FREE EXPRESSION IN THE AGE OF SECURITY THREATS

BY MASHA UDENSIVA-BRENNER

AN INTERVIEW WITH DUNJA MIJATOVIĆ

In November 1997, four years before the September 11 attacks on the World Trade Center prompted the war on terror, the participating states of the Organization for Security and Co-operation in Europe (OSCE) established a mandate on the representation of freedom of the media. The mandate outlines the OSCE's commitment to freedom of expression as a "fundamental and internationally recognized human right" and to "free, independent and pluralistic media" as an "essential" component of a "free and open society and accountable systems of government," and it designates an OSCE representative to ensure compliance with these principles. According to the mandate, the Representative on Freedom of the Media (RFoM) is charged with concentrating "on rapid response to serious non-compliance," and, in the case of serious non-compliance allegations, is to "seek direct contacts, in an

Mijatović addressing the media in Simferopol, March 4, 2014

appropriate manner, with the participating State and with other parties concerned, assess the facts, assist the participating State, and contribute to the resolution of the issue."

On February 23, 2016, the Harriman Institute welcomed Dunja Mijatović, the OSCE's third RFoM, to deliver the annual Harriman Lecture. It was three weeks before the end of Mijatović's six-year tenure, and she expressed her dismay at the rapid decline in media freedom she had witnessed since taking office in 2010. The OSCE, which currently encompasses fifty-seven participating states, including Russia, Azerbaijan, and Uzbekistan—countries where media freedom is severely restricted—has yet to agree on a representative to replace her, and Mijatović is worried about the future of the post. "It would be impossible to establish something like this now, and we have to protect it," she said. I spoke with Mijatović over Skype on January 25, 2016, about her career and the transformation of the global media landscape.

In late March, the Ministerial Council of the OSCE agreed to extend Mijatović's term for an additional year, since no consensus on her replacement had been reached.

Masha Udensiva-Brenner: What were your perceptions of the media and its function while growing up in the former Yugoslavia?

Dunja Mijatović: There was no media pluralism in the Communist system, and, coming out of it, it was very easy to manipulate people's minds, to inject hatred. I always quote Mark Thompson's book *Forging the War*, where he writes that verbal violence produced physical violence. Everything we read in the media in those days was propaganda. The experience was one of the main reasons I decided to work on promoting a free and safe environment for journalists to do their jobs.

Udensiva-Brenner: Were you ever interested in becoming a journalist?

Mijatović: Absolutely. I was very interested. I have always written and still write a lot. I see journalism, really courageous, investigative journalism, as a talent, a passion, but somehow I realized that it wasn't for me.

Left to right: Mijatović presenting her regular report at the OSCE Permanent Council, November 26, 2015; Mijatović, giving opening remarks at the expert meeting on intermediaries' role in Open Journalism, organized and hosted by the Office of the OSCE Representative on Freedom of the Media, December 9, 2015. Photos courtesy of the OSCE. *Opposite page:* Mijatović delivering the 2016 Harriman Lecture

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Udensiva-Brenner: What in particular made you realize this?

Mijatović: There was no particular moment; it was the way my career shaped up. I realized that in order for journalists to do their jobs, there was a need for institutions to provide a safe environment, which was totally missing in the Balkans, and to introduce certain regulations. And I don't mean restrictions of any kind, but the establishment of some kind of order—the rule of law, licensing—after a very chaotic period.

I was part of the team establishing the first media regulator in our postwar society; it was a process of state institution–building. Media played an extremely important role—the Independent Media Commission was the first institution established after the Dayton Agreement was signed, and the reason for it was the ethnic intolerance that had been created. I started working there back in '97.

Udensiva-Brenner: What was your role?

Mijatović: In the beginning I was head of the content and complaint department, which looked mainly at hate speech issues related to programs inciting violence and many other issues that we faced after the war. Later on, I became director of the broadcasting division, which was in charge of all issues related to media regulation—licensing, content regulation, technical issues, and sometimes content issues and digitalization, among other things. I stayed director of broadcasting until 2010, when I was appointed to the position I'm in now.

Udensiva-Brenner: What challenges did you face?

Mijatović: The main challenge was to stay independent and true to the profession in a much-politicized postwar society. To be able, together with my team, to resist enormous pressure, threats, and many other issues we faced in the process of introducing pluralism and establishing a safe and free media environment. We also had to gain the media's trust in an atmosphere that was extremely divided. But we had enormous assistance from international organizations and agencies, which helped us gain experience and provided trainings.

Udensiva-Brenner: You mentioned you received threats. Who were they coming from?

Mijatović: Sometimes from within the industry, sometimes from politicians. Sometimes they were hidden threats,

Mijatović talking with Harriman director Alexander Cooley in his office before the 2016 Harriman Lecture

sometimes direct. They ranged from, "You will never get a job if you give a license to this station," to bribes—all things that you have to face in a very problematic, divided, and complex society. That was our daily experience. In order to survive we had to stick together as a team, work on trust and professionalism. After that the situation changed for the better. But still, if you look at the media today, and the way it is influenced and manipulated, you will see there is much more work to be done.

Udensiva-Brenner: What has it been like to watch freedom of expression erode in recent years, as governments increase surveillance in response to terrorist threats?

Mijatović: Many people do not even think to challenge the legislation being introduced in order to fight terrorism—the right of the government to make our societies safer. Unfortunately, I see many governments making hasty decisions at the expense of human rights, and here I mean the right to freedom of expression. And when you see democracies doing this, what can you expect from countries still on the road to democracy? Not to mention those countries far away from any kind of democracy. We need to be able to assess the challenges all over the globe and to work with the states, and particularly with civil society, to raise awareness about the threats.

Of course there were challenges and problems when I was appointed representative in 2010, but if you look at the world now, it's not just about surveillance. It's also the conflict in Ukraine, which has influenced the media in Europe and the work of journalists in conflict zones tremendously, and Charlie Hebdo. All these things are threats not just to journalism but also to freedom of expression and the free flow of information.

Udensiva-Brenner: The U.K. government announced last November that it is considering new surveillance measures. What do you think of their proposals?

Mijatović: I intervened about this. It was a public statement to raise awareness and to ask the government to examine its proposal. We even submitted recommendations about what to do and what not to do in order to preserve free expression, particularly regarding the work of journalists; investigative journalism and the protection of sources was directly affected by this proposal. The latest news is that the government's own watchdog has also warned them not to do anything that can undermine fundamental human rights. This is something my office will continue to follow. We have raised our little red flag for many governments, including France, Spain, Canada, and other democracies.

Udensiva-Brenner: What's your response to the argument that surveillance has thwarted terrorist attacks in the past and is necessary to help do so in the future?

Mijatović: It's difficult to say what I think about this. I haven't seen any proof of it, though I'm sure there's a need to engage in surveillance when there is an imminent threat of violence and they have information that needs to be investigated.

But I'm always in favor of judicial oversight for any of these processes, and I don't think surveillance should be used by any quasi-judicial agencies or ISPs [Internet service providers]. Many governments are now proposing the engagement of intermediaries, and I think this is wrong—we cannot shift the responsibility of protecting our societies away from the state.

Of course there are issues relating to national security that not everybody needs to know about. But many of the measures are very hasty and adopted without any transparency. What I do know is that we do not know enough. It is impossible to have true security without respect for human rights. At the same time, we cannot enjoy human rights if we do not live in a safe society. We need to find a way to work on these issues together and not discuss security and human rights in parallel.

Udensiva-Brenner: You mentioned during a recent PEN Norway presentation that journalists, particularly those investigating issues of national security, have complained to you that they have started feeling like spies. Can you elaborate?

Mijatović: Well, this is another challenge of our times. I work a lot with various international organizations and NGOs; I also meet with journalists to hear about the problems and challenges they face not only within their countries but also while traveling. One big problem is the protection of sources in a digital environment. Journalists are using encryption more and more for obvious reasons. Many feel there's a need to introduce self-censorship, particularly if they live in problematic countries where there's no real rule of law and infrastructure to protect them and other citizens.

I'm looking at these problems from two sides; one is related to safety online and the other to how we deal with proposed legislation. You mentioned the UK and there are many other examples of laws providing security or fighting terrorism, but which negatively affect the work of journalists who have no idea whether or not their sources are visible and whether or not they can be safe. It's a very complex situation.

Udensiva-Brenner: How much hope can we derive from the recent U.K. Court decision on the David Miranda case?

Mijatović: We will have to wait and see. I'm sure it will become part of the case law on this particular topic. I intervened in this case. I wrote to the authorities in the UK and followed the entire judicial process, which was finalized a few days ago. The decision is already popping up in discussions, with questions of how it will affect future judicial cases and the protection

Mijatović with Dario and Mario Šimić, directors of Klix.ba media portal, Vienna, January 20, 2015. Photo by Vera Djemelinskaia, courtesy of the OSCE

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of sources. But it is too early to tell. The positive effect of the case is that it reinforces the importance of rule of law; it demonstrates that when you live in a state with an independent judiciary, you will have protection no matter what. Rule of law is extremely important for the survival of free media and freedom of expression. This is one of the main issues I'm raising with emerging democracies.

Udensiva-Brenner: Edward Snowden has done a lot to bring surveillance and freedom of expression issues to the public. Would you consider him a hero?

Mijatović: I never thought of him as a hero. We all have different ways of looking at our heroes. But I see him as a very brave person—a whistleblower, definitely—and someone who has changed the way we think about so many issues, including protection of sources and what journalists can do in order to find out whether or not they are under surveillance. Though I've raised many flags in relation to surveillance and whistleblowing, Snowden's case is difficult, as he is not a journalist and the mandate I have is quite limited when it comes to whistleblowers. In regards to his case, I have mainly monitored whether or not journalists and media could report freely about everything he revealed that was in the public interest. That was the angle my office covered, and it was very similar in relation to WikiLeaks. For me it was important that journalists and media outlets—*New York Times*, *Guardian*, and many others—could do their job freely.

Udensiva-Brenner: You mentioned earlier that the conflict in Ukraine and the Charlie Hebdo attack have hugely impacted the freedom of expression landscape. Can you discuss the specifics?

Mijatović: The conflict in Ukraine has demonstrated that as a society we do not learn from our mistakes. I was in Crimea in March 2014, just before the annexation, and I spoke to journalists. For me it was almost like Sarajevo revisited, seeing propaganda used as a tool to incite hatred. We have also had to deal with the sudden kidnapping and killing of journalists in Europe—in Eastern Ukraine, in Crimea. This is still happening, though it is not as problematic as it was earlier in the conflict.

Charlie Hebdo was a brutal attack on people solely because of their views, in this particular case because of visual cartoons they used to express these views, and it has created an atmosphere of increasing self-censorship, and increasing sensitivity around the world. For me there is a red line when it comes to this case. No matter how acceptable or unacceptable, or vulgar, or indecent or provocative, these cartoons are, they didn't kill people; people were killed by the guys who came in and pulled the trigger. Yet immediately following the attacks, and even now, we keep hearing this "but." "But they were this or that." In my view, there is no "but"—the moment we start hearing "but," we are losing the battle for free expression. The price of living in a democracy is accepting views that are different and provocative, maybe even offensive. We have to remember that the right not to be offended does not exist.

Udensiva-Brenner: Since 2009, the year before you started in your position, the U.S. has slipped twenty-nine slots on the World Press Freedom ranking—it's currently at an all-time low, number forty-nine of one hundred eighty. How has your office intervened and how has the U.S. government responded to your interventions?

Mijatović: I've had numerous interventions with the U.S. since I joined the office. The most significant cases were about Verizon, the protection of sources for the *New York Times*, wiretapping Associated Press journalists, and the clashes during Occupy Wall Street and Ferguson. Another issue we were very much engaged in with the U.S. is net neutrality; we even conducted an analysis with a recommendation to the FCC. In order for this recommendation to be taken into account, we sent it via the State Department.

I've paid particular attention to the U.S., because, with the First Amendment and a long history of free speech, I think it should lead by example. It should not allow cases like the ones it has had in the past few years. When it comes to the government's response, I have to say, it has been very positive. I have had several hearings before U.S. Congress, and I'm meeting U.S. officials all the time on the highest levels, and I

Opposite page: Mijatović at a conference on shaping policies to advance media freedom on the Internet, in Vienna, February 14, 2013


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Mijatović with her longtime friend and colleague Tanya Domi, adjunct professor of international and public affairs, Columbia, in Alexander Cooley's office before the 2016 Harriman Lecture

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have always found it extremely easy to work with them because of their genuine support no matter how critical of them I might be. Each and every recommendation we have sent, along with our assessments, was taken on board. No government likes to be criticized, and my job is to criticize most of the time, but when it comes to the U.S., I've always had full understanding and support.

Udensiva-Brenner: How much importance do you attribute to international press freedom rankings?

Mijatović: I cover a region of fifty-seven states and they are all different. And I do not compare them—for me it would be like opening Pandora's box. The problems sometimes overlap, but the impact and what we see in the national legislations vary. I take note of the information from Freedom House, Reporters Without Borders, but I do not base my interventions, or the reasons for my interventions, on those rankings.

I do think rankings are important for civil society, for journalists, in order to put pressure on governments, to change some things for the better. Rankings are a democratic tool. They all have different parameters for making their judgments. In many countries they make politicians angry. So at least they raise awareness. Rankings have a role, but, for me as an international official, the only intergovernmental media watchdog, they are not a reason to intervene.

Udensiva-Brenner: You came into your position in 2010 and you were only the third person in this role. What was it like to step into this relatively new organization that didn't have any other models? How did your job evolve from that of your predecessors?

Mijatović: Two colleagues were representatives before me, Freimut Duve and Miklós Haraszti. Of course I worked off of their legacies. The challenges were enormous, the responsibility as well. You are given a mandate that is a very powerful tool. It is quite broad; you shape it on your own, so, each representative, no matter who the person is, can shape the position according to the needs of the time. What I have brought to the role is more publicity, a greater presence on the international scene. The most powerful tool in my toolbox is my voice, and the office—a team of fifteen people—is more visible than ever. More people are aware of our work. More journalists are aware of the fact that they can turn to us if they have a problem. The network of NGOs, and civil society in general, has grown tremendously in the fifty-seven states.

Even in Mongolia, the newest OSCE participating state. It was important to be present in the field, to work with people; not to be in Vienna sitting at my desk, but reaching out, trying to find ways to connect with the governments imprisoning journalists.

Udensiva-Brenner: What were some of your biggest projects when you first came into office?

Mijatović: I can talk about the projects we are still working on; they are extremely important. We started working on the issue of Internet freedom back in 2013. We started a project called Open Journalism where we opened the discussion about new ways of dealing with an audience. We worked a lot with the *Guardian*, and some other papers that were pioneers, to see how we could help; and we also worked with lawyers and academics and intermediaries in the industry. Many other projects evolved from this. We started working on the safety of female journalists online. We have already held several events where we've brought journalists from various OSCE countries and beyond to discuss their experiences. We started working with some governments in order to see how states and law enforcement agencies can be more involved, together with media companies, in protecting female online journalists and bloggers.

We are currently working on a project that brings together Russian and Ukrainian journalists directly from conflict zones and works with them, particularly with young journalists, to build confidence and to discuss reporting in conflict zones, for example, the Balkans or Northern Ireland, and the work of NGOs in these areas. This proved to be a very positive experience for both sides. We are also engaging about the negative role of propaganda, which I consider a scar on modern journalism. All these projects were started during my tenure and I hope they will continue. We've had great response from journalists around the region, who have been actively engaged in the projects I just mentioned. We also try to hold conferences bringing together journalists, civil society, and government officials in Central Asia, where there isn't too much of a presence from other international organizations aside from the OSCE, and in the South Caucasus and the Balkans. These conferences are extremely important because they offer training to journalists and they bring people together in order to discuss important issues.

Udensiva-Brenner: What's it like to work in a position where you simultaneously handle the grassroots component and engagement with governments?

Mijatović: To be honest, I don't know—you just do it because you have to. No government likes to be criticized; my way of dealing with it is that I'm not very diplomatic. Diplomacy has a role to play in some cases. Particularly when we're discussing changes to legislation, but, if a person is beaten or killed and there is no investigation, we need to shout loudly and find the responsible parties. And the governments need to deliver justice to the people. It's very simple. I decided in the very beginning that I would be direct and honest, and that's how I've been doing it. Over the past six years I have stepped on the toes of very powerful people, but I do not regret it a single moment because I did it for the right reasons. In general, I've had overwhelming support from the majority of the states I work with.

Working with civil society is extremely time-consuming and not something you can forget about when you go home. I have visited prisons, I have visited people whom I'd met before who are now imprisoned for their work. For me, the most important thing is being granted access to visit these prisons in order to talk to people, and then, afterward, being granted access to talk to members of these governments so I can urge them to release these prisoners, to drop trumped-up charges, to stop putting pressure on these prisoners and their families. This is all part of the job if you really want to use the mandate in full.

Udensiva-Brenner: Were there any challenges associated with being the first woman in the position?

Mijatović: Absolutely not. I'm very sensitive to this and I would immediately say something if there had been.

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We give the journalists an independent platform to work from; we to try to build bridges for the future, to work on the dignity of the profession.

In many international events that I take part in, and in many organizations, I'm the only woman sitting on a panel. And if you look at the OSCE, it is only my colleague, the high commissioner for national minorities, and I, two ladies sitting with a bunch of men in gray suits. And that's the reality. When I started the position, I was actually warned that, being a woman from Bosnia and Herzegovina, I would face problems in some parts of the OSCE region, in Central Asia, the South Caucasus, but no. If I get into a fight, it is because we disagree on the issues. Most of the time, in many of these states, I have been treated with real respect. And of course they attacked me harshly on many occasions, but not because I'm a woman, but because they didn't like what I was saying. At least, that's how I saw it, and I never felt that kind of pressure. But of course, as part of the job, I'm always persona non grata in at least one of the states in the OSCE because of the issues that I'm raising; because I'm calling for the release of journalists; I'm calling for changes in legislation. Recently, in Poland, they said, "Who is she? What does she want? We are perfect." It is part of the job, but it's not related to the fact that I'm a woman.

Udensiva-Brenner: You've had to intervene quite a bit with the Russian government in recent years. How have they reacted to your interventions?

Mijatović: They don't like it. It's very public on both sides. I'm constantly being criticized on the Ministry of Foreign Affairs website. In a way, I don't mind being criticized. On the contrary, I think my work should be challenged and I should be accountable to all OSCE governments, including the Russian Federation. That's not the problem. The problem is when my work is challenged with lies. The problem is that the Russian government does not want to engage on any issue because they feel that everything is more or less fine.

Udensiva-Brenner: You mentioned a project bringing together Russian and Ukrainian journalists. How have the authorities reacted to this initiative?

Mijatović: When I announced this project back in 2015, both governments, Russian and Ukrainian, wanted to be part of it and they wanted to sit in on my meetings. I declined; I told them that I would report to them about the meetings as their representative, but they could not sit in. But, they have not posed any problems at all.

I work with the Russian Union of Journalists and the Ukrainian Union of Journalists, and I leave it up to the unions to choose our issues. Each time, they adopt recommendations and they draw conclusions. They also started bringing in young journalists from both countries. We give the journalists an independent platform to work from; we to try to build bridges for the future, to work on the dignity of the profession. I bring in people from the outside—I outsource—to teach journalism courses (I don't think my office should be doing that at all). It's not easy, but it's already producing results and, perhaps, building a foundation for cooperation in the future, when the two countries have better relations. In the former Yugoslavia, when the war was over, we all had to go back and work together. If there is no previously established trust, it is much more difficult to move forward.

Udensiva-Brenner: What types of results do you see from this collaboration?

Mijatović: Just the mere fact of having brought together these young journalists; a year and a half ago this would not have happened. They've resolved issues together in the field, such as trying to locate missing journalists, whom we were able to find through connections in the field. And they even had a joint call for releasing kidnapped colleagues from both sides of the conflict. So there are many, many examples, including these sensitive issues. There are also issues related to future work and training. They are working on producing a paper coauthored by Russian and Ukrainian journalists that will be distributed throughout Ukraine. There are small steps and there are big steps, but it's going somewhere.

Udensiva-Brenner: Your term is about to end, what are some of your reflections about the past six years? Is there anything you wish you could have done differently? Is there anything you didn't have enough time to tackle?

Mijatović: There is never enough time to do everything you want, but the most important thing is to try your best to achieve something. My reflection is very positive. I love working with people, and that is probably one of the reasons I managed to open doors in some of the most problematic places in the region. There is nothing much I would do differently. I do not regret making any politicians angry in the process. I wish I could help get more people out of prison. I hope that some of the people who are sitting in prison will get out during my term; even with a month and a half to go, I'm working hard on many of these cases. There's a human touch to my work. We all have different styles, and the new person will have to establish his or her own way of dealing with these issues, but I think the legacy I leave will help.

It is important to keep the independence and the autonomy of the office in order to be seen as an independent player and not someone who is influenced by any particular government, industry, or association. It is a difficult job. It might sound wonderful—you sit in Vienna and you work on issues related to media freedom. It sounds glamorous but it's not. It's hard work, and there's a need to engage with people in order to achieve results.

For me, one of the main reasons to call this a successful six years is the passion I continue to feel even though I will leave office in less than a month and a half. The biggest reward coming out of this position is the ability to help people. You cannot change the world, but, as long as you can help an individual in some place where there are no other international organizations, where there are no other tools—as long as you can find a way to keep the door open with some of the regimes, in order to help some people get out of prison and help them continue their important work as journalists, then you are accomplishing something.

Udensiva-Brenner: And what's next?

Mijatović: I still don't know. I want to stay in the field of human rights, definitely. I want to work with people, but I still don't know where my career will go. ■

About Mijatović

Mijatović, who has been touted as the most active and influential of the three RFoMs so far, is a founder of the Communications Regulatory Agency of Bosnia and Herzegovina, established in 1998 to create a legal, regulatory, and policy framework for the media. She was also involved in the creation of a self-regulatory Press Council and the first Free Media Helpline in South East Europe. In 2007, she was the first woman and the first non-EU member state representative elected president of the European Platform of Regulatory Agencies, the largest media regulators' network in the world. In 2010, the International Peace Center in Sarajevo awarded her the "FREEDOM" prize for her work and activities on the struggle for freedom, peace, and development in Bosnia and Herzegovina, Europe, and the world. And in 2015, she received the Médaille Charlemagne for her unique contribution to the media field, the process of European unification, and the development of a European identity; and the City of Geneva PEC AWARD for her work on the issue of the safety of journalists and media freedom in Ukraine during the crisis and her "exceptional personal commitment for the promotion of freedom of information in the whole region."