhaps a denominator, even more common among the various definitions of policy analyses (or studies, or research), is the inherently action-oriented nature of the endeavor. Common terms or phrases describing such a goal are: "to arrive at the best (or a good) policy or decision"<sup>30</sup>; "improving the behavior, regulations, practices, or agencies of political organisations";<sup>31</sup> "problem solving" or giving "advice on what should be done";<sup>32</sup> "improve the effectiveness of public decision-making";<sup>33</sup> "multi-disciplinary application of the social

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<sup>27</sup> Landau as quoted in Dery, 1984, p. 112.

<sup>28</sup> Dery, 1984, p. 113.

<sup>29</sup> Meltzer as quoted in Dery, 1984, p. 112.

<sup>30</sup> Nagel, 1984, xiii.

<sup>31</sup> Mood, 1986, p. 1.

<sup>32</sup> Wildavsky, 1987, pp. 2 and 14.

<sup>33</sup> John, 1998, p. 31.

sciences for the betterment of society”,<sup>34</sup> “to influence the future for the better through collective choice processes”,<sup>35</sup> and so on. This action-oriented goal of policy analysis, it seems, remains a matter of degree: leaving terminology aside, some analyses seek more to understand an existing policy than to recommend a new course of action and vice versa. The fact remains, however, that policy analysis *is* about improvement, about “what ought to be done, about making things better, not worse”.<sup>36</sup> This normative, core objective of policy analysis inevitably brings to the fore the issue of values, ethics, and morality of the analyst.

### **Policy analysts: Hired guns or handmaidens of democracy?**

In his *Public Policy Analysis: An Introduction*, while recognising the difficulty of defining the field, Dunn offers a more specific definition of policy analysis. He argues it is an applied social science discipline which uses reason and evidence to clarify, appraise, and advocate solutions for public problems.<sup>37</sup> What is most significant about Dunn’s definition is the *open*, if not rather bold acknowledgement of the *advocacy* dimensions of policy analysis. His definition has to be seen in light of the criticism often levelled at a field of enquiry that thinks of or presents itself as scientific but has been increasingly perceived by the policy community as ideological or partisan, be it in its methodology, purposes, or uses. Policy analysis, in fact, has often been – and continues to be<sup>38</sup> – denounced as being “ideology in disguise”, suppressing ethical and value questions in the name of science,<sup>39</sup> while policy analysts themselves were often seen as “hired guns”, “adding quantitative and analytical justification to political positions that are preordained”.<sup>40</sup>

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<sup>34</sup> Pal, 1992, p. 232.

<sup>35</sup> Nagel, 1994, p. 7.

<sup>36</sup> Wildawski, 1987, p. 13.

<sup>37</sup> Dunn, 1981, pp. 34-35.

<sup>38</sup> According to Laurence Lynn, Tribe’s early 1970s indictment of the field as a “form of ideology masquerading as science still stands as the definitive critique” (1996, p. 111).

<sup>39</sup> Dunn, 1981, p. 29. For more criticism of the “value-laden” field of policy analysis, see Pal (1992, pp. 25, 61, and 65) and Hawksworth (chap. 3).

<sup>40</sup> Lynn, 1996, p. 4.

The reason why policy analysis or policy research has been so vehemently denounced in the academic community is, in my view, manifold. To start with, policy analysis, by virtue of one of its most common definitions as “action-oriented *recommendations* to fundamental social problems”,<sup>41</sup> lends itself easily to subjective political, social, and economic judgements about what course of action the policy community *ought to* follow to solve some perceived problem. Moreover, as the literature on policy analysis itself acknowledges, there can be ample disagreement over what constitutes “a problem”, since the decision whether a situation is “a problem” or not is itself subjective.<sup>42</sup> Not only that, policy recommendations become even more suspicious when the research is commissioned by a client (most often the government and other policy making agencies) who seeks the “services”, “counsel” and “scientific” expertise of policy analysts before taking a certain course of action. Policy analysts, in that case, may be easily used as “instruments of everyday politics”, providing nothing more than “scientific and technical justifications produced...to suppress conflicts and legitimise choices *after* they have been made on political grounds”.<sup>43</sup>

The field of policy analysis has been under particular attack since the legitimacy of the theory behind it (i.e., positivism) was first questioned.<sup>44</sup> Post-positivist critique, developed predominantly by philosophers of science, discredits the “idea of theory-free, immediate experiential access to reality or ‘brute facts’”, and increasingly recognises that “values are intimately and properly involved in social science research and policy inquiry”.<sup>45</sup> Post-positivist theories have especially serious implications for policy analysis, which initially started as a rational project based on a clear dichotomy between facts and values, replicating experiments, examining computations, and so on.<sup>46</sup>

Not only did the critique of positivism question the theories, methodologies, and typologies of the field, but it brought to the surface the fundamental issue of applied policy analysis, ethics, and *political* engagement or the analysts’ connection with centres of power:

A recognition of the value-dependent nature of social science is crucial for understanding the role of reason and ethics in policy analysis. No inquiry into a policy problem is or can be free

<sup>41</sup> This is Majchrzak’s understanding of policy research (1984, p. 12, emphasis added).

<sup>42</sup> The subjectivity of problem definition will also be dealt with in Chapter 6.

<sup>43</sup> See Dunn (1981, p.28) for further criticism of the field.

<sup>44</sup> For a discussion of post-positivist critique of policy analysis, see Fischer (1990), Putt (1989), Dunn (1981), White (1994), and Metcalf (1998).

<sup>45</sup> Hawksrworth, 1988, p. 57.

<sup>46</sup> For a review of the historical development of the field of communication policy research, see McQuail (1994).

from the influence of values, for all forms of inquiry are ultimately based on beliefs about the nature of human beings, societies, government, and knowledge itself. These beliefs are formed prior to experience (a priori) and are based on assumptions about social order and the ends of human life, assumptions that cannot be corroborated with empirical evidence. For this reason, *all forms of policy analysis should be treated as potentially "ideological"*, in the sense that methods of policy analysis may conceal the real values of the analysts. The "attempt" to eradicate biases by trying to keep out the valuations themselves is a hopeless and misdirected venture. There is no other device for excluding biases in social sciences than to face valuations and to introduce them as explicitly stated, specific, and sufficiently concretised value premises". In policy analysis the best way to make values explicit is to include them as part of a *reasoned ethical argument or debate*.<sup>47</sup>

Finally, increasing recognition within academia that value free policy science may be unattainable or even undesirable has generated various strategies to deal with the general issue of values in post-positivist policy studies. The most prominent of these are "proposals for value identification" similar to those suggested by Dunn.<sup>48</sup> Proponents of this new approach to policy science, fully aware that "the desire to eliminate all value bias from policy inquiry results more often in the denial of the valuative dimension of policy prescriptions than in the elimination of tacit bias",<sup>49</sup> require that analysts "come up front with values" and make their values explicit.

This value identification varies, ranging from

sincere introspection and confessional statement, to the recommendation that analysts engage in a far more exacting process, identifying methodological assumptions influencing data collection (reliability of sample, nature of questionnaire, response rates, etc.) and describing assumptions used in the applications of data (choices of data sets, rejection of similar data from alternative sources, organisation and categorisation of data, choices of statistical techniques, etc.).<sup>50</sup>

### **Limitations and ethnocentrism of research**

Not only is there a general, pervasive lack of academic and intellectual consensus over the definition of the field of policy analysis itself, but some scholars have, more importantly, raised the possibility that its existing theories and methods may be unable to explain and account for *change* in policymaking.<sup>51</sup> Second, it seems that the very idea of research in the area covered

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<sup>47</sup> Dunn, 1981, p. 91.

<sup>48</sup> Hawksworth, 1988, p. 58.

<sup>49</sup> Hawksworth, 1988, p. 58.

<sup>50</sup> Hawksworth, 1988, p. 59.

<sup>51</sup> John, 1998. For an elaboration on this issue, see following section on theories of policy analysis.

by this study, i.e., communication *policy*, is itself a “minefield” and a “no-go area”.<sup>52</sup> As McQuail explains in his review of the field of communication policy research, research in that area has been hampered by several factors. To start with, claims to professional autonomy by communicators have led to a rejection of both research and policy. Moreover, the precepts of liberal communication philosophy themselves have served to delegitimize policy and to devalue research in the interests of policy and planning. In sum, McQuail writes, communication “policy is often perceived as a control in a domain that should not be controlled” and research in communication policy has been undermined as a result, thus suffering from a low status within the community of scholars.<sup>53</sup> Indeed, a review of both communication research literature, in particular, and of policy research literature, in general, seems to support McQuail’s claim. On the one hand, communication *policy* research, as opposed to other areas of communication research (i.e., uses, effects, content analysis, etc.), is relatively parsimonious and lacks a consistent, identifiable methodological and theoretical framework. On the other hand, any reference to actual communication policy analyses, conducted within the more general field of policy research, is very rare. By contrast, in-depth, systematic policy analyses – however arguably inadequate these may be – abound in practically all other areas of social, economic and political life (i.e., environment, housing, health care, labour, and so on).

Most importantly, the field of policy sciences and research remains largely “Americentric”. At best, it is also “Eurocentric”,<sup>54</sup> drawing examples and theories from the policy-making environment of economically developed liberal democracies in general (e.g., US, Britain, France, and to a lesser extent Sweden, Canada, and the European Union).<sup>55</sup> Echoing other policy analysts’ criticism of the field of policy sciences and the Third World or other non-American, non-European parts of the world, Dror concludes that current research in the field is largely unable to meet the challenges of the 21<sup>st</sup> century. He discusses the shortcomings of existing policy sciences, and calls for a “paradigmatic jump... toward advanced policy sciences”, and for the need to “globalise” the field if it were to effectively study policy making in other parts of the world. His criticism is worthy of being quoted at length:

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<sup>52</sup> McQuail, 1994, p. 39.

<sup>53</sup> Mc Quail, 1994, p. 39.

<sup>54</sup> Research with either an American or a West European bias will be referred to more simply as “ethnocentric research” in this study.

<sup>55</sup> Dror (1994, p. 4); John (1998, pp. 13- 20); and Sparks (2002, p. 4).

... Despite some efforts to the contrary... policy sciences are still in the main United States based in culture, in implicit as well as explicit values, in assumptions and in orthodoxies. Thus, underrating of situations that require revolutionary changes, assumptions that liberal democracy fit all conditions, trust in the basic goodness of human nature, mainly materialistic notions of human needs, culture-bound conceptions of “reasonableness”, antirisk attitudes, overrating of market mechanism and *underrating of the critical importance of the state*, ignorance of societal architecture tasks and the need for guiding elites, and an underlying assumption of relative resources abundance – all illustrate some underpinnings coloring most of policy studies as a result of US influence. To these should be added *ignorance of realities prevailing in most of the world and incapacity to comprehend value systems and policy orthodoxies radically different from those prevailing now in the Western world*. A priori rejection of policy options that may be essential in some Third World countries, even though contradicting Western values, adds to the blind spots characterising most of policy studies as a result of narrow cultural bases.<sup>56</sup>

This deficiency becomes more glaring in the case of communication policy research *about the Third World*. Addressing the problems of policy research about the Third World in the area of communication in particular, Halloran, to start with, reiterates the inadequacy and scientific failings of this type of research “in any situation, including the situation in the USA”. This “felony”, he adds, is compounded when existing models are exported to the Third World. The problem, he argues, is not “solely a Third World problem, although it certainly was this – it was essentially a social science problem”.<sup>57</sup> He even speaks of “research imperialism [that] has been added to the other imperialisms with which we have become acquainted”, and explains how

The situation... becomes even more problematic when we add geographical and stage-of-development components to the differences already mentioned. One has only to have experience of an international comparative research exercise to realise that *cultural, regional, and national differences profoundly influence the research effort at all stages and levels*. In the circumstances it is inevitable that we have disagreements as to aims, purposes, needs, theories, conceptualisation, design, methods, the nature of evidence and validity.<sup>58</sup>

Eapen, based on his own experience with communication research in several developing countries, notes how, despite the “many vital discrepancies [which] existed among cultures, social structures, and media systems” of these countries, “both media policies and research strategies were frequently imported as though such differences did not exist”.<sup>59</sup> In addition, he also decries the “ignorance” of the history of developing countries and of their wider social context in the existing approaches.

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<sup>56</sup> Dror, 1994, p. 4, emphasis added.

<sup>57</sup> Halloran, 1996, p. 178.

<sup>58</sup> Halloran, 1996, p. 176, emphasis added.

<sup>59</sup> Eapen, 1994, p. 280.

Reviewing the state of international communication research, Halloran concludes that, “in most cases the appropriate research had not been carried out” either “because the support for such research had not been forthcoming”, or when such support existed, appropriate research designs were lacking. He also notes how even when research was actually carried out, those with “vested interests and something to lose” were shelving the results to hide “new factual information [that] could often be a source of embarrassment”.<sup>60</sup>

Halloran identifies another major shortcoming of communication policy research in the Third World – one with equally serious political consequences. He duly notes how such research has, in addition to its epistemological deficiencies (in theories, methods, models, and concepts), also “tended to legitimate and reinforce the existing system and the established order.”<sup>61</sup> Moreover, such research had “far-reaching policy implications”, and “in the Third World... tended to strengthen economic and cultural dependence rather than promote independence”.<sup>62</sup>

The increasing recognition and critique within academia of the ethnocentrism of available communication and policy analysis theories, and of the inapplicability of such theories in different socio-cultural contexts, has important ramifications for the research at hand. These need to be addressed before attempting to review theories and methods of policy analysis.

### **“Indigenous” values**

In his article on research and development, Eapen seriously questions the “right” by which “external elites” tell populations in developing countries about what they should do to improve the quality of their life.<sup>63</sup> The (quite justified) call to question the existing research paradigms, especially concerning issues of development (economic, political, and so on) often suggested the inclusion of “native voices” and Third World nationals in carrying out their own policy research, “rather than having them externally imposed, as was the case so often in the past”.<sup>64</sup>

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<sup>60</sup> Halloran, 1996, pp. 166-167.

<sup>61</sup> Eventually, Halloran argues, it was the much needed and awaited emergence of more critical, challenging research in the area of communication policy and the Third World that eventually led to attacks on UNESCO’s research policy “from those who, until that time, had shown little interest in research other than that which reinforced their position” (Halloran, 1996, p. 171).

<sup>62</sup> Halloran, 1996, p. 171.

<sup>63</sup> Eapen, 1994, p. 281.

<sup>64</sup> Halloran, 1996, p. 178.



This “inclusion”, however, did not necessarily lead to better research standards (whether in theory or in methods). As Halloran argues

“...many of these nationals have been trained as conventional researchers, mostly in the West, and seem unable – perhaps sometimes unwilling – to free themselves from the ideological shackles of their educational and professional mentors. In this way they may even exacerbate the situation and perpetuate the error by giving the ‘alien import’ a national seal of approval.”<sup>65</sup>

The situation, I would argue further, can sometimes be even worse than just having indigenous cultures, as a result of the call for the “indigenisation,”<sup>66</sup> express themselves by simply using “imported” theories and methods of research and giving them their “seal of approval”. Some “indigenous” researchers, “protected” by the moral and scientific justification behind this “indigenisation” of research, unfortunately end up negating the basic democratic principles that underlie most of Western research, especially in the area of communication (i.e., free expression, gender equality, and so on). These “Western values” are then substituted with “indigenous values” that, more often than not, legitimise undemocratic, even repressive measures and policies in Third World countries. In his review of the results of a recent conference on societies in transition in Central and Eastern Europe and Asia, Sparks duly acknowledged the critique of “Eurocentric theories of development”. However, he seemed to complain about being

... Obligated to confront the issue of whether, for example, the strongly authoritarian control exercised over the media in contemporary mainland China is an expression of a dictatorial communist regime, or whether its real roots lie in a much older Confucian tradition that pervades Chinese culture.<sup>67</sup>

Later on in his article, Sparks clarified his position and that of other “Westerners” at the conference. He openly disagreed with Huntington’s viewpoint that “individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state” were fundamentally Western values that “often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures”.<sup>68</sup> Quoting Asian scholars critical of a monolithic, uncontested concept of “Asian values” (e.g.,

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<sup>65</sup> Halloran, 1996, pp. 178, 179.

<sup>66</sup> Halloran, 1996, p. 178.

<sup>67</sup> Sparks, 2002, p. 4

<sup>68</sup> Huntington as quoted in Sparks, 2002, p. 4

Confucianism in this case), Sparks concluded by doubting the usefulness and good intentions of claims to Asian values in explaining media systems in some Asian countries. He wrote that

...in Asia as in the West, categories like ‘democracy’ and ‘media freedom’ are bitterly *contested*, and that appeals to continent-wide traditions and values are in substance little more than *rhetorical attempts to win consent for arguments that might otherwise be rejected*.<sup>69</sup>

Without seeking to negate the differences in culture and value systems existing between various parts of the world, researchers, especially Western ones, should not let themselves be easily intimidated by unfounded attempts at cultural relativism and accusations of ethnocentrism by some indigenous researchers or policymakers,<sup>70</sup> as I will argue below. Their (i.e., the indigenous researchers’) true objective in accusing Western research of ethnocentrism may not be in actuality to come up with superior approaches to science. It is even quite possible that Western research theories and values are rejected not so much because of their ethnocentrism and non-adaptability to other contexts as for their ability to denounce and uncover human rights abuses in other (undemocratic) parts of the world. One should keep in mind here that the issue of free speech (itself at the heart of any communication policy), is a highly contested notion especially in Third World countries. Moreover, as Nagel argues, the issue of free speech is primordial in policy studies in general, “because all other policy problems would be poorly handled if there were no free speech to communicate the existence and possible remedies for the other problems”.<sup>71</sup> Unfortunately, it is freedom of expression that is mostly stifled in Asian societies (including Arab and Muslim ones), with religion (Confucianism, Islam, or others) used most often as a not-to-be-questioned, divinely ordained justification for internal repression and undemocratic policies.<sup>72</sup>

This being said, I strongly believe that the solution is not necessarily to introduce new theories and “indigenous” values as part of an anti-colonialist or anti-imperialist reaction, or to prevent constructive criticism of these “values” by relying on post-colonialist guilt in Western

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<sup>69</sup> Sparks, 2002, p. 4, emphasis added.

<sup>70</sup> One such example from China concerns the ruling party’s attack on several institutions which pushed for more democracy. Such ideals as “democracy” were dismissed as “imported,” and “polluting” the “spirituality” of the Chinese (Hong, 2002, p. 18).

<sup>71</sup> Nagel, 1994, p. 883.

<sup>72</sup> Lee responds to the use of “Asian values”, especially the use of Confucianism as an excuse for restrictive measures on Chinese media by pointing out the complexity and irreducibility of the religion, which “cannot be fruitfully spoken of as an unvarying historical and cultural totality” (as quoted in Sparks, 2002, p. 4). The same can be said about Islam, despite continuing hegemonic attempts by the main religious leadership to speak of the existence of one unified religion (i.e., their dominant version of Islam) in order to stifle *internal* dissent (Dabbous-Sensenig, 2000).

debate.<sup>73</sup> Indeed, claims to cultural relativism should be rejected when their true purpose is to muffle truth and to prevent truly scientific research and rational debate from furthering our understanding of the world we live in.<sup>74</sup> Halloran has already expressed the need to take seriously cries for the indigenisation of social scientific and mass communication research without falling into “parochialism or complete relativism”, but suggests treating it (i.e., indigenisation) “with reserve” for reasons other than those I just mentioned (i.e., to stifle debate and criticism of undemocratic values).<sup>75</sup> Quoting Habermas, he concurs that

The solution must lie in a recourse to reason and joint reflexion, with a view to developing new norms better adapted to our times, and in a move towards a universality, which would take into account the diversity of cultural identities. The problems of universality and relativity of values, of individual liberty and life in community, of autonomy and solidarity cannot be avoided, and must be resolved.<sup>76</sup>

The question remains, naturally, about *how* to achieve this goal.

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<sup>73</sup> Unfortunately, “native theories and methodologies”, as opposed to “native values”, are still to be proposed.

<sup>74</sup> Obviously, there is no ready-made recipe for sorting out the intentions of researchers or policymakers when they attack the ethnocentrism of research, especially in the area of freedom of expression and gender equality. One good solution, however, would be to allow the voicing of different, competing “indigenous” perspectives on the same issues *in the West* or in Western forums. It should be remembered here that “dissenting” scholars in Third World countries are at physical risk and often persecuted because of their beliefs. Their rarity in Third World forums should not be understood as reflecting their irrelevance to issues debated. Their views, which in no way guarantee truth, should be sought out to create a counterpoint to hegemonic voices in the Third World, and foster “guilt free”, constructive debate.

<sup>75</sup> Halloran, 1996, p. 179.

<sup>76</sup> Habermas as quoted in Comor, 1996, p. 179.

### Research and democracy: “Speaking Truth to Power”

Addressing the dilemma of the “problem-solving role”<sup>77</sup> of social science, Halloran wrote the following:

That validation and disciplined, systematic study should be given priority over assertion does not imply indifference to values and social concerns, nor should it prevent us from advocating and working towards preferred futures and having our own specific aims and objectives. We do need to recognise, however, that others may have different preferences and objectives. In fact, it is the commitment, the social concern and the wish to use results to produce change that gives research not only its dynamic quality, but also its justification.

Though the present study is very keen on adopting a rigorous methodology of research in order to offer, as much as possible, results that can be *replicated* by other researchers, and that can have a scientific, historical value in and of themselves, it does not claim to be value-free nor does it want to be. To start with, there is the awareness of the interdependency of media and social change on the one hand, and policy analysis and social improvement on the other. This interdependency has occupied an important space in these respective fields of research,<sup>78</sup> and more so since the collapse of the Soviet Union and the promise of democratisation extending to the rest of Europe. While this interdependency does not necessarily mean change for the better or democratisation in societies in transition,<sup>79</sup> the recognition of the implications of *new* policies and recommendations or shifting media roles on these societies (Lebanon in this case) is crucial to the present study.

Second, heeding the advice of post-positivist critique, i.e., that scientists should openly state values imbedded in their research, I would like to stress that the present research is my individual contribution to the task of rebuilding a more democratic Lebanon. Indeed, the whole enterprise is premised on, even motivated by, my commitment to the ideals of democracy and what it offers in terms of “socio-political pluralism, an equitable distribution of power and the existence of checks and balances”.<sup>80</sup> Democratisation as a political struggle “among and within

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<sup>77</sup> Halloran asks, for instance, if it is possible, “when we make our research recommendations, plan our strategies of intervention...[to] avoid the clash between policy interests on the one hand and the requirements of social scientific enquiry on the other? (Halloran, 1996, pp. 174-175).

<sup>78</sup> Man Chan (2002), Halloran (1996), and Hawksworth (1988).

<sup>79</sup> Indeed, as Man Chan argues, the media can “play an instrumental role in effecting ...de-democratisation” as well (2002, 39).

<sup>80</sup> Man Chan, 2002, p. 43.

the ruling elites and various socio-political forces” is, I believe, vital for a country that cannot survive (not peacefully anyway) without recognition and accommodation of the rights and privileges of all its constituent political, religious, and ethnic groups.<sup>81</sup> The media, especially the broadcast media, constitute a major site in which these struggles take place and are expressed<sup>82</sup> (both on and behind the screens). To describe the present analysis, using the jargon of policy analysts, this research can be characterised as purely academic, retrospective, mostly descriptive, initially more evaluative than action-oriented, and definitely not client-driven.<sup>83</sup>

This probably means that the present study may not have an *impact* on the world of policymaking or the policy process, at least not an immediate one in the way client-oriented, applied research has. However, this very condition equips it with advantages that most client-driven research lacks: it is more critical, is more (if not entirely) independent from centres of power, and is *open to scrutiny and debate*.<sup>84</sup> While these same qualities might make it automatically less attractive to policymakers and centres of power in Lebanon (and hence its lower impact), hopefully by the same token it will attract and be of use to other “target groups”. Specifically, I am thinking of Lebanese political activists concerned about the future of their country and researchers interested in furthering our understanding of the relation between media, law, society, and change. Wildawski’s famous title phrase –“speaking truth to power”- which summarises beautifully a major objective of policy analysis, is especially meaningful here:

Speaking truth to power remains the ideal of analysts who hope they have the truth, but realise they have not (and in a democracy, *should not have*) power. No one can carry out

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<sup>81</sup> See Chapter 3.

<sup>82</sup> Man Chan, 2002, p. 39. Man Chan also duly notes how democratisation and the media have a chicken and egg relationship. He asks, for instance, whether change in the media system leads to change in the political system or whether political change is a precondition for change in the media system. Though the present research cannot delve into this question, it is premised on the idea that the relationship between media and democracy exists nonetheless.

<sup>83</sup> Pal (1992, Chap 10), Hawksworth (1988, p. 13), and Dunn (1981).

<sup>84</sup> Halloran makes a distinction between two types of policy research: he identifies “policy research” and “policy-oriented research”. The former serves the policymakers on their own terms; the latter addresses the same issue but can do so “externally and independently” (1996, p. 174). Moreover, Pal argues that academic policy research, by its very nature as “analyst-driven” instead of client-driven research, “places a premium on open publication and sharing the results; and it encourages critical debate and theory testing” (1992, p. 223). This has to be contrasted with profit-based research which, more often than not, remains the private property of the agency or organisation commissioning the research. For a detailed discussion of ownership rules for contract research, see Metcalf (1998). Pal (1992), in Chap. 10, also provides a detailed account of the difference in the critical nature of academic and client-oriented research.

analysis without becoming aware that moral considerations are integral to the enterprise. After all analysis is about what ought to be done, about making things better, not worse.<sup>85</sup>

### Research on societies in transition

Since the collapse of the Soviet Union, researchers - excited by the wave of democratisation that promised to sweep Central and Eastern Europe - have shown growing interest in trying to explain and account for dramatic policy changes in these post-communist countries. Policy changes in post-apartheid South Africa and in South Korea (since 1987)<sup>86</sup> added to research interest in what came to be known as “societies in transition”. These societies were considered to be “in transition” because they were emerging either from communist dictatorships (i.e., the post-communist countries of Central and Eastern Europe), or capitalist ones (i.e., South Africa, South Korea, Indonesia, etc.).

Scholarship on these societies, unfortunately, has not been helpful in providing an adequate methodological or theoretical framework for the present analysis on media policy change in Lebanon. Lebanon does not easily fit the label “society in transition” in the sense that it neither emerged from a communist dictatorship nor from a capitalist one. Indeed, one can argue that, despite the amendments to the Lebanese constitution introduced by the Taef Agreement, and except for the fact that the government attempted to “reorganise” the media after the end of the civil war, the Lebanese political system remains practically the same.<sup>87</sup> Despite its specificity, however, Lebanon does share with the above-mentioned societies in transition the common characteristic of having a *media system in transformation*. Radical change, indeed, was marked by the introduction of *legal* private broadcasting for the first time in the country and in the Arab world. It is an understanding of this change in the media system specifically and what caused it to happen which constitutes a major objective of the present analysis. In this respect, the literature on policy analysis, more than any other field, was able to provide useful tools and concepts to analyse the 1994 Act.

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<sup>85</sup> Wildawski, 1987, p. 12, emphasis added.

<sup>86</sup> See Kyu Ho Youm, 1996.

<sup>87</sup> See Chapter 3 on the nature of the Lebanese state.

### WHAT THIS RESEARCH IS (AND IS NOT) ABOUT

A literature review in the classical sense of the word will not be undertaken for the following reasons: first, the multidisciplinary nature of the general field of policy analysis makes the very idea of reviewing all the literature daunting, if not, I may say, quite impossible.<sup>88</sup> Any scholar who even thinks of embarking on such an enterprise would have to be a 21<sup>st</sup> century Renaissance person in the fullest sense of the world: she or he has to be versed in economics, mathematics, political science, sociology, psychology, legal and ethical philosophy, and more. Second, some sub-disciplines of the general policy analysis field are simply not applicable in the case of the Lebanese Act of 1994. It would be absurd, for instance, to use cost-benefit analysis to explain the 1994 Act and how and why it came about. Cost-benefit analysis invariably uses money as a unit of comparison, which is not the case here. More importantly, it “tries to establish an equilibrium rather than introduce change”, and is thus incapable of explaining *change* which is precisely one of the main tasks of this study.<sup>89</sup> This does not mean, however, that I do not consider it necessary to review in the following chapter the major English language literature on policy analysis, with an eye on their *common objective*. Without getting into the muddle of terminology,<sup>90</sup> all policy analyses, whether economic, political, sociological, mathematical, or other ultimately seek to *analyse policy*.

Finally, a review of the studies on societies in transition was mostly helpful in pointing out to the inadequacy of ethnocentric and of other existing research paradigms<sup>91</sup> to account for policy change in Third World countries. Unfortunately, these studies could not (yet) offer an alternative framework useful for research on international communication policy.<sup>92</sup> Therefore,

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<sup>88</sup> This difficulty has been faced by scholars who attempted, and according to others, failed, to offer a review of the various camps working under “policy analysis”. A major criticism in such cases is the realisation that one and the same author can offer a good review in one field of policy analysis (e.g., political science) and a weak or incomplete one in another (e.g., economics and operation research). For more details, see Nelson, 1997, p. 177.

<sup>89</sup> For an explanation and critique of cost-benefit analysis, see Pal (1992, pp. 51-57); and White (1994, pp. 859, 864, and 865).

<sup>90</sup> For a detailed discussion of the different categories of policy analyses, see Dunn (1981), Pal (1992, p. 20), Majchrzak (1984, pp. 12-14), and Wildawski (1987, p. 14). Writings about the different categories can be confusing either because they use different terminology to refer to the same type, or same terminology for different types, or simply because, depending on the writer, the categories are not mutually exclusive.

<sup>91</sup> See Downing (2002 and 1996). Other societies in transition that also became the focus of research in communication, media policy, and change were South Korea, Taiwan, the Philippines, Thailand, Indonesia, and even China. Hong (2002), Yoon (2002), and Kyu Ho Youm (1996).

<sup>92</sup> See Downing (2002 and 1996).

it seems futile to review them and to discuss their relevance for the present study on broadcast legislation in Lebanon. As a consequence, and in the absence of methodologically systematic, theory-based research on communication policy in Third World countries, in general,<sup>93</sup> and on media in the Arab World, in particular, the present study inevitably suffers from a lack of an adequate, “tested” theoretical and methodological foundation. More importantly, it suffers from an absence of secondary sources on media policy in Lebanon.

Because of these major shortcomings, it is important to stress at the outset that it is beyond the scope of the present research to review and critique the major theories and methodologies of both policy and communication research in order to develop a testable hypothesis for future research in those intersecting fields. This is not to suggest in any way that there is no urgent need for such theorising,<sup>94</sup> but it would be asking too much from research that practically had to start from scratch. To my knowledge, no detailed historical (descriptive or analytical) account of the various phases of the 1994 Act exists. The very few available writings about the 1994 Act can hardly be seen as substantive secondary sources which can be built upon in the present analysis: they remain basically parochial, anecdotal, lacking detail, weakly argued, and devoid of *any* theoretical and methodological framework.<sup>95</sup> They merely reiterate, albeit in an academic format, what, to a lot of Lebanese lay people, is by now general wisdom: i.e., that the 1994 Act, especially the way in which it was implemented, served the interests of the politico-economic elites. This lacunae in the secondary sources automatically makes the need for theorising secondary to the task of thoroughly documenting the post-Civil War period in Lebanon, from the time when the 1994 Act was first introduced in 1991 to when it was implemented in 1996.

### **Problems of primary research in Lebanon**

In order to explain (but not justify) some of the reasons accounting for the paucity of primary research in the area of media and politics, I believe it is necessary to explore various difficulties that researchers face in Lebanon, especially when trying to locate and access official documents, statistics, and archival material. In *Policy Research*, Putt recognises the innumerable (new) advantages presented to policy analysts by the “Information Age... [with]

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<sup>93</sup> Downing argues how existing theories of the media have failed to explain media systems in the Soviet bloc, and to account for change in those societies (1996).

<sup>94</sup> See also Sparks, 2002, p. 4.

<sup>95</sup> See, for instance, Al-Abdallah Sinno (2001) and Rammal (2000).



one result of the information explosion [being] that a vast quantity of materials produced and consumed by organisations and individuals exists for research purposes".<sup>96</sup> In the area of communication, researchers interested in investigating the size and power of major media corporations are advised, among other things, to use reports on market share which are publicised by the press or existing regulatory agencies. They can also write the companies asking them for their annual reports and accounts, which public companies have, *by law*, recently been required to make available to the public in some countries.<sup>97</sup> Though such researchers know (or are made aware) of the difficulty, if not impossibility, of gaining "access to the corridors of corporate power", several alternative research strategies are easily available to them, and can actually be more relevant in assessing corporate power and control.<sup>98</sup>

This enthusiasm for the increasing possibilities for research in general is indeed additional evidence of the ethnocentrism of media research, and unfortunately cannot be shared universally by analysts from developing countries. To start with, far from having reached the Information Age, mostly due to economic reasons, many Third World countries have been left out of the Information Age altogether.<sup>99</sup> Indeed, not only does the Arab world lag far behind in terms of internet access, for instance, but this access is often monitored and limited by the authorities, with some "sensitive" sites simply blocked from the public, even inside American accredited universities.<sup>100</sup> Moreover, whereas Western researches have access to a wide array of public documents and official statistics to use in their research, the same cannot be said about media researchers in Lebanon. A simple example concerns the non-availability of statistics in the country. As will be explained later on in chapter 3, population statistics are a highly sensitive matter in a country where "demographic considerations [are] intimately bound

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<sup>96</sup> Putt, 1989, p. 224.

<sup>97</sup> Deacon, D., M. Pickering, P. Golding, and G. Murdock (1999). *Researching Communications: A practical Guide to Methods in Media and Cultural Analysis*. London: Arnold, p. 34 and 35.

<sup>98</sup> Deacon et al, p. 35-38.

<sup>99</sup> According to one of the supervisors of the most recent UNDP sponsored report on the Arab world (2002), the per capita income growth is the second lowest in the world, and, "on essential political and civil freedoms, the Arab world ranks dead last. Even sub-Saharan Africa is better wired to the world." Moreover, the report confirms that "in addition to a lack of freedom of expression, Arabs suffer most from a knowledge gap and gender disparities". Hunaidi quoted in *Daily Star*, 10 December 2002.

<sup>100</sup> American universities in Lebanon deny internet access to pornographic sites and politically-sensitive material (e.g. Israeli sites). As a teacher of communication studies, such restrictions affect my ability to teach comparative analysis of newspapers content, for instance, because the Jerusalem Post is inaccessible through the university's terminals. By contrast, it is often possible to access Israeli sites with private internet connections at home.

up with the fundamental issue of distributing and maintaining political power”.<sup>101</sup> This absence of statistics, however, is not limited to the demographic make up of the country. For a variety of reasons, official or reliable statistics in other areas are equally missing (e.g. the number of Syrian guest workers in Lebanon), including statistics on the market share of each of the broadcasting station.

The difficulty of conducting primary research in Lebanon, especially in the area of communication, has already been mentioned by other Lebanese academics. This difficulty was mostly manifested - in the area of media research in particular - in the refusal of journalists and broadcasters to discuss, for fear of harassment, the state of broadcasting in post-war Lebanon, at least until “broadcasting regulation issues have faded in importance”.<sup>102</sup>

Indeed, many Arab countries (including Lebanon) are, at best, fledgling democracies where the related concepts of freedom of expression and access to information remain anathema. Speaking of my own experience with media research in Lebanon, I can say the following: in the absence of a freedom of information act, of national libraries, national archives, administrative transparency, or public accountability, access to original documents and records is almost impossible under *normal* circumstances. Where national libraries and archives exist in neighbouring Arab countries (e.g. Syria), access to them may be conditional on approval, on a case by case basis, by the related authorities. A trip to the biggest national library in Damascus (the Assad Library), in the Fall of 1998, proved to be informative in that respect (though quite useless for the present research). There, I learnt, after making a long list of all the media related books that I wanted to use for the present research, that the books were classified (or “prohibited”), and that I needed special permission from the Syrian library officials to be able to consult them. For an authoritative, anti-democratic regime like the Syrian one, I presume, any book on media, democracy, or freedom of expression must be kept out of public/academic reach for “security reasons”.

Even when the documents in question are not classified, they can be arbitrarily treated as such by administrators. This does not mean, however, that the general public (including academics) has no access to official documents and files whatsoever. More often than not, it simply means that access to what is essentially non-classified information depends on whether the respective government administrator responsible - because of bribery, special connections,

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<sup>101</sup> Samir Khalaf (1987). *Lebanon's Predicament*. New York: Columbia University Press, p. 185.

<sup>102</sup> Marwan Kraidy (1998). ‘Broadcasting Regulation and Civil Society in Postwar Lebanon’, in *Journal of Broadcasting & Electronic Media*, 42 (3), 1998, p. 388.

or influence peddling (“wasta” in Arabic)<sup>103</sup> – allows it. My own personal experience with government bureaucracy and “discretionary” transparency was one such example about the importance of having wasta or being “well connected” in Lebanon. Indeed, what eventually helped me have full access to the license applications kept by the National audio-visual Council (documents which, according to law, are not available *in their entirety* to researchers in the Western world) was the fact that I resorted to influence peddling with a top-ranking government official who was also a personal acquaintance. In other words, in developing countries, where influence-peddling is a common and pervasive practice, a person with the right “connections” can have access to sensitive material that is not available to the public even in the most transparent democracies in the Western world.<sup>104</sup> I was, in that respect, “lucky” for being able to access highly sensitive original documents, i.e., complete broadcast licence applications, including *personal, hand-written comments* by members of the National Audio-visual Council or NAC. This access, unfortunately, was conditional, dependent on the “whims” of the NAC official who was supervising and to a large extent, allowing it. Anyone familiar with the practice of influence peddling (or “wasta” in Lebanon) knows that favours, sooner or later, have to be returned. In my case, I found myself in a situation where the pay back was to be in kind, mostly in the form of expected “romantic” favours. In other words, every extra day spent consulting these precious documents was accompanied by additional pressure from the “supervisor” to pay him back, and the more time I spent consulting the documents the more the pressure and the expected extent of the pay back increased. For these reasons, I could not spend as much time as I needed (the way researches in Western archival libraries can) to consult these mostly inaccessible documents that were crucial for my research: access to them was neither free, nor a right I held as a Lebanese citizen and researcher. Consequently, I had (against my will) to narrow down my search as much as possible, consulting, in the end, and over a period of just one week, only those applications that I thought would help me best understand the NAC’s licensing recommendations. These were the files of the following applicant television stations: LBCI, MTV, FTV, NBN, NTV, Al-Manar, and Tele Lumiere. I chose these stations

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<sup>103</sup> As sociologist Samir Khalaf documents, the concept of “wasta” or clientelism is still rampant in Lebanon and is due to the “survival of primordial loyalties, kinship, communal, and sectarian commitments” at the expense of the rule of law (Khalaf, 1987, p. 142). In such a system of political brokerage, “clients, who normally lack the power, wealth, and connections to obtain favoured treatment would be more than willing to pledge their allegiance *in return* for the benefits and private goals the patron can secure on their behalf” (p. 143, emphasis added).

<sup>104</sup> Influence peddling is actually part of a more general phenomenon (i.e. clientelism) pervasive in various parts of the world. In post-Soviet Russia, for instance, it is referred to as “blat”, and is an informal mechanism preferred to the rule of law (e.g. recourse to courts) because it is a “tried-and-true method of conducting business” (Brown,

because the first four were the only television stations licensed in the first round of licensing (i.e., in September 1996), while NTV had to apply several times and to go to court to finally get the licence three years later. The case of the religious broadcast stations Al-Manar (Shi'ite Muslim) and Tele Lumiere (Maronite Christian) is particularly interesting. Although the 1994 Broadcasting Act is silent on the issue of religious broadcasting, the authorities interpreted the law, with the support of the Guidebook for Operating Conditions, as prohibiting exclusively religious broadcasting. Nevertheless, the two aforementioned, purely religious stations were allowed to continue their operation (for reasons that will be explained later on).

In sum, due to the research limitations outlined in this chapter, this study will primarily seek to *document* the five-year period that elapsed between the introduction of the Act and its implementation. Only secondarily, and *with reservation*, will it try to *evaluate* media policy change in post-Civil War Lebanon. For methodological reasons, this evaluation phase will be saved for the last chapters (i.e., chapters 7 and 8), when those methods and theories of policy analysis reviewed in Chapter 2 and deemed most adequate will be called on to make sense of the primary research and historical documentation. In other words, the main contribution of this study will hopefully lie first and foremost in its meticulous collection and organising of primary sources and information and then in suggesting (separately from the primary research) ways of interpreting this data. Hopefully, this will provide a solid point of departure for other researchers who can go on to develop and test theories of change in international media policy, especially in Arab countries.

## CHAPTER TWO

### POLICY ANALYSIS: THEORY AND METHODOLOGY

#### The policy making process: major analytical tools

In this chapter, I will introduce the major parts of the policy making process. These parts also constitute the analytical sections and/or chapters dealt with in the present analysis. There are several elements, steps or processes<sup>1</sup> of policy making which are usually the object of analysis. These are: problem definition, policy formulation, policy adoption, policy implementation, and policy evaluation.<sup>2</sup> Together, these stages represent the policy making process.

The first stage in the policy making process is that of *problem definition*, when public authorities usually perceive or identify some “problem” or “problems” that require a solution. These *problems* then constitute the “why” of or rationale for policy making and determine largely the type of solutions or goals that policymakers seek. In the case of the 1994 Act, for instance, the Document of National Reconciliation that sought to put an end to the Civil War<sup>3</sup> identified the disorganised media landscape as a major source of discord in the country. The solution was to introduce legislation that would end this state of disorganisation, and “serve the efforts of reconciliation and the objectives of ending the state of war”.<sup>4</sup> The text of the 1994 Act thus provides the “how” of solving the problem of disorganised media: it is the policy *instrument* or the strategies or means through which the *goal* of ending the state of war was to be achieved.

It should be noted here that, unlike positivist policy analyses,<sup>5</sup> “new”, post-positivist policy analyses consider the process of problem definition as subjective, contingent, and inherently political. I will return to the “problem” in the problem definition process much later on in the study, to establish to what extent problem definition in the case of 1994 was political (at least

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<sup>1</sup> Each stage itself constitutes a smaller process. Thus we can speak of the process of policy formulation, the process of policy implementation, and so on. For an elaboration on these various processes, see Portney, 1986, p.5.

<sup>2</sup> The titles of the different stages of the policy making process may differ in the literature on policy analysis. For example, what Portney (1986) refers to as “problem formation” stage is often referred to as “problem definition” in other writings (Dery, 1984).

<sup>3</sup> See Chapter 4, section on “the problem definition stage of the 1994 Act”.

<sup>4</sup> Taef Agreement, Section A, Paragraph III, Article F.

<sup>5</sup> See following section on theories of policy analysis.

partly), and to deal with the implication of such problem definition for Lebanon's media system in the 21<sup>st</sup> century.

After defining a problem (depending on the policy sector and the political system) various political actors (e.g., legislative leaders, executive branch officials, activists and interest groups, courts, etc) interact to come up with different proposals to solve the problem. This step may be referred to as *policy formulation*, policy initiation, or agenda-setting.<sup>6</sup>

*Policy adoption* occurs when (depending on the political system) legislators, executive officials or courts enact a specific policy response. This response can take various forms. It is the "means" or "instruments" devised to "ensure that the government's goals have the best chance of being met", or "the means whereby policy goals and policy problems are bridged". It could be a piece of legislation, an executive order, an administrative regulation, a court decision, or some other measure.<sup>7</sup>

*Policy implementation* occurs when an adopted policy is turned over to an administrative unit to be put into effect. Assessing the success or failure of some policy cannot be achieved properly without considering the *implementation* process. Only after a policy solution is implemented can we find out why a certain policy failed. It could be, for instance, because of the type of solutions it offered (bad design) or because the way in which those solutions were executed was flawed (bad implementation).<sup>8</sup>

Finally, the process whereby governments review what has occurred in an attempt to determine whether programmes or policies have worked and should be continued is referred to as *policy evaluation*.

These various parts of the policy making process, it should be noted, are not necessarily interconnected. They can exist independently of each other, and can even be contradictory in terms of objectives sought within one and the same policy. As Portney explains,

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<sup>6</sup> This stage can also be referred to as policy formation or policy design.

<sup>7</sup> For a typology of the policy making process see Pal (1992, Chapter 7); and Portney, (1986, pp. 6-7). For instance, some policies are considered "distributive", "regulatory", "redistributive", or "structural". As already explained, in the case of the 1994 Act, we are dealing with a regulatory policy where the government attempted to deal with the limited spectrum and great number of existing broadcast stations by granting licenses to a few successful applicants only.

<sup>8</sup> These, however, are not necessarily the only criteria according to which a policy is judged. For instance, a policy may be a failure in meeting the goal for which it was designed but a success in terms of the popularity and political success it generates for the government. Such is the case, Pal argues, with respect to Canada's policy on multiculturalism (1992, p. 171).

Success in one process does not necessarily imply success in others. An item can be prominently on the agenda, for instance, without subsequent passage of legislation; passage does not necessarily guarantee implementation according to legislative intent.<sup>9</sup>

The present study deals with all of the above-mentioned processes of policymaking. This is made possible because, nearly a decade after its introduction, I was able to look back on the entire policy making process: from the early stages of problem definition (i.e., recognition in the Taef Accord that the media landscape had to be reorganised) to the final stages of the implementation of the 1994 Act.<sup>10</sup> This decision to include all the major processes in the analysis was indeed based on a methodological and theoretical choice, as we are going to see in the following section on theories of policy analysis.

Having introduced briefly the major steps in the process of policymaking, I am going to use Pal's similar though more contextualised and inclusive breakdown of the process for an elaboration of one additional step in the process, that on policy determinants.<sup>11</sup> According to Pal, the main elements of the policy process are policy determinants, policy content which has already been discussed and includes problem definition, goals, and instruments (or policy formulation), and policy implementation and impact (or evaluation).<sup>12</sup>

### **Policy determinants**

As Pal explains, policy determinants are the "causal forces that may be considered responsible for generating policies".<sup>13</sup> Such forces include the stage of economic development in a given country and the existing constellation of economic power, its political system or culture, the existence and strength of public opinion, interest group pressures, the acuteness of political and party conflict, the role of the media, and so on.<sup>14</sup> Policy-making, he adds, does not take place in a vacuum, nor should analysis of policy-making do so. Indeed, a current fundamental rethinking of the study of policy formation - itself part of the post-positivist critique of the field as we will see later in the review of policy theories - calls for going back to "*prepolicy* or

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<sup>9</sup> Kingdon, 1984, p. 3.

<sup>10</sup> Most applied policy analyses are bound by specific time limits and can only deal with one or two of those processes, usually with the purpose of recommending policy alternatives or evaluating some stage of the policymaking process.

<sup>11</sup> Pal, 1992, p. 21.

<sup>12</sup> Pal, 1992, p. 21.

<sup>13</sup> Pal, 1992, p. 20.

<sup>14</sup> Pal, pp. 21- 22.

*predecision* dynamics” because “context matters”, and “ is not entirely manipulable”.<sup>15</sup>

Context is indeed what gives policy analysis texture. As May writes, “an important perspective of those writing about policy design is the emphasis on matching content of a given policy to the political context in which the policy is formulated and implemented”.<sup>16</sup> Providing context for policy analysis necessitates, among other things, an examination of core societal values, of institutional and legal constraints, and of history. Dror refers to this process of contextualising policy studies, or the requirement to penetrate into deep historic processes as “thinking-in-history”.<sup>17</sup>

There is no hope of correctly understanding contemporary events and current processes and for impacting as aimed at on longer time spans if policy thinking is confined to thin slices of time, as is the rule in most policy-making and policy studies alike. Thinking-in-history, therefore, deserves all the more underlining as a must for advanced policy sciences.

The lack of context, as Eapen notes, is even more glaring in the case of research on communication and development in particular - an absence that is mostly due to the ethnocentric nature of research in the area.<sup>18</sup>

The media represent only one set of institutions among the many... they do not exist or operate independently of politics, economics, culture, traditions, and so on. This was willy-nilly missing in most of the communication and development research that had preceded. In addition, many of the approaches ignore the history of developing countries: their internal ongoing process of change and conflict, external relations (often with colonial powers), traditions, and cultures. All these form a wider social context of which the modern media are only a part. The introduction of mass media is frequently neither the first nor the most important of modernising factors. Its relevance and place in the process needs to be established empirically, not taken for granted.

However, as Pal warns, “context is of course a slippery word”, manifesting itself on more than one level: i.e., the local, national, and international levels. In the case of broadcast policy in Lebanon, for instance, one way of understanding policy change after the end of the Civil War could be informed by an understanding of the multiple contexts of the 1994 Act. To name only a few, and without prioritising, there is the immediate context of policymaking, or the

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<sup>15</sup> Bosso, 1994, p. 96.

<sup>16</sup> P.J. May as quoted in Bosso, 1994, p. 96.

<sup>17</sup> Dror, 1994, p. 7.

<sup>18</sup> Eapen, 1994, pp. 279-280.



specific “policy community”<sup>19</sup> that tended to dominate the shaping of the Act (e.g., Council of Ministers, MPs, private media lobby, and so on).<sup>20</sup> The literature on policy analysis identifies various players taking part in policy formation: in addition to the major ones involved (usually the government or administration, parliament, and the president), we find interest groups (business, professionals, organised labour, consumers, environmentalists, academics, consultants, and so on), the media, and public opinion. The inclusion of several of the non-governmental players, however, makes sense only if the system studied is democratic. For instance, public opinion can only truly have some effect on the decision of a government if the latter has been democratically elected, seeks re-election, and is accountable to its electorate through a system of checks and balances.<sup>21</sup> This is another instance where the ethnocentrism of research surfaces: it is difficult to determine how analyses of the extended policy community existing in Western democracies applies in the case of Lebanon. Indeed, Lebanon witnessed only two parliamentary elections since 1972 (in 1992 and 1996). Both elections, it should be noted, have been boycotted by a significant number of the Lebanese Christian electorate and have been denounced by some local and foreign monitoring groups, parties, MPs, academics, and so on.<sup>22</sup> Still, the key (visible) players involved will be introduced in Chapter 5, in the section on policy formulation. These are the Council of Ministers (the Hariri government between 1991 and 1996), some members of parliament, and the lobby groups – the most vocal of which was the private media lobby group. These players, as will be demonstrated based on newspaper reports of their activities and official documents, were able, with various degrees, to have an influence during the stages of policy formulation and adoption of the Lebanese broadcasting law. Their role was also studied in a subsequent stage of the policymaking process, i.e., the implementation of the 1994 Act as studied in Chapter 6. This was done partly by examining the ownership patterns of applicant stations, in an attempt to answer the

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<sup>19</sup> This is the term often used to describe major actors involved, in one way or another, in the policymaking process. For an elaboration of which players make up the policy community, see Kingdon (1984).

<sup>20</sup> See Chapter 5 for an elaboration on the role of the Lebanese policy community in shaping the design of the Act.

<sup>21</sup> As Kingdon argues, (Western) policy analysis has established the ability of mass public opinion to affect the policy making process, though this effect is more marked in certain stages of policymaking than others (1984, p. 66). See also Heineman (1990, p. 107) for a discussion of the importance of understanding the role of the electorate in the study of policy process.

<sup>22</sup> Khoury (1993) and Al Markaz Al-Loubnani Lil-Dirasat (1998). The number of those Lebanese people who boycotted the elections is not exactly known. For background information about the problem (and lack) of population statistics in Lebanon, see Chapter 3.

following questions: why were certain applicants successful and others, with equally satisfactory – if not superior applications as will be argued, failed? Is this failure arbitrary or coincidental? After all, for purely physical and technical reasons,<sup>23</sup> the spectrum could not accommodate all successful applicants. Could the licensing process have been based on considerations other than purely technical ones? What could these considerations have been? Could the identity of the shareholders of the successful applicant stations shed more light on the puzzle of the 1994 Act, especially during its implementation phase? Here, elite theory (generally absent from the literature on policy analysis, including Kingdon's sophisticated model) will prove quite useful in shedding more light on the policy making process related to the 1994 Act, especially concerning the role played by the Lebanese policy entrepreneurs.

Another context for the Act is the general political tradition of the country; hence the necessity to examine the nature of the Lebanese state, changes in the political system after the Civil War and the influence of these changes on the policymaking process. Indeed, as will be argued later on in, it is the pervasive *culture* of confessionalism in Lebanon (explained in Chapter 3), and not the wording or provisions of the 1994 Act for example, which explains to some extent the way the Act was implemented.

Finally, it will be noted, the change in the media system in Lebanon cannot be understood in isolation from the international context of deregulation and development in communication technology which has swept Northern America and Europe since the 80s, and helped introduce *de facto* change in the Lebanese media landscape.

### Theories of policy analysis

Despite the various theoretical and methodological shortcomings of the discipline of policy analysis, whether in the context of Western liberal democracies or the Third World, or whether in the areas of policymaking in general or communication in particular, policy analysis still offers, in my opinion, the most systematic and effective way of understanding policy-making and its intricacies. This is especially so in a (complex, multi-confessional) society that experienced change, as is the case in Lebanon. In the following section, I will review briefly the major theories of policy analysis, discussing their basic tenets, advantages and limitations with respect to their applicability for the study of the 1994 Act, and argue that some of these

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<sup>23</sup> At least at the time of the implementing of the Act, digital technology was not yet available in Lebanon to allow for more frequency allocation.

theories are, despite the earlier-mentioned problems (e.g., ethnocentrism), better fit to help explain change in the media system in Lebanon.

There are several theories that attempt to explain the process of policy making.<sup>24</sup> Some of the most important of these theories are: the rational choice theory, the stages model of decision-making, incrementalism, the neo-institutional approach, the ideas-based theory, and the agenda setting approach.

### *1. Rational choice theory*

To start with, the rational choice model conceives of policy-making as “a logical, reasoned and neutral way organisations assess problems, propose solutions, then choose and carry out courses of action”.<sup>25</sup> According to this theory of human behavior in organisations, individual choice is the “foundation of political action and inaction”<sup>26</sup> and the rational actor is constantly engaged in the process of “optimising”, or “selecting the course of action with the highest pay-off”.<sup>27</sup> From an analytical perspective, the theory is based on several assumptions, the most important of which are grounded in positivism. According to this theory, for instance, “there is an objective world that exists outside of the mind...since it is lawfully ordered, we can come to understand it through research methods that encourage neutrality and objectivity”. Moreover, “the only knowledge we can be certain of is empirically based”, and there is the possibility to “objectively analyse information about policy alternatives through scientific research methods.”<sup>28</sup> Consequently, rational policy model analysis uses quantitative techniques, mostly borrowed from the social sciences with demonstrable cause-effect relationship, empirical data, and replicable findings.<sup>29</sup> Another aspect of this policy analysis paradigm, “in spite of the claim

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<sup>24</sup> There are theories of policy analysis in general and theories of policy process in particular. The present study, being focused on the introduction and implementation of the 1994 Act, will focus on theories of policy process. Moreover, This review is not meant to be exhaustive. Indeed, it is rather selective, and focuses on major (but not all) theories of policy process. For instance, some theories were not dealt with when other, similar theories have been reviewed in this chapter. Such is the case, for instance, with the “group and network approaches”. These approaches generally fail to account for how power is exercised during policymaking, and to explain policy formation and change. For a more detailed review of the field of policy analysis, see John (1998).

<sup>25</sup> John, 1992, p. 33.

<sup>26</sup> John, 1992, p. 116.

<sup>27</sup> Rich and Oh, 1994, p. 74.

<sup>28</sup> White, 1994, p. 858. See also pp. 858-860 for a detailed criticism of the rational theory of policy analysis.

<sup>29</sup> One example of such rational techniques is the zero-based budgeting system to “appraise annual public spending decisions from first principles”. Another technique is the cost-benefit analysis of government investment projects. It is a “method of evaluating the economic and social costs of a public project in monetary value”. Obviously, this

that analysis eschews values”,<sup>30</sup> is its strong normative claim drawn from economics (e.g., methodological individualism)<sup>31</sup>, according to which individuals “rationally prefer whatever they perceive to be in their self-interest.”<sup>32</sup>

The limitations of rationality as a method of problem solving have been amply discussed in earlier literature. Indeed, reviewing the literature on policy analysis, one quickly becomes aware that this is one of the most criticised theories of social science inquiry.<sup>33</sup> Not only has the theory been found to be unrealistic and simplistic in its understanding of decision-making at the individual level (human beings are found rarely to adopt the rational decision-making approach),<sup>34</sup> but this is especially so when this understanding is extrapolated to explain the complex activities of modern governments. The theory indeed assumes “a single decision maker, or at least a decision-making unit, at the apex of the information system”,<sup>35</sup> when indeed the policy community is neither homogeneous, fully informed, nor purely motivated by logic or reason to reach the “best technical solution to a problem.”<sup>36</sup> As Majone concurs, the model is very narrow in that it has been developed for “an individual who *wishes* to be consistent”. “When several individuals are involved”, he explains,

the model does not require them to agree on their orderings and evaluations; each may be rational (that is, consistent) in holding quite divergent views. If a joint decision is required, they will have to resolve their differences through interactive processes like *negotiation* and *persuasion*, about which the model is silent.<sup>37</sup>

More importantly, the rational choice theory explains public policy as “the management of macro-economic policy in a representative democracy”.<sup>38</sup> Governments are seen to have a

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procedure cannot adequately calculate the *social* costs and benefits of some public projects. “In the end”, John writes, “policymakers made judgements about the desirability of the projects, which was exactly the type of behaviour advocates of these techniques wished to avoid” (John, 1992, pp. 31-32).

<sup>30</sup> White, 1994, p. 859.

<sup>31</sup> White, 1994, p. 859.

<sup>32</sup> White, 1994, p. 859.

<sup>33</sup> See earlier section on the post-positivist critique of science.

<sup>34</sup> Herbert Simon as quoted in Rich and Oh, 1994, p. 74.

<sup>35</sup> Pal, 1992, p. 40.

<sup>36</sup> Pal, 1992, p. 40.

<sup>37</sup> Majone, 1989, p. 15, emphasis added.

<sup>38</sup> John, 1998, p. 127.

range of choices about various public issues (taxes, interest rates, and so on) but ultimately the “preferred” policy is produced

as parties compete on different platforms and voters assess the party best able to manage the economy”. Another way of explaining the direction of macro-economic policy is to see it as a relationship between party leaders and voters and to assume that voters reward the government that delivers them a stream of economic benefits.<sup>39</sup>

The rational choice theory is actually unable to explain change,<sup>40</sup> which is precisely what needs to be explained in the case of Lebanon. Moreover, the needed context of the model (i.e., representative democracy), with its related assumptions about the role and function of the electorate in determining to some extent a “policy cycle geared to the timing of elections that drives the economy and voting behaviour,”<sup>41</sup> makes the rational explanation inapplicable, even useless in the case of Lebanon. Indeed, in Lebanon, not only is there (still) a total lack of statistics which are vital for such studies,<sup>42</sup> but the (newly-restored) electoral process itself, since 1992, has been contested.<sup>43</sup> Moreover, the country, at the time of the discussion of the 1994 Act, had barely emerged from a 16-year old Civil War, and its policy making community (specifically at the level of ministers of the government) was not exactly what one would term “rational”, being highly fragmented and often antagonistic, with a plethora of actors in a constant tug of (confessional) war, despite clear provisions to put an end to political confessionalism in the constitution of the Second Republic.<sup>44</sup>

## 2. The “stages” model

The major assumption of the “stages” model of policymaking is that policy proceeds in discreet stages, in a linear, time-ordered sequence of events.<sup>45</sup> Policy is seen, for instance, to start with

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<sup>39</sup> John, 1998, p. 127.

<sup>40</sup> John, 1992, p. 138.

<sup>41</sup> John, 1992, p. 128. As the author notes, rational choice explanations of public policy, in contrast to studies of voters, parties, and legislatures, are “rare” (1992, p. 117).

<sup>42</sup> See Chapter 3 for the political reason why Lebanon still has no census or any other population statistics.

<sup>43</sup> Since 1972 (3 years before the outbreak of the war), Lebanon has had only two parliamentary elections (in 1992 and 1996). Both were controversial in voters’ turnout and in their results and led to several lawsuits filed with the constitutional council to contest the results. See Al-Markaz Al-Loubnani Lil-Dirasat (1998).

<sup>44</sup> See Chapter 3. It should be noted here, for instance, that during the first post-war Hariri government, the prime minister (i.e., Hariri) was publicly at odds with his minister of information Samaha who eventually was replaced by a political and economic ally, Minister Makari.

<sup>45</sup> This linear representation of the policymaking process is especially advanced by journalists, bureaucrats, and politicians, “because of the attractiveness of clarity” (John, 1992, p. 24).

policy actors identifying a problem, negotiating a solution to it, reaching a decision, and then implementing it. As subsequent policy research has demonstrated, however, the policy making process rarely follows such a sequential model. It is often more of a “never-ending circular process”, with governments “reformulating responses to problems they have already acted on”.<sup>46</sup> Of even more significance, case studies of the policymaking process have shown the process to be “messy”, “loose”,<sup>47</sup> and certainly less orderly than the approach portrays it to be:

Governments often fail to introduce policies they promise, or they retreat in the face of opposition. On the other hand, sometimes radical changes occur suddenly, perhaps at the end of the legislative process, and are maybe little noticed by the public. In no way does the policy process correspond to the linear model *except in the minimal sense that a policy has to be proposed, legislated on and implemented*. The more policy analysts acknowledge complexity in decision-making, the more the linear idea dissolves. The policy process becomes more about attempts to counteract the unanticipated effects of public decisions than about responses to the demands that caused the policy to be introduced in the first place. Thus there is no beginning and end to public policy, for the most part, there is only the middle.<sup>48</sup>

### 3. Incrementalism

Whereas the rational model was dismissed early on by several critics for being unable to describe reality and to account adequately for the way the policy process worked, an alternative model emerged in response to this failure. Incrementalism challenged the sequential model of policy making, including the belief that government was characterised by a single, omniscient decision-maker capable of unified, rational decision-making. Indeed, in most countries, modern governments have extraordinarily complex bureaucratic structures with overlapping mandates and few clear centres of control. Moreover, policy-making is often distinguished by crisis response, short time horizons, and uncertainty, rather than the leisurely pace of dispassionate assessment implied by the rational model.<sup>49</sup> Finally, by more closely scrutinising the policymaking organisations, incrementalism has shown that policy actors are not “neutral cogs in a policy machine”,<sup>50</sup> but individuals with political interests to extend and defend.

More importantly, as a means of explaining the policy process, the incremental model posits that decision makers do not consider each issue or programme afresh. Instead, they start with what they are doing as a given, and move on from there by making small, incremental, and

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<sup>46</sup> Portney, 1986, p. 6.

<sup>47</sup> Kingdon, 1984, p. 78.

<sup>48</sup> John, 1998, p. 26, emphasis added.

<sup>49</sup> John (1998), Pal (1992), and Doern and Aucoin (1971).

<sup>50</sup> Pal, 1992, p. 42.

marginal adjustments. The result is that policy changes incrementally, piece-by-piece, and not in large leaps. By including both a cognitive and organisational component, the model was indeed found to describe several political and governmental processes.<sup>51</sup>

One can find various criticisms of the incremental model, including some by its very proponents Lindblom and Wildawski.<sup>52</sup> One such criticism, for instance, is that the incremental model, although “circular” in its description of elements of decision-making, is - similarly to the rational model - “silent” about *why* decision-makers adopt certain policies at certain times and places. This silence, according to John, makes incrementalism unattractive and unsatisfactory to theorists of public policy who are mostly interested in understanding the *why* of policymaking.<sup>53</sup> Another criticism is, however, of specific relevance for the present study. Incrementalism is found to be essentially conservative, only capable of describing the slow process of generating alternatives and small legislative and bureaucratic changes stretching over years. It is, unable, however, to develop a “satisfactory account of *causation*,”<sup>54</sup> and provides no basis for dealing with major social problems and sweeping change.<sup>55</sup> As Doern and Aucoin wrote,

In one sense situations such as crises or grand opportunities cannot be explained by the incremental model because they enable policy-makers to arrive at decisions using major value alternatives [...]. The incrementalist model, therefore, in attempting to suggest what constitutes the reality of policy-making, tends to eliminate all behaviour not “typical of ordinary political life.”<sup>56</sup>

Indeed, this conservative nature of the model - explaining change incrementally - makes it literally unsuitable for explaining a *major* policy change such as the Broadcasting Act of 1994, which was introduced in a highly conflictual, fragmented society transitioning from civil war to reconciliation.

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<sup>51</sup> Kingdon, 1984 p. 79; and Pal, 1992, p. 41.

<sup>52</sup> Lindblom 1968; and Wildawski 1987. For a more detailed criticism of incrementalism, see John (1998, pp. 33-36), Calista (1994, p. 129), Kingdon (1984, p. 83), and Pal (1992, p. 40).

<sup>53</sup> John, 1998, p. 36.

<sup>54</sup> John, 1998, p. 33.

<sup>55</sup> White, 1994, p. 861; Pal, 1992, p.41; and Kingdon, 1984, pp. 80, 81, and 206.

<sup>56</sup> 1971, p. 16.

#### 4. *Neo-institutionalism*

In the 1980s, there was a revival of academic interest in the role institutions play in politics, and a surge of interest in “bringing the state back in”, and of placing it at the centre of analysis.<sup>57</sup> Researchers were increasingly becoming disillusioned with mainstream approaches to politics which either paid too little attention to institutional structures or which assumed that policy resulted from socio-economic factors.<sup>58</sup> Organisational behaviour was assumed to be rule-bound,<sup>59</sup> and policy results shaped by institutional structures “rather than abstract theory”.<sup>60</sup> According to Skocpol,

... states matter not simply because of the goal-oriented activities of state officials. They matter because their organisational configurations, along with their overall patterns of activity, affect political culture, encourage some kinds of group formation and collective political actions (but not others), and make possible the raising of certain political issues (but not others).<sup>61</sup>

Unlike the old institutionalists who consider institutions *the* defining feature of modern political systems, the neo or new-institutionalists<sup>62</sup> accept that there are several influences (including economic ones) on policymaking. Though institutions matter, they “recognise the complexity of decision-making” and “seek to place the contribution of institutions in a prominent place alongside the many other causes of political action.”<sup>63</sup>

Neo-institutionalism, however, shares several problems with traditional institutionalism.<sup>64</sup> While institutions are central to understanding the policymaking process, they can also be the

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<sup>57</sup> Pal, 1992, p. 98. As Pal explains, “state” here means state officials and their capacities to affect public policy or a relatively permanent set of institutions.

<sup>58</sup> Pal, 1992, p. 98; and John, 1998, p. 57.

<sup>59</sup> By rules, Olsen and March mean “routines, procedures, conventions, roles, strategies, organisational forms, and technologies around which political activity is constructed...beliefs, paradigms, codes, cultures, and knowledge that surround, support, elaborate, and contradict those roles and routines” (1989, p. 22).

<sup>60</sup> Majone, 1989, p. 118.

<sup>61</sup> Skocpol as quoted in Pal, 1992, p. 98.

<sup>62</sup> Other approaches, though they are also more sophisticated than the “older” institutionalism and constitute an improvement on it, will not be dealt with in this review. This is so because of their view that slow incremental change is the reality of most policy making, because they assume a functioning democratic process, or because of their inability to explain policy variation and change. For details about two such approaches, i.e., the group and network approaches, see John, 1998, Chapter 4.

<sup>63</sup> John, 1998, p. 58.

<sup>64</sup> For a detailed criticism of “the old institutionalism”, see John, 1998, pp. 49-57.



“dignified aspect to political life,”<sup>65</sup> disguising the conflicts between interests. This form of politicking may indeed subordinate the power of institutions to that of powerful groups with access to public decision-making.<sup>66</sup> Another criticism is that, while institutions do to some extent create values, “wider social and political forces structure how the institution works. In this way there is a complex interaction between institutional and other processes, such as between political action and social change.”<sup>67</sup>

In other words, *the social context and political climate* of a country can cause as much variation as the operation of political institutions can. Indeed, institutional effects, John argues, “may themselves be the result of wider changes.”<sup>68</sup> However, he adds, it is difficult, when one considers various examples of policymaking, to “disentangle” the impact of institutions from that of social and political forces.

A related criticism on the lack of context in such an approach concerns the neo-institutionalists’ emphasis on comparing the same policy sector across different countries (with different contexts, naturally).<sup>69</sup> This becomes even more problematic when one considers how much public policy can vary across sectors in one and the same country.<sup>70</sup> As Pal notes, sometimes the divergences between policy sectors within countries is greater than divergences between them.<sup>71</sup>

Finally, a major criticism of the approach concerns the definition of “the state” or of what counts as institutional. If the neo-institutionalists’ definition is accepted, Pal writes, “we are left with some very general and abstract forces indeed.”<sup>72</sup> By including too many aspects of political life under one category, very little ends up being explained. In political science, precisely, it is this separation of constraints from motivations and interests of actors which

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<sup>65</sup> John, 1998, p. 49.

<sup>66</sup> John, 1998, p. 49.

<sup>67</sup> John, 1998, p. 51.

<sup>68</sup> John, 1998, p. 52.

<sup>69</sup> John, 1998, p. 64. Policy sectors vary; some of these are the economic, industrial, agricultural, and health sectors.

<sup>70</sup> Pal, 1992, pp. 114; and John, 1998, p. 64.

<sup>71</sup> Pal, 1992, p. 114.

<sup>72</sup> Pal, 1992, p. 102.

makes explanations possible.<sup>73</sup> In the absence of such a separation, “it becomes impossible to identify what causes variation and change”.<sup>74</sup>

However attractive neo-institutionalism may be, I find it especially difficult to apply to a context for which it was not developed. This theory of policymaking was conceived for use in the Western world, and assumes a democratic, (relatively) transparent and accountable functioning of institutions. Unfortunately, the same cannot be assumed about a country where political patronage and clientelism supersede the rule of law and Western-style bureaucracy.<sup>75</sup> In Lebanon, public institutions with formal mandates and mode of functioning exist but, *in practice*, as is the case in many Third World countries, they often follow informal modes of operation (i.e., corruption: from influence peddling to bribery, and so on).<sup>76</sup> Moreover, debate within the Western world has already highlighted criticism that has pointed out that although institutions shape policy actors, these very institutions are also dependent, in their rules and operation, on political choices made by those actors.<sup>77</sup> I believe this is especially true in Lebanon. Still, I find that neo-institutionalism’s conceptualisation and highlighting of the patterns of relationship between the state and societal actors or of the state-civil society interface are quite illuminating. It can be used to further our understanding of policy decisions in the case of the 1994 Act. Specifically, I am referring to the approach’s view of state *tradition* as the most “expansive” aspect of this relationship,<sup>78</sup> embracing “rules and conventions that apply across the full range of state institutions and which should exercise *some influence, even if modest*, on the general patterns of political behaviour and policy-making”.<sup>79</sup> Indeed, understanding state structure and state culture in Lebanon, its model of political governance (parliamentary democracy) but especially its unique historical tradition of confessionalism,<sup>80</sup> is,

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<sup>73</sup> John, 1998, p. 64.

<sup>74</sup> John, 1998, p. 64.

<sup>75</sup> Khalaf, 1987.

<sup>76</sup> In Lebanon, people speak of influence peddling or “wasta” as a fact of life, a must in order to get things done anywhere in the country. See also discussion on wasta in Chapter 1.

<sup>77</sup> John, 1998, p. 54.

<sup>78</sup> State/civil society relation can be conceptualised in three tiers: state tradition, policy sectors, and policy networks within the policy community (Pal, 1992, p. 103).

<sup>79</sup> Pal, 1992, p. 103, emphasis added.

<sup>80</sup> Lebanese political confessionalism is unique in the context of the Arab world.

as we shall see, (one) important key to understanding why the 1994 Act was implemented the way it was. In other words, the present study will argue that a structural analysis does indeed contribute to explaining the policymaking process. However, it also argues, in line with major criticisms of the approach, that instead of being “all-encompassing”, institutions are only seen to *limit*, rather than determine, the choice of actors.<sup>81</sup> Moreover, it agrees with the post-positivist analysis that, although the policy process takes place within networks, policy analysis is more than about “mapping networks and relationships... policy involves discourse, and framing issues in ways that *persuade*”.<sup>82</sup>

### ***5. Post-positivist or new policy analysis: ideas and arguments***

New policy analysts reject the rational choice claim that politics boils down to the interplay of interests. “The mere fact of human self-interest”, they argue, “does not explain changes in world-views, such as the growth of individualism, the prevalence of principled beliefs, the opposition to slavery and the spread of democratic freedoms.”<sup>83</sup> In other words, *advocacy*, more than political institutions and interests, may explain or be a causal factor of public policy. Grounded in the post-positivist critique of science, new policy analysts also reject the artificial separation between facts and values - a dichotomy which is, as we have seen earlier, the foundation of rational theory. One of the most radical proponents of this new policy analysis, Giandomenico Majone, indeed argues that “facts and values are so intertwined in policy-making that factual arguments unaided by persuasion seldom play a significant role in public debate.”<sup>84</sup> People who argue for policy change, consequently, engage in both moral and scientific argument:

Every politician understands that arguments are needed not only to clarify his position with respect to an issue, but to bring other people around to his position. Even when a policy is best explained by the actions of groups seeking selfish goals, those who seek to justify the policy must appeal to the public interest and the intellectual merits of the case. Perhaps these are only rationalisations, but even rationalisations are important since they become integral parts of political discourse. We miss a great deal if we try to understand policy-making solely in terms of power, influence, and bargaining, to the exclusion of debate and argument.<sup>85</sup>

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<sup>81</sup> John, 1998, p. 64.

<sup>82</sup> Pal, 1992, p. 114, emphasis added.

<sup>83</sup> John, 1998, p. 153.

<sup>84</sup> Majone, 1989, p. 8.

<sup>85</sup> Majone, 1989, p. 2. Majone offers the pertinent example of poverty in the USA and its rise on the political agenda to prove his theory of policy arguments: that it was the nature of the debate around poverty, and not the change in the material conditions of the poor, which could explain this rise.

The aim of these new analysts, obviously, is not to replace interests with ideas. Rather, they seek to reconcile the two, and generate a theory of public policy that encompasses both.<sup>86</sup> They see the policy process as a “contest between forms of discourse” characterised by arguments about norms and evidence which ultimately structure policymaking. Policy makers are seen as dealing “in images, symbols, and narratives through which they seek meaning.”<sup>87</sup> Moreover, new policy analysis, with its use of evidence and arguments, brings in more actors than are traditionally introduced by institutional, group and network accounts.<sup>88</sup> In this expansive account of the policy process, new actors include journalists, television programmers, academics, researchers, analyst, experts, and so on.

Several, often divergent formulations of post-positivist analysis exist, with the most radical version regarding the very notion of policy and policy process as part of the discourse and systems of meaning and language.<sup>89</sup> Moreover, post-positivist analysis uses the term “ideas” to cover a wide range of idea-related processes, from knowledge, beliefs, and norms, to world systems and ideologies.<sup>90</sup> Though this umbrella use of the concept, coupled with a variety of methods and situations, seems suited to account for the complex world of policymaking, it could also be a source of weakness:

The problem is that once interest-based claims are relaxed, there is a broad spectrum of frameworks ranging from the Foucauldian to the modification of rational choice theory. Which ideas-based approach assists the quest to explain public policy?<sup>91</sup>

Another criticism, similar to that addressed against the other previously discussed theories, is that there is a tendency, once again, to give prominence to one element (ideas in this case) in the explanation over others. Though this does not entirely discredit ideas-based approaches, it does constitute a major weakness when trying to understand the intricate world of policymaking. It is also more likely that, no matter how much decision-makers are able to

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<sup>86</sup> Though it is true that the discussion of ideas and arguments in public policy is quite novel, the concept that politics and administration are about argument is not new. See Vickers, 1965.

<sup>87</sup> John, 1998, pp. 156 and 158.

<sup>88</sup> See in this chapter footnote no. 62 concerning the group and network approaches.

<sup>89</sup> See Yanow (1996) for more details on this radical post-positivist approach to policy analysis.

<sup>90</sup> It is thus easier to understand the different formulations of this new policy analysis by looking at actual applications. For a summary of some of these applications, see John (1998, pp.159-165).

<sup>91</sup> John, 1998, p. 165-166.

mobilise certain discourses that benefit them, ultimately they are not going to promote ideas which work against their self-interest. As John argues,

it seems that at the same time that ideas constitute interests, interests gave reality to ideas. Though there are politicians and bureaucrats who simply aim to maximize personal wealth, fame or the size of their bureaus, most political actors are attached to political ideas which help their careers and launch them into the political world.<sup>92</sup>

This interplay or “symbiosis” between ideas and interests<sup>93</sup> may indeed be crucial to understanding change and, not just stability, in public policymaking.

It should have become clear after this brief review of the literature, that one of the major problems of the existing theories of policy analysis - a problem of utmost importance to the present study - is their general inability to explain variation and change. As John argues, this failure is mostly due to the “single approach” adopted by these theories. Even when they introduce complexity and try to be multidimensional, there is either a “tendency for one element in the explanation to dominate” or to include so many variables that causation becomes difficult to establish.<sup>94</sup> This shortcoming has been increasingly problematic, even frustrating, since the fall of the Berlin Wall, the collapse of the Soviet Union and the end of apartheid in South Africa in the last decade. Specifically, it makes it hard to adopt any of the above-mentioned theories to explain what was concurrently a sweeping change in the socio-political and media landscape in Lebanon.

#### ***6. Towards an “evolutionary” theory of policy analysis: Kingdon’s policy streams approach***

Having outlined the inability of each of the above-mentioned approaches to account fully for the complexity of the policy making process, I still find each approach valuable in shedding light, from some angle, on how policies are made. These various approaches are even more attractive when synthesised and integrated, in order to show that policy variation and change is more likely the result of (often parallel) interaction between different processes: individual choice and institutional constraints, ideas and interests, and so on. This should not mean,

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<sup>92</sup> Often I wonder if it is not more than a question of simultaneity (as suggested by John) in the case of ideas and self-interests. It may be even more likely that self-interests are identified *first* and only then are ideas called on to give meaning in politics and to realise those self-interests.

<sup>93</sup> John, 1998, p. 166.

<sup>94</sup> John, 1998, p. 167.

however, that “anything goes” and that an approach can be drawn upon whenever it is “suitable” in the analysis to make a point. “The critic”, John warns,

can never disprove the way an approach is applied because it is so flexible... [A] medley of accounts does not do justice to the different assumptions upon which they are based, such as about human nature and the effect of structures.... [T]he approaches can be linked together if the analyst *distinguishes between constraints on action and causes of action*. Thus institutions, patterns of interest-group and networked relationships and socio-economic structures are limits to human action though sometimes they change autonomously. Individual actors are the drivers for change and the foundations for human action. Ideas, on the other hand, give human agents purpose and are the way they express their interests. *The secret is to uncover the way each of these processes interacts with the others over time and in different places.*<sup>95</sup>

One such “recipe” or “secret” has been indeed advanced by John Kingdon, in his *Agendas, Alternatives, and Public Policies*.<sup>96</sup> Kingdon’s model is actually a developed version of the “garbage can” model of organisational choice offered by Cohen, March, and Olsen,<sup>97</sup> whereby he applies their ideas exclusive to organisations (mostly universities) to the wider political context which he also finds to have the characteristic of “organised anarchy”. Kingdon’s model seeks to explain how governmental agendas are set, why “some problems come to occupy the attention of governmental officials more than other problems”,<sup>98</sup> and why some alternatives receive more attention than others. According to Kingdon, the policy process consists of three families or processes: problems, policies (or solutions), and politics. First, people recognise problems. Second, a policy community of specialists works on generating proposals: “they each have their pet ideas or axes to grind; they float their ideas up and the ideas bubble around in these policy communities. In the selection process, some ideas or proposals are taken seriously and others are discarded”.<sup>99</sup> Third, the political<sup>100</sup> stream is composed of several political processes such as swings of national mood, balance of organised political forces, election results, changes of administration, interest group pressure campaigns, and so on.

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<sup>95</sup> John, 1992, p. 168, emphasis added.

<sup>96</sup> Kingdon, 1984.

<sup>97</sup> Cohen et al. (1972). These authors understand organisations to be more like “organised anarchies”. They argue that an organisation is a “a loose collection of ideas [rather than] a coherent structure; it discovers preferences through action more than it acts on the basis of preferences” (as quoted in Kingdon, 1984, p. 84).

<sup>98</sup> Kingdon, 1984, p. 197.

<sup>99</sup> Kingdon, 1984, p. 87.

<sup>100</sup> Here Kingdon is using the word “political” in its narrow sense, i.e., mostly with respect to politicians’ attention to voter reactions and important pressure groups (1984, p. 145). For reasons already explained, in the context of Lebanon, “political” is better used in its widest sense, i.e., mostly as any authoritative activity that seeks the distribution of benefits and costs.

These “streams” or elements of the policymaking process, moreover, are unique to each area of policymaking,<sup>101</sup> operate independently<sup>102</sup> of each other and are in a constant state of fluctuation. Indeed, they float around in policy communities in what Kingdon refers to as “policy primeval soup”. When the separate streams come together, they open up a (brief) possibility for change:

As I see it, people who are trying to advocate change are like surfers waiting for the big wave. You get out there, you have to be ready to go, you have to be ready to paddle. If you are not ready to paddle when the big wave comes along, you’re not going to ride it in.<sup>103</sup>

Kingdon calls this opportunity to introduce change a “policy window”. It opens mostly because of change in the political stream, or because “a new problem captures the attention of governmental officials and those close to them”.<sup>104</sup> Advocates of proposals or “policy entrepreneurs”, as illustrated in the above-mentioned quote, are seen to be waiting in and around government “with their solutions at hand, waiting for problems to float by to which they can attach their solutions, waiting for a development in the political stream they can use to their advantage”.<sup>105</sup>

What is most notable about Kingdon’s model is that rather than starting with stability, it “assumes continual policy change. All the elements to the policy-making process shift and change, and policy outcomes arise from the continual interplay.”<sup>106</sup> By taking the very messiness, complexity, and even unpredictability of the policy process as a starting point, and by adopting a fluid, multi-theoretic approach which emphasises the importance of the interaction(s) between context and institutions, ideas, and the role of decision-makers, the model becomes highly attractive for the present analysis. Moreover, this very fluidity of the

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<sup>101</sup> For example, debates about childcare and proposed solutions have nothing to do with transportation issues. Indeed, Kingdon writes that even the effect of dominant ideology does not affect public policy in any simple way. He argues that “ideology may be more at work in some domains than in others, more at work under some circumstances than others” (1984, p. 135).

<sup>102</sup> As Kingdon argues, the forces that drive the different streams are quite different. Each stream “has a life of its own, independent of the other” (1984, p. 118).

<sup>103</sup> Analyst for an interest group interviewed by Kingdon (1984, p. 165).

<sup>104</sup> Kingdon, 1984, p. 168.

<sup>105</sup> Kingdon, 1984, p. 165.

<sup>106</sup> John, 1998, p. 173.

model makes it, unlike the US-dominated policy studies, less susceptible to charges of ethnocentrism. John suggests that, with minor modifications, the model can be applicable to the EU policymaking systems.<sup>107</sup> Indeed, in the present study, I will argue that the model, more than any other model, is actually capable of explaining the policy making process and policy change in Lebanon.

### Weaknesses of Kingdon's model

Kingdon's model has been criticised for "concentrating too much on agendas and not enough on how ideas feed into the implementation process and back again".<sup>108</sup> Though Kingdon, in the first place, did not set out to deal with anything but agenda setting (or policy formulation stage) in his book, John's criticism duly points out a "missing link" in such a highly developed model. Indeed, one cannot separate factors that affect agenda setting or formulation from those affecting implementation, "as the two processes are almost fused. It is the *interaction* between different types of actors over both policy definition and implementation that is the correct way to conceptualise policy."<sup>109</sup> Indeed, by extending Kingdon's model to the implementation phase of the 1994 Act, and examining the *interaction* between the process of agenda setting and implementation, the present analysis not only supports the criticism that implementation is a "missing link" in the policy streams approach, but, most importantly, it sheds more light on our understanding of the policymaking community and its role as regards the 1994 Act. By way of example, the findings in Chapter 6 on implementation- where patterns of ownership and control of the licensed media are examined - cannot be explained using Kingdon's model. Such findings suggest that although the slicing up of the media pie was, quite expectedly, confessional, the less conspicuous nature of shareholders in all licensed media was not, and clearly cut across confessional lines. Such cross-confessional patterns of ownership were mostly evidenced by finding several shareholders owning shares in one of the four licensed stations while their siblings owned shares in "rival" stations with a different confessional identity. Moreover, the fact that, in the case of the 1994 Act, the major policy entrepreneurs were also the shareholders whose stations were to be licensed, was an indication of a flagrant conflict of interest. Though Kingdon discusses the power of the government or the administration (including such prominent actors as the president, the cabinet secretaries,

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<sup>107</sup> John, 1998, p. 176.

<sup>108</sup> John, 1998, p. 176.

<sup>109</sup> John, 1998, p. 176.



legislators, etc) to mobilise issues and dominate the agenda-setting phase, he does not properly account for the motivations behind such mobilisation. Even when he deals with the possibility that the policy entrepreneurs could act to promote their personal interest, these interests are mostly related to “career promotion”, “satisfaction from participation”, the promotion of certain values, or simply altruistic desire to affect public policy.<sup>110</sup> Significantly, Kingdon’s study fails to include the role of *financial interest* and *political control* when discussing some of the motivations of policy entrepreneurs. Such omissions make Kingdon’s model inadequate for explaining the role of policy entrepreneurs involved in the 1994 Act. Indeed, as the present study will demonstrate, control of the broadcast media in post-Civil war Lebanon, in the wake of privatisation, cannot be properly understood without including the financial and political dimensions of such control.

Kingdon’s model is a major step forward in our understanding of the policy making process. Its most valuable contribution lies in its convincing explanation of why policy changes, something that most other theories or approaches have failed to accomplish so far.<sup>111</sup>

However, since Kingdon’s model is incomplete in its account of the entire policymaking process (it does not include the implementation phase) and the nature and motivation of the policy making community, it will be supplemented with two additional approaches or steps. First, elite theory is used for an exploration of the “true” motivation(s) and role of the Hariri government in the privatisation of the media in Lebanon. As the research findings will show (Chapter 6), it proved indeed to be a useful tool, to borrow Mills’ expression, for the interpretation of what is going on at the topside of post-Civil War Lebanese society.<sup>112</sup>

In following, a brief review of those relevant aspects of elite theory that deal with the role of a country’s elites in shaping policy making will be added. This review is seen as a necessary “supplement” to Kingdon’s concept of policy entrepreneurs dealt with in this chapter.

Second, the present research will include a documentation and analysis of the implementation phase (Chapters 6 and 8), and seek to unravel interactions between this phase and earlier phases of the policymaking process. The last section of the present chapter will

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<sup>110</sup> Kingdon, 1984, p. 123.

<sup>111</sup> Baumgartner and Jones’ “punctuated equilibrium model” offers a somewhat similar explanation of policy change (1993). The model is equally successful in the way it tackles the complexity of decision-making, both in its stability and change. However, it too, does not take into account the equally complex process of implementation.

<sup>112</sup> Mills, naturally, was referring to modern American society (1956, p. 278).

justify the lay out of the present research and the chapters' breakdown as a result of such inclusion.

### **Elites and elite power**

Kingdon's model, as already explained, is an attempt to account for the complex, messy world of policymaking. It duly rejects the linearity of the policy stages process and suggests instead a multiple approach that includes different streams (the politics, policies, and problems streams) which, together, make up the policy process. These streams operate independently of each other until they meet, a policy window opens, and policy making ensues. Kingdon's model, despite its multi-linearity, fails to recognise the different powers driving each stream. His primeval soup metaphor, borrowed from the natural world, is too dependent on the *chance* interaction of the different streams, and inevitably downplays the disproportionate influence that some political players may yield in some or all stages of the policymaking process. It is the task of the present study to introduce, however tentatively, the dimension of power (political and otherwise) into Kingdon's model. This will be done mainly by identifying the existence of power holders in Lebanese society (the elite involved in *and* profiting from policymaking) and the extent to which they are capable of affecting the course and flow of the policymaking streams, of "twisting the hand of fate" and enacting policies or policy alternatives that accommodate their own interests.

The study of elite has a long tradition. It started over 2000 years ago with the Greek philosophers who attempted to explain social and political power, and was established as part of political science in the late nineteenth century and early twentieth centuries largely as a result of the work of two Italian sociologists, Vilfredo Pareto (1848-1923) and Gaetano Mosca (1858-1941).<sup>113</sup> The chief concern among those early elites theorists was that democracy in modern Europe was a myth. As they argued, government in a democracy "was certainly *of* the people, it might even be *for* the people, but it was never *by* the people but only by the ruling class."<sup>114</sup> As work on elite theories proliferated, it ranged from approaches rooted in the Marxist tradition which argued that holders of governmental offices were agents of the dominant (economic) class in society and not guardians of the public interest, to pluralist approaches that were less critical of capitalist democratic systems because these were found to be relatively

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<sup>113</sup> for more details about the work of Mosca and Pareto, see Bachrach, 1967; and Bottomore, 1964.

<sup>114</sup> Parry, 1969, p. 25.

pluralist (i.e. controlled by a *plurality* of elites).<sup>115</sup> In all its varieties, however, elite study is concerned with the issue of inequality”,<sup>116</sup> or the concentration of power and control in the hands of the few (the elites) in Western democracies.

In 1936, Lasswell wrote: “The study of politics is the study of influence and the influential(....)The influential are those who get the most of what there is to get. (...).Those who get the most are *elite*; the rest are *mass*.”<sup>117</sup> In fewer words, according to Lasswell, the elite are the influential or the powerful.<sup>118</sup> In order to define these “elites” in terms of the distribution of power, sociologists have mostly concentrated their empirical work on recruitment/circulation studies, and examinations of the backgrounds and characteristics of incumbents in putative elite positions.<sup>119</sup> Such studies, however valuable, may be misleading in their assessment of elite power, since the concept of power itself is controversial.<sup>120</sup> Indeed, the task is complicated by the fact that political power can assume many forms since *effective* power is quite distinct from *positional* power or power by virtue of office, which is limited by numerous constraints.<sup>121</sup> For instance, it is relatively easy to identify the more direct form of power manifested in the ability of the legislative bodies to pass laws, of judges to interpret such laws, of ministers to take executive decisions, of public servants to implement these decisions, and so on. However, another form of power, less anatomical and more indirect is the power to *influence* decisions taken and laws passed (i.e., power to indirectly influence policy making by influencing actors who decide policy). Indirect influence, moreover, covers a wide spectrum of action, and can range from the “most diffuse influence over political opinions to the most specific influence over appointments to political office”.<sup>122</sup> This latter form of power, though

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<sup>115</sup>See Birch (1993) for a review of some of these different elitist positions. Robert Dahl, a leading representative of the pluralistic approach, conducted a study of power structure in New Haven, Connecticut, which concluded that there was no power elite in New Haven. Even though there were inequalities between citizens in the degree of power they exercised in the system, these “inequalities were dispersed rather than cumulative” (Birch, 1993, p. 143).

<sup>116</sup> Vianello, 2002, p. 4.

<sup>117</sup> Lasswell quoted in Tachau (ed), 1975, p. 4.

<sup>118</sup> Scholarship on elite theory differs in its choice of conceptual terms to refer to “the influential” or “elite” in a given society. See Bottomore, 1964, Chapter 2; Bachrach (1971); and Stanworth and Giddens (ed), 1974, Chapter 1.

<sup>119</sup> Pahl and Winkler, 1974, p. 121.

<sup>120</sup> Birch, 1993, p. 140.

<sup>121</sup> Pahl and Winkler, 1974, p. 104.

<sup>122</sup> Birch, 1993, p. 139.

much more difficult to identify, is no less prominent in studies of political power. Indeed, political scientists' work is:

replete with distinctions between *de jure* authority and *de facto* power, between constitutional sovereignty and political strength, titular rulers and powers-behind-the-throne, front men and backroom boys, rubber stamps and pressure groups, office holders and influentials, strong leaders and weak ones, the politicians and the civil service, and in Bagehot's elegant phrase, between the dignified and the efficient.<sup>123</sup>

As Giddens argues, "it is precisely one of the major objectives of the study of elites to examine the relationship between formal authority and effective power".<sup>124</sup> Such study, moreover, should focus primarily upon the relationship between the political and economic elites, in order to isolate the two forms of power, or in order to uncover the connection between the "making" and "taking" of decisions where

the "taking" of the relevant decisions is vested in the political elite, but may be subject to influence by the economic elite; and, vice versa, where the authority to effect the policies or decisions in question rests in the hands of the economic elite but where these may be subject to influence from the political sphere.<sup>125</sup>

Not only should the researcher investigate the connection between the "taking" and the "making" of decisions, but he/she should also investigate the overlapping or interlocking of positions of the elite groups being studied.<sup>126</sup> As part of the study of elite circulation, the researcher should not be limited to the investigation of elite change and reproduction across generations,<sup>127</sup> but should also track "the interchange or movement of individuals *between elite positions themselves*".<sup>128</sup> This interchange can be linked with the phenomenon of "the multiple holding of elite positions (as in the interlocking of directorships, or where political leaders hold business appointments)."<sup>129</sup> Positional studies of elite composition and circulation across generations in the Lebanese parliament have already demonstrated that, although the process of elite recruitment is "fairly opened and has been significantly broadened, (...) the dominance of

<sup>123</sup> Pahl, R.E. and J.T. Winkler, in Stanworth and Giddens (eds), 1974, p. 102.

<sup>124</sup> Giddens (1974). Elites in the British class structure. In Stanworth P. and A. Giddens (1974), *Elites and Power in British Society*. London: Cambridge University Press, p. 4.

<sup>125</sup> Giddens, 1974, pp. 19-20.

<sup>126</sup> Mills, 1956, p.270-283; Giddens, 1974, pp. 16-17.

<sup>127</sup> For a study of elite circulation across generations in Lebanon, see Khalaf, 1987, Chapter 6 on parliamentary elite.

<sup>128</sup> Giddens, 1974, p. 16.

<sup>129</sup> Giddens, 1974, p. 16.

notable and privileged families, however, has not been seriously challenged". Indeed, when one examines family ties and kinship networks, in other words the role of clientelism and political patronage in defining Lebanese politics, "one, in fact, is prompted to argue that a comparatively small number of prominent families continues to exert almost monopolistic control over the political process in the country."<sup>130</sup> As will be demonstrated later, studying the role of Lebanese elites in the policymaking process, the interlocking control of shareholders in the licensed broadcast media, and their "multiple holding" of political and economic elite positions (Chapter 6), not only confirms those above-mentioned conclusions, but reveals a more complex picture of the Lebanese power elite – one that cannot be accounted for in a purely positional analysis.

**The role of elite in the policymaking process** Despite the various conceptual and methodological disagreements that characterise elite studies, elite theorists and researchers seem to agree that a decisional analysis that investigates governments or administrations and their decision making activities is a "convenient starting point",<sup>131</sup> and one that is far better in accounting for elite power than positional analysis, for instance. This is especially so because decision-making "is the point at which the possession of power is made manifest. A single minority or a number of minorities are conceived of as making the 'big decisions' which will determine the future course of society".<sup>132</sup> In his discussion of America's power elite, C.W. Mills reminds the reader that "we must judge men of power by the standards of power, *by what they do as decision-makers*, and not by who they are or what they may do in private life".<sup>133</sup> Indeed, Mills' *Power Elite* was already an attempt to document, however inadequately or partially, the thesis that a power elite composed of political, economic, and military men exists in the USA and actually determines basic policy for the nation. It is this emphasis on elite power as the power to influence national policy that is of relevance to the present study.

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<sup>130</sup> Khalaf, 1987, p. 134.

<sup>131</sup> Bachrach, 1967, p. 17; and Birch, 1993, p. 154

<sup>132</sup> Parry, 1969, p. 130.

<sup>133</sup> Mills, 1956, p. 286.

Judging power elites by their power to affect decision-making, as Mills recommends, however, is not easy advice to heed. Mills himself argued that the power elite is not altogether “surfaced”, and that

many higher events that would reveal the working of the power elite can be withheld from public knowledge under the guise of secrecy. With the wide secrecy covering their operations and decisions, the power elite can mask their intentions, operations, and further consolidation.<sup>134</sup>

Similarly, Giddens warns that

The difficulties involved in systematic research upon these matters, of course, are among the most severe and intractable of any which have to be faced in the study of elite power. Concealment, subterfuge, but above all probably the ubiquity of informal and personalised relationships and procedures – something which, although no doubt common in the connections between elite groups, is likely to be much more prevalent inside them – create large blank spots which no form of sociological research is likely to penetrate satisfactorily.<sup>135</sup>

This is especially so when research is conducted in a developing country. In this case, the researcher is not only confronted with the general difficulty, if not impossibility, of identifying the indirect forms of power at play during decision-making, already identified by Western researchers. The problem is compounded when clientelism - as opposed to the rule of law (the starting point of any study of democracy and its bureaucratic institutions) – dominates and is a culturally accepted way of conducting politics and business. Describing the situation in Lebanon, one leading Lebanese sociologists and researcher on elite composition and circulation in Lebanon wrote:

The shortcomings and abuses of patronage are many and grievous (...): endemic corruption, nepotism, favoritism, the erosion of legislative and executive powers, the reduction of the entire political process to one of squabbles over patronage rights and boundaries, the absence of any serious concern for formulating broad policy issues of national and civic significance....<sup>136</sup>

According to Khalaf, like confessionarism (Chapter 3), political clientelism has become almost “institutionalised into Lebanon’s body politic.”<sup>137</sup> As a system, it is mostly based on ties of kinship, community and fealty where the *za'im*, like the feudal overlord, “is the unquestioned leader of a tightly knit local community”.<sup>138</sup> His political assets, Khalaf writes,

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<sup>134</sup> Mills, 1956, p. 294.

<sup>135</sup> Giddens in Stanworth and Giddens (eds), 1974, p. 20.

<sup>136</sup> Khalaf, 1987, pp. 101-102.

<sup>137</sup> Khalaf, 1987, p. 98.

<sup>138</sup> Khalaf, 1987, p. 113.

are “typical of most personal relationships – namely, reciprocal loyalties and obligations”.<sup>139</sup>

He dispenses favors, secures jobs for the unemployed, and intervenes in the bureaucratic and judicial system on behalf of his clients. In return, “clients pledge their loyalty in gratitude for past favors and in anticipation of future ones”.<sup>140</sup> It is such predominant *wasta* mentality, Khalaf concludes, which undermines the role of Parliament, for instance: MPs, as political brokers, are “more concerned with the parochial and often petty interests of their local constituencies than with formulating and articulating broad policy issues of national and civic significance.”<sup>141</sup>

Elsewhere, studies on privatisation in the non-Western world, especially in societies in transition, proliferate with discussions on the weakness of the rule of law and the pervasiveness of clientelism and administrative corruption.<sup>142</sup> For instance, as several studies argue, much of the problems involved in privatisation - especially in Russia and the ex-Soviet block - resulted from the existence of patron-client relationships, the use of *blat* (Russian equivalent of the Lebanese *wasta*) and networking to promote personal interests that are never manifested in law.<sup>143</sup>

Finally, of more relevance to the present study on the role of the Lebanese elite and policy making, is Kalaf’s word of caution against “drawing too many inferences about the elite’s attitudes and political behavior from its social background”.<sup>144</sup> In this context, Mills’ advice seems all the more pertinent. To the extent that it is possible, Lebanese men of power shall be judged by the standards of power, *by what they do as decision-makers*, and not by who they are or what they may do in private life.

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<sup>139</sup> Khalaf, 1987, p. 113.

<sup>140</sup> Khalaf, 1987, p. 113.

<sup>141</sup> Harik quoted in Khalaf, 1987, p. 123.

<sup>142</sup> Hallin & Papathanassopoulos, 2002, pp. 184-190; Nain and Anuar, 1998, pp 9-16; Coronel, 1998, pp. 25-28; and Nyamnjoh, 1998, pp. 29-33;.

<sup>143</sup> Ledenava quoted in Shelley, 2001, p. 244. For studies on privatisation and the rule of law in the ex-Soviet Union, see Shelley, 2001, p. 244; Smith, 2001; Hendley, 2001, pp. 134-135; and Rutland and Kogan, 2001.

### Stages of analysis and chapters breakdown

As previously discussed, the present research will include all the stages of policy making that the “stages model” usually deals with: i.e., problem definition, policy formulation, policy adoption, and policy implementation. I have already discussed the failure of the linear model of policymaking to account for the complexity and reality of bargaining involved in policymaking. Still, the various stages in that model are seen (exclusively) in the present research as useful research *tools* or as “a set of measuring rods, to lay alongside the complex set of decisions, rather than ways of understanding public policy.”<sup>145</sup> In other words, the present analysis will look at each and every stage of the policymaking process related to the 1994 Act, without however subscribing to the theory of policy process behind those stages (i.e., the “stages model” discussed earlier).

There are a couple of reasons which justify this methodological and analytical choice: to start with, it is simply commonsensical, when trying to document the *story* of the 1994 Act from its introduction in 1991 till its implementation in 1996, to proceed chronologically. One effective way of doing this is to move linearly in time, while identifying the various stages of policymaking on the way. Second, having reviewed the various existing theories and studies of the policy process, it has become clearer that there is a need for a multi-faceted, multi-perspective approach to explain the “labyrinth”<sup>146</sup> of the policymaking process in general, even more so in the case of Lebanon. The linear breakdown of the process of the 1994 Act into distinct parts will allow the careful examination of each analytical section separately, using the method or methods of analysis appropriate for each part.

Here again, the importance of the political context to explain the policymaking process cannot be overemphasised.<sup>147</sup> Therefore, to start with, a historical review of the nature of the Lebanese state will be undertaken in order to understand the dominant political culture of confessionalism in the country (Chapter 3). This review will be followed by a more specific review of the history of the media in 20<sup>th</sup> century Lebanon (Chapter 4). As will be pointed out during the analysis of the text of the 1994 Act, the *new* broadcast policy may not, after all, look so new in several respects once it is seen *in context*, i.e., in light of the existing, much older

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<sup>144</sup> Khalaf, 1987, p. 123.

<sup>145</sup> John, 1998, p. 23.

<sup>146</sup> This is the word Kingdon uses to refer to the complex world of policymaking (1984, p. 18).

<sup>147</sup> I have already explained the importance of state tradition and of the political context in the section on “policy determinants”.



Press Law of 1962. Chapters 3 and 4 will rely exclusively on secondary sources to draw the larger socio-political context of the 1994 Act,

Chapters 5 and 6 will document the various relevant stages of the policymaking process: the policy formulation and policy adoption stages (Chapter 5), and the policy implementation stage (Chapter 6). Chapter 5 will document, based mainly on primary sources (official documents, original letters and memos, and to a lesser extent, interviews), and newspaper reports, the early stages of the policy making process. The first part of Chapter 5 includes an account of the “bargaining” that took place between the various policy actors or entrepreneurs involved in the various drafts of the 1994 Act. The second part of the chapter deals with the final Act itself, and the instruments chosen by the government to ensure that the initial goal (i.e., solving the problem of the war media phenomenon) had “the best chances of being met.”<sup>148</sup> It includes a textual and comparative analysis of the Act, whereby major sections of the 1994 legislation will be compared to the French audio-visual law of 1986 and the Lebanese Press Law of 1962. The purpose of such comparison is to verify to what extent the Lebanese Act was modelled after its French counterpart (as repeatedly claimed by Prime Minister Hariri), and whether the 1994 Act truly marked a radical change in the Lebanese media system (regulated up until then by the Press Law of 1962).

Chapter 6 will concentrate on the implementation stage of the Act. It will do so mostly by consulting the published opinions of the regulatory committee in charge of licensing (the National Audio-visual Council or NAC), and by comparing the general criteria for acceptance or rejection of applications with the NAC’s final (published) verdict concerning each applicant. The NAC’s published opinion will also be assessed by weighing it against the information included in the actual application files submitted to the NAC prior to its (final) decision. The aim of such a comparison is to establish whether, as repeatedly charged, the NAC applied double standards in its processing of applications.

Both chapters, as part of an analysis of policy determinants, will also document the contribution of the major players who affected the various stages of the policymaking process related to the 1994 Act. These players, who have “interests in and influence over policies produced or debated,” constitute the “policy community” according to Kingdon.<sup>149</sup> Since these players and their role (and motivation) can only be determined on a public, surface level (e.g.,

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<sup>148</sup> Pal, 1992, p. 138.

<sup>149</sup> Pal, 1992, p. 109. Most policy sectors have various types of actors (executive agencies or ministries, legislative committees, unions, professional associations, etc.). Not every policy community, naturally, includes all possible categories of actors.

depending on the nature of their office, their access to, or their coverage by the media), another method is also needed in order to know more about them, and to know which ones were *effectively more powerful than others* in the policy making process. It should be remembered here that the controversy surrounding the Act was at its highest during the implementation phase. The major criticism during that phase concerned the visible relationship existing between policymakers (Council of Ministers and some MPs in particular) and those applicants awarded licences. Therefore, basic approaches of elite theory will be applied in order to investigate the extent of the power of some of the major players: by looking carefully at the patterns of ownership of the major broadcast applicants and possible connections between the political and economic elites involved (Chapter 6), the present analysis will try to establish the extent to which ownership of a station (and consequently political and economic interests), and not just the merit of the licence application itself, can explain the licensing process.<sup>150</sup>

Finally, both chapters 5 and 6 will be restricted to documenting *what* happened, and will not seek to explain *why* some policy decisions were made, even when double standards in the application of the law are proven. Only in chapters 7 and 8, using Kingdon's model of policymaking but extending it to include the implementation process, will an *evaluation* of the entire policymaking process in the case of the 1994 Act, or an explanation of *why* things happened the way they did, be attempted. Adopting this specific structure for the present analysis does not mean that I adhere to the belief that social science research can separate facts from values. Quite the contrary. However, for reasons already discussed, the present research cannot hope to achieve more than a limited number of objectives – the most important of which is to document the phases of the 1994 Act. In other words, the study should not be construed as a test of Kingdon's theory or as an attempt to generate an alternative theory of policy analysis. Rather, it would be more accurate to say that the analysis, at some point, makes (good) use of Kingdon's model and expands on it in an attempt to make sense of the distinct parts (or stages) studied and to see *how these parts relate to each other*. By leaving the application of Kingdon's model to the very end of the study, however, I am emphasising the need to be cautious about interpreting the findings of the present research. This means, on the one hand, that those chapters or sections based on primary sources (i.e., chapters 5 and 6) can hopefully be independently of use for later analysts or historians. On the other hand, this also necessarily

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<sup>150</sup> This section on the patterns of ownership and control in the Lebanese broadcast media is included in Chapter 6. In Wildawski's account, without the merger of economics and politics into what came to be known as "political economy", "the economists and political scientists who make up the bulk of the [field] would have had far less in common to sustain their collaboration" (1987, p. xxxvii).

implies that, deploying different conceptual models, arguments, and justifications, one may be able to make sense of the story of the 1994 Act in different ways.

## CHAPTER THREE

### THE NATURE OF THE LEBANESE STATE: THE CULTURE OF CONFESSIONALISM

#### INTRODUCTION

In Chapter 2, I discussed the importance of one policy determinant that has a significant bearing on policymaking in general: i.e., the general political culture of the country whose policymaking process is being studied. This political culture, also referred to as dominant ideology, could be conceived of as people's attitudes toward the degree of government involvement in their life.<sup>1</sup> For instance, in the United States, the very idea of nationalising transportation is likely to face fierce popular rejection because of the dominant culture of liberal capitalism that promotes individual enterprise. As one interviewee put it, "our [i.e., in the US] ethic is personal initiative, and when the government tries to do anything, people cry socialism".<sup>2</sup> This dominant national ideology, moreover, may be more at work "in some domains than in others, more at work under some circumstances than others".<sup>3</sup> For instance, where the idea of nationalising transportation is opposed for fear of increased government control, national health insurance is welcomed. However, a dominant ideology does not affect policy outcomes in a simple way, and analysts should avoid being "tempted to attribute great power to a dominant national ideology, when it may not really be at work at all".<sup>4</sup>

Another way of looking at dominant ideologies from the perspective of government concerns the theme of "equity".<sup>5</sup> The principle of equity, Kingdon argues, can be a driving force when the government is pushing for certain programmes. Even when it is not, it remains a "powerful argument used in debates for or against proposals".<sup>6</sup>

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<sup>1</sup> Kingdon, 1984, p. 135.

<sup>2</sup> Respondent interviewed by Kingdon, 1984, p. 134.

<sup>3</sup> Kingdon, 1984, p. 135.

<sup>4</sup> Kingdon, 1984, p. 135.

<sup>5</sup> Kingdon, 1984, p. 135. The concept of equity here should not come to mean "equality" for all. More generally, it is the idea that government is responsible for distributing (some) available resources to all major social groups or classes in the country. This principle of equity is important in the case of Lebanon. It is especially relevant for understanding why some applicants ended up getting a license, despite their incomplete application files. This will be discussed in detail in Chapter 8.

<sup>6</sup> Kingdon, 1984, p. 135. Kingdon, for instance, explains the importance of equity in pushing for the government's universal renal dialysis programme. Without this principle of equity being applied, only patients with money or living next to a specialised medical centre would benefit from the improved technology for dialysis.

In order to better understand the reasons that influenced the policymaking process in Lebanon - reasons that by no means must be arbitrary or impartial, as this research is going to demonstrate - it is necessary to first understand the nature of the Lebanese state, and the cultural, historical, and geographical specificity that led to the formation of a political system and culture quite “unique” in the region. I am specifically referring here to the dominant national ideology or political culture of confessionalism. Confessionalism, as I will argue later on, is crucial for understanding why the 1994 Broadcasting Act was implemented the way it was. Indeed, to the external observer, the variety (from a religious or confessional point of view) of applicants who were granted broadcast licenses may reflect, to some extent, a democratic principle of equity in post-Civil War Lebanon. To the average Lebanese citizen, however, the licensing process was just another (predictable) chapter in the modern history of Lebanon, where the principle of confessionalism as institutionalised in the country’s culture and political system does not mean democratisation or equal chances for *all*. This is so despite the provisions of the new constitution of the Second Republic which calls for the abolition of confessionalism as part of a general plan to bring lasting peace to the country. Indeed, as this chapter will explain, confessionalism in Lebanon means a Lebanese citizen has democratic rights only in as far as this citizen belongs to a specific, *recognised* confession.<sup>7</sup> Not only that, but also those rights are directly proportional to the numerical size of the religious or confessional community he or she belongs to: i.e., the bigger the community, the more rights and privileges. When such a “formula” is applied to the licensing process, it comes as no surprise that the four applicant television stations associated with the five major confessional groups were licensed. By the same token, it was not surprising either that all other applicants, whether they fulfilled the legal requirements or not, were excluded.

Explaining this basic, dominant principle of Lebanese cultural and political life is the task of this chapter. The chapter is mostly intended for readers unfamiliar with Lebanese political culture. It should be noted, from the outset, however, that the present chapter does not intend to document or discuss the highly disputed history of the country. This task is better left to historians.<sup>8</sup> Instead, it is simply meant to review the modern history of Lebanon with an emphasis on the specificity of the Lebanese political system, and to explain the importance and anchoring of the concept of

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<sup>7</sup> Only monotheistic religions are officially recognised in Lebanon (i.e., Judaism, Christianity, and Islam). Hinduism or Buddhism, for instance, are not only not recognised, a Lebanese citizen cannot enjoy certain civil rights unless he or she adheres, at least on paper, to one of the monotheistic creeds.

<sup>8</sup> To date, there is no consensus on a unified, official history textbook for Lebanese schools. Indeed, depending on the school, one may find entirely different “versions” of the country’s history. For a discussion on the problems of historiography in Lebanon, see Salibi 1988; Ismail 1997; Beydoun, 1984; and Traboulsi, 1993.

confessionalism in Lebanese daily life. This understanding, I will argue later on, is needed in order to understand the policymaking process related to the 1994 Broadcasting Act.

### THE SPECIFICITY OF THE LEBANESE CASE

The Lebanese people, though sharing fundamental features of Arab culture – including Arabic as their mother tongue - are characterised by a cultural specificity which sets them apart from the rest of the Arab world on more than one level: e.g., culturally, economically, constitutionally, and politically.<sup>9</sup> There is no doubt, however, that the single most important specificity of the country is religious pluralism. Lebanon is in fact a multi-communal, multi-confessional state comprising many religious communities. Presently, the Lebanese state officially recognises twenty two different Abrahamic religious communities or confessions, falling mostly under two broad groupings - Muslim and Christian:<sup>10</sup>

- a. The Muslim communities comprising the Sunni, Shi'ite, and Druze communities.
- b. The Christian communities, comprising the Maronite, the Greek Orthodox, Greek Catholic, Roman Catholic, Protestant, and various other Eastern Christian denominations.

No current census on the proportion of each community exists, however. The last population census dates back to 1932 and was itself highly contested.<sup>11</sup> Updated confessional statistics are still non-existent and all later figures are estimates based on the 1932 figures. Even these estimates, Hanf observes, “are not free of wishful thinking.”<sup>12</sup> One Lebanese sociologist noted (in 1977) that there were still no scientific and objective statistics on the confessions in Lebanon.<sup>13</sup> The same can be said more than a decade after the end of the Civil War. Indeed, population

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<sup>9</sup> Barakat, 1991, pp. 15-17; and Rabbat, 1970, p. 61. As Barakat explains, Arab societies differ considerably from each other regarding their position on the homogeneity-heterogeneity continuum. For instance, Lebanon and Sudan have highly heterogeneous populations while Egypt and Tunisia are, in comparison, quite homogeneous. Moreover, in contrast to the most heterogeneous Arab societies, where a highly centralised political system is bound to exist, Lebanon with its “mosaic society” is characterised by “a discriminatory political system...ensuring the dominance of private over public identities” (Barakat, 1991, p. 17).

<sup>10</sup> Jews or “Israelites” (as they are referred to in Lebanon) are also a recognised confession in the Lebanese constitution.

<sup>11</sup> Khalil, 1992, p. 20.

<sup>12</sup> Hanf, 1993, p. 86.

<sup>13</sup> Hanf, 1993, pp. 86-96.

statistics in Lebanon are highly political, considering that the country is based on a system of proportional representation: “every statistic in Lebanon, direct or indirect, is a statistic of the strength of the communities, which raises questions about the majority and, therefore, about the distribution of power.”<sup>14</sup>

The 1932 census commissioned by the French mandate authorities showed (then) a majoritarian Maronite community and consequently gave Maronites political advantages over other communities. *No other census was carried since*, despite the (estimated) major increase in numbers among the Muslim communities, especially Shi’ites.<sup>15</sup> Therefore, the “estimates” based on the data of the 1932 census, the registration of nationals in 1943 and 1953, and the individual surveys of some authors have to be considered *simultaneously*, in order to gain an idea about the size of the various communities.

According to one such population estimate, the Lebanese religious communities in 1973 were divided as follows: all Christians formed 49% of the total population (24% Maronites, 9% Greek Orthodox, and 15% others). Muslims made up the remaining 51% (29% Shiites, 16% Sunnis, and 6% Druze). More importantly, most of the reliable estimates point to the same important conclusions: first, that no community forms the absolute majority (even the largest communities, Maronite or Shi’ite, do not make up one third of the entire population). Second, at least until the outbreak of war in 1975, neither of the large groupings (Muslim and Christian) had more than a slight majority.<sup>16</sup>

### **The Millet system**

Of all Arab countries, it can be said that Lebanon is the only country that offers effective and legal protection and rights to minority groups. Indeed, the Lebanese political system is unique among other (Moslem-dominated) Arab countries in that it advantaged Christians (Maronites in particular). One such advantage can be illustrated in the (unwritten) constitutional provision that only Maronite candidates are eligible to become presidents of the Republic. It should be noted

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<sup>14</sup> Hanf, 1993, p. 86. The example of the first Lebanese Sunni who wanted to stand for the presidency in 1932 and was dissuaded based on the argument of the confessional statistics was the first case in point (Rondot, 1947, p. 29).

<sup>15</sup> Khalil, 1992, p. 20; Taheri, 1968, p. 13. Disagreement about carrying out a new census has mostly revolved around the issue of the Lebanese abroad: Muslims wanted to exclude them from the census (there is a large Christian community living abroad) especially if they do not hold Lebanese citizenship, while Christians have demanded their inclusion.

<sup>16</sup> Hanf, 1993, pp. 87-88. Hanf considers the above mentioned estimates to be comparatively reliable considering the methodology used and especially the fact that their author is a non-Lebanese who has less of a stake in the results than an *involved* author (i.e., member of one of the communities vying for power in Lebanon).

here that the legal and social structures of Christian communities in the Middle East, especially in Lebanon, is not a recent invention. Indeed, as some historians argue, it dates back to early periods of Islamic rule in the area, as we are going to see below.

The origins of the different communities which inhabited the area later to be known as Lebanon is still a matter of dispute among historians.<sup>17</sup> However, it is generally agreed that, by the eleventh century, the most important religious communities were already settled there: Maronites in the extreme north of the Lebanon Mountains, Druze in the south, Shi'ites in the southern hills, the Bekaa and the central part of the Kisirwan mountains, and mainly Sunnis and Melchites<sup>18</sup> in the coastal cities.

The Arab Muslim empire, which extended over the territories of the previous Byzantine and Persian empires since the 7<sup>th</sup> century AD, developed rules for regulating the rights and responsibilities of other believers or “peoples of the book” (i.e., Christians and Jews) and of Muslim dissidents living within its confines. Most non-Muslims were thus allowed to maintain their religious autonomy in return for accepting the legitimacy of their Islamic ruler.<sup>19</sup> They also had to pay a poll tax or *dhimma* in return for protection. Moreover, Muslims rulers would grant *dhimmi* people the right to keep their own laws and to practise their religion freely. These principles included in early treaties thus became the basis for all subsequent Islamic policies toward Christians and Jews.<sup>20</sup> Slowly, non-Muslims were even allowed to keep their courts, their traditions, and their leaders. Non-Muslim communities thus came to enjoy a high degree of self-rule, forming what one historian referred to as “a state within a state”.<sup>21</sup>

With the rise of the Ottoman Empire, this ancient Muslim system of “wardship” was expanded into the “Millet system”. A Millet was a non-Muslim community which recognised the sovereignty of the Muslim state in return for administering its own affairs. Thus, while Christians and Jews, like Muslims, were subject to the Ottoman authorities in some areas (e.g., taxes), they were autonomous in all matters concerning personal status (marriage, inheritance, education, etc.).

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<sup>17</sup> Salibi, 1988.

<sup>18</sup> Melchites are members of one of the eastern Christian denominations.

<sup>19</sup> Historically, the first application of the Millet system goes back to the times of the prophet Mohammad. He concluded peace treaties with Christians and Jews, offering them protection for their lives and properties in return for their submission to the new government and paying taxes. For more details, see “Dhimma” in *Encyclopedia of Islam* Vol. II (Leiden: E.J Brill, 1965, p. 227).

<sup>20</sup> Hitti, 1962, p. 236.

<sup>21</sup> Fares, 1980, p. 142.



“This quasi-autonomy meant that for Christians and Jews, Ottoman rule was semi-indirect rule”.<sup>22</sup> Though the Millet system was characterised by varying degrees of tolerance (or intolerance, depending on the historian) in different periods of Islamic rule, one of its major consequences, centuries later, was to encourage communal differences and to preserve communal loyalties. Even after the last of the Muslim empires (i.e., Ottoman) disintegrated, socio-psychological barriers between members of different communities persisted. According to some historians, “suspicion”, “bitterness”, and “hatred” often characterised the relationship between Muslims and Christians, sometimes even within the various Christian communities.<sup>23</sup> This was especially true in post-1943 independent Lebanon where religious communities remained “quasi-autonomous” and “the major social organisation” for the individual.<sup>24</sup>

There is no doubt that the Millet system, in its attempt to be tolerant towards religious diversity, slowly instituted religious affiliation rather than secularisation as a source of cohesion (or more exactly co-existence) among the different religious communities. Lebanese Christian communities, realising the fragility of their status in an area that continued to be predominantly Muslim, were specifically keen on preserving their communal independence and unwilling to accept any infringement on their traditional privileges. This “fear of” or “lack of trust” in Muslim hegemonic society on the part of Lebanese Christians may have been strengthened by the existence of certain abuses in the application of the Millet system throughout history, even when these abuses were eventually corrected. Thus, with the creation of the Lebanese state, confessionalism became the ideology adopted by the new entity and the cornerstone on which the entire governmental structure was built. Christians, who were a slight majority, were pushed by past fears to reject plans of assimilation within the larger Arab context for fear of being reduced to a minority. Basically then, the Muslim-Christian rift in the Lebanese Republic reflects the will of

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<sup>22</sup> Hanf, 1993, p. 54.

<sup>23</sup> These divisions manifest themselves in the concepts adopted by Christians to describe their Lebanon: “Lebanon: refuge of the Christians”, “Lebanon: Christian homeland”, “Phoenician Lebanon”, “Lebanon a Western country”, etc. For an explanation of some of these concepts see Fahim Qubain, *Crisis in Lebanon*. Washington: the Middle East Institute, 1961, pp. 16-17. All these concepts, Fares argues, are attempts to separate Lebanon from its Arabic environment, and an affirmation that all previous Arabo-Islamic periods are temporary (Fares, 1980, p. 141). They also portray Christians as the justification for the existence of Lebanon.

<sup>24</sup> Hudson, 1968, p. 21. After the withdrawal of the Ottoman colonialists, Lebanon was ruled, as a mandate, by the French. It obtained its independence officially on 22 November 1943. The French mandate authorities, however, did not actually leave the country until 31 December 1946.

each side to “settle questions of identity and the future of the Lebanese state according to their own terms.”<sup>25</sup>

### From “Millet” to “confession”: defining confessionalism

A confession (or community) is the human grouping around a certain set of beliefs and practices that provides the individual with a sense of belonging. This common belief - a main factor *dividing* peoples into specific groups or communities - can be national, cultural, ethnic, religious or linguistic. Moreover, a community is a social body that *demand*s political and cultural commitments from its members who share common characteristics that are not shared by other groups (e.g., traditions, beliefs, and history).

More importantly, it is not enough for a state to encompass several such communities for it to be referred to as “multi-communal” or “multi-confessional”. A distinction should be made here between “groups in themselves” and “groups for themselves”, applying the Marxist class distinction, namely the degree of “consciousness” that a class - or group or community by analogy - has of itself.<sup>26</sup> Thus, a group or community displaying all the necessary criteria for an “objectively” identifiable formation does not actually constitute a community as long as members have not developed a common communal awareness based on these criteria.<sup>27</sup> In other words, any segmentation - along ethnic, religious, language, or other lines within a given society - is of no political consequence until self-awareness develops, making these communities with a clear group consciousness “groups *for* themselves”.

Finally, it should be pointed out that, in line with the Marxist group distinction/group consciousness, the existence of several communities in a given society or state does not translate into any significant power struggle unless the communities themselves are powerful (numerically, economically, and politically). Moreover, we can speak of a *confessional political system* when referring to a multi-confessional society only when the structures, institutions, and political life of the latter reflect the weight of its various (distinct) communities.<sup>28</sup>

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<sup>25</sup> Fares, 1980, p. 141.

<sup>26</sup> Hanf, 1993, p. 20.

<sup>27</sup> Max Weber also emphasises the importance of a community’s perception of itself. A criterion of distinction “leads naturally to a ‘community’ only if it is *subjectively* felt to apply to all” (emphasis added). He points out how common communal ancestry is often imagined and that communal consciousness “is, as a rule, determined by common political fate and not primarily by origins,” as quoted in Hanf, 1993, p. 21.

<sup>28</sup> Fares, 1980, p. 18.

In the literature on the Near and Middle East in particular, the term “community” is used to refer exclusively to *religious* communities.<sup>29</sup> In Lebanese political terminology, the word for a religious community is *ta'ifa* (group or confession), and the term *Ta'ifyia* (i.e., religious confessionalism or more simply confessionalism) is used to describe a political system where power sharing is based on religious loyalty or affiliation. *Ta'ifyia*, indeed, is the major characteristic of the Lebanese people, the single common feeling that permeates all walks of Lebanese political and cultural life. It is the product of the special fabric of Lebanese society - a society made up of several *tawa'ef* or religious communities, “each one acting as a *distinct society* or Millet as they were known during Ottoman rule”.<sup>30</sup>

### Conflict regulation in multi-communal states

In the definition offered about the nature of the state, Rodee et al. stress how - in addition to the territory, the people inhabiting the territory, and the form of government expressing the state sovereignty over that territory - cultural homogeneity is a critical factor in determining the state's potential for survival.<sup>31</sup> They explain, for instance, how in times of stress (economic or other), people who are divided along racial, linguistic, or religious lines are less willing to compromise, which makes it more difficult for the state to manage crises. More specifically, they tie the question of the cultural divisions of a country's people with that of national identity when explaining the various factors conferring legitimacy to a state's institutions:

Cultural homogeneity, then, is a powerful force working on behalf of national identity. And where the state's geographic boundaries, and the development of its economic resources, reinforce the cultural unity and so the national identity of the state's citizen's, the stability of the state and the ease with which the governors govern the governed are measurably enhanced ... Ultimately, *the state enjoys legitimacy not because of what it does, but because of what it is - the most visible and complete expression of the nation.*<sup>32</sup>

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<sup>29</sup> Finding the International Court of Justice definition of “community” quite comprehensive and accurate, Pierre Rondot adopts it for his study of the religious communities in Lebanon (Rondot, 1947, p. 22). On 31 July 1930, the International Court of Justice defined “community” as follows: “Le criterium de la notion de la communauté... est l'existence d'une collectivité de personnes vivant dans un pays ou une localité donnée, ayant une race, une religion, une langue et des traditions qui leur sont propres, et unis par l'identité de cette race, de cette religion, de cette langue et de cette tradition dans un sentiment de solidarité à l'effet de conserver leur tradition, de maintenir leur culte, d'assurer l'instruction et l'éducation de leurs enfants conformément au génie de leur race et de s'assister mutuellement”; *Resume Mensuel des Travaux de la Société des Nations*, 10/7 July, 1930.

<sup>30</sup> Rabbat, 1970, p. 62, emphasis added.

<sup>31</sup> Rodee et al., 1983, p. 34.

<sup>32</sup> Rodee et al., 1983, pp. 33-34, emphasis added.

Actually, there is little doubt that “the potential for conflict is considerably greater in multi-communal states than in culturally homogeneous states.”<sup>33</sup> Numerous social scientists agree that multi-communal states, by their very demographic make-up, are predestined to be unstable, and that multi-communal conflicts can only be successfully regulated either by eliminating the variety of different communities or by resorting to undemocratic means, that is the domination of one community over the others.<sup>34</sup> This pessimistic view is countered by those who argue that a number of states were able to regulate the coexistence of their various communities through institutional compromise.<sup>35</sup> However, as Hanf notes, “... the pessimists have the weight of quantitative argument on their side”.<sup>36</sup> He adds that the various views can be reduced to three ideological tendencies of legitimisation in multi-communal states, all seeking the goal of nation-building and conflict resolution but through different means: the concept of Jacobinism, the mobilisation of communal identities, and syncretistic nationalism. The latter tendency, for instance, in stark contrast to Jacobinism which seeks to eradicate all forms of particularism in order to create a unified, homogeneous state (e.g., France), seeks unity in diversity and regards the various existing communities as the nation’s building blocks. One way of achieving this unity in diversity is through the political articulation of communal identity (i.e., Switzerland and Lebanon), in what is known as “consociation” or in Swiss political usage as “Konkordanzdemokratie”.<sup>37</sup>

The self-awareness of communities has often been compared to that of nation-states. One could actually compare the cultural, political, and economic differences between communities to the ones existing between states. In 1968, Michael C. Hudson wrote the following about Lebanon: “The sub-national communities are compelled by the situation to act as if they were states in an

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<sup>33</sup> Hanf, 1993, p. 26.

<sup>34</sup> Hanf, 1993, p. 26..

<sup>35</sup> Lijphart, 1977, p. 1.

<sup>36</sup> Hanf, 1993, p. 27.

<sup>37</sup> Hanf, 1993, p. 29; Messarra, 1983 and 1997. The concept of Konkordanzdemokratie is part of the Swiss political vocabulary. Initially introduced into comparative political science as “proportional democracy” by Gerhard Lehmbuch, it became the cornerstone of an elaborate theory by Arend Lijphart (Lijphart, 1985, p. 1975) who borrowed Johannes Althusius’ concept of *consociatio* (community of common destiny or cooperative). As Hanf notes, “Lijphart regards his theory as more than an analytical instrument. It is also normative: given the conditions obtaining in plural societies, the only realistic choice is between consociation and no democracy at all. In states with different communities decisions by majority must inevitably be one-sided and favour the largest community. Consociation rests on conflict regulation through amicable agreement between the communities, by the involvement of all communities in the exercise of power and, consequently, by continual compromise. Consociation means the recognition of the existence of different communities and their political composition”(Hanf, 1993, p. 30).

international environment... Mutual deterrence and actors with devastating but relatively equal power create an uneasy perpetual truce."<sup>38</sup>

In *Ethnic Groups in Conflict*, Horowitz explains some of the main goals of ethnic conflict: control of the state, control of a state, and exemption from control by others. He argues how the centre is not a neutral arbiter for conflicts but is itself "a focal point of competition".<sup>39</sup> Actually, politics in multi-communal states, just like politics everywhere, is a continuous struggle for the distribution of power and, consequently, wealth. However, in contrast to the political parties or trade unions which members join freely in homogeneous societies, "membership in communities is quasi-automatic, a matter of birth and upbringing."<sup>40</sup> As a rule, acute situations of crisis arise when continued efforts to promote communal egalitarian incorporation suffer a setback. Communities thus resort to armed conflict, fearing their "legitimate" demands will not be accepted through more peaceful means.<sup>41</sup> Whereas crises may lead to social upheaval in homogeneous societies, they often lead to civil war in multi-communal states. More frequently than not, the armed conflict works as a means for negotiating a more acceptable form of conflict regulation.<sup>42</sup> The power politics of communities in this case resemble "the classic, pre-nuclear power politics of nations", with the variant that the possibility of civil wars ending in clear victories being much lower - especially in multi-communal states where no group constitutes a majority :

The likelihood of an agreement to coexist is greatest when all communities realise that none of them is strong enough to gain a clear victory, yet none so weak as to be permanently vanquished... The communities involved have to realise that they are not in a position to achieve all their material and ideological objectives. Such a conflict can only end when all participants *agree to share the goods and benefits of the country* - as relative as they may be - in a suitable manner, to accept the existing distinctions between the communities and, above all, to abandon all 'pure' ideologies, whatever their nature.<sup>43</sup>

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<sup>38</sup> Hudson, 1968, pp. 9 and 34.

<sup>39</sup> Horowitz, 1985, p. 50.

<sup>40</sup> Hanf, 1993, p. 33

<sup>41</sup> In such a case, according to Oberschall, "...both sides lack full and accurate information about each other; they have misconceptions about each other's strengths and weaknesses" (1973, p. 25). Hanf also describes each community's appraisal of its own political power during negotiations as a "miscalculation of the chance of one's demands being accepted" (Hanf, 1993, p. 37).

<sup>42</sup> Moreover, where coexistence was preceded by armed conflict, as in Switzerland and Lebanon, communal differences tend to be politically institutionalised. In the optimist view of Theodor Hanf, "civil war can lead to long periods of accommodation in coexistence" (Hanf, 1993, p. 32).

<sup>43</sup> Hanf, 1993, p. 37, emphasis added.

Finally, whereas privileged classes risk losing their privileges in homogeneous societies, the defeated communities in civil wars “risk subjugation or the loss of their identity, if not their lives”.<sup>44</sup>

### CONFESSIONALISM IN 20<sup>TH</sup> CENTURY LEBANON

Understanding the nature of political conflict in multi-communal societies is crucial for the present analysis of the Lebanese Broadcasting Act of 1994. It provides the study with the necessary background, namely the needed political context for understanding the nature of the controversy caused by the 1994 Act. Based on the nature of power politics and power sharing in multi-communal societies, I will argue that the main discontent with and criticism of the broadcasting law was partly of communal or confessional origins: communities - political and religious - that felt “excluded” were thus the most vociferous about the licensing process. Moreover, the battle for representation at the level of the broadcast media will be explained as being part of a larger battle for maintaining balance in political power and representation at the level of the multi-communal state (Lebanon in this case) - a concern seen more often than not as a matter of survival for the communities involved. Finally, understanding conflict resolution in a multi-confessional society will help to partially explain why the 1994 Act was implemented the way it was.

#### **Lebanon and inter-communal strife**

In the opinion of some scholars, Lebanon is an interesting example – “an apposite object of empirical research... as one of the few viable cases of consociation outside Europe”, at least up until 1975 - of the capacity of deeply divided systems to develop mechanisms for redressing their imbalance (i.e., tension-management and conflict-resolution).<sup>45</sup> However, the various inter-communal wars since the middle of the 19<sup>th</sup> century led many scholars to consider Lebanon as a state lacking a unified national allegiance or identity. In other words, the problem is diagnosed as being largely due to the imbalance between national and communal loyalties translating into tribal or communal allegiance greater than any other kind of allegiances – e.g., class or national ones.<sup>46</sup>

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<sup>44</sup> Hanf, 1993, p. 26.

<sup>45</sup> Hanf, 1993, p. 40.

<sup>46</sup> Fares, 1980, p. 12. Most accounts of Lebanese history stress the religious (internal) divisions, and sometimes the international (external) factors, to explain the Lebanese communal conflicts. Fawaz Traboulsi, in his study of conflicts in contemporary Lebanon, criticises this “reductionism” and “fixation on identity” in explaining Lebanese history. His own account tries to introduce another important dimension of the conflicts (i.e., class conflict), arguing that “it is the

Though confessionalism is generally innocuous when based on a legitimate grouping of individuals for the realisation of common goals and aspirations, any extremism in that grouping becomes a threat to the state since the (narrower) communal interest overwhelms and precedes the (larger) national interest.<sup>47</sup> In the case of Lebanon, this extremism in effect found its most violent expression several times within a century and a half.<sup>48</sup> More recently, since the creation of Greater Lebanon in 1926, the Lebanese state has continued to suffer from serious socio-political problems due to its religious pluralism and fragmentation, the most violent of all being the latest Civil War that broke out in 1975 and lasted until 1991.

Though the country, for several decades since its (actual) independence in 1946, “was held to be an example of successful, peaceful and democratic coexistence, as one of the few viable cases of consociation outside Europe,”<sup>49</sup> the breakdown of its social and political fabric during the 1975-1991 Civil War not only brought back memories of previous civil wars – the first of such wars extending from 1840 till 1860<sup>50</sup> - but also forced many to reconsider the success of its consociational system. Worse yet, the term “Lebanisation” became synonymous with internecine, fratricidal warfare - or at least the threat of warfare in other multi-communal states.

Far from attempting to study or even review how and why the “Lebanese Model” functioned since the creation of Greater Lebanon in 1926 and why it then broke down - a task outside the scope of the present research - I will summarise the recent historical conditions that institutionalised the confessional system, focusing on the specificity of Lebanon as a confessional, multi-communal state throughout the 20<sup>th</sup> century.<sup>51</sup>

This background, I will argue, is pertinent to understanding the 1994 Broadcasting Act: it provides the necessary political context for understanding the nature of the controversy caused by

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class frustrations which constitute the explosive and auto-destructive charge of confessional differences” (Traboulsi, 1993, p. iv, author’s translation).

<sup>47</sup> Khalil, 1992, p. 20.

<sup>48</sup> Several Lebanese civil wars, other than the 1975-1991 war, and whose causes can be largely traced to confessional divisions, occurred in 1841, 1845, 1860, and 1958. For details see Malcolm H. Kerr, *Lebanon in the Last Years of Feudalism: 1840-1868* (Beirut, 1959); Kamal S. Salibi, *The Modern History of Lebanon* (London, 1977); and Rabbat, *Al Waseet fil Kanoun al Doustouri* (Beirut, 1970).

<sup>49</sup> Hanf, 1993, p. 40.

<sup>50</sup> For a political economic study of this early major civil strife, see Fares, 1980.

<sup>51</sup> This historical synopsis is based mostly on the following literature: Fares, 1980; Salibi, 1977 and 1988; Hanf, 1993; and El-Jisr, 1978. Therefore, footnotes will not always be given for all individual facts, dates, and names in Lebanese history, except when contradicting versions are pointed out or direct quotes are used.

the law- mainly *how* and *why* confessionalism permeated the licensing process and resulted in vehement criticisms of the Broadcasting Act, especially during its implementation phase.

### **The question of legitimacy**

Following the defeat of the Ottoman empire in World War I, Arab provinces in Mesopotamia and Syria - previously under Ottoman rule - were divided as mandated territory between Britain and France, with the provision of preparing them soon for independence. In Mount Lebanon and the adjacent parts of the old province of Beirut, the Maronites - a Christian community with a long tradition of union with the Roman Catholic Church in Europe - started pressing for the creation of a "Greater Lebanon" under their control and separate from the rest of Syria. Already, in 1861, still under Ottoman rule, they had secured a special political status for their historical homeland of Mount Lebanon with an international guarantee.<sup>52</sup>

Though the Maronite community enjoyed strong French support, France could not act without reservation. In Mount Lebanon, the Maronites had a clear majority. In the "Greater Lebanon" that the Maronites were calling for, however, they were going to be outnumbered by the Muslim inhabitants of the coastal areas, the hinterlands, and the Bekaa Valley. Finally, on 1 September 1920, hard pressed by Maronites for whom they had strong sympathies, and in order to prevent King Faisal from building an independent kingdom in Syria, the French created the state of Greater Lebanon within the present borders. To the former territory of the Lebanese Mutesarrifate "Mont Liban", were added Beirut and the Beqa'a, Tripoli, Sidon, and Tyre regions.

To the Lebanese nationalists, though the new state was under French mandate with the promise of a subsequent independence, it was better than no state at all.<sup>53</sup> To Maronites, specifically, it was "the culmination of their long search for liberty and independence."<sup>54</sup> About the same period, also

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<sup>52</sup> The bloody events of 1860 turned the divisions between the religious communities into an important feature of Lebanese social and political life. In 1861, the major European powers (i.e., the Austro-Hungarian Empire, Russia, the German Empire, France, and Great Britain), moving to protect the Christian communities, pressed the Ottoman Empire to create an autonomous governorate of "Mount Lebanon" - or the Lebanon Mountains and the coastal strip north and south of Beirut, but excluding the city - with the powers guaranteeing its autonomy. This governorate would have an appointed Christian governor and an Administrative Council comprising representatives of all religious communities, with a system of approximately proportional representation introduced. This system introduced a fundamental change: instead of representation by community, representation was tied to demography. This change would gain momentum only very much later, as the events of the second half of the 20<sup>th</sup> century will demonstrate.

<sup>53</sup> Subsequently, on 23 May 1926, the new state received a constitution which transformed it into the Lebanese Republic. Independence was granted in 1943.

<sup>54</sup> Hanf, 1993, p. 65.



spurred by the nationalist drive, another “sister” republic (Syria) came into existence under the French mandate.

Whereas both newly founded states quickly developed separate administrative bureaucracies, flags and national anthems as a step towards their total independence, the question of nationality remained paramount and unresolved. To the Maronites and many other Christians in Lebanon, the question was resolved by claiming a Lebanese identity distinct from that of the Syrians, or the Iraqis, or the Palestinians. Differentiating themselves from the neighbouring, newly emerging Arab states, they claimed a Phoenician heritage that antedates the Arab Muslim heritage by thousands of years.<sup>55</sup> Not everyone in Lebanon, however, shared the “separatist” views of the Maronites. Arab nationalists, including Lebanese Muslims and some Christians, could not accept the French-created Lebanese Republic as a nation-state separate and distinct from Syria. Though it is true that the Syrian Republic was created in response to nationalist demands, “the Syrian Republic itself was not acceptable as the final and immutable achievement of the aspirations of its people”.<sup>56</sup> In the views of those Arab nationalists, Syrians were not only Arabs, but historically their territory had also always included Lebanon, Palestine, and the Transjordan, forming part of a greater Arab homeland.<sup>57</sup> In Lebanon, Lebanese Muslims in particular resisted the idea of a Lebanese state in which, for the first time in their history, “they were no longer part of the ruling group but at worst the minority, at best one minority among others”.<sup>58</sup>

Thus, from its inception, the new state was characterised by serious disagreements about its legitimacy: the concept of a distinct, natural, and historical Lebanese nationality was meaningful to some but not to others. On the one hand, stood the Lebanese nationalists, who largely endeavoured to prove that a distinct, unique Lebanon has existed since time immemorial. On the other hand, Arab nationalists - usually but not exclusively Muslims - regarded the history of the new state of Lebanon as part of the larger, richer history of the Arab-Muslim Empire.<sup>59</sup> Those

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<sup>55</sup> Salibi, 1988, p. 27.

<sup>56</sup> Salibi, 1988, p. 28.

<sup>57</sup> Salibi, 1988, p. 29. Shortly after the outbreak of the 1975 Civil War, Syrian Prime Minister Khaddam declared that, in case the Christian plan to partition Lebanon (to create a Christian separate state or canton) was carried out, Syria would not hesitate in annexing the country “which is in fact but a part of itself” (as quoted in Maila, 1992, p. 11).

<sup>58</sup> Hanf, 1993, p. 65.

<sup>59</sup> Proponents of a Greater Syria which would include present-day Syria, Lebanon and Palestine were primarily secular intellectuals, mainly Muslim and Greek Orthodox activists. Precisely because of its secular character, this

divisions extended to other elements constituting the foundation of a state: there were disputes over the geographical confines of the country and which part to be called “Lebanon”, over which community was already a nation in the past, whether an autonomous region existed from the 16<sup>th</sup> to the 18<sup>th</sup> centuries, and whether this region could be referred to as “Lebanese.”<sup>60</sup> In other words, Greater Lebanon was not the embodiment of the aspirations of all of its inhabitants. Its establishment, moreover, had far-reaching consequences (socially, economically, and politically), especially concerning the Christian (mainly Maronite) and Muslim relations on the one hand, and the Muslim-French relations on the other hand. For Lebanese Muslims, for instance, not only were the concepts of a Greater Arabia or at least an Arab Greater Syria far more desirable, but inclusion in the new state dominated by French suzerainty was “a veritable trauma.”<sup>61</sup>

Indeed, throughout the period of the French mandate, Arab-French relations were generally characterised by mutual suspicion. Arab suspicion was not without its justification. Arab nationalists in Syria and Lebanon rejected the French government which they believed was responsible for Arab political subjugation. These suspicions were greatest among the Muslims of the newly annexed areas, due to the long history of French-Maronite relations and alliance. When, by the end of World War One, Western powers divided geographical Syria (previously under Ottoman rule) into five units later to gain their independence, the policy was seen as a clear attempt to dismantle the Arab nationalist movement by empowering minorities, encouraging local or provincial movements, and weakening the Muslim majority.<sup>62</sup> Moreover, the creation of the new Lebanese state, to the majority of Muslims, was a French “artificial creation” that lacked moral and legal authority and was responsible for cutting political ties with other members of their community.<sup>63</sup> Salibi summarises the situation by ascribing the illegitimacy of Lebanon as a state in the eyes of the Arabs, in general, and Lebanese Muslims, in particular, to the Maronites. With

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concept found support only among minorities in different communities (Hanf, 1993, p. 64). As for the idea of an “independent Lebanon”, it had widest currency among Maronites.

<sup>60</sup> These divisions, Salibi argues, are no different in the other five countries formed out of geographical Syria - an Arab territory formerly ruled by the Ottomans. They were all “artificial creations” carved up and organised by Western imperial powers, and none of them had a “true or unarguable concept of special nationality to go with it” (Salibi, 1988, p. 31).

<sup>61</sup> Salim Nasr, ‘L’Islam Politique et L’Etat Libanais (1920-1975)’, in Olivier Carre, ed., *L’Islam et l’etat dans le monde d’aujourd’hui*. Paris, 1982, p. 33.

<sup>62</sup> Fares, 1980, p. 118.

<sup>63</sup> Maronites, including some historians, argue the opposite, contending that what came to be known as “Great Lebanon” or “Grand Liban” was not “created” by the French, but an already existing entity merely proclaimed part of the French mandate. Moreover, the argument goes, before the mandate and during the Ottoman Empire, Lebanon existed as an entity (what is referred to as the “Lebanese Emirate”), all this independently of Syria which was not an entity by then (Bou Malhab Atallah, 1980, p. 9).

the help of the French, the Maronites brought into existence not only a separate country but also a separate Lebanese nationality against the wishes of their neighbours and without the consent of the people who were forced to become their compatriots.<sup>64</sup>

Consequently, Muslims resisted the new state, rejecting any connection with the new political entity and cutting themselves off from public life (through civil resistance) and refusing governmental positions. Their opposition was in fact so vehement that they boycotted the census of 1921 which the French saw necessary in order to assess correctly the size of each community in preparation for the elections for the Advisory Council.<sup>65</sup> Numerous Muslims even refused to have the designation "Lebanese" on their identity papers. Christians at some point were attacked, mainly in the south, elections were boycotted, and demands by Muslim notables for the right of self-determination and unification with Syria were repeatedly voiced. This situation continued until 1926 (date of the creation of Greater Lebanon) when some Muslim elements, especially Shi'ite and Druze, started to be politically active.

In sum, from the very beginning the new state suffered from profound disagreements over its legitimacy. Of special difficulty was the new demographic situation created by "Greater Lebanon": while Maronites were a clear majority in Mount Lebanon (85% of the population), they became a relative majority in Greater Lebanon (two-thirds of the population in the new areas being Muslim). Henceforth,

Greater Lebanon had to face the problem of organising coexistence between areas with very different histories, between two religious groups of approximately equal numbers, and several religious communities of which no single one had anything remotely like a majority.<sup>66</sup>

Though the annexation of the coastal areas and the Beqa'a valley made Greater Lebanon more viable economically, it was a turning point in the political development of the country. It marked the end of a smaller Lebanon based on the close association between a Maronite majority and a Druze minority centred in Mount Lebanon, and the beginning of a more pluralistic society characteristic of present-day Lebanon and its capital Beirut. Actually, the newly annexed areas with their predominantly Muslim inhabitants brought down from 80% to 51% the number of Christians in the country, according to the 1932 census. Nearly half of the population was now Muslims who deeply resented this arbitrary annexation to a Christian Lebanese state: "While the expansion of Lebanon marked the culmination of Maronite aspirations, it also concealed a

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<sup>64</sup> Salibi, 1988, p. 32.

<sup>65</sup> Fares, 1980, p. 118; and Hanf, 1993, p. 65.

<sup>66</sup> Hanf, 1993, p. 66.

fundamental threat to the country's future stability and even its very existence as a Christian state."<sup>67</sup>

### **The increasing confessional-ideological rift: Arabism vs. Lebanism**

Prior to the creation of the republic, political alliances and objectives were rather loose and no community sought the exclusion of others from the political arena.<sup>68</sup> With the creation of Greater Lebanon, two important new elements entered political life: the sharp increase in the number of Muslims in the new republic - an increase which disrupted the existing balance of powers and expectations, and the frequent instrumentalisation of legitimate religious interests to create an ideological smoke-screen to justify political aims.<sup>69</sup>

Though religious conflicts in Lebanon were nothing new and were already experienced by inhabitants of the Mountain in the middle of the 19<sup>th</sup> century, they were exacerbated with the formation of Greater Lebanon. Despite the fact that Muslims were soon to form a narrow majority of the inhabitants of the newly created state, the structure of power in Lebanon was established to give Christians, mainly the Maronites, the upper hand, due to their majority status at the time and French support in the early days of the Lebanese Republic.

Whereas Christians considered their political dominance to be crucial for their survival in the engulfing Muslim Arab world, Muslims pressed for reforms, taking into consideration the changing demographic structure. This conflict over power sharing led to increased rivalry between the various confessional groups and to deeper divisions within the Lebanese society. On the one hand, Muslims, increasingly resentful of their under-representation in the political system, turned away from the idea of a Greater Lebanon and started identifying with the Arab world (i.e., Arabism). Christians, on the other hand, strengthened their alliance with the West, mainly France, in order to maintain their existence and domination in Lebanon (i.e., Lebanism).

While the country could be protected against the destabilising external influence of Arab nationalists and Arab intervention for the duration of the mandate, the problems of the country worsened as soon as the mandate ended. Not only were none of the two dominant ideologies (i.e., Lebanism vs. Arabism) able to gain a wide currency among the population at large, but both

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<sup>67</sup>Tarabey, 1990, p. 5.

<sup>68</sup>Fares, 1980, p. 90.

<sup>69</sup>Fares, 1980, p. 91.

represented different concepts of nationality. As Salibi sums up the situation in the aftermath of the creation of Greater Lebanon,

All that Lebanon needed to be a success was political accord and an even social development among the different communities which had come to form its population and in the different regions it had come to comprise. However... it was exactly these conditions that proved hard to reach... from the very beginning, the two forces (Arabism and Lebanism) collided on every fundamental issue, impeding the normal development of the state and keeping its political legitimacy and ultimate viability continuously in question.<sup>70</sup>

### THE RISE (AND FALL?) OF CONFESSIONALISM

#### The French Mandate years and the instilling of political confessionism

Two of the most significant constitutional decisions of the French mandate were: the establishing of the electoral system for the Chamber of Deputies or the future parliament and the promulgation of a constitution for the Lebanese Republic. This constitution, which, with some amendments, is still in force, is loosely based on that of the French Third Republic whereby a parliamentary democracy is headed by a president with wide powers.<sup>71</sup> Moreover, the adoption and development of the system of political confessionism during the French mandate and after independence had a great bearing on the religious organisations of the three Muslim communities and lasting repercussions on subsequent Lebanese political life. Accordingly, while being previously weakly organised - especially when compared to their Christian counterparts - Muslim clergymen started organising themselves hierarchically and occupying positions with permanent tasks. For instance, the French authorities appointed three religious leaders (one Sunni, one Shi'ite, and one Druze) and recognised them as the official spokespersons for their respective communities, in the fashion of Christian clergymen.<sup>72</sup> This Muslim participation in Lebanese political life affected them in at least one major aspect, i.e., by making them *think in confessional terms*. Whereas the different communities previously exhibited a high sense of solidarity in the early years of independence, when no acceptable formula to divide public offices or positions between Muslims and Christians

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<sup>70</sup> Salibi, 1988, pp. 36-37.

<sup>71</sup> Hanf, 1993, p. 68.

<sup>72</sup> Fares, 1980, p. 102.

existed, the subsequent allocation of such positions to the various communities eroded that solidarity.<sup>73</sup>

As a result of this allocation, a new form of conflict *within* the larger Muslim community developed. While this conflict was muted during the mandate years due to the Muslim categorical opposition to the French rule, things changed after the Lebanese state acquired its independence in 1943. Since then, the initial ties that kept the Muslim communities together gave way to the attempts by each community to develop separately its own distinct identity. Not only did the confessional system reinforce and encourage the organisational independence of each of the three Muslim communities – e.g., they each developed separate legal structures for their personal status cases and affairs - it also seems to have created suspicion among them.<sup>74</sup> On the one hand, in the opinion of Fares, instituting confessionalism in the newly created state allowed the French to follow a policy of “divide and conquer” by dividing Lebanese society into several competing groups. On the other hand, he adds, confessionalism assured the Maronite community - believed to be the largest Lebanese community and France’s closest ally in the area - a powerful position. Thus, from the very beginning, according to some historians, the mandatory French authorities decided to maintain the confessional system and even to reinforce it.<sup>75</sup> The idea behind this policy was that a system based on political discrimination would decrease the probability of a national alliance or front coming to existence and opposing Western rule. In a confessional system, communities would be constantly reminded of their differences and fight among themselves instead of allying against an external enemy.<sup>76</sup> Though this interpretation of French intervention as another instance of “divide and conquer” is upheld by some historians, it is also contested by others. Hanf, for instance, interpreted the French institutionalising of confessionalism positively, arguing that one of its main consequences was equality for all communities. He gives credit for this to those Lebanese Christian politicians who, against the Jacobin ideas of the French

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<sup>73</sup> Indeed, in the 1943 Muslim Convention, the various Sunni, Shi’ite, and Druze members insisted on unity among the various Muslim communities, declaring that all Muslims belonged to a single community (Fares, 198, p. 126). It is noteworthy that the convention was held in order to protest the government’s decision to allocate 22 parliamentary seats to Muslims compared to 32 for Christians. The solidarity exhibited by the Muslims at the convention actually forced the French to intervene to change the proportions. From then on up until the constitution of the 2<sup>nd</sup> Republic (1989), five seats would be allocated to Muslims for every six reserved to Christians.

<sup>74</sup> Fares, 1980, p. 127.

<sup>75</sup> Fares, 1980, p. 103.

<sup>76</sup> Fares, 1980, p. 119. For details on Muslim political and armed resistance against the new state and the French authorities’ “pitting” of communities against one another see Fares, 1980, pp. 119-123. For a detailed analysis of the administrative steps taken by the French in the early days of the Republic to consolidate confessionalism by integrating it into the political system. See Fares, 1980, p. 103.

administrators of the mandate, insisted on “safeguard[ing] the peculiarities of the country and its institutions by stressing on and preserving the fundamental right of the existing communities”.<sup>77</sup> To support his claim, Hanf gives the example of the Shi’ite community which was recognised for the first time as a separate community.<sup>78</sup> Salibi seems to hold similar views concerning the role of the French, arguing that the special fabric and character (including success) of Lebanon cannot be attributed to an outside agency (i.e., France), for the “different social ingredients... were already in existence in different compartments of the country long before 1920”.<sup>79</sup> Thus, by the end of the mandate, and with the beginning of the independence period, Muslim leadership gradually stopped rejecting the confessional system - their stakes in it were growing steadily - and the hostility of the Muslim population towards this system also gradually lost its momentum once their political representation was increased and their demands for increased services were met.<sup>80</sup>

Indeed, several articles in the 1926 Constitution guaranteed the rights of the various communities. Article 9 guaranteed freedom of conscience and religion and gave communities the exclusive right to legislate on matters of personal status. Article 10 reserved to the communities the right to their own educational systems, subject to supervision from the state. The electoral law respected the interests of all communities. Muslims also started to feel the disadvantages of boycotting all public service: not only did they see the emergence of a predominantly Christian civil service as a result of this boycott, they realised that public policies could also serve some of their own interests.<sup>81</sup>

Two other factors also greatly contributed to the political integration of Lebanese Muslims and the reduction of their hostility towards the newly created state: first, the economic boom that Lebanon witnessed during the early years after its independence (in 1943) till the end of the 1950s, and secondly the failure of the Arab nationalist movement in general to achieve its goals. Though this by no means meant that the Arab nationalist movement had lost the power to mobilise the Muslim communities in Lebanon - the 1958 (short-lived) civil strife was a case in point - what

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<sup>77</sup> Hanf, 1993, p. 67.

<sup>78</sup> Under Ottoman rule, Shi’ites had had the legal status of the dominant orthodox Sunni community (i.e., Shi’ites were not recognised as a distinct Muslim denomination). This must have been especially humiliating for the Shi’ite community which historically views its origin in the very persecution inflicted upon it by orthodox Muslims (i.e., Sunnis) shortly after the death of the prophet Mohammad.

<sup>79</sup> Salibi, 1988, p. 232.

<sup>80</sup> Fares, 1980, p. 125.

<sup>81</sup> Hanf, 1993.

is noteworthy is that, as a result of the two factors above mentioned, the legitimacy of the Lebanese state increased and the nature of the conflict between the various communities changed. As long as Muslims called for unity with other Arab countries and as long as Christians insisted on a Christian Lebanon devoid of any Arab character (or without any Arab identity), and enjoying special ties with France, cooperation between the two was unthinkable. Indeed, the realisation of any of the ideological aspirations of the one would mean the annihilation of the other. For that reason, Lebanon during the mandate years was characterised by an acute conflict between the communities. However, when the issue of the identity of Lebanon was settled politically in a manner that satisfied the competing communities, cooperation or co-existence became a viable, practical solution. Thus, unlike the boycott of the census in 1921, Lebanese Muslims took part in the 1932 census. Finding that Christians were only a slight majority, they strove to occupy positions in proportion to their share of the population, abandoning the boycott of public services. Since 1934, they have fully participated in politics and premiership was reserved exclusively for a Muslim Sunni candidate. It was only in 1943, however, that thoughts about the imperative need for internal and *external* coexistence crystallised in the form of Lebanon's historic compromise: the National Pact.

### **Consolidating the Lebanese confessional system: The National Pact**

The French Mandate in Lebanon ended on 8 June 1941 and Lebanon was officially proclaimed independent on 26 November 1943.<sup>82</sup> Elected first President of the Republic at the end of 1943, the Maronite leader Beshara el-Khoury appointed his Muslim (Sunni) ally, Riyad al-Solh, at the head of a government representing the six major confessions in the country: the Maronites, the Sunnis, Shi'ites, Greek Orthodox, Greek Catholics, and Druzes.<sup>83</sup> More importantly, both President El-Khoury and Prime Minister Solh became the authors of the National Pact, a verbal understanding or "gentlemen's agreement" concerning the identity of Lebanon, guidelines for foreign policy, and fundamentals of power sharing between the religious communities. According to this agreement, often referred to as the "unwritten constitution" of Lebanon, the Christians would renounce the protection of Western powers while Muslims would renounce union with Syria or other Arab states. "Neither East nor West", as the prime minister put it in his ministerial

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<sup>82</sup> It should be remembered that the French mandate authorities did not fully withdraw until the end of 1946.

<sup>83</sup> In 1937, following the French-Lebanese Treaty, a Sunni deputy was nominated as prime minister. This nomination set a precedent in Lebanese politics, whereby all subsequent prime ministers were to be Sunni, just as all presidents were to be Maronite (Hurewitz, 1956, pp. 211-214).



declaration.<sup>84</sup> The purpose of this “double negation” was, on the one hand, to reassure the Christians that Muslims will cease calling for unity with Syria, and on the other, to reassure Muslims that Christians will stop seeking French protection.<sup>85</sup> Though Lebanon would be defined as a country with “Arab features”, it would nonetheless retain its “special character” and cultural ties with the West. Moreover, all communities were to be included in the exercise of power, with the major governmental posts reserved to candidates from the largest confessional groups: the presidency to a Maronite, the premiership to a Sunni Muslim, and the presidency of the chamber of deputies (or parliament) to a Shi’ite Muslim. As for the other posts in government and seats in the chamber of deputies, allocation was to reflect *proportionally* the sectarian composition of the country on a ratio of six (Christians) to five (Muslims).<sup>86</sup> This basic formula was added under Article 95 of the constitution (as amended on 8 November 1943), and extended proportional representation to the rest of the country’s institutions, starting with the cabinet of ministers, and affecting all positions in the public service. According to Article 95, “*as a provisional measure, and in keeping with the desire for justice and harmony, the religious communities shall be adequately represented in the civil service and in the cabinet, provided that this does not harm the interests of the state*”.<sup>87</sup> As a result, the country could not be governed by a simple majority. A “grand coalition” was necessary, with every large community having the right of veto.<sup>88</sup>

Though the National Pact was not a written legal document, but merely “the unwritten expression of the will of different minorities to coexist,”<sup>89</sup> it had the power of an unwritten constitution and was eventually enforced as such, often in contradiction with some of the principles of the Lebanese constitution (as will be discussed below). In Lebanese politics, more importantly, the Pact came to be used interchangeably with the term “proportionality”. According

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<sup>84</sup> Al-Jisr, 1978, p. 147. In his ministerial declaration, Riad al-Solh also spoke of Lebanon as “an Arab nation... which has all the benefits of Western culture”, as quoted in Maïla, 1992, p. 12.

<sup>85</sup> Expressing his strong doubts about the workability of this “double negation”, the leading intellectual and journalist of the independence years wrote in 1949 (Naccache, in *L’Orient* newspaper): “The alliance between Christianity and Islam rests on a double rejection. What sort of unity can be created from such a formula? What one half of the Lebanese do not want is quite obvious, and what the other half does not want is equally obvious... For fear of being what one is, and unwilling to be one thing or the other, Lebanon is in danger of being nothing at all... A state is not the sum of two impotences—and two negations will never bring forth a nation”. Author’s translation.

<sup>86</sup> The same proportions were applied during the French Mandate, based on the (last) census of 1932.

<sup>87</sup> Emphasis added.

<sup>88</sup> Hanf, 1993, p. 73.

<sup>89</sup> Rene Aggiouri in *L’Orient* daily, 6 April 1957. For a legal discussion on the binding character of the National Pact see Khalil, 1992, pp. 131-138.

to Hanf, however, a distinction should be made between the two. First, the practice of proportionality indeed antedates the National Pact. Proportionality was actually introduced by the Ottoman Empire about a century earlier. This was done in order to reconcile the different warring communities (especially the Maronites and the Druzes) and to bring to an end the civil war that started in 1840 and lasted for almost twenty years.<sup>90</sup> Second, as Hanf argues, those who were involved in the Pact made a historical compromise and meant it to be “provisional”, in accordance with the wording of Article 95 of the constitution. However, the Pact soon acquired a rigid character unlike what the fathers of the Pact meant it to be: i.e., a flexible, general principle of power sharing. The various Lebanese communities

came to regard not only offices of state, but positions in all ranks of the civil service as objects of patronage. Thus, every transfer and every promotion came to involve politics. Whereas the Pact was a grand, indeed historical compromise, the linkage with rigid proportionality considerably restricted the scope for the small, daily compromises equally necessary if a system of consociation is to function.<sup>91</sup>

In sum, the Lebanese political system, a parliamentary democracy based on the 1926 constitution, with its rigid application of proportionality, is a highly confessional one. Indeed, several articles in the constitution guarantee individual freedoms, mainly the freedom of religion and education. Various laws and decrees promulgated after 1943 also delegate to the different religious communities the power to regulate and implement religious rights and interests through separate religious institutions.<sup>92</sup> Specifically, on sensitive topics such as marriage, divorce, and inheritance, no state or civil laws exist in Lebanon. Instead, there are sectarian laws where each separate religious institution overlooking those matters acts on behalf of the state to protect and regulate the interests of its community members. Each individual is thus necessarily registered with the government as a member of a particular confession and consequently is subject, *exclusively*, to the statutes and courts of that community on issues of personal status (marriage, separation, divorce, custody of children, adoption, alimony, inheritance, etc.).

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<sup>90</sup> See Hanf, 1993; and Fares, 1980.

<sup>91</sup> Hanf, 1993, p. 73.

<sup>92</sup> Examples: Law of 2 April 1951 giving non-Muslim communities the power to regulate all matters of personal status; and Decree No. 18, of 13 June 1955 giving the Sunni community total administrative, social, and financial control over matters of personal status and religious affairs.

Thus, while belonging to the same country and having “equal rights” according to the Lebanese constitution,<sup>93</sup> all Lebanese are *not actually equal in rights* within the Lebanese confessional system. As opposed to many comparable cases in Europe and North America – where individuals gain additional group rights along with their basic, extensive individual rights – in Lebanon, individuals cannot enjoy many individual rights unless they belong to one of the recognised Abrahamic confessions. Indeed, the rights of every Lebanese may vary considerably depending on the religious community he/she belongs to, since confessions can differ greatly in their attitude towards or regulation of matters of personal status. For instance, patterns of inheritance differ between the Muslim and Christian communities: whereas Muslim rules of inheritance limit the share of female heirs, which is half of the share of the male heir, Christians do not discriminate between the sexes.<sup>94</sup>

Moreover, instilling the confessional system is not limited to giving the various religious communities the power to overlook matters of personal status: religious holidays, just like national holidays, are officially respected nation-wide, and religious leaders are treated (almost) like heads of states. More significantly, the state’s social benefits and development programmes are allotted on a religious or confessional basis – a practice which politicised religious administration and played a significant role in deepening confessionalism in Lebanese society.<sup>95</sup> More generally, Lebanon’s religious pluralism is reflected in the proliferation of sectarian institutional life. Institutions such as schools, hospitals, infirmaries, and printing presses that are secular and/or governmental in most other countries have a religious base in Lebanon. This situation enables “an individual, if he wishes, to pass his entire life in schools, youth organisations, and voluntary associations with only members of his own faith”.<sup>96</sup>

Education, moreover, has been relegated to the different religious communities. Thus, most children end up attending schools that are religiously homogeneous in terms of student body and

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<sup>93</sup> According to Article 7 of the constitution, all Lebanese are equal, and have equal civil rights and duties “without any distinction made between them.”

<sup>94</sup> Christian women, up until 1959, used to inherit according to the Muslim law or Shari’a, a rule introduced by Emir Beshir Shehab at the beginning of the 19<sup>th</sup> century. This decision by the Lebanese prince was considered revolutionary at the time because it gave more rights to Christian women since they were not allowed to inherit under the existing feudal system. However, more recently, and following several lobbying efforts conducted by women groups asking for equal rights, a new inheritance law for Christians was promulgated on 27 June 1959, giving Lebanese Christian women inheritance rights equal to those of Christian men. The same 19<sup>th</sup> century Shari’a law, however, continues to be applied to Muslim women in Lebanon.

<sup>95</sup> El-Jisr, 1978, pp. 248-249.

<sup>96</sup> Hanf, 1993, p. 84. I assume the same can be said about Lebanese females.

where textbooks interpret Lebanese history from a sectarian perspective. This strong decentralisation of the educational system has also been responsible for reinforcing particularistic communal perspectives at the expense of serving as a vehicle of national political socialisation and accommodation.<sup>97</sup>

In sum, in an attempt to accommodate the various communities and to reach national reconciliation, the Lebanese state, from its inception and particularly since its independence in 1943, had to delegate considerable powers to the separate religious communities. Increasingly, religious differences in Lebanon came to constitute a major determinant of the country's social and political life. Thus, an individual's religious affiliation is not limited to defining his/her major theological position or ritual practices. It is the *foundation* of his/her basic life patterns, legal status vis-à-vis the state, social and political relationships, and "a badge of social identity".<sup>98</sup>

While the constitution acknowledges and protects the various religious communities, enhancing the feeling of security and tolerance among them and defusing conflict through power sharing, one result has been the heightened awareness of sectarian distinctions. This situation, compounded by the existence of separate and government-endorsed personal status codes for each confession; the presence of a large number of religious organisations and social agencies reinforcing a particularistic instead of a national perspective; and the high, quasi-presidential status given to all religious leaders, led, in the words of historian Bassem El-Jisr, to the "creation of seventeen quasi-autonomous states within the Lebanese state."<sup>99</sup>

### **Breakdown of the "Lebanese model" and emergence of the Second Republic**

The National Pact has often been criticised for being responsible for instilling (religious) confessionalism in all walks of Lebanese social and political life, even though the practice of proportionality itself is older than the Pact and dates back to 1864, as already mentioned.<sup>100</sup>

Though from the start the Pact has been closely linked with, or more accurately reduced to, rigid

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<sup>97</sup> Hanf, 1993, pp. 88-89.

<sup>98</sup> Hanf, 1993, p. 86.

<sup>99</sup> El-Jisr, 1978, p. 243. Before the last amendment to the Constitution in Taef in 1989, the number of religious confessions acknowledged was seventeen.

<sup>100</sup> It should be noted here that some historians and scholars consistently point out that the Lebanese political system - which is a confessional one - was not a consequence of the French mandate (as many are inclined to believe) and that it can be traced further back in time to the beginning of the Ottoman rule over Syria (Rabbat, 1970).

proportionality, the fathers of the Pact never had this equation in mind. In fact, the fathers of the Pact recognised the social ills deriving from confessionalism and looked forward to the day when the confessional system would be abolished altogether. In one of his ministerial speeches as Prime Minister in the first government after independence, Solh thus spoke of the “blessed hour in the history of Lebanon when confessionalism would be abolished, and with God’s will we shall seek that this hour will come soon...”<sup>101</sup>

Between 1943 and 1975, Lebanon was characterised chiefly by a pursuit of political bargaining to ensure power sharing. It also functioned through “the mutual deterrence” of opposing strategies and interests, a deterrence brought by the realisation that “half a loaf was better than no bread”.<sup>102</sup>

It was the same realisation that gave birth to the National Pact, a strategy of power sharing, combined with a syncretistic national ideology. Thus, as long as the pie was shared equally, Lebanese conflicts were regulated peacefully. However, conflict regulation broke down when one of the Lebanese communities bargained for more than its allotted share in the system - that is for total control.<sup>103</sup> The first breakdown of this nature happened in 1958, but equilibrium was quickly re-established with relatively little damage.<sup>104</sup> In 1975, civil war broke out again, this time not to be appeased until 16 years later.

On 1 October 1989, after a dramatic escalation of events in Lebanon, sixty-two Lebanese deputies - half of them Christian, the other half Moslem - were flown to Taef in Saudi Arabia with the objective of putting an end to the Civil War.<sup>105</sup> A committee of seventeen, representative of the various communities’ weight, was chosen to draft an outline for constitutional reform. After twenty-three days of deliberation, on 22 October, “the Document of National Understanding” (or Reconciliation) emerged, officially endorsed by the majority of the Lebanese MPs present at Taef.

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<sup>101</sup> Article 95 of the Lebanese constitution also stresses the *temporal* character of the confessional/ proportional representation, stipulating that, on a *temporary* basis, all communities shall be represented fairly in the government and public offices.

<sup>102</sup> Hanf, 1993, p. 139.

<sup>103</sup> This, as in the case of previous Lebanese civil wars, was only possible with the help of non-Lebanese allies. The international dimension of the Lebanese *internal* crises, in fact, cannot be overlooked when studying the factors accounting for these wars (Hanf, 1993, p. 140; Maila, 1991, p. 14; Mansour, 1993, p. 200; Menassa, 1994, p. 48; and Smock, 1975, p. 147).

<sup>104</sup> Commenting on foreign intervention in the 1958 crisis, Hanf explains how, “fortunately for Lebanon”, the two external actors called upon neutralised each other, and were “wise enough not to pursue a surrogate war in Lebanon” (Hanf, 1993, p. 140).

<sup>105</sup> The following dramatic events acted to precipitate the Taef meeting to attempt reconciliation: in the wake of President Amin Gemayel’s departure on 23 September 1988, Lebanon suffered a constitutional impasse, with the presidency left vacant. This was followed by the emergence and co-existence of two separate governments (the Aoun

The Document was then ratified by the Lebanese parliament on 5 November 1989, in Qoleiat, Lebanon, in the form of a constitutional amendment.<sup>106</sup>

Also known as “The Taef Agreement”, though Arab-sponsored, this was indeed the most serious and comprehensive peace attempt in 15 years and was basically a Lebanese *compromise* to redefine power sharing among the various religious communities. As Hanf notes, though agreement at the beginning seemed impossible, gradually it became evident that only a small minority was calling for radical change. The majority, he adds, would accept limited reforms. In the end, according to one committee member, “everyone was dissatisfied, but almost everyone found it acceptable”.<sup>107</sup>

The Agreement dealt primarily with internal Lebanese conflicts - it contained amendments to several articles of the Lebanese constitution, especially on the question of national identity and the (internal) system of government.<sup>108</sup> It also dealt with two complicated external dimensions of the Lebanese Civil War: the Syrian (quasi-permanent) presence and the Israeli occupation.<sup>109</sup>

With regards to the constitutional reforms, the distribution of key offices was retained, in keeping with the 1943 Pact. However, the powers of those offices were modified to accommodate the (estimated) change in the numerical strength of the Muslim communities, consequently altering the division of power between the communities.<sup>110</sup> For instance, the powers of the

government and the Hoss government), each accusing the other of being unconstitutional. Finally, on 14 March 1989, the hostilities and bombardments resumed on a scale rarely used even in Lebanon.

<sup>106</sup> On 21 September, the political reforms voted for in Taef were promulgated by the President of the Republic. The Constitution of 1926 was thus amended. The “General Principles” which introduced the Document of National Understanding were integrated in the form of a ten point preamble into the constitution of 1926 which had lacked one.

<sup>107</sup> As quoted in Hanf (1993, p. 584). On the nature of the Taef Agreement as “a compromise”, Maila argues that, in substance, this document is “nothing new”, adopting compromises and equilibria that had already been debated or drawn up by one party or another in previous attempts at reconciliation. For more details, see his analysis in *The Document of National Understanding: A Commentary*. Oxford: Centre for Lebanese Studies, 1992.

<sup>108</sup> The Document of National Understanding opens with the following statements of principle on the character and identity of Lebanon, which were later to be integrated in the preamble to the amended constitution : “Lebanon is a sovereign, free and independent nation, a definitive homeland for all its children. It is unified as a country, as a people, and as institutions, within the borders laid down in the Lebanese constitution and internationally recognised. Lebanon is an Arab country, both by kinship and identity... Lebanon is a democratic and parliamentary republic, founded on the principles of respect for civil liberties, of freedom of expression and of religion, and of equal rights and duties for all citizens without distinction. All power and sovereignty derives from the people; they exercise their rights through the constitutional institutions. The system is based on the principle of the division of powers.” Author’s translation.

<sup>109</sup> Israel finally withdrew on 25 May 2000. The Syrian army, by contrast, is still “stationed” in Lebanon. This continuing Syrian “presence” is especially controversial since it contradicts the related stipulations in the Taef Accord (Maila, 1992).

<sup>110</sup> The Taef Agreement, like the 1943 Pact, continues the tradition of reserving the highest governmental posts to the three largest communities: a Maronite president, a Sunni prime minister, and a Shi’ite speaker of the chamber of deputies.

(Maronite) president were reduced to a largely ceremonial office while the powers of the (Sunni) prime minister and the (Shi'ite) speaker of the chamber of deputies (or parliament) were significantly increased. Parliament, moreover, was given more powers and constituted on parity, instead of the Christians' previous numerical superiority of 6:5 (i.e., six Christians for every five Muslims). Seats in the chamber of deputies would henceforth be distributed as follows: an equal number of seats for Christians and Muslims, with proportional representation for the communities within each group.<sup>111</sup> In sum, the Taef Agreement gave Lebanese Muslims, Sunnis and Shi'ites, some of their long-time demands for power sharing, based on their belief in their increasing numerical superiority, especially in the case of the Shi'ites.

### CONCLUSION

Since Greater Lebanon was created, the state has suffered, despite relatively long periods of peaceful co-existence and understanding, from a lack of consensus about what being Lebanese is all about: do the Lebanese constitute a nation or are they simply part of a greater (still unrealised) political entity? Is Lebanon a society, or a community, or just a conglomerate of distinct religious communities? Should Lebanon preserve confessionalism in its political structure or should it eradicate it? What alternatives to confessionalism are there?

Though the Taef Agreement is a renewal of the contract between the Lebanese communities, it ultimately seeks the "vital national objective" of abolishing confessionalism, seeing in it the source of Lebanon's social ills. To that effect, some provisions called for a future electoral law to be drawn up to "transcend the confessional system".<sup>112</sup> In addition to a (future) chamber of deputies without confessional proportionality or parity, a senate is also to be created, which would represent the religious communities and whose powers would be restricted to matters of fundamental importance. Moreover, a national council, comprising the three highest governmental positions and eminent people from different fields, is to be set up, with the task of "abolishing confessionalism in stages".

However, the agreement sets no time limit for the task of abolishing confessionalism, either concerning the national council or the bicameral system (which would still retain a confessional

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<sup>111</sup> This, it should be noted, is a *temporary* measure to be adopted until a new electoral law is drawn up to "transcend the confessional system" (Hanf, 1993, p. 585).

<sup>112</sup> See Taef Agreement, General Principles, Political Reforms, Paragraph F.

character in its senate). The lack of such time limit reflects a disagreement among the various communities concerning the matter and an inability to introduce real change. In other words, though the Taef Agreement was a successful attempt to put an end to the Lebanese conflict, one can barely say it is innovative in the solutions it offers to the confessional problem of the country. Especially when it comes to its provisions to reform the political system and division of powers, it remains loyal to the National Pact of 1943: it reaffirms, this time *in writing*, that confessionalism is the basis of Lebanese political society and the foundation of Lebanese legality.<sup>113</sup> As Maila argues, the Taef Agreement “sanctions the return to the confessional formula”, and is “implicitly a re-organisation of the National Pact in all of its elements: Arabness, independence, and inter-communal solidarity”.<sup>114</sup> As to the question of abolishing confessionalism at a later date, Maila is sceptical, describing it as a “utopia typical of multi-communal societies.” He also points out how both the belief in a gradual realisation of this utopia and the absence of any timetable were also characteristic of the 1943 National Pact. Forty six years after the initial pact, Hanf concurs, this utopia is still being clung to, with its realisation “adjourned ad Calendas Libanicas. Both in 1943 and in 1989 an ‘interim’ proved the suitable form of compromise between dream and socio-political reality.”<sup>115</sup>

Though it can surely be credited with ending the Civil War, the Taef Agreement remains a highly controversial document, mostly criticised for being “the solution to a tragedy that became [through the way it was implemented] a tragedy in need for solution”.<sup>116</sup> More importantly for the present study, the text of the new constitution or its application did not change in any way the basic political culture of the country. Indeed, political debate in Lebanon, more than ever, continues to be about “distribution of political and economic power, and the definition of the state’s identity as in any multi-communal state.”<sup>117</sup> In Lebanon, as already discussed, these issues continue to be centred on arguments about the Pact and *proportionality*. Understanding this basic principle of Lebanese political life, as we will see later on, is crucial for an understanding of one of the most controversial, landmark pieces of legislation passed in the last decade: the Lebanese

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<sup>113</sup> A statement in the Taef document reads: “Power cannot be recognised as lawful unless it is in agreement with the Pact of Co-existence.” See opening section on “General Principles”, Paragraph J.

<sup>114</sup> Maila, 1992, p. 18. For a similar argument, see also Khalil, 1992, p. 166.

<sup>115</sup> Hanf, 1993, p. 588.

<sup>116</sup> Mansour, 1993, p. 11

<sup>117</sup> Hanf, 1993, p. 74.



Broadcasting Act of 1994. The political culture of confessionalism, it should be noted, however, is not the only policy determinant affecting policy choices and outcomes. It is, as was already argued in Chapter 2, one of many policy determinants that make up the general context of policymaking. For instance, one of the other important policy determinants was the policy community and the various (often antagonistic) subgroups that make up such a community. Using the concepts and methods of elite theory, the present study will investigate whether the most powerful members of such a community (the political and economic elite) have a disproportionate amount of power to tilt policies in their favour. By examining various policy determinants and their different influence on policy making, the present research hopes to offer a more thorough and multi-dimensional account of the forces that shaped the Lebanese 1994 Act.

### **'Invisible' policy determinant? the role of Syria in Lebanese politics**

The literature on policy making reviewed in Chapter 2 includes a variety of policy determinants. These determinants provide a multi-layered context for policymaking, yet none of them considers the following situation: the power of a state to influence the national policies of *another*, much smaller neighbouring state. The role of Syria in Lebanese politics is a case in point. Though Syrian influence on Lebanese affairs may have started earlier,<sup>118</sup> Lebanese public outcries against it started in the wake of the Syrian military intervention in Lebanon in 1976.<sup>119</sup> Indeed, such outcries have increased with Syria's continuing 'presence' in the country ever since, despite the end of the civil war in 1991 and the Israeli withdrawal from the Lebanese south a decade later.

Syrian *direct* intervention in Lebanese domestic affairs is fairly well documented. Such intervention mainly takes place during elections, when candidates either critical of Syria's relationship with Lebanon or simply without Syrian backing are harassed in a variety of ways: their posters are torn down and replaced with pro-Syrian candidates, their cars vandalised, and their homes shot at.<sup>120</sup> Other studies on Syrian direct meddling in Lebanese affairs point to the manipulating of electoral laws since 1992 in order to structurally eliminate opponents and pool together pro-Syrian candidates.<sup>121</sup>

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<sup>118</sup> Syria has never accepted a fully independent Lebanon and continues to maintain, half a century after Lebanon's independence, that Lebanon is part of a Greater Syria.

<sup>119</sup> Khalaf, 1989, p. 29.

<sup>120</sup> Freedom House Report on Lebanon, 2001.

<sup>121</sup> Al Markaz Al-Loubnani Lil-Dirasat, 1998, pp. 289-293.

While identifying cases in which Syrian *direct* intervention has taken place and the forms in which such intervention occurs is possible, the same cannot be said about its *indirect* role in Lebanese politics. In the case of the 1994 Act, detecting the existence of such intervention is all the more difficult since the Syrian government *appears* to have stayed at bay. No visible Syrian actors seemed to be involved in the process, and no revealing Syrian official pronouncements were made throughout the entire policy making process (i.e., between 1991 and 1996). Given the long history of Syrian intervention, one should not come to the conclusion that the lack of evidence in this case is proof of lack of intervention. This is especially unlikely when a contentious, highly political and politicised area of policy making is involved (i.e., the privatisation of the Lebanese broadcast media).

The problem with identifying Syrian indirect control of Lebanon is compounded by the existence of clientelism. As already explained in Chapter 2, in a system based on political patronage, Parliament is ineffective as a forum where controversial issues and policies with a national outlook are debated. As Khalaf writes, most MPs - having “no political orientation beyond the list or clique that got them elected” - end up being more like “puppets” to be manipulated and managed by a skilful President, for instance.<sup>122</sup> He actually lists several “real actors” in the political system, with the power to (indirectly) influence Parliament and to make it impotent in times of crisis.<sup>123</sup> Such actors include, among others, prominent Lebanese leaders, bankers, businessmen, and militias (during civil strife). I would add to the list the name of Syria, whose role in securing seats in Parliament for ‘favoured’ candidates has been widely discussed and fairly well documented. Indeed, a recent example on the degree of “subservience” of Parliament (to Syria) - in an area as critical as the election of a new president - occurred in 1998, when Emile Lahoud was elected president of the Lebanese Republic. According to the constitution, senior government officials must resign their posts at least two years before running for office. In 1998, Lahoud, the highest ranking general in the army then, could thus not be a candidate for the presidency, according to law. Interestingly enough, just prior to his election in Parliament in October 1998, Parliament amended this constitutional stipulation. Such “timing” and ability to “foresee” the result of a supposedly free election are quite revealing. The Freedom House Report (2001) cites this among other examples of Syria’s political control of Lebanon.<sup>124</sup>

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<sup>122</sup> Khalaf, 1987, p. 123.

<sup>123</sup> Khalaf, 1987, p. 141.

<sup>124</sup> The report also mentions Syrian pressure on and influence of the judiciary, by affecting the appointments of prosecutors and the investigation of magistrates (Freedom House Report on Lebanon, 2001).

Having established the existence of Syrian intervention in Lebanese politics in general, the possible role of Syria with respect to the 1994 Act in particular has to be considered. This is especially significant considering, as previously argued, that any study of the policymaking process cannot be complete without a study of the relationship between “formal” authority (Parliament or the Executive in this case) and “effective” power.<sup>125</sup> In the case of Syria, identifying such a relationship throughout the policy making process (between 1991 and 1996) in the form of hard evidence, quite expectedly, is impossible. No anecdotal evidence could be found either, including any rumours about Syrian intervention. Syria may have been, in the case of the 1994 Act, a major player among the community of policy entrepreneurs. However, its role, as long as it cannot be documented, can only be inferred. Consequently, the bulk of the research – especially parts based on hard evidence and published material – will suffer from a total absence of this *presumably* important policy actor. Only when an evaluation of the entire policy making process is made towards the very end of the study, i.e., in Chapter 8, will some attempts be made to introduce Syria as a likely force in shaping Lebanon’s private media scene. Such role, absent (for lack of any evidence) from the policy making process that started with policy formulation in 1991 and ended with the allocation of licenses in 1996, will be *inferred* based on media-related developments that occurred *after* 1996. Such developments, it will be argued later, demonstrate – among other things – that the Lebanese private media cannot criticise Syria (or any other influential Arab state) with impunity.

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<sup>125</sup> See section on elite theory in Chapter 2.

## **CHAPTER FOUR**

### **MEDIA INSTITUTIONS AND REGULATION IN LEBANON UP TO 1994**

#### **INTRODUCTION**

The present chapter, like the previous one, is part of a necessary general review of the political and social context in Lebanon, laying the groundwork for the analysis of the 1994 Broadcasting Act. Chapter 3 dealt exclusively with the political culture of confessionalism and showed how this distinct ideology permeates all walks of life in the country. The present chapter is specifically concerned with the development of media practices and institutions in 20<sup>th</sup> century Lebanon. Such historical review is also indispensable for an understanding of the background of the Broadcasting Act, especially the extent to which the Act marks a significant change in the Lebanese media landscape. Indeed, references to this review will often be made throughout the remainder of the study, especially when the text of the Act is compared, in Chapter 5, with the Lebanese Press Law of 1962.

In this summary of the historical development of the Lebanese media, I will deal separately with the print and broadcast media, since their developments were quite distinct and the practice and tradition of print journalism was established long before the introduction of the broadcast media. Moreover, while the print media enjoyed relative freedom and political publications were licensed in large numbers, broadcast media remained under strict governmental control, in contrast with the general freewheeling economy of the country. Finally, while press laws existed early on within the Ottoman Empire and developed during the French mandate and after independence, broadcast laws remained non-existent until 1994, when the first Lebanese Broadcasting Act was introduced.

#### **PART ONE: DEVELOPMENT OF THE LEBANESE PRESS**

##### **Press laws in the Ottoman Empire**

Although printing was introduced in Lebanon as early as 1610 by a group of Maronite priests, the first popular, non-religious Arabic weekly newspaper in Lebanon did not appear until 1857. It was soon followed by other weekly papers, most of which were edited by Lebanese

intellectuals “who sought to educate and guide members of their community” in times of crisis.<sup>1</sup>

These early Lebanese newspapers came under strict Ottoman political control. The legislative “list” of Sultan Abdul Magid regulated printing and printed matter in the Ottoman Empire. Its most serious restrictions on the media included prior restraint, forbidding “any criticism of government actions”, and banning any discussion that might negatively affect relations with other states.<sup>2</sup> The first press law in the Ottoman Empire appeared in January 1865 and was applied in all Ottoman provinces, including Lebanon. This law, which remained in effect until the issuing of the second law in 1909, opened up licensing to all Ottoman subjects, and allowed them to start a newspaper without minimum capital for owners or educational requirements for journalists. It also guaranteed the right of reply for persons mentioned in news items or articles. Its most serious restriction, however, can be found in Article 13: this article authorised the administrative suspension of papers which published material threatening the security of the empire, which caused “excitation or agitation”, or were deemed inappropriate with respect to the royal family.<sup>3</sup>

Under the Law of 1865, issued by the relatively liberal Ottoman Sultan Abdel Aziz, Lebanese papers prospered and Lebanese journalists enjoyed relative freedom.<sup>4</sup> This freedom, coupled with the development of the Lebanese educational system (due largely to the influence of Christian missionaries), provided an atmosphere that made it possible for Lebanon to move ahead of other Arab countries in terms of the per capita number of newspapers published.<sup>5</sup> These Lebanese papers, moreover, were openly partisan, distinguishable by their call for the unity of the ethnic or religious group they represented. Having the oldest tradition in journalism in the area (compared to Egypt, Syria, Iraq, and Palestine), “Lebanon could be regarded as the true cradle of Arab journalism”.<sup>6</sup>

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<sup>1</sup> The first daily appeared as late as 1894 (Dajani, 1992, pp. 22-23).

<sup>2</sup> Hamza, 1965, p. 111.

<sup>3</sup> Ghorayeb, 1982.

<sup>4</sup> Yazbeck, 1969, p. 123.

<sup>5</sup> Dajani, 1992, p. 25.

<sup>6</sup> Dajani, 1992, p. 25; McFedden, 1953, pp. 2-3.

After the death of Sultan Abdel Aziz and the ascension to power of Sultan Abdel Hamid the Second (1876-1908), the print media came under more severe restrictions. Using the excuse of the Russo-Ottoman war (1877-8), the Sultan declared martial law and imposed censorship on the press. This was followed by a series of stricter measures and laws aimed at even greater control of the press. In fact, under Ottoman rule, the press, in general, was not regulated by laws granting freedom within clearly specified limitations. Rather, the press was subject to the whims and moods of the sultan and his absolute power, which he enforced through officials from various ministries, especially during times of war. To name a few, some of the directives of the Sultan included a list of subjects that newspapers were not allowed to discuss. These included: reform, Arab nationhood, the history of earlier Muslim empires (e.g., the Abbasede Khalifate), the history of France, revenge, executions, criticisms, disorder, madness, bribery, meetings, gatherings, republican ideals, the deposition of monarchs, poisonings, and so on.<sup>7</sup>

Not only were publications severely restricted in their content, as these directives demonstrate, but newspaper publishers were also restricted in the number of papers they were allowed to print and distribute periodically. They were required to attach “clearance” stamps on all copies of each issue. In other words, they could only print or distribute as many copies as the number of stamps provided by the Ottoman controller.<sup>8</sup> As some scholars argue, the repressive measures of Sultan Abdul Hamid, aimed at stifling discontent and revolt in the provinces, had the exact opposite effect in Lebanon. Indeed, the restrictions served as a unifying factor, bringing together journalists and political activists and creating a nationalistic outlook. Thus, with the increasing pressure on the press, Lebanese journalists began calling for independence and for the political freedom of the Arabs from the Ottoman regime:

This historical link between journalism and politics does much to explain the extremely political character of the contemporary Arab press... Today it is a tradition, which is just as ‘right’ in the minds of Arab editors as is the not-very-old American tradition of objective reporting.<sup>9</sup>

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<sup>7</sup> Dajani, 1992; and Ghorayeb, 1982.

<sup>8</sup> Ghorayeb, 1982.

<sup>9</sup> McFedden, 1953, p. 4.

When the Ottoman regime, in response, started persecuting the rebellious journalists, many fled to Egypt, which had been autonomous since 1831. There they enjoyed relatively more freedom and became so influential as to monopolise the publication of newspapers for years to come.<sup>10</sup>

The pressure on journalists under Ottoman rule lasted until 1908, when the Young Turks came to power. The new regime was more liberal than the previous one and was interested in modernising the Empire. Thus, on 16 August 1909, a new press law was introduced. This law laid the foundations for journalistic work with some of its basic principles surviving to this day. It dealt, among other things, with publication, printing, and authorship. However, its most important feature was the abolition of prior restraint and the easing of working conditions by reducing the postal rate for publications and facilitating the granting of newspaper licenses.<sup>11</sup>

This liberal period, however, was short-lived. In the newly established "Turkish Empire," the new ruling Turkish elite began to discriminate against Arabs and other non-Turks, with efforts made to control non-Turkish newspapers. Uninhibited by the new restrictions, Lebanese journalists made their first attempt to unionise the profession in Beirut in 1911. One of the major aims of the union or "press committee", besides protecting the right of journalists and promoting the profession, was to serve "the state and nation".<sup>12</sup> Lebanese journalists, however, had to pay a high price for their boldness and for playing a role in bringing about national awakening. On 16 May 1916, 31 Arab leaders including 16 journalists were publicly hanged in Damascus and Beirut for stirring public opinion and calling for independence.

### **The press during the French mandate**

When, at the end of World War I, the Allied forces occupied Lebanon, and their commander, Marshal Allenby, abolished censorship of the press in September 1919, he kindled hopes for an upcoming era of press reform. In the same year, journalists established the first Lebanese press union for both journalists and publishers. However, with the placing of Lebanon under the French mandate, those hopes were immediately thwarted: the mandate government not only upheld the Ottoman

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<sup>10</sup> As May Shaheen reports, two famous Egyptian journalists declared in 1944 that "We Egyptians are not used to being publishers and editors of newspapers. We are only used to being reporters. Publishing is the business of the people of ash-Sham (Syria and Lebanon) and not ours" (Shaheen, 1957, p. 62-63).

<sup>11</sup> This law was amended in 1910, 1912, and 1914.

<sup>12</sup> Mashmushi, 1979, p. 146.

restrictions on the journalists but actually increased them. Papers violating the censorship code were suspended by the French authorities at the request of the special “office” in charge of the press.

On 6 May 1924, the first press law under the French mandate was issued. In contrast to the 1909 Ottoman law which restricted the practice of the profession to the educated - at least seven years of education and a period of apprenticeship were required - the 1924 law opened the practice to everyone with a minimum workable knowledge of the language. However, Lebanese journalists were still not satisfied with the new Press Law. To stifle opposition, the French authorities retaliated by adding an article in 1925 allowing them to suspend any newspaper without a court order. A year later, on 23 February 1926, prior restraint was imposed on the print media in Lebanon and Syria. However, these and other measures aimed at reducing opposition and discontent with the mandate government backfired: many papers continued to champion independence, even at the price of imprisonment for their editors. Some papers, however, were willing to support the French mandate in return for financial rewards. It was during this period that the practice of “bribing” journalists became increasingly common.<sup>13</sup>

In sum, Ghorayeb notes, “towards the end of the French mandate the picture one has of the Lebanese print media is that of a clear division between papers championing independence and others supportive of the French regime”.<sup>14</sup>

### **The press between independence and 1975**

In 1943, Lebanon declared its independence from the French mandate authority.<sup>15</sup> Though one of the first things the new national government did was to abolish prior restraint, the French press law remained practically unchanged for the first few years after independence.<sup>16</sup> The first national government actually turned out to be stricter in enforcing the French press law.<sup>17</sup> However, after the rigged elections of May 1947 and the exposing of the corrupt practices of the government by several journalists, the government reacted and enacted a new press law in 1948.

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<sup>13</sup> In their memoirs, two leading Lebanese journalists of that period “bragged about the fact that they received financial as well as other favours in return for journalistic services they rendered officials”, cited in Ghorayeb, 1982, pp. 32-33.

<sup>14</sup> Ghorayeb, 1982, pp. 32-33.

<sup>15</sup> See Chapter 3.

<sup>16</sup> Prior restraint was abolished in an amendment introduced on 8 January 1945.

<sup>17</sup> Dajani, 1982, p. 33.



Though the press law of 1948 in general granted journalists more freedom than before and organised all journalists into one union, it contained provisions allowing the government to increase its restrictions on opposition papers. Thus, through a ministerial decree, the government could stop any publication for three consecutive days for criticising the president of the state (Articles 65 and 66).<sup>18</sup> As Article 68 of the 1948 law stipulates, no new licences were to be given except to whoever already owned licenses for two political dailies that have ceased publication. In other words, a new daily newspaper could not get a license and start publication unless two older, existing dailies were bought up by its owner and shut down for good. This measure was introduced in an attempt to bring the large number of existing dailies down to 15.<sup>19</sup>

The restrictions of the law of 1948 were countered by a protest campaign organised by journalists. The government responded by suspending seven publications in one day.<sup>20</sup> The persistent press campaigns against Bechara el-Khoury, president of the first national government elected in 1943, and the public discontent they helped bring about, eventually led to the resignation of the president and his government.

The new regime of President Chamoun enacted, in October 1952, a more liberal legislative decree lifting most of the restrictions of the 1948 law: press offences were to be dealt with in a special court, journalists were organised into two unions (one for publishers and another for editors), and the granting of licences to new papers was open again. As a result, the number of political dailies increased: there were 50 dailies in Beirut alone. Hard pressed by the union of publishers, the government then issued the legislative decree No. 74 (13/4/1953) limiting, once again, the granting of licences.<sup>21</sup>

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<sup>18</sup> The suspension could be extended to up to one year.

<sup>19</sup> One of the main reasons accounting for the large number of political publications in Lebanon was the openness of the Lebanese press laws compared to those in other Arab countries. Considering the small size and population of the country, Lebanon could be described as the leading Middle Eastern country in terms of its number of newspapers. For instance, in 1994, there were 105 licensed political publications: 53 daily papers, 48 weeklies, 4 monthly magazines and over 300 non-political publications. It should also be noted here that publications in Lebanon are licensed according to three horizontal categories: daily, weekly, and monthly or quarterly, and two vertical categories: political and non-political (i.e., cultural, scientific, etc.).

<sup>20</sup> For details on this period see Lebanese Press Union, *al-Mu'tamar as-Sahafi* (Arabic: the Press Conference), 1949, Lebanese Press Union, Beirut.

<sup>21</sup> According to legislative decree number 74, no new licence was to be given to a new political publication as long as Lebanon has more than 25 dailies and 20 weeklies and periodicals. However, the decree allowed publishers owning more than one licence to change the name of the publication, provided that the new licence cancelled two old ones owned by him/her. Once the set number of political publications was reached, a licence for a new publication could be issued provided that the licence for an old publication was cancelled. While the purpose of this new legislation was to limit and ultimately decrease the large number of existing publications, one of its consequences was turning existing licenses into a hot property, leading to a great increase in their price (Ghorayeb, 1982, p. 147). It made publishers reluctant to relinquish publishing dailies or periodicals for which they had a license, "in the hope that [they] will be able

Several factors worked to turn the Lebanon of the 1950s into a leading centre of finance, business, and diplomacy. During that period, the Arab world went through dramatic political and economic upheavals, with major political regimes becoming either monarchies or one-party systems. Lebanon soon became a major commercial and trade centre for the area, a role enhanced by the strategic location of the country and the investment of Arab oil revenues in its economy. These changes reflected positively on the Lebanese print media, and resulted in a rush to publish newspapers in order to follow the great economic and political changes in the area. Slowly, the Lebanese press also came to fill the void left by the Egyptian print media which lost their status as leaders of the Arab press, especially after Nasser's *coup d'état* and his coming to power in 1952.

The Lebanese press thus became the platform for political debate in the Arab world and acquired a prominent pan-Arab status. This new role for the Lebanese press was also helped by the introduction of the latest technologies. In short, "the power of the press became so apparent that no government could possibly afford to ignore it."<sup>22</sup>

Though the Lebanese print media enjoyed relative freedom, exemplified by the large number of existing publications, its freedom in terms of subject matter, or its independence from sources of influence has often been questioned. Describing the Lebanese media, Ibrahim Salameh wrote: "[they] are not at all free; rather they are mortgaged and in debt to those—Arabs or Tartars—who possess money and can afford to rent them... The Lebanese print media write for their subsidisers and not for their readers".<sup>23</sup> Echoing Salameh's criticism, Dajani argued that the main threat to the independence of Lebanese media came from foreign interests and their influence on what was printed.<sup>24</sup> With the highest circulation figures for newspapers never exceeding 60,000 during a peak period, Dajani estimated that most Lebanese publications could hardly support themselves based on circulation and advertising revenues alone. This situation, he added, "predisposed them to accept financial assistance from outside sources" in exchange for editorial support.<sup>25</sup> Dajani also documented cases of financial assistance and other forms of subsidies (including bribery) "pouring" into the Lebanese print media from foreign embassies, companies and investing firms, as well as local groups, including the Lebanese government. These findings led him to conclude that "the country's mass media

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to receive subsidies in times of crisis, or sell or rent [their] licence to an aspiring leader or political group' (Dajani, 1992, p. 46).

<sup>22</sup> Dajani, 1992, p. 36.

<sup>23</sup> Salameh, 1967, pp. 173-175.

<sup>24</sup> For instance, Dajani notes that in 1992 there were 105 licensed political publications and 300 non-political ones relying on advertising revenues in a very small market (Lebanon has a population of three million).

<sup>25</sup> Dajani, 1992, pp. 45-46.

(particularly the print media)... tend to take the colour of the money poured into them, sacrificing credibility for material profit".<sup>26</sup>

With the election of President Fouad Shehab in 1958, serious efforts were made to introduce administrative reforms. On 14 September 1962, a new press law was introduced. This law, which is still in effect (with subsequent modifications), clearly defined the profession and the practice of journalism. It provided the press with minimal state censorship while establishing the limits within which the freedom of the press may be exercised. Thus, while journalism was defined in Article 9 as "the free profession of publishing news publications", this freedom was limited by the general laws of the republic and the special nature of the Lebanese system.<sup>27</sup> For instance, "news which endangers national security or the unity or borders of the state or which degrades any religion or arouses sectarian or racial grudges" was punishable by law.<sup>28</sup>

As several critics agree, the golden age of the press started with the Chamoun presidency (in 1952) and ended with the Shehab presidency in 1964. Eventually, the 1962 law, still in effect at the time of writing, was amended several times, with each of the modifications decreasing the margin of freedom for the profession. Thus, in 1965 for instance, the government of President Helou, under pressure from Arab leaders objecting to the Lebanese media attacks directed at them, introduced a special decree amending article 62 of the 1962 law. This decree, commonly known among journalists as "the law of the kings and heads of state", forbids the print media from criticising all foreign heads of state.<sup>29</sup> Other subsequent restrictions followed. During Franjeh's presidency, a decree prohibiting foreigners from owning any share in Lebanese papers was introduced.<sup>30</sup> This prohibition of non-Lebanese ownership, as we will see in Chapter 5, found its way to the new law regulating the broadcast media in 1994.

In sum, prior to the Civil War of 1975, in a country characterised by a *laissez-faire* economy that produced a relatively prosperous and modern society, an independent press, protected by the government's laws and regulations, was established and developed, slowly acquiring the role of

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<sup>26</sup> Dajani, 1992, pp. 48-57.

<sup>27</sup> Press Law of 14 September 1962, Article 1.

<sup>28</sup> Press Law of 1962, Article 62.

<sup>29</sup> Dajani, 1992, p. 39.

<sup>30</sup> According to Dajani, this decree was introduced by the President to punish a magazine that was critical of him and his family, accusing the latter of illegal financial activities. The magazine was believed to be financed primarily by non-Lebanese Arabs (Dajani, 1992, p. 39). As Dajani observes, this "technical hurdle" (introduced by the above-mentioned decree), however, could be easily surmounted: foreigners still wishing to own a Lebanese paper could register their shares under the name of Lebanese citizens acting as a cover, after having concluded secret agreements with them.

watch-dog. Its proliferation and diversity also reflected the human geography of the country: the multiplicity of religious communities, Christians and Muslims, none of which could claim a majority.<sup>31</sup> Thus, the different parties and factions, under government licence, were able to establish their newspapers and magazines in order to articulate their agendas and to criticise the government in a climate of relative freedom.<sup>32</sup>

## PART TWO: DEVELOPMENT OF RADIO AND TELEVISION

### **The broadcast media before the Civil War**

#### *1. Radio*

Unlike the print media, radio remained the only mass medium under complete government control from its inception. Radio Levant was first established by the French mandate government in 1938, with the declared aim of bringing “closer together the French and Arab cultures in both Syria and Lebanon”.<sup>33</sup> Another aim was to counter the Arabic-language radio propaganda of the Germans and the Italians.<sup>34</sup> In 1946, three years after independence, Radio Levant was handed over to the first national government and was dubbed Radio Lebanon. It was financed by government funds, and operated within the Ministry of Information.<sup>35</sup>

Although radio was used early on to propagate the plans of the government and functioned as the mouthpiece of the government and the ruling elite, developing it along with other mass media remained a low priority until 1952 and the election of a new president.<sup>36</sup> With Lebanon and the region undergoing political and economic changes (e.g., the Arab oil boom, the Nasserite Arab national movement in Egypt, etc.), the new President Chamoun, more aware of the power of the media, changed the order of priorities: in 1953, two legislative decrees were issued, one organising the print media and the other regulating radio broadcasting (legislative

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<sup>31</sup> Fisk, 1990; Salibi, 1976. See also Chapter 3.

<sup>32</sup> Gordon, 1980; and Abou Mire'ee, 1980.

<sup>33</sup> Khouri, 1966, p. 14.

<sup>34</sup> Boyd, 1993, p. 69.

<sup>35</sup> In 1946, Radio Lebanon was subordinated under the Directorate of Propaganda and Publishing, itself a branch of the Ministry of the Interior. With the demand for an organised information network increasing, a separate information ministry was needed. Thus, in 1949, the Ministry of Guidance and News was formed, to which the radio station was attached. Presently, Radio Lebanon is controlled by the Ministry of Information. Its budget is fully provided by the government, with no outside sources of income (i.e., commercial advertising) or annual license fees paid for radio sets.

<sup>36</sup> Dajani, 1992, p. 73.

decree No. 39).<sup>37</sup> The same year, more government money was injected in the station to improve transmission and production. In 1961, another decree (No. 7276/1961) gave Radio Lebanon a monopoly over radio broadcasting.

Not only was Radio Lebanon the only station legally authorised to transmit inside Lebanon (the monopoly was challenged after the outbreak of the Civil War in 1975 as we will see later), it championed exclusively the cause of whatever government happened to be in power. More importantly, access to its airwaves was denied to dissident politicians and opposition leaders. By having all sorts of advertising (commercial and political) banned altogether, political opponents were prevented entirely from disseminating their views. This control - financial and political - was taken up by all consecutive regimes in Lebanon who saw Radio Lebanon as their medium of choice since Lebanese governments have “no newspaper to defend [themselves]”.<sup>38</sup> This control was actually more consistent with governmental control of the media in other Arab countries, but in contradiction with the relative freedom of the press in the country.<sup>39</sup> Rather than complement the watchdog function of the Lebanese press, Radio Lebanon exclusively disseminated government views and policies, and reflected throughout a zealous attempt to maintain an uncompromising status quo, failing, even before the outbreak of the War, to cater to the Lebanese public interest. As Dajani sums it up,

All through its long history, the official Lebanese radio broadcasting system has failed to develop into a genuine popular channel of information and entertainment accessible to the various religious communities as well as to the different socio-economic groupings... Aside from music programs and certain live broadcasts, the Lebanese radio did not signify very much for the people.<sup>40</sup>

## ***2. Television***

The development of the third major communication medium in the country followed an entirely different path. Whereas the print media developed as a reaction to a social need (fighting Ottoman imperialism, fostering Arab nationalism, etc.), and while radio was the government’s only available medium for propaganda and a reaction to the existing watch-dog press, television in Lebanon was a purely commercial venture from the very beginning. In October 1954, two Lebanese businessmen (Wissam Izzedine and Alex Arida) submitted an application for a television broadcasting company.

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<sup>37</sup> Under legislative decree No. 39, radio broadcasting continued to be a branch of the Ministry of Guidance and News, and Radio Lebanon was split into two departments: one for administration and another for production.

<sup>38</sup> Prime Minister Salam as quoted in Dajani, 1992, p. 68.

<sup>39</sup> Boyd, 1993, p. 70.

<sup>40</sup> Dajani, 1992, p. 69.

Two years later, in August 1956, a 21-article agreement was signed with the government, and La Compagnie Libanaise de Television (CLT) was granted a license for television broadcasting to be re-negotiated 15 years later. Starting transmission in May 1959, CLT was thus the first non-government-operated, commercial or advertisement-supported television station in the entire Arab world.<sup>41</sup> In July 1959, another company (Tele Orient) signed a similar agreement with the government and began transmission in May 1962.

The most important terms of the agreement concerned transmission channels, monopoly issues, and government control. The companies - to which the government denied monopoly rights - were allowed to broadcast television signals on two channels each: channels 7 and 9 for CLT and channels 5 and 11 for Tele Orient. Moreover, since no broadcast media law existed at the time, television was to be subjected to the laws and regulations that governed the Lebanese printed press as well as to all national and international laws and regulations on wireless communications and broadcast institutions.<sup>42</sup> More importantly, the companies faced severe restrictions on the kind of programmes they could broadcast: they were not allowed to broadcast any programming that might threaten public security, morals, and religious groups, or favour a political personality or party.<sup>43</sup> Whereas programming was restricted to education or entertainment, news programmes were to remain the prerogative of the government: the licensed companies had to broadcast, free of charge, news programmes and official bulletins prepared by the Ministry of Guidance and News.<sup>44</sup> Though the case of television reflected a hybrid situation (i.e., half commercial/half government controlled), the government's approach to television did echo its approach to radio. Broadcast media were seen as important tools of political control, and both radio and television were expected, though differently to some extent, to operate as a mouthpiece for those in power, especially in their news content. With respect to the owners of the television companies, this situation was not exactly unwelcome by the

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<sup>41</sup> Transmission could not start earlier because the construction of the station was interrupted by the 1958 civil strife.

<sup>42</sup> Indeed, broadcast media – which proliferated during the 1975 Civil War – continued to be regulated in the same way (e.g. by the Press Law of 1962), until a Broadcasting Act was passed in 1994.

<sup>43</sup> Television programming was very much affected by its socio-political context. One of its main dictates was to preserve religious balance, even neutrality, in its commercial programming. Certain guidelines to that effect governed Lebanese dramatic productions, assuring respect for the multi-cultural make-up of Lebanese society. One of these guidelines was giving characters names that did not reflect their religious identities: names like Mohammad or Joseph, for instance, were shunned altogether. This neutrality, however, has been strongly criticised by Dajani who sees it as a failure to use television to seriously address the task of bringing the warring factions together. He deplores the total absence of local productions that feature a Muslim and a Christian working together (Dajani, 1993, p. 103).

<sup>44</sup> Boyd, 1993, p. 72. Television news-films used in newscasts were sealed upon arrival at the Beirut airport. They were then delivered to each station where government censors broke the seals in special viewing rooms.

owners of the television companies: motivated by the need to return a profit to their shareholders, they did not invest in (usually expensive) news and educational programming. Indeed, the government-controlled news freed them of any responsibility for the content of what their company broadcast, and they preferred instead to concentrate on cheap imported entertainment - mostly foreign shows from the United States, England, France, and Egypt.<sup>45</sup> As for the Ministry of Education and the Ministry of Information, they were not compelled to intervene, especially as long as political or controversial programmes were shunned altogether.

From their inception, and despite efforts to increase their revenue, including an agreement to join efforts and co-ordinate policy and programming in 1968, both television companies continued to face serious financial problems.<sup>46</sup> The situation became worse in 1974 when the CLT's agreement was up for renewal. In the new agreement, the government went further in attempting to institutionalise its political control over the company: the agreement stipulated that two government censors must be present at the station at all times and required that CLT broadcast an evening one-hour programme prepared by the government. CLT was also to give 6.5 % of its net advertising revenue to the government and to limit the number of minutes of advertising during the news bulletin to a maximum of three.

The situation of both companies continued to deteriorate during the first two years of the Civil War (1975-76), especially with the serious reduction in advertising revenue, their main source of income. In 1977, in an attempt to save the country's two existing television companies from looming economic disaster,<sup>47</sup> and in order to keep those stations (which became the major source of entertainment left for the Lebanese population during wartime) afloat, the government intervened. On 30 December 1977, legislative decree No. 770 was issued: it legalised the existence of a new television company, Tele Liban, which was to absorb both CLT and Tele Orient. It was licensed for a period of 25 years and given a monopoly over television broadcasting in Lebanon. The capital of Tele Liban was divided equally between the government (which owned 50% of the shares) and the other two existing companies (which owned the other half). Tele Liban's president was to be appointed by the president of the republic and had to report to a board of directors of twelve

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<sup>45</sup> Boyd, 1993, p. 74. Some local productions were started later on, but were not numerous enough to be profitable.

<sup>46</sup> Though advertising remained the major source of revenue, both companies tried, with very limited success, to increase income through sales of locally produced programmes to the Arab countries. In 1974, these programmes accounted for 12% of Tele Orient's total income, whereas CLT's revenue from programme sales was only 5% (Dajani, 1992).

<sup>47</sup> It should be remembered here that there was no state-controlled television. As an act of compensation, the Lebanese government wanted to control only the news on commercial television stations.

members: six appointed by the government and the other six representing the two companies. More importantly, Tele Liban was to be financed exclusively through advertising.

Although the government's intervention was a step towards the creation of a national television system, the results remained short of using an important and popular medium in order to serve the public interest. The government, on the one hand, succeeded in maintaining a service that was on the verge of collapse, and allowed the replacement or repair of transmission equipment and facilities damaged during the war. On the other hand, Tele Liban did not have a mandate to serve the public interest. Little if no attention at all was paid to improving the quality of programming and audience appeal. Tele Liban, it seems, was just to be controlled, and later to be completely owned, by the government.<sup>48</sup>

### **Broadcasting during the Civil War: "the war media phenomenon"**

As we have already seen, the various Lebanese factions did not lack outlets for political expression in the press. The same could not be said about the government-controlled broadcast media, with political groups systematically denied access to the airwaves since independence in 1943. There had been, however, repeated attempts to breach the government's control of and monopoly over the broadcast media. The 1958 civil strife, for instance, set a precedent for the establishment of unofficial radio stations: three rebel radios, each controlled by and representing a different political or confessional faction, were established, and for nine months challenged the state-run radio's version of events before being shut down.

The problem of access to radio came again to the forefront in the spring of 1972 during the Lebanese elections. Some prominent opposition leaders, frustrated with their inability to access state-controlled broadcast media, threatened to start their own radio station to compete with the state-owned radio. The government responded by declaring illegal any such attempt. There was also a short-lived attempt to counter the state radio monopoly by purchasing air-time on the Cyprus Broadcasting Corporation's medium-wave service reaching Lebanon. The government thwarted the operation four days later, jamming the station.<sup>49</sup>

Criticisms of and challenges to the government-controlled media were thus especially strong in times of crisis (i.e., the civil strife of 1958) and reached unprecedented proportions during the 1975-

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<sup>48</sup> Only later on, in 1994, would the Lebanese government (through a ministerial decree) be able to buy up all private shares in Tele Liban, making it the sole owner of the company. As we will see in subsequent chapters, not even then (i.e., with the passage of the 1994 Broadcasting) would any provision be included to deal with Tele Liban's general mandate, much less its content requirements.

<sup>49</sup> Mirshak, 1972, p. 7.



1991 Civil War. State broadcasting (especially radio) was unresponsive to the needs of a factionalised society, divided mainly along confessional lines. Consequently, new outlets of expression and information were sought. These outlets were of special significance since the official radio news on the Civil War attempted to remain neutral, “avoiding the embarrassment of having to report about worsening local conditions”.<sup>50</sup> This neutrality often meant not covering the war at all. At times, Boyd wrote, “one would not know from radio programs that the country was in the midst of a devastating war”.<sup>51</sup> The fate of the two existing commercial television stations was somehow different. As we are going to see in the following section, these stations were unable to maintain a policy of neutrality, having been very early on involved in the Civil War.

From the onset of the Civil War, polarised listeners, increasingly suspicious of the government’s one-sided coverage of the crises in the country, sought alternative sources of information. The warring factions and various political groups, whose views were until then excluded from the broadcast media, were ready to satisfy that need, and started establishing their own private stations.<sup>52</sup> Their task was facilitated, on the one hand, by the absence of the rule of law during the war. On the other hand, the monopoly of Radio Lebanon over the airwaves was itself controversial from a legal point of view. This controversy came to the fore in 1975 with the outbreak of the Civil War and the emergence of a private radio station, The Voice of Lebanon. This radio station, which represented the Christian Maronite Phalangist perspective, was the only rebel station to secure a “permit” to operate from the Ministry of Post and Telecommunications. However, the legality of this permit, which was granted during the Frangieh presidency (1970-1976), was rejected during the subsequent Sarkis presidency.<sup>53</sup> The Voice of Lebanon controversy centred around the following issues: whether private broadcasting is legal, whether it requires prior licensing, and which legal authority is responsible for such licensing (in case it is legally possible). Up until the passage of the 1994 broadcasting law, those questions remained (legally) unresolved.

In sum, between 1975 and 1991, rebel or clandestine broadcast stations proliferated, reaching incredible proportions for a country the size of Lebanon.<sup>54</sup> Several of these media outlets functioned

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<sup>50</sup> Dajani, 1993, p. 82.

<sup>51</sup> Boyd, 1993, p. 75. See also Dajani, 1992, p. 83.

<sup>52</sup> This practice was not restricted to the broadcast media. The same war saw the proliferation of dozens of unlicensed newspapers and political publications.

<sup>53</sup> For more details on this licensing controversy, see Boutros (1991, pp. 39-41).

<sup>54</sup> It may actually be inaccurate to use the term “clandestine” to describe these unofficial media. Their location was no secret to anyone, especially to government administrators.

as the mouthpiece of the party, faction, or religious group which financed or supported them, and generally appealed to a narrow segment of the population, mostly to an audience adhering to the same ideology or simply belonging to the same confession (or religious group). Others, bound by their geographical location, and for fear of reprisal, were forced to reflect the opinion of the faction controlling the area where their offices or printing presses were located. In the case of the print media, this situation often created a selected readership of a different type, determined by its geographical location: polarisation of opinions in this case corresponded to the geographical and military division of the country. In any case, few papers were able to maintain a moderate stance towards the War. Instead, there was an increasing “tendency to manipulate news for purposes of political or sectarian mobilisation”.<sup>55</sup>

### **Regulating the “war media”: the “problem definition” stage of the 1994 Act**

Up until 1975, and despite the stipulation in the Lebanese Constitution that guaranteed freedom of expression, radio and television remained under the control and monopoly of the government. In that respect - the case of the print media is an exception as we have seen - Lebanon was similar to every other Arab country where the legitimate broadcast media were either heavily influenced or fully controlled by the state.

There were various attempts to challenge that monopoly, all thwarted by successive governments keen on keeping the tight grip over the broadcast media. The Civil War, however, seriously and irreversibly altered the electronic media landscape in Lebanon. With the outbreak of the war and the absence of effective government control, rebel stations were finally able to mushroom and slowly became a daily fixture of life in Lebanon. Though they differed in motivation (some were purely political, others were there for profit, and some served both purposes), and were not always able to survive financially, they were able to mount a serious challenge to the government’s placid broadcast services, offering alternative perspectives on the war. Their contributions, however, were certainly not seen positively by all. Unofficial broadcast media were often accused of increasing division in the country, of representing exclusively one warring group or another, and of offering their own one-sided, often distorted perspective on events.

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By 1990, in addition to the state-controlled broadcast media, there were no less than 42 illegal television stations and 300 illegal radio stations, servicing a population of less than 4 million. It should be noted here that these stations were broadcasting without being registered by the government with the International Telecommunications Union.

<sup>55</sup> Dajani, 1992, p. 65.

Even Tele Liban was unable to avoid being directly implicated in the Civil War and fuelling the crisis. Indeed, a televised *coup d'état* led by a Muslim Lebanese army officer sparked the heavy embroilment of the broadcast media early on in the conflict. On 11 March 1976, Brigadier Aziz Al-Ahdab occupied the studios of CLT's channel 7, located in the Western, Muslim sector of Beirut, and interrupted the evening newscast to announce his "Communique No. 1". The same message was then transmitted from the official radio studios. The retaliation on the Christian side was swift: supporters of the Christian President immediately took control of Tele Orient and the official radio transmitters in the Christian-controlled area. This marked the beginning of a fierce media war: each major warring faction had its own radio and television outlet, and was "bombarding" its audience with its war propaganda messages. Describing this war-like situation, a prominent Lebanese journalist and television newscaster observed:

The Al-Ahdab information forces are entrenched in the Lebanese Television Company and the Lebanese Radio Station-Information Ministry. The Franjieh information forces have dug in at Tele Orient and the Amsheet radio relay station near Jbail. For ammunition, they are using contradictory news flashes and endless rounds of threats, insults, "we shall overcome" speeches, patriotic songs and military marches. Caught in the middle are the listeners and the viewers - and possibly, the troop themselves, the men and women who are reading the news and the various statements prepared for them by the two camps.<sup>56</sup>

The government, in sum, was very critical of the presence of unofficial broadcast media, and referred to them as "the war media phenomenon". It saw in them a threat to its authority, and accused them of threatening the unity of Lebanese society, and of directly contributing to the conflict. On 1 August 1978, replying to a parliamentary question on unofficial radio stations, Prime Minister Salim El-Hoss declared:<sup>57</sup>

The existence of private radio stations is an illegal phenomenon caused by the events of the last two years. This phenomenon constitutes a threat to the authority of the state and a source of confusion and agitation which conflicts with the efforts being exerted for peace on the land of this nation. There is no final solution to the problem of security in Lebanon in the presence of these stations. The government will work to close all these stations down.

A little over a decade later, in 1989, the Taef Agreement, based on a similar assessment of the role played by the "war media", included a section on the need to reorganise the broadcast media as part of a general plan to end the war:

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<sup>56</sup> Khoury, 1976, p. 41. Despite the increased programme co-ordination between CLT and Tele Orient since "the split" in 1975, the new semi-official company, years after the start of its operation, still retained a (confessionally) polarised character (Dajani, 1992, pp. 100-101; Boyd, 1993, p. 80).

<sup>57</sup> Dajani, 1992, p. 87.

All the information media shall be reorganised under the canopy of the law and within the framework of responsible liberties that serve the efforts of reconciliation and the objectives of ending the state of war.<sup>58</sup>

On 4 November 1994, the Lebanese parliament approved the final version of a draft to regulate the broadcast media in Lebanon. Not only was it the first broadcast law to exist in Lebanon, but it was also the first piece of legislation dealing specifically with the broadcast media in the entire Arab world.<sup>59</sup> The official point of view on the “war media” was clear: dismantling the illegal stations and regulating the media landscape was as crucial a step in ending the war as disbanding and disarming the militias themselves:

If we accepted the decision to abolish the militias and gave this decision priority of implementation in the effort to move from the state of war to a state of peace then we also have to accept what ought to be done so that the communication channels are not militia instruments which fire words instead of bullets.<sup>60</sup>

Closing down unlicensed stations, however, was going to be one of the most difficult tasks facing the post-war governments: these increasingly popular operations had become a fixture of the national electronic media landscape, and provided an alternative to the Ministry of Information’s radio service for both entertainment and information.<sup>61</sup> Listeners, grown accustomed to them, resisted closing the stations, seeing in the government action an attack against their civil, or more exactly confessional, liberties. Moreover, the time factor was on the side of the unlicensed stations. On the one hand, the extended Civil War allowed the more competitive ones (they were either the most competent and professional in their work or heavily subsidised) to grow in size. Indeed, some of them became institutions with equipment, work practices and operations similar to those found in stations servicing medium-sized markets in the United States.<sup>62</sup> On the other hand, the various (divided) governments during the Civil War were, for about 16 long years, unable to deal with

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<sup>58</sup> Section A, Paragraph III, Article F.

<sup>59</sup> The broadcast media in Arab countries are still mostly regulated by (often antiquated) press laws and other general state laws.

<sup>60</sup> From the opening speech of Minister of Information Albert Mansour, Ministry of Information; conference for the Reorganisation of Media in Lebanon; 17, 18, and 19 May 1991.

<sup>61</sup> Several audience surveys have demonstrated the popularity and appeal, especially during news hours, of some of the most established unlicensed broadcast stations (Dajani, 1992).

<sup>62</sup> Boyd, 1993, p. 78.

broadcasting problems and to have a unified policy concerning broadcast information. As a result, the illegal stations gained “a kind of de facto recognition which was slowly being routinised”.<sup>63</sup>

### CONCLUSION

In conclusion, a review of the media landscape in 20<sup>th</sup> century Lebanon, prior to the introduction of the 1994 Broadcasting Act, revealed the following:

1. First, the existence of restrictive press laws enforced by both the Ottoman colonial empire and the French mandate authorities;
2. Second, the emergence of Lebanon, upon its independence in 1943, as a unique hub for a relatively free press that soon acquired a pan-Arab character;
3. Third, the existence of a clear dichotomy in the state’s approach to the various media: whereas the Lebanese press was relatively autonomous and was able to reflect to a large extent confessional pluralism in the country, access to the broadcast media was restricted to the government of the day. Even the introduction of commercial television – a first in the Arab world in the early 1950’s - could not escape this control. Indeed, all politically “sensitive” programming on commercial television was kept under the supervision of the Ministry of Information, creating a “hybrid” type of half commercial/half government-controlled television broadcasting.
4. Fourth, the total lack of a state broadcasting policy aimed at creating and reinforcing a national identity in a country suffering from “multiple”, fragmented identities.<sup>64</sup> Even the government-owned television was more the result of accident than planning: the state had to intervene in order to save the only two existing television stations from financial collapse during the Civil War. The two commercial companies were thus merged into one single company, Tele Liban, which only ended up being entirely owned by the government in 1994. Even then, Tele Liban lacked any general mandate or programming guidelines that could serve the “public interest”.
5. Fifth, the emergence of unofficial media (especially radio and television stations) as soon as the Civil War broke out and government control of the situation waned. These unofficial media

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<sup>63</sup>Dajani, 1993, p. 88.

<sup>64</sup> The situation, it could be said, was the exact opposite in other Arab countries, especially those that underwent “revolutionary” changes of regime (e.g., Libya, Syria, and Iraq). See Rugh, 1987 for a comparative analysis of media systems in the Arab world.

gained special significance in the life of their audience specifically because the government-owned or controlled broadcasters failed in their mission of properly informing the public during times of crises. Whereas state radio was often criticised for “ignoring” the war that was ravaging the country, television stations were victims, very early on, of the confessional strife. Depending on their geographical locations, the two television stations (Compagnie Libanaise de Television and Tele Orient) fell in different hands and often transmitted completely opposite versions of what was happening in the country.

It is against this general background of the country, with its culture of confessionalism gaining even more momentum after 16 years of civil strife, and its broadcast media being finally accessible to practically all existing factions or confessions, that the Broadcasting Act of 1994 will be assessed.

## CHAPTER FIVE

### THE POLICY FORMULATION AND ADOPTION PROCESSES OF THE 1994 ACT

#### INTRODUCTION

Between 1989 and 1994, several attempts to pass a broadcast law in accordance with the media-related stipulation of the Document of National Reconciliation failed. This endeavour proved to be much harder than the various post-Taef governments had anticipated it to be.<sup>1</sup> Indeed, any new broadcast legislation was not only going to be “big-ticket”<sup>2</sup> legislation that could significantly affect the commercial interests of the major financial (and political) players involved. More importantly, at stake were serious political considerations that could alter the very delicate political balance itself and consequently the future of peace, democracy and pluralism in post-Civil War Lebanon.

The purpose of the present chapter is to document two specific stages of the policymaking process related to the 1994 Act: i.e., the policy formulation and policy adoption processes. In the previous chapter, I concluded with a section on how the Lebanese authorities, prior and during the Taef negotiations, identified the “problem” of unregulated media. These media, which proliferated during the Civil War, were perceived to contribute directly to the conflict. Having identified the problem as such (*problem definition* stage), the next step was for members of the policymaking community (e.g., MPs, ministers, various interest groups, and so on) to come up with proposals or alternatives to solve this problem. This *policy formulation* step, also referred to as *policy initiation* or *agenda setting* in the literature on policy analysis, will be dealt with in the first part of this chapter (Part One). In this part, I will compare the different draft bills proposed by various and often antagonistic political actors, the major clauses of each proposal, and the relationship between the objectives sought by each and the interests involved (social, political, economic, and so on). This step, I believe, is necessary in order to understand the Broadcasting Act in its final form, the origin of its major stipulations, and the apparent contradictions that it embodies in terms of seeking to increase government control, on the one hand, and attempting to curb it, on the other.

The documentation of the chronological unfolding of the *policy formulation* process will rely mostly on primary sources (the various draft bills, minutes of parliamentary sessions, the

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<sup>1</sup> Within the Lebanese context, the term “government” is used interchangeably with “Council of Ministers”.

<sup>2</sup> This was the term used by Patricia Aufderheide when describing the economic forces that shaped the writing of the 1996 Telecommunications Act in the USA (Aufderheide, 1999, p. 41).

Official Gazette, and personal interviews with some key players). Secondary sources will also be used, especially the major daily newspapers which covered the activities and pronouncements of public officials involved in the legislative process.<sup>3</sup>

The second part of the chapter (i.e., Part Two) concerns *policy adoption*, when legislators and executive officials enact a specific policy response to some identified problem. In the case of the “war media problem”, the response was embodied in what is considered to be a landmark piece of legislation in the Arab world, the 1994 Broadcasting Act. Indeed, the Act was going to regulate, for the first time in Lebanon and the Arab world, private radio and television. Therefore, the second part of the chapter will analyse the wording of the 1994 Broadcasting Act. This will be done in order to understand to what extent the Act, as a solution, is capable of bridging policy problems (i.e., the war media phenomenon) and policy goals (i.e., regulating the media in such a way as to end the state of war). For instance, since the unofficial broadcast media were frequently accused of inciting confessional hatred and war, regulating them after the end of the Civil War was perceived to be of utmost necessity, indeed a matter of national security. On the other hand, diversity of opinion in Lebanon is of such importance in the country, it is practically a condition for peace among the various and equally powerful confessional groups. This means that any blatant attempt to curb such freedom, no matter how crucial this is for national peace and security, could be counterproductive and achieve precisely the opposite effect, i.e., undermining the project of national reconciliation. Already one can see here the tensions embodied in this formidable task: how to regulate and basically limit the number of broadcast media without this regulation being simultaneously perceived as a threat to confessional or political pluralism. This tension between those two opposing tendencies, I will argue later on, is actually what characterises the story of Lebanon’s first broadcast legislation: not only does this tension account for the difficulty of its birth, but it also largely explains some of the inherent contradictions in the text itself (described in this chapter) and later on the problems in the implementation of the 1994 Act (Chapter 6).

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<sup>3</sup> All primary and secondary sources in Arabic used in this study, when quoted, are translated by the author. The only exception is the 1994 Act and the related Guidebook of Operating Conditions. These texts can be found in the Appendix section, in English, in the English translation available at the National Audio-visual Council offices in Beirut. The key secondary sources used are Lebanon’s major national daily newspapers, which were monitored daily between 1994 and 1996. These are: *An-Nahar*, *Al-Dyar*, *Al-Safir*, and *Al-Amwar*.



## PART ONE: POLICY FORMULATION

### BEFORE THE ACT: SHAPING FORCES

The “media file”, as Lebanese media and politicians referred to the (long) process of broadcast legislation, was one of the thorniest issues facing all post-Taef governments that tried to deal with it between early 1991 and November 1994, date of the passage of the Lebanese Broadcasting Act. This “file” was so hot it was often placed at par, on the national agenda, with the equally controversial parliamentary elections.<sup>4</sup>

The 1989 Taef Agreement, which ushered in the end of civil strife and the beginning of the Second Republic, stipulated that the media should be reorganised within the “framework of responsible liberties” in order to serve “the efforts of reconciliation and the objectives of ending the state of war.”<sup>5</sup>

The first serious attempt towards “reorganising” the media was undertaken by the second post-Taef government of Karameh. Minister of Information Albert Mansour, in an unprecedented (and never since repeated) move to involve the public and civil society in an open debate that he hoped would lead towards the drafting of a democratic broadcasting law, organised a three-day conference in May 1991.<sup>6</sup> Invited to speak were academics, various politicians, professionals (judges, lawyers, telecommunications engineers, journalists, etc.) and other prominent individual members of civil society as well as many NGOs. However, there

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<sup>4</sup> There were no parliamentary elections held throughout the 16-year Civil War. The first post-war elections were held in the summer of 1992 and were also the first parliamentary elections to be held in twenty years. These elections, however, were boycotted by the majority of Christians and Christian leadership. The reasons behind the boycott were varied: the “selective” or often “distorted” application of some of Taef’s provisions in order to suit some communities (i.e., Muslims) at the expense of others (i.e., the Christian communities); Syrian hegemony and its effect on the outcome of the election; fear of abolishing political confessionalism and the loss of some (Christian) political privileges, etc. (Khoury, 1993). As a result of the boycott, and with only 28.86% of the eligible voters exercising their right to vote, the first parliament to be elected since 1972 was accused of being non-representative of the Lebanese population (especially of its Christian component). The following parliamentary elections were held in 1996 and drew similar criticisms. They, too, were considered illegitimate, especially by several Christian politicians and their constituencies who boycotted them (Khoury, 1993; Abi Saab, 1998). Between those two highly contested elections, the first Lebanese broadcast legislation was being shaped.

<sup>5</sup> Section A, Paragraph III, Article F.

<sup>6</sup> The conference was held in Carlton Hotel in Beirut (hence its other title, the “Carlton Meeting” or “Carlton Conference”) on 17, 18, and 19 May 1991. See the conference reader published by the Lebanese Ministry of Information, titled “Conference for the Reorganisation of Media in Lebanon”. For practical purposes, in this chapter, I will be referring to the reader that was published after the Carlton Conference as “the conference reader”.

were practically no representatives of the existing unlicensed private broadcast stations.<sup>7</sup>

The purpose of the conference, according to Mansour's opening speech, was to get "all participants to present their opinion" as a "necessary first step" before embarking on the project of drafting a broadcast bill. The minister was especially keen on safeguarding freedom of expression in Lebanon, and wanted to do so by providing a level playing field for all types of applicants, whether these are (financially) capable of owning a mass medium or not.<sup>8</sup>

Democracy is not just freedom. It is freedom and equality. And freedom of expression cannot be the freedom to impose one's opinion on the other. One cannot place the wolf and the lamb side by side, and say to the lamb it has the right to devour the wolf. There is no democracy when the big has the right to swallow the small...

Minister Mansour also insisted on the need to put an end to the war "by altering the tools of war," some of which were thought to be in the hands of the broadcast media. Effectively, several participants dealt with the issue of the war and the media, though there was no consensus on whether the media contributed to the fighting or merely "mirrored" the war situation.<sup>9</sup> However, there was general agreement on the need to "reorganise" the media "responsibly" and without sacrificing freedom of expression in the process.

Throughout the 3-day conference, several demands or recommendations were reiterated by the participants. These included the need

1. To safeguard freedom of expression, human rights, and pluralism in the media;
2. To allow the existence of private broadcasting side by side with state broadcasting;
3. To prevent monopoly and concentration of ownership in the media;
4. To provide proof of the financial viability of broadcast stations and prohibit "foreign or other secret financial support,"<sup>10</sup>
5. For a higher national council to license and supervise the media;

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<sup>7</sup> The only speaker from an illegal station was LBCI's CEO Pierre Daher. Minister Mansour explained this "absence" by arguing that illegal broadcast media are "not best suited for the drafting of a bill because of conflict of interest". See conference reader, p. 123.

<sup>8</sup> Introduction of Minister Mansour, Carlton conference. See conference reader.

<sup>9</sup> In the Carlton conference, Dr Rashid stressed the futility of the argument, and wondered why the media were still being blamed for the war while politicians and party leaders, who were also responsible for the war, were "forgiven" and eventually co-opted into the post-Civil War governments. She also put the blame on the official media that failed to perform their duty and actually only succeeded in reinforcing the importance of the private media to viewers (p. 88, 89). A similar criticism about the co-opting of the wartime power elite in the post-Taef government was also voiced by one of the MPs during the parliamentary general assembly of October 1994, during which the broadcast bill was voted for (minutes of the parliamentary session, 13 July, 1994, p. 1487).

<sup>10</sup> These were the words used in the summary of recommendations produced at the end of the 3<sup>rd</sup> day of the "Carlton meeting".

6. For a technical committee to study and organise the limited number of frequencies available for allocation, in conformity with international standards;
7. For a “code of ethics” for private broadcasters;<sup>11</sup>
8. To protect and encourage local production and content (including the production of children’s and educational programming);
9. To respect standards of taste and decency;
10. To protect the environment from damage caused by broadcast and relay equipment;
11. To cater to regional concerns through the location of broadcast stations or their programming;
12. To provide employment to media graduates in the private media;
13. To keep the new regulation abreast of the latest technological advances in the field of communication.

In his closing speech, Minister Mansour noted the emerging “broad consensus on the need for broadcast legislation”. He also emphasised the need for “interim regulation” to deal with the current situation.<sup>12</sup>

Mansour’s optimism was met with great scepticism by the private unlicensed broadcasters who were wary of any government control in the name of regulating the media. To save the legislative process, Mansour suggested the temporary renting of some of the public broadcaster’s channels to the de facto stations. This arrangement would provide the government-owned station (i.e., Tele Liban)<sup>13</sup> with the needed funds to improve its facilities and services while at the same time allowing the de facto stations to continue their operation.<sup>14</sup> Mansour’s recommendations were ultimately approved by the Council of Ministers in January 1992. The decision caused public uproar “not because of what it stated but because of what was reportedly said in the deliberations of the ministers”.<sup>15</sup> Apparently, these ministerial

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<sup>11</sup> Interestingly enough, most if not of all these demands concerned solely the private media. This should come as no surprise, actually, considering the little interest shown by the government toward “public” broadcasting throughout the policy formulation stage. Indeed, the 1994 Act defers dealing with the mandate and content requirements of Tele Liban till later on. This was still not done at the time of writing.

<sup>12</sup> See conference reader, p. 131.

<sup>13</sup> For background information on Tele Liban, see Chapter 4.

<sup>14</sup> *Al-Nahar* daily, 9 August 1991.

<sup>15</sup> Dajani, 1999, p. 18.

deliberations toyed with the idea of restricting television news to Tele Liban.<sup>16</sup> Several official statements were issued, both locally and internationally, in response to this, denouncing the attempt to mute freedom of expression in Lebanon, -“a red line which may not be crossed without negatively affecting the country”.<sup>17</sup> The Hariri government promptly denied the charge. Inevitably, however, the regulatory process was stalled, with the media and public opinion more suspicious than ever of the government’s “real” intentions.

The following Hariri government put another minister in charge of this difficult task. The new Minister of Information, Michel Samaha, followed a different strategy. He first had to work on “confidence building and removing the fear” of a government clamp down on illegal stations.<sup>18</sup> In a meeting held with representatives of these stations, he “convinced” them of the need to co-operate in the drafting of a code of ethics and to abide by it until broadcast legislation was passed.<sup>19</sup>

In a press conference held on 23 December 1992, the Ministry of Information announced the result of this process, which also involved prior discussions with various religious, educational, and parental groups. Freedom of the media was to be guaranteed as stipulated by the constitution. In return, the broadcast media had to respect and consolidate the “spirit of reconciliation and national unity between citizens” as stipulated by the Taef Agreement.<sup>20</sup> They were mostly to do that by exercising self-censorship: the code insisted on the need to refrain from inciting confessional hatred and strife, to support the Lebanese resistance against the Israeli occupation, to produce quality programming that reflects Lebanese culture and heritage, to avoid broadcasting indecent and violent material, and to respect the needs and specifications of the audience when scheduling programmes.

The various clauses of the code were actually addressing specific problems that had “plagued” the programming of unlicensed stations until then. One of the most pressing problems concerned both the content *and* time of broadcasting of some of the programmes. In fact, several stations were very cheaply run, often not more than an apartment-based operation with equipment that was either obsolete (U-Matic and VHS tapes and cameras) or non-

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<sup>16</sup> *Al-Nahar* daily, 21 January 1992; and *Al-Safir* daily, 11 January 1992.

<sup>17</sup> *Al-Safir*, 13 January 1992.

<sup>18</sup> Minister of Information Michel Samaha, personal communication, 14 January 1999.

<sup>19</sup> According to Al-Mashnouk (1994, pp. 77- 78), Samaha actually had to threaten to close down the illegal stations in case they refused to abide by a code of ethics.

<sup>20</sup> See Al-Mashnouk (1994, p. 80) for more details.

professional.<sup>21</sup> Being under-funded and under-equipped, these stations often resorted to seedy, “almost freely produced”<sup>22</sup> nightlife programming which was, to the horror of parents and educators, broadcast during the daytime.<sup>23</sup> This total disregard for, even ignorance of a basic rule in programming - addressing specific audiences during specific airtimes - was actually behind the mobilisation of various civil society groups and their urgent support for the government’s intention to regulate broadcasting.

The code of ethics that Samaha fervently pushed for was to be binding (through self-censorship) on all broadcasters until the passage of a broadcast regulation.<sup>24</sup> The remaining step for the government was (finally) to start drafting a broadcast bill. The French model was the openly preferred one, given the long history of French-Lebanese interaction and affinity, and the political value of emulating the modern broadcast legislation of a leading Western democracy.<sup>25</sup>

More than a year later, there was still no draft bill in the offing. According to Minister of Information Samaha, the Hariri government was not interested in any of the draft proposals that the Minister had presented.<sup>26</sup> The situation changed abruptly, however, when a church in a predominantly Christian area was blown up in February 1994, killing and injuring dozens of innocent people.<sup>27</sup> This time, the Hariri government promptly reacted to the “spiralling chaos and lack of restraint in media” operations by speeding up work on a draft bill and decreeing

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<sup>21</sup> Speech prepared by Dr Alfred Barakat for the conference on the “Reorganisation of the Media”. Conference reader, p. 52.

<sup>22</sup> These were some of the words used by one of the conference participants to describe the “decadent” state of Lebanese television. See conference reader, p. 124.

<sup>23</sup> Such programmes were often handheld, single (video) camera recordings of Beirut at night: night clubbers, party-goers, and aspiring performers (mostly belly-dancers) filled the screens at all times of the day (especially in the afternoon and early in the evening when children are known to watch television the most).

<sup>24</sup> Al-Mashnouk reported that Samaha was keen on getting the code done *before* Christmas 1993, which he did only two days before the set deadline (1994, p. 80). Eventually, the code of ethics did not prove efficient and only a few months after pledging to respect it some stations reverted back to their pre-code practices (Al-Mashnouk, 1994, p. 82).

<sup>25</sup> See Chapter 3. Minister Samaha went as far as personally attending work meetings by the French broadcast authority (Conseil Supérieur de l’Audiovisuel or CSA) to understand its mode of operation and the extent to which it was independent from the government (Samaha, personal communication, 14 January 1999).

<sup>26</sup> Personal communication, 14 January 1999.

<sup>27</sup> The bombing occurred in Saydet Al-Najat Church in Zouk (heavily populated Christian area towards the north of Beirut). The leader of the Lebanese Forces, Samir Geagea, was implicated and later arrested. This event almost precipitated the country’s first major political crisis since the end of the Civil War in 1991. Geagea was eventually acquitted of this charge.

that all unlicensed stations were to refrain from broadcasting “news or any other direct or indirect political programming” until a broadcast act was passed.<sup>28</sup>

This government decision was received with a public uproar and confirmed the general fear of what was felt to be truly lying behind the government’s intentions concerning broadcast legislation. On 13 July 1994, during an extraordinary parliamentary session, opposition MPs vehemently attacked the government’s ban, and accused the government of dereliction of duty and of being responsible for the general chaotic situation, by having failed to execute one of the stipulations of the Taef Agreement concerning the reorganisation of the media.<sup>29</sup> In that same session, MPs were surprised to find out that, only days before summer adjournment, a draft broadcast bill was being introduced by the government.<sup>30</sup> To several MPs, this “critical timing” seemed like another deliberate attempt to sabotage the regulatory process by putting parliament under pressure to pass an urgent piece of legislation without being given time to study it.<sup>31</sup> Prime Minister Hariri, accusing opposition MPs of being “antagonistic”,<sup>32</sup> defended his government’s timing contending that “it was impossible for our government or any other government to pass a law with the broadcast media continuing their operations”. He insisted, referring to his government, that they “are not against the media or freedom of expression”. To prove that, he said:

I personally own media institutions... and no one understands the media better than I do: I own a private television [FTV], half of Tele Liban, and a radio [Radio Orient]. I also own several newspaper titles.<sup>33</sup> Some of them are not yet published but I may publish them. Therefore, as far as the media, [the various] freedoms and all those august phrases about repressing freedom and democracy are concerned, please allow me. No one knows better than

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<sup>28</sup> Nashef, 2000, p. 110. The decree banning broadcast news was signed on 23 March 1994.

<sup>29</sup> The Taef Agreement was signed on 22 November 1989. See parliamentary session held on 13 July 1994, p. 1479.

<sup>30</sup> This bill was drafted by a ministerial sub-committee headed by Vice Prime Minister Michel Murr. According to then Minister of Information Michel Samaha, his (earlier) draft bill was fiercely rejected by the Council of Ministers and referred, with the intention of postponing discussing it, to the committee headed by minister Murr which never studied it (Samaha, personal communication, 14 January 1999).

<sup>31</sup> See parliamentary session held on 13 July 1994, p. 1485.

<sup>32</sup> Hariri, who was present during the session, accused MPs who wanted to vote for a lift on the news ban of “breaking the government’s decision”. In retaliation, MP Wakeem defended the parliament’s democratic right to propose and enact laws (Minutes of the parliamentary session held on 13 July 1994, pp. 1485, 1487).

<sup>33</sup> See Chapter 4 on history of media in Lebanon for an explanation of the “peculiar”, existing system of licensing newspapers.

we [i.e., the government] do in that respect, especially me.<sup>34</sup>

Unconvinced, MPs went ahead with their proposal to lift the ban on news by passing their own proposed bill.<sup>35</sup> According to this bill (No. 353), “temporarily, and until the passage of a broadcasting law, broadcast stations operating in Lebanon can resume broadcasting news and political programmes”.<sup>36</sup> Consisting of a total of only 6 articles, the bill contained almost exclusively content restrictions: respect of the Taef Agreement (national unity and reconciliation), respect of pluralism of opinion and freedom of religion, respect of standards of taste and decency, objectivity in the news, the right of reply, and so on.

Emerging victorious from its battle for political and media freedom, parliament had now till October, date of the following session, to study the much awaited and controversial proposed government bill.

### **The draft bills**

In 1994, the year in which Lebanon finally witnessed the difficult birth of its first broadcasting act, several proposed bills, originating from the government or parliament, were presented. The 1994 Act which passed in November of that year, bears, to a considerable extent, the imprint of all these other bills, and represents the final compromise reached between the Hariri government, opposition MPs, and the private media lobby.

Chronologically, the first draft bill proposed was presented by Minister of Information Samaha. This bill, however, was never submitted to parliament.<sup>37</sup> The most salient feature of the Samaha bill was the vast discretionary powers it gave to the Ministry of Information and its minister: whether in the area of licensing, controlling content, or imposing sanctions, power rested almost exclusively in the person of the Minister of Information, despite the creation of several regulatory bodies, including a national council for the broadcast media. This

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<sup>34</sup> See parliamentary session held on 13 July 1994, p. 1484.

<sup>35</sup> Being at odds with the Hariri government which he was part of then, Minister of Information Samaha helped draft this parliamentary bill with other MPs “behind the scenes” ( Samaha, personal communication, 14 January 1999).

<sup>36</sup> Article 1 of Bill No. 353. The bill also specifies that this temporary measure does not endow the unlicensed stations which were temporarily put back into operation with any legal rights (i.e., licensing, spectrum frequencies, etc.)

<sup>37</sup> It should be noted here that Samaha was politically at odds with Hariri throughout his term and he was eventually removed from office to be replaced by Farid Moukari, a Hariri political and business ally.

concentration of power in the hands of the Minister, at the expense of the various regulatory bodies, was at odds with the Minister's own (subsequent) declaration to the author regarding the need for an "independent" regulatory agency such as the NAC.<sup>38</sup> Another important feature of that bill is its proposed classification of broadcast stations. There were to be five categories of licenses: general, specialised, regional, encrypted, and satellite broadcasting. Licensing conditions were to vary according to the category, and were to be mostly drawn from the general provisions of the Trade Act, especially concerning the needed capital and Lebanese ownership.<sup>39</sup>

A second draft bill was proposed by then MP Issam Naaman, and was presented in a conference held in parliament in May 1994.<sup>40</sup> The bill introduced the following:

1. Regarding licensing: licenses are to be granted by the government based on the opinion of the Minister of Information and *after* consulting with the National Audio-visual Council (or NAC). The 5 categories of licenses suggested were the same as the ones found in the Samaha proposal, with an additional specification of the capital required for each category. For instance, the capital of a general broadcast station was to be not less than one billion 500 million Lebanese pounds, that of a specialised station one billion, and that of a regional station 750 million.<sup>41</sup> Finally, and more importantly, the applicant could contest the government's licensing decision through the Constitutional Council.
2. Regarding ownership: individual ownership was to be restricted to a maximum of 20% of the shares, "to prevent monopoly and safeguard democracy."<sup>42</sup>
3. Regarding technical and content regulation: several regulatory bodies were to be created with the mission of controlling the quality of broadcasting and programming. The "independence" of those regulatory bodies, especially the NAC, was to be ensured by including several members of civil society (i.e., trade unions representatives, media

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<sup>38</sup> Former Minister Samaha, personal communication, 14 January 1999.

<sup>39</sup> See Samaha's proposed bill in Nashef, 1995, p. 44-49.

<sup>40</sup> See full text of proposal as published in *Al-Dyar* daily on 9 May 1994.

<sup>41</sup> The current exchange rate then was around 1500 LL to the American dollar. An amount of one billion five hundred million Lebanese pounds would thus amount to one million US dollars.



professionals, academics, women NGOs, etc.) However, this independence remained limited for a variety of reasons: for instance, all regulatory agencies in general were to be presided over by officials from the Ministry of Information or the Minister of Information himself.<sup>43</sup> Moreover, the suggestions of the NAC were not binding and were of a purely “consultative” nature.

4. Finally, two specific clauses in the Naaman proposal merit attention. The first concerns compensating Tele Liban for the loss of its exclusive right to broadcast till the year 2012.<sup>44</sup> This compensation was to be purely financial and levied by imposing a 5% tax on the advertising income of all licensed private broadcast stations. In return, Tele Liban would drop all legal charges pressed against the unlicensed private broadcasters who were using its channels. The second suggestion sought to compensate the government for the loss of its exclusive rights to broadcast by giving it a 10% share in each licensed private broadcast station. Naturally, these last two clauses drew special attention from the media lobby which bitterly fought any direct interference in their business (through mandatory government ownership of shares or through taxation) and, unlike several other suggestions made by Naaman, did not make it to the final draft submitted to parliament.

A third bill, drafted during the same period by a governmental committee headed by Minister of Interior Michel El-Murr, was introduced around the same period. This bill, however, received vehement criticism from private broadcasters and opposition MPs and had to be rewritten several times before being finally submitted for discussion and voting in the parliamentary general assembly. In its initial form, the bill contained severe restrictions concerning licensing, ownership, and content regulation, and gave wide discretionary powers to the government. The major points of contention concerned the following:

1. The government was to have a mandatory share of 20% in each licensed station for the purpose of “adding some sort of self-censorship or “censorship from the inside” to the operation of the station regarding programming, news, advertising, and other types of

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<sup>42</sup> This was Naaman’s justification for the clause restricting ownership, as he explained during the press conference held in parliament in which he introduced his proposal (Nashef, 1995, p. 51).

<sup>43</sup> The proposed NAC, which included a large proportion of members from civil society, was to be presided over by the Minister of Information himself and included four other top government officials from various ministries (e.g., Ministry of Information, Ministry of Education, and Ministry of Culture). The technical committee was to be composed mostly of members chosen from related ministries or appointed by the Minister of Information.

<sup>44</sup> According to Decree No. 126/1959, Decree 2098 of 21 June 1979, and Decree 4507 of 2 November 1988, Tele Liban was to be the exclusive broadcaster till 31 December 2012.

programming”, as Nashef explains.<sup>45</sup> This censorship from within would work especially by having two government officials sitting on the board of directors of the licensed stations.

2. The government was to be the only authority responsible for licensing and “there was to be no higher council for the media”.<sup>46</sup>
3. Granting of licenses depended on spectrum scarcity and the limited advertising market.<sup>47</sup>
4. The proposal dealt only with future broadcast stations and did not take into consideration the existing de facto stations.
5. Regional broadcasting was not to be allowed, and cable and satellite broadcasting were to be regulated in separate laws.
6. The maximum share allowed for any single shareholder was to be 10%.

Faced with intense opposition, especially from the influential media lobby, the Council of Ministers amended its proposal (i.e., the draft bill introduced by Minister Murr), mainly by limiting the government’s discretionary powers and especially by removing its mandatory ownership of the 20% share in each licensed station. The revised bill (or Decree No. 5349), however, still contained some very contentious clauses regarding the government’s stringent control over the broadcast media:

1. There were to be only two categories of broadcast licenses: all stations (radio and television) were to be generalist in content, had to ensure universal coverage, and were classified according to whether they broadcast political programming (category 1) or not (category 2). Cable television was to be licensed separately by ministerial decree.
2. No single owner (whether an individual or a corporation) could have more than 10% of the shares in a television or radio station.
3. The government was to be the only authority responsible for studying license applications and approving them. Licenses were to be granted, first and foremost, “in consistence with the public interest and the necessities of national security”.<sup>48</sup> Though a single regulatory agency

<sup>45</sup> See summary of proposed bill in Nashef, 1995, p. 54.

<sup>46</sup> See guiding principles of the governmental committee’s draft bill in Nashef, 1995, p. 54.

<sup>47</sup> There is no accurate data concerning the size of the advertising market in Lebanon. Existing figures are estimates that can vary greatly: some estimates go as low as 60 million dollars per year, while others, based on official rates of TV advertising per minute, are as high as 420 million dollars. Even those sources that give such high estimates admit that the “actual” size of the advertising market does not exceed 90 million dollars. See interview with Talal Makdesi, Vice President of the Lebanese Advertisers Union, in *Sayyadat Wa Aa'mal* periodical, No. 4, November 2000, p. 44.

<sup>48</sup> Author’s translation.

was created for the task of supervising the content and operations of licensed broadcast stations, this agency was mainly comprised of government officials, who would report to the Minister of Information and exercise “prior censorship”.<sup>49</sup>

4. Licensing depended on two major factors: the number of frequencies available (to be determined later by the Ministry of Telecommunications) and the size of the advertising market.

5. The license fee was to be one billion LL for all categories of television stations (1 and 2).<sup>50</sup>

6. The amount of advertising time per hour was to be limited to eight minutes, advertisements during the news bulletin were prohibited, and 10% of all advertising revenue was to be allocated to a special health and retirement fund for broadcast employees.

#### **Amendments of the parliamentary joint committee: the compromise**

Once the Murr bill (i.e., the 3<sup>rd</sup> above-mentioned bill) was approved by the Council of Ministers, the next step was to send it to an appointed joint parliamentary committee<sup>51</sup> for discussion, before being finally debated by the parliamentary general assembly. The “discussion” sessions were nine in all, and as a result the bill underwent some major changes that reflected the power of the advertisers, the media lobby, and of opposition MPs.

In this section, I will analyse the government bill as amended by the parliamentary joint committee, especially those areas that were considered most crucial by all parties involved (i.e., the incumbent government, the powerful opposition MPs and the private media representatives). These areas concerned the conditions for licensing, the authority responsible for granting licenses, the various broadcast categories, the number of licenses to be allocated, content control, penalties, and advertising. The objective of this analysis is to understand some of the paradoxical aspects inherent in the final version of the 1994 Act and to trace their origin by relating them to the opposing political forces at play during the shaping of the Act.

During the first session, representatives of the private media were able to present a memorandum expressing their grievances concerning the government-proposed bill and urging

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<sup>49</sup> During the first meeting with the joint committee, Prime Minister Hariri, when asked to justify the “prior censorship” clause, explained that the term “prior” was added “by mistake” (Nashef, 1995, p. 65).

<sup>50</sup> One billion LL amounts to approximately 666,000 \$. The fee was reduced for radio stations. Radio stations of the 1<sup>st</sup> category (i.e., with political programming) were to pay 500 million LL (or 333,000\$), as opposed to 250 million LL (or 166,000\$) for radio stations of the 2<sup>nd</sup> category (i.e., without political programming).

<sup>51</sup> The two committees in question were the Justice Committee and the Communication and Transport Committee.

the committee to amend some of the articles of the bill. Those grievances concerned mainly the following:

1. The immense discretionary power of the government concerning licensing, especially prior restraint on content and ownership,<sup>52</sup> and the limiting of the period of licensing to a maximum of 10 years for television stations.<sup>53</sup> The media lobby was also greatly worried about the government's power to grant licenses without having to justify its decision.
2. The absence of a higher council for the media that could be "the practical guarantee for freedom of the media in Lebanon".
3. The government's intention to act against freedom of trade and competition first by tying the granting of licenses to the size of the advertising market and second by burdening the broadcasting sector with very heavy fees and financial conditions.<sup>54</sup> There was also concern about the absence of a concrete monetary figure regarding the minimum capital required from applicant stations.<sup>55</sup>
4. The need for several broadcast categories, especially regional broadcasting that could play an important developmental role.
5. The need for an interim period during which the existing stations could readjust themselves to meet the licensing conditions.

As a way of remedying the situation, the broadcasting lobby suggested deleting or amending some of the contentious articles (e.g., advertising minutes per hour, government control of the sale of shares, amount of the license fee,<sup>56</sup> etc.). It also called for the creation of an independent national council responsible for granting licenses and requested that the judiciary, and not the

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<sup>52</sup> According to the draft bill, no sale of shares in any licensed broadcast station can occur without the prior approval of the Council of Ministers.

<sup>53</sup> According to this bill, the maximum period of a broadcast license was to be 10 years. The private media lobby, however, was worried that some licenses might be granted for a period as short as one or two years, because the proposed bill only fixes a ceiling for the licensing period (Nashef, 1995, p. 72).

<sup>54</sup> The media lobby suggested that the highest license fee not exceed 600 million LL (as opposed to the one billion LL requested by government). It also suggested that regional stations, which make up the majority of existing stations, be charged the least (50 million LL).

<sup>55</sup> Private media representatives were worried that this ambiguity would allow the government to discriminate between applicants and to ultimately favour big business.

<sup>56</sup> Instead of the 1 billion LL required by government for all types of television stations, the memorandum suggested that the fee range between 600 million and 50 million LL depending on the category of the station, with regional stations being charged the least (Nashef, 1995, p. 72).

executive branch, be the only power responsible for imposing sanctions on the broadcast media, according to the principle of the separation of powers.<sup>57</sup>

In sum, it was obvious that the private broadcasters' interest would be served by limiting governmental hold of the licensing process and programme content, by alleviating the financial conditions imposed on applicants and licensees (including the tax on advertising revenue), by limiting government regulation of advertising scheduling, and by securing licenses for as long a period as possible.

The amended government bill, having managed to reserve the exclusive authority to grant licenses for the government, did seek to constrain this discretionary power through the following means: on the one hand, a National Audio-visual Council (or NAC) was to be set up. This NAC, which was strongly pushed for by a media lobby wary of government abuse of power, was to be even more independent in its make up than the one suggested in the proposal of MP Naaman. However, its independent, exclusive role concerning the granting of licenses, as initially envisaged by the media lobby, was mitigated by reducing it to the publishing of a non-binding opinion concerning license applicants. On the other hand, Naaman's proposal to further check government power by allowing rejected applicants to appeal with the Constitutional Council was successfully included.

Other "victories" for the media lobby included dramatically reducing the heavy financial conditions concerning license fees. For instance, the one-time license fee of two billion Lebanese pounds (c. 1,300,000 \$) for a television station was dramatically reduced (by 7/8<sup>th</sup>) to 250 million (c. 166,000 \$). No amount concerning the capital needed for applicant stations was specified, however.<sup>58</sup> The media lobby was also able to extend the period of licensing from a maximum of ten years to a *fixed* period of 16 years, though initially it favoured an unlimited period of licensing, then agreed to a "limit" of 25 years.<sup>59</sup>

Perhaps the major amendment in favour of the media lobby and pluralism in general was the cancelling of Article 44 which gave the government the exclusive right to decide on how many licenses were to be granted. Though the government was now denied this right, the issue of the *number* of licenses to be allocated proved to be one of the key and most controversial aspects

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<sup>57</sup> For a summary of this memorandum, see Nashef, pp. 66-74.

<sup>58</sup> The financial requirements were, by contrast, highly detailed in the Naaman proposal. For instance, a general broadcast station, to be eligible for licensing, had to have a capital of no less than one billion five hundred million LL. It had to have at least 100 employees and had to broadcast at least for 12 hours a day.

<sup>59</sup> Both the government's and Naaman's bills suggested that the license period not exceed 10 years for television stations (it could be less).

of the regulatory process in question. Although spectrum scarcity was not contentious in itself, nor was the consequent and inevitable need to limit the number of licenses questioned, there was total disagreement over how many broadcast stations the available spectrum could accommodate. A related controversial issue was the *type* or categories of broadcasting licenses to be granted. In the government proposal (Decree No. 5349), only two categories were to exist: category 1 for general stations that broadcast political programming and category 2 for general stations without news or any other political content. Both categories were to ensure universal coverage. By contrast, both MP Naaman's proposal and the memorandum of the private media lobby included five categories of licenses: general, specialised, regional, encrypted, and satellite broadcasting. Naturally, free-to-air broadcasting was at the heart of the controversy, with the debate whether or not to include regional broadcasting playing a major role in determining the final number of available licenses (regional broadcasting requires fewer frequencies than broadcasting covering the entire country). With the government's insistence on universal coverage for any type of broadcasting license (without possibility for regional broadcasting), and with the exclusion of the new telecommunications technology<sup>60</sup> and its ability to make maximum use of the spectrum, the number of licenses to be allocated was thus reduced to a minimum.

During the discussion sessions held by the joint parliamentary committee, several technical reports concerning the number of frequencies and channels to be allocated were submitted. The first report, submitted by a group of experts commissioned by the joint committee, concluded that only 3 television stations could be licensed if universal coverage were to be "of acceptable quality".<sup>61</sup> The private media report, citing the newest developments in broadcast technology (namely digital compression and narrow beam focus), elevated the number to 17. A third report submitted by MP Abd El-Rahman reached a conclusion similar to that found in the private media report (i.e., 16 channels). Finally, MP Bakhos argued against the exclusive need for stations ensuring universal coverage. Instead, he suggested that only one station (i.e., Tele Liban) be entrusted with that responsibility. This, he argued, would automatically leave more frequencies available for a larger number of networks that can be more regional in their focus.

Towards the end of the nine sessions, the compromise materialised by denying the government the power to decide on the number of licenses to be granted on the one hand, while

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<sup>60</sup> The reason given for this exclusion was that digital compression is "incompatible" with the broadcasting technology and equipment available in Lebanon (Nashef, 1995, p.87).

<sup>61</sup> Nashef, 1995, p. 82.

only broadcast stations with mandatory universal coverage would be allowed on the other hand (category 1 and 2). As for encrypted (cable) and satellite broadcasting, they were to be legislated separately, knowing that the government's initial proposal intended to regulate them through ministerial decrees.

As for the (already) few existing clauses on advertising, the media lobby succeeded in eliminating entirely the most restrictive ones (e.g., the limitation on amount of advertising time per hour, the 10% tax on advertising revenue, etc.) and in amending Article 35 which gave the government the power to regulate all other unmentioned matters concerning advertising through ministerial decrees. In the amended Article 35, all matters relating to advertising had to be dealt with in a separate piece of legislation. In sum, the advertising related articles were watered down and the amended version retained only a vague restriction on monopolistic practices and some minor content controls (as will be seen later on).

The last discussion session dealt with content regulation and the government-controlled television station or Tele Liban. Prior restraint having been immediately dropped in the first session,<sup>62</sup> parliamentarians retained the major provisions of the proposed bill, though the wording of some of the content regulations was adjusted (sometimes reduced) to prevent ambiguous terms from giving the government large powers concerning censorship. Basically, general content regulation included the guarantee of freedom of expression and the pluralist character of ideas and opinions, the objectivity of the news, the maintenance of public order, and the need for developing local audio-visual production. Restrictions on content based on "national security" considerations were dropped. Other content restrictions (especially concerning libel, the right of reply, and so on) reiterated those already found in the existing Press Law of 1962, and penalties were defined in accordance with the general Penalties Law. Though the private media lobby pressed hard for the exclusive right of the judiciary to intervene in case of violation of content or licensing conditions, the Minister of Information maintained his (traditional) power to initiate action against licensees.

Probably the subject of least interest during those sessions was that of Tele Liban. The few clauses related to this government controlled station were mostly concerned with abolishing the station's exclusive right to the Lebanese airwaves. The operation of the station itself (and its mandate?) were to be specified later on by ministerial decree.

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<sup>62</sup> The highly controversial "prior censorship" on content clause was, as already mentioned, immediately dropped by attributing it to a "mistake". As Prime Minister Hariri explained, "what was meant instead was post-hoc censorship". See summary of the minutes of the nine joint parliamentary discussions in Nashef, 1995, p. 65.

By the end of the nine sessions, which started on 6 September 1994, the government-proposed bill or Decree No. 5349 was finally ready to be discussed in parliament, after several major amendments had been introduced. The resulting “hybrid” draft legislation prompted a prominent Lebanese journalist to write in large headlines the next day: “The broadcasting project: dividing up the booty between the committee and the government”.<sup>63</sup> Indeed, the emerging draft bore so clearly *both* the imprint of the government proposed bill and of MP Naaman’s proposal, which was in general looked at favourably by the media lobby,<sup>64</sup> that one could easily recognise its inherent contradictory nature, or the opposing pulls exercised on it during the drafting stages: while some provisions gave strong discretionary powers to the government, others were included precisely to shift the power away from the government and to favour the interests of broadcasters and advertisers. As for the “public” and “its interest,” it was occasionally referred to in the various draft bills, without however an accompanying definition of what “the public interest” actually meant. The phrase, indeed, whenever evoked, was especially vacuous since there is no existing tradition or history of public service broadcasting in the country. Lebanese “public” media do not have the same tradition or origin as that of Western Europe or Northern America, where the concept of public interest is at the heart of any debate on the public or private media.<sup>65</sup>

#### **Last amendments: voting for the bill in parliament**

The amended bill or decree 5349 was finally submitted to the parliamentary general assembly (for voting) on 19 October 1994. The deliberations in the general assembly required three sessions during which the last modifications to the government’s proposed bill were introduced. Although there were suggestions to vote for it all at once, the bill was eventually discussed or voted for article by article “due to the seriousness of the subject matter and its future implications for Lebanon”, as veteran MP Rasheed El-Solh argued in parliament.<sup>66</sup> During the voting sessions, the major comments or changes suggested by different MPs concerned the following :

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<sup>63</sup>Editorial by Nicholas Nassif, *Al-Nahar*, 13 November 1994.

<sup>64</sup> This was generally the case except, naturally, in the area of the government’s mandatory ownership and taxation on advertising revenue.

<sup>65</sup> For a detailed discussion of “public interest” during the drafting of the American Telecommunications Act of 1996, see Aufderheide, 1999. See also Chapter 4, section on radio and television, for a summary concerning the government controlled-media.

<sup>66</sup> Minutes of the general parliamentary session, 19 October 1994, p. 1691.



1. To make the Guidebook of Operating Conditions,<sup>67</sup> which specifies the administrative and technical criteria for licensing, be “part of the law [in question] in order to avoid discretionary and arbitrary” measures by the government when allocating licenses.<sup>68</sup>
2. To secure the independence of the National Audio-visual Council by putting certain legal mechanisms in place and by making it responsible for drafting the Guidebook of Operating Conditions.<sup>69</sup>
3. To create a trade union for all broadcast media employees, as is the case with workers (journalists and editors) in the print media.<sup>70</sup>
4. To have a single, reliable technical report that specifies the number of channels to be allocated,<sup>71</sup> and to postpone discussion of the bill until parliament itself commissioned a group of engineers to come up with an “independent, disinterested or impartial” report. Interestingly, though the government insisted during the session that a technical report was available, Speaker of Parliament Berri was unable to support that claim. In answer to the “rumour” that there were two technical reports, he admitted that, in fact, there were “two opinions”, and “not two reports”, concerning the number of channels to be allocated. However, upon voting for the postponement of the discussion of the proposed bill until such technical report is submitted, this suggestion failed to pass.<sup>72</sup>
5. To reintroduce regional broadcasting (without universal service obligations) in order to ensure pluralism of voices, and to compensate for the inability of the spectrum to accommodate more than a handful of national programmes or channels.

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<sup>67</sup> This is the equivalent of the French “cahiers des charges” mentioned in the French audio-visual law of September 1986. In this study, the Guidebook of Operating Conditions will be more briefly referred to as “the Guidebook”.

<sup>68</sup> Intervention of MP Estephan El-Doueih, minutes of the general parliamentary session, 19 October 1994, p. 1689.

<sup>69</sup> Minutes of the general parliamentary session, 19 October 1994, p. 1689.

<sup>70</sup> Minutes of the general parliamentary session, 19 October 1994, p. 1689.

<sup>71</sup> By the time the proposed bill was discussed in parliament, there was still no such report. Existing reports up till then were highly contradictory. MP Wakeem pointed out sarcastically that it was “no coincidence” that the technical committee commissioned by the government recommended a much lower number of channels to be licensed than the committee commissioned by private broadcasters. Another MP was equally disgruntled by the failure of the government to live up to its promise “to contact the international centre of communication in Geneva” for a final answer. Minutes of the general parliamentary session, 19 October 1994, pp. 1689, 1694, and 1696. For other criticisms of the lack of a reliable technical report on the number of channels, see also pp. 1696 and 1697.

<sup>72</sup> During the same session, Minister of Information Samaha also pointed out that the existing reports were “preliminary”, “approximate” and “not final”. Minutes of the general parliamentary session, 19 October 1994, pp.

Two of the above mentioned concerns proved thornier than expected: the technical committee and regional broadcasting. Interestingly, both were directly related to the *number* of broadcast stations that were going to be licensed.

### ***1. The Technical Committee***

Though MP Wakeem's suggestion to delay voting for the bill (for lack of a reliable technical report) failed, the issue of the number of channels to be allocated was not considered any less controversial. One solution was offered by MP Nayla Mouawad. She suggested the setting up of a *permanent* body responsible for studying and providing technical information concerning available frequencies, as is the case in France. The emerging compromise consisted of the following: the creation of a technical committee (the TC) to study all technical aspects relating to television and radio transmission. This committee would be made up mostly of government officials and specialists appointed by the Council of Ministers, and would submit its recommendations to the Minister of Information and the National Audio-visual Council (NAC).

### ***2. Regional broadcasting***

The exclusion of regional broadcasting from the categories recognised by the proposed bill also stirred heated debate in parliament. Several MPs, headed by Naaman, wanted to re-introduce the idea of regional broadcasting, already pushed for (in vain) by the private media lobby. Regional broadcasting was already discussed in detail in Naaman's May proposal but was dropped entirely during the discussions of the joint parliamentary committee. The main argument in favour of regional broadcasting was that it was needed to ensure pluralism, especially in a multi-confessional country like Lebanon. Moreover, as some opposition MPs argued, only regional broadcasting would cater to the specific needs of some regions or areas – especially the agricultural regions of Lebanon - that would otherwise be neglected by a general or national broadcaster. The fact that Tele Liban failed the pluralism and public interest tests,

especially during the Civil War, made such need for regional broadcasting even more pressing.<sup>73</sup>

A concomitant argument (for regional broadcasting), and one that easily ties into the limited number of licenses to be allocated, was that the stations to be licensed belonged to a handful of “rich individuals” who could use their own stations to advance their political career:

There is Future TV headed by a politician. We cannot compete with him financially nor own our own television station. This is unacceptable [or unfair]. We want to work in politics and communication is politics, let's admit that openly. We are not legislating for the public interest any more, we are legislating for individuals.<sup>74</sup>

In sum, it was clear that opposition MPs feared that the spectrum scarcity argument, coupled with the universal coverage requirement and the discretionary powers held by the government concerning licenses, would ultimately lead to the following : a dramatic reduction in the number of media outlets and of political players with access to their constituencies through the few available media.

In the face of this mounting pressure from opposition MPs to reintroduce the category “regional broadcasting” into the bill,<sup>75</sup> Prime Minister Hariri and Speaker of Parliament Berri insisted that regional broadcasting, especially after the Civil War, was in fact a threat to the “higher national interest of the country”. As Berri put it, “...regarding that matter [regional broadcasting], we are very keen on having everyone read in the same book and hear from the same book”.<sup>76</sup>

Once again, the tension between two opposing tendencies or approaches, each pulling the bill in different directions, came to the fore. Earlier, concerning the licensing authority, we saw how opposition MPs (backed by the media lobby) on the one hand, and the government on the other hand, fought for an act that would minimise government control to the advantage of the former and strengthen it to the advantage of the latter. In the case of regional broadcasting, the tension between the two was articulated along different lines: regional broadcasting was perceived as the best protection for pluralism for the first party and a major threat to national

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<sup>73</sup> Minutes of the general parliamentary session, 19 October 1994, pp. 1701 and 1702. For a summary of Tele Liban's performance during the Civil War, see Chapter 4.

<sup>74</sup> MP Omar Karami (also former Prime Minister), minutes of the general parliamentary session, 19 October 1994, p. 1701.

<sup>75</sup> The example of regional broadcasting, especially of regional news, both in the case of American private television networks and that of the BBC, was frequently cited by MPs to stress the importance and universality of the concept of regional broadcasting. Minutes of the general parliamentary session, 19 October 1994, p. 1700.

<sup>76</sup> Minutes of the general parliamentary session, 19 October 1994, p. 1700.

unity in post-war Lebanon for the other.<sup>77</sup> Eventually, a compromise saved, once again, the legislative process: a paragraph was added to Article 10 regarding the classification of television and radio corporations, whereby licensed stations can, “within the broadcasting capacities granted to them<sup>78</sup> and separately of their general programming grid”, offer “broadcasting dedicated to a particular region of the Lebanese territory to cover issues related to this region”. This was so “provided that the length of broadcasting doesn’t exceed 20 hours per week.”

## **PART TWO: POLICY ADOPTION**

### **ANALYSIS OF THE TEXT OF THE 1994 ACT**

In this section, the major provisions of the 1994 Act in its final form will be analysed. Though the Act itself contains a total of 53 articles divided among 12 chapters, I will only emphasise those parts that were a major source of contention between the key policy shapers throughout the regulatory process. These parts are: the licensing conditions, ownership, content regulation (advertising and programming), and the NAC.

The analysis will include some comparison with the French audio-visual law of 1986, which served as the model or “ideal” to be followed when the Lebanese law was being drafted. Being at the head of the government that was finally responsible for passing the Act, Prime Minister Hariri repeatedly assured the public that his government offered Lebanon top quality legislation that was not only the first of its kind in the entire Arab world – which it was - but was also

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<sup>77</sup> In retaliation to the government’s rejection of regional broadcasting, several MPs argued that the best and most democratic way to protect the national interest and unity was to control the content of these stations, and not to prevent them from existing, which would practically amount to prior censorship or restraint. MP Wakeem even argued that the problem of division and confessionalism in Lebanon “was not starting from below and growing upwards but [that it] always fell from above downwards”. In other words, he blatantly accused the power elite, itself dependent on confessionalism, of fostering confessionalism to maintain its power. Minutes of the general parliamentary session, 19 October 1994, p. 1704. See Chapter 3 for a detailed explanation of the role of confessionalism in the political culture of Lebanon.

<sup>78</sup> This meant that licensed stations would not be granted additional frequencies for their optional regional broadcasting.

comparable in quality to similar laws adopted in major European democracies.<sup>79</sup> Indeed, on several occasions Hariri gave, specifically, the example of the French broadcast legislation as the ideal that his government looked up to when drafting the new law. Though this move or comparison could be easily construed by critics as a mere tactic to “sell” the Lebanese Act of 1994 to the public, it was not surprising in itself. This is especially so considering the long political and cultural interaction between France and Lebanon. Indeed, it was quite “normal” for Lebanon, which first emerged as a republic under *French tutelage* in the early 1920s, and whose first constitution (and civil code) were modelled after the French ones, to use the French broadcasting law as a model for its first broadcast legislation ever.<sup>80</sup> Indeed, as early as May 1991, several participants in the Conference for the Reorganisation of Media in Lebanon, including Minister of Information Mansour, were already citing the French broadcasting law as *the* example to follow, especially concerning broadcasting freedoms and the National Audio-visual Council.<sup>81</sup>

The purpose of this comparison is not to evaluate the French law itself – a task outside the scope of this thesis – but to *test* the extent to which the Lebanese Act is actually based on the French one,<sup>82</sup> as repeatedly claimed by the government. This will be done first by fleshing out similarities or differences between the two acts, and later by trying to justify the existence of those similarities or differences. My major contention here is that the Lebanese Act was a major site for struggle and control by involved players (as demonstrated in the first section of this chapter), and that a pertinent approach to understanding it requires an examination of those provisions that attempted to secure control for those different (often antagonistic) players.

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<sup>79</sup> See *Al-Safir*, 24 May 1996 and 19 September 1996.

<sup>80</sup> India’s 1997 Broadcasting Bill followed a similar path, with the British Broadcasting Act of 1990 serving as a model (Price, 2000).

<sup>81</sup> See conference reader, Conference for the Reorganisation of Media in Lebanon, pp. 36 and 37. It should be noted here that the current administrative and bureaucratic organisation of the Ministry of Information is a reflection of the (old) French model for governmental organisation, which was studied and introduced to the Lebanese Ministry of Information in the 60s. For a critique of the structural organisation of the Lebanese Ministry of Information, see reader of Conference for the Reorganisation of the Media in Lebanon, p. 110.

<sup>82</sup> It has to be clarified here that any reference to the French audio-visual law, unless otherwise stated, specifically refers to it based on its initial 1986 shape as amended in 1989 (when the French Conseil Supérieur de l’Audiovisuel or CSA was introduced). Other amendments will still be taken into consideration when relevant, with a mention of the full date on which the amendment was introduced. It is important to note here that, since its passage in 30 September 1986, the French law underwent more than a dozen amendments (e.g., in January 1989, December 1992, April 1996, July 1998 among several others), the most important of which having been introduced on 1 August 2000. By contrast, the Lebanese Act is still unchanged at the time of writing. Finally, in this section, for practical reasons, I will be often referring to the French Audio-visual Law of 30 September 1986 as “the French Law”.

From the onset, it should also be pointed out that the Lebanese Broadcasting Act, though the first of its kind in the Arab world, was *not* created in a vacuum. Even though there might be some strong evidence that the French audio-visual law of 1986 was used as a model or blue print, the 1994 Act could not be well understood unless seen also as a product of its own socio-political context. In other words, other shaping forces will be pointed out to whenever possible, especially in this case, influences from the *existing* (amended) Press Law of 1962.<sup>83</sup> Indeed, the new broadcast legislation often borrows from the Press Law of 1962, and can only be assessed fully in the light of this connection: either as merely reiterating, or as building on parts of the existing press law. Thus references to the 1962 Press Law, and not just to the 1986 French legislation, will be made whenever called for. By looking at the 1994 Act from different angles or perspectives, and by applying more than one frame of reference for the comparative analysis, hopefully a better understanding of this “new” and “revolutionary” piece of legislation can be achieved.

### **Restrictions on ownership**

Ownership of the new media was actually at the heart of most of the controversy and debate concerning the new legislation. From the start, it was clear to all, especially to the dozens of illegal private broadcasters, that only a “lucky” few would, or could end up with a license, considering the spectrum scarcity constraint. In a world of limited resources, choices had to be made. The next question, naturally, concerned the selection criteria. If spectrum scarcity was presumably a fact of life (or airspace) that existing broadcasters had to live with,<sup>84</sup> choosing the “lucky few” who were going to win out in the end was a different matter altogether. Living in a country that had just emerged from a 16-year long Civil War and where influence peddling and corruption, especially among the power elite, are rampant, it was no wonder that the issue of “who gets to decide who gets what” was seen as being of paramount importance.

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<sup>83</sup> The (amended) Lebanese Press Law of 1962 will be often referred to in this chapter as “the Press Law”.

<sup>84</sup> Naturally, the illegal private media tried hard, though unsuccessfully, to introduce the argument that the new communication technology offers the possibility of increasing the efficiency and extent of airwave allocation.

In the following sections, I will focus on issues of ownership and control as dealt with in the 1994 Act. The Act not only specifies who is qualified to own shares in the broadcast media (the Lebanese identity issue), but also places restrictions over how much each owner is allowed to hold within one broadcast station or medium (i.e., concentration of ownership) *and* across different media (i.e., cross ownership).

### *1. Lebanese ownership*

Requiring that only a Lebanese national can own shares at all in the broadcast media, not only has its equivalent in the French Law, but is actually totally in sync with other commercial Lebanese laws.<sup>85</sup> This is especially true regarding press ownership in Lebanon. To start with, the French Law includes clear restrictions on foreign ownership. It does not allow foreign entities or individuals to own more than 20% of the capital shares of a broadcast station (Article 40). In the case of corporations, a corporation is considered foreign if the majority of shares are held by non-French citizens. However, the 1994 Act is far more strict and forbids foreign ownership altogether (Articles 13 and 31 respectively).

This “fear” of foreign ownership, it can be argued, is not without its historical justification. For instance, one has to see the Lebanese media in the context of the Arab world where, in general, only government-controlled media are allowed. As Dajani explained in his historical review of the Lebanese press, Arab voices – muted at home - found an outlet for expression in the “easy to acquire” Lebanese press. As a result, Beirut became a haven for the “Arab press”, playing “the role of forum for the Arab world, accessible to all conflicts and ideological battles being waged in the world at the time”.<sup>86</sup> This situation, he argued, led to the development of print media that were more a reflection of the (Arab) power interests behind them than any genuine attempt to deal with Lebanese politics and society. This external Arab influence, he continued, reached its paroxysm during the Civil War, “accentuating differences” in the already

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<sup>85</sup> For instance, the same Lebanese ownership requirement applies to real estate ownership in Lebanon (decree No. 69/11614).

<sup>86</sup> Dajani, 1992, p. 12. According to Dajani, the prominence of the Lebanese press owed much to the 1952 *coup d'etat* in Egypt led by Nasser. Up until then, the Egyptian print media could boast of being the leaders of the Arab press. After 1952, however, and the resulting economic and political instability in the region, the Egyptian press began to lose its pan-Arab role and the Lebanese press took over (p. 35).

fragmented Lebanese society.<sup>87</sup> A Lebanese journalist, back in 1967, deplored the state of the Lebanese media by describing them as “not at all free”. Instead, he said, they were “rented”, “mortgaged and in debt to those – Arabs or Tartars – who possess money and can afford to rent them”.<sup>88</sup> Two years later, Lebanese President Charles Helou, in his address to the newly elected members of the council of the Lebanese press union, asked ironically: “... may I learn what foreign countries your papers unofficially represent? Welcome to your second country Lebanon”.<sup>89</sup>

Whatever the reasons, the 1994 Act, similarly to the Press Law, clearly and categorically prevents any foreign ownership of the broadcast media in Lebanon. In his draft proposal, MP Naaman already explained that the purpose of the Lebanese ownership, “naturally, [was] the preservation of this public sector from falling into foreign hands”.<sup>90</sup> Several additional control mechanisms were included for that purpose, especially in the case of corporations. Not only does the Act require that all shares be nominal<sup>91</sup> (to control their ownership more effectively), but in the case of a company having shares in a broadcast medium, the company’s internal statute should strictly forbid sale of shares to any non-Lebanese individual or (legal) entity (Article 13). The Act indeed goes even further than the already restrictive Press Law, requiring that any buying or selling of shares in the future be subject to prior licensing by the Council of Ministers (Article 15). This last restriction was especially contested by the private media lobby: while accepting the motives for keeping the media in Lebanese hands, the lobby questioned the real objective behind Article 15, considering that other (existing) stipulations were sufficient to ensure Lebanese ownership of the broadcast media. The lobby, in sum, saw in this unjustified measure “fear of”, and not “fear for” the media in Lebanon.<sup>92</sup>

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<sup>87</sup> Dajani, 1992, p. 44.

<sup>88</sup> Journalist Ibrahim Salameh as quoted in Dajani, 1992, p. 44.

<sup>89</sup> Dajani, 1992, p. 12. In 1965, external Arab influence on internal Lebanese politics was such that President Helou, “as a result of Arab pressure during one of the Arab summits... issued a decree in which the Press Law of 1962 was amended in order to prohibit the media from criticising kings and heads of state”. Later on, during the term of President Franjieh, a new clause was added to the Press Law forbidding non-Lebanese from owning shares in the Lebanese press (Dajani, 1992, p. 93). See also Chapter 4.

<sup>90</sup> Nashef, 1995, p. 166.

<sup>91</sup> Nominal shares bare the “name” of their owner. This requirement makes it possible for the government to control the identity of the specific individuals who own shares in the Lebanese media sector.

<sup>92</sup> Nashef, 1995, p. 67.



## 2. Concentration of ownership

The 1994 Act sought to control concentration of ownership by forbidding any person or entity from owning, directly or indirectly, more than 10% of the total shares of a broadcast station. The husband or wife, their parents, and their children under age were all to be considered one person (Article 13). In other words, no less than *ten different* shareholders were required to own a broadcasting corporation. This provision clearly departs from its counterpart in the Press Law where a person (a journalist in specific), can own, individually, a newspaper (Article 31). The French Law, for its part, only requires that any entity in control of more than 20% of the shares of a broadcast station *notify* the Conseil Supérieur de l'Audiovisuel or CSA (Article 38).<sup>93</sup>

Clearly, the 1994 Act sought to prevent the broadcast media from being controlled by a few players, and to ensure pluralism *in ownership*. However, no provision is made concerning *confessional pluralism* among shareholders, knowing that the dominant *practice or convention* since the emergence of the Lebanese Republic after World War II has been to include representatives from the existing confessions in all public administrations and elected bodies.<sup>94</sup>

This “silence” regarding the religious identity of the owners, while emphasising their Lebanese identity, is not surprising in itself if one were to consider first that the media in question are *private*, and second that one of the major (future) goals of the Taef Agreement is to abolish confessionalism from all walks of Lebanese political and administrative life. Until such objective is met,<sup>95</sup> a station could, theoretically, and contrary to the established practice of the confessional distribution of power, be entirely and *legally* owned by several shareholders from a single Muslim or Christian confessional group.

The article in question is vague as well, even contradictory, in its attempt to limit concentration of ownership (Paragraph 3): “under age” children are counted as one with the owner. This means that the “adult” children of some shareholder can easily own shares (10% each) in one and the same station.<sup>96</sup> In other words, it is possible for some owner, along with his/her 9 *adult* children, to own for themselves a television or radio station. In the same

<sup>93</sup> The amendment of 1 August 2000 reduced the percentage to 10 (Law No. 2000-719).

<sup>94</sup> See Chapter 3 on the historical review of the Lebanese political system.

<sup>95</sup> See Taef Agreement, Chapter Two, Paragraph g. It should be noted that, more than a decade after the signing of the agreement, the process of abolishing confessionalism - a “basic national objective which should be gradually phased in during an interim period” - has still not started (author’s translation).

<sup>96</sup> The interpretation of this paragraph of the Act as allowing adult children to own shares in a broadcast corporation along with a parent was found to be very plausible, even normal, by the current Vice-President of the NAC, since adult children are, *legally*, independent from their parents (Fadel Shalak, personal communication, 22 August 2001).

Paragraph 3, however, the law mentions that no one can own, “directly or indirectly”, more than 10% of the shares: “The husband and the wife, their ascendants and their minor descendants are considered as one person”. This provision is particularly confusing considering that the adult children of a shareholder (and maybe his/her siblings too?) are also entitled to shares in one and the same licensed broadcast station. If that is the case, what could possibly be meant by “direct” or “indirect” ownership? The other “paradox” of this limitation on the concentration provision concerns the “parents” of a shareholder; if not just the minor children, but also the parents and spouse of a shareholder are “considered as one person”, how can this provision reconcile with the fact that the “minor” child who becomes an adult and is therefore eligible to own 10% of the shares on his/her own, has a parent who already owns another 10% of the share? Is that parent, who was a shareholder *before* the child became an adult, forced then to divest him/herself of the 10% of shares?

### 3. *Cross media ownership*

The Act deals with cross ownership as follows: a person or entity cannot have shares in more than one broadcast company (Article 13). However, once a corporation is set up – of which that person or entity is a shareholder – the corporation, and not the single shareholding person or entity, is allowed to own “only one television and one radio” (Article 12). In this respect, the Act is significantly more strict in its limitation of cross ownership than the French Law. The latter, even in its most recent restrictive amendment,<sup>97</sup> allows a certain measure of cross-ownership, depending on market share, both within and across all the different media (analogue or digital television, radio, cable, satellite channels, newspapers, etc.).<sup>98</sup>

Though cross-ownership controls in the 1994 Act can be seen as an improvement or as a “novelty” when compared to the Press Law where no such restrictions exist at all, the 1994 seems to be only concerned with cross ownership in the case of radio and television. Moreover,

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<sup>97</sup> According to Kuhn, “the process of diversification by press groups into other media sectors gave rise to political concern in the mid-1980s, leading to the introduction of cross-media legislation to prevent undue concentration both within and across the different sectors (1995, p. 237). This “concern” led, on 15 May 2001, to the setting up of a joint task between the CSA and the Anti-Concentration Council to specifically monitor and check concentration in the audio-visual media (see Amendment 2001-420 of 15 May 2001).

<sup>98</sup> The Law of 2000-719, introduced as an amendment to the 1986 Law on 1 August 2000, is quite detailed in its control of cross ownership. For instance, any person or entity cannot own, “directly or indirectly, more than 49% of the capital or voting shares” of a national television station (Article 39). Then the law details, for example, how a person or entity that owns more than 15% of the shares of an analogue national television station cannot own more than 15% of the shares of another similar station. The amendment then fixes the percentage of shares to be owned to a maximum of 5% in each station if the person or entity has shares in 3 different analogue national television stations (Article 39).

the approach is glaringly simplistic, especially when compared to the long and detailed sections on cross ownership in the modified French Law:<sup>99</sup> not only is the Act completely oblivious of cross-ownership with other media sectors (newspapers, cable, satellite, etc.), but no concept of market share is introduced to put the concentration of ownership in perspective, the way the French Law does. In other words, in the absence of any such limitations on cross-ownership, it is very likely, in a worst case scenario, to imagine a single corporation with a license for one radio and one television stations, being dominant in terms of national audience share (theoretically up to 100% of market share) and to own as many national newspapers as it wishes to, again regardless of the market share in total annual readership. Worse yet, this possibility paves the way, *legally*, for a single corporation to own *all* newspapers and to dominate *all* market shares of radio and television audiences on a nation-wide level through ownership of one radio and television corporation, and to emerge and establish itself as a single media monopoly in the country. Moreover, knowing that this corporation can be exclusively owned by one parent and his/her adult children and siblings, one family could theoretically and *legally* dominate the entire radio/television/newspaper media field in Lebanon.

### **Content regulation**

Whereas issues of ownership identity and control (i.e., concentration and cross-ownership) were hotly debated at the various stages of the drafting of the law (and were major points of contention between the various political players involved in the legislation), content regulation was merely glossed over. Article 3 early on stresses that “the audio-visual media are free”, then goes on to add that this freedom is to be “exercised in conformity with the Constitution and other existing laws”.<sup>100</sup> Article 7, in its 7<sup>th</sup> paragraph reiterates this duty of private broadcasters to respect “the provisions of the general laws which are not in contradiction with the present law”. These other laws, it should be noted, especially the content provisions of the 1962 Press Law, are far from protective of freedom of expression and could, quite to the contrary, easily

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<sup>99</sup> See articles 39, 40, 41, 41-1, 41-1-1, 41-2, 41-2-1, 41-3, and so on in the amendment of 1 August 2000 of the French Law.

<sup>100</sup> Author’s translation.

serve as rubber stamp censorship stipulations.<sup>101</sup> For instance, broadcast offences (and penalties) concerning content are largely the same as the ones considered for the print media. They mostly refer to defamation (libel or slander), blackmail, inciting confessional hatred or strife and weakening of national unity, criticising heads of states, endangering the national security of the country and its relationship with other countries, and spreading false or exaggerated news about the country's financial situation. However, private broadcasters were specifically required by the 1994 Act to

1. Respect the freedom of others, their rights, and pluralism of opinion and ideas;
2. Respect objectivity in reporting news and events;
3. Respect the need to promote national, cultural production;<sup>102</sup>
4. Refrain from broadcasting "anything that may contribute to propagandise relations with the Zionist enemy";
5. Respect public order, national defence requirements, and the public interest;
6. Respect copyright laws;
7. Respect the individual's right of reply in case a radio or television station "broadcasts anything that harms his reputation or honour".

The French Law, similarly, starts with a general enunciation of the principle of freedom of audio-visual communication. This freedom, Article one explains, is limited only by national defence needs, the requirements of public service and public order, the freedom and property of others, and the pluralist expression of opinion.<sup>103</sup> Elsewhere, however, the French Law, through the CSA, calls for the protection of children and adolescents, either through the choice of broadcast time or by requiring broadcasters to place a visual warning prior to any programming "susceptible" of harming minors.<sup>104</sup> The CSA is also required by law to oversee the production

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<sup>101</sup> For a detailed comparison of these general provisions and related penalties as applied to the print and broadcast media, see Boutros, 1993, Vol. II, pp. 31-67.

<sup>102</sup> National production quotas and types of Lebanese programming were later specified in the Guidebook of Operating Conditions. See Appendix B.

<sup>103</sup> Article one, in a later amendment, adds to the restrictions (on freedom of the media) the "respect of human dignity", "technical constraints inherent in telecommunications technology", and "the necessity to develop an audio-visual production industry" (Law 2000-719 of 1 August 2000).

<sup>104</sup> Article 15 as modified by the Law No. 2000-719 of 1 August 2000.

and broadcasting of programming related to electoral campaigns.<sup>105</sup> None of these last two measures are addressed in the Lebanese Act to date. The Guidebook, however, seeks to protect minors by requiring the late broadcasting of programmes with sexual or violent content, and prohibits cartoons based on “excessive violence”, though nowhere is a definition offered of what “excessive” means.<sup>106</sup>

### *1. Local production*

The major disagreement over control of programming concerned whether the percentage of national<sup>107</sup> production should be fixed in the Act itself or in the Guidebook of Operating Conditions.<sup>108</sup> Minister of Information Samaha strongly argued against fixing a percentage for local production in the Act, and instead supported the idea of determining this percentage in the Guidebook, because local production varies on an annual basis, depending on various factors such as subject matter and financial capacities.<sup>109</sup> Eventually, the percentage and type of local production was left for the Guidebook, under a section titled “Minimal Broadcasting Hours and Compulsory Local Programmes”.<sup>110</sup> “Compulsory” local programmes, for instance, include programmes promoting “Lebanese, Arab, and international history and literary heritage”. Moreover, 40 % of these locally produced programmes have to specifically deal with Lebanon.<sup>111</sup> Other compulsory locally produced programmes include series, news bulletins, game shows, children programming, documentaries, sports shows, and so on.

According to the Guidebook, the (total) minimum number of hours of local programming required is 730 broadcast hours per year. Considering that, according to the same Guidebook, a television station of the first category (i.e., with political programming) has to broadcast at least 12 hours a day, the percentage of “mandatory” local production amounts to approximately

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<sup>105</sup> Article 18 of the French Audio-visual law as modified by Law 96-62 on 29 January 1996.

<sup>106</sup> This, of course, is to say nothing of the difficulty involved in defining “routine violence” on television. See Guidebook of Operating Conditions or Decree No. 7997 in Appendix B, p. 14.

<sup>107</sup> Within the context of the Lebanese broadcasting law, both the terms “national” or “local” production are used interchangeably to refer to programmes produced in Lebanon as opposed to imported ones, whether these latter are Arabic, Mexican, or Western in general.

<sup>108</sup> Minutes of the parliamentary session, October 1994. If national production quotas are fixed in the Guidebook instead of in the text of the 1994 Act, they are easier to change (simply through a ministerial decree). Any changes in the Act, by contrast, require voting in parliament.

<sup>109</sup> Minutes of the parliamentary session, October 1994, p. 1695.

<sup>110</sup> See Guidebook in Appendix B, p. 13.

<sup>111</sup> Guidebook, Appendix B, p. 13.

16.6% of a station's yearly total broadcasting time.<sup>112</sup> For a station that broadcasts 24 hours a day, the percentage drops accordingly by half and barely makes up 8.4 % of the total yearly output. Moreover, converting the specified thematic breakdown of the mandatory 730 hours of local programming into percentages for a yearly output shows that, of the 16.6% of the yearly fixed minimum of local programming, and for a daily broadcast of 12 hours, we end up with the following percentages: 0.118 % goes to Lebanese drama/series, 6.39 % to local news, 2.94 % to songs and music, 2.05 % to game shows, and a remaining 3.78 % to sports, variety shows, documentaries, and development programming (e.g., agriculture, public health, etc.). Finally, according to the same Guidebook, 20% of the compulsory 730 hours of local production, or 3.3 % of the total yearly output (always considering a daily broadcast of 12 hours) shall be dedicated to children and youth.<sup>113</sup> Finally, since the programme quotas fixed by the Guidebook are given in absolute value and not expressed as a percentage of a station's total output, all the above percentages, once again, can drop by half if a station broadcasts up to 24 hours a day.<sup>114</sup> In either case, it is actually very hard to see how these mandatory, very low quotas can effectively protect, much less promote or "develop the national cultural industry", as specified in the Guidebook of Operating Conditions,<sup>115</sup> which also requires broadcasters to:

Encourage Lebanese TV production, [to] thrive to highlight Lebanon's archeological, historical, artistic and cultural landmarks, and give full support to research and experiment in the arts with a view to ensuring creativity and innovation.<sup>116</sup>

The French Law, by contrast, not only expresses the quotas of French programming as a *fixed percentage* of the total output that is independent of the hours of broadcasting a day, but this percentage is almost five times as great as the one fixed in the Lebanese Guidebook of

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<sup>112</sup> See Guidebook in Appendix B, p. 13.

<sup>113</sup> See Guidebook in Appendix B, p. 13.

<sup>114</sup> Actually, none of the major private television stations broadcasts less than 18 hours per day, with Future Television running a 24 hour daily broadcast.

<sup>115</sup> A recent content analysis of major private television stations, (e.g., LBC, MTV, and FTV) showed that local production was very low compared to imported American, Mexican, and Arabic programming (Chour, 2001, p. 42). While the author argues that this very low percentage of Lebanese programming is also of poor quality and fails to address the cultural and societal needs and problems of the country, it is interesting to note here that the percentages he reached are *significantly superior* to the minimum quotas of local programming set by the Guidebook.

<sup>116</sup> Author's translation. See Guidebook of Operating Conditions, Appendix B, Chapter One on "General Terms". See also 1994 Act in Appendix A, Article 7, Paragraph 3.

Operating Conditions (for a 24 hour a day broadcast).<sup>117</sup> For instance, Article 27 of the French Law, as amended on 1 August 2000, requires that 40% of all film and audiovisual productions be French. In the case of radio, not only should French songs make up 40% of the total broadcast, but also half of that percentage should be allocated to new talent or new songs.<sup>118</sup> Finally, an added protection ensures that these French local productions have a prominent place (prime time or other) in the broadcasting schedule.<sup>119</sup>

Moreover, unlike the case in the French law, neither broadcast time nor language (i.e., Arabic) are specified in the Lebanese Guidebook. To start with, the only instance where the Arabic language is mentioned is found in the Guidebook of Operating Conditions, in the section related to news bulletins.<sup>120</sup> In this section, use of standard Arabic is mandatory. News bulletins in “foreign” languages can also be produced, on the condition that their duration does not exceed the duration of the Arabic news bulletins.

Overall, these Lebanese content restrictions are so lax, they actually make it possible for private broadcasters to evade quota requirements and consequently to avoid supporting Lebanese talent and production<sup>121</sup> through several methods : by scheduling Lebanese programming late at night, for instance, and reserving the lucrative prime time slot for popular US or Mexican series; by replaying old Lebanese series ad nauseam just to fill the quota requirement; and finally by making Lebanese programming in a *non*-Lebanese language, since nothing in the Act or the Guidebook specifies anything about the language to be used in all types of programming except for the news. A recent content analysis found out that most of the children programmes on MTV, for instance, were not in Arabic. Instead, they were mostly in

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<sup>117</sup> The Guidebook requires a minimum of 730 hours of locally produced programming per year. For stations broadcasting 24 hours a day (most major licensed television stations do not broadcast less than 18 hours a day), this makes the percentage of local programming amount to 8.3% of total broadcasting time.

<sup>118</sup> Amendment to the 1986 Law, No. 94-88, 1 February 1994.

<sup>119</sup> Article 27 of Law 86-1067 as amended on 1 August 2000.

<sup>120</sup> See Guidebook in Appendix B, Chapter Three on “Programs”, section on “News Bulletins”.

<sup>121</sup> Simply by considering economies of scale, it becomes obvious why good quality local production could be much more expensive, and less able to secure viewership than an imported American series whose popularity has already been established internationally (i.e., *Friends*, *Baywatch*, *the Bold and the Beautiful*, and so on). See Barendt, 1995, p. 219. It is also important to remember here that Lebanon has a population of only 3 million and cannot count on selling its local production in the larger Arab world for two reasons: Lebanese dialect - a variation on standard Arabic - is not easily understood outside a few neighbouring countries, and Lebanese televisions or production houses cannot compete (in terms of quantity, quality and financing) with the established television and film industry in Egypt which is currently the major cultural supplier in the Arab world.

French or English. Even when those Arabic children programmes made extensive use of French or English, they did so without attempting to include the Arabic translation in the subtitles.<sup>122</sup>

## 2. Religious programming

While nothing in the 1994 Act itself refers to religious broadcasting, not to mention minority broadcasting (e.g., concerning the large Armenian community in Lebanon), the Guidebook includes the possibility of airing religious programmes. A maximum total of 52 hours a year is allowed, and is to be distributed among the various confessions according to “the principle of equality and the need to preserve the requirements of public order and interest”. The 1986 French Law also allocates time for religious programming on its public channels. Article 56 stipulates that Sunday morning should be reserved for religious programming that caters to the major religions practised in France. Expenses for making and transmitting such programming are to be covered by the French public broadcaster.

It should be noted that, unlike secular France, Lebanon is a “religious” country as stipulated in the constitution, and is comprised of no less than 20 religious communities. Knowing that there is no other possibility within the Act to broadcast religious programming, especially not on public television (i.e., Tele Liban),<sup>123</sup> it can hardly be seen how the broadcast requirement of “pluralism” can be achieved by allocating one hour a week to religious programming, unless the pluralism referred to in the Act is everything *but* religious pluralism.<sup>124</sup> Especially in the case of Lebanon, where politics and religion are inseparable components of one’s identity (at least according to the state), the Act’s protection of pluralism of ideas on the one hand and its practical prohibition of religious programming on the other seem to be quite irreconcilable, even paradoxical.

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<sup>122</sup> Chour, 2001, p. 38.

<sup>123</sup> It should be remembered that the 1994 Act does not deal with the content requirements and “public interest” duties of Tele Liban. The only related article (i.e., Article 41) defers such legislation to a later time.

<sup>124</sup> Expressed as a percentage, 52 hours a year is 1.18% for an average of 12 hour broadcast per day and 0.59% for a 24-hour broadcast. Considering at least the 5 major confessional groups (i.e. Sunnis, Shi’ites, Druze, Maronites,



### 3. *Tele Liban or the absence of a public broadcaster*

All of the above explained content regulations, as specified either by the Act or the Guidebook, would have made more sense had they been reiterated or even compensated for in the mandate of the only existing “public” television station (i.e., Tele Liban).<sup>125</sup> This is especially so concerning religious broadcasting which would normally fall under the mandate of a public broadcaster, and not a private one. Here lies perhaps the major discrepancy of the 1994 Act: of a total of 53 articles, only one deals with Tele Liban. According to article 41, the company’s monopoly rights to the airwaves were to be cancelled, and some of its channels to be redistributed to the licensed private broadcasters.<sup>126</sup> The reorganisation of Tele Liban, however, was to be carried out later on according to decrees issued by the Council of Ministers. As early as the Carlton conference in 1991, which was organised by the Ministry of Information to involve civil society in the discussion on the new broadcast legislation to be introduced, many voices denounced the lack of a communication policy in Lebanon, especially concerning “public” broadcasting.<sup>127</sup> It should be noted here that, *to date*, no legislation exists concerning Tele Liban, its organisation, or mandate.<sup>128</sup>

### 4. *Advertising control*

Early proposals, with the exception of the one made by the government, lacked any control of advertising, whether in content or through scheduling. Some minor controls of content

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and Greek Orthodox), this could mean that each of these groups gets a total of about 10 hours of airtime during the entire year. See Act in appendix, Article 7, Paragraph 2. See also Guidebook, Appendix B, Chapter One, p. 2.

<sup>125</sup> I use the term “public” with great reservation in the case of Tele Liban, because this state-controlled broadcaster, which became fully owned by the state as of the passage of the 1994 Act, never had the mandate of a public broadcaster (in the West European sense), and because its historical record has demonstrated its performance as a *government-controlled*, and not public service, broadcaster. See Chapter 4 for a historical review of Tele Liban. For a detailed discussion of the difference between the two concepts (i.e., government controlled vs. public broadcasting), see Barendt, 1995, Chapter 3.

<sup>126</sup> According to Article 41 of the 1994 Act, Tele Liban has the right to broadcast on all VHF channels and to have one programme on the UHF channels. Other UHF channels are to be redistributed among private broadcasters.

<sup>127</sup> Some participants actually used the phrase “non-policy of communication” to refer to the absence of public broadcasting in Lebanon. See conference reader, titled “Conference for the Reorganisation of Media in Lebanon”, pp. 92-95.

<sup>128</sup> As Dajani explains, the emergence of Tele Liban itself as a state broadcaster was not the result “of a communication policy or of a deeper understanding of the role of television in Lebanese society, or of a new communication policy”. As he explains, it was a quick move taken by the government in response to an emergency situation when the only two existing (private) television stations collapsed (Dajani, 1992).

eventually found their way to the final version,<sup>129</sup> but regulation of scheduling and amount of advertising per hour disappeared altogether: whereas the government's proposal sought to limit the number of advertising minutes per hour to eight, and to preclude advertising during news bulletins, for instance, the 1994 Act has no such restrictions. Moreover, no limits are imposed on the times during the day at which an advertisement with violent or sexual content can be aired, whereas both programmes with violent and sexual content and promotions for such programmes are required not to be aired before nine in the evening.<sup>130</sup>

Only one article (39) deals with advertising monopoly, mainly by forbidding the "owners of the audio-visual medium or the sub-contracted advertising agency, as well as their spouses or children, [from having] shares in more than one company". Finally, the last article in the Act concerning regulating advertising, probably due to the recognition that the field remains clearly under-regulated, states that "advertising issues that have not been foreseen by this law will be governed by a special law" (Article 40). No "special law" for advertising has yet been passed.<sup>131</sup>

### **The National Audio-visual Council: status, functions, and powers**

Initially, the government sought to control all phases of the licensing process, from studying applications to allocating frequencies to granting or withdrawing licenses. The National Audio-visual Council (or NAC), the new regulatory body introduced by the 1994 Act, was entirely absent from the government's proposal and was only introduced later on under parliamentary pressure in order to check governmental control of broadcasting.

Articles 17 and 18 of the 1994 Act specify the make-up of the NAC. According to these articles, the NAC shall consist of 10 members half of whom are to be appointed by the Council of Ministers and the other half by parliament, following the same appointment procedure of the members of the Lebanese Constitutional Council. Here it should be noted that no mention is made whatsoever regarding who is to preside over the NAC. The possibility for the Minister of Information to be president is not precluded. However, according to one legal scholar's opinion, the Minister is an unlikely candidate especially because, according to Article

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<sup>129</sup> Chapter 8 of the Act, which deals exclusively with advertising, warns for instance against advertising that "might misinform the consumer, harm his health or interests or includes any violation of public morals"(Article 36).

<sup>130</sup> See Guidebook in Appendix B, pp. 14 and 18.

<sup>131</sup> At the time of writing, a draft bill for regulating advertising was being discussed but not yet approved for voting in parliament.

35, the NAC “meets on its own initiative or upon the initiative of the Minister of Information”.<sup>132</sup>

Moreover, Article 18 of the Act seeks to secure the independence of the NAC members and to free them from any conflict of interest by prohibiting them from being members of elected bodies or civil servants in public administrations, or from conducting any activity “in contradiction with their function within the Council”. The same article specifies that these members are to be chosen among “Lebanese intellectuals, artists, scientists, and professionals”. This very “loose” description of the qualifications of the NAC members, according to Boutros, is justified because it makes it easier to select a Council “consisting of a wide selection of individuals who have the needed qualifications” for such a position.<sup>133</sup>

The establishment of the NAC as a regulatory body with the above mentioned functions was supposed to emulate the French CSA (Conseil Supérieur de l’Audiovisuel) model.<sup>134</sup> Though members of both councils are appointed in the same way as the Constitutional Council in their respective countries,<sup>135</sup> they clearly differ when it comes to the powers conferred on them by law. The CSA, even with less regulatory powers than its predecessor (the CNCL),<sup>136</sup> has a range of duties and powers that are not even closely matched by those of the NAC. For instance, the CSA is entrusted with the preservation of pluralism both in content (i.e., opinions and ideas) and in ownership, by ensuring, for instance, that the commercial operator is not in breach of the detailed anti-concentration provisions of the 1986 law.<sup>137</sup> The CSA is also

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<sup>132</sup> See Boutros, 1995, p. 81, emphasis added. The statutes of the NAC ratified on 15 November 1995 make this point clear: “within a maximum of 10 days as of the date at which the Cabinet ratifies the Statutes, the Minister shall convene the members to a meeting he shall preside, in order to elect a chairman, a vice-chairman as well as a secretary” (see Article 4 of the NAC Statutes in Appendix A).

<sup>133</sup> Boutros, 1995, p. 80.

<sup>134</sup> The 1986 Law (or the Leotard Law) had initially set up another authority, the Commission Nationale de la Communication et des Libertés or CNCL. The CNCL, however, was replaced by the CSA in the 17 January 1989 amendment (or the Lang-Tasca law), because the CNCL had, “perhaps unfairly, attracted a great deal of criticism for the way in which it had awarded licenses” (Barendt, 1995, p. 18 and 65). In fact, according to the Euromedia Research Group, “between 1982 and 1989, the issue of the broadcasting regulatory body replaced that of the status of broadcasting programme channels as the most contentious issue for communication policymakers” (*the Media in Western Europe*, 1992, p. 62, 66).

<sup>135</sup> The CSA is composed of nine members, one-third of which are nominated by the President of the Republic, one-third by the President of the Assembly, and one-third by the President of the Senate.

<sup>136</sup> According to Barendt, this is partly a result of the Parliament’s will to decrease the influence of the incumbent government on the CNCL and “partly because the Conseil Constitutionnel has curtailed the scope of the law-making powers delegated to administrative agencies” (1995, p. 66).

<sup>137</sup> Law of September 1986, Article 17.

entrusted with the control of advertising and sponsorship. It appoints the chief executives of public service broadcasting organisations, it can impose a “must carry” rule on cable networks to force them to transmit the programmes of the terrestrial channels, and it issues licenses to operate radio stations, private television stations (terrestrial or relayed by satellite), and cable networks.<sup>138</sup> Especially when it comes to enforcing programme standards, the CSA has wide responsibilities. Among these we find the protection of pluralism, of children and youth, and the laying down of general rules concerning the right of reply, access rights, and election broadcasts (i.e., the conditions of production and the scheduling and broadcasting of programmes related to electoral campaigns).<sup>139</sup> More importantly, it is provided with a wide range of facilities in order to “accomplish the missions it is entrusted with by the (...) law”.<sup>140</sup> For instance, it has strong enforcement powers over private broadcasters: it can issue an order requiring them to comply with their programme obligations, and in the case of a failure to comply, it can impose fines, suspend the license, or even withdraw it.<sup>141</sup>

As for the major functions and powers of the NAC conferred by the 1994 Act, they can be summed up as follows;<sup>142</sup> the NAC is:

1. To study the license applications and to ensure that they meet the conditions set up by the 1994 Act and the related Book of Operating Conditions.
2. To give an “advisory” or “consultative” (i.e., non-binding) opinion to the Council of Ministers regarding the rejection or the approval of applications, and to publish this opinion in the Official Gazette.
3. To give its (non-binding) opinion concerning the Guidebook of Operating Conditions. The Guidebook is to be drafted by a committee set up and supervised by the Council of Ministers. The Council of Ministers gives its final approval concerning the Guidebook with a ministerial decree (Article 25).

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<sup>138</sup> Law of September 1986 as modified by the Lang-Tasca Law of 1989.

<sup>139</sup> Law of 30 September 1986, Articles 13, 15, 16, 54, and 55 (in these respects not amended in 1989).

<sup>140</sup> Article 19 of the modified 1986 Law.

<sup>141</sup> These powers of enforcement are more limited when it comes to public broadcasting. See Barendt, 1995, p.

116.

<sup>142</sup> See 1994 Act, Appendix A, Articles 17-23, 35, and 47.

4. To give its opinion in case the Minister of Information decides to suspend a licensed station for infringement of the law.
5. To control the content of broadcast corporations.

Though the NAC may seem to have some of the general powers of the CSA, especially concerning licensing and content control, a closer look at the wording of the text of the Lebanese Act and the details (or lack thereof) concerning these powers shows an entirely different picture. For instance, the NAC can only give a “consultative opinion” to the Council of Ministers concerning broadcast applications. In other words, this opinion is not binding in any way on the Council of Ministers which retains the final word concerning the granting or withdrawing of licenses. It should be noted here that, nevertheless, *some* limits on the government’s absolute licensing power were eventually imposed; first by requiring the NAC to publish its opinions in the Official Gazette, and second by allowing rejected applicants to contest the government’s decision with the Constitutional Council.<sup>143</sup> In fact, during the discussion of the bill by the joint parliamentary committee, opposition MPs, unable to push for a stronger NAC that would be exclusively responsible for granting licenses, had to “compromise” by making the NAC more of a “partner” with the government. However, by requiring that the NAC publish its opinion in the Official Gazette, they hoped this requirement would act as an indirect pressure mechanism, or to put it more bluntly, that it would embarrass the government when and if it decides to apply its discretionary powers when granting licences.<sup>144</sup>

More alarming than the fact that the NAC was left with a secondary, watered down role in the licensing process, is the practical absence of enforcement powers and facilities needed by the NAC to perform its duties. Only one short article (Article 47) explains how the NAC is to carry out its control function vis-a-vis the licensed broadcast institutions: “*Upon the request of*

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<sup>143</sup> 1994 Act, Articles 19 and 24. These limits or checks, as explained earlier in this chapter, were introduced by MPs during the discussion of the government’s draft proposal and later on during the voting for the bill in parliament.

<sup>144</sup> Press conference by veteran MP and human rights activist Joseph Meghaizel, held immediately after the promulgation of the 1994 Act on 4 November, 1994. The only other change introduced later on to the NAC functions was during the November voting sessions: MP Naaman suggested that the NAC be consulted with concerning the Guidebook of Operating Conditions before the Council of Ministers approves it. Minutes of the parliamentary session, 19, 20, and 25 October 1994, p. 1708.

*the Ministry of Information and through its bodies, the National Audio-visual Council exercises control over TV and radio corporations*".<sup>145</sup>

Though both the 1994 Act and the related Guidebook of Operating Conditions reiterate that broadcast companies are subject to the control of the NAC in "accordance with the provisions of law No. 382/94" [i.e., the 1994 Act], nothing is clear or specified about the *nature* of this control. According to Article 47, at least, one must assume that the controls referred to, in addition to studying the license applications, are controls of the general programming standards or quotas mentioned in the Act and the Guidebook. Such controls would probably exclude the monitoring of broadcast electoral campaigns, which are not even mentioned in the Act. More importantly, the NAC is unable to exercise control over licensees *except through* the Ministry of Information and whatever facilities the Ministry is willing to put at its disposal (i.e., the NAC). Indeed, every time technical, administrative, or content control to be exercised over licensed stations is mentioned in the Act, the Minister of Information, along with the NAC, is specified as the controlling authority.<sup>146</sup> Indeed, the importance of the Minister of Information as the highest broadcast authority seems to precede that of the NAC, especially since it is ultimately the Minister, and not the NAC, who can authorise the suspension of the operations of a broadcaster in infringement of the law. The NAC, once again, is left with a "consultative", non-binding opinion.<sup>147</sup>

In sum, not only does the NAC have very limited powers of regulation and an unclear "mandate" to control broadcasting, it has no power of enforcement according to the 1994 Act. According to Barendt, it is "virtually useless to lay down programme standards, unless there is some mechanism for their enforcement".<sup>148</sup> It is interesting to note here that enforcement of the operating conditions and other existing general laws is the prerogative of the Minister of Information or the Council of Ministers, and not of the regulatory or controlling agency (the NAC). Just as in the case of licensing, the NAC can exercise its power only indirectly in cases of infringement by giving "suggestions" to the Minister (or Council of Ministers) who

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<sup>145</sup> Emphasis added.

<sup>146</sup> See the following examples in the Guidebook in Appendix B: first, Chapter Two, Part One on "General Terms", 4<sup>th</sup> section (on "Controls"); second, Chapter Five concerning "Fees and Contraventions [i.e., infringements]", Paragraph 9.

<sup>147</sup> See Guidebook in Appendix B, Chapter Five, Paragraph 9.

<sup>148</sup> As Barendt adds, this is to say nothing about the efficacy of these enforcement measures (Barendt, 1995, p. 115).

subsequently imposes the penalties mentioned in the law.<sup>149</sup> Finally, even these suggestions (by the NAC) can be dispensed with if they are not provided to the Minister of Information within 48 hours of his “request” to convene with the NAC (Article 35).

In light of this brief comparison between the French CSA and the Lebanese NAC, and without delving into an analysis of how independent or powerful the CSA itself is,<sup>150</sup> especially when compared to other European regulatory bodies, it becomes actually hard, if not ludicrous, to speak of the “powers” of the NAC.

### CONCLUSION

The purpose of this chapter was twofold: to analyse the *policy formulation* and *policy adoption* phases of the Lebanese Broadcasting Act – not only the first broadcast legislation of its kind in Lebanon, but also in the entire Arab world. This analysis was carried out in two parts: the first part on *policy formulation* followed the legislative process that ultimately led to the passage of the 1994 Broadcasting Act; the second part on *policy adoption* analysed the wording of the Act itself, and the ability of the Act, *as a solution* to the “problem” identified earlier, to meet certain objectives.

I intended the *policy formulation* phase to be an intrinsic part of my overall study of the Act, especially its implementation (Chapter 6), for the following reasons:

1. First, in order to see the extent to which the Lebanese democratic legislative process in post-Civil War Lebanon is actually working, especially since regulating the broadcast media in a highly confessional society is crucial for safeguarding pluralism and maintaining peace;
2. Second, to analyse the extent to which the various political groups (or policy community) involved (i.e., the media lobby, the advertising lobby, civil society, government officials, and so on) were able to influence the legislative process in question and how;

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<sup>149</sup> For a second infringement, the Council of Ministers, and not the Minister of Information, retains the power to close down the station.

<sup>150</sup> See Barendt (1995) for a detailed comparative analysis of the main broadcast regulatory bodies in the UK, France, Italy, Germany, and the US.

3. Finally, to provide a background or backdrop against which to analyse the text of the Act itself and to understand the origin of some of the contradictions or idiosyncrasies inherent in its final text.

The second part, which analysed the wording of the 1994 Act, was mostly based on a comparison of the final text of the Act with its French counterpart (as it was passed in 1986). The reason for choosing the French Law of 1986 as a comparative model was mainly due to the Hariri government's repeated claim that the 1994 Act was comparable in quality to its French counterpart. However, I could not restrict my analysis to a comparison with the French Law. Any such restriction would have impoverished the comparative analysis, and would have prevented us from seeing the Act as a product or extension of its own milieu, and not just as a foreign implant. Therefore, the 1994 Act was also compared to the Lebanese Press Law of 1962 which was, up until 1994, also used to regulate the content of the broadcast media. This double comparison was meant to assess the extent to which the 1994 Act was a landmark piece of legislation within its Lebanese context, and the extent to which it conformed to or departed from the older Press Law of 1962.

In sum, to start with, it is interesting to note that all of the recommendations suggested by civil society, during the only instance where it was actually invited to participate in the legislative process (i.e., during the Carlton conference), were incorporated in one way or another in the final version of the Act. The most important of these recommendations concerned the safeguarding of freedom of expression and pluralism, the possibility for private and regional broadcasting to exist, the introduction of a new regulatory body to supervise the media, restrictions on monopoly and cross-ownership, the protection of national cultural production, giving priority in employment to media graduates, and even the protection of the environment from the hazards of broadcasting and relay equipment.

In general terms, the 1994 Act can thus be considered a political "success", especially for post-War civil society. Moreover, the (difficult) subsequent process through which this piece of legislation went, the often contradictory pulls exercised on it by powerful, antagonistic players, and the final compromise embodied in the Act itself, are all an indication of the existence of a pluralistic, democratic environment in Lebanon.

A comparative analysis with the Press Law of 1962 showed the extent to which the 1994 Act often built on, or sometimes even borrowed from, the Lebanese Press Law. One major similarity, for instance, is the *total prohibition* of non-Lebanese ownership, which is thought to



be by some Lebanese scholars the direct consequence of decades of non-Lebanese (mainly Arab) interference in Lebanese politics through (direct or indirect) financial control of the press.<sup>151</sup> Knowing that, it would have been very unlikely, for instance, to see the 1994 Act literally emulate the French Law which is, comparatively, much more permissive with respect to foreign ownership.

In other instances, the 1994 Act departed drastically from the Press Law and seemed to be more “inspired” by the French Audio-visual Law. This was especially the case with respect to clauses related to limitations on concentration of ownership and cross-media ownership. Whereas no such limitations whatsoever exist in the Press Law, the 1994 Act, just like its French counterpart, recognises the urgent need to check concentration of ownership in order to safeguard and promote pluralism. It clearly departs from the French Law, however, in the way in which these checks are carried out. The 1986 French Law, and its subsequent amendments, increasingly address the complex relationship between pluralism and ownership. It recognises the need to safeguard pluralism through different mechanisms: by having several shareholders in the same broadcast corporation, by not allowing one corporation to own more than a specified percentage of the national audience share, and by limiting cross-ownership within all sectors of the media (print, cable, satellite, etc.). The French Act also recognises the importance of pluralism *in the content* of these broadcast corporations, and not just in their ownership. Here the French CSA is endowed with considerable facilities and powers to monitor pluralism of ideas and opinions in programming. The Lebanese Act, by contrast, seems to find a multiplicity of shareholders a sufficient guarantee for pluralism and against monopoly in the broadcast media. However, even in that respect, it fails miserably: by not specifying what “direct” and “indirect” controls mean, by making it possible for each of the adult children of a shareholder to also own shares, and by being totally oblivious to the concept of audience share and cross-ownership with media sectors other than broadcasting. Indeed, it can be argued, the Act paves the way, in the most legal way possible, for a “single-family monopoly” of the entire media landscape in the country. This problem is doubly compounded when one considers that the only regulatory body entrusted with enforcing some of the major provisions of the Act, namely concerning studying applications, granting licenses, and monitoring programming, is a powerless, toothless, practically homeless<sup>152</sup> watchdog, especially when compared to the CSA.

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<sup>151</sup> See Chapter 4 on history of the media in Lebanon.

<sup>152</sup> To date, the NAC has no personnel (other than the members themselves, naturally), and no equipment or any other physical facilities (such as TV sets videos) to monitor programming on all Lebanese stations (NAC Vice-

Having followed the various phases that shaped the Act, and having analysed its major provisions especially through comparison with the French Law of 1986 and the Lebanese Press Law of 1962, I was able to flesh out the major areas of contention that accompanied the shaping of the Act. I was also able to study its possibilities and limitations, *as a solution*, in dealing with some real or perceived problems (e.g., need for the protection of pluralism and of national cultural production, prevention of concentration of ownership, and so on.). The next stage in this analysis (i.e., Chapter 6) is to study *how the Act was applied* to fulfil one of the stipulations of the Taef Agreement, i.e., to “reorganise all the information media under the canopy of the law and within the framework of responsible liberties in order to serve reconciliation efforts and to end the state of war”.<sup>153</sup> It is this *implementation* phase, specifically, that the following chapter addresses.

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President Fadel Shalak, personal communication, 22 August 2001). All it has at its disposal, in fact, is three plain, normal size offices in the main building of the Ministry of Information.

<sup>153</sup> Document of National Reconciliation, more commonly known as the Taef Agreement, Chapter 3, paragraph F, author’s translation.

## CHAPTER SIX

### IMPLEMENTATION: POLICY INSTRUMENTS AND THE LICENSING PROCESS

#### CHRONOLOGY OF THE IMPLEMENTATION PROCESS

In less than a year after the passing of the Broadcasting Act, a series of steps had already been taken in order to reorganise the Lebanese media landscape, as stipulated in the Taef Accord. A Technical Committee for the Organisation of the Audio-visual Media (the TC), was formed in June 1995, followed by the National Audio-Visual Council (or NAC) in October 1995. The TC was in charge of determining the number of broadcast channels available for allocation while the NAC was entrusted with the task of studying the applications. Both the technical report detailing the available number of frequencies and the Guidebook of Operating Conditions needed for the licensing process were approved by ministerial decree on 7 and 27 February 1996, respectively.<sup>1</sup> On the 2<sup>nd</sup> of March 1996, the Minister of Information announced that the door was now open for receiving applications. Applicants had two months to submit their applications.<sup>2</sup> By the 7<sup>th</sup> of May, 63 broadcast applications were submitted to the NAC. This deadline was extended by ministerial decree on 5 June 1996, due the Israeli Operation (Grapes of Wrath) that swept the south of the country in April 1996. On 16 September 1996, the NAC published its recommendations in the Official Gazette.

The next day, the Council of Ministers approved all of the NAC recommendations except one.<sup>3</sup> Of the initial 63 radio and television applicants, 15 were to be granted a license. Licenses were to be distributed among the following broadcast categories: four television stations of the first category (i.e., allowed to broadcast political programming), three radio stations of the first category, and eight radio stations of the second category (i.e., without news and other political programming). There were to be no television stations of the second category. On the same

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<sup>1</sup> Nashef, Antoine (2000, p. 123). The Guidebook of Operating Conditions was introduced by Ministerial Decree No. 7997 on 29 February 1996. According to the Broadcasting Act, this guidebook is to detail the operating conditions of license applicants and later on of licensees. The government official English translation refers to it as the "Book of Specifications". I prefer, in this study, to use the more explanatory phrase "Guidebook of Operating Conditions" or, more succinctly, "the Guidebook".

<sup>2</sup> *Al-Nahar* daily, 3 March 1996.

<sup>3</sup> Of all applicants accepted by the NAC, the only one rejected by the Council of Ministers was Radio Mont-Liban. However, the station was granted a licence in a subsequent meeting of the Council of Ministers, in July 1997.

day, the Council also prohibited non-licensed stations to broadcast news and public affairs programmes and gave them two months to liquidate their assets.

The government's licensing decisions created an uproar among broad sections of society. Discontent with, even anger at the government's alleged injustice was voiced by the owners of the dozens of unlicensed stations, their soon-to-be unemployed thousands of employees,<sup>4</sup> academics, politicians, the Lebanese General Labour Confederation (GLC), and many others. Several strikes were staged and the army intervened, supposedly in order to maintain law and order. For the second time since the end of the Civil War, the country seemed to be on the brink of falling back into a serious political crisis.<sup>5</sup> The government was mainly accused of using its discretionary power to grant licenses to those stations connected with government officials while denying them to those related to the opposition or to those who lacked the backing of the country's political or economic elite. The government's decision was also criticised for being based on sectarian considerations rather than on technical or professional criteria. Leading national newspapers ran front-page headlines vehemently denouncing the government's decision. *Al-Safir* called the day the licensing decree was issued "a day of shame".<sup>6</sup> *Al-Diyar* described it as a dark day in the history of Lebanon, where only those in power (i.e., Hariri and a few other political leaders) got to rule the media and the country.<sup>7</sup>

The charge that broadcast licensing was based on all but professional or technical considerations has become such an aphorism that no serious study has actually been conducted to prove the extent to which licensing was biased. In fact, the earliest "serious" study was conducted by New Television (or NTV). Written from the perspective of a rejected applicant, the study tried to demonstrate to the public the bias in the government's treatment of license applications, providing as many examples as possible to support its argument.<sup>8</sup>

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<sup>4</sup> The number of private radio and television employees threatened with unemployment was estimated at 4,000. *Al-Shark Al-Awsat*, 30 January 1996.

<sup>5</sup> In February 1994, following the explosion of a bomb in a church in a Christian neighbourhood and the following arrest of the leader of the outlawed Lebanese Forces, the country witnessed its first major political crisis since the end of the Civil War (in 1991). To prevent the existing illegal broadcast stations from fuelling the crisis, the government uniformly banned the broadcast of news bulletins on March 23, 1994, with the exception of state controlled media. The ban, the government announced, was to be held until the passing of a broadcasting law. See also Chapter 5.

<sup>6</sup> 19 September 1996.

<sup>7</sup> See *Al-Diyar*, *Al-Safir*, *L'Orient-le-Jour*, *Al-Amwar* and *Al-Nahar* issues of 18 September 1996.

<sup>8</sup> NTV's self-published brochure, "Al-Mukhalfa Wahida Fil Rafd wal Kouboul", 31 July 1997. The findings of the NTV study were not used in the present research, based on the assumption that NTV may have been mostly motivated by self-interest and consequently provided "inaccurate" information when fighting back.

Most Lebanese academic literature dealing with the licensing process was critical of the licensing process in general, citing several “mistakes” in the way the law was implemented. Such mistakes included: licensing some applicants despite existing imbalances in the confessional make up of the shareholders, despite exceeding the 10% ceiling on ownership, and despite the existence of non-Lebanese shareholders. No tangible or verifiable evidence, however, was provided in these studies to support such claims. One simply had to believe what they claimed had happened during the licensing process. Often, the names of those applicants who were accepted despite infringing on the law were not even mentioned. Two such representative studies, for instance, not only repeat the same information concerning the various infringements of the law committed during the implementation process, their findings are mostly based on what was already known (in more detail) from NTV’s self-published brochure.<sup>9</sup>

NTV’s major contention was that the government and the NAC used their discretionary powers to grant or withdraw licences, regardless of the objective criteria set by the 1994 Act and the Guidebook of Operating Conditions. Its arguments can be summed up as follows:

1. All the stations that were granted licenses had a majority of shareholders belonging to the same confessional group, in clear contradiction to the stipulations of the law.
2. The applications of accepted stations were, at best, as problematic as the applications of some rejected applicants (e.g., infringing on the cross-ownership stipulation).
3. NTV, unlike accepted applicants, was “the only television station that fulfilled all the requirements of the application” and yet was denied a licence. It concluded with the following question: “was NTV’s application rejected because it [i.e., NTV] dared to act as the voice of the opposition?”<sup>10</sup>

Though NTV later on challenged the NAC’s and government’s decision in court and eventually ended up obtaining a broadcast license three years later,<sup>11</sup> several questions still remain regarding the licensing process in 1996: was the NAC partial in its recommendations? If

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<sup>9</sup> For academic writings on the government’s granting of licenses see Al-Abdallah Sinno (2001, p. 223); and Rammal (2000, p. 39).

<sup>10</sup> All direct quotes from Arabic sources (except from the officially translated legal texts of the 1994 Act and its related Guidebook included in appendixes A and B) are translations of the author. Direct quotes from the 1994 Act and the Guidebook for Operating Conditions or Decree No.7997 are mostly taken from the officially accepted translations of those legal texts. Unfortunately, these translations are generally sub-standard, at times even grammatically or linguistically incorrect, in my opinion.

<sup>11</sup> See details later in this chapter.

so, to what extent and how? Finally, how true are the charges made by NTV in its objection to the decision of the NAC and the government?

### POLICY INSTRUMENTS

Instruments are the means with which a policy is implemented. After defining a policy problem and determining a solution to it or a set of goals, the question of implementation or the “how” becomes paramount. Since no policy can be designed with every conceivably important administrative detail included in it, policy-makers and legislators have to rely on others - usually administrators - to translate their goals into reality. In the case of the 1994 Act, two such newly created administrative bodies that were instrumental in executing the policy goals of the Act (i.e., the organisation of the broadcast media) were created. These were: the Technical Committee for the Organisation of the Audio-visual Media (referred to henceforth as the TC), and the National Audio-visual Council (referred to as the NAC).

#### The Technical Committee

The task of the Technical Committee for the Organisation of the Audio-visual Media<sup>12</sup> was, according to Article 8 of the Act, to study the number of available frequencies to be allocated, respecting international standards and conventions. Moreover, the study was to be conducted in coordination with the NAC and the Council of Ministers. Once this task was completed, the National Audio-visual Council was to study the submitted applications and to present its recommendations to the Council of Ministers. In turn, and based on the number of frequencies available, the Council of Ministers was to grant licenses (1994 Act, Article 16).

On 8 January 1996, the TC announced the results of the much awaited technical report: a maximum of 6 television stations and 10 radio stations (including the government-owned radio and television stations)<sup>13</sup> could be licensed, in order to ensure quality of coverage while at the same time respecting the “Lebanese government’s wish to grant licenses to the biggest number of applicants possible and allow for pluralism of opinion”.<sup>14</sup>

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<sup>12</sup> This is my translation of the committee’s title. The official translation refers to it as the “technical committee regulating TV and radio broadcasting”. See 1994 Act, Appendix A, Article 8.

<sup>13</sup> The government owned one television station and one radio station. See Chapter 4.

<sup>14</sup> As quoted in Nashef, 2000, p. 124.

Both the make-up of the TC and its technical report, however, met with widespread criticism.<sup>15</sup> Article 8 stated the professional occupations of would-be members of the committee and the procedures that the appointments had to go through. The appointment of the TC members one year later, however, violated the stipulations of the Act in several ways:<sup>16</sup>

1. Whereas the law stated that the TC should include *two* representatives of *licensed* television and radio stations, the Council of Ministers appointed *three* representatives from *unlicensed* stations and none from the licensed stations.
2. The Director General at the Ministry of Telecommunications was to be appointed according to the Act. Instead, two employees from that Ministry were appointed.
3. The “four experienced telecommunications engineers” required by Article 8 were not appointed.
4. Instead of the Director General at the Ministry of Telecommunications, the Director General at the Ministry of Information was appointed president of the committee.

According to Pakradouni, these “defects” made the TC a committee made up of members appointed “incorrectly from a legal perspective”. This, in turn, nullifies any decisions and procedures made by the TC.<sup>17</sup> Moreover, the report was not completed “in cooperation” with the NAC as stipulated by the law (Article 8).<sup>18</sup>

Whereas the questionable make-up of the TC was not exactly a hot issue for the opposition, the existing broadcast stations, and anyone displeased with the Act, the technical report of the TC made news headlines and was the subject of heated debate in parliament and on the streets. It was indeed difficult for the opposition to believe that the report was not “tailored”<sup>19</sup> to fit only those stations that belonged to the political and confessional elite. In parliament, MP and former Prime Minister Karami openly questioned the “technical” aspect of the report.<sup>20</sup>

There is nothing technical about the report... I will repeat what (Speaker of Parliament) President Berri has said repeatedly in private meetings and what was eventually published in *Al-Nahar*. Prime Minister Hariri wants three television stations. Then Sheikh Pierre Daher (owner of LBCI) comes and asks President Berri: “Technically, how many stations are allowed

<sup>15</sup> See *Al-Nahar*, 30 January 1996.

<sup>16</sup> NAC Vice-President Shalak, personal communication, 26 July 2002. See also Pakradouni (1996) for a discussion of the infringements concerning the appointment and procedures of the TC.

<sup>17</sup> Pakradouni, 1996, p. 85.

<sup>18</sup> NAC Vice-President M. Shalak, personal communication, 26 July 2002.

<sup>19</sup> This was the metaphor used by the president of the Lebanese confederation of trade unions (GLC) when describing the 1994 Act and its application. See *Al-Nahar*, 30 January 1996.

<sup>20</sup> Minutes of the 4th parliamentary session held on 29 January 1996, published in *Al-Nahar* on 30 January 1996.

to broadcast?" he answers him: "apparently six". He (Daher) asks him (Berri) to write it down and he does. Then Hariri and Berri meet, argue, and the story ends by agreeing, six months ago, to have six stations. What is so technical about the story or the technical report?

In a memorandum sent to the government one day before the convening of the Council of Ministers on 7 February 1996, the Follow-up Committee for the Audio-Visual Media<sup>21</sup> - a lobbying group made up of representatives from the different broadcast media - noted the following concerning the Guidebook for Operating Conditions and the technical report of the TC:

1. Both the Guidebook and the technical report were written according to political and commercial considerations (i.e., self-interest), and were not based on purely technical or scientific criteria.
2. The TC submitted its report before a general survey of national frequencies was carried out by the government and approved by the International Tele-communications Union (ITU) in Geneva.<sup>22</sup>
3. The Report and the Guidebook unjustifiably prohibited private radio broadcasting from using AM frequencies. Only FM frequencies were to be allocated, knowing that the existing number of AM frequencies was more than what the Lebanese (only) public radio station needed and that Lebanon's allocated frequencies could be easily increased by applying to the International Frequency Registration Board or IFRB.<sup>23</sup>

Finally, comparing frequency allocation in Lebanon with that in its neighbouring countries (Turkey, Cyprus, and Israel), the Follow-up Committee concluded rather sarcastically that the recommendations of the TC were indeed "unique".

Between 18 October 1994 (date of the passage of the Act) and 30 June 1996 (the last deadline for applications), several technical reports were circulated: one was an official study of available frequencies done by a group of European experts and commissioned by the

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<sup>21</sup> This non-governmental committee was created soon after the passage of the 1994 Act. It was made up of representatives of private media stations from different orientations who were worried about the consequences of the Act on Lebanese democracy and pluralism. More practically, they were worried about losing their business or jobs once the Act was implemented.

<sup>22</sup> One of the main purposes of this internationally approved survey of airwaves and frequencies is to prevent interference between broadcast signals while allowing at the same time for a maximum number of broadcast stations in each country.

<sup>23</sup> This criticism was reiterated by several politicians and MPs. Former Minister of Information, Michel Samaha, in the parliamentary session held on 24 May 1996, said it was "deplorable to deprive Lebanon of its right to AM frequencies and to limit them to FM frequencies... "[T]he technical report is political. It did not take into consideration Lebanon's right to its own space." See also interview in *Al-Diyar* on 21 January 1996 with former Minister of Information Albert Mansour.



Ministry of Telecommunications. Another official report, the 1992 Huet report, was submitted by an ITU expert and concluded that only 3 television stations could be licensed. The third official report was submitted by the TC, as stipulated in the Act. There were also two other unofficial reports: one was commissioned by the Follow-up Committee<sup>24</sup> and the other submitted by a broadcast engineer at one of the main private (unlicensed) stations.<sup>25</sup>

Though almost all of these reports agreed on the available number of channels for allocation (circa 41 channels), each had a different set of calculations about the number of national broadcasters these channels could accommodate, if universal coverage were to be ensured.<sup>26</sup> Not surprisingly, with the exception of the Ministry of Telecommunications report,<sup>27</sup> official reports in general concluded that only a very limited number of channels can exist while studies commissioned by private broadcasters found enough space for up to triple that number. For example, non-governmental reports recommended 10 or more television channels whereas one of the early committees commissioned by parliament, for instance, concluded on 19 September 1994 that not more than three television licenses can be allocated to have “acceptable” coverage.<sup>28</sup> Moreover, and in contrast to the government reports, privately commissioned reports frequently cited the new technology of digital compression which enables the reduction of the number of frequencies needed per channel, thus allowing for more channels to exist (or for more licenses to be allocated).<sup>29</sup>

Only one report was ultimately used by the government to justify limiting the number of accepted broadcast applicants: it was the study prepared by the TC and whose results were

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<sup>24</sup> This report, published on 17 January 1996, concluded that at least 10 television and 36 radio stations could be accommodated. It also pointed out that Israel was using all its AM frequencies and that Cyprus had 13 such frequencies and was even renting some of them to foreign radios.

<sup>25</sup> This report was prepared by Nassim Boustani from LBCI. It concluded that 13 private television stations could be licensed, in addition to the government-owned Tele Liban. Interestingly, the same engineer was also member of the committee commissioned by the TC, which found that only 5 television stations could be licensed.

<sup>26</sup> Universal coverage is a major requirement of the 1994 Act. Article 10 defines television corporations as broadcast companies whose “broadcasting covers the whole Lebanese territory”.

<sup>27</sup> According to this official report published by the Ministry of Telecommunications on 23 January 1996, Lebanon had the right to broadcast for 28 television stations (VHF and UHF) and 42 radio stations (AM and FM).

<sup>28</sup> Nashef, 1995, p. 81. The number of licenses to be allocated is calculated by dividing the number of existing frequencies by the number of frequencies needed by each broadcaster to ensure universal (i.e., national) coverage. Independent or non-governmental technical reports were obtained from the General Manager of NTV, who was also member of the Follow-Up Committee.

<sup>29</sup> In the parliamentary session held on 23 May 1996, MP and former Minister of Information Michel Samaha also criticised the technical report for “not taking into consideration the latest technologies of 95 and 96”. However tempting this option (of digital broadcasting may be), it may seem unrealistic in the case of Lebanon, where all broadcasters operating in 1996 were still using the analogue system.

announced on 8 January 1996 by TC President Mohammad Obeid.<sup>30</sup> According to Obeid, available frequencies could only accommodate 6 television and 12 radio stations (including the government-owned broadcast stations). The Minister of Information endorsed the findings of the report, “insist[ing] that foreign companies advised, from a mostly technical perspective, against having more than 5 television stations in Lebanon”.<sup>31</sup>

The report made newspapers headlines, and caused outrage among numerous MPs, members of the opposition, various religious leaderships and especially the dozens of private broadcasters and their employees who saw their fate finally sealed.<sup>32</sup> There were immediate moves by the latter to counter the report by calling for strikes, sit-ins, and other forms of public demonstrations.<sup>33</sup> In parliament, outraged MPs denounced the government’s handling of the policy implementation process. They saw in it a “disguised” attempt to “monopolise the media” and “muzzle” freedom of expression in the name of “re-organising” it.<sup>34</sup> The dominant story was that of political elite and government official dividing up the “media-pie”, with the President of the Council of Ministers (Hariri), his Vice-President (Murr), Speaker of the House (Berri), and several Christian (mostly Maronite) ministers and MPs almost certainly securing licenses for their respective television stations.<sup>35</sup>

Lebanese newspapers, for the following months, abounded with headlines related to the technical report and the ensuing “acute political crisis”.<sup>36</sup> For protestors, the most vocal of

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<sup>30</sup> Pakradouni, p. 40. The legality of the appointment of Obeid to the presidency of the TC was questioned by several commentators, including more recently by NAC Vice-President Shalak (personal communication, 26 July 2002).

<sup>31</sup> *Al-Safir*, 19 September 1996.

<sup>32</sup> See the following newspapers for details: *Al-Nahar* 12 January, *Al-Amwar* 18 January 1996. It should be noted here that some unlicensed stations were purely commercial and totally reliant on advertising, while others were mostly financed by political or confessional groups. Some used a mixture of both to survive. By the mid-90s and with the proliferation (by the hundreds) of broadcast media, stations entirely dependent on advertising were facing fierce competition. The more technically modest and least popular ones had to reduce their advertising rates dramatically to lure in advertisers. For instance, while the well-established LBCI was charging between 2000 and 3000 dollars for each thirty-second advertisement, Sygma TV was charging as low as \$35.

<sup>33</sup> See *Al-Nahar*, 30 January 1996. It should be noted here that frequent demonstrations and public protests held by the private media employees and their relentless defence of freedom of expression were repeatedly discredited by government officials who saw in them nothing but a desperate attempt to save their jobs in the name of freedom of expression.

<sup>34</sup> *Al-Amwar*, 18 January 1996; *Al-Nahar*, 30 January 1996. See also minutes of the Parliamentary session held on 29 January 1996.

<sup>35</sup> *Al-Nahar*, 12 January 1996.

<sup>36</sup> Headline, *Al-Safir*, 24 May 1996.

whom were MPs of different political orientations, there were various points of contention concerning the government's handling of the Act.

To start with, the number of allowed television stations “conjured up” by the TC was not surprising: not only did that number coincide with the number of existing unlicensed stations related to government officials and political elite representative of the major confessional groups,<sup>37</sup> it was already circulating three months *before* the passage of the 1994 Act itself and two years *before* the TC was even formed.<sup>38</sup> Few actually believed that there was anything “technical” about that number. In parliament, one MP criticised the report for being “full of obvious defects”, while another called for its “suspension” and the reliance on foreign expertise and the latest broadcast technologies instead.<sup>39</sup> Another veteran MP announced that the report would be respected only when the circumstances of its inception and the qualifications of the experts who worked on it were clarified.<sup>40</sup> In short, the report was found by many to be “political” instead of “technical”.

Second, the government's perceived attempts to speed up the licensing process – whose timing also coincided with the drafting of the (equally if not more) controversial national parliamentary election law<sup>41</sup> - was very suspicious. This was especially so because the (last) 1992 elections were, as already mentioned in Chapter 5, very controversial themselves and highly contested, even boycotted, by various political and confessional groups.<sup>42</sup> In this context, the ministers' decision to speed up the licensing process was perceived as a clear attempt to abuse power and to secure licenses for their stations before the end of their

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<sup>37</sup> In an editorial published in *Al-Nahar* on 30 July 1996, MP Mohammad Kabbani criticised the prevalence of “number 6” in all walks of Lebanese life, equating it with the number of the major confessions existing in Lebanon. He noted how “number 6” was also the number of licenses to be allocated. It should be reminded that the number of (unlicensed) operating television stations was estimated at 50 by 1996 (*Al-Abdallah Sinno*, 2001, p. 189).

<sup>38</sup> In the parliamentary session held on 13 July 1994, Minister Dalloul objected to the “temporary” licensing of existing illegal stations. He feared that this temporary license might cause trouble once the Broadcasting Act is promulgated: “we are dealing with a technical problem: if we can only grant licenses to 5 or 6 stations what are we going to do with the rest?” Minutes of the parliamentary session held on 13 July 1996, p. 1480.

<sup>39</sup> Minutes of the parliamentary sessions held respectively on 29 January and 23 May 1996.

<sup>40</sup> *Al-Anwar*, 18 January 1996.

<sup>41</sup> The 1996 parliamentary elections were due to take place in the summer of that year. The greatest (and still ongoing) controversy regarding Lebanese electoral law is about gerrymandering, i.e., the dividing up of voting districts in order to enhance or undermine the electoral chances of specific ethnic, confessional, or ideological groups (Hanf, 1993, p. 625). Another still unresolved controversy relates to the voting age, *The Daily Star*, 30 May 2002.

<sup>42</sup> See Khoury (1993), and Mansour (1993).

term.<sup>43</sup> In sum, Pakradouni wrote, “the technical report is a political lie... a borrowed name for a predetermined political decision”.<sup>44</sup>

Even Nabih Berri, the speaker of parliament and a major representative of the largest confessional community in Lebanon (i.e., the Shi’ites), did not escape personal criticism because of the applicant television station associated with him (i.e., NBN). An editorial commenting on the technical report derided Berri for rushing to get his share of the media pie “before he owned a single camera”.<sup>45</sup> On 30 January 1996, *Al-Nahar* reported on shareholders in NBN hurrying to buy up equipment “from the local market, i.e., from television stations that have no hope of obtaining a license”. Unlike all other non-licensed television stations, NBN, at the time the NAC was accepting applications, did not exist except on paper. The requirements set by the Guidebook of Operating Conditions, however, were intended for existing broadcast stations. This is why the fact that NBN submitted an application *before* it physically existed was perceived by many commentators and members of the opposition (to Hariri’s government) as another evidence that licenses were going to be allocated exclusively to members of the Lebanese confessional and political elite.

In the face of the heated debate concerning the results of the technical report, the government insisted that “6 stations is more than what Lebanese space can take”,<sup>46</sup> and that talk about distributing licenses among the political and confessional elite is “pure speculation and incorrect”.<sup>47</sup> Unconvinced, opposition MPs started mobilising support for a bill intended to freeze Article 16 of the Act, according to which licenses are granted by ministerial decree.<sup>48</sup> Parliamentary pressure and widespread public criticism of the government, including threats of

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<sup>43</sup>The “rush” with the media file was criticised by Ahmad Al-Asaad in a press conference reported in *Al-Nahar* on 30 January 1996. He called for the postponing of the entire process until the elections were over and a more representative parliament was elected. This criticism and the demand to postpone the media file was reiterated by MPs in the parliamentary session held on 29 January 1996. Always in the same edition of *Al-Nahar*, an editorial quoted politicians supportive of the governing coalition who justified the need to rush the licensing process by wanting to prepare the broadcast media to play an “active”, “influential” role in the upcoming elections. In *Al-Anwar* issued on 18 January 1996, an editorial made a case for linking politically the “hot media file” with the “election file”. See also *Al-Nahar* issued on 12 January 1996 for further criticism of the government’s rush to implement the 1994 Act.

<sup>44</sup> Pakradouni, 1996, p. 25.

<sup>45</sup> *Al-Anwar*, 18 January 1996.

<sup>46</sup> Speaker of Parliament Berri as quoted in *Al-Anwar*, 18 January 1996.

<sup>47</sup> Minister of Information Farid Makari as quoted in *Al-Nahar*, on 30 January 1996.

<sup>48</sup> *Al-Anwar* 18 January 1996, *Al-Safir* 24 May 1996.

civil disobedience,<sup>49</sup> were enough to make the government step back and agree to a compromise: the period of two months granted by Article 50 of the Act for stations to prepare for their application files was to be extended.<sup>50</sup> At the same time that the duration of this extension was being negotiated – there was disagreement in parliament over the duration of the extension – Israel was launching another major operation in the south of Lebanon.<sup>51</sup> Media representatives, for their part, continued their pressure for an extension, because “Israeli aggression paralysed the country and its administrations” and made it impossible to meet the 7 May deadline.<sup>52</sup> Finally, on 2 May 1996, the government agreed to extend the deadline till 8 June 1996, though only for those stations that could not complete their file because of the Israeli operation.<sup>53</sup> By 7 May, “the door for accepting applications,” *Al-Nahar* wrote, “was closed”.<sup>54</sup> A few days later, Minister of Information Farid Makari was quoted reassuring applicants that “the law is the rule and the guarantee” and that “application files will be studied with great care and fairness”.<sup>55</sup> From then on, it was the NAC’s job to study each application file and submit its recommendations within the following 45 days (Article 19).

### **The National Audio-visual Council**

The National Audio-visual Council or NAC was the second body introduced by the Broadcasting Act after the TC and entrusted with the task of studying applications to make sure the legal requirements are met, before submitting its recommendation to the Council of Ministers (Article 19 of the 1994 Act). Whereas Chapter 5 analysed the nature, functions, and powers of the NAC as specified in the *text* of the law, in this section I will attempt to assess the degree to which the NAC was successful in carrying out the mission for which it was created.

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<sup>49</sup> An article in *Al-Nahar*, appearing shortly after the results of the technical report were announced, featured a headline in which the Lebanese confederation of trade unions (GLC) warned of “great consequences” (if the government does not stop clamping down on freedoms). *Al-Nahar*, 30 January 1996.

<sup>50</sup> The first deadline set by the government was 7 May 1996.

<sup>51</sup> Operation Grapes of Wrath was launched on 11 April 1996.

<sup>52</sup> *Al-Nahar*, 1 May 1996.

<sup>53</sup> *Al-Safir*, 3 May 1996.

<sup>54</sup> Headline of a news article appearing in *Al-Nahar* on 8 May 1996.

<sup>55</sup> Minister of Information Farid Makari as quoted in *Al-Safir* on 13 May 1996.

The main legal requirements for applicants, as specified by the Act and the Guidebook of Operating Conditions, largely concerned the following areas:<sup>56</sup>

1. The financial situation of the applicant (capital, personnel, equipment, etc.)
2. Lebanese ownership and restrictions on concentration of ownership and on cross-ownership
3. Restrictions on content (respect of freedom of expression and pluralism, national defence needs, production of Lebanese programming, etc.)

As already explained in Chapter 2, policy research –even when grounded in a post-positivist approach to science - tries to use scientific logic and rational methods to gain information about policy issues. This use of standardised procedures is necessary if the “activities through which observations are made and interpreted are explicit, well-defined, and *replicable by other analysts*.”<sup>57</sup> It was paramount that my research, as part of the value-laden policy analysis field, rely as much as possible on science or logic in order to avoid observations and conclusions based more on personal intuition or opinion than on empirical evidence. This requirement - that other researchers be able to scrutinise, replicate, and confirm or contest my original findings concerning the NAC - has actually guided my choice of the method of analysis itself for the present chapter. In this politically charged undertaking, I could not depend on a review of the political context, interviews with key players, and personal inferences if my findings were to be verifiable. Some “consistent” criteria were needed to make my research systematic. I thus chose to base my analysis of the performance of the NAC on information that is easily available, sizeable enough to be comparable, and relevant enough in itself to allow the drawing of conclusions concerning the work (or at least some of the work) of the National Audio-visual Council. I am referring specifically to all of the NAC recommendations (concerning the 63 applications) as published in the Official Gazette on 16 September 1996. These published recommendations will constitute the primary data source for the present analysis: by comparing or juxtaposing the official reasons given for accepting or rejecting the various broadcast applications; and by verifying, whenever possible, those reasons by going back to original or

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<sup>56</sup> See Article 7 of the 1994 Act.

<sup>57</sup> Emphasis added. See (Putt, 1989, pp. 21-22) for a more detailed discussion of the use of scientific methods in policy analysis.

official documents,<sup>58</sup> I will attempt to assess the extent to which the NAC's technical criteria were *uniformly* applied.

As to the case of the “more difficult” to access application files, their use in this study will be restricted to a support function, i.e., corroborating or questioning the research findings already based on publicly available documents. As valuable as the files and the hand-written comments therein are, their value as historical or scientific documents is limited by the very fact that they are practically inaccessible to the general public. Not only would findings based on these files be difficult to verify, but evidence - especially in the form of hand-written comments – could easily “be made to disappear”.

Interviews with key players will constitute another important method for exploring the major issues and dimensions of the implementation of the 1994 Act. By providing inside knowledge that may otherwise be unavailable and by identifying various (often contradictory) perspectives concerning the value of the text of the Act, especially its implementation, they can often be invaluable. The key informants in this study are all former or present top government officials who had (or still have) some form of direct involvement with the Broadcasting Act or its implementation. However, all views expressed will be treated with scepticism and will not be used to establish definitive cause-and-effect relations. Their basic function is to gain insight into problems and issues, because any explanation based on them would be nothing but “conjecture”.<sup>59</sup> Though there is reason to believe that the former officials who are no longer tied to the government or its administrations may be “freer” to express their opinion than current officials, the nature of the research topic and the high political stakes involved dictate my scepticism and force me to apply what Douglas calls “tough-minded suspicion.”<sup>60</sup>

Discussing the media landscape in Lebanon, as this study will show, can be synonymous with opening Lebanon's “Pandora's Box”. Understanding the type of broadcasting law which was drafted, especially the way in which it was implemented as this chapter will document, is actually another way of getting to know the social, political, and economic ills that plague the country. Triangulating the interviews as data sources is thus a necessary methodological task, though it will not be carried out by “checking out against alternative accounts” as some

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<sup>58</sup> Official documents such as those showing the date of registration of a corporation, the names and shares of each shareholder, and the company's registration with the National Social Security are publicly, though not easily, accessible.

<sup>59</sup> Lofland as quoted in Putt, 1989, p. 145.

<sup>60</sup> As quoted in Putt, 1989, p. 158.

analysts suggest.<sup>61</sup> For several key interviewees, the political or economic stakes were high, the opinions radically different, and the real motives difficult to fathom (for this researcher). For this and other reasons, I prefer instead the “checking out against direct observations of hard facts” method.<sup>62</sup> In other words, interviews will be, whenever possible, pitted against findings based on established records in order to “test” their credibility.

Finally, it should be remembered that television, and *not* radio, was at the heart of the licensing controversy. This was probably due to the perceived importance of this medium in Lebanese political life.<sup>63</sup> However, relying solely on the (few) television applications I was permitted to have access to and the related NAC opinion could not suffice to draw strong conclusions concerning the NAC’s licensing activities in general.<sup>64</sup> Therefore, a comparison of *all* NAC published opinion about radio and television applicants will be made, with a special attention given to the controversial NTV and NBN cases.

### **Analysis of the recommendations of the National Audio-visual Council**

The NAC checked the following legal and technical requirements while studying each television or radio application. Any deficiency in any of these requirements, based on the 1994 Act, Decree no. 7997, and the NAC’s own interpretation of both, could justify the rejection of a given application.<sup>65</sup>

- a. Concerning ownership: the candidate shall be a corporation and cannot own more than one television and one radio station. All shares shall be nominal shares. Each shareholder, whether a legal or natural person, should be Lebanese and may not own, directly or indirectly, more than 10% of the company’s total share. The spouses, parents, grandparents, and children under age are all considered one person. Moreover, the company’s statute shall stipulate that no legal or natural person may have shares in more than one company owning a television and radio station. Finally the religious composition of shareholders should

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<sup>61</sup> See Putt 1989, p. 157, on the merits of triangulating data sources based on intensive interviews.

<sup>62</sup> Douglas as quoted in Putt, 1989, p. 158. Moreover, as Murphy explains, researchers consider several factors when assessing interviews: whether the comments are internally inconsistent, whether the accounts lack details or concrete examples, and whether the answers are based on second-hand or hearsay information (cited in Putt, 1989, p. 158).

<sup>63</sup> See Rugh (1987) on the (political) importance of television throughout the Arab world.

<sup>64</sup> The television applications I had access to belonged to LBCI, MTV, FTV, NBN, NTV, Al-Manar and Tele Lumiere.

<sup>65</sup> See 1994 Act (Appendix A) and Decree No. 7997, p. 20 (Appendix B).



respect the confessional pluralism of the country. This last requirement, as we shall see later on in the section, has no foundation in the Act or its related Guidebook.

- b. Financial conditions: the licence application shall include proof of the corporation's capacity to cover the costs of at least the first year of licensing.
- c. Administrative conditions: the company shall include in its application a copy of its administrative organisational chart and quarterly programme grid. The number of the company's employees holding a university or technical degree shall not be less than half of the total number of employees.

In June 1996, 63 applications for radio or television licenses were submitted. On 16 September 1996, the NAC published its opinion in the Official Gazette: four television stations (1<sup>st</sup> category), four radio stations (1<sup>st</sup> category), and 8 radio stations (2<sup>nd</sup> category)<sup>66</sup> were found eligible for a licence. In other words, barely one fourth of the applications submitted by the 62 operating broadcast stations were accepted by the NAC.<sup>67</sup> As already mentioned, the results of the licensing process created a political, economic and social scandal. On the one hand, thousands of former broadcast employees joined Lebanese trade unions and organised several demonstrations in protest of the Act. In parliament and in public discussions, opposition leaders were accusing the government of stifling freedom of expression and pluralism and of favouring only those applicants tied to the political, confessional and financial elite.

In my study, I will deal with the criticism of the licensing process by separating the analysis of the NAC's opinion from that of the Council of Ministers' decision. The reason for this breakdown is twofold: on the one hand, the NAC's opinion was not legally binding and the government could allocate licenses *against* the recommendation of the NAC. Indeed, there were (very few) instances, as we will see later, where the NAC's recommendations were ignored, or even reversed by the Council of Ministers. On the other hand, the NAC had to publish both its opinion *and* the justification of that opinion whereas the government simply issued licensing decrees. In other words, a separate analysis of the NAC's published recommendations is preferable in order to show first whether the NAC was, as charged, partial in carrying out its duties. Second, such a separate study can show whether there was any

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<sup>66</sup> As a reminder, a category 1 broadcast licence, unlike a category 2 license, allows the airing of news and political programming.

<sup>67</sup> NBN television was the only applicant that was not in operation, much less in existence during the licensing period. See upcoming section on the special case of NBN.

correlation between the NAC's opinion and the Council of Minister's decision concerning license allocation.

To start with, the identity and position of the 10 members of the NAC – half of whom were appointed by the Council of Ministers and the other half by parliament – raised questions about their actual independence from centers of power early on. The 1994 Act requires that the NAC members be independent: Article 18 precludes civil servants and members of elected bodies from being appointed and Article 21 prevents members of the NAC from having an “activity in contradiction with their functions within the Council”. These members, moreover, were required by law to be professionals in the “intellectual, literary, scientific and technical fields” (Article 18). Judging from the text itself, it is not clear whether these “professionals” have to be related in any way to the field of communication. Upon implementation, it was obvious that at least half of the appointed members did not have any experience whatsoever in the media field: these included a philosophy highschool teacher, two lawyers and two businessmen. One such member, Maher Baydoun, a successful businessman and son of a prominent politician, was reported to “love the field of communication with all his heart even though he never studied communication or practiced in the field”.<sup>68</sup>

Not only were most members of the first National Audio-Visual Council totally unrelated to the field of communication (technically or artistically), the President of the NAC himself was introduced in *Al-Safir* national daily as someone “who never studied or practiced in the field of communication”.<sup>69</sup> The NAC President, however, declared that he had “dealt with media issues” during his term as president of the Alumni Association of the Al-Makassed educational institution.<sup>70</sup>

Equally, if not more, important than the professional qualifications and suitability of the appointed members, however, was their political independence from the three major heads of the state (i.e., Maronite President Hrawi, Sunni Prime Minister Hariri, and Shi'ite Speaker of Parliament Berri).<sup>71</sup> Just a few weeks after the formation of the NAC, there were serious doubts

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<sup>68</sup> *Al-Safir*, 14 November 1995.

<sup>69</sup> *Al-Safir*, 14 November 1995.

<sup>70</sup> *Al-Safir*, 14 November 1995. Almost two years later, when the first NAC term was over, NAC President Shaar was quoted as saying that “several members were neither experienced nor professionals in the field”. He added, however, that “experience taught us a lot”. *Al Safir*, 20 November 1998.

<sup>71</sup> A common term used by national newspapers and politicians to describe this post-Taef, “tripartite rule” was “the Lebanese Troika”. As long as the “alliance” between the Maronite, Sunni, and Shi'ite leaders existed, the country's politics could be run by ensuring that the three “heads” had their share of the pie, including the media pie. *Al Safir*, 20 November 1998.

concerning the independence of the newly created regulatory body. The headline of a national newspaper accused the majority of the members of “belonging to Hariri”. That same newspaper quoted a member of the NAC as saying “he was proud of his friendship with Prime Minister Hariri.”<sup>72</sup> Another member of the NAC, Maher Baydoun, was known as being the Vice-President of the board of directors of Solidere, the controversial (giant) real estate company associated with Hariri.<sup>73</sup> One opposition MP was quoted elsewhere as saying that 8 out of the 10 NAC members were pro-Hariri.<sup>74</sup> Indeed, two years later, suggested amendments to the Act included the need to have “objective criteria” be applied when appointing members of the national council, to avoid the mistakes that surfaced during the implementation of the Act in 1996.<sup>75</sup>

In the face of repeated criticism concerning the actual independence of the NAC, however, NAC members insisted (at the time) that their opinion was free from any political pressure. The NAC’s first president, Sami Sha’ar, went on record as saying that there was not even an “ounce of politics” in the NAC’s decisions and that the NAC’s recommendations abided strictly by the Guidebook of Operating Conditions” (or Decree No. 7997).<sup>76</sup>

Since the NAC, despite repeated claims to the contrary by its members and the Hariri government, was nonetheless vehemently accused of being partisan, I propose to study the criteria according to which the NAC’s recommendations for licensing were made and whether double standards were actually at play. In order to do this, I will analyse all the major areas that the NAC looked into when studying the applications. One such area, for instance, concerned ownership in general. Specifically, it dealt with such issues as Lebanese ownership, restrictions on cross-ownership, and a ceiling of 10% of the shares for each shareholder. Another major

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<sup>72</sup> *Al-Safir*, 14 November 1995.

<sup>73</sup> See Wakeem’s detailed account of the breadth of Hariri’s business and holdings in the country (1998).

<sup>74</sup> *Al Safir*, 24 May 1996.

<sup>75</sup> *Al Safir*, 5 March 1998.

<sup>76</sup> See *Al-Afkar* news magazine, 5 May 1997, issue No. 768, p. 44. Later on, members of the new national council (some of whom were also previous members of the first NAC) admitted that political, rather than technical criteria, affected the performance of the former NAC in 1996. *Al Safir*, 5 March 1998.

consideration by the NAC when studying the applications was the financial capacities of each applicant, and its ability to cover the costs of the first year of operations after licensing.

### *1. Pluralism of ownership*

One of the important criteria for acceptance (or rejection) by the NAC was the pluralist character of the corporation: shareholders had to be from different confessional and regional backgrounds, and to reflect the societal make-up of Lebanon. This criterion, as the NAC Vice-President recently described it, was in accordance with the “text and spirit of Law No. 94/382 [i.e., 1994 Act] which, in its article 7, paragraph 2, stipulated that the following should be taken into consideration when granting a license: “respect for human dignity, the freedom of others and their rights, and the pluralism of ideas and opinions...”.<sup>77</sup> Consequently, six applicants were rejected for, among other reasons, not respecting Article 7 of the Act. This criterion was so basic, actually, that one corporation – the Hizbollah-owned Al-Manar radio station - saw its application entirely rejected for the single reason that “ more than 50% of the shares are owned by shareholders who belong to the same political party which is in contradiction with the pluralist character stipulated by Article 7 of the 1994 Act, and which constitutes one of the basic criteria for granting licenses”.<sup>78</sup>

Before studying the application of the pluralism requirement, I would like to comment on the legality of the requirement itself. In the 1994 Act, only Article 7, Paragraph 2, stresses the pluralist character of the station when considering applications. However, this required “pluralism” is tied in with the “objectivity” requirement of the news and other restrictions on content such as the maintenance of public order, national security, etc. The Guidebook of Operating Conditions, for its part, is slightly more detailed in its description of pluralism and specifies in Chapter 3 on programming that political programmes should be objective and avoid being one-sided. As applied by the NAC, this pluralism requirement has been largely interpreted to mean pluralism *in ownership* and not just in content as the law meant it. This interpretation is especially problematic since both the 1994 Act and the Book of Operating Conditions do not mention anything about the confessional identity of the owners or

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<sup>77</sup> NAC Vice-President Shalak, personal communication, 22 August 2001.

<sup>78</sup> Taken from *Al-Jareeda Al-Rasmyah* (the Lebanese Official Gazette), issue No. 47, 16 September 1996. All references to the Official Gazette in this chapter relate to issue No. 47 in which the NAC published its recommendations concerning the first round of applications. In other words, the 16 September 1996 issue will be referred to throughout this chapter as the “Official Gazette”, with only the relevant page numbers added, unless otherwise stated.

shareholders except that they must be Lebanese citizens.<sup>79</sup> In an interview with Marwan Shalak, Vice-President of the NAC, he explained that this requirement concerning the religious pluralism in ownership was important to maintain the sectarian balance in the country and to prevent the media from reverting back to their wartime sectarian character. By forcing broadcast corporations to have shareholders from different confessions, he argued, the NAC was hoping that “embarrassment” among the (confessionally and regionally) different owners might prevent a station from being too overtly confessional or biased in its political or religious content.<sup>80</sup> Shalak, however, was quick to add that the NAC was aware of the limitations of this approach. The proof, he added,

is out there for everyone to see: the presence of Muslim shareholders in predominantly Christian-owned stations (and vice-versa) seems to have no bearing on their content. All television stations have a clear-cut confessional character. It is the way the country is!<sup>81</sup>

In a recent content analysis of local news on the existing private television stations (i.e., Al-Manar, LBCI, FTV, MTV, and NBN), Nasser Chour studied the news coverage of the return of the Maronite patriarch to Lebanon after a visit to North America. The author concluded that the politico-religious orientation of the stations was clearly evident in their programming and newscasts, especially their local news. One of his starkest examples concerns the airtime given by two stations to the same event: the Maronite LBCI and the Muslim Shi’ite Al-Manar. The first dedicated 31% of its local news time to the visit while the latter gave it as little as 5% or 3 minutes out of its total 54-minute news bulletin.<sup>82</sup> In sum, it can be said, the NAC’s “pluralism” in ownership policy was at best successful in eliminating several undesirable candidates (some of whom were overtly one-sided), while being incapable of preventing licensed broadcast stations from being biased politically and confessionally.

Questioning the rationale for the pluralism in ownership requirement does not, however, dispel the charges of double standards levelled at the NAC. As a test of the NAC’s impartiality, the religious identity of the shareholders of LBCI, MTV, FTV, and NBN will be compared.

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<sup>79</sup> See 1994 Act, Article 13 and Decree No. 7997 (or Book of Operating Conditions), p. 16.

<sup>80</sup> “Embarrassment” was the word used by Shalak to explain how the NAC was counting on some measure of pluralism among owners of the same station to affect content positively. NAC Vice-President Marwan Shalak, personal communication, 22 August 2001.

<sup>81</sup> NAC Vice-President Shalak, personal communication, 22 August 2001.

<sup>82</sup> Chour, Nasser (2001).

Since the NAC recommended granting all these stations a license, one must assume that not more than 50% of the shareholders of each should belong to the same political party or “religious family” – to use the terminology of the NAC.<sup>83</sup> This “50% limit”, it should be noted, was derived from the Muslim-Christian (estimated) aggregate proportions of the Lebanese population.<sup>84</sup>

According to Table 5.1, the station that infringed the most on the NAC’s pluralism requirement was LBCI: not only did it have the highest percentage of shareholders belonging to one and the same confession (i.e., 69% of all shareholders were Maronite), but it was almost exclusively owned by Christians. MTV, which was also licensed, came next with a majority of Christian shareholders (82%). In fact, if the NAC’s criterion concerning religious pluralism were to be equally applied to all television stations, not only Al-Manar, but also all applicants should have been denied a license. This would have included NTV, the station whose application was rejected by the NAC and who, in its published contesting of the NAC ruling, claimed that “it is the only television station that fulfills all the requirements of the Guidebook of Operating Conditions”, including the pluralism requirement.<sup>85</sup>

A comparative study of the religious make-up of both licensed and unlicensed television stations also shows that, by merely looking at the dominant confession (i.e., dominant in terms of numbers of shares) in each licensed station, it becomes obvious that each station has a distinct confessional character as far as ownership is concerned. Thus, LBCI is predominantly Maronite Christian, MTV Greek Orthodox Christian, FTV Sunni Muslim, and NBN Shi’ite Muslim (with a comparatively high percentage of Druze Muslim owners). “Coincidentally”, the only four television stations licensed were associated with the five largest or more powerful confessional groups in the country. In that respect, it is quite difficult to counter the opposition claim that the granting of licenses was done on a confessional, and not a professional, basis.

## *2. Lebanese ownership*

The 1994 Broadcasting Act, as already seen in Chapter 5, contains several stipulations and restrictions concerning ownership. The same restrictions were reiterated in the Guidebook of Operating Conditions, and became the basis for rejecting numerous applications. One major

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<sup>83</sup> These were the words recurrently used by the NAC to justify its recommendations as published in the Official Gazette.

<sup>84</sup> See Chapter 3 on the political culture of confessionalism.

<sup>85</sup> NTV’s self-published brochure titled “Al-Mukhalifa Wahida Fil Rafd wal Kouboul”, 31 July 1997.

restriction on ownership concerns the Lebanese identity of the shareholder. In those cases in which the shareholder is a legal person or entity (i.e., a company or corporation), the 1994 Act stipulates that the company's statutes should prohibit the cession of its shares to non-Lebanese persons.<sup>86</sup> This restriction, however, was never used by the NAC as a legal excuse to justify the rejection of any application. In fact, LBCI obtained its license *despite* its infringement of the

**Table 6.1. Percentage of shareholders in Lebanese private television stations according to confession, first round of applications, May 1996<sup>87</sup>:**

| TV station/<br>confession            | FTV       | LBCI        | MTV       | NBN          | Al-Manar    | NTV          |
|--------------------------------------|-----------|-------------|-----------|--------------|-------------|--------------|
| Sunni                                | <b>59</b> | -           | 11        | 5.26         | 21          | <b>59.47</b> |
| Shi'ite                              | 6         | 4           | 5         | <b>47.34</b> | <b>49.5</b> | 9.42         |
| Druze                                | 2         | 0.1         | 2         | 21.04        | -           | 1            |
| Muslim<br>corporations               | -         | 4           | -         | -            | -           | -            |
| Maronite                             | 5         | <b>69.9</b> | 7         | 10.52        | 8.25        | 21.42        |
| G.Orthodox                           | 26        | 11          | <b>59</b> | 10.52        | 3.6         | 3.69         |
| Catholic                             | 2         | -           | 6         | 5.26         | 13.7        | 5            |
| Other Christian<br>minorities        | -         | 1           | -         | -            | 3.95        | -            |
| Christian<br>Corporations            | -         | 10          | 10*       | -            | -           | -            |
| Total<br>percentage of<br>Muslims    | <b>67</b> | <b>8.1</b>  | <b>18</b> | <b>73.64</b> | <b>70.5</b> | <b>69.89</b> |
| Total<br>percentage of<br>Christians | <b>33</b> | <b>91.9</b> | <b>82</b> | <b>26.36</b> | <b>29.5</b> | <b>30.11</b> |
| Total<br>percentage                  | 100       | 100         | 100       | 100          | 100         | 100          |

\*This 10% includes 0.4% of MTV shares distributed over 31 individual Christian shareholders.

<sup>86</sup> 1994 Act, Chapter Four, Article 13, Paragraphs 1 and 2.

<sup>87</sup> All information tabulated in this chapter was done by the author. All compilations are based on the NAC's published opinion concerning the 63 applicants as published in the Official Gazette on 16 September 1996.

Lebanese ownership stipulation: in clear contradiction to the Act, five of the shareholders at LBCI were companies whose internal operating rules were not included in the application file, making it impossible for the NAC to check the Lebanese identity of the companies. This infringement was, interestingly enough, simply pointed out by the NAC itself - along with other infringements as we will see later on – in the same published opinion that recommended licensing LBCI.<sup>88</sup>

### 3. *Limitation on cross-ownership*

Along with the pluralism requirement, the limitation on cross-ownership was among the major reasons given by the NAC for rejecting applications. Before I look for possible unequal treatment concerning the cross-ownership requirement, I will explain what criteria were used by the NAC to exclude applicants in infringement of the cross-ownership requirement.

In its published opinion in September 1996, the NAC considered it an infringement of Article 13 of the Act whenever a shareholder in one of the applicant stations was also found to have shares in another applicant station. Instead of rejecting both applicants guilty of cross-ownership, however, the NAC decided that only one party or applicant should be held accountable for that infringement: i.e., the station which submitted its application at a later date. For instance, some of the shareholders at LBCI also had shares at Sawt el-Ghad radio station. The NAC mentioned this dual infringement in the Gazette but followed it with an exoneration in the case of LBCI, on the grounds that the date of registration of the LBCI application preceded that of Sawt el-Ghad. According to the NAC's published opinion, this priority "shifts the weight of the infringement on the latter station."<sup>89</sup> In total, fourteen applicants were found guilty of cross-ownership, four of whom were exonerated due to their "earlier" date of submission (see Table 5.2.).<sup>90</sup>

This "priority test" worked mostly by comparing the days on which the problematic applications were submitted. However, there were rare cases in which the parties held in infringement submitted their application on the same day. Here, the problem was solved by using, once again, the priority argument, and exonerating those stations which submitted their applications *first* on that same day. For example, both MTV and Tele Lumiere had common

<sup>88</sup> See Official Gazette, p. 3319.

<sup>89</sup> LBCI's application was submitted on 4 May 1996. That of Sawt el-Ghad was submitted three days later. For more details, see Official Gazette, p. 3319 and p. 3344.

<sup>90</sup> These were : MTV, LBCI, Delta Radio, and Radio Mont-Liban. Official Gazette, p. 3317, 3318, 3350, and 3356.



shareholders. According to the NAC, since both applied on the 4th of May, and since MTV's application number was 5 and that of the other station was 6, Tele-Lumiere - and not MTV - was found in infringement of the law and denied a license. Other stations who were in a

**Table 6.2. Cross-ownership infringements as indicated by the NAC in the Official Gazette on 16 September 1996:**

|    | Station                          | No.* | Date   | Cross-ownership with              | Cross-ownership with            | C/ownership with                | Pro-ba-tion | Licen-se |
|----|----------------------------------|------|--------|-----------------------------------|---------------------------------|---------------------------------|-------------|----------|
| 1  | MTV                              | 5    | 4/5/96 | Tele Lumiere<br>No. 6 4/5/96      | PAX<br>No.50 7/5/96             | Sumera<br>No. 59 7/5/96         | Yes         | Yes      |
| 2  | LBCI                             | 8    | 4/5/96 | Sawt Al-Ghad<br>No. 54 7/5/96     |                                 |                                 | Yes         | Yes      |
| 3  | NTV                              | 26   | 7/5/96 | Alamyah Lil Bath<br>No. 37 4/5/96 | Radio Delta<br>No.2 3/5/96      |                                 | No          | No       |
| 4  | Tele Lumiere                     | 6    | 4/5/96 | MTV<br>No.5 4/5/96                | Sawt Elmahabba<br>No. 17 4/5/96 | Halleluya<br>No.5 3/5/96        | No          | No       |
| 5  | Al-Hurryya                       | 22   | 4/5/96 | LBCI<br>No. 8 4/5/96              |                                 |                                 | No          | No       |
| 6  | Alamyah Lil Bath                 | 37   | 4/5/96 | NTV<br>No. 26 7/5/96              |                                 |                                 | No          | No       |
| 7  | Audio-Visual Co.                 | 24   | 4/5/96 | LBCI<br>No. 8 4/5/96              | CVN<br>No. 10 4/5/96            |                                 | No          | No       |
| 8  | Sawt El-Ghad                     | 54   | 7/5/96 | LBCI<br>No. 8 4/5/96              |                                 |                                 | No          | No       |
| 9  | Sumera Beirut                    | 59   | 7/5/96 | MTV<br>No.5 4/5/96                |                                 |                                 | No          | No       |
| 10 | Delta radio                      | 2    | 3/5/96 | NTV<br>No. 26 7/5/96              |                                 |                                 | No          | Yes      |
| 11 | Mont-Liban (MTV)                 | 12   | 4/5/96 | Tele Lumiere<br>No. 6 4/5/96      | Pax Network<br>No. 50 7/5/96    | Sumera<br>No. 59 7/5/96         | Yes         | Yes      |
| 12 | Al-Doualyya Lil Mashari' Ilamyah | 24   | 4/5/96 | Van<br>No. 16 4/5/96              |                                 |                                 | no          | no       |
| 13 | Eco Liban                        | 30   | 4/5/96 | Sigma 90<br>No. 4 3/5/96          | LBCI<br>No. 8 4/5/96            | Alamyah l/Bath<br>No. 37 4/5/96 | No          | No       |
| 14 | Pax Network                      | 50   | 7/5/96 | MTV<br>No.5 4/5/96                |                                 |                                 | No          | No       |

- "No." refers to the number of the application file. It should be noted that the smaller the number of each application, the earlier the submission date. "Date" refers to the date of the submission of the application.

similar situation were: Radio Al-Hurryya, LBCI, the Audio-Visual Co., Cable Video Network, Van Radio, and Al-Doualyya Lil-Mashari' Al-I'lamyah. In all of the above-mentioned cases, the problem of cross-ownership was dealt with by considering the number of the submission of the application on the same day (4 May 1996).<sup>91</sup>

The NAC's decision to punish only one applicant station when it was found to have common shareholders with another applicant station is questionable for a variety of reasons. First, according to the 1994 Act, applicants are asked to respect the deadline set by the Ministry of Information. This deadline can be extended by governmental decree (Article 50). No mention is made, either in the Act or the accompanying Guidebook, of priority playing any role in considering the applications. Neither was anything concerning the subject publicised during the application period. Second, even if one were to find a logical explanation for the use of the priority test, a comparative analysis of the NAC's use of this "priority justification" reveals yet another inconsistency in treating different applications. Whereas in the cases already mentioned the "priority test" was evenly applied, there were instances where the NAC decided that a given station was guilty of cross-ownership (or not), regardless of the date of submission of the application. Al-Alamyah Lil-Bath, for instance, was denied a license because of cross-ownership with NTV (which wasn't licensed anyway). This, despite the fact that the aforementioned station applied 3 days earlier than NTV.<sup>92</sup>

The most glaring example of the NAC's inconsistency in dealing with applications remains that of Radio Mont-Liban. The NAC, in its published opinion, established cross-ownership links between the station and three other stations (Tele Lumiere, Pax Network, and Sumera Beirut). However, the NAC concluded that "the burden of the infringement falls on the latter three".<sup>93</sup> Though this argument could be accepted in the case of Pax Network and Sumera Beirut – they both submitted their application three days later than Mont-Liban, the same cannot be said about Tele Lumiere. In fact, the latter's application was not only submitted on the same day as Mont-Liban, but also much earlier.<sup>94</sup>

<sup>91</sup> See the Official Gazette, pp. 3318 for MTV, 3329 for Tele-Lumiere, 3336 for Al-Hurryya, 3318 for LBCI, 3339 for the Audio-Visual Co., 3320 for CVN, 3336 for Van Radio, and 3362 for Al-Doualyya Lil-Mashari' Al-I'lamyah.

<sup>92</sup> See Gazette p. 3341. A similar case involved Eco Liban and Al-Alamyah Lil-Bath. Eco Liban was charged with cross-ownership although its application number was 30 and the other station's number was 37. Both submitted applications on the same day (4 May 1996). See Table 5.2. and Gazette p. 3341 and p. 3367.

<sup>93</sup> Official Gazette p. 3356.

<sup>94</sup> The number of the Mont-Liban application was 12, and that of Tele Lumiere was 6. Official Gazette, pp. 3356 and 3329.

Finally, the NAC had to use its discretion, it seems, to circumvent the continuing illegal status of the “exonerated” MTV, LBCI, and Mont-Liban. Since these stations could still be legally held accountable for not respecting Article 13 on cross-ownership, the NAC recommended giving them the benefit of the doubt by granting them a one-year probation to correct the infringement, citing Article 32 of the 1994 Act<sup>95</sup>:

After having been notified of the decision of the Council of Ministers, the licensed company has one year to start operating according to the conditions stipulated by the law. The government can give, if necessary, an additional period. The right to the license is lost *de facto* if the company does not submit to the Ministry of Information, within a maximum of one year, a request of inquiry and verification as to the administrative, technical and financial conditions required for the license.

What are the conclusions to be drawn from the behavior of the NAC concerning the implementation of the cross-ownership stipulation? It is clear that the NAC was not using the same criteria for assessing the various applications, nor was it always justified in its choice of these criteria. One might wonder, for instance, why the date and number of the submission of the application should count in the licensing process, especially considering that no such criterion was established anywhere in the 1994 Act or the Guidebook? In any case, the main question remains whether there was a rationale behind this discretionary approach to the applications by the NAC. It is difficult to answer this question with full certitude at this stage. However, it is obvious that of all fourteen stations that were found to be infringing on the cross-ownership stipulation, only three were exonerated. Moreover, while the “priority test” worked in favor of LBCI and MTV, it was not properly applied in the case of Mont-Liban because otherwise it would have made it ineligible for any licensing. Finally, it is equally obvious that, of all stations that were in clear infringement of the law – whatever the nature of that infringement – no “second chance” (i.e., probation period) was given except to the same LBCI, MTV, and Mont-Liban. Article 32 of the 1994 Act clearly provides that opportunity to all accepted applicants, giving them “one year to start operating according to the conditions stipulated by the law”. In this case too, the NAC seems to have applied the law selectively.

#### ***4. Limits on concentration of ownership; the case of New Television***

The 1994 Act deals with the issue of concentration of ownership by stipulating that each shareholder, whether a legal or natural person, cannot own more than 10% of the corporation’s total number of shares (Article 13, Paragraph 3). While Chapter 5 dealt with the context, goals,

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<sup>95</sup> This is an excerpt from the official English translation of the 1994 Act used by the NAC.

and implications of this stipulation, the present study will be limited to its implementation by the NAC. Of the 63 applicants, only one applicant – New Television or NTV - was found in infringement of Article 13, with a shareholder owning 12.76% of NTV's total shares.

Consequently, and due to two other infringements, NTV was denied a license.

NTV's case would have been no cause of controversy if NTV had not decided to fight back and take its case to the Constitutional Council. In this section, I will deal with the case of NTV, the stages its application went through, the reasons for denying it a license, and to what extent the NAC was justified (or not) in its decision. I would like to point out, from the beginning, the difficulty of knowing exactly what happened between NTV on the one hand, and the NAC and the Council of Ministers on the other. The entire issue of broadcast licensing was a very hot one at the time and was closely intertwined with the socio-political ills of the country. The problem was exacerbated by the fact that NTV, while still an unlicensed broadcaster, chose to play the opposition card, and had led a campaign to denounce the rigging of the previous (1992) parliamentary elections. Finally, in a country where administrative corruption is rampant, it is quite hard to base evidence solely on official documents (when these could be obtained), because these documents themselves could be easily subject to manipulation or forgery.<sup>96</sup>

In its decision announced on 16 September 1996, the NAC gave the following reasons for rejecting NTV's application:

1. The list of shareholders dated 23 June 1996, in which the 10% ceiling on ownership is respected, is not signed by the CEO of the company as requested by the Guidebook and therefore cannot be considered valid. Therefore, the NAC reasoned, an older (signed) list has to be used instead. Since the older list, dated 31 May 1996, has a shareholder with 12.76% of total shares, NTV is in clear infringement of Article 13, Paragraph 3 of the Act.
2. Two of the shareholders at NTV have shares in other radio stations, which constitutes another infringement on Article 13 concerning cross-ownership (Paragraph 4).

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<sup>96</sup> NAC Vice-President Shalak repeatedly, and cynically, said how "easy" it is for applicants to get forged official documents "in fulfilment of the Guidebook requirements". He also added that, in this case, it was not up to the NAC, but to the judiciary, to check the authenticity of the documents submitted (personal communication, 22 August 2001). It should be noted here that the official documents Shalak referred to could be anything from a company's registration in the Department of Commerce to a clearance certificate from the Lebanese government's social insurance fund.

3. The company's internal statutes do not clearly specify that all shares have to be nominal (also Article 13).<sup>97</sup>

In its rebuttal, NTV asserted that all these infringements were corrected in its subsequent applications files which were submitted to the Ministry of Information (on 29 June 96, 2 October 96, 17 December 96, and 7 February 97).<sup>98</sup> It claimed, however, that those corrected files were "ignored" by the Ministry, which resulted in another rejection by the NAC, announced on 5 April 97. This time, the NAC gave the following reasons for rejecting NTV's "corrected" application:<sup>99</sup>

1. The new shareholders' list dated 21 January 97, in which the 10% ceiling is respected, is not officially signed by the Department of Commerce.
2. The company's capital of 16 billion Lebanese pounds (or Lira) is not enough to cover the expenses of a television station, which were estimated at 20 billion by the NAC.

NTV rejected the financial argument as "an invention" of the NAC, finding no mention of or justification for the required amount (i.e., 20 billion LL) either in the Act or the Guidebook.<sup>100</sup> Trying to clear itself of the infringement of the 10% ceiling on ownership in order to correct its application file was, as it turned out, a much more complex endeavour for NTV than expected. Equally complex for me was trying to establish what exactly happened concerning this corrected file (which was also rejected by the NAC). According to NTV managers, the rejection was "orchestrated" by having a government administrator withhold an official document required by the Guidebook. The NAC version was that NTV should not have submitted an incomplete file.<sup>101</sup> Considering the rampant administrative corruption— itself the subject of heated debate in parliament,<sup>102</sup> coupled with the politically hot issues of broadcasting

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<sup>97</sup> Nominal shares are shares held by a clearly identifiable owner and signifying ownership through his or her "name". Any buying or selling of these shares, therefore, cannot be done without an official change of name. This measure was required by law to keep control of the identity of all shareholders in the Lebanese broadcast media.

<sup>98</sup> NTV's general manager Sayed Franjeh, personal communication, 31 July 97.

<sup>99</sup> The NAC' second opinion was published in the Official Gazette, No. 29, 12 June 97, p. 2425.

<sup>100</sup> NTV's self-published brochure.

<sup>101</sup> NAC Vice-President Shalak, personal communication, 22 August 2001.

<sup>102</sup> In the parliamentary session held on 29 January 1996, the major topics of discussion, in addition to the media file, were administrative corruption and government misallocation of funds. The latest chapter in the Lebanese corruption saga and the unwillingness of the government to combat it concerned a recent draft bill that failed to pass in parliament on 30 June 2002. The following day, the national English-speaking newspaper *The Daily Star*

and confessionalism, it was almost impossible for me to properly investigate this part of the NTV case and verify which version of the story was true. To give an idea of the imbroglio that characterised the NTV application, I will review some of the events that surrounded the submission of the corrected file.

On 19 May 97, shortly after the NAC announced its opinion concerning the second round of applications, NAC President Sami Sha'ar was featured in a prominent local news magazine. In the interview, he categorically denied that political pressure had any role to play in the decision of the NAC. Asked about the NTV case, Sha'ar explained that, although a copy of the modified and signed list of shareholders was duly included in the latest application file submitted to the NAC, the NAC, after double checking with the Department of Commerce – where the (original) modified list should have also been deposited - could not find evidence of such a list.<sup>103</sup> The NAC ruling, in that case, was to discard the submitted copy of the new list and consider the older list as the official one. Because the older list had a shareholder with a share exceeding the allowed 10% ceiling, this meant that NTV was still in infringement of the law and could not be eligible for a license.<sup>104</sup>

Using his right of reply shortly afterwards, NTV's CEO Tahseen Khayat rejected Sha'ar's argument concerning NTV's infringement of ownership restrictions. As evidence, he provided the news magazine which published his right of reply (to Sha'ar's) with an official (new) list of shareholders signed by the Department of Commerce and showing that all shareholders had less than 10% of the total shares. He also questioned the NAC's need to inquire about NTV's shareholders' list at the Department of Commerce. Citing the required documents as listed in the Guidebook of Operating Conditions, he wondered why Sha'ar had to double check about the existence of the original new list at the Department of Commerce knowing that the Guidebook only requires the signed (and not the original) copy for the application file.<sup>105</sup>

To sum up, the NAC rejected NTV's application because of an allegedly missing document and NTV went to court claiming that the document was indeed part of its application and in the

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wrote: "in a sign that the old psychology still prevails, parliament rejected a proposal by Hariri to ban the purchase of telecommunications licenses by relatives of political officials."

The rejected bill was meant to prevent relatives of government officials (ministers or MPs) to own shares in the telecommunications sector.

<sup>103</sup> When a corporation raises its capital or modifies its shareholders list, the minutes of the meeting where this decision took place are sent to the Department of Commerce to be enclosed in the company's official file there.

<sup>104</sup> NAC President Sami Sha'ar interviewed in *Al-Afkar*, 5 May 97, pp. 44-45.

<sup>105</sup> "Right of Reply", *Al-Afkar*, 19 May 97, pp. 50-51.

possession of the Department of Commerce. Relying solely on the existence of the document itself is hardly enough proof (*against* or *for* one of the two contending parties, i.e., NTV or the NAC), because forging or withholding official documents is relatively easy in a country where bribery, influence-peddling, and corruption in general are the norm. According to NTV's general manager, the updated shareholders list was "withheld" by a top administrator in the Department of Commerce long enough to exceed the deadline for applications and to prevent NTV from getting a license. Not only is this claim almost impossible to verify, but another additional element doubly complicated the matter: the NTV shareholder responsible for the infringement - Hassan Bawab - officially contested the new list in which the percentage of his shares dropped from 12.76% to a little under 10%. He claimed that the company's capital was raised during a general assembly of NTV shareholders that was held illegally. In other words, the one and same NTV shareholder responsible for infringing on Article 13 of the law concerning ownership, went to court because he rejected his company's (i.e., NTV's) decision to raise its capital and consequently have Bawab's share in it reduced to the legal limit of 10%. Theoretically, had Bawab accepted NTV's decision, the company would have been eligible for a license.<sup>106</sup> This paradoxical behavior (Bawab working against NTV's and his own interest?) is, however, easily explained by NTV's general manager Sayed Franjieh. According to Franjieh, Bawab - who is a relative of one of Hariri's advisors - was actually used to "lay a trap for NTV."<sup>107</sup> Upon investigation of that claim, I was able to establish the following connections: Hassan Bawab is in fact the brother-in-law of Fadi Shalak, one of Prime Minister Hariri's well known top advisors and managers. Shalak, who is currently editor-in-chief and general manager of Hariri's newspaper *Al-Mustaqbal* (The Future in Arabic), is also (coincidentally?) the cousin of the current NAC Vice-President Marwan Shalak who was also a NAC member in 1996, when the first round of applications was being studied.

Though it is still difficult to ascertain what happened with NTV's "missing document", the business and family connections existing between key players involved gives some credence to the claim of NTV manager Franjieh. However, rather than spend more time studying a matter

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<sup>106</sup> Bawab's share dropped from 12.76% to the more legal level of 9.54% as a result of raising NTV's capital from LL 11,850,000,000 to LL 15,850,000,000 on 31 May 1996. Most of the information and documents about the "NTV shares controversy" were obtained from the NTV application file kept at the Ministry of Information. However, because the different parties went to court, the same official documents can be obtained from the Department of Justice.

<sup>107</sup> Sayed Franjieh, personal communication, 31 July 1997.

that is highly sensitive and difficult to investigate for the political and administrative reasons previously mentioned, I will continue studying the NTV case by concentrating on the easier, and probably more fruitful method of comparing the various NAC's decision and to try to establish inconsistencies in its treatment of applicants.

Realising that the best way to defend itself and gain support for its cause was to expose the double standards applied by the NAC, NTV argued that all accepted applications infringed in one way or another on the 1994 Act and the conditions put forth by the NAC. It gave the following examples in support of its claim;

1. NBN was still on the drawing board when it applied and therefore could not possibly have met the requirements of the Guidebook. Yet it was accepted even though it had only paid up \$300,000 of its company capital.<sup>108</sup>
2. All accepted television applicants did not respect the pluralism requirement: for example, more than 70% of MTV's and LBCI's shares belonged to owners from one and the same confession, and more than 50% of the shares in each station were held by single families. The same could be said about FTV and NBN.
3. Some licensed stations were guilty of cross-ownership or had incomplete files (i.e., MTV and LBCI) yet they were given a one-year probation to correct their application. NTV and other applicants, by contrast, were not given a second chance.
4. In conclusion, NTV denounced the "double standards" exercised by the NAC, and called for a re-evaluation of its decision and of that of the Council of Ministers.<sup>109</sup>

Having studied the NAC decisions concerning the first round of applications, it becomes obvious that NTV's criticism of the NAC decisions is difficult to discard. The findings in this study so far support NTV's claims concerning the NAC's unequal treatment of applicants who infringed on the "pluralism" and "cross-ownership" requirements. As for the first claim (that NBN did not meet the financial requirement with its paid up capital) the only piece of evidence available is a hand-written note by one of the NAC members found in NBN's application file. The note criticised NBN's estimated expenditures as "imprecise", "insufficient", and "unrealistic". It then added that the paid up capital is 1/40<sup>th</sup> of the company's capital.<sup>110</sup> Though

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<sup>108</sup> The capital required by the NAC was LL 20 billion or roughly \$13,350,000.

<sup>109</sup> NTV's self-published brochure.

<sup>110</sup> NBN's announced capital at the time was about LL 25,000,000,000. 1/40<sup>th</sup> of that amount is roughly LL620,000,000. NTV was claiming NBN had only paid up LL450,000,000 of its capital. In either case, NBN fails the financial test.



the note itself does not openly state it, it clearly implies that NBN does not meet the financial conditions required by the NAC.

NTV's case grew especially stronger when the Council of Ministers later "changed its mind" concerning Al-Manar which was rejected in the first round of applications (i.e., on 16 September 1996). Whereas NTV was in vain trying to "add" the missing document to its file before the decisions were out, the Council of Ministers accepted in time the "supposedly" corrected application of Al-Manar.<sup>111</sup> NTV also denounced as "ultimate injustice" the claim that the door for accepting applications was "closed".<sup>112</sup> Indeed, this claim has no legal foundation in either the Act or the Guidebook. Worse yet, it was made at a time when (still) no ITU approved plan of frequencies existed and no exact amount of licenses to be allocated was fixed.<sup>113</sup> As a last resort, NTV challenged the decision of the Council of Ministers to deny it a license by going to the Constitutional Council or CC (Article 24).

Finally, on 17 June 1999, NTV was vindicated by the Constitutional Council's decision No. 609/98. The decision of the Council of Ministers not to grant a license to NTV was thus revoked because:

1. Power was abused by not granting NTV a license despite fulfilling the required conditions.
2. Because the decision was based on "materially" incorrect facts.
3. Because the decision was not justified and was solely based on the NAC's opinion, which was itself illegitimate because it relied on incorrect facts.<sup>114</sup>

Rebutting the two supposed infringements the NAC attributed to NTV to deny it a license, the Constitutional Council ruled:

1. Concerning the list that shows that shareholder Bawab has reduced his share to 9.54%, rejecting it because it was not registered with the Department of Commerce was illegitimate

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<sup>111</sup> Al-Manar was licensed by the Council of Ministers in July 1997 even though the NAC recommended not to in its published opinion in September 1996. The council of Ministers claimed that it received the station's corrected file shortly before it announced its decision. According to Khayat, the major shareholder at NTV (back in operation since October 2001), there was no "corrected" file submitted by Al-Manar, as required by law. Instead, there was "a letter" sent to Prime Minister Hariri asking him to grant a licence to Al-Manar (Tahseen Khayat, personal communication, June 2002).

<sup>112</sup> NTV's self-published brochure. In fact, on 17 September 1996, the Minister of Information was quoted by the National Information Agency saying that no applications will be accepted as of 31 November 1996.

<sup>113</sup> According to the 1994 Act, the TC's technical report should respect international conventions and be approved by international bodies responsible for allocating frequencies (Article 8). This was still not done at the time of writing.

<sup>114</sup> The Constitutional Council is referring to NAC opinion No. 64 published on 5 April 1997, during the second round of applications.

because the Trade Act does not have such a requirement. Moreover, Bawab's share can be inferred from another document issued by the Department of Commerce and included in the application file.

2. As for the financial condition of NTV, the NAC made a mistake in considering it a precondition for licensing. In reality, this is a post-license requirement, as stipulated by article 32 of the Act.<sup>115</sup> Moreover, the NAC does not have the prerogative to decide on the amount of money an applicant needed to meet the financial requirements. In any case, the Constitutional Council argued, NTV - which had been in operation for more than 7 years at the time - had proved its financial capacity to conduct business and had invested more than LL 20 billion so far.

Perhaps the most important criticism of both the NAC and the Council of Ministers to come out of the Constitutional Council's decision concerns the double standards applied when dealing with applications. First, the CC rejected the claim that the corrected NTV shareholders' list should not be taken into consideration because it was submitted after the NAC announced its opinion. For the CC, it was considered sufficient that the required documents were submitted *before* the Council of Ministers announced its decision.<sup>116</sup> The CC used the example of Al-Manar to justify its ruling: the NAC had rejected the application of (Hizbollah-backed) Al-Manar, yet the Council of Ministers granted it a license because the station submitted a corrected file before the government's decision was announced. Second, the CC brought up the case of MTV and LBCI which, despite several infringements on the law, were accepted by both the NAC and the Council of Ministers and, in conformity with Article 32, were given a one-year probation period to conform to the requirements of the Act and the Guidebook. According to the CC, out of "fairness" and on the basis of "equal treatment", NTV should also have been accepted.

### ***5. Organisational chart: the case of the National Broadcasting Network***

One of the important documents to be enclosed in each application was the stations' organisational chart detailing all managerial positions, and the names, college degrees and qualifications of the managers. This requirement, found only in the Guidebook, was part of an

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<sup>115</sup> Article 32 stipulates that the company with a right to a license has one year (*after* being notified by the Council of Ministers) to start operating according to the requirements of the 1994 Act.

<sup>116</sup> NTV had submitted a corrected file 30 days before the Council of Ministers announced its decision concerning the applicants on 23 July 1997. See *Al-Safir*, 18 June 1999.

attempt to ensure that the applicants were commercially and financially viable; that they could hire enough personnel to run a major organisation; that the required number of experienced employees and university graduates were recruited; and to provide job opportunities for unemployed media workers.<sup>117</sup>

Looking at the application of the organisational chart requirement, the following can be ascertained: sixteen applicants were found to be in infringement of this requirement (see Table 5.3.). There were, moreover, different categories regarding these infringements: some of the applicants simply omitted to include the chart, while others provided an incomplete or a non-detailed one. In both cases, the NAC considered it equally impossible to assess the quality of the personnel and their existing positions within the applicant station.

Moreover, because one applicant – Al-Bayan Radio - was denied a license on the sole ground of a missing chart, one would assume that the organisational chart is one of the major requirements for getting a license.<sup>118</sup> This does not seem to be the case, however, because, of the aforementioned 16 applicants, one applicant was still recommended for licensing, *despite* the submission of an incomplete chart and two other infringements. This was the case of LBCI, which was also found guilty, as seen earlier, of cross-ownership and incomplete shareholders' identification documents. Not only that, but, unlike other rejected applicants, LBCI was granted a one-year probation to restructure itself and correct its file.

Denying one applicant a license while granting it to another, knowing that both were found guilty of the same infringement, raises questions, once again, about the inconsistency of the NAC's evaluation of the application files. This becomes even more problematic when considering the case of the licensed National Broadcasting Network or NBN. In the NAC's published opinion, NBN's application was accepted because it was found to conform entirely with the stipulations of the 1994 Act and the conditions of the Guidebook.<sup>119</sup> Unlike the case with LBCI and MTV, its file was, according to the published opinion of the NAC, complete and did not need the one-year probation period to be corrected.

NBN's case might not be considered specifically controversial – besides the fact that the make up of its shareholders is predominantly Moslem and most of its capital was not paid up yet – except for one detail: the company *did not exist* at the time it submitted its application, or

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<sup>117</sup> See Guidebook Appendix B, Chapter One, Part 3, Administrative Conditions, p. 5.

<sup>118</sup> See Official Gazette, p. 3372.

<sup>119</sup> Official Gazette, p. 3315.

at least had not started broadcasting yet, unlike all other applicants. This is further confirmed by the existence of an official document, signed on 13 May 1996, which states that the company (i.e., NBN) was not indebted to the government (then) because “NBN is not registered with the National Social Security”.<sup>120</sup> In other words, NBN either had no employees then or was not performing its duty as an employer by providing social security to its

**Table 6.3 List of applicants in infringement of the organisational chart requirement, as mentioned by the NAC in the Official Gazette:**

| *  | Station                             | Non detailed chart | Unavailable chart | Other listed infringements | License | Probation |
|----|-------------------------------------|--------------------|-------------------|----------------------------|---------|-----------|
| 1  | LBCI                                | X                  |                   | Yes                        | Yes     | Yes       |
| 2  | Al-Loubnanya Lil-Bath TV            | X                  |                   | Yes                        | No      | No        |
| 3  | UTV (Al-Mashrek)                    |                    | X                 | Yes                        | No      | No        |
| 4  | ICN                                 | X                  |                   | Yes                        | No      | No        |
| 5  | Tele-Lumiere                        | X                  |                   | Yes                        | No      | No        |
| 6  | Al-Noujoum TV                       |                    | X                 | Yes                        | No      | No        |
| 7  | Audiovisual Co.                     |                    | X                 | Yes                        | No      | No        |
| 8  | Sawt el-Watan                       | X                  |                   | Yes                        | No      | No        |
| 9  | Sawt el-Ghad                        | X                  |                   | Yes                        | No      | No        |
| 10 | Al-Loubnanya Lil-Bath radio         | X                  |                   | Yes                        | No      | No        |
| 11 | Al-Loubnanya Al-Muttahida Lil-I'lam |                    | X                 | Yes                        | No      | No        |
| 12 | Strike Radio                        |                    | X                 | Yes                        | No      | No        |
| 13 | Ciel FM                             |                    | X                 | Yes                        | No      | No        |
| 14 | 3M Magic 102                        | X                  |                   | Yes                        | No      | No        |
| 15 | Al-Bayan                            |                    | X                 | No                         | No      | No        |
| 16 | La Une                              |                    | X                 | yes                        | no      | no        |

\*The applicants, TV and radio stations, are ordered according to the sequential number of the NAC opinion about each, as published in the Official Gazette.

<sup>120</sup> Clearance document issued by the National Social Security on 13 May 1996, No. 96/4221.

employees. According to the NBN's application file, the first possibility seems more likely, especially because not a single employee's or manager's name and degree were mentioned in the submitted organisational chart, as required by the Guidebook of Operating Conditions.<sup>121</sup>

NBN, in any case, was certainly not yet broadcasting at the time it submitted its application. Members of the NAC who studied the NBN file, moreover, repeatedly wrote down the comment that the applicant (NBN) was a company "under construction" and that the organisational chart was "hypothetical".<sup>122</sup> Recently, when asked to justify granting a license to a company that did not exist at the time of licensing, NAC Vice-President, dismayed by the amount of controversy created by the licensing of a "hypothetical" station (i.e., NBN), asked: "what if broadcast companies were not existing then? There is nothing against new companies applying for a license. That is why the law allows for a one-year probation period".<sup>123</sup>

Precisely, Article 32 of the Act offers a one-year probation to all accepted applicants, after which an operating station's right to a license can be withheld if the operating conditions are not fully respected. In the case of NBN, unlike MTV and LBCI (which had been broadcasting for years in 1996), the NAC did not recommend in its published opinion that NBN be granted a one-year probation to prove itself and conform to the NAC requirements. There is nothing in the 1994 Act against licensing new stations, but there is no provision either to exempt such stations from the probation period needed to check on their operation when these stations are found eligible for a license. Logically, this should have been especially the case with NBN, because it was not yet in operation at the time of the submission of applications. The following is the full text of Article 32 which explains the various steps to be followed when granting licenses.<sup>124</sup>

The decree of license is issued *after* verifying that the corporation has met the required conditions.

After having been notified of the decision of the Council of Ministers, the licensed company has one year to start operating according to the conditions stipulated by the law. The government can give, if necessary, an additional period. The right to the license is lost *de facto* if the company does not submit to the Ministry of Information, within a maximum of one year, a request of inquiry and verification as to the administrative, technical and financial conditions required for the license.

<sup>121</sup> By late September 1996, days after it was granted a ministerial license, NBN was still not in existence. See *Al-Safir*, 19 September 1996.

<sup>122</sup> The hand-written notes of the NAC members were included and kept in the application file, property of the Ministry of Information.

<sup>123</sup> Marwan Shalak, personal communication, 22 August 2001.

<sup>124</sup> It should be remembered that this (often weak) translation is the official one adopted by the NAC. Emphasis added.

In other words, according to the 1994 Act, an applicant has, first, to be recommended by the NAC to the Council of Ministers. The Council then allows successful applicants to operate for a full year, while trying to conform fully to the requirements of the Act and the Guidebook. Only *after* such probation period has elapsed, and *only* upon verifying whether the successful applicant has fulfilled all the requirements (concerning its operation), does the Council of Ministers grant the applicant a license by decree. In the case of NBN – an applicant more than any other in need of “proving” itself – the NAC seems to have found it unnecessary to give NBN a probation period. All other operating stations, however, with the exception of MTV and LBCI, were rejected for a variety of reasons and entirely denied a probation period.

#### ***6. Authentication of documents and date of registration***

The deadline for submitting applications was 7 May 1996. According to the Guidebook, several required documents should be authenticated by the relevant government agencies “less than one month before the application is presented”.<sup>125</sup> This specific requirement was actually responsible for eliminating 14 candidates from the race, because, according the NAC, the date of registration of some of these companies with the Department of Commerce – along with that of other related documents - was *ulterior* to the date of submission of the application file (see Table 5.4.).<sup>126</sup> As the NAC reasoned in its published opinion, a company that submits its application before being officially registered with the government is a “hypothetical” company and therefore is not eligible for the extension of the deadline granted by government decree No. 10, on 5 June 1996. Thus, all applicant stations which were registered after submitting their application were automatically rejected, even if their file was submitted before 7 May 1996 (the first deadline).

Judging only from the published opinion regarding rejected applicants, the NAC seems to have acted consistently in treating the various applications. However, the official registration documents of two companies who were found eligible for a license showed that their case was similar to all applicants rejected for the single infringement explained above. To start with, the

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<sup>125</sup> See List of Documents, Appendix B, p. 20.

<sup>126</sup> See Official Gazette for the following rejected applicants, pp. 3320, 3327, 3334, 3345, 3348, 3351, 3353, 3359, 3368, 3374, 3375 and 3380.

company registration document of LBCI (No. 41685) was dated 15 June 1996.<sup>127</sup> This means that LBCI was not yet officially registered as a company when it submitted its application file on 4 May 1996. The NAC, however, did not mention any such infringement in

**Table 6.4 Applicants with late company registration date (i.e., after 7 May 96)<sup>128</sup>**

|    | Station                        | Company registration date | Other listed infringements | License    |
|----|--------------------------------|---------------------------|----------------------------|------------|
| 1  | CVN                            | 14.5.96                   |                            | No         |
| 2  | Sigma 90                       | 4.6.96                    |                            | No         |
| 3  | Loubnan Al-Arabi               | 27.6.96                   |                            | No         |
| 4  | Sawt Van                       | 21.6.96                   |                            | No         |
| 5  | Sumera Beirut                  | 27.6.96                   | Yes                        | No         |
| 6  | Sawt Beirut wa Lubnan Al-Wahed | 27.6.96                   |                            | No         |
| 7  | Radio Halleluya                | 29.5.96                   |                            | No         |
| 8  | Sawt Al- Nougoum               | 20.6.96                   | Yes                        | No         |
| 9  | Sawt Al-Mahabba                | 17.6.96                   |                            | No         |
| 10 | Sawt Al-Hobb                   | 21.5.96                   |                            | No         |
| 11 | Radio Holy Qoran               | 22.5.96                   |                            | No         |
| 12 | Group FM                       | 21.6.96                   |                            | No         |
| 13 | Nayeri                         | 21.5.96                   |                            | No         |
| 14 | Mix FM                         | 26.6.96                   |                            | No         |
|    | <b>NBN*</b>                    | <b>3 .5. 96</b>           | <b>No</b>                  | <b>Yes</b> |
|    | <b>LBCI</b>                    | <b>15.6.96</b>            | <b>Yes</b>                 | <b>Yes</b> |

- Both NBN and LBCI are highlighted in bold characters because they were cleared of the “late date” infringement. Although no mention was made of problems concerning their registration date in the Official Gazette issued on 16 September 1996, they are being added to the table for comparative reasons.

<sup>127</sup> The deadline for *submitting* applications was 7 May 1996, and that for *completing* applications was 30 June 1996. See in Official Gazette the example of CVN which was rejected exclusively for having a late company registration date.

<sup>128</sup> For details, see Official Gazette, pp. 3320, 3327, 3334, 3336, 3345, 3348, 3351, 3353, 3359, 3368, 3370, 3374, 3375 and 3380.

its published opinion concerning LBCI. Not only that, but, upon investigation, it became obvious that most of LBCI's other official documents were submitted in completion of the file much later than the deadline for the extension period itself.<sup>129</sup>

NBN, another company that the NAC recommended for licensing, also raises questions concerning its eligibility for a license. NBN's file was submitted on 3 May 1996. It contained among other things: a certificate of the date of registration of the company, minutes of the last ordinary general assembly, and minutes of the last board of director's meeting.

Looking carefully at the dates of the aforementioned documents, one can notice that they all have the *same date* as that of the submission of the file. This means, in other words, that NBN's shareholders and board of directors were able to meet, raise the company's capital from LL 600,400,000 to LL 25,280,000,000, and officially register the company, all on the same day they submitted their file, i.e., on 3 May 1996.

### ***7. Covering the expenses of the first year of licensing***

The first criterion for granting licenses, according to the 1994 Act, is the ability of the applicant to cover the expenses of the first year, in addition to its technical and professional capacities (Article 7, Paragraph 1). Under the title "Financial Conditions", the Guidebook reiterates this requirement, adding that these expenses must be calculated in a way to cover all the provisions of the above mentioned Article 7.<sup>130</sup> The NAC applied this financial criterion mainly by comparing each applicant's paid up capital with its projected costs for the year following licensing.<sup>131</sup> Whenever the projected costs largely exceeded the paid up capital, the applicant was considered to be in infringement of the 1994 Act. Consequently, fourteen applicants failed the financial test.

The case of two of the fourteen applicants rejected on financial grounds stands apart: according to the NAC, both Al-Manar television and Al-Fajr radio stations did not have the capital needed to cover the cost of a broadcast station. Interestingly, the financial costs of the above-mentioned applicants were not measured against their respective paid up capital - as was

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<sup>129</sup> The official documents referred to in this section are not classified. They can be obtained, for a certain fee, from the related government agency. For example, the certificate of non-bankruptcy status and the certificate that LBCI is a purely Lebanese company were both issued on 19 December 1996. The official clearance documents were issued on 24 December 1996 (i.e., several months after the second deadline).

<sup>130</sup> See Appendix B, "Financial Conditions", p. 4.

<sup>131</sup> Revenues from advertising were not counted towards covering all or part of the expenses, especially when the applicants were only recently established. This was the case for Radio Nostalgie and Radio Hit FM, Official Gazette, pp. 3357 and 3358.



the case with other applicants - but against a fixed amount of money *estimated* by the NAC. This “estimated” sum was LL 20 billion for a television station and LL 5 billion for a radio station (1<sup>st</sup> category).<sup>132</sup> Though both the 1994 Act and Decree No. 7997 stipulate that applicants should be able “to ensure the expenses of at least the first year of the license”, no amount of money is mentioned in either the 1994 Act or its related Guidebook.<sup>133</sup> Thus, not only did the NAC use its discretion to fix the amount an applicant needed to run its operations during the first year, it also announced the “estimated” sum post-factum, i.e., in its opinion published months *after* the deadline for submitting applications. This measure led to the elimination of two candidates, even though their proposed first year expenditures did not necessarily exceed their paid up capital.<sup>134</sup>

Not only did the NAC impose a questionable financial condition (on what basis was the required sum calculated? Why wasn't this sum mentioned in the Guidebook?), it did not make it public until *after* applications were submitted, i.e., in its published opinion on 16 September 96. Al-Manar and Al-Fajr were thus rejected for failing to fulfill a requirement that was *non-existent* during the first round of applications. It should be remembered here that pressure groups and opposition MPs had fought bitterly, during the discussion of the draft proposals, against imposing high fees on applicants. They argued that the exorbitant fees imposed by the government's draft proposal would automatically eliminate many candidates from the race and eventually limit freedom of expression and pluralism in the country. As a result of lobbying, the government eventually ended up reducing the licensing fee from c. 650,000\$ down to 165,000\$ for all categories of television stations. Pressure groups, continuously weary of government abuse, also pressed the government to include in the draft bill, *in writing*, the minimum capital required by each applicant.<sup>135</sup> This demand, however, was not heeded. In that context, the NAC's capital requirement for each applicant, which was set at circa \$13 million later on (i.e., during the licensing process), seemed to substantiate the fear of opposition MPs

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<sup>132</sup> LL 20 billion makes about \$13.5 million (1\$=1,500 LL.). These “approximate” figures were given by NAC Vice-President Shalak, personal communication, 6 August 2001.

<sup>133</sup> See 1994 Act, Article 7 and Decree 7997 or (Guidebook), Appendix B, p. 4, under Financial Conditions.

<sup>134</sup> The Al-Manar application file (which I had access to) showed yearly expenditures of LL 16,565,935,000. These could be roughly covered by the station's paid up capital of LL 15,000,000,000.

<sup>135</sup> See Chapter 5.

and especially the media lobby: i.e., that the government, through the NAC, sought to eliminate applicants by making them fail, from the outset, the “surprise” financial test.

#### LICENSING BY GOVERNMENT DECREE

Just one day after the NAC published its opinion in the Official Gazette on 16 September 1996, the Council of Ministers convened and granted licenses to all applicants accepted by the NAC except one.<sup>136</sup> Four television and three radio stations were officially allowed to operate with a 1<sup>st</sup> category license (for political programming). These were the Lebanese Broadcasting Corporation International (LBCI), Future Television (FTV), the National Broadcasting Network (NBN), and Murr Television (MTV). The radio stations which were licensed, with a similar ability to broadcast political programming (i.e., 1<sup>st</sup> category license), belonged to the same companies that owned the first four licensed television stations. 8 radio stations of the second category (i.e., without political programming) were also granted a license, always based on the NAC recommendations. All other operating, unlicensed stations were given two months (i.e., till 30 November 1996) to liquidate their assets and terminate their activities. That same day, the government also prohibited the unlicensed stations to broadcast news bulletins. However, an exception was eventually negotiated for the Hizbollah-backed Al-Manar TV and its affiliate Al-Noor radio station. The official excuse for such an exception was the need for the government to support these stations’ national resistance activities against Israelis occupying the south of Lebanon.<sup>137</sup>

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<sup>136</sup> Mont-Liban radio, the station affiliated with the Murr family, which owns the major shares of MTV, was accepted by the NAC and rejected by the Council of Ministers.

<sup>137</sup> *Al-Safir*, 19 September 1996.

Hizbollah is the main resistance group in the south of Lebanon. It is an Iranian-backed, Lebanese Muslim Shi’ite organisation that was founded to resist the occupiers, shortly after the Israeli invasion of Lebanon in 1982. Though initially the exceptional measure to allow Al-Manar to continue to operate was to be temporary (until the end of the Israeli occupation), Al-Manar was eventually granted an official licence during the second round of applications, again despite the NAC’s disapproval.

Shortly after granting the Hizbollah stations an exception, some Christians leaders started calling for an “equal” treatment for the equally unlicensed Christian religious television station Tele Lumiere, demanding that the government’s licensing decisions maintain a sectarian balance (*Al-Safir*, 18 September 1996). Bowing to pressure, the government turned a blind eye to the operation of Tele Lumiere, which continues to broadcast unlicensed to date. As a final update, Israel withdrew from the south of Lebanon in May 2001. The Hizbollah-backed broadcast stations, which were left to operate because of their “resistance” activities back in 1996, are still in operation.

Following the government's allocation of licenses, local newspapers abounded with reports which denounced the government's "blatant" and "shameless" "discretionary" decision and the "record speed" with which it was made. The day the licenses were granted was described as "a day of shame", or the day the media was "seized" by the power elite. Analyses and editorials tried to demonstrate the double standards and the hypocrisy behind the licensing process.<sup>138</sup> What was already feared or predicted more than six months earlier (i.e., when the technical report of the TC came out) finally became a reality. In the face of all this criticism, however, Hariri insisted that his government "did not discriminate against anyone" in particular, and that it "considered the NAC's decision with impartiality".<sup>139</sup>

### **Patterns of ownership and control**

While the NAC's opinion concerning license applications was of a purely "consultative" nature, and had to be justified and published in the Official Gazette, the Council of Ministers had the final word concerning the granting of broadcast licenses. It could do so simply by issuing licensing decrees, after having been informed of the NAC's (non-binding) opinion concerning each applicant.

Chapter 2 introduced the various determinants that generally affect the policymaking process. Some of these are: the political culture or dominant ideology, administrators, legislators, public opinion, interest group pressures, and so on. Of these policy determinants, policy entrepreneurs (to use Kingdon's terminology) are those groups or individuals that play a key role in introducing policy proposals. The Hariri government was indeed a major policy entrepreneur in the case of the 1994 Act, responsible not only for introducing the draft bill of the Act but also for implementing it, all within less than two years. I have already documented the controversy surrounding the implementation of the Act, mostly by studying the TC report and the NAC's handling of all 63 broadcast applications. The study of both of these regulatory bodies was made possible by the availability of published documents and primary sources. For instance, careful examination of the NAC performance was done mostly by going back to its own published opinions (as required by the 1994 Act), and looking for inconsistencies in the NAC's treatment of applications. However, the NAC, due to the non-binding nature of its opinion, is not the final authority in charge of granting licenses. If the results of the licensing

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<sup>138</sup> See also *Al-Nahar*, *Al-Diyar*, and *L'Orient-Le-Jour*, 18 and 19 September 1996.

<sup>139</sup> *Al-Safir*, 19 September 1996.

process were so hotly contested, then the decisions of the authority ultimately responsible for granting licenses (i.e., the Council of Ministers) have to be examined too. Unfortunately, the Council of Ministers, according to the 1994 Act, does not have to justify its opinion before issuing licensing decrees. Not only that, in September 1996, with the exception of Radio Mont-Liban, it accepted at face value the NAC's opinion concerning the 63 applicants. Without giving itself the time to examine the applications or the National Council's decision, it issued licensing decrees in less than one day after the NAC made its opinion public.

In the absence of any official or published documents that could be used to examine the decision of the Council of Ministers, the extent to which this decision was defensible, and the true motives behind it, I propose an alternative, indirect approach that might answer some of the questions concerning the government's licensing decision. The Hariri government was vehemently criticised for slicing up the media pie exclusively among the political, confessional, and economic elite. Druze MP Walid Jounblatt referred to this multi-layered elite which seized the newly privatised broadcast media as the "octopus of money and power".<sup>140</sup> Former Speaker of Parliament Husseini, years after licensing was over, continued to denounce the "militias of arms and finance" that controlled Lebanon, and referred to Prime Minister Hariri as "the head of the financial militia" in the country.<sup>141</sup>

In this section, I will study the identity of the shareholders in each of the licensed television stations (i.e., LBCI, FTV, MTV, and NBN). The assumption behind such examination is that knowing who these shareholders are (politically, confessionally, and economically) may tell us about the reason why those four television stations in particular were successful despite serious deficiencies in their license applications. The study will be carried out by trying to establish, as much as possible, *various types of connections* between the different shareholders, both inside one and the same station and between the different stations.

To start with, for a Lebanese person with average knowledge in local politics, it is considered a matter of common knowledge that the major shareholders of the licensed stations are members of the political elite.<sup>142</sup> Among the shareholders at LBCI, we find two ministers (Sleiman Frangieh and Georges Ephrem) and three MPs (Issam Fares, Nabil Boustani, and Michel Pharaon). At FTV, we have two MPs (the sister of Prime Minister Hariri – Bahya Hariri

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<sup>140</sup> *Al Safir*, 19 September 1996.

<sup>141</sup> *La Revue du Liban*, 18-25 May 2002.

<sup>142</sup> The period considered is around the time of the licensing, i.e., in 1996. This means that some of the elected MPs and ministers have changed ever since.

- and Khaled Saab), the three sons of MP Issam Fares, and the brother of Farid Moukari - Minister of Information in the Hariri government. At MTV, we find two ministers (Fares Boueiz and Elie Hobeika), and a would be Minister of Information Ghazi Aridi. Major shareholder Gabriel Murr is the brother of (then) Minister of Interior Michel Murr. At NBN, the wife and sister of Speaker of Parliament and Shi'ite and Amal party leader owned shares. We also find a top official from the Shi'ite Amal party (Khalil Hamdane), a minister and his brother (Yassine and Rabah Jaber), and a former minister (Samir Mokbel). Druze religious leadership was mostly represented through the Gaith family, namely the children of the Druze highest religious leader (Bahjat Gaith).

Not only was the political elite – covering the confessional spectrum – found in all these licensed stations, one can also see the extent to which the country's economic elite was also “represented”. Whether it is the established families of Fattal, Sehnaoui, Pharaon, Abou Adal, Boustani, Aude, Hariri, Solh, Dabbas, Mikati, Ibrahim, Taoutal, or others, one can see the concentration and interest of Lebanon's economic elite in the broadcasting sector.<sup>143</sup>

In sum, a cursory look at the identity of many shareholders in the licensed television stations supports the critics' claim that the media pie was indeed divided up among Lebanon's economic and politico-confessional elite. Such observation, however, is not sufficient to understand the extent to which broadcast ownership was heavily concentrated in the hands of a few members of this Lebanese politico-economic elite.

### **Family, business, and “other” ties: interlocking control**

In Table 5.1. of this chapter, I established the predominance of one of the major confessions in each of the licensed stations. This was done by consulting the shareholders' official identification papers or IDs, which are part of the public record.<sup>144</sup> However, a shareholder's confessional ID is only the tip of the iceberg. Indeed, an examination of the family, business, and political relationships between shareholders, shows a much more complex web of interconnections between them.

Throughout the policy formation phase concerning the 1994 Act, various interest groups, in order to safeguard pluralism of expression in the Lebanese media, insisted on preventing the concentration of the broadcast media in the hands of a few players. According to Article 13, “a

<sup>143</sup> Details of the business activities of Lebanon's economic elite are based on (ongoing) research by political economist Fawaz Traboulsi on the 80 families that control Lebanon's economy.

<sup>144</sup> In Lebanon, IDs include an individual's confession. This confession has nothing to do with the person's own religious convictions. It is determined at birth and rarely changed.

natural or legal entity cannot own directly or indirectly more than 10% of the totality of the company's shares. The husband or the wife, their ascendants and their minor descendants are considered as one person".<sup>145</sup> In Chapter 5, I discussed, from a theoretical perspective, the inability of such a formulation to prevent a single family from controlling, *directly*, a broadcast station. By allowing the descendants (i.e., children of age) of any shareholder to own shares in the same station, the door was left wide open for concentration of ownership in all the licensed stations. Starting with LBCI, the founder Pierre Daher, together with his wife Randa Saad Daher, owned the maximum, legal 10% of the shares.<sup>146</sup> However, the extended family, whether on the side of Daher or Saad (i.e., the brothers or sisters of the couple), owned 50% of the shares. At MTV, founder Gabriel Murr (brother of the Minister of the Interior during the Hariri administration in 1996) and his four adult children owned, together, 47% of the shares. At FTV, Prime Minister Hariri did not personally own any shares in the station. By contrast, his brother, his sister, and his wife, together owned 30% of the shares. Finally, at NBN, Speaker of Parliament Nabih Berri, like Hariri, did not have direct shares in the station. His wife and his sister-in-law, by contrast, owned 10.5% of the total shares. The Druze ownership, mostly represented in the same station through sons and brothers of the Druze highest religious leader (i.e., Bahjat Gaith), had 17% of the shares.

Each licensed station could thus be clearly and strongly associated with at least one "founding family" from a distinct major confession: the Murr family is Greek Orthodox, the Daher-Saad family Maronite, The Hariri family Sunni, the Berri-Assi family Sh'ite, and the Gaith family Druze.

That the 1994 Act allows brothers, sisters, and adult children of a shareholder to own, *legally*, a maximum of 10% each of the shares in the same station is clearly reflected in the concentration of shares within one and the same family in each licensed station during the implementation phase. However, the same article limiting concentration of ownership also prevents anyone from owning, *indirectly*, more than 10% of the shares. The Act does not specify, however, what constitutes "indirect" ownership. In the case of the licensed stations, as demonstrated above, it seems that indirect ownership was indeed a major way to circumvent the limitation on concentration of ownership by the various shareholders. However, "indirect" ownership was never a subject of contention or a reason for rejecting an applicant by the NAC

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<sup>145</sup> This is quoted from the text of the official translation used by the NAC. Language mistakes were thus left uncorrected.

<sup>146</sup> The percentage of each shareholder is part of the public record. It should be noted here that the percentages quoted above relate to 1996, the year in which licensing took place, and may have changed ever since.

in 1996. Does that mean that the NAC did not consider brothers, sisters, adult children, or any other members of an extended family owning together more than 10% of the shares in the same station to be indirect ownership? Can the same also be asked about business partners or employees, who often worked with (or for) some shareholder in non-broadcast-related businesses? Don't these glaring examples constitute indirect ownership? If not, what does? Ultimately, it was obvious that what indirect ownership per se meant was simply not dealt with - not in writing anyway - by the very regulatory body responsible for safeguarding pluralism in the *ownership* of the media. This is especially ironic considering that it was the NAC itself, and not the 1994 Act, which was the source of such a requirement (i.e., confessional pluralism).

When ties other than family ones are investigated, the ownership of each family becomes even more "concentrated". These "other" ties can range from regular business and political relationships, to any other type of overt or covert relationships, including "personal friendships". Here, it should be noted that the research could not possibly uncover all types of connections between shareholders, especially when some of these (important) connections are hidden, non-publicised or could not be documented. For example, two shareholders in the same station - who apparently have nothing to do with each other - may be "known" to be "personal" friends or "allies". Moreover, there are many cases where some unknown shareholder is "rumoured" to be another shareholder's "yes-person". Such "knowledge", however, unless published in a quality national newspaper or mentioned publicly by a politician or key figure, or based on actual documents or public records, had to be dismissed in this study. This was so even if the revealing, "informally transmitted" piece of information was likely to be true. The purpose was simply to avoid, as much as possible, the inclusion of gossip in this study.

To start with, in the case of MTV, roughly 70% of the shareholders (totalling 43) were MTV employees. Some of them were easily recognisable TV celebrities, including MTV's famous anchor Camille Menassa and actress Natalie Naoum. The majority, however, were junior employees and members of the technical staff. FTV also had (easily identifiable) top managers or directors among the shareholders: Ali Jaber, the station's executive manager; Ghaleb Al Shammah, CEO of the company and personal advisor to Prime Minister Hariri; Nouhad Machnouk, media advisor to Hariri; Moustapha Razyan, financial advisor to Hariri; and Youssef Takla, Hariri's lawyer.

That some of these stations' "established" celebrities or top managers owned shares in them was not in itself unusual, although this could have justifiably raised important questions regarding the real "independence" of those shareholders vis-à-vis the shareholders they *worked for in the same station*. The employees or advisors to Prime Minister Hariri identified above,

together, owned 26% of the shares at FTV. Their shares, added to the ones owned by Hariri's wife, sister, and brother, made up 56% of all shares at FTV. Can it be said, in this case, that Hariri *indirectly* owned the majority of the shares at FTV in 1996, in clear infringement of the law? The NAC, based on its published opinion, did not seem to think so.

Equally questionable was the case of MTV's large number of "small-time" employees who were also shareholders. Even though I could not investigate their financial capacity to own the shares they "supposedly owned on paper" (to quote NAC Vice President Shalak), and even though it could be argued that their (individual) shares in the company were minimal,<sup>147</sup> their relatively young age (in 1996) does raise questions about their ability to invest in the company on the one hand, and their independence as shareholders on the other. At the time of licensing in 1996, of the total of 43 shareholders, 31 were under the age of 35. Of these young shareholders, 22 were under the age of 30. Indeed, 19 of them were barely in their mid-twenties. This does not prove in itself that those shares were not legally owned by those young shareholders, and could not have actually been bought by them. It is more a question of the extent to which the Murr family, in violation of the 1994 Act, was single-handedly, though *indirectly*, in control of the station. NAC President Shalak himself admitted that the major MTV shareholder (i.e., the Murr family) used its own employees at the station as a "front" in order to own a bigger share than that which the clause on the concentration of ownership allows for (i.e., the maximum 10%). As evidence for such a claim, he questioned the ability of "small time" employees to buy up shares in a multi-million dollar business:<sup>148</sup>

MTV circumvented the law [on concentration of ownership] by having many shares owned by employees who could not have all this money. Unfortunately, we [i.e., the NAC] know this here but we can't do anything about it. When they [i.e., MTV applicants] present official, signed documents, we have to accept those documents even if we know they are not true and that they were obtained through bribery. This [investigating the real financial situation of applicants] falls under the jurisdiction of the Department of Justice, and not that of the NAC.

Another type of *indirect* relationships that was left unexamined by the NAC when studying concentration of ownership in the applicant stations concerned business ties. Looking at the names of the shareholders in the applications, one may not fathom the extent to which those "different" shareholders are in reality business allies, mostly in areas outside of broadcasting

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<sup>147</sup> Many MTV employees had between 11 and 22 shares. The total number of MTV's shares in 1996 was 380 000.

<sup>148</sup> Personal communication, 6 August 2002. In Lebanon, it should be noted, the minimum legal salary is a little above a hundred dollars per month. Most young media graduates are considered lucky if they are employed at all in a broadcast station, and if they make more than three hundred dollars a month.



(e.g., banking, construction, etc.). By examining publicly available documents, especially company registration papers in the Department of Commerce, one can find the names of the shareholders and members of the board of directors of these companies. For example, at FTV, Robert Debbas, with his 10% share, was Hariri's business partner in Saudi Arabia and a major government contractor (for electric installation) during the Hariri administration. Farid Roupahel, who owned 5 % of FTV, is another one of Hariri's business partners and a major banker.

In this paragraph, I will give further examples of interlocking control *across* the licensed television stations. The relationships established are not meant to be exhaustive in any way. Some of the companies mentioned, on whose board of directors one can find shareholders in different licensed television stations, may not be important or known to the general public (in Lebanon). However, this (brief) study of the ownership patterns of the licensed stations is only meant to show the "tip of the iceberg", i.e., the extent to which most of this interlocking control is held by Lebanon's economic elite.<sup>149</sup> For instance, at LBCI, shareholder Raymond Audi is co-founder, along with the Fattal family (Khalil, Bernard, Georges, and Simon) which also owns shares at the station, of Societe Libanaise de Gestion de Fonds SOLIGEF. The one and same Raymond Audi is also owner of Societe de Presses Economique SAL with LBCI shareholder Michel Pharaon. Michel Pharaon's father, MP Pierre Pharaon, is co-founder of Societe Generale Libano-Europeenne de Banque along with LBCI shareholder Maurice Sahnaoui. Also from LBCI, shareholder Maurice Sahnaoui is co-founder of Sigma Middle East, along with the Fattal family. Two other members of the Sahnaoui family, however, have shares at MTV. The same is true of the Fares family, with father (and MP) Issam Fares owning shares at LBCI while the three sons (Michael, Najad, and Fares) are shareholders at FTV. NBN and MTV have also shareholders from the same family: father Nehmeh Tohme is at NBN while son Youssef Tohme owns shares at MTV.

In sum, this brief study of the ownership patterns of the Lebanese private broadcasting revealed a complex web of interlocking controls, often cutting across confessionally different and economically competitive stations. In other words, one could find shareholders from different confessions who owned shares in different broadcast stations yet were joined in other, non-media related businesses such as banking or contracting. A controversial book written by a veteran MP and member of the opposition to the Hariri government had already revealed

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<sup>149</sup> Traboulsi, 1993.

similar patterns of ownership and control of major resources in the country (i.e., banks, real estate, mobile phone companies, etc.).<sup>150</sup> In this book, MP Wakeem mostly documented how several companies were owned, on paper, by unknown individuals who, upon investigation, turned out to be members of the extended family of some politician or of the family of his business or political allies (Wakeem specifically targeted Prime Minister Hariri in his book). He was indeed mostly interested in demonstrating how the political and economic elite often *indirectly* controlled the major resources of the country, especially in the wake of deregulation (or more precisely privatisation) in the country.

Finally, it should be emphasised that this study is not meant in any way to be the definitive study on the subject (i.e., interlocking control in the Lebanese broadcast media), especially that ownership has changed since the stations were first licensed. Instead, the study was undertaken with the purpose of raising important questions concerning the text of the Act, its application and the issue of concentration of ownership. The results of this study were also needed in order to understand the implementation process and to infer the true motives behind the final decision of the Council of Ministers regarding license allocation.

### CONCLUSION

In the beginning of this chapter, I set out to study the implementation phase of the 1994 Lebanese Broadcasting Act. This phase of the Act was to be carried out by two newly formed bodies, the Technical Committee for Audio-Visual Regulation (TC) and the National Audio-Visual Council (NAC). As soon as the recommendations of these bodies were made public, they were vehemently criticised by a large number of politicians, academics, and activists. Nevertheless, the government granting of licenses was based on these recommendations. The perceived government partiality, compounded by a general democratic crisis of legitimacy (the contested 1996 elections) and worsening economic conditions, led to a series of demonstrations and protests that threatened the (newly regained) stability of post-Civil War Lebanon.

Having investigated the circumstances surrounding the inception, operation, and decisions of the TC and the NAC, it becomes obvious that most of the charges levelled against those committees were legitimate. These charges revolved mainly around two main, interrelated themes: first, how the government was going to use the new Broadcasting Act to its own

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<sup>150</sup> Wakeem, 1998.

advantage by *exclusively* licensing those stations owned or controlled by the economic and power elite (i.e., ministers in the Hariri cabinet and MPs) and their business allies; and second, by stifling media opposition entirely by denying it broadcasting licences.

Starting with the TC, the appointment of its members did not respect the stipulations of the Act. Its illegitimate status was exacerbated by the publication of a report that, to many, was nothing more than a confirmation of their fears that there was going to be only enough “airwave space” to accommodate, exclusively, those stations that the Hariri government *wanted* to license. In fact, the TC report was problematic in more than one way: first, the number of channels available for broadcasting licenses was “orally” announced by the TC President and the Hariri government. In other words, the “technical” report that the government relied on to allocate the limited number of licenses never actually stated *in writing* how many licenses were to be allocated. It simply provided a brief, one-page study of available frequencies (VHF, UHF, AM, and FM). As long as the document did not specify how many frequencies were needed by each broadcasting station, if universal coverage were to be ensured, it could not be said that the number of licenses to be granted, as announced by the Hariri government, was based on professional or technical criteria.

Second, the number of television stations to be licensed was “guessed at” or “leaked” to the public long before the TC announced the results of its report. Indeed, the number of available licenses was announced (through a slip of the tongue?) by a member of the Hariri cabinet in the parliamentary session where the draft bill of the Act was being discussed, years before the TC was even formed. For many commentators, this clearly meant that the report was purely a “technical disguise” for a political pre-decision.

Third, the number of licenses circulated by the Hariri government matched *perfectly* the number of major confessional groups in the country: Sunni, Shi’ite, Druze, Maronite, and Greek Orthodox. Not only that, but the political leaders from each of these confessions held leading positions in the Hariri government and were running the country (they were either members of the Parliament and/or the Council of Ministers) and each had their own (illegal) television station waiting to be licensed. The only confessional leader who did not own a station at the time of licensing (i.e., Shi’ite Speaker of Parliament Berri) was often derided by politicians and journalists for rushing to get his share of the media pie before he owned a single camera.

Finally, even if the TC’s make-up, proceedings, and study of frequencies had respected the letter of the law, the TC’s final report remains invalid and useless unless approved by international agencies responsible for regulating frequency allocation, as stipulated by the Act.

This has not been done to date.<sup>151</sup> Interviewed recently concerning the TC and its report, NAC Vice-President Shalak had no qualms asserting that “no technical committee was ever formed by ministerial decree in 1996”, that “no TC statutes were ever approved” until years after the passage of the Act,<sup>152</sup> and that “no written report ever came out of the TC”.<sup>153</sup> Indeed, both NAC Vice-President Shalak and Former Minister and political opponent of Hariri, Michel Samaha, affirmed (separately) that the number of licenses to be allocated was pre-decided by the Hariri government, irrespective of any technical report available.<sup>154</sup> Samaha, who was Minister of Information in the first Hariri cabinet, quoted Hariri as asking him to “produce a law for 4 television stations and maybe just two”.

The second policy instrument required to implement the 1994 Act was criticised even more vehemently than the TC. Whereas the TC – however illegitimately – (supposedly) assessed and then announced the number of licenses to be allocated, the NAC recommended to which applicants these limited licenses were to be granted. By doing so, it confirmed the already existing prevalent suspicion that the sole government intention behind the “alleged” reorganisation of the media landscape was actually to clamp down on the media and to restrict freedom of expression to a few chosen members of the (then) existing power elite.

A careful comparative analysis of the (largely published) criteria, according to which the NAC proceeded in its study of the applications, clearly shows that double standards were the norm throughout the evaluative process. Indeed, in every major area or requirement, the NAC failed to treat applicants equally. These major areas included: restriction on ownership (Lebanese ownership, pluralism of ownership, cross-ownership, and concentration of ownership) and the financial condition of the applicant (assets, capital, employees, etc.). For instance, many applicants were eliminated for reasons that had no foundation whatsoever in the Act or in the Guidebook, such as the pluralist religious identity of the shareholders. Another example concerns the elimination of only one of two applicants when both of them were found

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<sup>151</sup> In an in-house report addressed to the Minister of Councils on 12 June 2001, the NAC criticised the “temporary” allocation of frequencies and urged the government to complete the general plan (for frequencies) to be approved by international agencies for a final allocation of licenses (Article 8 of the Act). The same report mentioned ministerial decrees No. 49 and 53 issued on 4 November 1999, in which the government approved the “temporary” allocation of frequencies. This is proof, according to the NAC report, that the need for an ITU approved plan still exists.

<sup>152</sup> On 24 May 2000, ministerial decree No. 22 was issued according to which a technical committee was to be officially formed, *for the first time*. The decree included the names of the appointed members.

<sup>153</sup> NAC Vice-President Marwan Shalak, personal communication, 26 July 2001.

<sup>154</sup> Michel Samaha, personal communication, 14 January 1999; and Marwan Shalak, personal communication, 26 July 2001.

guilty of cross-ownership. Even if this “priority test”, which was introduced post-factum, could somehow be justified on logical grounds, it was applied inconsistently by the NAC. There were several other cases where applicants were rejected and others were accepted though both were guilty of the same infringement. For instance, LBCI was to be granted a license despite an incomplete organisational chart (among other listed infringements), whereas Al-Bayan radio was denied a license on the sole grounds of a missing organisational chart. The same LBCI was recommended for a license despite its dominant Christian ownership (91.9%), while Al-Manar was rejected solely for having more than 50% of its shareholders from the “same religious family” (70.5% of Muslim). Finally, the paradoxical cases of NBN and NTV should be mentioned. The first (i.e., NBN) was to be licensed before it physically existed or went into operation, and despite several infringements in its application. The second (NTV) was one of the most active and popular stations, with the highest output in Lebanese programming (sitcoms and series).<sup>155</sup> It cannot be said that NTV’s application was flawless, but it certainly was, *at least*, as satisfactory as any of the other successful applicants, especially LBCI and MTV. Still, NTV was rejected. When the infringements of NTV were corrected, they were not accepted because of a supposed “bureaucratic” imbroglio. Worse yet, the “hypothetical” NBN did not need the one year probation to prove that it could conform to the conditions of the Act or the Guidebook, whereas NTV, which was operating since 1991, with more than 300 employees, was denied the same opportunity granted by the Act.

In conclusion, not only was the NAC inconsistent in its application of the legal requirements, but there was a clear pattern to its discretionary assessment of applications. This assessment seems to have followed a specific logic or aim when “sifting” applications, in order to end up only with those applicants expected to win a license before they even applied: i.e., those stations affiliated with the major confessional groups in the country *and* whose owners were in power at the time licenses were allocated. Thus, only four private television stations were licensed:

1. LBCI which was predominantly Maronite-owned and included among its shareholders Christian ministers and MPs,
2. FTV which was founded by Muslim Sunni Prime Minister Hariri,
3. MTV which belonged to the Greek Orthodox family of Gabriel Murr, whose brother Michel Murr was Vice- Minister during the Hariri government in 1996, and

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<sup>155</sup> Between 1 June 1994 and 1 May 1996, NTV was responsible for generating 40% of the total local production, compared with 33% coming from the government-owned Tele Liban and 26% from the remaining television stations put together (NTV self-published brochure).

4. NBN associated with Muslim Shi'ite Speaker of Parliament Nabih Berri, the Druze highest religious leader Bahjat Gaith, and Druze political leader and minister in the Hariri government Walid Jounblatt (through his advisor and NBN shareholder and current Minister of Information Ghazi Aridi).<sup>156</sup>

Not only were the criteria and methods used to eliminate some applicants highly questionable, if not at times illegal, those very stations that obtained a license in September 1996, it can be argued, are, almost six years later, *de jure* "illegal". In the report sent to the Council of Ministers on 12 June 2001, the NAC duly pointed out that all those stations that were licensed (in 1996) have an illegal status. According to the Act, accepted applicants were to be put "in operation" for a year until an inquiry led by the Ministry of Information concluded that the administrative, technical, and financial conditions have been duly met. Only then, the NAC reminded the Council, can the licensing decree be issued (Article 32). In other words, when the NAC published its recommendations on 16 September 1996, the government, according to the law, should have allowed successful applicants to operate for a one year probation period (that could have been extended by law) to conform to all legal requirements. Only after these applicants are checked and approved of one year later, can the government legally grant them a license. However, in the case of the 1994 Act, and just one day after the NAC publicised its opinion on 16 September 1996, the Hariri cabinet allocated licenses by ministerial decree.

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<sup>156</sup> One common "joke" from that period was that NBN, instead of being an acronym for the National Broadcasting Network, was actually an acronym for Nabih Berri Network or No Broadcasting Network.

## CHAPTER SEVEN

### ANALYSIS OF THE LEBANESE BROADCASTING ACT OF 1994

#### INTRODUCTION

The present study set out to analyse the Lebanese Broadcasting Act of 1994, the first legislation of its kind to regulate private broadcasting in the Arab world. Both the passage of this landmark legislation and its implementation, however, caused a political upheaval and a wave of demonstrations in a country barely recovering from a 16 year long Civil War. Practically not a day went by between its initiation early in 1991 and its implementation in 1996 without the Act making the news. The most contentious issue, however, was related to the implementation phase: discontent with and rejection of the government's handling of broadcast applications was seen as a result of the Hariri government's general failure to deal with the Lebanese economic and political crises in post-war Lebanon.

In the present study, I wanted to achieve a dual objective as part of my general analysis of the 1994 Act: first to collect and organise (often highly inaccessible) primary data related to the 1994 Act and to make it available to the general public and the community of researchers. Results of this primary research thus made up the core of chapters 5 and 6. No attempt was made in those chapters, however, to *explain, interpret, or link* the collected data. This may have seemed, at times, frustrating to the reader. However, I felt compelled to make this distinction, *as much as possible*, in order to allow the findings based on primary research to stand on their own, in case my interpretation, based on a new approach to policymaking,<sup>1</sup> was not convincing enough. This brings us next to the second objective of the present study, which is dealt with exclusively in this chapter: i.e., making a *persuasive argument* – much the way a lawyer does - when attempting to interpret the data to explain the 1994 Act. Majone argues that, like policymaking, policy analysis has an *argumentative* function.<sup>2</sup> In his view, a policy analyst is a

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<sup>1</sup> As already explained in Chapter 2, this chapter makes use of Kingdon's version of policy streams approach. The following chapter, however, extends Kingdon's model to include the implementation phase. In his review of the field of policy analysis, John stressed the need for an "evolutionary" theory similar to Kingdon's in its "synthetic" approach yet more comprehensible and able to fill the existing gap in policy analysis (i.e., the study of implementation, which Kingdon did not deal with). Only such an approach, John argued, would be able to *fully* explain policy variation and change (1998, p.194). It should be emphasised that, to my knowledge, no such theory in policy analysis is available yet.

<sup>2</sup> Here I am heeding Majone's advice, and basing my approach in this chapter on the post-positivist conviction that it is impossible to separate values from rational analysis. See discussion of "ideas" theory of policy analysis in Chapter 2.

producer of policy arguments, more similar to a lawyer – a specialist in legal arguments – than an engineer or a scientist. His basic skills are not algorithmical but argumentative: the ability to probe assumptions critically, to produce and evaluate evidence, to keep many threads in hand, to draw for an argument from many disparate sources, to communicate effectively. He recognises that to say anything of importance in public policy requires value judgements, which must be explained and justified, and is willing to apply his skills to any topic relevant to public discussion.<sup>3</sup>

The analytical task of the present concluding chapters (i.e., chapters 7 and 8) is to answer the following questions: why did the 1994 Act create such a controversy? Which aspects or phases were specifically problematic, and why? Why was this landmark legislation introduced in the first place? What does the understanding of the policymaking process in this case tell us about the media, society, law, and change in Lebanon - a post-Civil War society with a media system in transition?

### **Policy analysis: establishing causation**

“Effective policy analysis”, as John writes, “needs to know how policy works”.<sup>4</sup> This means that establishing *causation* or the search for causal mechanisms lies at the heart of the analytical project. Indeed, it is only through an understanding of causation in public policy that reformers and activists can “know if their proposals for changes in decision-making procedures will work or not”.<sup>5</sup> It is this task of establishing causation, precisely, which is mostly lacking in policy research: whether out of cautiousness or for lack of adequate theorising or both, many studies end up being descriptive rather than explanatory.<sup>6</sup> This may be due to the complexity of the world of policymaking on the one hand, and to the fact that most policy research is funded by government bodies or private clients whose research interests lie elsewhere:

The difficulty of the research process does not mean social scientists should always fall back on description. The researcher has to make sense of complex chains of causation, appraise the other worlds of counterfactuals..., weigh up the importance of pieces of information, and revise explanations in the light of new discoveries. Political scientists should not despair that they do not have all the conditions and methods of natural scientists. They can still theorise and test hypotheses providing they are careful about their research design and infer correctly from the results. By avoiding looking for explanations of a law-like nature, political scientists instead can look for mechanisms which show the links in a causal model.<sup>7</sup>

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<sup>3</sup> Majone, 1989, pp. 21-22.

<sup>4</sup> John, 1998, p. 10.

<sup>5</sup> John, 1998, p. 10.

<sup>6</sup> John, 1998, p. 10.

<sup>7</sup> John, 1998, pp. 11 and 12.



In the present study, not only was finding such a general policy research model extremely difficult, the problem was compounded when specifically dealing with *communication* policy in an Arab country. Here, the dearth of existing theories in the field of communication research on changing media systems (especially in the Arab world), coupled with the general ethnocentrism of research in the field, made the very idea of attempting to analyse the Lebanese Broadcasting Act a formidable task. Still, this is precisely what the present analysis hopes to have achieved, though maybe somewhat unconventionally from a structural point of view. Wildawski likens policy analysts to “explorers [who] must be denizens of all domains, free to cross borders and trade for the offerings of each discipline”.<sup>8</sup> Moreover, he argues, policy analysis is “synonymous with creativity”, because it is “an activity for which there can be no fixed program”<sup>9</sup> and because there are “different ways of thinking about public policy”:<sup>10</sup>

... there can be no one definition of policy analysis. As old-time cooks used to say when asked how much spice a recipe required, “as much as it takes”. Policy analysis is an applied subfield whose content cannot be determined by disciplinary boundaries but by *whatever appears appropriate to the circumstances of the time and the nature of the problem*.<sup>11</sup>

Just because policy analysis is multi-disciplinary and even multi-theoretic,<sup>12</sup> however, should not mean that “anything goes” in policy analysis. Landau has already warned that “with so extensive a domain of inquiry, the enterprise is bound to be disordered... No field of inquiry, no specialisation can be built upon an unrestricted and indefinite domain”.<sup>13</sup> “If policy analysis is everything”, Wildawski concurs, “then it is nothing”.<sup>14</sup> I could not agree more. Here, Wildawski stresses the importance and interdependency of both “art” and “craft” required in the field of policy analysis: while *art* and imagination help the analyst discover new solutions

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<sup>8</sup> Wildawski, 1987, p. 386. Interestingly, Kingdon refers to his book on *Agendas, Alternatives, and Public Policies* as “an intellectual journey” with the reader acting as “traveller” (1984, p. 2).

<sup>9</sup> Wildawski, 1987, p. 3.

<sup>10</sup> Wildawski, 1987, p. 15.

<sup>11</sup> Wildawski, 1987, p. 15, emphasis added.

<sup>12</sup> This is the “evolutionary approach” suggested by Kingdon (1984), for example, and praised by John (1998) in his review of the field of policy analysis.

<sup>13</sup> Landau as quoted in Wildawski, 1987, p. 387.

<sup>14</sup> Wildawski, 1987, p. 387.

to problems, *craft* is very much needed to justify those solutions and to persuade the policy community.<sup>15</sup>

In sum, the “new” approach adopted for this analysis manifests itself in a significant way in the structure chosen for the study. Chapters 5 and 6 constitute the main contribution of this study - or the information and data collected and organised using exclusively primary sources. In contrast to those two mostly *descriptive* chapters, chapters 7 and 8 are highly *evaluative*. They make up the *argumentative*, explanatory part of this study of the 1994 Act. They try to *make sense* of the research findings in chapters 5 and 6, to use the data collected from various sources and with different methods as *evidence*, and to make a persuasive *argument* when establishing *causation* in the policy making process related to the 1994 Act.<sup>16</sup>

#### ANALYSIS OF THE POLICYMAKING PROCESS: THE 1994 ACT

As already argued in Chapter 2 on theories and methods of policy analysis, Kingdon’s policy streams approach has, of all existing theories of policy analysis, been found most capable of accounting, in general, for complexity and *change* in the policymaking process. This is especially true in the case of Lebanon, since Kingdon’s model, more than any other existing model, is fluid enough to be adaptable to societies and systems other than the one for which it was developed (i.e., the US). The policy streams approach, however, was developed by Kingdon to explain only two early phases of the policy making process: first, why some issues become prominent within the policy community and not others (i.e., *the problem formation* or

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<sup>15</sup> Wildawski, 1987, p. 389.

<sup>16</sup> Majone distinguishes between the following categories: “data”, “information”, “evidence” and “argument”. Argument, he writes, is what connects data or information with the conclusion of an analytical study. Most importantly, he writes: “the structure of the argument will typically be a complex blend of actual statements and subjective evaluations. Along with mathematical and logical deductions it will include statistical, empirical, and analogical inferences, references to expert opinion, estimates of benefits and costs, and caveats and provisos of different kinds. This unavoidable complexity makes any direct, informal testing of the argument quite impossible. Whatever testing is done must rely on a variety of standards that depend on the analytical methods employed, on the plausibility and robustness of the conclusions, and an agreed-upon criteria of adequacy and effectiveness.” Evidence, he adds, is not synonymous with the data or information collected. It is “information selected from the available stock and introduced at a specific point in the argument in order to persuade a particular audience of the truth or falsity of a statement. Selecting inappropriate data or models, placing them at a wrong point in the argument, or choosing a style of presentation that is not suitable for the intended audience, can destroy the effectiveness of information used as evidence, regardless of its intrinsic cognitive value. Thus, criteria for assessing evidence are different from those used for assessing facts. Facts can be evaluated in terms of more or less objective canons, but evidence must be evaluated in accordance with a number of factors peculiar to a given situation, such as the specific nature of the case, the type of audience, the prevailing rules of evidence, or the credibility of the analyst” (Majone, 1989, pp. 10 - 11). For more details on this distinction between the different categories, see Majone, 1989, Chapter 3.

*definition* phase), and secondly why some alternatives or proposed solutions are considered and not others (i.e., the specification of alternatives phase). This second phase is what I referred to in my study as the *policy formulation* of public policy exclusively studied by Kingdon<sup>17</sup> and briefly dealt with when explaining the various stages of policymaking in Chapter 2 of this study.

In the present chapter, I will make use of Kingdon's model to explain several initial stages of the policymaking process in respect to the 1994 Act (i.e., problem definition, policy formulation, and policy adoption). More importantly, however, my analysis will be extended beyond the phases Kingdon dealt with to include a key (final) phase, if not *the most important phase* in the entire policymaking process, i.e., the implementation phase. Chapter 8 will attempt to demonstrate that implementation was indeed the *key* aspect of the story of the Lebanese Broadcasting Act of 1994.

### **Problems, policies, and politics**

For Kingdon, the policymaking process or "game" is the result of the interaction of three different, independent processes or streams: problems, policies, and politics. As he argues, each of the above-mentioned streams may be (individually and independently) responsible for initiating change. One influence in the early phases of policy making (which introduces the need for a change in policy)<sup>18</sup> may thus come from the problems stream or "the inexorable march of problems pressing in on the system", with some crisis or prominent event (such as the collapse of a bridge or plane crash) signalling the emergence of such problems.<sup>19</sup> Another source of pressure for policy change may be found in the policies stream: this pressure may be prompted by the development of a new technology, for instance, and sometimes even by ideas which sweep policy communities "like fads".<sup>20</sup> Finally, political processes (or the politics stream) also affect the agenda. These could be anything from a change of administration,

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<sup>17</sup> Kingdon actually uses a slightly different terminology to describe those stages of policymaking. For instance, he refers to the problem definition and policy formulation stages (mentioned above) as the "agenda-setting" phase of policymaking (1984). However, he makes a distinction between processes of agenda setting and of specifying of alternatives. As he argues, "perhaps agenda setting and alternative specification are generated by quite different processes". For instance, he writes, presidents might be more important in setting the agenda but have much less control over the alternatives which are mostly generated by experts or members of Congress (1984, p. 4).

<sup>18</sup> In the present analysis, the 1994 Act - being a piece of landmark legislation - marks a significant policy change as far as broadcast legislation in Lebanon is concerned.

<sup>19</sup> Kingdon, 1984, p. 18.

<sup>20</sup> Kingdon, 1984, p. 17.

election results, and public opinion, to “swings of national mood”.<sup>21</sup> The three process streams are largely independent of one another, each developing “according to its own dynamics and rules. But at some critical juncture the three streams are joined, and *the greatest policy changes grow out of that coupling*” of the problems, policies, and politics streams.<sup>22</sup> This critical juncture or point in time, when the three streams come together and major policy change takes place, is what Kingdon refers to as a “policy window”. It is to policy entrepreneurs what “an opportunity for a launch” is to space shots.<sup>23</sup> This policy window, most importantly, is unpredictable, infrequent, and when it actually opens, it does not stay open for a long time.

In addition to exploring the various processes or sources of pressure for policy change, Kingdon introduces the various participants or “players in the game”.<sup>24</sup> These are : the administration, interest groups, experts and consultants, the media, elections-related participants, and public opinion.<sup>25</sup>

Having briefly outlined Kingdon’s approach,<sup>26</sup> I will now apply it to the problem definition, policy formulation and policy adoption stages of the policy making process in the case of the 1994 Act. I will thus discuss what those streams were in the case of the 1994 Act, which windows opened up and when, and who the players were. In other words, I will explain *why* such a landmark piece of legislation was introduced in the first place; *why* the Act (as voted for in parliament) was chosen among the existing alternatives; *why* it was implemented the way it was implemented; *who* the major participants were; and, finally, *what* the policymaking process in the case of the 1994 Act tells us more generally about media policy, society, and change in Lebanon. The analysis will not necessarily be linear or chronological, the way a (historical) narrative usually is, even though the chapters themselves were set up this way (i.e., based on a linear, “stages” model of policymaking). Moreover, since the analysis is *retrospective*, it is actually possible to look back on the finished policymaking process and its outcomes, and see how the various stages relate to and even explain each other. Indeed, some stages of the process

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<sup>21</sup> Kingdon, 1984, p. 17.

<sup>22</sup> Kingdon, 1984, p. 19, emphasis added.

<sup>23</sup> Kingdon, 1984, p. 166.

<sup>24</sup> Kingdon, 1984, p. 16. Each of the participants, moreover, can be involved in each of the policy streams, crossing freely between one and the other.

<sup>25</sup> Kingdon, 1984, chapters 2 & 3.

<sup>26</sup> See Chapter 2 for a more detailed review.

or “gaps” in the narrative might need to be “guessed at” or inferred, based on research findings related to later stages or events in the process. It cannot be overemphasised here that, apart from the original data and information collected from primary sources in chapters 5 and 6, my *analysis* of the entire policymaking process in chapters 7 and 8 is an attempt to *interpret* the collected data. This interpretation makes use of the primary research findings (of chapters 5 and 6) as *evidence* whenever possible to support my *argument* concerning *this* story of the 1994 Act. Here, I would like to quote Kingdon at length:

The processes we will discuss are *extraordinarily complex*, and the *telling of the story is thus complicated*. Unlike the juggler who keeps several bowling pins in the air at once, we will concentrate on one pin at time, allowing the rest to clatter to the floor. If readers are patient, they will notice that the seemingly neglected pins will each receive attention in their turn, and that we will finally assemble them into a *pattern as coherent as is allowed...*<sup>27</sup>

### ***1. The problems stream***

To start with, Kingdon asks, what prompts dramatic change in governmental agenda? Indeed, he adds, “how does a given condition get defined as a problem for which government action is an appropriate remedy?”<sup>28</sup> The problems stream is usually an early phase of the policymaking process where the existence of some problem (or problems) is recognised and for which, subsequently, a solution (e.g., a policy) is sought within the policy community. In the case of Lebanon, towards the end of the Civil War, the dozens of unlicensed broadcast stations were considered to be a “problem” or hurdle in the way to peace and were repeatedly blamed for their contribution to civil strife. Their regulation or “reorganisation” was thus considered a must, in order to fully end the state of war.<sup>29</sup> Though problem definition or identification may seem to be a straightforward process, Kingdon agrees with those post-positivist policy analysts who say it is not. They argue that problem definition (or deciding what needs to be solved) is quite a subjective process,<sup>30</sup> and that the very act of determining whether or not a given

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<sup>27</sup> Kingdon, 1984, p. 20, emphasis added.

<sup>28</sup> Kingdon, 1984, p. 17.

<sup>29</sup> Taef Agreement, Section A, Paragraph III, Article F.

<sup>30</sup> Dery (1984), Majone (1989), Dunn (1981), Wildawski (1987), and Pal (1992). As Dunn explains, the view that policy problems exist independently of the defining agency is “naïve”. “The same facts”, he writes, “are often interpreted in markedly different ways by different policy stakeholders” (e.g., government statistics which show that crime, pollution, and inflation are on the rise) (Dunn, 1981, p. 97). However, Dery notes, the view that problems are inherently subjective should not “mean that difficulties do not objectively exist” (e.g., hunger, death, etc.) (1984, p. 4).

problem exists is itself “a matter of interpretation”.<sup>31</sup> As Dery writes, problems are defined as such not because of certain qualities or properties inherent in them, but “by virtue of interpretation and by choosing the goals or values that one wishes to serve via solution”.<sup>32</sup> According to Dunn, “policy problems are in the eye of the beholder”.<sup>33</sup> More importantly, equating an “undesirable phenomenon” with a “problem” brings to the fore the defining agency, or “who may legitimately define certain conditions [as] a social problem” that needs to be solved.<sup>34</sup> According to Becker, “a problem is not the same to all interested parties.”<sup>35</sup> Indeed, starting with the Carlton conference - organised by the Ministry of Information to involve civil society in discussing the broadcast legislation to be introduced – there were experts, academics, politicians, and media professionals who vehemently rejected the identification of the proliferating unlicensed media as “a problem”. Some even argued the opposite case, i.e., that the problem was the government-owned stations themselves:<sup>36</sup> by failing to fulfil their mission of informing the public during the war, the official media served to reinforce the importance of the private broadcast media in the eyes of the Lebanese public. In his survey of the Lebanese broadcast media during the Civil War, Boyd criticised the official media, which, by trying to stay neutral, ended up being non-responsive “to the needs of the Lebanese population during the civil war”.<sup>37</sup> Boyd, for instance, described how “there were times, even during the heaviest fighting in 1975 and 1976, when one would not know from radio programs that the country was in the midst of a devastating war”. Television, he added, “reflected the situation even less”.<sup>38</sup>

The present analysis, far from wanting to establish whether the “unofficial,”<sup>39</sup> unregulated broadcast media that proliferated during the Civil War were *truly* a “problem” or not (that

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<sup>31</sup> Kingdon, 1984, p. 91.

<sup>32</sup> Dery, 1984, p. 7. Maier goes even further, saying that groups “look for solutions even *before* they are certain of what the problem is” (as quoted in Dery, 1984, p. 57, emphasis added).

<sup>33</sup> Dunn, 1981, p. 97.

<sup>34</sup> Dery, 1984, p. 22. Kingdon refers to the problem of problem definition as “struggles over definition” (1984, p. 110).

<sup>35</sup> Becker as quoted in Dery, 1984, p. 25.

<sup>36</sup> See Chapter 5.

<sup>37</sup> Boyd, 1993, p. 75.

<sup>38</sup> Boyd, 1993, p. 75. For details, see Chapter 4, section on media during the Civil War.

<sup>39</sup> Boyd prefers this term over “clandestine” or “rebel” broadcast stations. The reason he gives is that the origins and locations of these stations were known, but they were broadcasting “on frequencies that the Lebanese

would be a different research topic altogether), focuses on the following: *how* the defined “policy problem” of the unofficial media was *solved* by one of the post-Civil War governments (i.e., the Hariri government), and how ultimately this specific problem definition may have served narrow political and economic interests, in addition to “reorganising” the Lebanese broadcast media.

Policy analysis sees problem solving and decision making as being “closely related”.<sup>40</sup> In the case of the 1994 Act, it should be remembered that the “problem” of the broadcast media was *pre*-defined or diagnosed several years *before* Hariri was appointed Prime Minister and actively sought to regulate the media.<sup>41</sup> Still, the “close relationship” between problem solving and decision making is, in some ways, fairly obvious regarding broadcast legislation in Lebanon. In a way, the very act of “diagnosis” or problem definition during the Taef negotiations did dictate the course of action or remedy to be taken by the first post-Civil War government, i.e., by seeking to impose regulation.<sup>42</sup> In other words, by seeing broadcast regulation as the solution to the Lebanese media problem, it was inevitable, at least from a purely technical perspective, that only a few applicants were going to end up being licensed. This was especially problematic in the case of Lebanon because several hundred broadcast stations were *already* in operation, and had invested (to varying degrees) in equipment and personnel. Moreover, connecting the problem definition phase to the policy design or formulation phase is quite tempting and would add credence to the dominant popular claim that the entire Act was engineered all along to serve the interests of the politico-economic elite. In the case of the 1994 Act, it is very difficult to prove to what extent Hariri and other policy entrepreneurs played a role in the early stages of problem definition during the Taef negotiations. This will probably remain that way as long as the minutes of the Taef Agreement continue to be classified.<sup>43</sup> It is possible, however, to uncover to whose advantage such

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government had not registered with the International Telecommunications Union, a United Nations agency” (1993, p. 77).

<sup>40</sup> Dery, 1984, p. 25.

<sup>41</sup> It should be noted, for those readers unfamiliar with the history of the negotiations in Taef, that Hariri was an important figure in those negotiations. *La Revue du Liban*, 18-25 May, 2002, pp. 12-13.

<sup>42</sup> Dery, 1984, p. 57. Dery writes that “diagnosis is probably the single most important routine, since it determines in large part, however implicitly, the subsequent course of action” (p. 57).

<sup>43</sup> The “godfather” of the Taef Agreement is former Speaker of Parliament Hussein Husseini. When recently asked about making public the minutes of the Taef discussions, he said that these minutes will have to remain classified until the situation is “normal” again and the participants in the Taef negotiations decide by a majority vote to make them public. *La Revue du Liban*, 18-25 May, 2002.

problem definition and (subsequently) problem solution worked.<sup>44</sup> As Kingdon writes, “there are great political stakes in problem definition. Some are helped and others are hurt, *depending on how problems get defined.*”<sup>45</sup> In the case of the 1994 Act, casting aside the connection between problem definition and policy design or formulation for the above-mentioned reasons, some of these political stakes may still be *deduced* by focusing on later processes of policymaking (i.e., proposing alternatives, bargaining, policy adoption, and implementation). By carefully studying who “won” and who “lost” and why, and by looking for *recurrent* patterns of behaviour, choices, and courses of action among policy entrepreneurs or major players throughout the entire policymaking process, I hope to uncover what some of these “stakes” were and which group involved in the policymaking process was powerful enough to successfully push for them.

## 2. *The policies stream*

Another important contributor to governmental agendas and alternatives is the policies stream, where policy proposals are generated by the community of specialists and policy entrepreneurs. These entrepreneurs, Kingdon explains, are advocates from various areas of the larger policy community who are willing to invest “time, energy, reputation, and sometimes money – in the hope of a future return.”<sup>46</sup> This return or incentive might be anything from the simple satisfaction of participating in the process to the promotion of personal and “material” interests.<sup>47</sup> Different policy entrepreneurs naturally come up with different proposals for solving a diagnosed problem. In this “policy primeval soup,”<sup>48</sup> the selection process is far from being rational. Rather, it is “evolutionary”, a

selection process in which some of these ideas survive and flourish. With this reasoning, the origins become less important than the processes of mutation and recombination that occur as ideas continuously confront one another and are defined until they are ready to enter a serious

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<sup>44</sup> This does not necessarily preclude the involvement of political elite, including Hariri, early on in the problem definition stage (he was a major negotiator in Taef). This is just to say that I have no evidence to make such assertions, even if they could be true.

<sup>45</sup> Kingdon, 1984, p. 110.

<sup>46</sup> Kingdon, 1984, p. 122.

<sup>47</sup> Wilson as quoted in Kingdon, 1984, p. 123.

<sup>48</sup> Kingdon borrows the “soup” metaphor from biology. He likens the generation of alternatives and proposals in the policy community to the process of “biological natural selection”. For instance, he compares the floating around of ideas in policy communities to the floating around of molecules in what “biologists call the ‘primeval soup’ before life came into being” (1984, p. 116).



decision stage. Thus the order ideas are tried out sometimes approaches randomness, but the key to understanding the process is knowing the conditions under which ideas survive.<sup>49</sup>

In this primeval soup, not only do some ideas survive and others do not, the surviving ideas, most importantly, do not conserve their initial shape. This change in public policy ideas, Kingdon argues, follows an evolutionary pattern where “recombination”, rather than “mutation”, occurs. In other words, he writes,

Wholly new ideas do not suddenly appear. Instead, people recombine familiar elements into a new structure or a new proposal. This is why it is possible to note, “There is no new thing under the sun,” at the very same time change and innovation are being observed. Change turns out to be recombination more than mutation.<sup>50</sup>

Based on the analysis of the text of the 1994 Act in Chapter 5, it could be argued that the new broadcast legislation in its final shape – though a piece of landmark legislation in its own right – was not really “new” : it was more of a hybrid creation, a result of the *combination* or *recombination* of both the old and the new. This is especially obvious when comparing the 1994 Act to the “new” French broadcast legislation of 1986 and the “old” Lebanese Press Act of 1962. A good example which can explain such a “recombination” (previously referred to in Chapter 5 as “contradiction”), can be found in the Act’s restriction of ownership. On the one hand, the 1994 Act, much like the French Law of 1986, requires pluralism in the ownership of each broadcast station by fixing a ceiling for an individual’s shares to prevent a single person or corporation from monopolising a broadcast medium. By contrast, this restriction is altogether non-existent in the older Press Law. When it comes to foreign ownership, however, unlike the French Law, the Act strictly forbids ownership of the broadcast media by any non-Lebanese entity. Here, the 1994 Act can be seen as the extension or continuation of the same ownership restriction already existing in the Press Law of 1962.<sup>51</sup>

Another important process at work in the policies stream is referred to by Kingdon as the “softening up” process.<sup>52</sup> This softening up process is essential for opening up an initially “inertia-bound” policy community and the larger public, resistant with respect to major changes. It gets them “used to new ideas” and builds acceptance for new policy proposals.<sup>53</sup>

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<sup>49</sup> Kingdon, 1984, p. 124.

<sup>50</sup> Kingdon, 1984, p. 124.

<sup>51</sup> See section on “Lebanese ownership” and “Concentration of ownership” in Chapter 5.

<sup>52</sup> Kingdon, 1984, p. 128.

<sup>53</sup> Kingdon, 1984, p. 128.

Then when a short-run opportunity to push their proposals comes, the way has been paved, the important people softened up. Without this preliminary work, a proposal sprung even at a propitious time is likely to fall on deaf ears.

In the case of the 1994 Act, five full years elapsed between the time when the Taef Agreement stipulated the “reorganisation” of the media in 1989 and the passage of the first legislation on private broadcasting in 1994. Two additional years were needed before the Hariri government could finally implement the new law. Indeed, this “delay” in the policymaking process prompted MP Khatib, during the parliamentary session of July 1994, to accuse all post-Civil War governments, including the government of the day (i.e., Hariri’s) of dereliction of duty in the area of broadcast regulation.<sup>54</sup> However, with hindsight, and considering the nature of the new legislation, this “delay” seems to resemble Kingdon’s “softening up” process, having been necessary to ensure serious consideration and acceptance for this landmark proposal in a highly sensitive area (i.e., freedom of expression and pluralism in the media).<sup>55</sup> Indeed, the sequence of events (which led to the passage of the Act) described in Chapter 5 makes sense when seen from the perspective of a softening up process : the first step in this process was meant to acquaint the policy community, the media, and the general public in Lebanon with the idea that there was a need to regulate broadcasting. This was no easy task. It should be remembered that such regulation was being introduced after the Lebanese population had, over the long period of Civil War, developed a taste for pluralism in the broadcast media. More importantly, the proliferation of these multi-confessional sources of information and entertainment took on more meaning considering the unrealistic and unconvincing policy of “neutrality” on the part of the official media.<sup>56</sup> Minister of Information Mansour (a minister in the first post-Civil War government) made a commendable step in the direction of democracy by involving civil society in the early deliberations. Ultimately, however, he failed to introduce any draft proposals. Member of the new Hariri government, the next Minister of Information, Michel Samaha, continued the softening up process. He knew that, first, he had to work on “confidence building” among the unofficial media. Rather than immediately seek to introduce an unpopular, authoritative piece of legislation, he proposed a “voluntary” code of ethics for the private media to abide by. This temporary code of ethics would be binding (through self-censorship) until the passage of a new law. Samaha’s strategy seemed to be working

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<sup>54</sup> Minutes of the parliamentary session, 13 July 1994.

<sup>55</sup> For case histories that underline the same point in the US, see Kingdon, 1984, pp. 128-130.

<sup>56</sup> See Chapter 4, section on the media during the Civil War.

temporarily, and it did get the consent of the policy community (including the private media lobby) and the general public. However, the situation did not change significantly. Eventually, it became evident that the broadcasters had little respect for the code and that a draft bill was not being proposed. Stagnation set in once again, until the three policy streams met, and a “policy window” opened up.<sup>57</sup>

Finally, Kingdon explains the “criteria for survival” in the policies stream that enable certain ideas or proposals to survive or to be short-listed, while others don’t. Proposals that fail to meet these criteria, he writes,

are not likely to be considered as serious, viable proposals. If a proposal initially fails one or more of these tests, it might be reworked or combined with something else, and then floated again [in the policy primeval soup]. A proposal that survives usually satisfies these criteria.<sup>58</sup>

One such criterion, for instance, is “public acquiescence”.<sup>59</sup> Specialists in the policy community know that, ultimately, “their proposals must be acceptable to the public” if they are ever to be considered.<sup>60</sup> Another criterion is what Kingdon calls dominant ideology or political culture.<sup>61</sup> This ideology which affects public policy outcomes in different ways, is “more at work in some domains than in others, more at work under some circumstances than others.”<sup>62</sup> In the case of Lebanon, the political culture of confessionalism can be seen as the single most important criterion that affected the selection and survival of some policy proposals, being the dominant ideology or political culture that permeates all walks of Lebanese life.<sup>63</sup> In the case of the 1994 Act, confessionalism was indeed what made some proposals more prominent on the government agenda than others. Thus, in the area of broadcasting, just like in the council of ministers, parliament, and public administrations, *all major confessions - depending on their size – had to have a share in the pie*. According to this principle,

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<sup>57</sup> I will return to this “policy window” after I finish discussing all three policy streams.

<sup>58</sup> Kingdon, 1984, p. 131.

<sup>59</sup> Kingdon, 1984, p. 138.

<sup>60</sup> Kingdon, 1984, p. 138.

<sup>61</sup> Kingdon, 1984, p. 133.

<sup>62</sup> Kingdon, 1984, p. 135.

<sup>63</sup> See Chapter 3.

(termed “consociation” as already explained in Chapter 3), all participants realise that co-existence and peace in multi-confessional or multi-ethnic societies cannot be achieved unless all parties agree to share power. This is indeed what holds this confessionally-divided country together. In other words, any perceived imbalance in this power division threatens the fabric of the country and may easily lead to armed conflict – which was indeed the case several times throughout the last two centuries in Lebanon.<sup>64</sup> Maintaining this confessional balance was thus a national priority, a matter of life and death for the country, especially considering the fact that communities that have been defeated or excluded from power sharing will most likely “risk subjugation or the loss of their identity, if not their lives”.<sup>65</sup>

Naturally, slicing up of the media pie was a major area of struggle and control between the different confessional communities in post-Civil War Lebanon. Freedom of expression for all (or to be exact, for all *major* confessional groups), was a “red line which may not be crossed,”<sup>66</sup> lest the country fall back into chaos and civil strife. One such instance (i.e., crossing the red line of freedom of expression) did indeed occur when an early government draft proposal stipulated that “prior censorship” was to be applied to all licensed stations. When asked to defend such a stipulation during one of the parliamentary sessions, Hariri immediately retracted the suggestion, attributing it to a “mistake”.<sup>67</sup> Kingdon calls such “faulty” ideas “trial balloons” which give policy makers or entrepreneurs the possibility to test the feasibility or acceptability of their proposals.<sup>68</sup>

This dominant political culture of confessionalism indeed acted as a *constraint* on policymakers during the discussion and implementation of the 1994 Act. The Act thus had to accommodate the various confessional groups by protecting pluralism both in ownership and in programming.<sup>69</sup> Confessionalism also explains several successful ideas that survived in the policy soup, such as pluralism in content, limits on concentration of ownership, etc. Finally, as will be argued later on, it is this prevalence of the political culture of confessionalism and its

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<sup>64</sup> See Chapter 3.

<sup>65</sup> Hanf, 1993, p. 26.

<sup>66</sup> *Al-Safir*, 13 January 1992.

<sup>67</sup> See Chapter 5, section on “draft bills”.

<sup>68</sup> Kingdon, 1984, p. 131. However, as one respondent warns when interviewed by Kingdon, one should avoid “stupid” or “fatal” mistakes if they don’t want their proposal to be discredited.

<sup>69</sup> Interestingly, the 1994 Act does not openly recognise religious or confessional pluralism. Instead, it seeks to protect pluralism of opinions. One explanation of such an omission could be that the Act is a product of the

influence on the policymaking process which will be especially visible in the implementation phase, when the existing frequencies were distributed *exclusively* among the five major confessional groups in the country.

In sum, according to Kingdon, a policy community “produces a short list of ideas”.<sup>70</sup> Ideas floating in the policy soup go through a selection process whereby some ideas are formulated, survive the process of softening up, and largely satisfy the criteria by which specialists evaluate proposals. There may not be a single proposal on which all specialists agree, but at least a set of a few prominent alternatives has risen to the top of the policy primeval soup, ready for policy makers to consider.<sup>71</sup>

In the case of the 1994 Act, many ideas proposed as early as 1991 during the government-sponsored Carlton conference<sup>72</sup> made it to the top of the policy soup by the spring of 1994, when several proposals were circulating. Surprisingly, and as has already been shown in Chapter 5, almost all of the recommendations that emerged by the end of the conference survived the various tests and made it not only to the later stages of selection, but to the final text of the Act itself.<sup>73</sup> The most important of these “surviving” ideas were the following: allowing for the existence of private broadcasting side by side with state broadcasting, safeguarding pluralism in the media, preventing monopoly and concentration of ownership, prohibiting foreign ownership of the media, requiring proof of the financial viability of applicant stations, setting up a technical committee to study and organise the number of frequencies available for allocation, setting up a higher national council to supervise the media, protecting and encouraging Lebanese production and content, catering to regional concerns, and providing employment to media graduates. Judging from these surviving ideas, it seems that Lebanese civil society felt the need to regulate the operation and content of the media, but only after making sure that pluralism in the media outlets was preserved and there was no going back to pre-Civil War government monopoly over broadcasting.

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Second Republic which is supposed to work on eradicating political confessionalism (according to the Taef Agreement).

<sup>70</sup> Kingdon, 1984, p. 131.

<sup>71</sup> Kingdon, 1984, p. 139.

<sup>72</sup> This is actually a common, shorter title for the “Conference for the Reorganisation of the Media in Lebanon”, which was organised in May 1991 by the Ministry of Information in order to discuss, with civil society, the introduction of a new broadcast legislation. See Chapter 5.

<sup>73</sup> See Chapter 5, section on “shaping forces”.

### 3. *The politics stream*

“Independently of the problems and policy streams”, writes Kingdon, “the political [or politics] stream flows along according to its own dynamics and its own rules”.<sup>74</sup> It is composed of various things such as public mood, election results, change of administration, pressure group campaigns, and so on. As Kingdon argues, public policy analysis usually treats the politics stream or these political events as if they were exogenous to policy making and not an integral part of the process. More importantly, Kingdon sees change as a “function of the shifts of important participants (e.g., a change of administration or the influx of new legislators), or as a response to shifts in national mood or interest group configurations”.<sup>75</sup>

To start with, “the national mood” refers to “the climate in the country, changes in public opinion, or broad social movements”.<sup>76</sup> Members of the policy community are found to pay serious attention to the national mood when coming up with policy proposals.<sup>77</sup> Depending on the circumstances, it can work as a promoter of certain items on the government agenda or serve as a constraint, pushing other items into obscurity. In the case of post-Civil War Lebanon, and during the design (or policy formulation) stage of the Act, the national mood was indeed anything but “fertile ground” for government regulation, especially regarding the reduction of the number of the broadcast media. To start with, the highly segmented Lebanese population had grown accustomed to a diverse media landscape, with each confessional or political group enjoying being able to access its preferred source of information and entertainment. Though private broadcasting was non-existent prior to the Civil War,<sup>78</sup> the situation changed dramatically when unofficial broadcast media (basically radio stations) started operating during the war, becoming a staple of Lebanese daily life.<sup>79</sup> This development

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<sup>74</sup> Kingdon, 1984, p. 162.

<sup>75</sup> Kingdon, 1984, p. 146.

<sup>76</sup> Kingdon, 1984, p. 146.

<sup>77</sup> The national mood is “sensed in different ways”. One way is for elected politicians to know about their constituents’ mood through mail, town meetings, delegations, etc. Another is to follow the media, “which is filled with commentary on and impressions of the nature of the times” (Kingdon, 1984, p. 149).

<sup>78</sup> *Tele Liban*, as shown in Chapter 4, was an unusual mix of private ownership and government control.

Nevertheless, it was a mouthpiece of the government of the day and precluded fair access by opposition members from the various political and confessional groups.

<sup>79</sup> I remember, as a child growing in Lebanon during the Civil War, how my parents and family members constantly tuned in to “Muslim” radio stations to know about the condition of the roads in “our part” of the city. Our Christian friends, by contrast, living in the “Christian-dominated” part of Beirut, had to tune in to “their” radio

was consolidated especially towards the end of the Civil War. It could also be seen as a result of a “spill-over” effect<sup>80</sup> of deregulation in general, reflecting a wave of broadcast deregulation that had already swept most of Western Europe and was moving towards Eastern Europe (i.e., the ex-Soviet bloc). Indeed, 1985 marked the beginning of the first “unofficial” television station (LBCI) in Lebanon. This event was soon followed by the founding of other (unlicensed) television stations (namely NTV in 1991). Meanwhile, in Europe (including France), legislators were drafting, sometimes for the first time, laws to regulate private terrestrial broadcasting, cable, and satellite.<sup>81</sup>

In sum, once the (private broadcasting) genie was out of the bottle, the Lebanese policy community knew well that it could not put it back in, not if it wanted to achieve reconciliation and end the state of war, as stipulated by the Taef Agreement. Not only was the national mood hostile towards shutting down existing broadcast stations, it was generally very suspicious of the political leadership in post-Civil War Lebanon, including its handling of the media file. As already explained in Chapter 3, it was the Taef Agreement that made it first possible, at least on paper, to end the state of the war. However, several groups (mostly Maronite Christians) were strongly dissatisfied with the Agreement itself.<sup>82</sup> This was especially so after the agreement reduced the powers of the Maronite president of the Republic and gave legitimacy to Syrian presence on Lebanese soil (which many Christian denominations, especially Maronites, continue to see as occupation). Even those groups that initially accepted the Taef Agreement soon realised that it was not being properly implemented by post-Civil War governments.<sup>83</sup>

A second component of the politics stream is made up of “organised political forces”<sup>84</sup> such as interest groups and political parties. Most of the time, a balance between these forces supports the status quo and works against the introduction of (radical) change. Decision makers, at least in functioning democracies, respect this balance and anticipate the cost they

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stations to find out whether certain areas in their part of the city were being bombed or not. In other words, civilians did not venture out of their home before getting clearance from their “trusted” radio station.

<sup>80</sup> A certain policy can have a spillover effect from one country to another, or in the same country from one policy area to another. For instance, the experience of deregulation in aviation may be used by proponents of deregulation in other areas (e.g., trucking, rail, and so on). For more details on a policy’s “spill over” effect, see Kingdon, 1984, pp. 192-194.

<sup>81</sup> Downing (1996), Comor (1996), and Kuhn (1995).

<sup>82</sup> See Chapter 3, section on the “Emergence of the Second Republic”.

<sup>83</sup> In a recent magazine interview, former Speaker of the House Hussein Husseini – “godfather” of the Taef Agreement – criticised post-Civil War governments (especially the Hariri government) for being “selective” in their implementation of the Agreement. *La Revue du Liban*, No. 3845, 18-25 May, 2002.

<sup>84</sup> Kingdon, 1984, p. 150.

will have to pay if any of their proposals were to meet intense opposition.<sup>85</sup> We have already discussed “trial balloons” in the policies stream, specifically when the Hariri government’s draft bill included a provision on prior censorship. In the case of the 1994 Act, the balance of organised forces was not in favour of change, especially when change in this case meant closing down most of the existing broadcast media, and threatened what was perceived to relate directly to fundamentals of freedom of expression and pluralism in the recovering country.

Bargaining, concessions, and compromises were indeed integral parts of the policy process leading up to the passage of the 1994 Act. They are a major aspect of the politics stream and can be summed up with the term “consensus building”.<sup>86</sup> Unlike the consensus that can be found in the policies stream, where an idea survives after passing through a series of tests or “criteria for survival” and where “persuasion” is the word, consensus within the political stream is largely about “bargaining”:

Here, coalitions are being built through the granting of concessions in return for support of the coalition, or as actual or potential coalition members make bargains. Joining the coalition occurs not because one has simply been persuaded of the virtue of that course of action, but because one fears that failure to join would result in exclusion from the benefits of participation. The proposals have already been discussed and honed in the political stream. The actors are now trying to reach toward a winning coalition. Thus the discussion is more likely to be, “You give me my provision, and I’ll give you yours”, rather than, “Let me convince you of the virtue of my provision”.<sup>87</sup>

In Chapter 5, I described the result of those compromises regarding the 1994 Act, calling it a “hybrid” piece of legislation full of contradictions and torn between the opposite pulls exercised on it. However, the Act in its final shape can also be considered a triumph for civil society, the private media, and advertisers. This is especially apparent when the final Act is compared with the earliest bill introduced by the Hariri government. This bill, in the early stages of its introduction, was vehemently criticised and rejected for the wide discretionary powers it gave to the government : i.e., the government was intended to have a mandatory share of 20 % in each licensed station, and two government officials were to be placed in each station in order to exercise censorship on programming from “the inside”.<sup>88</sup> Moreover, there was no intention to set up a special council responsible for licensing and monitoring the media. Instead, the government was supposed to be the sole authority in charge of the entire process (i.e.,

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<sup>85</sup> Kingdon, 1984, p. 151.

<sup>86</sup> Kingdon, 1984, p. 159.

<sup>87</sup> Kingdon, 1984, p. 161.

<sup>88</sup> See Chapter 5, section on “Draft Bills”.



licensing and control of content). Granting licenses was not only to be dependent on spectrum scarcity, but also to be geared to the size of the advertising market. Finally, no provision was made to deal with the specific case of *existing* unofficial media, and no regional broadcasting was to be allowed (every licensed applicant had to ensure universal coverage).

Obviously, such a bill, if passed, would have entirely concentrated power within the government of the day as far as broadcasting was concerned. Consequently, the bill had to be significantly watered down or altered to be even considered for voting in parliament. This meant mostly dispensing with any provision which gave the government shares in the licensed stations or the exclusive right to decide how many licenses were to be granted, and the introduction of a national council to monitor the media instead of the government. The council's relative independence was to be secured by having half of its 10 members nominated by Parliament and the other half by the Council of Ministers (in other words its members were not all to be appointed by the government the way some early proposals suggested).

More importantly, the government (as Council of Ministers) was denied the right to decide how many licenses were to be allocated. Instead, a technical committee was to be set up temporarily, whose main task would be to submit a report on the number of existing frequencies to be allocated. To top it all, rejected applicants were to be able to contest the result of the final license allocation by appealing with the Constitutional Council.

There were other "victories" as well for the private media and advertising lobby: e.g., the burdensome license fees were dramatically reduced, making it possible for the more modest stations to apply for a license.<sup>89</sup> The period of licensing was extended to 16 years,<sup>90</sup> and advertising controls *almost entirely* disappeared. Finally, regional broadcasting – which the government consistently rejected and which all non-governmental proposals pushed for – finally found its way into the final proposal, after being hotly debated during one of the last parliamentary sessions that discussed the Act.

While the influence of the private media and advertising lobby was highly visible in the dramatic changes discussed above, the government, for its part, did not exactly emerge as a total loser. Indeed, it was able to come out of the negotiations with a few gains, or at least to

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<sup>89</sup> For instance, in the case of a television station, the fees were reduced from 2 billion LL (or 1,300 000 US Dollars) to 250 million LL (or 166,000 US Dollars).

<sup>90</sup> Some initial proposals limited the licensing period to as low as two years. By contrast, the private media lobby was initially pushing for an unlimited period, then agreed to bring it down to 25 years before the number 16 was finally reached.

retain some important privileges: though a newly introduced national council was to be in charge of licensing, its function was purely “consultative”. In other words, the decision to allocate licenses ultimately resided with the government. More bargaining by opposition groups, though, managed to enforce the publication of these non-binding decisions in the Official Gazette.<sup>91</sup>

Regional broadcasting,<sup>92</sup> which was originally meant by pressure groups and opposition MPs as a measure for allowing a maximum number of broadcast stations to exist (not all applicants wanted or could afford universal coverage), and was successfully imposed in the final Act, was eventually circumvented. Though the Act allows for regional broadcasting, it only does so for those stations that have *already been licensed on the basis of universal coverage*. In other words, regional broadcasting *per se* could not exist. Only (the few existing) stations already ensuring universal coverage could, if they wanted to, use their allocated frequencies to dedicate a small percentage of their programming a week to regional concerns (a maximum of twenty hours a week).

Finally, in line with the findings of the policy design or formulation process and what it involved in terms of bargaining and “tipping”, and by weighing those provisions in favour of the various (anti-government) interest groups against those that gave control to the government, one is strongly tempted to conclude the following : not only did heavy bargaining actually take place, but private interests groups were able, to a considerable extent, to wrestle considerable control away from the Hariri government. Analysis of this phase of the policymaking process indeed proved that democracy did exist in the early years of the Second Republic. One might wonder here why the Hariri government consented to pass such a law. One possible explanation is that when an “idea’s time comes,”<sup>93</sup> as Kingdon writes, bargaining is heavily at work, and

The time comes when rigid adherence to one’s original position would cost one dearly. These times are the real opportunities for passage [i.e. the policy window], when compromise is in the air. At these times, participants of all types conclude that the bandwagon is rolling, and that they should be active in shaping the outcome. Advocates for change push hard for their proposals. Even enemies of change introduce their own proposals in an attempt to bend the outcomes as much as they can to their own purposes. Informed observers describe such events with phrases like “wanting to be in the game”, “trying to be dealt in”, and “jumping on before

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<sup>91</sup> See Chapter 5, section on “Amendments of the Parliamentary Joint Committee”. It is actually thanks to this provision (i.e., that the NAC’s opinion be published), that the present study of implementation could be carried out.

<sup>92</sup> See Chapter 5, section on “Last Amendments”.

<sup>93</sup>This is the title of Kingdon’s Chapter One (1984).

it's too late". Consensus is built, sometimes very rapidly, by cutting in many and diverse interests.<sup>94</sup>

The text of 1994 Act can clearly be seen as evidence of this type of bargaining within the policy community. This bargaining, more importantly, seemed to work to the advantage of non-governmental pressure groups, especially the media lobby. Moreover, the national mood, in addition to the previously discussed dominant culture of confessionalism, was not at all propitious for any clamp down on freedom of expression and pluralism in the media. Instead, it helped shift the balance in the direction of more pluralism and less government control. The Hariri government, for its part, seemed to be rather weak in the face of such forces. It knew it had to back down on most of its initial stipulations in order to have the broadcast legislation passed. Though Kingdon never assumes that the bargaining forces are equal in practice,<sup>95</sup> it is surprising to see that it was actually the very government which pushed strongly for the introduction and passage of the Broadcasting Act which seemingly emerged as the weaker party in the bargaining process. If the proposed piece legislation, as demonstrated earlier, had managed to wrestle control away from the government, why would that same government push so fervently for its passage in the first place?<sup>96</sup> Could the government have been truly so disinterested? Or was there more to the story of the 1994 Act?

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<sup>94</sup> Kingdon, 1984, p. 161.

<sup>95</sup> Kingdon, 1984, p. 164.

<sup>96</sup> See Chapter 5, section on "Shaping Forces".

## CHAPTER 8

## IMPLEMENTING THE 1994 ACT: THE MISSING LINK

In Chapter 2, while praising the value of Kingdon's model for the present analysis, I pointed to a "missing link"<sup>1</sup> in the chain of events described in the model, namely the implementation phase. Kingdon's study deals exclusively with earlier stages of the policymaking process (i.e., problem definition, generation of policy proposals and bargaining during the policy formulation stage). This makes his account of the policymaking process, at best, incomplete. As I will argue in this chapter, inclusion and analysis of the implementation phase of the 1994 Act not only adds texture and depth to the emerging picture, it actually shows a different picture altogether.

Analysis or evaluation of the implementation process is usually concerned with studying the extent to which the implementation of some policy was effective or "faithful" in fulfilling the intentions of public servants,<sup>2</sup> or whether the implementation was a success or a failure.<sup>3</sup> This evaluation is necessary in order to determine why a given policy was or was not successful: i.e., as a result of bad execution (flawed implementation) or bad design.<sup>4</sup> In the present study, however, interest in the implementation phase centred mainly around two different research areas: first, documenting how the 1994 Act was implemented, and then analysing what this specific implementation can tell us about the entire policy making process.

Concerning the analysis of the implementation of the 1994 Act, the objective is to understand the *role* that the implementation phase played in the policymaking process, and not whether the policy in question was implemented successfully or not.<sup>5</sup> This is done so for a variety of reasons. First, "success" during implementation is almost never "total", and is more a matter of degree (i.e., "minor" or "moderate" success).<sup>6</sup> Second, the connotations of the terms

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<sup>1</sup> This is actually the phrase used to describe research on implementation which is seen to lag behind the much older research on policy formation (Bosso, 1995).

<sup>2</sup> Calista, 1994, p. 118.

<sup>3</sup> Pal, 1992, p. 171.

<sup>4</sup> According to Majone, for instance, it is "notoriously possible to plan well and to implement the plan stupidly" (1989, p. 20).

<sup>5</sup> Implementation research is much more recent and underdeveloped than research on policy formation. There is also a recognised need to integrate implementation into a more general theoretical policy framework. See Calista, 1994, p. 118.

<sup>6</sup> Pal, 1992, p. 178.

“success” and “failure” can be misleading. Successful implementation has already been defined as the ability to meet the stated objectives or goals of a policy. However, as Pal notes, “there is nothing to compel the analyst to agree with those goals” in the first place.<sup>7</sup> For instance, an analyst may find that a certain policy has been implemented successfully but may want to question the problematic nature and goals of the policy itself. Conversely, some policy failures (during the implementation phase) may be applauded by certain groups who are not happy with the introduction of the policy in the first place. Third, policy goals can be quite opaque or vague.<sup>8</sup> Whatever the reason behind this vagueness, the result is one: “trouble” at the implementation stage.<sup>9</sup> Indeed, it is generally known in the policy analysis literature that policies are almost never properly executed.<sup>10</sup> As Pal writes, “‘perfect implementation’ may appear to be either a perfect fantasy or a perfect nightmare”, and the study of implementation remains “the dismal science” of policy analysis: “it shows why things cannot or will not get done properly”.<sup>11</sup>

Since the present study is more concerned with understanding the interplay of forces (societal, economic, political, and so on) that caused policy change in the Lebanese media landscape, the implementation phase will be examined as part and parcel of a continuum, i.e., the entire policymaking process. In *Analysing Public Policy*, John argues that it is “rarely appropriate to separate out the factors that affect policy formulation from those that influence policy implementation”.<sup>12</sup> Not only are the two processes “almost fused”, but it is the interaction between different types of actors during the various stages of the policymaking process that can help us conceptualise policymaking.<sup>13</sup>

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<sup>7</sup> Pal, 1992, p. 178.

<sup>8</sup> There are several reasons for this vagueness: policies by their nature have an “open texture”, stating goals and objectives abstractly (Pal, 1992, p. 179). Moreover, legislators with an eye for re-election and who want to avoid public criticism or being accused of taking extreme measures, may *deliberately* hide the policy’s true goals and objectives “behind a rhetorical façade” (Pal, 1992, p. 179). For more details on why policies are vague, see Heineman, 1990, p. 109; and Calista, 1994, p. 131.

<sup>9</sup> Heineman, 1990, p. 109.

<sup>10</sup> Pal, 1992, p. 172; and Calista, 1994, p. 119.

<sup>11</sup> Pal, 1992, p. 175.

<sup>12</sup> John, 1998, p. 176.

<sup>13</sup> John, 1992, p. 176.

Finally, the implementation phase of the policy process is recognised by analysts as a “fertile ground” for the interplay of interest.<sup>14</sup> I have already discussed how policies have “stated” goals, based on the identification of a problem and ways of solving that problem. However, there are “latent” goals as well, such as partisan advantage (e.g., rewarding friends and punishing enemies), maintaining popularity, getting re-elected, and so on. These political motives, which are very influential in the policymaking process, are usually hidden and denied. Moreover, the problem of identifying the policy goals (for the purpose of assessing implementation) is compounded by the fact that most policies have more than a “single, overriding objective.”<sup>15</sup>

Keeping in mind that policy goals may be multiple, imprecise, hidden, and generally resistant to measurement,<sup>16</sup> in this section I will summarise the research findings of my chapter on implementation (i.e., Chapter 6). Then, I will *interpret* these findings, discussing *why* the 1994 Act was implemented the way it was and *what this specific implementation* tells us about the policymaking process related to the Act.

Chapter 6 dealt exclusively with two major policy instruments introduced by the 1994 Act to translate the policy’s goal into reality. These were the Technical Committee for Audio-Visual Regulation (or TC) and the National Audio-Visual Council or (NAC). The purpose of research on these policy instruments was to check, based on primary material and official publications, the extent to which the set-up of these committees, the appointment of their members, and their handling of their mission respected the provisions of the 1994 Act. This task is especially important since both the TC and the NAC were at the heart of the controversy during the implementation phase.<sup>17</sup>

Some of the major issues raised by the performance of those newly introduced bodies were: was the technical report submitted by the TC based on purely technical considerations or on political ones? Supposing that the TC report was technically defensible, how impartial was the NAC in its processing of the dozens of applications competing for a handful of licenses?

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<sup>14</sup> Heineman, 1990, p. 109. As Heineman explains, stakeholders might exploit the fact that public commitment to programmes wanes over time. Thus, if they can construct durable coalitions that can outlive the public interest, their interests will remain while public interest will dissipate.

<sup>15</sup> Pal, 1992, p. 180.

<sup>16</sup> Pal, 1992, p. 182.

<sup>17</sup> See Chapter 6.

As already documented in Chapter 6, the appointment of the members of the TC clearly disrespected the provisions of the 1994 Act. Moreover, members of the committee were accused of “bias”, because they were civil servants selected to promote the government’s agenda.<sup>18</sup> Much more controversial, however, was the crucial technical report issued by the TC. Though discussion of the results of the report (i.e., that only five or six television stations and a dozen radio can be licensed) proliferated in parliament and in the national media, the present study found no *written* evidence concerning the number of licenses to be allocated in the published TC report. Instead, this short, one-page document specified the total number of existing frequencies for television, i.e., 41.<sup>19</sup> This number could not mean much in itself, because, ultimately, the number of licenses to be granted depended on whether each station needed 3, 4, or 5 frequencies to ensure universal coverage (the less frequencies required by each station, the more stations can be licensed).

Moreover, the fact that, two years after the government granted the licenses, some newspapers were still publishing reports concerning the number of channels to be licensed in Lebanon following international standards, adds to the argument that no such number, registered with the ITU,<sup>20</sup> existed at the time of licensing in 1996.<sup>21</sup> As recently as June 2001, i.e., 5 years after existing frequencies were allocated, access to in house correspondence indeed confirmed the idea that there was still no technical report specifying how many broadcast stations can operate according to international standards. In a memorandum sent by the NAC in June 2001 to the Council of Ministers, the NAC deplored the absence of a general plan for frequencies to be approved by the ITU in Geneva. The 1994 Act requires such approval *before* applications are considered (Article 8). Obviously, the TC “official” report specifying the number of licenses to be allocated that was circulating in 1996 was, to say the least, not only “oral”, but certainly non-authoritative. In the national newspapers, the report was rightly described as a “political decision” or “agreement” between the “three presidents”<sup>22</sup> – who were

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<sup>18</sup> This perceived bias in the make up of the committee was the opinion of an anonymous member of the opposition to the Hariri government, published in *Al Safir* on 10 January, 1996.

<sup>19</sup> *Al-Nahar*, 12 January 1996.

<sup>20</sup> International Telecommunications Union. See Chapter 6.

<sup>21</sup> The alleged technical report itself stated clearly that those 41 channels were not yet registered with the ITU. *Al-Nahar*, 19 August 1998; *Al-Safir*, 30 June 1998; *Al-Safir*, 1 July, 1998.

<sup>22</sup> *Al Nahar*, 12 January 1996. Both former Minister of Information Samah and current NAC Vice President Shalak confirmed that view when interviewed by the author.

more popularly (and sarcastically) referred to as “the Troika”: i.e., President of the Republic Hrawi, Prime Minister Hariri, and Speaker of Parliament Berri.

The study of the performance of the NAC in handling the applications showed clearly the double standards applied throughout by this new regulatory body. Whether concerning pluralism of ownership, Lebanese ownership, limitations on cross-ownership, limitations on concentration of ownership, or the financial situation of applicants, the NAC was found to be consistent in its uneven handling of applications.

To start with, the respect of pluralism of ownership requirement has no legal foundation in the 1994 Act. The only existing stipulation concerning the identity of shareholders requires that they be Lebanese (Article 13). In other words, ownership of the broadcast media does not have, according to the 1994 Act, to reflect the confessional make up of the country. The Act, by contrast, recognises and protects the need for pluralism of opinion *in content* (Article 7). When asked to justify the NAC-imposed requirement on confessional pluralism *in ownership*,<sup>23</sup> NAC Vice-President Shalak admitted that “the hysterical situation of the country” dictated such a choice. He explained that the NAC, on the one hand, hoped that confessional pluralism in ownership would ensure pluralism in content within one and the same station (which it didn’t).<sup>24</sup> On the other hand, he added, the requirement concerning proportional confessional ownership was needed to exclude, *indirectly*, applicants whose programming was exclusively religious. Since the NAC could not reject the applications of these religious stations without “being crucified” by the religious authorities behind them, it needed the “excuse” of lack of owners from different confessional background, in keeping with *the spirit of the traditional culture of confessionalism*, to get rid of such unwanted applicants.<sup>25</sup> Again, he was specifically referring to confessional stations with purely religious programming, pointing out, among others, to the Hizbollah-owned television station Al-Manar. In the end, however, it seems more likely to me that this “excuse” was applied selectively to filter applications. In other words, it could not be used in any way to cancel pre-selected candidates from the race (i.e., FTV, LBCI,

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<sup>23</sup> The NAC required that the shares of different shareholders reflect the country’s confessional make-up, i.e., that 50 % of the shares be held by Muslims and the other 50% by Christians. Moreover, each category (Muslims or Christians) had to include the country’s major denominations (e.g., the 50% Muslim shares should go to Sunnis, Shi’ites, and Druzes).

<sup>24</sup> See Chapter 6.

<sup>25</sup> Vice President Shalak literally used the metaphor of “corpses [of NAC members] lying in Martyr’s Square” to describe what the NAC members would have faced had they openly declared their rejection of purely religious broadcasting. He said the “excuse” of pluralism in ownership was the only acceptable way that the NAC could think of to reject such stations, especially when the application of these religious stations were “impeccable” (he cited specifically the case of Al-Manar). Personal communication, 22 August, 2001.



MTV, and NBN)<sup>26</sup> even though their ownership was highly-disproportionate from a confessional point of view.

Second, LBCI was the only applicant licensed *despite* infringing on the Lebanese ownership stipulation (one of its shareholding companies was not registered as purely Lebanese). It was, moreover, the only station among all applicants guilty of such infringement.

Third, cross-ownership was the major requirement responsible for eliminating many applicants. However, out of fourteen applicants guilty of cross-ownership, only MTV and LBCI were licensed despite this infringement. The NAC, in its published opinion, pointed to the infringement while granting them a grace period of one year to correct the problem. No other applicant whose file was incomplete or incorrect in any way was given a similar opportunity granted by law to correct its file.<sup>27</sup>

Fourth, concerning the authentication of documents,<sup>28</sup> this requirement was responsible for eliminating 14 candidates from the race. In its published opinion, the NAC listed this infringement as *the* reason for rejecting applications. Upon investigating the date of authentication of all accepted applicants (i.e., FTV, MTV, LBCI, and NBN), two of them were found equally guilty (LBCI and NBN), yet nothing was mentioned concerning this infringement in the NAC's published opinion.

Finally, the special cases of NBN and NTV remain, probably, the most glaring examples of the preferential treatment granted to some applicants by the NAC. NBN was the only applicant station not operating (some say not even physically existing) at the time of application. Several official documents were found to prove it. The ensuing absence of an organisational chart detailing all positions and names of employees and their qualification (as required by the Guidebook of Operating Conditions) should have, assuming even-handedness in the treatment of applications, totally disqualified NBN. This was not so. Not only was NBN's application accepted, there was no mention whatsoever concerning this major infringement. By contrast, one applicant (Al Bayan Radio), which was operating during the licensing period, was entirely dismissed on the sole ground of a missing chart. Moreover, while all in all 16 applicants were singled out for not submitting an organisational chart (at least not a detailed one), *only one applicant* was given a one year probation period to correct the problem: LBCI. Finally, in the

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<sup>26</sup> LBCI, at the time of the acceptance of its application in May 1996, had a staggering majority of 92% Christian shareholders. Only 8% were Muslims from various denominations. See Chapter 6, Table 6.1.

<sup>27</sup> Article 32 of the 1994 Act automatically grants all accepted applicants a one-year period to conform to all the requirements of the Guidebook of Operating Conditions and the 1994 Act.

<sup>28</sup> See related section in Chapter 6.

case of NBN, the station was found, upon research, unable to meet the required financial conditions as specified by the NAC.<sup>29</sup> In the published opinion, however, NBN was found to conform completely to all NAC requirements.

NTV's treatment by the NAC could be said to have been the exact opposite of NBN's. NTV's application was not exactly flawless, but it contained, comparatively, very few infringements of the NAC's requirements. NTV also immediately sought to rectify these problems. At worst, it could be argued, it had as much right to a license as any of the other accepted applicants with problematic applications. I am referring here to NBN, MTV, and LBCI. However, the NAC kept insisting that the rectification did not take place within the legal time limit and eventually NTV's application was turned down. NTV had been successfully in operation and especially active in producing local programming for five years prior to that decision (i.e., since 1991). My personal investigation could not establish a satisfactory solution to the "puzzle" of the "missing rectified" documents. However, the Constitutional Council's subsequent revoking of the Hariri government's decision (in 1999) is powerful enough evidence that the Hariri government and the NAC made an unfair decision regarding NTV. This unfair treatment was especially apparent, the Constitutional Council reasoned, when the Council of Ministers accepted the corrected file of Al-Manar *after* the NAC gave its opinion concerning applications. NTV, the Constitutional Council ruled, like Al-Manar, had submitted the rectified documents before the Council of Ministers gave its final decision. Therefore, it should have received equal treatment, i.e., it should have had its rectified documents (which were submitted after the NAC gave its opinion on 16 September 1996) accepted by the Council of Ministers ultimately responsible for granting licenses.<sup>30</sup>

Having summarised the results of the implementation phase concerning the NAC and the TC, and having established the double standards and the illegality in the functioning of those newly established regulatory bodies, the next question is: how can the functioning of the NAC and the TC be interpreted? Was there a rationale behind this functioning? If yes, how does this rationale fit with the entire policy making process in the case of the 1994 Act?

The implementation phase, more than any other phase, demonstrated the government's pre-decision and intent to restrict the media field to very few, "pre-selected" players, regardless of

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<sup>29</sup> This was found in two different sources: the NTV self-published brochure denouncing the NAC's unequal treatment of applicants, and a hand-written note by one of the NAC's member drawing attention to the weakness of NBN's financial situation.

<sup>30</sup> See Chapter 6.

the existence of any standardised technical arguments or criteria to justify such a decision. Starting with the technical report, it was obvious that the decision to restrict the number of private stations to four was primarily a political *pre*-decision, despite repeated official claims to the contrary.<sup>31</sup> Two years *before* the appearance of the report, and three months before the Act itself was voted for in parliament, a “slip” by a Minister in the Hariri government during a parliamentary session proved that this number was indeed *pre-determined*.<sup>32</sup>

Parallel to this *political* decision concerning the number of private television stations, was the equally political decision to restrict all AM frequencies to government controlled radio. This decision naturally reduced in a significant way the number of radio frequencies to be allocated to private stations (private radios were only left with FM frequencies).<sup>33</sup> The official justification for such a restriction was that AM broadcasting could easily overcome geographic boundaries<sup>34</sup> (i.e., reach areas outside of the Lebanese border) and that the government has “every right to promote and give prominence to official [i.e., government-controlled] media.”<sup>35</sup>

Finally, the number of accepted television applicants was, *coincidentally*, the exact number needed to accommodate the four applicant stations that represented, together, the five major confessional groups of the country: LBCI was predominantly Christian Maronite, MTV Greek Orthodox, FTV Muslim Sunni, and NBN Shi’ite and Druze.<sup>36</sup>

The Hariri government, prior to license allocation, persistently rejected accusations of (expected) preferential treatment of applicants, openly declaring that:

Granting broadcast licenses will not be made on a confessional or political basis, as some are claiming. Instead, it will be based mostly on technical and financial criteria, and on the basis of respect of the concept of national reconciliation and the pluralist nature of shareholders.<sup>37</sup>

In the face of evidence gathered in the present study, the above-mentioned quote sounds more like pure interests disguised behind a façade of “neutral language of technical decision-

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<sup>31</sup> On 10 January 1996, a member of the NAC stressed, in a newspaper interview in *Al-Safir*, that the number four is “not a coincidence, but is the result of careful, precise, and scientific studies”.

<sup>32</sup> See Chapter 6, section on “The Technical Committee”.

<sup>33</sup> See Chapter 6, section on “The Technical Committee”.

<sup>34</sup> *Al-Safir*, 10 January 1996.

<sup>35</sup> Prime Minister Hariri as quoted in *Al-Safir*, 19 January 1996.

<sup>36</sup> Both the Shi’ite and the Druze communities rank fourth and fifth in terms of their power in the confessional hierarchy of the country.

<sup>37</sup> *Al-Safir*, 19 January 1996.

making”.<sup>38</sup> Indeed, careful examination of the application files of those stations and of the published opinion of the NAC concerning all applicants demonstrated that the NAC applied double standards in its processing of applications. Most importantly, it did so in a way that consistently favoured the few stations that were “pre-selected” to receive a license on the one hand, and consistently worked to reject all other “undesirable” applicants on the other. A good example to further support this argument is presented by the case of NTV and NBN. Indeed, NTV and NBN represented two ends of the spectrum of applicants: when the door was open to receive applications, NTV was a strong viable operation and NBN a non-existing station with a shaky financial record and a questionable application file.<sup>39</sup> Still, the NAC chose to reject the first and accept the latter, revealing the extent to which the NAC was a malleable tool in the hand of the Hariri government.

This was certainly not the role envisaged by those legislators and pressure groups who successfully forced the inclusion of a regulatory council into the Hariri government’s bill. In a press conference following the parliamentary sessions where the bill was discussed (in the Fall of 1996), opposition MP and human rights activist Joseph Meghaizel admitted that they (i.e., the various pressure groups) were unable to make the NAC the sole authority responsible for licensing. However, he comforted his audience by emphasising that the very fact that the NAC had to publish its opinions in the Official Gazette was a great check on the power of the government. This is indeed true to the extent that it is precisely this stipulation in the 1994 Act which allowed me, based on an official publication, to document inconsistencies in the performance of the NAC. Moreover, MP Meghaizel mentioned another important check on the government’s discretionary powers: the possibility to contest the result of the license allocation by going to the Constitutional Council. This is what NTV did and what eventually allowed it to get a license nearly 4 years after it was unfairly denied one. In the end, however, both of those aforementioned checks on government power worked *retrospectively*. They had no real value at the crucial time of licensing. They could only be used later on, when an injustice had already been committed.

Not only was the NAC, as already demonstrated, unable (or maybe unwilling) to perform impartially, but its decision concerning the 63 applicants seems, with only one exception,<sup>40</sup> to have completely matched the government’s decision. Just one day after the NAC published its

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<sup>38</sup> Pal, 1992, p. 180.

<sup>39</sup> See Chapter 6, section on “Financial Conditions”.

<sup>40</sup> Radio Mount-Lebanon’s application was accepted by the NAC and rejected by the Hariri government in 1996.

final opinion concerning the applications, the Hariri government issued licenses based on and respecting this opinion, obviously without feeling the need to check the NAC decision by going through the applications themselves. This practically means that the Council of Ministers totally entrusted the NAC with this task and was willing to grant licenses based solely on the NAC's judgement. This is hardly what one expects to happen if the NAC had truly functioned as a check on the government's discretionary power. Moreover, if the NAC seemed intent, by applying double standards, on making only a handful of applicants eligible for a license, and if the Hariri government simply followed suit with its granting of licenses to those applicants, then the next question is: why were those applicants, in particular, pre-selected to win?

Since the hottest debate revolved around television licenses exclusively, this question will be answered by concentrating on the four licensed television stations : LBCI, MTV, FTV, and NBN. I have already mentioned how policy goals, in addition to being complex and multiple, are often hidden. The present research has indeed shown the discrepancy between the government's declared objectives and its hidden ones. Naturally, throughout the controversial licensing process, the government consistently denied any hidden motives and insisted on its impartiality and fairness in dealing with applications. I was, however, able to *infer* the Hariri government's (hidden, unpublicised) agenda from the TC's performance, the decisions of the NAC and of the Council of Ministers concerning the final number of frequencies, and, finally, from the nature and patterns of ownership of the successful applicants.

To start with, it is quite obvious that Hariri was intent on securing a license for his own radio and television stations before the end of his term.<sup>41</sup> This could not be done, however, without also granting a license to Speaker of Parliament Berri, a major representative of the largest (other) Muslim confession (i.e., the Shi'ite confession). After all, not only did the Muslim communities have the backing of Syria (much to the dismay of many Christians), but Muslims are mostly perceived, by both Christian leadership and communities, to have emerged from the Civil War and the conclusion of the Taef Agreement with enhanced political gains.<sup>42</sup> As far as the broadcast licensing was concerned, the role of the NAC concerning the applicant stations representative of the three largest Muslim communities was instrumental and

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<sup>41</sup> See chapter 7 for a discussion on the importance of timing and the insistence on behalf of the Hariri government to pass and implement a broadcast law during his term. See also Chapter 5.

<sup>42</sup> One of the major complaints by Christians, especially the Maronite leadership concerning Taef, for instance, is the reduction of the powers of the Maronite President of the Republic, on the one hand, and the increase of the powers of the Sunni Prime Minister and the Council of Ministers and Parliament, on the other. According to the Muslim leadership, this redistribution of powers was needed to end the Civil War and rectify the injustice of the

reflected the (confessional) power division in the country. Both Sunni and Shi'ite (and Druze) backed applicants were not only accepted by the NAC, their applications were found impeccable, even when they were not. This was especially problematic in the case of NBN, as already explained. It should also be remembered that, according to the 1994 Act, members of the NAC were to be appointed equally by the Council of Ministers (headed by Prime Minister Hariri) and the Parliament (headed by Speaker Berri).<sup>43</sup> For Hariri, to exclude a Muslim Shi'ite and Druze station from the broadcast scene would have been simply unthinkable.

Granting licenses to Greek Orthodox MTV and Maronite LBCI seems to have been a different story, however. I have already discussed the importance of the political culture of confessionalism, and how such political culture or dominant ideology can work as a constraint on the policymaking process. Granting a license to both LBCI and MTV seems to have been more the result of a *constraint* on, and not a choice by the Hariri government. According to Samaha, former Minister of Information and member of the Hariri government in 1996, Hariri had asked him to draft a [broadcasting law] that would accommodate two, or maybe four, television stations.<sup>44</sup> Based on my own research findings, I assume Hariri meant to license FTV and NBN exclusively. Indeed, unlike the case with FTV and NBN, the various problems with LBCI's and MTV's applications were openly listed in the Official Gazette, instead of being "forgotten" or glossed over, as was especially the case with NBN. Moreover, the Hariri government, in the only instance where it contradicted the opinion of the NAC, rejected the application of a radio station (Mont-Liban) affiliated with the Greek Orthodox Murr family. However, in the end, Hariri's "preference" was constrained by the dominant political culture of confessionalism, according to which power and resources are to be shared by the major confessional groups. Eventually, both MTV and LBCI had to be given a slice of the pie, lest the country was to fall back into confessional strife. The preferential treatment those two "problematic" applicants received was especially demonstrated by the fact that the NAC was willing to give them, to the exclusion of all other applicants, a one year probation period to correct their file, as stipulated by the 1994 Act.

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political system, by reflecting the large demographic growth of the Muslim population since 1932 (date of the last official census, when Maronites were the largest community in the new emerging First Republic).

<sup>43</sup> An editorial in the leading national newspaper *Al-Nahar*, one day after the publication of the decision of the Council of Ministers, explains the (behind-the-scenes) process of licensing and slicing up the media pie. Though the author does not provide physical evidence to his arguments, his conclusions are largely confirmed in the present study. *Al-Nahar*, 19 September 1996.

<sup>44</sup> Samaha, personal communication, 14 January 1999.

In sum, the final allocation of licenses showed that the Hariri government was intent on rejecting all applicants that lacked the backing of a major confessional group, regardless of their technical and financial eligibility, especially when these were playing the opposition card (this was especially the case with NTV). That the Hariri government, through its NAC arm, also granted radio frequencies<sup>45</sup> to *the very same companies operating the licensed television stations* can be seen as part of a larger scheme to reduce pluralistic voices and to restrict freedom of expression in Lebanon.

Under such circumstances (i.e., Hariri's intent to allocate as few licenses as possible), it can be argued that the constraint of the political culture of confessionalism during the allocation of licenses was actually beneficial for the country, and may have indeed acted as a guarantee for the existence of some degree of confessional pluralism in the private broadcast media. Indeed, we have seen how several eligible applicants were (often unfairly and illegally) rejected, and how the Hariri government seemed reluctant to license LBCI and MTV, the two Christian television stations that 'represented' the two most powerful Christian denominations in the country.<sup>46</sup> However, in accordance with the principle of *proportionality* discussed earlier, the Hariri government *had to grant a license to each of the confessionally-backed* television stations. Failure to do so would have probably meant a return to civil strife, something that the original Taef stipulation concerning broadcast regulation insisted on avoiding by all means.

The confessional pluralism manifested through the existence of the 4 licensed stations, however, is quite deceptive when considered in the light of the study of the identity of *all* shareholders in each of the successful applicant stations.<sup>47</sup> Indeed, such a study, informed by elite theory - which was introduced in Chapter 2 in order to make up for the weakness of Kingdon's model to account for power structures in society - reveals *two different accounts* of what happened as regards the policy making process being studied. On one immediate level, it

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<sup>45</sup> By the end of the licensing process, 4 television stations of the first category (i.e. with political programming) were licensed. As for radio, there were 3 stations of the first category (one for NBN, one for FTV, and one for LBCI) and 8 of the second category (i.e., with no political programming).

<sup>46</sup> It should be remembered that one major outcome of the Taef Agreement was the political 'reorganisation' of the country in order to increase the powers of the Council of Ministers (presided over by a Muslim Sunni Prime Minister) and the Parliament (presided over by a Muslim Shi'ite Speaker), at the expense of the powers of the President of the Republic (a Maronite Christian). In other words, the second constitution that resulted from Taef decreased the powers of Christian communities (especially Maronites), in order to reflect the growing size of Muslim communities since the 1932 census, and their greater power (probably) due to, among other things, to Syrian and Saudi backing. See Chapter 3.

<sup>47</sup> See Chapter 6, section on "Patterns of Ownership and Control".

confirms academic findings and popular claims concerning the dividing up of the media pie among the confessional and political elites who belonged to the major confessions in the country and held government positions at the time licenses were being allocated. The study of the confessional identity and family ties of major shareholders indeed confirms such claims. Though none of the stations could be associated *directly* with members of the political and confessional elites (who were either members of the Hariri government or of parliament), the majority of the shareholders in each station were found, whether through confessional or kinship ties, to be associated with the political leaders of the major confessional groups. Since these connections were often hidden and indirect (the 1994 Act does not allow concentration of ownership),<sup>48</sup> there is strong evidence of the existence of a concerted “ploy” by these politico-confessional elites to circumvent the limitation on concentration of ownership within each station, in order to end up with a majority of shares in their respective stations. The analysis, specifically, showed that many unknown shareowners were actually members of the extended family of the figure-head (or figure-heads) associated with each station and carried different family names (e.g., in-laws).<sup>49</sup> Other shareholders were often employees, associates, lawyers, or business partners of these figure-heads, thus their connections to the easily identifiable figure-head of each station (often in areas outside of broadcasting) was either difficult to trace or simply remained unpublicised. The following dominant (and often indirect) connections could be established: between MTV and the (Greek Orthodox) Gabriel, brother of the (then) Minister of the Interior Michel El Murr; between NBN and the Speaker of Parliament and Shi’ite leader Nabih Berri; between LBCI and the Maronite and Lebanese Forces supporter Pierre Daher; and between FTV and the Sunni Prime Minister Rafic Hariri.

An investigation that went beyond the simple identification of the confessional identity and (extended) family of the major shareholders associated with each licensed station, revealed a more complex web of interconnections between the shareholders of all the licensed stations. More important than looking for the correspondence (or lack thereof) of a shareholder’s confessional identity with a specific station was identifying the economic activities of those shareholders that were not accounted for in the first “web” of connections on the confessional/political elite. Informed by elite theory, the study also looked carefully into the business activities (type and scope), interlocking control (in board directorships outside the

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<sup>48</sup> See section on “Patterns of Ownership and Control” in Chapter 6.

<sup>49</sup> Shareholders have not remained the same since 1996. The present analysis of patterns of ownership is based exclusively on the status of the stations in 1996.



media business), and other formal and informal connections among the (often) less politically prominent, and less talked about shareholders. The result of such investigation showed that the “first web of interconnections” identified above, which verified the claim that the stations were licensed to accommodate the political elites from the major confessional groups, is incomplete in its account of what happened during the licensing process. Many shareholders were found to be members of the (comparatively less conspicuous) Lebanese *economic* elite - a handful of families that command by themselves a large part of the Lebanese economy. Indeed, the Lebanese broadcast media seem to have attracted not only Lebanon’s most famous but also richest: practically all of Lebanon’s economic elite is thus found to be ‘represented’, in one way or another, when it comes to ownership of the media.<sup>50</sup> Among them we find the major shareholders or owners of the country’s biggest construction and contracting companies, Lebanese industries, import and export companies, insurance companies, banks, advertising agencies and production houses.<sup>51</sup> Such findings seem to echo, to some extent, what an earlier study about Lebanon’s “economic oligarchy” established: i.e., the degree of control that a handful of families exercised in vital areas of the country’s economy and the role they played (through their access or vicinity to political power) in securing their often monopolistic privileges.<sup>52</sup> In that respect, the story of the privatisation of the media in Lebanon is not unique, and resembles much of what happened in other parts of the developing world and the ex-Communist countries in the last decade or so. In almost all of these cases, the pervasiveness of clientelism and administrative corruption, and the absence of the rule of law and accountability, led to the corruption of the privatisation process (both in the media and other major sectors of the economy) and “allowed individuals to promote their interests at the expense of others and the larger financial benefit of society.”<sup>53</sup> In sum, the story of privatisation in the non-Western

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<sup>50</sup>Information regarding Lebanon’s economic “ruling families” is taken from Fawaz Traboulsi’s unfinished, ongoing research on Lebanon’s 80 families that control the country’s economy. See also Chapter 6 for a detailed analysis of the patterns of ownership and control in the Lebanese broadcast media.

<sup>51</sup> Tendencies towards vertical and horizontal integration have also been identified, mostly in the ownership of various media outlets (radio stations, television stations, and magazines) in addition to production houses, advertising agencies, and national sports teams by some of the shareholders in Lebanon’s broadcasting stations.

<sup>52</sup> Traboulsi, 1993.

<sup>53</sup> Shelley, 2001, p. 245.

part of the world seems to have resulted in the wholesale transfer of property to a privileged few.<sup>54</sup>

More revealing than the (commonsensical) interest and concentration of this economic elite in the private media, however, is the interlocking of their economic activities in areas outside of broadcasting (largely through interlocking directorships), and the *apparent independence of these economic activities from confessional considerations*. Several of these shareholders were thus found to have shares in one station while having siblings (mostly, but not exclusively, sons) or business partners (outside broadcasting) who have shares in another (supposedly competing or confessionally antagonistic) station. For instance, while (Christian) Issam Fares, a business partner of Saudi Prince Salman al-Saoud, has shares at (Christian) LBC, his 3 sons are shareholders at (Muslim) FTV. Similarly, (Christian) Nehmeh Tohmeh, who is a business partner of Hariri, is in (Muslim) NBN while his son is in (Christian) MTV.

The study of the patterns of ownership and control in the licensed television stations indeed showed the extent to which ownership of these stations was interlocking and multi-layered and often cut across confessional lines. The state's culture of confessionalism as a constraint on policymaking could only explain the 'surface reality' of the slicing up of the media pie: a reality probably meant, among other things, to reassure the Lebanese constituents emerging from the civil war that major communities were indeed accommodated for by the Hariri government, in a spirit of reconciliation. The 'below-the-surface reality', unraveled by the complex web of cross-confessional ownership, shows that when it comes to business, ideology probably comes last.

Such findings about media ownership and control in post-Civil War Lebanon are not truly surprising. In his study of the political economy of the militias during the civil war, Fawaz Traboulsi documented how (supposedly) confessional militias thrived on openly mobilising support by exploiting confessional loyalties (and fear) in the population, while simultaneously conducting business, *together*, behind closed doors. In other words, he exposed the confessional 'cover' of the various (warring) Lebanese militias, showing how "united" indeed they were in "dividing the population".<sup>55</sup>

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<sup>54</sup>See Mawdsley and White, 2000; White et al, 2001; Brown, 2001; and Yergin and Gustafson, 1994 for studies on the process of privatisation in post-Soviet Russia. For similar studies and conclusions concerning privatisation of the media in Malaysia, the Philippines, Cameroon, and southern Europe and Latin America in general, see respectively: Nain and Anuar, 1998; Coronel, 1998; Nyamnjoh, 1998; and Hallin and Papathanassopoulos, 2002.

<sup>55</sup> This is a translation (from French) of the title of a related section from Traboulsi's study of the political economy of the Lebanese Civil War (1993).

Having established the politicisation of the implementation process, and the bending if not breaking of the law in order to achieve a specific policy outcome, the next question is: to what extent this outcome is exclusively the result of a process of implementation? In other words, is this outcome solely due to “bad” or “distorted” implementation of a “good” policy design, or is it just the final chapter in a process politicised and controlled from its inception by the Hariri government which succeeded in introducing a broadcast legislation suited to its needs?

Recent scholarly literature on the implementation phase of policy studies stresses the interconnectedness between policy design and implementation, how these two phases are “not mutually exclusive”,<sup>56</sup> and how inappropriate it is to “separate out the factors that affect policy formulation from those that influence policy implementation”.<sup>57</sup> Here, I find the concepts of “backward mapping” and “reversible logic” (or ends-causing-means logic) helpful in explaining the relationship between the implementation phase and earlier phases of the policymaking process in the case of the 1994 Act. According to Elmore, policymaking is a process of backward mapping that can best be studied by employing the concept of reversible logic<sup>58</sup> Rather than look at the policymaking process as a linear, chronological succession of events and decision-making that starts with the identification of some problem, analyst should start with outcomes of policy implementation and proceed backwards. “Policy outcomes are derived from participants exchanging proposals about policy implementation that lead them to create policy intentions”.<sup>59</sup> Backward mapping, Calista adds, “captures where participants... want to be”. Participants, accordingly, have a “vested interest in learning about where others want to go. The process resembles an ends-causing-means logic except that means commonly derive from incompatible ends”.<sup>60</sup> According to Calista, “reversible logic complements backward mapping”:

Faced with a problem, policymakers frame solutions using the elements over which *they* exercise the greatest control. The content of policy at any given level of the system is a function of the implements people control at that level and the effects they are trying to produce at other

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<sup>56</sup> Calista, 1994, p. 136.

<sup>57</sup> John, 1998, p. 176.

<sup>58</sup> Elmore cited in Calista, 1994, p. 136.

<sup>59</sup> Calista, 1994, p. 136.

<sup>60</sup> Calista, 1994, p. 136.

levels... Implements include resources and information that participants command as well as knowledge about what instruments appear to serve them best.<sup>61</sup>

In the case of the 1994 Act, applying reversible logic (or trying to understand the intentions of policymakers from the outcome of a policy and the instruments of implementation that some of them had control of), the following can be said: it is obvious that the winner was not the one identified earlier during the bargaining process that took place (i.e., the policy formulation phase). The “winner” identified earlier in the study was the private media lobby and opposition groups that wanted to protect pluralism in the media. The ultimate winner, however, turned out to be the Hariri government, because, unlike other participants, *it had control over implementation*. Thinking of the end result of the implementation process as where the Hariri government “wanted to be”, and looking backward at earlier stages from that vintage point, one can see more clearly the logic that drove the entire policymaking process since its inception. To start with, the Hariri government, by the end of 1992, had already set the wheels in motion to introduce the first Lebanese broadcast legislation. The initiative of Minister Samaha to introduce a voluntary code of ethics was, though short-lived, a successful part of the softening up process started by the previous government (during the Carlton conference). However, and due to the sensitivity of the media issue in post- Civil War Lebanon, things came, once again, to a halt. This was especially complicated by the presence of Michel Samaha in the post of Minister of Information in the Hariri government. An openly declared political adversary of Hariri, Samaha explained the stalemate by accusing the Hariri government of rejecting every draft proposal that he tried to present.<sup>62</sup> Then, in February 1994, things suddenly changed, and the wheels were suddenly set in motion again. A church was bombed in a heavily populated Christian area. The leader of the disbanded Lebanese Forces (a major warring Christian party during the Civil War) was arrested and accused of planning the bombing. The highly critical situation threatened the spirit of reconciliation promoted by Taef and the newly emerging Second Republic experienced a severe crisis of legitimacy (especially in the eyes of the Christian communities).<sup>63</sup> To stop “the spiralling chaos and lack of restraint in the media”,<sup>64</sup> the

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<sup>61</sup> Calista, 1994, p. 136, emphasis in original.

<sup>62</sup> See Chapter 4.

<sup>63</sup> A large number of Christians were already very dissatisfied with the settlement achieved during the Taef negotiations, which they saw happening at the expense of the Christian communities of Lebanon. The arrest and accusation of Samir Geagaea, leader of the (Christian) Lebanese Forces, was perceived by many as further proof of a conspiracy executed by Lebanese Muslims and masterminded by Syria against Lebanese Christians.

<sup>64</sup> Nashef, 2000, p. 110.

Hariri government moved quickly to pass, on 23 March 1994, a decree prohibiting all unlicensed media from broadcasting “news or any other direct or indirect political programming” until a broadcast act was passed.<sup>65</sup> The subsequent sequence of events and the ability to pass a landmark piece of legislation within just months of the bombing can be explained using Kingdon’s “policy window” metaphor. I have already discussed, separately, the three policy streams that made up the policymaking process in the case of the 1994 Act. As long as these streams were not joined, however, no policy change could be introduced. The bombing of the church in February 1994, which forcefully re-started the legislative process concerning private broadcasting, can thus be seen as the “crisis”, the “focusing” or “propitious event” that Kingdon mentions (among other causes) to explain why policy windows open, how the three streams join, and how policy change ensues:

Policy entrepreneurs play a major part in the coupling at the open policy window, attaching solutions to problems, overcoming the constraints by redrafting proposals, and taking advantage of politically propitious events.<sup>66</sup>

The fact that policy windows do not stay open for long, and that one has to “strike while the iron is hot”, explains the speed with which the government’s draft proposal was pushed through. During the parliamentary session of 13 July 1994, MPs were surprised to find out that, only days prior to this last session before summer adjournment, a draft bill had been introduced. This “critical timing” seemed to them like a deliberate attempt to circumvent the legislative process by putting parliament under pressure to pass an urgent piece of legislation without taking the time to study it.<sup>67</sup> However, parliament was able to counter Hariri’s pressure. It defied the decree he issued in March (which prohibited news), and voted for a temporary bill that would allow unlicensed stations to resume their broadcasting of political programming.

Later on, when the broadcast bill was discussed in October that year, two additional amendments were introduced by opposition MPs, in order to wrestle as much licensing power away from the government as possible. Thus, to the national audio-visual council (previously forced on the government’s draft proposal) was added a technical committee whose task was to study the available number of frequencies and number of licenses to be allocated. Regional broadcasting was also included, to allow for a maximum number of programming. I have already argued that the bargaining process seemed largely to work in favour of the private

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<sup>65</sup> Nashef, 2000, p. 110.

<sup>66</sup> Kingdon, 1984, p. 166.

<sup>67</sup> See Chapter 5, section titled “Before the Act: Shaping Forces”.

media lobby and opposition MPs. What tipped the balance in the opposite direction later on, however, was the ultimate power to allocate licenses that the Hariri government had fiercely clung to all along.

To sum up, the present documentation of the various stages of the 1994 Act and the interpretation of these research findings, based mostly on Kingdon's analysis of the policy making process, revealed the following: the political and confessional elite in Lebanon had other goals and objectives in "reorganising" the media landscape (according to the provision of Taef) than simply to solve some identified problem (i.e., to end the state of war). The early conference at the Carlton Hotel - organised to discuss with experts, professionals and civil society groups ways of "organising" the broadcast media – showed a sharp disagreement over this diagnosed problem, and whether the media fuelled the crisis or simply reflected it.<sup>68</sup>

Though there was no consensus by the end of the conference nor was there ever a single persuasive or "scientific" argument (e.g., media effects study) presented in support of the claim that the media did fuel the crisis, post-Civil War governments, especially the Hariri government, repeatedly blamed the media for being the last bastion of the war.<sup>69</sup> The community of experts who took part in the Carlton conference, by contrast, seemed indeed outraged that the government should attempt to regulate the media because of the media's (alleged) participation in and fuelling of the war. This was especially unconvincing, they argued, considering that the very politicians and militia leaders who actually led the war were themselves amnestied of their war crimes and responsibilities after the Taef Agreement. Worse yet, according to these experts and academics, several of these "warlords" were co-opted, becoming ministers in the early post-Civil War governments.<sup>70</sup> This criticism of the government for (unjustifiably) "blaming it all" on the media was three years later reiterated during one of the parliamentary sessions in which the 1994 Act was voted for. In the session, MP Wakeem pointed out the example of the Minister of Information and his deputy (both present in the session) who both come from different factions that were at war with each other and yet were, on that day, "sitting happily together on their governmental seats".<sup>71</sup>

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<sup>68</sup> See reader of the Conference for the Reorganisation of Media in Lebanon.

<sup>69</sup> Parliamentary session, 13 July 1994.

<sup>70</sup> See Chapter 5, footnote 9. Of course, it could be argued, such co-opting was necessary, even inevitable, if the Civil War was to be brought to the end.

<sup>71</sup> MP Wakeem, parliamentary session, 13 July 1994, p. 1487.

The Hariri government's great interest in introducing the 1994 Act and in having it implemented at all costs before the change of parliament that was to follow the September 1996 elections seems to have been quite self-serving. A careful examination of the dates of certain major events related to the Act not only reveals the extent to which timing was crucial, it also gives important clues about the implementation process of the 1994 Act. To start with, the Hariri government's primary interest behind the regulation of the broadcast media may have been to secure licenses to a handful of the members of the political and financial elites (starting with himself), *before his term was over*, and not just to reorganise the media to maintain peace in Lebanon. The government draft proposal was thus introduced, to the dismay of many members of parliament, in a great rush within just a few months after the church bombing in February 1994. This was followed by a series of dramatic events: e.g., the government signing a decree forbidding news, parliament retaliating by enacting a broadcast bill that allows non-licensed stations to resume political programming, etc. More importantly, the implementation of the Act itself reflected the importance of "timing" for the Hariri government.<sup>72</sup> The results of the license allocation process would have, according to this logic, needed to come out before the new parliamentary elections in September 1996. This is indeed what happened: the results of the "deliberations" of the Council of Ministers were made public on 17 September 1996, within just 24 hours of the publication of the NAC recommendations. On the one hand, this means the Hariri government "trusted" the decisions of the NAC so much that it saw no need to study the 63 broadcast applications before deciding which ones were to be licensed for the next 16 years. The government indeed accepted all applicants recommended by the NAC.<sup>73</sup>

This is quite intriguing when one considers that the very purpose of introducing a national council in the first place was to check on the government's abuse of the licensing process. On the other hand, the argument that the Hariri government was, above anything else, determined to *secure* licenses for a "select few" before the end of his term, is strengthened by the fact that the government also had to contravene the law in order to do so. According to the 1994 Act,

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<sup>72</sup> For more on the importance of timing, see Kingdon, 1984, p. 169-172. That things were proceeding much faster than anticipated can be seen in NBN's attempt to buy up used equipment just before the deadline for applications. NBN was the only television station not in operation during the application period. It was reported in national newspapers to be rushing to buy up equipment "from the local market, i.e., from television stations that have no hope of obtaining a license. Shi'ite Speaker of Parliament Nabih Berri, with whom NBN is associated and who represents one of the largest (if not the largest) confessional groups in Lebanon, was seen to be keen on getting his share of the media pie before he even "owned a single camera" (*Al-Nahar*, 30 January 1996).

<sup>73</sup> On 17 September, the government accepted 15 of the 16 applicants by the NAC. After the 1996 parliamentary elections were over and the start of new term for Prime Minister Hariri, the government eventually added the same applicant rejected earlier by the NAC (i.e., Radio Mont-Liban) to the list of lucky licensees in July 1997.

successful applicants must first be granted a one-year period to conform entirely to the requirements of the Guidebook of Operating Conditions. Only then (i.e., at least one year later), and upon “checking” the operation of those applicants, can the official licenses be issued by ministerial decree (Article 32). Naturally, the Hariri government could not risk having those licenses rejected by the following government. It thus simply “skipped” the trial period, “blindly” granting licenses to the successful applicants based on the NAC’s opinion. It could be argued, here, that such “bending” of the rules on the part of the Hariri government was necessary if Lebanon were to enjoy the presence of representative broadcast media. In other words, a justification of the performance of Hariri’s government regarding licensing could be made on the grounds that “the end justifies the means”, and that MTV and LBCI – the two major Christian broadcasters – had to stay in operation despite their incorrect or incomplete applications. Though I agree that the licensing of LBCI and MTV was (and still is) important for safeguarding pluralism in Lebanon, I find that defence rather unconvincing. Based on my earlier argument in this chapter concerning Hariri’s initial “desire” for a broadcasting law for “just two stations,”<sup>74</sup> and knowing that Muslim television stations (i.e., FTV and NBN) were found by the NAC to have perfect application files while Christian LBCI and MTV were given a year to correct theirs, I find it more likely that, if he could, Hariri would have liked to bend the rules indeed, but only in order to exclusively license two stations (probably FTV and NBN). However, I believe, Hariri knew there was a limit to how far he could go with bending the rules. Severely constrained by the dominant culture of confessionalism, he knew he *had* to license LBCI and MTV. He also knew that failing to do so would have probably jeopardised the entire licensing process.

That the Hariri government was interested in the specific area of license allocation rather than in broadcast regulation in general, is further demonstrated by its deferral of regulation of all other major aspects of broadcasting such as advertising, cable, and satellite. In other words, the Hariri government did not demonstrate that it was in any way intent on safeguarding the *public* interest. Besides the initial granting of licenses to a few pre-chosen applicants, all subsequent governments, including a new Hariri administration (in office at the time of writing), did practically nothing to ensure control over content of the broadcast media, and to regulate advertising and televised election campaigns, in order to reinforce the effort of

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<sup>74</sup> See Chapter 6, p. 209.



reconciliation and safeguard the public interest.<sup>75</sup> At the time of writing, the NAC – the authority responsible for controlling the operation of the licensed media - still lacks the personnel, equipment, guidelines, and prerogative to control programming.<sup>76</sup> The broadcast stations, meanwhile, are following clearly identifiable confessional lines, whether according to academic research or members of the powerless NAC itself.<sup>77</sup>

The situation is certainly more detrimental to the efforts of national reconciliation, in the wake of the total marginalisation of Tele Liban (the state television). Tele Liban could have served as a major tool to achieve the Taef objective of reconciliation (e.g., by promoting pluralism, a national identity and safeguarding the public interest). Instead, one single article in the 1994 Act dealt with this government-owned station. Article 41 specified the frequencies to be allocated to the station, while deferring organisation of its operation and programming for later on. This neglect is especially questionable when all AM frequencies were denied to private radios in 1996, under the excuse that the government needed them (all!) to promote state-controlled broadcasting. Eight years later, with Hariri back in office, still nothing has been done to prevent Tele Liban from lapsing into obscurity.<sup>78</sup> The station's service was even completely halted by a ministerial decision at one point, until the government could figure out ways of rescuing it from its disastrous financial situation.

One final argument that supports the idea that the Hariri government was purely interested in dividing up the media pie (as opposed to *regulating* or *organising* the media), can be inferred, using reverse logic, from the government's promotion or rejection of certain stipulations during the discussion and bargaining period (i.e., policy formulation). On the one hand, the Hariri government rejected the idea of a technical committee to study the number of available licenses to be allocated, a national council that would regulate the media instead of

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<sup>75</sup> Obviously, this does not prevent the authorities from closing down these stations once in a while, when their programming is seen to "threaten national security". Just recently, one of the licensed television stations (MTV) was shut down for having used airtime to promote its major shareholder, Gabriel Murr, during the summer 2002 by-elections. To date, in the absence of a law regulating electoral campaigns in the broadcast media, a single clause in the election law (Article 68) does so. It forbids all printed and broadcast media from promoting a candidate. *The Daily Star*, 30 May 2002.

<sup>76</sup> The NAC, according to the 1994 Act, can only exercise content control when "requested to do so by the Ministry of Information" and by using "the facilities offered" by it (Article 47). On 6 April, 2001, the newly appointed NAC President Mahfouz was quoted denouncing the fact that the NAC was still unable to exercise content control as stipulated by the 1994 Act. He accused the Hariri government of delay in forming the committee responsible for programme control and in providing the equipment necessary to exercise such control.

<sup>77</sup> See Chapter 6, section on "Pluralism of Ownership".

<sup>78</sup> At the time of writing, Tele Liban was mostly playing black and white re-runs from early 70s local productions in addition to infomercials.

the Council of Ministers, of making the judiciary responsible for settling disputes between the operating stations and the government, of allowing regional broadcasting to exist, and of specifying the capital needed for applicants to be accepted.<sup>79</sup> On the other hand, it insisted on making the Council of Ministers the sole higher authority responsible for licensing and regulating the media, and on making universal coverage a must for all successful applicants. Looking at the entire policy formation phase,<sup>80</sup> one can see that the debate between the Hariri government and opposition groups was actually centred on the *number* of applicants that the new legislation was going to allow. Opposition MPs and the media lobby, though they strongly pushed for regional broadcasting, failed to have it included (in the Act) as a separate broadcast category. In his address in parliament on October 1994, MP Wakeem lamented this exclusion of regional broadcasting:

“if the media are a part of politics, I can say to you that, according to this law [the 1994 Act], I cannot publish a pamphlet, whereas one man – without pretence – I know which part of the public is with me and which part is with him, can open ten television stations... who can explain what is wrong with having a private television station in each region? We know that those who can set up television stations covering all of Lebanon, are not many”.<sup>81</sup>

The Lebanese government, in the name of maintaining the cultural and national unity of the country, insisted on precluding regional broadcasting altogether, and demanded universal coverage from all applicant stations. This was indeed a powerful argument advanced by both Prime Minister Hariri and Speaker of Parliament Berri against regional broadcasting, especially knowing the history of media fragmentation during the Civil War.<sup>82</sup>

Giving the Hariri government the benefit of the doubt, it could be said that achieving national unity through mandatory universal coverage was a step in the right direction. However, this important objective cannot be achieved by enforcing universal coverage alone. The Hariri government should have demonstrated more interest and effort in securing national unity. Tele Liban, for instance, instead of being totally “forgotten” (it still is), could have been at least equally if not more efficiently used to create social cohesion and integration as the state broadcaster on whom such a burden traditionally falls. Indeed, the fact that, almost a decade

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<sup>79</sup> Specifying the amount of capital needed was done later on, during the processing of applications. While pressure groups successfully managed to reduce the huge sum of money the government initially wanted in return for granting a license, later on they were surprised to learn that the capital required by applicants exceeded the capacities of most operating stations (in 1996).

<sup>80</sup> Policy formation as used here includes both the policy formulation and policy adoption stages.

<sup>81</sup> MP Najah Wakeem, minutes of the general parliamentary session, 19 October 1994, p. 1701.

<sup>82</sup> See chapters 4 and 5.

later, still no legislation has been introduced, much less discussed, to organise the operation and management of Tele Liban (as stipulated in the 1994 Act) may be more evidence that the Hariri government was actually disinterested in the “public interest”. In any case, as this analysis has already shown in chapters 5 and 6, it is more likely that the “universal coverage” condition imposed worked more effectively as a technical/ structural requirement that eventually led to the elimination of the majority of the existing, smaller broadcasters.

### CONCLUSION

Kingdon’s model, I have already stated, stops short of continuing the policymaking story till the end. Implementation, Pal writes, “is one of the trickier phases in the policy-making process”.<sup>83</sup>

At some point a decision is made and the policy – with its complex interweaving of goals, problem definition, and instruments – is announced. That of course is not the end of the story; in many ways, *it is just the beginning*, since the policy has to be implemented.<sup>84</sup>

It is an established fact in policy research conducted in the Western World, mostly in Northern America, that implementation is almost never perfect. However, such (ethnocentric) research is generally conducted based on the premise that the rule of law is the foundation of democratic systems. In other words, one-to-one implementation is at least *expected*, though, for a variety of reasons, is never fully achieved.

The present research on and analysis of the 1994 Act (from inception to implementation) not only supports literature that considers implementation a complex, crucial part of the policymaking process (some researchers think of implementation as a straightforward, technical process). It also places this important phase within the context of the entire policymaking process, rather than looks at it as a distinct part of the process. Indeed, each phase cannot be understood in its complexity unless related to other phases, and causal relationships established to explain the entire policymaking process.

Considering only those stages of policymaking that Kingdon dealt with (i.e., problem definition and policy formulation), one may justifiably think that the Hariri government incurred considerable losses during the bargaining process, to the advantage of the private media lobby and opposition groups. The fact that the Hariri government could lose out to some

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<sup>83</sup> Pal, 1992, p. 172.

<sup>84</sup> Pal, 1992, p. 171, emphasis added.

extent to opposition groups was itself a very likely outcome of the policy formation process. Indeed, according to Kingdon, policy outcomes are “unpredictable... An administration proposes a bill, then is unable to control subsequent happenings and predict the result”.<sup>85</sup> In his opinion, participants may even find themselves ending up with a result “not to their liking”.<sup>86</sup>

So far, Kingdon’s analysis (of the policy formation process) could be said to apply quite well to the Lebanese case, with the successful bargaining on the part of the media lobby and opposition groups, moreover, demonstrating the existence of a democratic forum in post-Civil War Lebanon. However, looking back at the *entire* policymaking process related to the 1994 Act, I would argue that most, if not all of the (political) losses incurred by the Hariri government through bargaining during the early stages of policymaking seem to have been successfully *recuperated* during the implementation phase. Perhaps in this research finding lies the most significant contribution of the present study of the Lebanese Act of 1994.

In the specific case of Lebanon, unless one has access to the (mostly hidden), non-transparent details of the implementation phase, one may not realise the extent to which both committees (the NAC and TC) were indeed used to promote the agenda of the Hariri government rather than the Lebanese public interest - the very purpose for which these committees were so vehemently pushed for during the policy formulation stage by politicians and lobbying groups. Neither the (forceful) introduction of a technical committee nor a national council for regulating the media were successful in keeping the Hariri government at arm’s length from the highly sensitive, highly controversial licensing process. Both regulatory bodies, in my opinion, were instead *effectively used* to win the consent of public opinion and to maintain the *appearance* of objectivity, professionalism, and bureaucratic transparency and accountability in the face of mounting opposition against Hariri’s total control of the licensing process. Thus, the Hariri government could claim – as it repeatedly has - that it was simply following the recommendations of the (supposedly) independent bodies, which it certainly did. The present study, however, has – by applying Kingdon’s model of policy analysis, applying reverse logic to analyse primary research findings, and studying the patterns of ownership of the licensed stations - shown that the Hariri government was actually willing to accept the recommendations of the NAC simply because it had (indirect) control over such

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<sup>85</sup> Kingdon, 1984, p. 177.

<sup>86</sup> Kingdon, 1984, p. 178.

recommendations in the first place.<sup>87</sup> This claim to democracy and professionalism by the Hariri government was not exclusive to the implementation phase. It actually started with the early phases of the policymaking process, when Hariri repeatedly addressed and “appeased” the suspicious Lebanese public by saying that Lebanon was acquiring a first rate piece of legislation comparable to the one existing in one of the leading world democracies (i.e., France). The pretence of a French-style law, and a French-style national council and technical committee were needed to obtain public acquiescence to what was mostly a private political and economic agenda.

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<sup>87</sup> Here I would like to take issue with Speaker Berri concerning what he said in *Al-Nahar* on 27 January 1999, three years after the licensing file was closed. Berri was quoted boldly admitting that ‘licensing (in 1996) was “discretionary” and based on “confessional considerations”, that “the law was not properly implemented”, and that “the decisions of the NAC were not taken into consideration” by the Hariri government. I agree with his belated “confession” concerning all the above-mentioned points except the last one. I believe Berri is here trying to exonerate the NAC by shifting the blame to the Hariri government. In this study, however, I argue that the NAC functioned as the direct arm of the Hariri government during the licensing process.

## CONCLUSION

I hope that, in the present study, I have been able to live up to Wildawski's definition of a policy analyst, having enough courage to cross borders and explore new terrain, yet cautious enough to know my way back home. The task was not an easy one, considering the lack of signposts, directions, and mapping that available studies usually offer the inexperienced traveller/adventurer. My purpose in this study, was, using primary sources, mainly to document a still-undocumented, important period of post-Civil War Lebanon; i.e., a period in which a piece of landmark legislation for private broadcasting was introduced for the first time in an Arab country. My study, though suffering from a general lack of existing theories on communication and policy making in the Arab world, tried to go beyond simple description and documentation. It also ventured into the murky waters of analysis and interpretation in a highly under-researched area. This was mostly done by making use, as much as possible, of Kingdon's "evolutionary"<sup>1</sup> model of policymaking. The present analysis, without aspiring to be conclusive or to contribute to a new theory of communication, policymaking, and the Arab World, sought however to extend the analysis of the 1994 Act to its natural conclusion, i.e., the implementation phase. This phase was not dealt with in Kingdon's model, for the simple reason that he set out to exclusively explain earlier phases of the policymaking process. By including all stages of policymaking, and by extending Kingdon's concept of 'policy community' to include elite theory, the present study tried to shed light on a process still greatly under-researched by the beginning at the 21<sup>st</sup> century: broadcast regulation in the Arab world.

To start with, the *raison d'être* of the Lebanese 1994 Act was multiple and can be traced to several contextual levels. First, there is the survival, consolidation, and even "primacy" of confessional loyalties in post-Civil War Lebanese society. These loyalties "continue to serve as viable sources of communal solidarity".<sup>2</sup> Second, there was the Civil War which, *de facto*, introduced the idea of multiple media outlets, each expressing the views and aspirations of some community or group. Third, there existed, since independence, a politico-economic elite that

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<sup>1</sup> This is how John refers to Kingdon's policy streams approach, though he calls for the improvement on and extension of Kingdon's model (developed mostly to explain the policy formulation phase of policymaking).

<sup>2</sup> Khalaf, 2001, Chapter 10. As Khalaf argues, this "retribalisation" apparent in re-awakened communal identities as a consequence of Lebanon's violent experience during the war has two consequences: on the one hand it accounts "for much of the resourcefulness and cultural diversity and vitality of the Lebanese. On the other hand, it "undermine[s] civic consciousness and commitment to Lebanon as a nation-state" (p. 259).

controlled the country's economic and political resources,<sup>3</sup> and which, along with new elite groups that arose during the Civil War (particularly the warlords),<sup>4</sup> sought to control the newly privatised broadcast media (among other important sectors of the economy). Fourth, there was a recognised need, if not a necessity, for the post-Taef governments to license stations representative of the major confessions because of the political culture of confessionalism - a precondition for peace in post-Civil War Lebanon. Finally the international wave of deregulation that swept Western Europe, having a "spill over" effect in various parts of the world, starting with the ex-Communist countries, may have played a role in the introduction of privatisation to the Lebanese broadcasting sector.<sup>5</sup> All these various influences may have, together, though to various degrees, brought about the 1994 Act and given it, within its immediate and larger regional (i.e., Arab) context, "a precedent-setting nature".<sup>6</sup>

More important than this general analysis of the various reasons that led to the introduction of a landmark piece of legislation, is the finding, in the present study, that existing, mostly North American or European policy analysis and mass communication research are basically inadequate to account for media, law, and change in Lebanon. Indeed, my study of the entire process of policymaking related to the 1994 Act, from problem definition to implementation, showed that broadcast legislation in Arab countries (starting with Lebanon) may not be properly understood unless researchers pay close attention to what I consider to be one of the most crucial, if not *the* crucial phase, in broadcast legislation in Arab societies. I am referring specifically to the implementation phase of policymaking. Research findings, mostly in North America (where policy analysis is well established), have either acknowledged the fact that

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<sup>3</sup> The current heated debate on privatising the country's major public services (e.g., electricity, water, mobile phoning systems, and so on) is seen by opposition groups as an ongoing attempt by Prime Minister Hariri and other leaders of the military and financial elite to control the country following the privatisation of the public sector. Former Speaker of Parliament, Hussein Husseini, very recently, referred to this emerging national elite as "the militias of arms and finance". Interviewed in *La Revue du Liban*, 18-25 May 2002.

<sup>4</sup> Traboulsi, 1993.

<sup>5</sup> See definition of "spillover" discussed earlier in Chapter 7 (section on "politics stream"). Speaking of "spillover" effect, the Syrian government – one of the most restrictive governments in the Middle East concerning freedom of expression – recently announced its intent to amend the 1949 Press Law. Such an amendment would, according to the Syrian Minister of Information, enable more periodicals and newspapers to be published. (*Al Mustaqbal*, 5 July 2001). I understand this need, if not "pressure" to open up the media in Syria, largely as the result of growing global liberalisation in media regulation and increasing exposure of the Syrian population to trans-border satellite communication.

studies of implementation are underdeveloped – “a missing link” – in policy research, or that, at best, the implementation phase is usually disappointing and never perfect.<sup>7</sup> The present study was able to provide a third “possibility” concerning what implementation in an Arab country can be about.

The main contribution of the present study, besides the documenting of all phases of the Lebanese Broadcasting Act of 1994, lies in the realisation that implementation is a crucial, even decisive phase of policymaking in Lebanon. Indeed, it can be so crucial and decisive as to significantly and *intentionally undo* the (relatively) democratic bargaining process which characterised the earlier stages of policymaking. In other words, any study of the policy making process that fails to include all stages of the process can lead to erroneous results, and paint an incomplete picture of the phenomenon being studied. Without stretching Kingdon’s model to include the implementation phase, for instance, the present study would have concluded, based on reasonable evidence, that civil society and democratic institutions are very much part of Lebanon’s political culture. Inclusion of the study of the implementation process proved this to be wrong.

Moreover, as the present study has demonstrated, the “undoing” of the gains of civil society and other pressure groups by the Hariri government was made possible because, unlike the case in Western Europe and North America, clientelism is rampant and the rule of law is the *exception* not the rule in Lebanon (and Arab societies in general). In the case of the 1994 Act, the concept of clientelism, more than any possible account of bargaining among policy entrepreneurs (offered by Kingdon), could explain how the media was, in the end, so easily ‘captured’ by Lebanon’s politico-economic elite. More specifically, the use of elite theory was able to shed more light on Lebanon’s policy community – a community characterised by such an unequal distribution of power as to raise serious concerns about the nature of ‘democracy’ and political participation in Lebanon. Indeed, with no fear of accountability and considering the lack of the rule of law, Lebanon’s most powerful had practically free reign during the privatisation process, and were able to lay their hands on the media pie, while at the same time preserving a ‘vener’ of (confessional) *proportionality* and ‘equal distribution of wealth’ in the eyes of the Lebanese communities. Such ‘instrumentalisation’ of confessionalism for political (and in this case also

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<sup>6</sup> Kingdon is referring to policymaking in general. I find some of his analytical phrases quite useful in the case of the 1994 Act (Kingdon, 1984, p. 191).

<sup>7</sup> See Chapter 2 for details concerning the implementation phase.



economic) gain in the policy making process indeed lends credence to both instrumentalist and constructivist theories of ethnicity, at the expense of the primordialist theory. This latter theory postulates that “ethnic sentiment and the solidarity it produces are an original part of the human race, and hence natural, inevitable, and nonrational.”<sup>8</sup> While this theory is, in a sense, corroborated by the first narrative according to which Lebanon’s media were divided up among the country’s powerful politico-confessional elite, in keeping with the political culture of confessionalism, it is seriously challenged by the second, ‘latent’ narrative uncovered by the study of interlocking control in the Lebanese media. This study, informed by elite theory, shows that the *distribution* of Lebanon’s power elite in the Lebanese media was anything but irrational or natural. Rather, it was calculated, and was, for the most part, independent of confessional identity. In other words, the slicing up of the media pie respected Lebanon’s political culture of confessionalism only on a superficial level. This is in keeping with instrumentalist theories which recognise that ethnicity (and in the case of Lebanon, confessionalism) is “one among many possible or available instruments that can be used by groups to gain control of resources and improve their material circumstances.”<sup>9</sup>

Having said that, it is important for researchers interested in the field of media, policy, and change in individual developing countries and/or societies in transition, to tie the characteristics of media systems to “a deeper analysis of common patterns in the political development”<sup>10</sup> of these countries, and to integrate elite theory in the model chosen for policy analysis. The dual advantage of elite theory, in this respect, lies in its acknowledgment of the important role of *indirect* power to influence policy making and, consequently, in its ability to (conveniently) incorporate the concept of clientelism essential in such studies. It is doubtful that, without an approach that includes these various levels of analysis, a thorough account of media systems in these countries can be reached.

### **Policy making and time: an update**

Finally, another very useful component should be added to any multi-faceted approach to the analysis of policy making in the developing world and in societies in transition, i.e., the

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<sup>8</sup> Binder, 1999, p. 6.

<sup>9</sup> Binder, 1999, p. 6.

<sup>10</sup> Hallin and Papathanassopoulos, 2002, pp. 184-185.

dimension of time. Few researchers can afford or are able to include this additional element, but the importance of a study that stretches over time when studying policy making cannot be over-emphasised. The literature on elite theory recognises the importance of the ‘time factor’ in elite studies, since “time is a central element in any political actor’s calculations”.<sup>11</sup> As Pahl and Winkler argue:

What is crucially missing in most power-studies is any account of actual decision-making at the top (intrinsically difficult to obtain access to, of course except usually long after the event). (...) In default of detailed ethnography, sociologists have behaved *as if* they had this material and assumed, for want of any corrections, that those in elite roles had power by virtue of their office. The result is a very mechanistic description of power, as if organisations really worked the way they were drawn on the wall chart. (...) If one does not have access, one can at least look at related situations where we do have evidence.<sup>12</sup>

Precisely, in the case of the 1994 Act, more *evidence* concerning the *real and hidden intentions of decision-making at the top* was obtained *with time*. As it turned out, the story of Lebanon’s privatisation of the broadcast media did not end in 1996 when the broadcast licenses were finally allocated. This is especially true considering that the ‘policy making elite’ or ‘decision-makers at the top’ responsible for the introduction and implementation of the 1994 Act are still in their positions of power, and capable of carrying out their ‘initial’ designs for Lebanon’s private media. As I was adding the final touches to the present study, the latest developments in Lebanon’s media scene, though tragic in themselves, added up to lend additional support to my initial research findings. When evaluating the entire policymaking process that extended from May 1991 - date of the first policy formulations - to September 1996 - when the chapter on privatisation of the media was finally closed (or so it seemed), i.e., when licenses were finally allocated, I came up with the following conclusion: Hariri, as an emerging political and economic power in Lebanon’s post-Civil War scene was intent on tightly controlling, if not monopolising, the newly privatised broadcast media. At the time the new broadcast legislation was being introduced, he had already secured a majority share in Lebanon’s public broadcaster and owned Radio Orient in addition to several newspapers.<sup>13</sup> His willingness to introduce a

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<sup>11</sup> These are the suggestions from the works of Presthus and Agger. See details in Parry, 1969, p. 139-140.

<sup>12</sup> Pahl and Winkler, 1974, p. 104.

<sup>13</sup> See section on ‘Shaping forces’ in Chapter 5.

broadcast law that would only accommodate “two, maybe four” television stations<sup>14</sup> became a reality when only four stations out of 63 applicants were eventually (and illegally) licensed: LBCI, MTV, FTV, and NBN.<sup>15</sup> As was demonstrated, this was mostly done by having the NAC apply double standards during the processing of applications, and by “making up” the number of broadcast frequencies years before any technical report approved by the ITU was submitted. Such licensing was also carried out by doing injustice to NTV, an applicant whose file was at least as satisfactory as that of any of the other successful applicants. NTV, at the time, had an editorial policy very critical of Prime Minister Hariri’s agenda. MTV and LBCI, both Christian and critical of Syrian presence in Lebanon, were only *reluctantly* licensed: indeed, out of the 4 successful applicants, only the Christian stations were singled out for being in infringement of the law in the published opinion of the NAC. Muslim Shi’ite NBN, which did not even exist at the time it was granted a license, and whose application file was the most problematic of all four stations, got a clean bill of health in the NAC’s published opinion. So did FTV, the station associated with Hariri.<sup>16</sup>

Subsequent events related to the broadcast media, but not included in the time frame of the present analysis (i.e., 1991-1996), not only proved the validity of the above-mentioned conclusions, but shed more light on the existence of ‘invisible’ players in the policy making process in particular and Lebanese affairs in general. Towards the end of 1999, when Hariri’s term was over and Salim Hoss took over, NTV was vindicated by the Constitutional Council which ruled that NTV was indeed wronged during the licensing process. NTV resumed broadcasting in October 2001.

In 2000, Hariri was re-elected as Prime Minister. His handling of the media, since then, has demonstrated that, indeed, the ‘media file’ was not closed. Not only were stations that had ‘secured’ a license in September 1996 faced with the possibility of losing those licenses, but the selectivity in singling out certain stations for infringement of the law confirms Hariri’s earlier ‘designs’ for Lebanon’s broadcast media. In September 2002, MTV was *permanently* closed

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<sup>14</sup> This quote is multiply attested by Minister of Information Samaha (interviewed on 14 January 1999) and the Vice President of the National Audio-Visual Council (interviewed on 22 August 2001).

<sup>15</sup> See Chapter 6 on the illegality of the licensing process.

<sup>16</sup> FTV’s application file, upon personal consultation, was found to be quite satisfactory. NBN’s file, by contrast, had very serious defects. See Chapter 6 for details.

down for infringing on the electoral law (which prohibits political advertising). This permanent revoking of MTV's license was made not only in defiance of accepted rules of legal procedure, but was carried out despite the fact that other stations, especially Hariri's FTV, were guilty of the very same offence.<sup>17</sup> Then, on the 1st of January 2003, NTV's satellite feed was suddenly interrupted. Hariri had, by virtue of personal fiat, given orders to the Minister of Telecommunications, who obliged. Once again, this was done in breach of legal procedure, since only the Council of Ministers, and not the Prime Minister, has the power to look into such infringements and impose sanctions *after the act*.<sup>18</sup> The reason for Hariri's personal intervention was a promotional clip, on NTV, of a public affairs episode hosting Saudi dissidents. According to Hariri, he was unable to convene an extraordinary Cabinet meeting to discuss the issue because of the holidays and the unavailability of some of the ministers (some of them had left the country). Therefore, he decided to act unilaterally, and stop the station from airing the episode (by ordering the cutting of the satellite feed) *before* harm to Lebanese-Saudi relations was done.<sup>19</sup>

In sum, in less than 6 months, Hariri's government (or Hariri with the powers-that-be behind him?) has been responsible for closing or attempting to close down two licensed stations known for their 'opposition' status (MTV is known for its opposition to Syrian presence in Lebanon while NTV is opposed to Hariri's policies in general). In 1996, already, one barely 'made it' (MTV) while the other was unjustly denied a license (NTV). By contrast, NBN - whose licensing was highly controversial in 1996 - was allowed, with impunity, to change its status from a generalist station (as stipulated in its license) to a specialist, 24-hour news station.<sup>20</sup> This 'switch' is in clear infringement of the 1994 Act, which does not recognise the existence of such a category of licenses.

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<sup>17</sup> On the 2<sup>nd</sup> of January 2003, MP Boutros Harb initiated a lawsuit against Tele Liban, FTV, NBN, and LBCI for clearly infringing on the Lebanese electoral law by conducting political advertising that privileged a few candidates and excluded others. In support of his case, he supplied the courts with a CD from IPSOS-STAT, Lebanon, which contains recordings of the "illegal" political advertising carried out by the above-mentioned stations. See *Al Nahar*, 2 January 2003.

<sup>18</sup> Prior censorship of the media is illegal in Lebanon. For a legal discussion of such a 'unilateral' action by Hariri and its legality, see *L'Orient-Le-Jour*, *Al-Nahar*, *Al-Safir*, and *the Daily Star* of January 4<sup>th</sup>, 2003, and *Al-Nahar* of 28 December 2002.

<sup>19</sup> Eventually, the episode was not broadcast as scheduled, and NTV's satellite transmission was resumed. See *Daily Star*, 6 January 2003.

<sup>20</sup> Floundering NBN did this in a bid to improve its ratings.

The latest NTV ‘incident’ is revealing in many respects. First of all, it reinforces the interpretation put forward earlier in this study, i.e., that Hariri was against licensing this station, regardless of the quality of its application. Indeed, he was recently quoted in relation to the incident as wanting to permanently revoke NTV’s license for threatening relations with Saudi Arabia. Second, it shows that Hariri’s “trial balloon” concerning the inclusion of prior censorship clause in the media law in the early 90s was not a “mistake” as he claimed then,<sup>21</sup> and reflects a continuing desire to clamp down on the media. Finally, the staunch defense of Saudi-Lebanese interests, justified indeed by Lebanese media laws that prohibit the defamation of other Arab states, can be read on two different levels. First, considering the fact that other stations’ criticism of politics in various Arab countries (including Hariri’s own FTV) has not been penalised,<sup>22</sup> current media policy demonstrates that the use of the law is very selective, indeed a sword of Damocles that people in power can use to promote their own interests. Second, Hariri’s defense of Saudi interests, *before* they were actually hurt, and the exclusion of other Arab regimes from similar protection (with the exception of Syria, naturally), reinforces the “special status” that *some* Arab countries have in the eyes of Lebanese authorities. This defense also brings to the fore the ‘invisible hand’ of Saudi Arabia as a major power broker in Lebanon, and the main supporter of Hariri’s entrance into the Lebanese political scene.<sup>23</sup> Indeed, the Taef Agreement that brought an end to the Civil War involved two major non-Lebanese, Arab players: Saudi Arabia and Syria. While Syrian intervention in and control of Lebanese politics (and media) is more widespread, probably due to Syria’s actual presence on Lebanese soil, Saudi Arabia seems to have preferred a more discreet (though by no means less effective) role.

Finally, the present evaluation of the policymaking process as regards the 1994 Act, which highlights the country’s power elites and their role as the principal actors capable of influencing national policy, should not be misconstrued as suggesting the existence of a *united* power elite; far from it. Elite studies, including the most ‘pessimistic’ variety (exemplified by Mills’ position),<sup>24</sup> recognise the lack of cohesiveness and existence of friction and even conflict among

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<sup>21</sup> See Chapter 5.

<sup>22</sup> *Al-Nahar*, 4 January 2003.

<sup>23</sup> Saudi interference in Lebanese media in particular is not new, especially in the print media. It has often taken the shape of indirect ownership of the Lebanese newspapers or “grants” offered to prominent journalists. See Chapter 4.

<sup>24</sup> According to Mills, the existence of conflict and individual ambitions in the higher circles of the power elite, however important these may be, are superseded by “the internal discipline and the community of interests that bind the power elite together, even across the boundaries of nations at war” (1956, p. 283). The major weakness of this

the power elite.<sup>25</sup> In my study, I demonstrated the existence of a strong interlocking of elite positions in the private media, government positions, and economic holdings in Lebanon between 1991 and 1996. The underlying assumption behind the study of interlocking positions is that such knowledge makes it possible to explain which agencies, institutions or persons rise or fall in influence on the basis of interlocking relations.<sup>26</sup> However, as Giddens warns, interlocking control should not be assumed to provide an “index of elite solidarity”.<sup>27</sup> More specifically, “statistical details on the interlocking of positions are again of little value unless the *nature* of the connections are examined.”<sup>28</sup> The latest developments in the Lebanese media scene indeed highlight the need to qualify interlocking ownership, and not just to identify it. Hariri and several of his business allies were found to be ‘represented’ in both Christian LBCI and MTV. The existence of this interlocking control, however, in no way explains the complex relationship between Hariri and these two stations. LBCI, in the last few years, had been repeatedly ‘harrassed’ by the Hariri government (which was forced to grant it a license in 1996 for confessional considerations). However, LBCI seems to be quite immune, at least so far, from the fate of other ‘opposition’ stations (i.e., MTV and NTV). One possible explanation could be its association with members of the Saudi economic and power elite in order to consolidate its role as a satellite broadcaster.<sup>29</sup> In the light of what happened to MTV and NTV recently, any future conflict between LBCI and the Hariri government may reveal which of the two has greater *wasta*

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understanding of ‘elite interests’ is that it endows the concept of ‘elite interests’ with an immutable character and does not take into account the reality that interests might be ‘common’ and ‘unifying’ in one instance and significantly divergent in another.

<sup>25</sup> For more details on conflicts among power elites, see Parry, 1969, pp. 41-45; and Howorth, 1981, pp. 249-250.

<sup>26</sup> Lasswell, Lerner, and Rothwell, 1971, p. 19.

<sup>27</sup> Giddens, 1974, p. 17.

<sup>28</sup> Giddens, 1974, p. 17, emphasis added.

<sup>29</sup> *The Daily Star*, 16 December 2002. Increasingly, for financial (and changing ownership ?) considerations, LBCI has been catering to its Muslim viewers, and slowly acquiring a pan-Arab outlook, in an attempt to extend its reach beyond the 3 million Lebanese at home to include the 300 million Arabs “out there”. This is especially apparent in the decision to move the set of several of its programmes, especially game shows (e.g., “Ya lel ya ein”), to Egypt. Indeed, one of the (highly westernised) female hosts of LBCI, who prior to moving her show to Egypt spoke a Lebanese dialect with a French accent heavily interspersed with French words and phrases (she was born in Quebec), seems to be speaking differently now. Lebanese followers of the game show can easily notice her increasing use of a more accessible dialect understood by the general Arab audiences, and her total avoidance of French expressions mixed with her Arabic (a common phenomenon among many Lebanese Christians). See Kraidy (2000) on LBCI’s programming aimed at Muslim viewers and the economic imperatives behind this programming policy.

with the Saudi power elites – who, it should be remembered, are from being a cohesive entity themselves.

The recent NTV crisis, especially as debated and reported in the Lebanese media, seemed to reduce Lebanon's media policy to the decisions of a handful of 'antagonistic' powerful players (i.e., Lahoud vs. Hariri).<sup>30</sup> The term "Troika"- often used by Lebanese politicians and journalists - is indeed a common (sarcastic) way of labeling the alliances and conflicts at the top.<sup>31</sup> The problem with such an explanation is that it is both reductionist and illusory. It eradicates the existence of a complex web of interests and connections on both the national and international levels, and attributes major national crises to the whims and personal interests of easily identifiable actors with easily identifiable powers. This may have partially been the case here, but this power play "at the top" may just be the tip of the iceberg. Elite theory, after all, warns of the limitations of assessing power, especially the invisible type. In the end, only time may tell.

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<sup>30</sup> As *The Daily Star* reported on 6 January 2003, Hariri was upset by Lahoud's intervention in favour of NTV because "Hariri supported Lahoud when the latter favored shutting down MTV, but felt that the favor was not returned when the president failed to back him on ending NTV's satellite broadcasting".

<sup>31</sup> The 3 top governmental positions refer to the president of the republic, the prime minister, and the speaker of parliament.

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**APPENDIX A**

**LAW NO. 382**

**(The Lebanese Broadcasting Act of 1994)**

## Law No 382

### On TV And Radio Broadcasting

The National Assembly adopted the following law published by the President of the Republic:

#### Chapter One

##### Objective and Definition

###### **Article 1**

This law aims at regulating the audiovisual broadcasting, regardless of the technique, the means or the tool used, regardless of its status or its name, and at regulating all issues and rules related to this broadcasting.

###### **Article 2**

The terms mentioned hereinafter have, when used for the enforcement of this law, the following meaning:

- Radio Broadcasting: broadcasting by electromagnetic waves or any other means, which the public can pick up.
- TV broadcasting: live broadcasting of pictures, whether they are animated or not, accompanied by voice or not, through electromagnetic waves or any other means, which the public can pick up.
- Channel: margin of frequency occupied by a TV broadcasting station for TV broadcasting.
- Wave: margin of frequency occupied by a radio broadcasting station for radio broadcasting.
- TV or radio broadcasting station: all kinds of fixed or movable transmitters or relay devices, transposers or amplifiers, as well as all terrestrial or satellite networks that enable to follow in direct the TV or radio broadcasting.
- Retransmission: to take all or certain radio or TV programs, regardless of the technical means used by the licensed media, and retransmit them to the public, without any change, simultaneously or at a later stage.
- Television: legal entity that regulates and broadcasts a televised program to the public, or the one that broadcasts it without change to a third party.
- Radio: legal entity that regulates and broadcasts a radio program to the public, or the one that broadcasts it without change to a third party.
- Program: all elements of the service provided by the TV and radio corporation, as stipulated by the previous paragraph.
- Advertisements: advertisements addressed to the public according to the time granted to

the advertiser, in view of promoting, buying or renting a product or a service, or in order to put forward an issue or an opinion or to cause other effects wanted by the advertiser.  
- Literary, artistic, musical or scientific assignees: legal or natural entity that creates an innovation in the intellectual, artistic, musical or scientific fields, or that acquires the right to exploit it.

## Chapter Two

### General Provisions

#### **Article 3:**

The audiovisual media are free. The freedom of the media is exercised in conformity with the Constitution and the laws in vigor.

#### **Article 4:**

By audiovisual media, one means all TV or radio broadcasting putting at the disposal of the public or certain categories of the public, signals, pictures, sounds or texts regardless of their nature, not having the character of private correspondence, through channels, waves, transmitters, networks and other audiovisual broadcasting or transmission techniques.

#### **Article 5:**

The establishment of audiovisual media inside Lebanon's territory or in its territorial waters is subject to a prior license.

#### **Article 6:**

Without a prior license, a natural or legal entity cannot import, manufacture, install or use any transmitter or audiovisual broadcasting or transmission device. Concerned administrations will confiscate the devices, equipment and material, imported, manufactured, used or under installation without prior licensing. The offender will be liable to the penalties stipulated by the laws in vigor.

#### **Article 7:**

Licenses are granted to TV and radio corporations according to the following criteria:

First:

- 1 - The capacities and the technical features of the transmitters and the broadcasting

stations through the channels and the waves that are assigned to them.

2 - Working conditions and requirements, such as human resources, programs, machinery, premises, equipment, studios and stations.

3 - The capacity of the media to ensure the expenses of at least the first year of the license.

Second:

The corporation's commitment to respect the human condition, freedom and rights of others, the pluralism in terms of opinions and ideas, the objectivity of the broadcasting of news and events, the respect of law and order, as well as national defense needs and public interest requirements.

Third:

The corporation's commitment vis-à-vis the need to develop the national industry related to the national audiovisual production.

Fourth:

The corporation's commitment vis-à-vis the size of the local production defined by the book of specifications related to every category of TV and radio corporations in different programs.

Fifth:

The corporation's commitment not to get any financial gain, which does not result from an activity directly or indirectly related to the nature of its work.

Sixth:

The corporation's commitment not to broadcast anything that may contribute to propagandize relations with the Zionist enemy.

Seventh:

The audiovisual media are governed by the provisions of the general laws which are not in contradiction with the present law.

### **Article 8:**

Licenses are given in the respect of the rights granted to Lebanon by international conventions on channels and waves, provided they are defined and distributed according to internationally adopted rules and technical criteria and they ensure a clear and developed broadcasting.

A technical committee regulating TV and radio broadcasting is set up. This committee, working in cooperation with the Minister of Information and the National Audiovisual Council, includes:

- 1 - The Director General of investment at the Ministry of Telecommunications,
- 2 - The Director General of information,
- 3 - A representative of the Ministry of Defense
- 4 - Four experienced telecommunications engineers, appointed by decision of the Cabinet, upon the proposal of the Ministers of Information and Telecommunications,
- 5 - The technical director of Radio-Liban,
- 6 - The technical director of TL1,
- 7 - Two representatives of licensed TVs and radios.

This committee is entrusted with studying all technical aspects of TV and radio broadcasting and submits the appropriate proposals in this respect to the Minister of Information and to the National Audiovisual Council.

#### **Article 9:**

TV channels, radio waves, the margin of frequencies and vibrations and other channels and waves are the exclusive right of the state and cannot be ceded or sold.

The corporation uses the channel or the wave through renting it for the whole license period under the laws and regulations in vigor. This right of use given to the corporation cannot be considered a concession. Besides, the corporation doesn't have on any account, at the end of the contract of lease, right to any compensation, regardless of its nature.

The radio or TV corporation cannot sell or cede, directly or indirectly, the totality or a part of its lease rights. In the case of a contravention of this kind, the corporation is, de facto, prohibited from broadcasting.

### Chapter Three

#### Classification of TV and Radio Corporations

#### **Article 10:**

Televisions are classified as follows:

- 1st category: televisions that broadcast TV programs, including the News bulletin and political programs. Their broadcasting covers the whole Lebanese territory.
- 2nd category: televisions that broadcast TV programs, except for the News bulletin and political programs. Their broadcasting covers the whole Lebanese territory.
- 3rd category: encoded televisions, the programs of which can only be followed by subscribers technically equipped for this end.
- 4th category: international televisions, the broadcasting of which is based on satellites and goes beyond the Lebanese territory.

TV corporations may have, within the broadcasting capacities granted to them and

separately of their general grid, a broadcasting dedicated to a particular region of the Lebanese territory to cover issues related to this region, provided that the length of broadcasting does not exceed 20 hours per week.

**Article 11:**

Radios are classified as follows:

- 1st category: radios that broadcast radio programs, including the News bulletin and political programs. Their broadcasting covers all the Lebanese territory.
- 2nd category: radios that broadcast radio programs, except for the News bulletin and political programs. Their broadcasting covers all the Lebanese territory.
- 3rd category: encoded radios, the programs of which can only be followed by subscribers technically equipped for this end.
- 4th category: international radios, the broadcasting of which is based on satellites and goes beyond the Lebanese territory.

Radio corporations may have, within the broadcasting capacities granted to them and separately of their general grid, a broadcasting dedicated to a particular region of the Lebanese territory to cover issues related to this region, provided that the length of broadcasting doesn't exceed 20 hours per week.

## Chapter Four

### Establishment of the Corporation

**Article 12:**

The television or the radio is set up as a Lebanese joint-stock company entitled to own only one television and one radio.

**Article 13:**

All the company's shares are nominal. The shareholders are subject to the following conditions:

- 1- The natural person shall be Lebanese, having the legal capacity and not having been condemned for a crime or a serious offense, or deprived of his civil laws.
- 2- The legal entity shall be a Lebanese company, the statutes of which forbid it to cede its shares to others than Lebanese natural persons or Lebanese companies.
- 3- A natural or legal entity cannot own directly or indirectly more than 10% of the totality of the company's shares. The husband or the wife, their ascendants and their minor descendants are considered as one person.
- 4- A natural or legal entity cannot be shareholder in more than one company. The husband or the wife, their ascendants and minor descendants are considered as one

person.

**Article 14:**

The company's founders shall subscribe to at least 35% of its capital. They shall not sell their shares before five years at least as to the date of the license. The company shall publish in the official gazette a list of the shareholders and the percentage of their shares at the time the license decree was issued. It shall re-publish the same list at each case of sale or cession of shares.

**Article 15:**

Every sale or cession of shares of the television or the radio corporation shall be subject to a prior license. Every sale or cession involving the shares of the television or the radio corporation against the provisions of this law, even between contracting parties, is considered null, void and with no effect.

Each person having committed a contravention, having participated in it, is liable to a fine, which shall not be less than the real value of the shares sold or ceded, and six months to three years of imprisonment. The shares are confiscated by the state that sells them in accordance with the laws in vigor.

Provisions of this article are applied on every act done through the intermediary of a «pseudonym». The «pseudonym» is considered responsible jointly and severally for the above-mentioned fine.

Every agreement aimed at guaranteeing the execution of such an act or the commitment to set compensation in case of non execution, is considered null and void.

## **Chapter Five**

### **The License**

**Article 16:**

The license is granted to the television or the radio corporation upon a decree adopted by the Cabinet after consultations with the National Audiovisual Council.

**Article 17:**

A «National Audiovisual Council» is created. It consists of 10 members equally appointed by the Council of Ministers and the National Assembly.

**Article 18:**

Members of the National Audiovisual Council are chosen among the Lebanese having



made their proofs in the intellectual, literary, scientific and technical fields; who are not members of elected bodies, nor civil servants in public departments.

#### **Article 19:**

In addition to the functions stipulated by other articles of the present law, the National Audiovisual Council fulfils the following missions:

- 1- Study the license applications submitted to the Council of Ministers through the Minister of Information. It can, if necessary, have resort to experts, administrative staff, technical offices or companies specialized in the field of information.
- 2 - Verify that the applications meet the legal conditions.
- 3 - Give an advisory opinion to the Council of Ministers to approve or reject the application. This opinion is published in the official gazette as soon as the Minister of Information deposits it at the Council of Ministers and before the Council takes a decision about the licensing application.
- 4 - The National Audiovisual Council shall write and present its report within 45 days after the acceptance of the licensing application.
- 5 - The Cabinet puts, through the Minister of Information, the licensing application as well as all necessary documents and technical information, at the disposal of the National Audiovisual Council.

#### **Article 20:**

- 1 - The mandate of the National Audiovisual Council is three renewable years.
- 2 - In the event the seat of a member becomes vacant for any reason whatsoever, this seat is occupied within one month, through procedures similar to that of the nomination and for the remaining period of the membership of the one whose seat is vacant. The absence to three consecutive sessions without a valid cause is considered as a resignation.

#### **Article 21:**

The members of the Council shall not, during their membership, have an activity in contradiction with their functions within the Council.

#### **Article 22:**

The National Audiovisual Council adopts its statutes and the Council of Ministers approves them.

#### **Article 23:**

Allocations of the National Audiovisual Council's members are defined by a decree taken by the Council of Ministers.

#### **Article 24:**

The decision of the Council of Ministers is revocable by the State Council if the legal conditions of licensing are breached.

**Article 25:**

The book of specifications of each category is set up by a specialized committee - or more according to the nature of the topics. The committee is set up by decision of the Council of Ministers and it may resort to all specialists or technicians it needs. The book of specifications is approved by a decree of the Council of Ministers after consultation with the National Audiovisual Council.

**Article 26:**

The license is valid for 6 years, renewable according to a request presented three years before this period expires.

**Article 27:**

First: the licensing fees that TV and radio corporations shall pay are determined as follows:

- The television of the first two categories: 250 millions L.P.
- The radio of the 1st category: 125 millions L.P.
- The radio of the 2nd category: 50 millions L.P.

Second: the yearly rentals that TV and radio corporations shall pay are determined as follows:

- The television of the first two categories: 100 millions L.P.
- The radio of the 1st category: 25 millions L.P.
- The radio of the 2nd category: 15 millions L.P.

## Chapter Six

### Management and Obligations of the Corporation

**Article 28:**

Every radio or television appoints a program director and every 1st category corporation broadcasting the News bulletin and political programs shall appoint a director of News and political programs.

The director shall be Lebanese since more than 10 years, having the legal capacity, not having been condemned for a crime or a serious offense and working on a full-time basis at the corporation.

**Article 29:**

The TV or radio corporation shall publish in the official gazette, in three local newspapers and in the register of commerce, the names of the president and the members of its board of directors as well as the names of two of its directors. It shall also put at the disposal of the public a list of its shareholders' names.

**Article 30:**

TV and radio corporations shall broadcast for one hour per week, programs of national orientation as well as education, health, guidance, cultural and tourist programs, without counterpart, upon the Minister of Information's request and according to the time schedule specified in the book of specifications.

The Minister of Information provides the material to be broadcast or accepts the material available at the corporation.

**Article 31:**

Any natural or legal entity enjoys the right of answer in case televisions or radios broadcast anything that harms its reputation or its honor.

The corporation shall broadcast the answer in technical conditions similar to those that prevailed at the time of the broadcasting of the information requiring the right of answer, and in a way to ensure it a similar public.

The Minister of Information may ask the broadcasting of any denial and rectification of information related to a department or a public utility, in accordance with the proceedings stipulated in the press law.

The right of answer is exercised according to time limits, provisions and penalties stipulated by the press law and its amendments.

**Article 32:**

The decree of license is issued after verifying that the corporation has met the required conditions.

After having been notified of the decision of the Council of Ministers, the licensed company has one year to start operating according to the conditions stipulated by the law.

The government can give, if necessary, an additional period. The right to the license is lost de facto if the company does not submit to the Ministry of Information, within a maximum of one year, a request of inquiry and verification as to the administrative, technical and financial conditions required for the license.

**Article 33:**

TV and radio corporations assume the legal responsibility for any mistake occurred in the exercise of their activities.

## Chapter Seven

### Prohibitions and Penalties

#### **Article 34:**

Televisions and radios shall conform to licensing conditions as well as to statutory provisions in vigor.

#### **Article 35:**

1 - If the television or the radio corporation does not conform to the obligations stipulated by the present law and by laws in vigor, it is liable to the following measures:  
a- In the case of the first contravention, the Minister of Information, upon the National Audiovisual Council's proposal, stops the corporation from broadcasting for a maximum of three days.

b. In the case of the second contravention, committed within one year as to the first contravention, the Council of Ministers, upon the Minister of Information and the National Audiovisual Council's proposal, stops the corporation from broadcasting for one period varying between three days to one month.

The National Audiovisual Council meets on its own initiative or upon the Minister of Information's invitation.

In the event the Council does not answer his invitation within 48 hours, the Minister of Information can do without the Council's advice.

The decisions mentioned in this article shall be revocable by the competent court that will give its decision in accordance with the rules, provided that indemnities, if the measure is contrary to the law, do not exceed the lump sum of 10 millions L.P. for every day of stoppage for the television corporation and 3 millions L.P. for the radio corporation.

2 - In addition to what is mentioned above in the paragraph 1, the offenses and crimes committed through televisions and radios are liable to the penalties foreseen by the Penal code, the press law, the present law and other laws in vigor. These penalties are made harsher in accordance with the article 257 of the Penal code. The term «radio and TV corporations» is added where necessary in the above-stated laws. Broadcasting through them is considered the equivalent of publications foreseen in the article 209 of the Penal code.

## Chapter Eight

### Advertisements

**Article 36:**

TV and radio corporations shall ensure, when broadcasting any advertisement, that its content does not deceive the consumer or harm his health, nor contain elements affecting the youth and public morals.

**Article 37:**

Advertisements shall be clear and easy. They shall differ, by their form and audiovisual aspects, from the programs and the material they come in between. The faces and the voices of the News anchors shall not be used in advertisements.

**Article 38:**

Advertisements are broadcast between a program and another. They can be inserted in a same program, provided they do not affect its unity and value and they do not infringe authors' rights in the literary and artistic fields.

**Article 39:**

Each broadcasting corporation shall create a department or contract the services of an advertising agency, which shall provide it with advertisements and manage its advertising business.

The department of advertisements of the broadcasting corporation or the sub-contracted advertising agency cannot give exclusively its advertisements to one advertising mediator.

To prevent the monopoly, the owners of the audiovisual media or the sub-contracted advertising agency, as well as their spouses or their children, cannot have shares in more than one company. Besides, employees working on a full-time basis for the advertising agency may not work in more than one advertising agency and the latter may not serve more than one television and one radio.

**Article 40:**

Advertising issues that have not been foreseen by this law will be governed by a special law.

**Chapter Nine**

**TL1**

**Article 41:**

1 - The exclusive right which TL1 used to enjoy in terms of TV channels is annulled. TL1 has the right to broadcast on all VHF channels and to have one program on the UHF channels, in accordance with the technical organization that will broadcast channels between licensed televisions.

As a compensation, the company is exempted from paying the fees imposed on other media until the year 2012, i.e. the date on which its former exclusive right expires.

2 - This law doesn't give TL1 any right to indemnities, regardless of their nature and of the party that pays them, except for the compensations foreseen in the previous paragraph of this article.

3 - Contrary to all other texts of law, the government has the right to reorganize TL1 according to decrees adopted by the Council of Ministers upon the proposal of the Ministers of Information and Finance.

## **Chapter Ten**

### **Control On Corporations' Incomes**

#### **Article 42:**

The licensed company shall submit every six months to the Minister of Information its investment balance-sheet. This balance-sheet includes the amounts of money or resources that derive from the company's activities at the professional and technical meaning of the term.

The Minister of Information shall check the content of the balance-sheet, as well as the advertising resources, the returns of the technical production and others if necessary, and this, by all possible means of verification, mainly the control of the licensed company's registers and those of advertising agencies.

If it turns out that the company suffers, in its last budget, of a financial deficit that does not exceed the three quarters of its capital, the Minister of Information grants the licensed company a period of six months at the term of which it presents its investment balance-sheet. If incomes, after this period, do not cover half of this deficit, the Minister of Information can ask the court of publications to decide to suspend the broadcasting, for a period that the court will determine, provided it does not exceed one year.

If the deficit exceeds the three quarters of the company's capital, the Minister of Information can refer it to the competent jurisdiction to decide to suspend the broadcasting immediately without delay and for a maximal period of one year.

By «financial deficit», one understands the accumulated financial deficit.

#### **Article 43:**

After the period of suspension expires, the company can only rebroadcast after proving that it has the necessary funds to cover all its deficit. It shall, in this case, prove the source of these funds and how it got them.

The Minister of Information can ask for clarifications and additional proofs. He can

decide to allow the company to re-broadcast in light of the data and proofs that it presented in terms of the veracity and the safety of the financing sources and the company's commitment not to undertake anything that is contrary to public interest.

**Article 44:**

Any violation of the provisions of both articles 42 and 43 of the present law or any of them, exposes the offender to imprisonment from three to six months and to a fine of 10 to 30 millions L.P., or to one of these penalties.

**Article 45:**

If it turns out that the licensed company acquired a gain that it could not prove to have legitimately acquired, the Minister of Information asks the court of publications to stop the company from broadcasting for three to six months. The court imposes on the company to pay a fine equivalent to the double of the amount that the company acquired. If it turns out that the gain has been acquired while serving the interests of a State or a foreign or local organization, in a way that is contrary to public interest, that harms the political régime, stirs confessional sensitivities or incites to violence and unrest, the offender is liable to imprisonment of six months to two years and a fine of 50 to 100 millions L.P. The court can stop the company from broadcasting for a period varying between six months and two years. It can also annul for good the license that has been granted to it.

**Article 46:**

The proceedings of how to exercise control on the incomes of TV and radio corporations are defined by a decree adopted by the Council of Ministers upon the Minister of Information's proposal.

**Chapter Eleven**

**Exercise of Control On TV and Radio Corporations**

**Article 47:**

Upon the request of the Ministry of Information and through its bodies, the National Audiovisual Council exercises a control on TV and radio corporations.

**Chapter Twelve**

**General and Provisional Terms**

**Article 48:**

Provisions of the Code of commerce are applied where they are not in contradiction with the provisions of the present law.

**Article 49:**

The proceedings of the enforcement of this law are determined by decrees adopted by the Council of Ministers upon the proposal of concerned ministers.

**Article 50:**

Televisions and radios operating before the enforcement of the present law benefit from a period of two months to present the licensing application after the Ministry of Information announces it has started to receive applications. The government can grant these corporations an additional period to complete the application file. These corporations remain operating and continue their activities until the licensing decree is issued. In case their application is rejected, they are given a delay to liquidate their business.

**Article 51:**

Televisions and radios are exempted from all kinds of fines, taxes and fees that were due before the enforcement of the present law.

**Article 52:**

All texts or provisions contradictory with the present law are annulled. This law does not include encoded and satellite TV broadcasting, the licensing fees and proceedings of which are governed by a special law.

**Article 53:**

The present law enters in vigor as soon as it is published in the official gazette.

Baabda, November 4, 1994

President of the Republic Elias Hraoui (signature)

Prime Minister Rafic Hariri (signature).



**APPENDIX B**

**DECREE NO. 7997**

**(The Guidebook for Operating Conditions)**

## **Decrees**

### **Ministry of Information**

#### **Decree No 7997**

#### **Ratification Of The Book Of Specifications of TV And Radio Corporations, 1st and 2<sup>nd</sup> Category**

The President of the Republic,  
In conformity with the Constitution,  
Under Law No 382, dated 4/11/1994 and related to TV and radio broadcasting, mainly in its Article 25,  
And after consultation of the Audiovisual Council on 20/1/1996,  
In accordance with the Minister of Information's proposal,  
And after consulting the State Council (Advice no 86/95-96, dated 29/1/1996 and advice No 106/95-96 dated 23/2/1996),  
And following the approbation of the Cabinet on 7/2/1996 and 27/2/1996,  
Approves the following:

**Article 1:** The book of specifications attached to this decree and related to TV and radio corporations, 1<sup>st</sup> and 2<sup>nd</sup> categories, has been ratified.

**Article 2:** The present decree shall be enforced as soon as it is published in the official gazette.

Baabda, February 29, 1996

Issued by the President of the Republic  
Elias Hraoui (signature)

Prime Minister  
Rafic Hariri (signature)

Minister of Information  
Farid Makari (signature)

Minister of Finance  
Rafic Hariri (signature)

## Book of specifications of TV Corporations, 1st category

### Chapter One

#### General Terms

The book of specifications aims at encouraging the establishment of a civilized and advanced information industry in the fields of production and broadcasting, in conformity with international agreements governing Lebanon's rights in this regard. The book also aims at developing this industry to keep pace with technology progress in all fields of production, broadcasting and registration, in a way to serve Lebanon's interests and national objectives.

The following conditions should be met to reach these objectives:

- 1- Respect the freedom, human essence and rights of others, the various ways of expressing ideas and opinions, the objectivity of news and events broadcasting, as well as maintain public order, national defense needs and public interest requirements.
- 2- Encourage the Lebanese TV production, thrive to highlight Lebanon's archeological, historical, artistic and cultural landmarks, and give all support to researches and experiments in terms of arts, in view of ensuring the components of creativity and innovation.
- 3- Ensure professional competition among TV corporations, starting from the principle of responsible freedom and sound trade rules, while taking into account the principle of equality, as well as offer and supply requirements under laws in vigor.
- 4- Adopt a well-studied, flexible and dynamic program timetable, which goes along with the spectators' ages in order to preserve public morals, national and family cohesion, and set up a classification of programs, movies and series.
- 5- Keep pace with the intellectual, cultural and technical progress, in a way to raise Lebanese TV corporations to international standards.
- 6- Allow TV corporations to fulfill their mission as efficient tools in building the human being, develop public sense and enhance aesthetics and euthenics.

To reach these objectives, the corporation shall commits itself to the following:

- 1- The freedom and democracy of the TV activity, as well as its role in expressing all opinions.
- 2- Respect human rights and the rights of others, and safeguard public order, national defense needs and public interest requirements.
- 3- Respect others' rights in terms of literary and arts, and abstain from broadcasting anything that may constitute a violation of others' arts, literary and commercial ownership.
- 4- The need to develop the national industry in terms of TV production.

- 5- The volume of the local production as defined in the book of specifications.
- 6- Encourage national education and preserve social peace, family bonds and public ethics.
- 7- Not broadcast anything that may lead to propagandize relationships with the Zionist enemy.
- 8- Not broadcast any economic topic or comment that may affect either directly or indirectly the security of the economy and the national currency.
- 9- Not broadcast or transmit anything that may stir up or incite to confessional or sectarian feuds, nor anything that may drive society, mainly children, to physical and moral violence, moral delinquency, terrorism or racial or religious segregation.
- 10- Not broadcast any slander, libel, demeaning, defamation or calumny vis-à-vis any legal or natural persons.
- 11- Not earn any financial gain other than from the nature of its work.

## Chapter One

### Legal, Financial and Administrative Conditions

The TV candidate for licensing shall specify that its objective consists of broadcasting visual programs, including the news bulletin and political programs, the broadcasting of which covers all Lebanese cazas (districts). In other terms, it asks to be classified as a first category corporation, provided it meets the following conditions when applying for licensing.

#### **First: Legal Conditions**

- 1- The candidate shall be an anonymous Lebanese society, which does not and cannot own more than one TV and one radio station.
- 2- The society's statutes shall stipulate that the society is governed by all provisions of Law No 382, issued on November 4, 1994.
- 3- All the society's shares are nominal shares.
- 4- All shareholders shall meet the following conditions:
  - i- For natural persons: they shall be Lebanese, enjoying legal capacity and civil rights, and not convicted of a felony or an infamous offense.
  - ii- For legal persons: they shall be a merely Lebanese society, the statutes of which prohibits the cession of its shares to other than natural Lebanese persons or a purely Lebanese society.
  - iii- The society's statutes shall stipulate that no legal or natural person may alone, and at any time, own more than 10% of the society's total shares. The spouses, their forebears or minor descendants are considered one person.
  - iv- The society's statutes shall stipulate that no legal or natural person may have shares in more than one society owning a TV station. The spouses, their forebears or minor descendants are considered one person.

- 5- The society's founders shall subscribe to at least 35% of its capital.
  - i- The society's statutes shall stipulate that the society's founders shall not sell totally or partially their shares before at least five years as of the licensing date.
  - ii- The society's statutes shall stipulate that a list of its shareholders' names and percentage of shares shall be published in the official gazette once the licensing decree is issued, and that this list shall be published in the same way at each cession or sale of shares.
- 6- The society's statutes shall stipulate that each cession or sale of shares shall be subject to the Council of Ministers' prior authorization. The society, when informed of a shareholder's intention to sell or cede shares, shall submit to the Council of Ministers a request for prior authorization through the Minister of Information. The sale or cession cannot be concluded before getting the Cabinet's prior authorization. In this case, the same rules and procedures required for the licensing application shall be adopted.
- 7- The society's statutes shall stipulate that the society shall publish in the official gazette and in three local newspapers the names of the chairman and members of its board of directors, as well as its managers. It shall also publish any amendment affecting the people mentioned in this clause.
- 8- The society shall submit copies of property or lease deeds related to its occupied premises, including maps signed by a specialized engineer defining how these premises are exploited and their different activities.
- 9- The society's statutes shall stipulate that the society is governed by the Code of commerce provisions and by laws and regulations in vigor, unless a special text in the audiovisual law or in the book of specifications states otherwise.
- 10- The corporation wishing to renew its license shall submit an application to the Minister of Information three years before the termination of the license period. The Minister refers the request to the National Audiovisual Council so that the latter gives its advice in this regard under provisions stipulated in the Law No 382/94.

## **Second: Financial Conditions**

- 1- The license application shall include proofs of the corporation's capacity to ensure all the costs of –at least- the first year of licensing. These costs are calculated as to ensure the provisions of Article 7 of the law No 382 issued on November 4, 1994.
- 2- The society's statutes shall stipulate the following:
  - i- The company shall submit to the Ministry of Information the exploitation statement at the end of each six months, as of the date it gets the license.
  - ii- The applicant company shall be governed by Article 42 of the law No 382 issued on November 4, 1994, in terms of the Ministry of Information's duty to verify the veracity of the exploitation statement and in terms of the rules that shall be respected to reduce the financial deficit and the measures that the Minister is entitled to take.

- 3- The company shall submit to the Ministry of Information and to the National Audiovisual Council at the end of each six months proofs of the company's capacity to fulfill the rights stipulated by §1 of the final general terms of the chapter 3 of the book of specifications (Programs).

### **Third: Administrative Conditions**

- 1- The company shall enclose with the license application a copy of its administrative organizational chart, including all its administrative, technical and programs positions, attached to an identification card of all its employees, defining their identity, educational background, and their field experience based on the number of years in service.
- 2- The company shall commit itself to register its employees at the Social Security Fund according to laws and regulations in vigor. It shall also submit documents proving this commitment with the request of inquiry and verification stipulated by Article 32 of the law.
- 3- The company shall appoint a full-timer program manager, holding recognized university degrees in his field of competence, with at least a three-year experience.
- 4- The company shall have specialized managers and heads of departments as well as a manager for the news bulletin and political programs, holding each recognized university degrees in their field of competence, with at least a three-year experience.
- 5- Each manager or head of department shall be Lebanese for more than ten years, enjoying the legal capacity and not convicted of a felony or infamous offense.
- 6- The company shall appoint technical staff, holding the technical baccalaureate degree recognized by relevant authorities.
- 7- The number of company's employees holding university or technical degrees recognized by relevant authorities, including managers and specialized heads of departments and technical staff, shall not be less than the half of total employees having each his field of competence.
- 8- While recruiting, the company shall give the priority to media employees; graduates from faculties of information and institutes specialized in the field of information.

## **Chapter 2**

### **Technical Conditions**

#### **Definitions**

Terms used in the text are defined as follows:

- i- The company: the licensed TV.
- ii- ITU (International Telecommunications Union): a United Nations specialized agency in the field of Telecommunications.

- iii- IFRB (International Frequency Registration Board): a council created by the International Telecommunications Union, to register and coordinate the use of frequencies.
- iv- CCIR (Radio International Consultative Committee): a branch of ITU, thus part of UN, aimed at issuing documents to edit, send and receive information through radio signals.
- v- Production Unit: equipments and installations where TV programs are prepared, registered and edited.
- vi- Transmission Center: it can also be called transmission center and consists of the premises and equipments they contain, mainly transmitters, towers, antennas and link equipments.
- vii- Link Network: installations and equipments used in transmitting the image and the sound from the final control tower or from production centers to different transmission centers.
- viii- ERP (Efficient Radioactive Power): the product of the transmitter strength multiplied by the antenna maximal output (for a bi-polar half-wave antenna).
- ix- Antenna Specifications: mechanical and electrical specifications of an antenna, which, altogether, define the antenna output and polar bi-directional (both horizontal and vertical) diagram.
- x- Received Electric Field Strength: the electric field at the receiving point resulting from a TV broadcasting. Its measurement unit is the volt/meter.
- xi- UHF: part of the spectrum situated between frequency 470 and 860 Megahertz, holding 48 TV channels, the capacity of each being 8 Megahertz. They are numerated from 21 to 68 under CCIR-PAL-G system.
- xii- Power Density: its measurement unit is the mw/ cm<sup>2</sup>. It measures the electrical or magnetic capacity emitted by one antenna, crossed with the surface unit. It is used when talking about the quantity of radiation on the matter to define the closest safe distance to transmission antennas.

### **Part I: General Terms**

#### **First: General Methodology**

As Lebanon is a member of international organizations and bodies involved in organizing, coordinating and developing TV transmission, TV corporations shall abide by the conditions, recommendations, criteria and specifications that are adopted by these bodies and to which Lebanon is committed, such as:

- Federation of Arab Radios
- The International Telecommunications Union- ITU
- The International Frequency Registration Board- IFRG
- The Radio International Consultative Committee- CCIR

Therefore, companies shall commit themselves to:

- 1- Prepare files, technical studies and documents related to the use of channels allocated to them, and submit them to the Ministry of PTT to be registered at the

IFRG in conformity with regulations. These channels shall not be considered as final before registration.

- 2- Choose transmission devices and standards in conformity with conditions, specifications and criteria defined in the latest issue of the CCIR recommendations.

### **Second: Company's Premises**

The first category TV premises consist of different units and include in general:

- 1- The administration and its annexes.
- 2- The final control and transmission tower. It should be linked, at the company's expenses, to the headquarters of the Ministry of Information's control unit.
- 3- Fixed and mobile production units, engineering equipments and studios, which can be located anywhere.
- 4- Transmission centers disseminated on all Lebanese territories according to the coverage need imposed by the law organizing the audiovisual media. They shall be linked among them on one hand, and on the other to the final control and transmission tower by a link network.

### **Third: Modification Of Transmission Centers Specifications Or Creation Of New Centers**

- 1- Should the company choose to modify transmission specifications in one of its centers, it shall submit a request in this concern to the Minister of Information, enclosed with a technical file explaining the causes and details of the requested modification. The Minister of Information refers the file to the body organizing radio and TV broadcasting to study its technical aspects. The latter sends back the file to the Minister after studying it, enclosed with its opinion. It shall also send a copy of it to the National Information Council.
- 2- Should the company choose to create a new transmission center, it shall submit a request in this concern to the Minister of Information, enclosed with a technical file including the following:
  - i- The name and location of the transmission center.
  - ii- A geographical map revealing the location and the expected coverage limits.
  - iii- Details of the center, its altitude above sea level, and the antenna height as to the ground.
  - iv- The antenna specifications.
  - v- The transmitter strength.
  - vi- The link between the new transmission center and the new studios and/or other transmission centers.
  - vii- The channel to be used and the offset frequency as to the TV.

The Minister of Information sends the file to the body organizing radio and TV broadcasting to study its technical aspects. The latter sends back the file to the Minister after studying it, enclosed with its opinion. It shall also send a copy of it to the National Information Council.



#### **Fourth: Control**

- 1- The company shall record all TV material to be broadcast live and archive them for 30 days at least as of the broadcasting date. All along this period, the company shall be responsible for the disclosure of any videotape to relevant authorities for examination.
- 2- The company shall permanently monitor the quality of signals at all stages, starting from studios and production units, to link networks and transmitters at all transmission centers. It shall ensure that all these signals are in conformity with provisions of §2, clause first, part I chapter 2 and with conditions and specifications stated in the present document and its annexes. For this purpose, the company shall have at hand a series of high quality measurement devices and submit a quarterly report to the Minister of Information. The Minister shall refer this file to the body organizing radio and TV broadcasting to study its technical aspects. The latter sends its report to both the Minister of Information and the National Audiovisual Council within a maximum of 10 days to take the appropriate decision.
- 3- The body organizing radio and TV broadcasting may, when necessary, ask the Minister of Information to allow it to visit the company to see how it undertakes broadcasting operations, and to conduct required measurements and experiments to prepare its studies and proposals. The company shall facilitate the task of the said body and people mandated by it. The body submits its reports and proposals to both the Minister of Information and the National Audiovisual Council.
- 4- The company undertakes to ensure that its broadcasting from any location would not cause any interference or jamming that may negatively affect any TV, radio or telecommunications signal, or any sensitive electronic devices. It also undertakes to take necessary actions to avoid any interference or jamming, through installing filters or reducing the broadcasting capacity, and/or modifying the antenna specifications, according to the nature of interference or jamming, under penalty of ending the broadcasting of the center causing interference or jamming. The Minister of Information or the National Audiovisual Council may resort to the body organizing TV and radio broadcasting so that it verifies the situation and submits its proposals in this regard.

#### **Fifth: Individuals' Security And Environment Protection**

- 1- The company shall do what is necessary to preserve the security of its employees, its visitors and others against the risks to which they may be exposed at its premises, such as fire, lightning, electric shocks, climbing of transmission tower and others.
- 2- TV sets that are not compatible with security criteria against the risk of electric shock are prohibited. In particular, sets that are not equipped, while functioning, with means impeding access to high tension circuits are prohibited.
- 3- The company undertakes to abide by general rules of environment protection according to the directives of competent authorities at the Ministry of Environment.

- 4- The company undertakes to abide by security measures so that people standing or working near transmission centers are not exposed to a radio field, the strength of which exceeds the standards stated below, according to medical researches on the risks of radiation and based upon the 1985 recommendations of the American National Standards Institute (ANSI) and the International Radiation Protection Agency (IRPA) and other US and international organizations:

#### Frequency Band

UHF frequencies on the band 470-860 MHz

Power density safe to be exposed to for no more than 6 minutes:

The product of the equation: Frequency / 300- Milliwatt per square centimeter

To calculate the power density emanating from a given radio field, the following equations put forward by the general guide of the US National Radio Association, 8<sup>th</sup> edition, 1992, can be adopted:

$$S \text{ (mW/cm}^2\text{)} = E^2 / 4000 = 40 * H^2$$

S = Power density in mW/cm<sup>2</sup>

E = Electric Field Strength in Volts per meter

H = Magnetic Field Strength in Amps per meter

### **Part II: General Specifications Of TV Broadcasting System**

- 1- The company undertakes to broadcast on legally licensed channels. Broadcasting shall be in conformity with the PAL-G system and according to CCIR specifications and technical standards. Annex 1 shows the main characteristics of the CCIR-PAL-G color-TV system on the UHF band.
- 2- The minimal accepted limit of the field strength receiving TV broadcasting, unprotected against interference, shall be at the limit of the geographical coverage as shown in Annex 2, provided it exceeds in major cities 80 decibels micro volt/m.
- 3- The Maximum Efficient Radiation Power of UHF TV transmission centers within cities and conglomerations is defined at 50 KW ERP. Precautions shall be taken to protect neighboring areas from emanating radiation, according to § 4, Article 5, on the security of individuals and environment protection.

### **Part III: Channels And Frequencies**

#### **First: TV Channels/ UHF Band**

The Cabinet's decision to make the company operational adopted upon the proposal of Ministers of Information and PTT, assigns broadcasting channels to each company as well as geographical areas in which it can use these channels and each channel's broadcasting specifications. Annex 3 shows the conditions that rule the use of TV channels on the UHF band. This assignment is not considered final before being included in the text of the licensing decree following the channels registration at the International Telecommunications Union (International Frequency Registration Board).

## **Second: Link Devices Frequencies**

The Ministry of PTT delivers a license for the use of the link devices frequencies to meet TVs' needs, according to conditions set up by the Ministry.

## **Part IV: Equipments**

### **First: Towers**

Transmission towers shall meet the following conditions:

- 1- Metal towers and their cemented bases shall be designed and manufactured according to the general conditions of security and technical standards in order to support the maximum weight of material to be put on, and in order to resist to winds reaching 150 km/h on the surface. The company shall keep at hand the construction studies related to the tower as well as the manufacturer's certificate proving that the tower and its bases can support all this weight.
- 2- They shall also be equipped with secure ladders.
- 3- They shall be in conformity with the specifications set by the Directorate of Civil Aviation in terms of:
  - i- The respect of the maximal accepted height at the given location.
  - ii- The painting mode and colors.
  - iii- The lighting to be ensured.
- 4- Towers shall be equipped with an anti-lightning system set up by the company or specialized staff.
- 5- While choosing the location of towers assembling, a distance not less than twice the height of the tower to be built shall be kept between the tower location and the high tension lines, provided a certificate from Electricité Du Liban (EDL) shows that the company is committed to such a condition.

### **Second: Antennas**

Antennas specifications shall be subject to the provisions of §2, clause first, part I, chapter 2.

### **Third: TV Transmitters**

TV transmitters specifications shall be subject in general to the provisions of §2, clause first, part I, chapter 2 and to conditions set by Annex 4, while taking into consideration the following:

- 1- Transmitters shall be equipped with a notch filter, calibrated to reduce harmonic spurious emissions to accepted levels according to CCIR recommendations.
- 2- Transmitters shall be equipped with a calibrated device allowing the lecture of the strength of direct and reflected transmission.

### **Fourth: Production Engineering Equipments**

TV fixed and mobile production equipments are governed by the provisions of §2, clause first, part I, chapter 2 (technical conditions).

**Fifth: Use Of Professional Equipments Non Compatible With CCIR Standards**

The company may use professional equipments in the internal control operations or in the view of recording some shots, the duration of which shall not exceed 5 minutes, as a part of a whole program such as external recordings to be broadcast throughout news bulletins.

**Annex 1**  
**TV Broadcasting Specifications On UHF Band**

As Lebanon adopts the color-TV PAL 625/50 system, the specifications of which are detailed in the CCIR guides, and as Lebanon is also committed to broadcasting on the UHF band by using the G mode, all corporations operating in Lebanon shall adopt this system to broadcast. The chart below shows the main specifications of the CCIR-PAL-G system.

| ITEM | PARAMETER  | PAL G    |
|------|--|----------|
| 1    | Lines per picture  | 625      |
| 2    | Field Frequency (Hz)                                     | 50       |
| 3    | Line Duration (microseconds)                             | 64       |
| 4    | Line frequency (Hz)                                      | 15,625   |
| 5    | Field Duration (milliseconds)                            | 20       |
| 6    | Video Bandwidth  | 5        |
| 7    | Channel Bandwidth  | 8        |
| 8    | Nearest Edge of Channel to Vision Carrier (MHz)          | -1,25    |
| 9    | Sound Carrier Frequency Relative to Vision Carrier (MHz) | 5,5      |
| 10   | Width of Vestigial Sideband (MHz)                        | 0,75     |
| 11   | Vision Modulation Polarity                               | Negative |
| 12   | Sound Modulation   | FM       |
| 13   | FM deviation   | -/+ 50   |
| 14   | Vision I.F. (MHz)  | 38,9     |
| 15   | Vision/ Sound Ratio                                      | 1:10     |

**Annex 2**  
**Minimal TV Broadcasting Receiving Signals**

The table below shows the minimal receiving signals in areas subject to the TV coverage according to CCIR- 417-4 standards.

**The minimal average strength of unprotected TV signal at the limits of covered areas**

|      |                |                |
|------|----------------|----------------|
|      | 470-582 MHz    | 582-860 MHz    |
| Band | Band IV        | Band V         |
|      | Channel 21- 34 | Channel 35- 68 |

|                                   |               |               |
|-----------------------------------|---------------|---------------|
| Minimal average field strength    | + 65 decibels | + 70 decibels |
| 10-meter high antenna requirement | micro- volt/m | micro-volt/m  |

N.B: To avoid interference and jamming, the field strength shall be increased as to exceed the minimal levels stated above, in conformity with CCIR 417-4 standards.

**Annex 3**  
**Terms For TV Channels Use On UHF Band**

- 1- Licenses are delivered in conformity with the rights granted to Lebanon by international conventions on UHF-band channels.
- 2- Channels are licensed and distributed once for good after being registered at the International Frequency Registration Board.
- 3- The planning for the channels use shall be in conformity with ITU technical conditions and rules so as not causing interference on channels used and registered by the neighboring country.
- 4- In order to register channels, the specifications of transmission centers using these channels shall be defined.
- 5- When using channels to cover one geographical area from close or regrouped transmission centers, technical rules and recommendations emanating from international bodies and enforced in Lebanon shall be respected, mainly in terms of the good choice of channel numbers, which can be in harmony in the same geographical area (REP 1085-1 and REP 306-4 issued by the CCIR, and recommendations IUT-RBT 655-3, IUT-RBT 1123 AND REC 417-4).
- 6- The Cabinet's decision to make the company operational defines the different frequencies assigned to each company as well as the geographical areas that use each frequency for broadcasting.

**Annex 4**  
**General Specifications Of TV Transmitters On UHF Band**

TV transmitters are subject to the specifications set by the Radio International Consultative Committee CCIR. The table below shows the main specifications.

| ITEM | PARAMETER                              | SPECIFICATIONS  |
|------|--|---|
| 1    | Visual Carrier Frequency Stability     | +/- 1000 Hz per year<br>+/- 500 Hz per year if OffU and iU employed |
| 2    | Audio Carrier and Stability            | 5.5 MHz above Visual Carrier +/- 100 Hz                             |
| 3    | Intermodulation Products 3-Tone Method | < -60 dBc   |
| 4    | Harmonic and Spurious Emissions        | < -60 dBc   |
| 5    | Maximum Frequency                      | +/- 50 KHz  |

|   |                    |                 |
|---|--------------------|-----------------|
|   | Deviation          |                 |
| 6 | Audio Pre-emphasis | 50 Microseconds |

### Chapter 3

#### Programs

##### **First: Minimal Broadcasting Hours And Compulsory Local Programs**

- 1- The first category TV shall daily broadcast a minimum of 12 hours of local, Arab and international program, provided this daily broadcasting includes 6 hours of programs classified as “first screening”, to be shown each day between 16:00 and 24:00.
- 2- Is considered a “first screening” each TV program and movie, the production of which goes back to 5 years maximum and which was not shown on any licensed TV in Lebanon as of the date the first license was decreed by the Council of Ministers, in accordance with the provisions of the book of specifications. The number of first screening hours of the category mentioned in this clause shall not be less than 3 hours per day.
- 3- Is considered also a “first screening” each long movie having been shown for the last time on licensed TVs in Lebanon more than ten years ago as of the date the first license was decreed by the Council of Ministers, in accordance with the provisions of the book of specifications.
- 4- Is also considered also a “first screening” each broadcasting of classical music or Jazz played by orchestras, around half-hour each day.
- 5- Should the TV choose to reduce the number of daily compulsory first screening hours during the summer, it shall make up for these reduced hours by a similar number during other seasons of the year, provided the cut rate does not exceed 50%.
- 6- The TV shall dedicate per year a minimum of 730 compulsory hours to locally-produced programs, provided these programs meet the conditions stipulated by above-mentioned § 2 and 3.
- 7- These hours are divided as follows:
  - i- 13 hours of drama programs inspired of the Lebanese, Arab and international history, and literature heritage. The percentage of Lebanese programs shall make up at least 40% of these hours.
  - ii- 26 hours of drama programs (series or independent episodes) in the first year following licensing and 39 hours as of the next year.
  - iii- 678 hours of different other programs covering some or all following topics, each being calculated according to maximal levels as stated below:
 

|   |           |
|---|-----------|
| (1) The news bulletin                       | 280 hours |
| (2) Variety of songs, music and short plays | 129 hours |
| (3) Games and competitions                  | 90 hours  |

(4) Variety of cultural, social, sports, documentary and development (environment, public health, agricultural guidance, family, population, Lebanese regions, etc.) journals 166 hours

(5) Long plays 13 hours

The company shall dedicate 146 hours out of the minimal compulsory hours per year, to programs for children and youth, equally divided on clauses 2, 3, 4 and 5 of the present paragraph.

- 8- The first category TV shall dedicate per week at least one hour to broadcast programs of national orientation as well as programs in the field of education, health, guidance, culture and tourism without any return. This broadcasting shall take place between 17:00 and 19:00; these hours shall not be calculated out of the 678 local compulsory hours, unless the company itself produces and finances them following the Ministry of Information's agreement. In this case, they shall be deduced from the compulsory hours dedicated to the various journals above-mentioned in § c.
- 9- Each TV has the right to cut the broadcasting of its general programming off one region or more, to broadcast programs specially designed for that region. In this case, the broadcasting period shall not exceed 20 hours per week for each region. The content of these special programs shall be proper to the region itself, and half of them shall be dedicated to development, cultural, social, economic, educational, environmental and health issues. The broadcasting period shall not be calculated out of the minimal compulsory hours.

### **Second: The TV's Obligations**

- i- The TV shall not broadcast movies and programs characterized by violence and sexual excitement before 22:30 p.m.
- ii- It shall not advertise for these programs before 21:30p.m.
- iii- It shall not broadcast cartoons programs based on over-violence, which may affect children and youth's imagination.
- iv- It shall completely abstain from showing sex movies qualified as X movies.

### **Third: Programs Classification And Categorization**

Programs are divided into 3 categories according to their production of origin:

- Local programs
- Arab programs
- International programs

#### **1- Local programs:**

They are programs that are designed, produced, executed, presented or performed by main characters, most of whom are Lebanese, and thanks to Lebanese financing. As for drama and musical drama programs, as well as programs set to be marketed in Lebanon and abroad, their financing may be Lebanese, Arab, international or a joint financing. The TV is not obliged to have a production

agency. It may get the rights of locally-produced programs through contracts signed with the producer or accredited distributor on behalf of the rights owner.

## **2- Arab and international programs:**

They are programs that the TV gets the right to show under contracts signed with the producer or the accredited distributor on behalf of the rights owner. The TV shall not buy and broadcast programs focusing on unjustified violence or anything that may arouse feuds and instincts and may harm the Nation and its friendly states.

## **Fourth: News Bulletin And Political Programs**

### **1- General Principles**

Beside the general principles that govern the work of first category TVs, these corporations shall abide by the following principles:

- i- Respect the Lebanese Constitution and the general principles enshrined in its preamble.
- ii- Give the news bulletin and news programs enough space, and present them in objectivity, while taking into consideration the high national interest and while abiding by laws in vigor.
- iii- Extend the basis of citizens' direct participation through organizing political and social symposiums with them, or with officials and others, mainly symposiums aimed at exposing positions vis-à-vis national debated issues.
- iv- Distinguish between objective information on one hand, and between propaganda and advertising on the other.
- v- Beside that, in terms of prohibitions and contraventions, the law No 382 dated 4/11/94, the law No 353 dated 28/7/94, the press law and the Penal code shall be applied.

### **2- Concept of political programs**

They are programs that focus on internal or external politics, on questions of public affairs related to the work of ministries, administrations, public institutions, municipalities and their relations with citizens and with each other as well as their staff's behavior. A distinction shall be made here between the political program and all other programs, regardless of their nature or topic, whether they are programs destined for guidance, education or entertainment.

## **Fifth: Live Transmission**

- i- TVs shall broadcast official celebrations and ceremonies on the occasion of Independence Day.
- ii- TVs may broadcast live other occasions or ceremonies having a national public character.
- iii- Live transmission of any ceremony, having a political character and unauthorized by relevant authorities, is prohibited.
- iv- TVs may broadcast religious celebrations, which are exclusively defined in decrees as official holidays for public administrations and



municipalities. They may also broadcast other special religious occasions on an exceptional basis, after the Council of Minister's approval.

#### **Sixth: Religious programs**

TVs may broadcast or re-transmit religious guidance and educational programs on the occasion of official religious celebrations, provided the total broadcasting and re-transmission hours do not exceed altogether 52 hours per year. They should also take into consideration, in their distribution, the principle of equality and the need to preserve the requirements of public order and interest.

#### **Seventh: Distribution Of Broadcasting Hours For The News Bulletin And Political Programs.**

##### **1- News bulletins:**

- i- 2 news bulletins at least for each corporation, which broadcasts at least 12 hours a day; and 1 news bulletin at least for each corporation, whose number of daily broadcasting hours does not exceed 12 hours. The duration of each bulletin shall not be less than 30 minutes.
- ii- The news bulletins are presented in classical Arabic.
- iii- The TV may present additional news bulletins in foreign languages, provided the time dedicated to news bulletins in foreign languages does not exceed the time dedicated to the news bulletins in Arabic. News bulletins in foreign languages shall be governed by general principles applied on Arabic news bulletins.
- iv- The TV may transmit Arab and international news bulletins through satellite, provided it gets the right to transmit and broadcast them, while abiding by principles and provisions governing news bulletins and political programs.
- v- The TV may broadcast news flashes and rounds-up provided they abide by principles and provisions governing news bulletins and political programs.

##### **2- Political programs**

The TV shall broadcast 1 political program or more per week, based upon objectivity and abstaining from biased opinions, the program consisting of one or more episodes.

#### **Eight: Final General Provisions**

##### **1- National Anthem**

The TV shall start and end its broadcasting by the National Anthem.

##### **2- Rights**

Each TV shall preserve others' rights through signing contracts with rights owners, defining the value and the duration of these rights, mainly:

- i- Rights of producers, publishers, composers, authors, scenario and dialogue writers under the law 20/69.
- ii- Rights of producers
- iii- Rights of actors
- iv- Rights of singers
- v- Rights of distributors acquired through buying other's rights
- vi- Rights of technicians through mentioning their names at the beginning or the end of the recorded TV program
- vii- Rights of authors, composers and music publishers' association in Lebanon.

### **3- Obligations**

Each licensed TV shall submit to the Ministry of Information and to the National Audiovisual Council the following documents:

- i- The final quarterly grid and all modifications added on it, including special programs dedicated to each region.
- ii- A copy of the daily grid.
- iii- A monthly statement on local broadcast programs, each program's duration, broadcasting date and time, as well as the duration and broadcasting date and time of special programs dedicated to regions.
- iv- A monthly statement on Arab and international broadcast programs, with each program's duration, and broadcasting date and time.
- v- Copies of documents through which the company bought the rights of broadcast programs whether they were recorded on tapes or shown live by their own means or through satellites.
- vi- The TV shall display its logo throughout the broadcasting.
- vii- In order to preserve authors, composers, and publishers' rights, the TV shall prepare a monthly statement including details of songs and music material that were broadcast during the month, while mentioning the names of the authors, the composers, and the publishers, and submit it to the authors, composers, and music publishers' association in Lebanon., entrusted with preserving the Lebanese author rights as well as the Arab and foreign ones, in conformity with the principle of equal treatment, so that rights are distributed among their owners.

### **4- Penalties**

Should a TV violates the texts stated in the book of specifications, it shall be subject to measures stipulated by article 35 of the law number 382 and by others laws in vigor.

## **Chapter 4** **Advertisements**

The company shall abide by legal provisions governing advertising in TVs and radios, mainly the law number 382/94, the advertising law and all other laws and regulations in vigor, provided the following rules are respected:

- 1- Abstain from broadcasting any advertising containing anything that deceives the consumer, harms his health and interest, and negatively affect youth and public morals. The advertising material shall be governed by the same principles applied on programs.
- 2- Clearly present the advertisements in a way to distinguish between them and the programs in which they are included, and make them differ on both audio and visual aspects. Advertisements shall not use the anchor or program speakers' faces and voices.
- 3- Broadcast advertisements between one program and the other. They may be broadcast throughout the same program, provided they do not affect its unity and value nor harm owners' rights in terms of arts and literature.
- 4- Not broadcast advertisements for programs containing violence and sexual excitement before 21:30.
- 5- Not broadcast advertisement for any occasion, ceremony, or festival whatsoever in case they are not legally authorized.

## Chapter 5

### Fees and Contraventions

- 1- The licensing fee that the company has to pay is set to 250 million LP.
- 2- The annual leasing fee for channels use is set to 200 million LP.
- 3- The company undertakes not to sell, totally or partially, its leasing rights, or cede them whether directly or indirectly to anyone whatsoever throughout the leasing period. It is not entitled to compensation at the end of the leasing contract since TV channels are the state's exclusive right that shall not be sold or ceded.
- 4- The licensing fee is paid within a maximum of one month as of the date the company is informed of the cabinet's decision to make it operational.
- 5- The annual fee of the first year after licensing shall be paid within a maximum of one month as of the date the company is informed of the cabinet's decision to make it operational. Both amounts of money mentioned in clauses 4 and 5 are paid by bank checks under the rules defined by the Ministry of Finance.
- 6- The company shall enclose with the licensing application a temporary affidavit for 250 million LP issued by a bank operating in Lebanon according to Annex 1. The company gets back this affidavit in case the counsel of ministers rejects the licensing application. In case the company gets the license, it retrieves the affidavit in return for:
  - i- Disclosing a receipt to prove that company has paid the licensing fee.

- ii- Disclosing a receipt proving that the company has paid the annual leasing fees for the first year.
  - iii- Submitting an affidavit issued by a bank operating in Lebanon and valid for one year as of the Cabinet's decision to make the company operational, for an amount of 10% of the first year's costs according to the estimates statement presented by the company with the licensing application.
- 7- The company is subject to the control of the National Audiovisual Counsel in accordance with provisions of law No 382/94.
- 8- The company is legally responsible for any mistake committed during the practice of its activities.
- 9- In case the TV does not abide by its due obligations, the following measures shall be taken against it:
- i- In the case of the first contravention, the Minister of Information, upon the National Audiovisual Counsel's proposal, shall prevent the company from broadcasting for a maximum of 3 days.
  - ii- In the case of the second contravention and within one year following the date of the first contravention, the Cabinet upon the Minister of Information's proposal, based upon the National Audiovisual Counsel's advice, shall prevent the company from broadcasting for at least 3 days and a maximum of one month.
  - iii- The above stated decisions maybe brought before the competent tribunal to examine them in accordance with the rules, provided the compensation ruled by the tribunal in case the measure is considered against the law, does not exceed a 10 million LP lump-sum for each day the company is prevented from broadcasting.
- 10- The company shall be governed by the provisions of the book of specifications and any amendment to it. This amendment defines the deadline given to the company to rectify its situation and submit a request for verification to the Ministry of Information. The same rules and procedures stipulated by articles 19 and 32 of the law 382/94 are adopted.
- 11- The company is subject to the provisions of the laws in vigor, in anything that is not contrary to the law No 382/94.
- 12- Offences committed by TVs are subject to penalties stipulated by the penal code and the press law. These penalties shall be made harsher according to article 257 of the penal code.

#### **Affidavit**

#### **Reference**

|              |
|--------------|
| Branch       |
| Date         |
| Affidavit No |

**Beneficiary**

|                         |
|-------------------------|
| Ministry of Information |
|                         |
|                         |

Dear Sirs,

We would like to inform you that our company has issued an affidavit jointly and severally in favor of the guaranteed, upon its own request, and for a maximal amount of 250 million LP.

Type of affidavit: Provisional

This affidavit shall remain valid for 1 year, and we undertake, when it is terminated, and without any request, unless you inform us of its extension or exemption, to either pay you cash its equivalent value or give you a new affidavit under the same conditions.

As we commit ourselves to this affidavit, we inform you that we reside at our company's headquarter in ...

Please accept our best regards.

**List of documents**

**First: Documents To Be Enclosed With The Licensing Application**

- 1- A certificate of the company's registration, ratified by the register of commerce less that 1 month before the application was presented.
- 2- A copy of the company's statute with its amendment ratified by the register of commerce less that 1 month before the application was presented.
- 3- A certificate of non-liquidation and bankruptcy issued by the register of commerce less that 1 month before the application was presented.
- 4- A list of shareholders with the number of each one's shares, signed by the company's CEO and Secretary, enclosed with the police record and individual civil status extract of each shareholder.
- 5- The minutes of the last ordinary general assembly in which members of the board of directors were elected on the date the licensing application was presented, as well as the minutes of the board of director's meeting in which the CEO, the Deputy Director General and the board's alternate members (if exist) on the date the licensing application was presented. The above-stated minutes shall be

ratified by the register of commerce less than 1 month before the licensing application was submitted.

- 6- A copy of the minutes of the board's meeting, which approved the submission of the licensing application.
- 7- A copy of the company's logo with a certificate of its registration at the Ministry of Economy.
- 8- A copy of the company's organizational chart showing the name of the program manager and the manager responsible for each program falling under its field of competence in case the company is a specialized TV, enclosed with an individual civil status extract for all of them as well as a police record and a copy of their university degrees ratified by relevant authorities.
- 9- An estimates statement of the costs of the first year following licensing under article 7 of the law No 382/94, ratified by the company's board of directors and enclosed with the affidavit stipulated by paragraph § c, clause 6, chapter 5 (Fees and Contraventions)
- 10- Acquittances issued by the Ministry of Finance, the Municipality, and the National Social Security Fund.
- 11- A pledge letter signed by the CEO and ratified by a Notary Public, proving that the company abides by the provision of the book of specifications and by any amendment to it.
- 12- A pledge letter signed by the CEO and ratified by a Notary Public, certifying that the company has been informed of the documents it shall submit in the request of inquiry and verification within the enclosed list, as well as other documents that may be requested by the Ministry of Information or any concerned party.

#### **Second: Documents To Be Enclosed With The Request Of Inquiry And Verification**

- 1- A copy of the certificate issued by the Ministry of PTT and other competent authorities, certifying that the company has got a prior licensing for importing, manufacturing, assembling, or using of any transmission or broadcasting device.
- 2- A personal file of the company's employees including:
  - i- An individual Civil Status Extract
  - ii- A police record
  - iii- A certificate from the National Social Security Fund
  - iv- A copy of the last University degree ratified by competent authorities
  - v- A certificate of experience issued by the companies and the corporations for which the employee has worked, defining the number of the years of experience in his field of competence.

These documents shall be issued less than one month before the application was submitted.

- 3- A copy of property deeds (with a real estate certificate issued less than one month before the licensing application was submitted) or a copy of leasing deeds registers at the Municipality.

4- A copy of the company's contract with the advertising agency or a copy of its advertising structure ratified by the CEO.

SHEFFIELD HALLAM UNIVERSITY  
LEARNING CENTRE  
POULTON LANE CAMPUS,  
SHEFFIELD, S11 6UZ