The Main Challenges for the OSCE Representative on Freedom of the Media

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Abstract

This article focuses on the interdependence between security and human rights. The author advocates that freedom of expression and free media – two basic human rights – play increasingly important roles in fostering a meaningful debate on security issues and that they can help us to effectively address new challenges, not least in the new digital era. The article addresses major challenges within media freedom such as Internet freedom and journalists' safety and the importance these challenges play with regard to the link between security and human rights.

Security and human rights are interdependent. The improvement of one strengthens the other, as, too, does the converse – deteriorating conditions for media freedom and free expression is nothing short of a serious threat to security.

One of the outstanding features of the OSCE is the comprehensive multidimensional concept of security, an approach that takes into account the respect for human rights. Human rights and security complement, reinforce and belong to each other in the same way that human rights and fundamental freedoms are linked to each other. Freedom of expression and free media also play increasingly important roles in fostering a meaningful debate on security issues and they can help us to effectively address new challenges, not least in the new digital era.

With that in mind, the RFoM's role as an intergovernmental media watchdog is becoming increasingly important; the tasks that the RFoM has been mandated to perform since its establishment in 1997[1] are more valid today than ever before. To observe media developments in the OSCE region, to issue early warnings on violations of the freedom of expression and media freedom, and to advocate for full compliance with OSCE commitments are all crucial tasks that need to be carried out to uphold and protect the freedom of the media and the freedom of expression.

The driving forces behind creating an OSCE media watchdog were the participating States themselves, not media professionals, civil society or academia. Having recognized that independent and pluralistic media were instrumental in building free and open societies, the participating States wanted to protect and expand the freedom of expression and media freedom. The RFoM was the institution that would assist them in implementing relevant OSCE principles and commitments, translating these freedoms into reality.

Having performed its mandated tasks during the last decade and a half, this year's anniversary of the institution provides an opportunity to stop and reflect on the developments in the field of the media so far. Looking in the rear mirror, however, the sad truth that unfolds is that the OSCE media environment is worsening, not improving. Authorities wanting to suppress free speech online threaten the public square of the 21st century, the Internet. Old challenges to media freedom, among which the safety of journalists is the most pressing, still remain.

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1   PC.DEC No. 193 Mandate of the Representative on Freedom of the Media.

The Internet – Giving Control Back to the Users

The digital revolution has fundamentally transformed our societies in ways that were unimaginable ten, fifteen, twenty years ago. The change is ongoing and hard to grasp. We think differently because of digitalization, and we act and interact differently because of digitalization. What is more, digitalization has created a new notion of the media. While traditional one-way communication systems – such as that of the press, radio and TV – still play a big role in shaping our lives, the Internet has provided us all with the opportunity to be part of a more inclusive dialogue. Whether it be on politics, public issues or popular culture, we are more often invited to speak our minds freely and comment on the news – and the online freedom space does not end here!

With the Internet, the divide between producer and receiver, journalist and reader, agenda-setter and agenda-actor has become less obvious. Today, Internet users do not only consume media content, but also have the power to shape or even alter narratives portrayed in the media. "Open journalism" is a term used to define the new interactive process of creating media content, primarily online. It captures the ongoing media development, made possible by the Internet, in which editorial offices more frequently rely on users to provide them with information, give ideas and comments on stories even before they are published, and also assist in processing various documents.

The New Freedom Front Line

"Empowerment" is the word, if there is any, to describe the opportunities for freedom provided to us all by the digital revolution. Through the Internet users have regained control over information, thereby making content hard, not to say impossible, to control by the privileged few.

Recognizing the power-shifting potential of the Internet, there are forces in motion that have sought and keep seeking to hinder the advancement of human rights online, making the Internet the new front line in the fight for freedom of expression and media freedom worldwide.

The argument put forward is that the RFoM should not deal with online freedom issues, as the OSCE commitments in the media field do not explicitly mention the Internet. Instead, the Institution should solely address concerns related to the traditional mass media – the press, radio and TV. In short, the Institution should act as if the media environment has not changed since 1997 when the mandate of the RFoM was adopted by the OSCE Permanent Council.

It is deeply worrying that these forces see the Internet as a threat to security, rather than an opportunity to build security. Only when human rights are guaranteed can a stable security community in fact be built, and vice versa, only when security is a reality can human rights be safeguarded and advanced.

Consider the following.

For any society to embrace stable reform, an exchange of ideas is imperative. This is where freedom of expression and freedom of the media come into play. However, without adequate security arrangements and respect for the rule of law, the price for exercising human rights is often far too high. The crucial debate that would advance society is forsaken; the risk for conflict rises.

At the same time, a poor human rights situation can spur conflict by itself. If our right to basic and other needs are not met, if impunity is the order of the day, a state of disillusion prevails that can easily spark the flames of conflict. These are only some of a number of different ways in which the relationship between human rights and security can be illustrated.

In addition, it is important to remember that we have to be able to exercise our right to freedom of expression and the freedom of the media if we are to claim other freedoms, including economic, social and cultural rights. When the enjoyment of these freedoms has become a reality, the risk for conflict has also severely decreased.

Internet freedom as a Human Right

In the 2010 Astana Commemorative Declaration, the participating States reiterated: "human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility."[2]

This is the instinctive response to the criticism voiced against RFoM efforts related to Internet freedom – human rights are inalienable, absolute, universal. This means that humans have the right to their rights regardless of the platform through which they choose to enjoy them. If print media are used as a channel for free expression, the RFoM should deal with violations of this freedom in the print media. If the radio is used as a channel for free expression, the RFoM should deal with violations of this freedom in the radio media. Likewise, if the Internet is used as a channel for free expression, the RFoM should deal with violations of this freedom on the Internet.

What is paper to the print media? What are electromagnetic waves to the radio media? What is the Internet for the online media? Regardless of the medium used, all three are means for spreading information, and at their best are platforms through which a democratic dialogue can be created, developed, and sustained.

The failure by some to acknowledge the link between security and human rights and to see the Internet as an opportunity to build both democracy and its close corollary security is deeply worrying and saddening. Paradoxically, repressive measures against the media are often justified as a means to battle national security threats. Instead, free, independent and pluralistic media should be seen as a means for advancing security.

Not only do the media provide platforms through which various issues can be discussed in a democratic manner, they also perform an important watchdog role, seeking to hold those in power responsible for their actions. This includes reporting on corruption, organized crime and the human rights situation in general.

Advancing Freedom Online

Let's face the truth: the Internet is in many ways new to us. We are still groping in the dark on how human rights should be protected online, and how to best promote our joint freedoms.

Wanting to find answers to how to continue paving the way for Internet freedom, the Institution organized a major event, the Internet 2013 Conference in Vienna this year. More than 400 participants followed the discussions on site and several hundred participated through Facebook and Twitter or watched the live stream.

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2   SUM.DOC/1/10/Corr. 1* Astana Commemorative Declaration Towards a Security Community.

The event generated a set of recommendations prepared by my office on how freedom of expression and media freedom can be guaranteed online. They highlight that these freedoms should be applicable to all forms of journalism and, considering that disseminating and receiving information is a universal human right, citizens should be allowed to decide what they want to access on the Internet.

The full set of recommendations can be found on the Institution's website – http://www.osce.org/fom/100112.

Journalism – a Cornerstone of Democracy

We call them journalists, reporters, bloggers, editors people whose job it is to present us with the news, to reach out to us and to give us the information we need to make well-informed decisions, for our benefit but also for the benefit of society as a whole.

Without a pluralistic, open, and independent media environment, where journalists are allowed to work freely, democracy cannot exist.

Even if more than one candidate is running for office, there cannot be free and fair elections if journalists are not allowed to ask critical questions and pass judgement on the powerful. Likewise, even if different media channels do exist, there cannot be a free flow of information if journalists are not allowed to evaluate the news independently without interference from authorities.

On these and other aspects, journalism is closely interlinked with democracy; and the free exchange of ideas, opinions and beliefs prompted by journalists is undeniably crucial to any sustainable democratic development.

At the same time, democratic forms of government are the close corollary of security. Among the features of such governments is respect for the rule of law and human rights, including the freedom of expression and the freedom of the media.

The Gap between Paper and Practice

All participating States have on paper agreed to protect the safety of journalists. The 1994 Budapest Summit resulted in the unanimous adoption of a declaration on this pertinent issue, the Participating States thereby stating:

> *(36)* … freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They [the participating States] take as their guiding principle that they will safeguard this right.

> *(37)* They condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.[3]

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3   DOC.RC/1/95 CSCE Budapest Declaration Towards A Genuine Partnership In A New Era.

In the first half of this year alone, and by low estimates, 21 media members in participating States were physically attacked, 10 were imprisoned or placed in short-term detention because of their line of work, and five were jailed or are currently in prison being charged with criminal defamation. A number of journalists were furthermore sentenced to up to nine years imprisonment on dubious charges; others were targeted in firebomb attacks outside their homes. A newspaper was forced to close because of civil defamation decisions ordering extensive damages; another paper had a parcel bomb delivered to one of its editorial offices.

Moreover, and of equal concern, is a growing type of harassment of journalists' right to cover public demonstrations. Law enforcement officers have in a number of participating States only recently used excessive and unnecessary force against media workers in order to stop them from reporting from such events. These actions not only demonstrate the relentlessness by which the media are treated, but also show that authorities are directly involved in obstructing journalists from exercising their right to media freedom.

Promoting Journalists' Safety

Whether it involves covering public demonstrations, writing investigative stories or engaging in political reporting, journalism in its various forms clearly remains a dangerous pursuit in the OSCE region. The high price for pursuing journalism is not only paid by individuals, but also has a negative effect on the media environment at large, self-censorship being one the regrettable effects of the lack of journalistic safety.

Members of the media must be safeguarded, otherwise freedom of expression and free media are under attack. And when that happens, security is under attack and the very essence of democracy is at stake.

Attempts to scare the media into silence in the name of security are detrimental to any democracy, because the very reason for fighting national security threats in any democracy is to safeguard and expand human rights, including for journalists.

In comparison with issues related to Internet freedom, the safety of journalists is an old challenge for media freedom advocates. The main areas of concern have been broadly elaborated upon, and the literature on how to deal with these issues is extensive. Impunity for assaults against and the killing of journalists, the unlawful imprisonment of journalists, and raids on editorial offices by law enforcement officers are all areas which are also covered in one of the more recent publications by the Organization on these issues – the OSCE Safety of Journalists Guidebook.

The Guidebook presents a number of recommendations on how to enhance the safety of journalists. This could be done by not applying a statue of limitations for assaults and killings, and to carry out effective investigations bringing those responsible to justice. If journalists are imprisoned investigations should likewise be completed swiftly, and if found not guilty by an independent jurisdiction, the journalists in question should be released. Law enforcement officers should furthermore respect the right of journalists to report on various issues, and not arrest or confiscate equipment in raids if this is not in the strong public interest.

The full set of recommendations can be found on the Institution's website – http://www.osce.org/fom/85777.
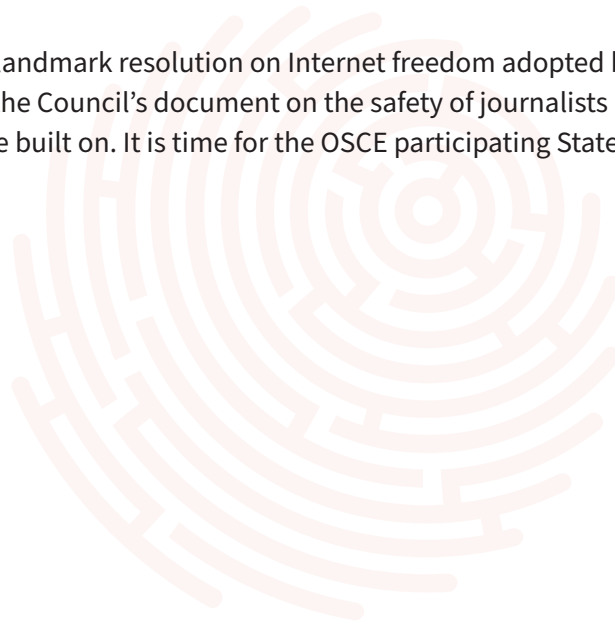
The Key – Political Will

Regardless of the many recommendations that my office makes and no matter how many publications it publishes, the media situation in the OSCE will not improve unless participating States start acknowledging

the human rights of all of their citizens, including journalists. The OSCE commitments in the human dimension are robust and serve as a good foundation for building democracy and security, but can – again – only be implemented if participating States are willing to take the measures which are necessary.

We ought to remind ourselves that never has there been the time to overregulate the media, and especially not now. Since we do not know what the digital tomorrow will bring, protective measures could cause more harm than good. We risk making the mistake of Don Quixote, fighting windmills and not ferocious giants, fighting human rights and not security threats.

Authorities claiming that certain security measures are justified solely because they would build security have either forgotten or simply chosen to ignore that human rights are one of the most important values to be defended when balancing enforcement measures with rights. After all, a security community is built on respecting human rights and allowing its members to enjoy the same freedoms to which every human being is entitled.

There are ways forward. The landmark resolution on Internet freedom adopted by the United Nations Human Rights Council last July, and the Council's document on the safety of journalists agreed upon in September 2012 are great initiatives to be built on. It is time for the OSCE participating States to also turn words into action.

This article was first published with Brill | Nijhoff publishers, and was featured on the Security and Human Rights Monitor (SHRM) website.

Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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