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THE GREAT FIREWALL OF DEMOCRACY
The role of Internet's social media platforms in promoting freedom of expression and
human rights today



Master Thesis
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INTRODUCTION

Consistent with Article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.

- *The Declaration of Windhoek, 3 May 1991*¹

Two decades after the call for the establishment of World Press Freedom Day, the arrival of the digital revolution has made it possible to engage the High Commissioner for Human Rights this year at the annual International Human Rights day, which commemorates the 63 years of Universal Declaration of human rights, with the importance of the Internet and social media platforms as the main topic, and its role in promoting human rights, freedom of expression and democratic governments, something that those gathered in Windhoek in 1991 could not have imagined.

This dissertation will examine the role of Internet and the various digital communications platforms in reshaping today's state politics and policies in both democracies and dictatorships and in protecting of human rights (especially the right to freedom of expression and opinion).

The right of Freedom of Speech is protected internationally by article 19 of the Universal Declaration of Human Rights and of the International Covenant on Economic, Social and Cultural Rights (ICCPR), in which every member state of the United Nations, who signed or ratified the treaty, has the obligation and the duty to respect, safeguard and promote these rights. Moreover, freedom of speech is an International Customary Law, which bounds every state of the International community.

The first chapter is divided in three main pillars: the first pillar analyzes the propaganda model of the IVth Power in relation with the various technological innovations, examining how propaganda in a democracy is what violence is in a dictatorship. The second pillar focuses on the birth of Internet, its evolution and impact on the ecosystem of the media and of the society. The third pillar, studies concrete

¹ UNESCO, Concept Paper, World Press Freedom Day 2011 21st Century Media: New Frontiers, New Barriers Washington, DC, United States, (14. 12.2011):
http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/WPFD2011/WPFD_Concept_Paper_2011.pdf

practical cases in which the internet and social media platforms have not only been a weapon for protecting human rights, freedom of expression and democracies but an instrument for waging conflict and violence.

The second chapter is a specific national case-study of the freedom of expression in People's Republic of China. This chapter is divided in main two parts: first part, analyses the mechanisms the government exercises to undermine the freedom of expression: the censorship and the surveillance techniques and how it impacts human right violations, especially of journalists and human right activists; and the second part, analyzes China's domestic and international obligations in protecting, promoting and respecting the rights to freedom of expression and the right to privacy at an international human rights standard.

CHAPTER ONE

THE IV POWER, DEMOCRACY AND THE INTERNET

“si un individuo de otra generación no tan lejana hubiera podido dormir por cien años de repente despertara en esta era, ¿reconocería lo que observa? ¿Se sentiría como un extraño en su propio planeta!”²

-M. E. Alvarez Del Real

If any human being from a last generation would have slept for the last one hundred years and would suddenly wake up in our era, would he still recognize the world he observes? He would feel like a stranger in his own planet!³ The XX centuries experienced an unprecedented speed of innovative evolution in the field of communication and transportation technologies. The trend of this explosive technological revolution, which reached its golden era with the miracle birth of the Internet, does not show any indication of slowing down at the beginning of the XXI century. It facilitated the connection and the flow of information between geographically separated people, as messages could travel far faster than humans or any means of transportation. Today, everyone can know what is happening in another place on this planet at any given time and everyone can be connected in real time with anyone anywhere, cutting through barriers of time and distance. It has transformed the world into a small ‘global village’⁴.

Moreover, the XX century defines itself with a second characteristic: it’s the birth century of the Universal Declaration of Human Rights, a century deep committed to human rights and dignity, which ensures through an ongoing struggle that these rights are respected:⁵

This interaction between human rights and new technology is an important development in terms of the revolutionary changes which are taking place in our lifetimes, and that is why human rights and the information revolution are among the defining characteristics of the past century.⁶

² ALVAREZ DEL REAL M. E., *Avances Científicos más notables del siglo XX*, Editorial América, 1991, p. 8-9.

³ English translation of *Ibid.*

⁴ Marshall McLuhan, together with Bruce R. Powers coined this expression in his book *The Global Village: Transformations in World Life and Media in the 21st Century*, which was published in 1986.

⁵ Cfr. HICK S. – E. F. HALPIN - HOSKINS E., *Human rights and the Internet*, Macmillan Press LTD, London, 2000, p. x.

Cfr. RUSSEL B., *El impacto de la ciencia en la sociedad*, Madrid, Aguilar S. A. De Ediciones, 1961, p. 26.

⁶ HICK S. – E. F. HALPIN- HOSKINS E., *Human rights and the Internet*, 2000, p. x.

These two developments have transformed people's lives and perceptions, as it has played a crucial role in including the voices of those who have previously been ignored by societies, especially the voice of those who had been disinherited of their rights.⁷

In order to understand the effect of the new information and communication technologies on human rights, democracy and freedom of expression, it is vital to understand first the role of traditional media, the structure of the propaganda model and their influence on human rights in the XX century. Only then it's possible to understand the effects and the consequences of the shifting of the traditional mass medias to the digital era with the introduction of the Internet, and their impact in waging war or in building peace, in ensuring human rights or genocide, in promoting democracies or dictatorships.

1. The IVth Power in the XX century

In this part, the main focus is on the understanding of both the mass media that was accepted as part of modern society⁸, and the propaganda model that has been sophisticated through the two world wars. This aims to gain a deeper understanding on how "propaganda is to a democracy what violence is to a dictatorship."⁹

1.1. Modern society and the mass media

The word media comes from the Latin plural of medium¹⁰ and can be defined as a channel, a system or the means of communication. McLuhan defined the medium as "any extension of ourselves", or more broadly, the medium is any new technology "as technologies, mediate our communication; their forms or structures affect how we perceive and understand the world around us."¹¹ The concept masses according to Lang is "to characterize a society that consists of people somehow connected by

⁷ *Ibid.*

⁸ Cfr. LANG K. – G. ENGEL LANG, *Mass Society, Mass Culture, and Mass Communication: The Meaning of Mass*, University of Washington, International Journal of Communication 3 (2009), 998-1024. <http://ijoc.org/ojs/index.php/ijoc/article/viewFile/597/407>

⁹ The quote is by William Blum, is a U.S. journalist and one of the founders and editors of the *Washington Free Press*.

¹⁰ Cfr. OXFORD DICTIONARIES, <http://oxforddictionaries.com/definition/media>

¹¹ MCLUHAN M., *Understanding media, the extension of Man*, MIT Press, U. S. A, 1964, p. 7- 14.

communication while, at the same time, also dispersed in space and essentially detached from one another.”¹² This brings us to the common definition for mass media as a sources of information which includes exclusively traditional mass medias such as newspapers, magazines, radio and television, and which reach and influence large numbers of people and is commonly attributed to the modern society and mass audiences.¹³

The “founding father” of all mass media communication can be attributed to Johannes Gutenberg in the sixteen century, as he invented the first printing press with metal movable, which triggered an unprecedented revolution that started with the revolutionary Martin Luther’s religious reformation in 1517. In other words, it was the first milestone for the emerging of mass production, advertising, intellectual property, accessibility and science.¹⁴ Moreover, these means of communication slowly evolved, but none on the speed of the twentieth century with the introduction of the telegraph, the telephone, the radio, the cinema, the television, the computer, the laptop, the cellular phone, and finally the Internet and the World Wide Web.

The following part underlines the role traditional mass media played in the XX century in order to understand the potential of the mass media and the danger of propaganda techniques.

1.2. Propagandas is to democracy what violence is to dictatorship

"All that is necessary for evil to triumph is for good men to do nothing."- Edmund Burke

In this last century, the emerging of each of these new mass media instruments was accompanied with new techniques of pervasive propaganda techniques, which have been sophisticated, especially during the I and II world war.¹⁵ The leaders soon realized that the power lied always in the hands of those who controlled, collected, selected and disseminated information to an uninformed mass, keeping the audience constantly out of

¹² LANG K. – G. ENGEL LANG, *Mass Society, Mass Culture, and Mass Communication*, (2009), 998-1024. <http://ijoc.org/ojs/index.php/ijoc/article/viewFile/597/407>

¹³ *Cfr. Ibid.*

¹⁴ *Cfr. NAUGHTON J., From Gutenberg to Zuckerberg, What you really need to know about the Internet*, Clays Ltd, London, 2012, p. 15-20.

¹⁵ HIEBER L. *Lifeline Media: Reaching populations in crisis, A guide to developing media projects in conflict situations*, Media Action International, Great Britain, 2001, p. 1.

any ideas or thoughts that were unaligned with their mainstream political agenda. Soon, traditional media became the instrument of excellence to control and manage the geopolitical arena and was placed in a powerful position, considered as the IVth power.

When mass media are put exclusively in the hand of political leaders, it becomes the tool of propaganda to control and shape the public opinion of the masses. The English philosopher Graham Wallas, who in his book *Human Nature in Politics* suggested that human beings are not merely governed by reason, but by “affection and instinct”, which can be easily managed by a manipulator’s intention. Wallas notes:

Given a greatly expanded franchise, with its corollary of the need to base authority on the support of public opinion, political society invited the attention of the professional controller of public opinion. When to the demand for new methods of publicity there were added revolutionary advances in the techniques of communication, and the latest discoveries in social psychology, mankind had to deal more than ever “the cold-blooded manipulation of popular impulse and thought by professional politicians.”¹⁶

Similar to Wallas’ thought was Reinhold Niebuhr, who in his book *Moral man and immoral society* argues that rationality belongs to the cool observer and that the average man does not follow reason but faith. This faith requires necessary illusion and potential emotions, which are provided by the Newsmaker.¹⁷

It is quite easy to look through how propaganda enters the media in dictatorships, authoritarian and totalitarian regimes: as anyone who fails to recite official dogma simply get imprisoned or killed.

Many argue that in the free “democratized world”, media propaganda centralization and concentration, which control the flow and spread of information, does no longer exist. The leading critical thought to this assumption can be attributed to Naom Chomsky and Ed Herman analysis in their groundbreaking book, *Manufacturing Consent*, which challenges the common dogma of media objectivity in the free country of excellence- in the United States of America. It describes how mass medias (such as the *New York Times*, *Time*, *Newsweek magazines* and *CBS News*) are today’s new propaganda vehicles that shape public opinion in a ‘western democratic society’, without

¹⁶ WALLAS G., *Human Nature in Politics*, Timeless Classic Book, London, 2010, p. 86.

¹⁷ Cfr. NIEBUHR R., *Moral Man and Immoral Society: A Study of Ethics and Politics*, Charles Scribner’s Sons, Washington, 1932, p. 6- 12.

the use of violence nor an over system of censorship.¹⁸ The book illustrates the propaganda model and highlights the main filters of the mass media, which are the following: media ownership (by huge corporatizations), advertising, reliance on mass media sources and ideological control mechanism. It is mainly applied within the practice of marginalizing the public from pluralistic sources of information and mobilizing public support for the special interest that dominates the government and the private sector. Chomsky notes that:

It's a tyranny. But, that's the whole point of corporatization – to try to remove the decisions over their own fate, to limit the public arena, to control opinion, to make sure that the fundamental decisions that determine how the world is going to be run – which includes production, commerce, distribution, thought, social policy, foreign policy, everything – are no tin the hands of the public, but rather in the hands of highly concentrated private power. And there are various modalities for doing this. One is to have the communication system, the so-called information system, in the hand of a network of, fewer or more doesn't matter that much, private tyrannies.¹⁹

Likewise does Ben Bagdikian's note, in his book *Media Monopoly* (1983), how few major corporation dominate mass media on a global scale, leading and shaping public opinion through the monopoly of information:

Five global-dimension firms, operating with many of the characteristics of a cartel, own most of the newspaper, magazines, book publishers, motion picture studios, and radio and television stations in the United States. Each medium they own, whether magazines or broadcast stations, voices the entire country, and the owners prefer stories and programs that can be used everywhere and anywhere. [...] These five conglomerates are Time Warner, by 2003 the largest media firm in the world; The Walt Disney Company; Murdoch's News Corporation, base in Australia; Viacom; and Bertelsmann, based in Germany. Today, none of the dominant media companies bother with dominance merely in a single medium. [...] This gives each of the corporations and their leaders more communications power than was exercised by any despot or dictatorship in history.

In order to understand this propaganda theory in democracies more easily, the following section analyzes a concrete chase in which the media has played ia crucial role in the East Timor Genocide in the 70s. Major news corporations did not promote the Genocide directly, but this time but simply silence it. Chomsky describes the East Timor atrocity as the following:

¹⁸ Cfr. CHOMSKY N. – E. HERMANN, *Manufacturing Consent: The Political Economy of the Mass Media*, Bodley Head, London, 2002.

¹⁹ CORPWATCH, *Naom Chomsky and Corporate Control over the Internet*, 6th of May 1998. <http://corpwatch.org/article.php?id=1408>

[...] the biggest slaughter relative to the population since the Holocaust, which makes it not small. And this is genocide, if you want to use the term, for which the United States continues to be directly responsible. [...] The U.S. media had real complicity in genocide in this case.²⁰

However, how was it possible that this genocidal massacre has received almost no coverage from the mass media, especially not by the major leading press?

In this chase, it's vital to track down the history of the conflict. East Timor is a small island north Australia which has been part of the Portuguese Empire till its collapse in the 1970s. However, in 1975 the island was illegally invaded by Indonesia.

Before the Indonesian invasion, the media coverage was high in the leading press. However, after the Indonesian attack, the News coverage started to decline very sharply. When the atrocities reached their peak in 1978, the coverage reached zero: "literally zero in the United States and Canada, which has been another big supporter of the occupation."²¹

In fact, media coverage *to this day* has always completely wiped out the U.S. record: the strongest criticism you'll ever find is, "We didn't pay enough attention to Timor," or "The U.S. didn't try hard enough to get Indonesia to stop its atrocities" or something like that.²²

The reason for is United States geopolitical interest in the region. Chomsky explains that:

[...] the main reason why the Western power supported this invasion was that there's a huge offshore oil field in Timor's territorial waters, and before 1975 the Australians and the Western oil companies had been trying unsuccessfully to make a deal with Portugal to exploit it. Well, they hadn't had any luck with Portugal, and they figured an independent East Timor would be even harder to deal with- but they knew that Indonesia would be easy.²³

The plan succeeded, when Australia and Indonesia signed a big treaty to start extracting Timorese oil 1989.²⁴ The United States was able to complete their geopolitical agenda with Indonesia by controlling the mass media, which in their return determined information in order to serve the interest of the dominant group of societies. There are thousands of other examples that can illustrate how mass media shape the

²⁰ CHOMSKY N., *Understanding Power*, 2002, p. 295- 296.

²¹ *Ibid.*, p. 295

²² *Ibid.* p. 295- 296.

²³ *Ibid.*, p. 296-297.

²⁴ *Cfr. Ibid.*, p. 297.

perception of the world. As a virtual monopoly they can tell one fragmented side of the story, repeating it as often as possible in order to make it history. For example: mass media has played its manipulative practice by silencing the atrocity and simply not covering up the story. In all these chases, every time a mass media journalists or mass media corporation fragment, manipulate or silence events, they do breach the ethical international journalistic codes. As part of their duty they must verify the sources of information, in their obligation they are to be accountable for seeking the truth and report it. It is in their responsibility to act in order to minimize any harm.²⁵

Having understood the dangerous results of a controlled mass media in both democracies and dictatorship to human rights and freedom of expression, it's is vital to understand the role of the Internet in protecting these rights.

So the question that arises is the following: is Internet taking over the traditional media and challenging the propaganda model? In order to answer that question, it is important to understand what the Internet really is.

2. Passing from traditional to digital media

“The Internet is one of the most powerful inventions of the digital age. It has the potential to empower and educate, to cross cultural boundaries and create global communities. It offers the means for any individual with access to a computer and a gateway to the Internet to participate in a free flow of information and ideas with other across the world.”²⁶

-Amnesty International

In order to understand the power of Internet in influencing and challenging the propaganda model, its important to have a deep understanding of what the Internet is, how it functions and how it changed the ecosystem of the media environment.

²⁵ INTERNATIONAL FEDERATION OF JOURNALISTS, *IFJ Declaration of Principles on the Conduct of Journalists*, 14th of March 2003. <http://www.ifj.org/en/articles/ifj-declaration-of-principles-on-the-conduct-of-journalists>

²⁶ AMNESTY INTERNATIONAL, *Undermining freedom of expression in China, the role of Yahoo!, Microsoft and Google*, The Human Rights Action Centre, UK, 2007. <http://www.amnesty.org/en/library/asset/POL30/026/2006/en/18c6f357-d41b-11dd-8743-d305bea2b2c7/pol300262006en.html>

2.1. The birth of the Internet

The Internet that we use today was switched on in January 1983. It was designed over the course of the previous decade (in the late 1960s) by the United States Defense Department, which created the Defense Advanced Research Projects Agency Network (known as DARPA NET, and later ARPANET), in order to exchange military research information. In 1974, the 'Internetworking' project began and was led by two engineers, Vinton (Vint) Cerf and Robert Kahn, both of whom worked on the ARPANet.²⁷ They assured that the new net had two main rules: first, that there must be no central control and second, that "the network should not be optimized for any particular application."²⁸ In the mid. 1980s, the network has expanded beyond military applications until it reached today's open access network.²⁹

But what is the Internet? Is the Net a synonym of the World Wide Web? What is the Cyber net or cyberspace? Unfortunately, there have been many misconceptions regarding its definition; many appear confused by the range of terms used to describe it. While many of these terms may describe this new technology, grasping these technical terms has been inaccurate.

The Internet can be defined as "a global pool of information and services, accessible locally through individual computer stations that are each part of a global system of interconnected computer networks."³⁰ The Web is "simply a system that sits on top of the Internet, making it greatly easier to navigate the information there and to use it as a medium of sharing and communication."³¹

²⁷ Cfr. NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 45-55.

²⁸ Cfr. *Ibid.*, p. 47.

²⁹ Cfr. HICK S. – E. F. HALPIN - HOSKINS E., *Human rights and the Internet*, 2000, p. 6. / BURKEMAN O., *Forty years of Internet: how the world changed for ever*, *The Guardian*, 23rd of October 2009.

<http://www.guardian.co.uk/technology/2009/oct/23/internet-40-history-arpamet>

³⁰ HICK S. – E. F. HALPIN - HOSKINS E., *Human rights and the Internet*, 2000, p. 5-6.

³¹ BURKEMAN O., *Forty years of Internet: how the world changed forever*, *The Guardian*, 23rd of October 2009.

<http://www.guardian.co.uk/technology/2009/oct/23/internet-40-history-arpamet>

The origin of the Web traces back to Tim Berners-Lee, who experimented at the European high-energy physics laboratory in Geneva: CERN, and created his own Web (info.cern.ch).³² In the Internet context, the World Wide Web pages are one of the many kinds of traffic means that run on the Internet infrastructure. Other means of Internet traffic include: music files, software updates, e-mail, phone conversation via Skype and other VoIP (Voice over Internet Protocol) services, streaming media (video and audio) and others.³³ In other words: “The web is huge and very, very important- but its just one of the things that run on the Internet. The network is much bigger”³⁴. Therefore, clarifying the first misconception: the Internet is not synonymous for the World Wide Web (WWW).

According to the International Telecommunication Union, the total number of Internet users worldwide is now over 2 billion³⁵, and although it is hard to estimate the exact number of Web pages existing, it was estimated to 20-40 billion pages in 2011.³⁶

Wikipedia web, for example - which has about 360 million readers- is one of the eight most visited web sites, behind Google, Facebook, YouTube, Yahoo, Blogger.com, *Sina Baidu* (the leading Chinese language search engine) and Windows Live (Microsoft’s search engine).³⁷ Facebook, which was launched in 2004 by the young Harvard student Mark Zuckerberg, grew from 150 million to 600 million between 2009 and 2011. Half of its users log in at least once a day and many spend a significant amount of time on it, uploading 200 million photographs a day. It has been described as the biggest image-hosting site with a total of 90 billion photographs.³⁸ Moreover, Twitter has more than 200 million registered accounts with 600,000 signups per day and more than 200 million Tweets per day.³⁹

³² *Ibid.*

³³ Cfr. NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 39.

³⁴ *Ibid.*, p. 40.

³⁵ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 16 May 2011, p. 4.

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

³⁶ Cfr. NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 58.

³⁷ *Ibid.*, p. 90.

³⁸ Cfr. *Ibid.*, p. 97.

³⁹ THE GUARDIAN, *Weibo: The Chinese Twitter that dwarfs Twitter*, The digital content blog accessed 7th of March 2012.

<http://www.guardian.co.uk/technology/pda/2011/jul/15/weibo-twitter-china>

This leads to the definition of social media. Likewise to the previous concept, there has been a very limited understanding of what this term exactly means. The social media includes web-based sites for social networking and microblogging, mobile technologies, virtual social worlds and games. Through which, users create online communities to share information, ideas, personal messages and to turn communication into interactive dialogue. Andreas Kaplan and Michael Haenlein define social media as "a group of Internet-based applications that are build on the ideological and technological foundations of Web 2.0, and that allow the creation and the exchange of user-generated content."⁴⁰ It is a media for social interaction and has substantially changed the way organizations, communities, and individuals communicate

The current trend toward social media can therefore be seen as an evolution back to the Internet roots, since it retransforms the World Wide Web to what it was initially created for: a platform to facilitate information exchange between users.⁴¹

This brings up the question whether these various Internet platforms can be considered just as another mass media medium, or rather be an alternative tool of information to the propaganda models. In order to answer these questions, it is vital to analyze how Internet changed the so called 'ecosystem' of the media environment.

2.2.The changing ecosystem of the media environment

Naughton describes, in his book *From Gutenberg to Zuckerberg* that: "we are living through a radical transformation of our communications environment"⁴² The Internet's impact is historically revolutionary "like the industrial revolution and the invention of printing combined."⁴³ It was Marshall McLuhan who first borrowed the biological concept of the ecosystem, in order to compare it to the media environment. It can be treated as a biological system with its diversity and co-evolution, and where new leanings and adaption can occur. The ecosystem of the media environment is a

⁴⁰ KAPLAN A. M. – M. HAENLEIN, *Users of the world, unite! The challenges and opportunities of Social Media*, Volume 53, Issue 1, Paris, January–February 2010.
<http://www.sciencedirect.com/science/article/pii/S0007681309001232>

⁴¹ *Ibid.* p. 60.

⁴² NAUGHTON J., *From Gutenberg to Zuckerberg, What you really need to know about the Internet*, Clays Ltd, London, 2012, p. 5.

⁴³ *Ibid.*, p. 26.

community of organizations, publishers, authors, end users and audiences; all along functions together with their environment as a unit.

Moreover, the emerging information environment which was triggered by the Internet, changed the 'industrial information economy' that is a competitive paid-for content markets increased together with consolidation of ownership.⁴⁴ In other words, information was considered a consuming product and a profitable one too.

However, through the sharing sites NAPSTER, everyone with an Internet connection had the access to the information for free. This had a transformative impact on this industrialized company.

The emergence of the 'the networked information economy' in which 'decentralized individual action- specifically new and important cooperative and coordinated action carried out through radically distributed, nonmarket mechanisms that do not depend on proprietary strategies- plays a much greater role than it did, or could have, in the industrialized information economy.'⁴⁵

Furthermore, anyone with an Internet connection could become a global publisher by creating websites, writing blogs, publishing photographs, streaming audio or posting video online. For example, a multitude of enthusiastic 'amateurs' have created the world's leading encyclopedia, Wikipedia.

It is a technological platform that creates easy-to-use software tools for online communities to publish weblogs, digital movies, and music. It is technology that enables anyone with a computer to become an author, a film director, or a musician. In a world increasingly influenced by the Internet it is unsurprising that these new media are seen as playing an important role in the debate about young people and civic engagement.⁴⁶

The Internet has been an expansion tool for traditional mass media at nominal cost. Unlike any other medium of communications (such as radio, television and printed publications), which are based on one-way transmission of information, the Internet represents a significant leap forward as an interactive medium. Especially with the advent of the so-called Web 2.0 services - the intermediary platforms that facilitate participatory information sharing and collaboration in the creation of content-

⁴⁴ *Cfr. Ibid.*, p. 122-113.

⁴⁵ *Cfr. Ibid.*, p. 122-113.

⁴⁶ LOADER B. D., *Young Citizens in the Digital Age: Political engagement, young people and new media*, Routledge, New York, 2007, P. xii.

individuals are no longer passive recipients, but active publishers of information. These platforms are particularly valuable in countries where there is extremely no independent media, as they enable individuals to share critical views and to find objective information.

Generally, by enabling individuals to exchange information and ideas instantaneously and inexpensively across national borders, the Internet allows access to information and knowledge that was previously unattainable. This, in turn, contributes to the progress of society as a whole.⁴⁷

Today, the word “broadcasting” is replaced increasingly by “narrowcasting”; rather than a single mass audience consuming the same broadcast information, we have multiple audiences, interests, and information channels. The emergence of new communication media challenge the propaganda/broadcast model by increasing the number of channels through which information reaches the public, and by lowering the costs of entry to previously- excluded voices. As a result, instead of relying on “one-to-many” broadcasts, people can now get information through “one-to-one” and “many-to-many” systems, in which they themselves choose and create their own media form divers resources. It has changes the rules of the old mass media model.

[...] the Internet has increased the efficiency and scope of individual and group networking. This has enabled people to escape the mainstream media’s constraints in many and diverse cases.⁴⁸

Many ambitious claims have been made for the Internet, suggesting that the net will be the great democratiser, not only at the political level, but at the information dimension, as it levels the playing field of knowledge and access to ideas. Just Like Gutenberg’s printing press, it will give to the many the knowledge, which was previously confined to the few.

⁴⁷ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, 16 May 2011, p. 6.
http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

⁴⁸ CHOMAKSY N. – HERMAN E. S., *Manufacturing Consent, The Political Economy of the Mass Media*, The Bodley Head, London, 2002, p. 3.

The next question that emerges is: whether Internet can be automatically a tool for defending human rights violations? Or is it a weapon for waging violence and destruction? Does it trigger automatically democracy and freedom of expression or is it an instrument of surveillance, which breaches the civil right to privacy?

3. The Internet: A neutral tool, a weapon of waging war, a tool for peace?

This part is divided in two pillars, in which various small case studies will be examined, in order to illustrate the different consequences and results the Internet can have, when used in different ways; as it is a neutral tool. In both pillars the role of the Internet in exposing human rights violations will be presented. In the first part the focus is mainly on the role of the social media in contributing to the exposure of war crimes, crimes against humanity and violation of basic human rights through the two documentaries: “Sri Lanka Killing Fields” and “Kony 2012”. The second part underlines how cyberspace can be transform to cyber war and thereby to new battle filed of various hackers and whistleblowers. WikiLeaks and Anonymous will be practical examples of not only limit their practice in exposing various human rights abuses but the exposure of various classified confidential material.

Both pillars are challenging the fine line between freedom of expression, human right defenders and great journalistic work for one side, and criminal acts, threatening national security and cyber war from the other side.

3.1. Social media technologies in mobilizing the international community in promoting human rights

“[...] Information today has therefore become not merely more powerful but more accessible. Human rights travels far and fast on the Internet. A violation of human rights, a massacre, a mass arrests. The world immediately knows when such things occur, who has been victimized, and how to respond.”⁴⁹

In this part, two concrete example of social media footages presented by International and local NGO, will illustrate the potential power they have in shifting

⁴⁹ HICK S. – E. F. HALPIN - HOSKINS E., *Human rights and the Internet*, 2000, p. xi.

public opinion, capturing the attention of the international community and mobilizing them to action in regard of a certain human rights violation issue in a certain country.

The “Sri Lanka’s Killing Fields” is a documentary that exposes shocking new evidence of war crimes, human rights abuses and crimes against humanity, which were committed during the closing days of Sri Lanka’s civil war in 2009. The Sri Lankan government’s forces and the Liberation Tigers of Tamil Eelam (LTTE) killed around 100,000 people and displaced thousands.⁵⁰ The documentary is a collection of various (previously unaired) mobile phone footages, which were filmed by the Tamils who were under attack, but also by the government soldiers who filmed their victims as their war trophies. The crimes were of extra-judicial executions and other evidence and testimony that the Sri Lankan Army systematically and knowingly, with oversight of senior military and government’s officials, bombed hospitals and civilians.⁵¹

The documentary was first aired by British broadcaster Channel 4 Television in June 2011.⁵² In October 2012 it has reached the European Parliament and United Nations Headquarters.⁵³ Amnesty International has repeatedly called for the Secretary General to launch an independent inquiry and has urged United Nations member states to support it.

However, the Sri Lankan Ambassador to the European Union denied the documentary’s allegations and its authenticity- despite being authenticated by United Nations specialists⁵⁴- and accusing the European Parliament and participating International NGOs of having their own agenda, stating:

⁵⁰ Cfr. DIAZ J. L., ‘Sri Lanka’s Killing Fields’- shocking the UN into action, *Livewire*, Amnesty International. <http://livewire.amnesty.org/2011/06/21/sri-lankas-killing-fields-shocking-the-un-into-action/>

⁵¹ Cfr. INTERNATIONAL CRISIS GROUP, Screening of “Sri Lanka’s Killing Fields” Documentary and Panel Discussion. <http://www.crisisgroup.org/en/support/event-calendar/past-events/sri-lankas-killing-fields.aspx>

⁵² <http://srilanka.channel4.com/index.shtml>

⁵³ Cfr. AMNESTY INTERNATIONAL, <http://www.amnesty.org/en/news-and-updates/qa-sri-lanka's-killing-fields-2011-06-14>

⁵⁴ OHCHR, *Special Rapporteur on extrajudicial, summary or arbitrary executions, UN human rights expert Christof Heyns on Sri Lanka video footage*, 30TH of May 2011. <http://www2.ohchr.org/english/issues/executions/videos.htm>

I would like to start by saying [...] that this presentation was not organized by an official EU body, and so does not reflect an EU view. [...] This film presents dubious footage and makes unsubstantiated allegations against the government of Sri Lanka.⁵⁵

Moreover the Sri Lankan government has released a rebuttal to the documentary, *Lies Agreed Upon*⁵⁶, and on the 15th of March 2012, thousands of Sri Lankans have rallied outside the United State embassy in the capital Colombo in response to The United States statement to bring a resolution before the United Nations human rights council, urging Sri Lanka's government to investigate those allegations and seek reconciliation.⁵⁷

Another experiment which illustrates the potency of social media is the online video "Kony 2012", which has been flouting around on the Internet and which has gone viral in just a couple of days. It was launched by a United States based non-profit organization called 'Invisible Children' hoping to spark international attention and action to the Lord's Army leader (LRA) Joseph Kony. The 30-minute documentary launched on the 5th of March 2012 by the video's two filmmakers Jason Russell and Bobby Bailey caught global attention in a few days. It was endorsed by major Hollywood celebrities and reached 80 million views, 2.5 million 'likes' on its facebook page, and 6 million tweets on the third day of its launching. It has been considered one of the fastest social media campaign, catching the attention of major media news, celebrities and politicians. This well produced documentary aims to make Joseph Kony 'famous' not to celebrate him but to raise support for his arrest and set international justice for crimes committed against humanity and other human rights abuses.

However, this documentary has triggered a major debate on its accuracy and intention. Various voices accused the documentary of being misleading, including statement: that Josef Kony is no longer in Uganda, that Uganda has other major

⁵⁵ LUCAS S., *Channel 4's "Sri Lanka's Killing Fields" screened at the European Parliament*, Digital Journal, 12th of October 2011.

<http://digitaljournal.com/blog/13361>

⁵⁶ SRI LANKA GUARDIAN, *Sri Lanka's 'Lies Agreed Upon' show in the British parliament was utter flop*, 17th of October 2011. <http://www.srilankaguardian.org/2011/10/sri-lankas-lies-agreed-upon-show-in.html>

⁵⁷ *Cft.* ALJAZEERA, *Sri Lankans protest UN war crimes probe*, 15th of March. 2012. <http://www.aljazeera.com/news/asia/2012/03/2012315142554716851.html>

problems, the simplification of a complex issue, the pushing of a geopolitical agenda of U.S. military/humanitarian intervention in the African continent.

Moreover, an online-video response to 'Kony 2012' has been launched by the Ugandan Prime Minister Amama Mbabazi'. Mbabazi hopes that it will declare that it will correct the "false impression" given by US group's film that Uganda is in conflict, expressing:

The video, "Kony 2012", by Invisible Children, an advocacy group in San Diego, has been viewed by over 80 million people worldwide since it was released online last week, with a string of celebrities tweeting links to the emotional film. [...] It is particularly welcome to see so many young people uniting across barriers of nation, race, religion and culture to take a stand for justice. I salute you and I thank you. [...] I extend the invitation not just to the 20 celebrities, but to you all - come and see Uganda for yourself - you will find a very different place to that portrayed by Invisible Children.⁵⁸

However, 23rd of March, the African Union has announced that it will deploy a 5,000-strong military force to hunt down the Warlord, financed by the United States and the European Union, and it will include soldiers from Uganda, South Sudan, Congo and the Central African Republic⁵⁹. African Union special envoy Francisco Madeira favored the United States backing force stating:

The Americans are playing a pivotal role in some aspects [...] They support us militarily, they support us with equipment, they support us with military advice, they support us even with intelligence and training," he told reporters at its launch ceremony in the South Sudanese capital Juba.⁶⁰

Moreover, the United Nations Central Africa envoy Abou Moussa underlined the factor of global pressure on Kony stating that: "We need to take advantage of the high level of interest, goodwill and political commitment to finally put an end to this crime."⁶¹

So, independently whether the movie's intention is, one thing is for sure: it was one of the biggest social media experiments, which proved the potential force of a well-narrative documentary, which is spread in various Internet platforms. It has illustrated

⁵⁸ ALJAZEERA, *Uganda launches video to counter 'Kony 2012'*, 17th of March.

<http://www.aljazeera.com/news/africa/2012/03/2012317134323360997.html>

⁵⁹ BARIYO N., *New Hunt Launched for Warlord*, The Wall Street Journal, 23rd of March 2012.

<http://www.wallstreetjournal.de/article/SB10001424052702304636404577299603744040494.html>

⁶⁰ REUTERS, *African Union launches U.S.-backed force to hunt Kony*, 24th of March 2012.

<http://www.reuters.com/article/2012/03/24/us-southsudan-kony-idUSBRE82N08T20120324>

⁶¹ *Ibid.*

the power to involve millions of ‘netizens’, crossing national borders, age or any ethnic or religious differences. It has shaped and reshaped new public opinions on a given issue by catching the attention of international politicians, celebrities and traditional mass medias and by also giving the opportunity for the ‘netizens’ to discuss and debate on it on social media platforms.⁶²

These two examples underline two main things. First it illustrates a new information age; with the increased speed in communication, news travels faster than ever, creating immediate and international responses to a certain issue and opens the doors for unforeseen international debates which includes not exclusively the ‘elites’ but everyone: the ‘netizens’, the international mass medias, the politicians, NGO, the United Nations, all participate in the debate regarding an emerging situations.

Second it underlines the emerging of ‘civic journalism’, meaning that anyone using a simple tool kit of modern technology becomes a messenger or a witness, contributing voluntarily or involuntarily to telling a story. Even, if journalists are banned in a country, information is censored or blocked, there is still a way to seep out in the form of mobile phone, video or other footage and can be a source of evidence for alleged crimes against humanity, war crimes, and human rights violations, which could mobilize the international community and international organizations into pressuring the country into respecting these rights.

3.2. A mouse and a keyboard, the new weapons of fighting the battle of freedom of expression?

*[WikiLeaks]... could become as important a journalistic tool as the Freedom of Information Act.*⁶³

- Time Magazine

Wikileaks is an international non-profit organization that was been by an Australian activist Julian Assange and others in October 2006. Since its creation it has dedicated to publish high sensitive information regarding corruption, human rights

⁶² Cfr. ALJAZEERA, 'Kony 2012' and the future of activism, Inside Story, 11th of March 20120. <http://www.aljazeera.com/programmes/insidestory/2012/03/201231111225766134.html>

⁶³ SCHMIDT T. S., *A Wiki for Whistle-Blowers*, Time U.S., 22nd of January 2007 <http://www.time.com/time/nation/article/0,8599,1581189,00.html>

violations, diplomatic cables and other material of ethical, political and historical significance. The core Wikileaks principle as of defending right of the freedom of Speech:

The broader principles on which our work is based are the defence of freedom of speech and media publishing, the improvement of our common historical record and the support of the rights of all people to create new history. We derive these principles from the Universal Declaration of Human Rights. In particular, Article 19 inspires the work of our journalists and other volunteers. It states that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. We agree, and we seek to uphold this and the other Articles of the Declaration.⁶⁴

The early-published documents were referred to events in Africa, including a copy of a decision by the rebel leader in Somalia to assassinate officials working in the Somali government and documents regarding corruption by the Kenyan leader Daniel Arap Moi.⁶⁵ In 2007, the first U.S.-related leak was published regarding the Guantanamo detention site: the copy of the 'Standard Operating Procedures', in which an investigative report written by Julian Assange illustrates "that the United States had 'almost certainly' violated the terms of the Chemical Weapons Convention as originally drafted by the UK in 1997."⁶⁶ In 2008, leaks included details of a Swiss Bank's tax avoidance activities in the Cayman Island, details of the secretive Church of Scientology, United States military Rules of Engagement in Iraq and many more.⁶⁷ Throughout the following years, WikiLeaks increasingly getting active and started to make headline news lines, storming thereby the mass media mainstream globally, triggering a huge uproar from the international arena.

Moreover, in 2009, WikiLeaks won Amnesty International's UK Media Award (in the category "New Media") for the release of "*Kenya: The Cry of Blood – Extra-Judicial Killings and Disappearances*," which documented police abuses⁶⁸ and exposed hundreds of extrajudicial assassinations of people that were investigating the killings. As a result, the United Nations Rights Council, which sent a team to Nairobi-Kenya, lead by United

⁶⁴ WIKILEAKS, <http://www.wikileaks.org/About.html>

⁶⁵ NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 123-124.

⁶⁶ NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 124.

⁶⁷ *Ibid.*

⁶⁸ *Cfr.* THE GUARDIAN, *Amnesty International Media Awards 2009: full list of winners*, 3rd of June 2009.

<http://www.guardian.co.uk/media/2009/jun/03/amnesty-international-media-awards>

Nations Special *Rapporteur* Prof. Alston, to investigate the facts.⁶⁹ The *Rapporteur* reported that Kenya's police were blocking the probes into the killings:

The Special Rapporteur came to the conclusion that police in Kenya frequently execute individuals and that a climate of impunity prevails. Most troubling is the existence of police death squads operating on the orders of senior police officials and charged with eliminating suspected leaders and members of criminal organizations. Such groups harass and kill Kenyans, and strong policing is required to counter the threat. Carte blanche killing by the police, however, does nothing to eradicate such criminality; rather, it perpetuates the sense that the police are good at killing and bad at law enforcement. For policing to truly create security, it must be conducted with respect for the human rights of all, including those of suspects and victims. A lack of police accountability for killings results from the absence of effective internal or external investigation or oversight mechanisms.⁷⁰

In 2010, WikiLeaks marked a new departure with the release of the video 'Collateral Murder', which illustrates a gunshot incident made by a U.S. apache helicopter in 12 July 2007 killing several civilians including a 22-year-old Reuters photographer.⁷¹ According to the Guardian: "The Pentagon blocked an attempt by Reuters to obtain the video through a freedom of information request. [...] Assange said his organization had to break through encryption by the military to view it".⁷² This shocking movie was leaked thanks to a 22-year-old U.S. Army private, Bradley Manning, who is charged on 22 counts.⁷³ Manning, was arrested at a United States military base in May 2011, and was initially held for almost three months at Camp Arifjan in Kuwait, and then transferred in July 2010 to the Marine corps base at Quantico in Virginia, where he was held for another eight months at inhuman and cruel conditions, such as being locked up in solitary confinement for 23 hours a day and being made to strip naked at night. The United Nations Special *Rapporteur* on torture has formally accused the United States government of cruel, inhuman and degrading treatment towards Bradley Manning and of violation of article 16 of the convention against torture, Mendez writes:

⁶⁹ Cfr. WIKILEAKS, *WikiLeaks wins Amnesty International 2009 Media Award*, 2nd of June 2009. http://mirror.wikileaks.info/wiki/WikiLeaks_wins_Amnesty_International_2009_Media_Award/

⁷⁰ UN GENERAL ASSEMBLY, A/HRC/11/2/Add.6, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston**, Mission to Kenya, 26th of May 2009.

⁷¹ Cfr. MCGREAL C., *Wikileaks reveals video showing US air crew shooting down Iraqi civilians*, The Guardian, 5th of April 2010.

<http://www.guardian.co.uk/world/2010/apr/05/wikileaks-us-army-iraq-attack>

⁷² *Ibid.*

⁷³ MCV EIGH K., *Bradley Manning to enter plea to 22 charges as arraignment hearing begins*, The Guardian, 23rd of February 2012. <http://www.guardian.co.uk/world/us-news-blog/2012/feb/23/bradley-manning-to-enter-plea>

The special rapporteur concludes that imposing seriously punitive conditions of detention on someone who has not been found guilty of any crime is a violation of his right to physical and psychological integrity as well as of his presumption of innocence.⁷⁴

‘Collateral Murder’ not only aroused a widespread condemnation of the war crimes, but marked the Whistleblower organization with a shift to what many call ‘advocacy journalism’ recognizing it as a source of investigative reporting.⁷⁵

The second evolutionary progresses of WikiLeaks’ strategies were in the following release of ‘war logs’: a 440, 000 field report of Iraq. WikiLeaks decided to team up with three traditional news organizations: the London *Guardian*, the *New York Times* and Germany’s *Der Spiegel*:

These ‘partner’ organizations were given time to analyse, verify and prepare the material for publication. All four organizations then published on the same day, with WikiLeaks releasing the full cache of document and the others publishing their analyses of them.⁷⁶

Furthermore, new leading media partnerships increased, including leading media such as *Le Monde* (France) and *El Pais* (Spain),⁷⁷ when WikiLeaks decided to publish the 250, 000 confidential United States diplomatic cables. The United States reaction, as a result, was harsh to these publications as the organizations has started to be viewed as a threat for national and international security, and started to be attacked by various medias and politicians. Secretary of State Hillary Clinton first stated:

Let's be clear: This disclosure is not just an attack on America's foreign policy interests. . . It is an attack on the international community—the alliances and partnerships, the conversations and negotiations, that safeguard global security and advance economic prosperity.⁷⁸

Despite the lack of concrete evidences the publication of the cables had endangered the lives of individuals or damaged United States interests⁷⁹, WikiLeaks was

⁷⁴ UN GENERAL ASSEMBLY, A/HRC/19/61/Add.4, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, 29th of February 2012, p. 74-76.

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_61_Add.4_EFSonly.pdf

⁷⁵ Cfr. NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 123.

⁷⁶ *Ibid.*, p. 126.

⁷⁷ Cfr. *Ibid.*,

⁷⁸ KESSLER G., *Clinton in Kazakhstan for summit, will face leaders unhappy over Wikileaks cables*. Washington Post, 30th of November 2010.

<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113001095.html>

⁷⁹ Cfr. NAUGHTON J., *From Gutenberg to Zuckerberg*, 2012, p. 127.

and still is subjected to hysterical criticism. There were also calls from some right-wing United States media figures for the assassination of Julian Assange. Kuhner published his article “Assassinate Assage” at the *Washington Time*, saying that:

As Mr. Assange has conducted cyberwarfare against America, President Obama has dithered. [...] In short, Mr. Assange is not a journalist or publisher; rather, he is an enemy combatant - and should be treated as such. [...] Julian Assange poses a clear and present danger to American national security. The WikiLeaks founder is more than a reckless provocateur. He is aiding and abetting terrorists in their war against America. The administration must take care of the problem - effectively and permanently.⁸⁰

It is interesting to analyse the different views the main mass media had regarding WikiLeaks. As for the BBC News it was rather questioning whether “*WikiLeaks [is] threatening National security or embarrassment?*”.⁸¹ There is no doubt that to many, Julian Assange has been a personification of people’s power⁸², with the introduction of the omnipresent Internet. However, to others he has been considered as an enemy and a threat to the point that Sarah Palin “demanded Assange be hunted in the same way as al-Qaida”⁸³ since he has been accused of aiding terrorists.⁸⁴ In an interview with ABC News, special *Rapporteur* Frank la Rue, considered these attack as hate speech:

ELEANOR HALL: What about the freedom of expression of those who express outrage about WikiLeaks? Should people be allowed to call for a person's assassination for example?

FRANK LA RUE: Never. That is incitement to hatred and violence. And that is, that falls under article 20 of ICCPR (International Covenant on Civil and Political Rights).

I think people can express their outrage and people can say that they feel offended by the content of what's being presented in WikiLeaks. But never to call for harassment or direct action against those that are doing that.⁸⁵

According to Frank La Rue, the United Nations *Rapporteur* the critical aspects are rather linked to national security and the personal safety of individuals:

⁸⁰ KUHNER J., *KUHNER: Assassinate Assange*, The Washington Time, 2nd of December 2010.
<http://www.washingtontimes.com/news/2010/dec/2/assassinate-assange/>

⁸¹ REYNOLDS P., *National security or national embarrassment*, BBC News, 29th of November 2011.
<http://www.bbc.co.uk/news/world-us-canada-11861458>

⁸² Cfr. RUSSIA TODAY, *Julian Assange, The man behind WikiLeaks*, 25th of August 2010.
<http://rt.com/news/sci-tech/julian-assange-man-wikileaks/>

⁸³ TOWNSEND M. – HARRIS P. – SMITH. A. D and others, *WikiLeaks backlash: The first global cyber war has begun, claim hackers*, The Guardian, 11th of December 2010.
<http://www.guardian.co.uk/media/2010/dec/11/wikileaks-backlash-cyber-war>

⁸⁴ Cfr. KUHNER J., *KUHNER: Assassinate Assange*, 2nd of December 2010.

⁸⁵ HALL E., *UN Rapporteur says Assange shouldn't be prosecuted*, ABC News, 9th of December 2011.
<http://www.abc.net.au/worldtoday/content/2010/s3089025.htm>

[...] in reference to what has been published in WikiLeaks I think there is no criminal responsibility for being the medium. This is one of the big debates in Internet and up to now the general doctrine is that there is no responsibility just to transfer information.[...] There is a responsibility in I would say in this case in two situations. One is that some statements can clearly be a threat to national security. And the second issue is the personal safety of individuals. Those are the cases that really have to be looked at. But having said that just the fact that the information is embarrassing information to a government does not make it subject to be blocked or filtered or reprisals to the director/founder of the service.⁸⁶

The Nobel watchers say a prize for WikiLeaks would highlight the growing role of specialist Internet sites and broad access social media in bringing about world change.⁸⁷

The Norwegian parliamentarian Snorre Valen underlined that WikiLeaks was:

[...] one of the most important contributors to freedom of speech and transparency in the 21st century. [...] By disclosing information about corruption, human rights abuses and war crimes, WikiLeaks is a natural contender for the Nobel Peace Prize.⁸⁸

So, regardless how controversial WikiLeaks might be, the organization has caught international attention regarding issues of corruption, war crimes and human rights abuses through the use of social media and the Internet. It has inspired various online 'netizens' and it was successful in the inception of this new idea of cyber space power to a the new 'digital generation'. Furthermore, every attempt to railroad WikiLeaks off the net, it has only triggered the counter effect:

Removing its hosting servers has increased WikiLeaks' ability to stay online. More than 1,300 volunteer "mirror" sites, including the French newspaper *Libération*, have already surfaced to store the classified cables. Within days the WikiLeaks web content had spread across so many enclaves of the internet it was immune to attack by any single legal authority.⁸⁹

The fueling fire was of this new revolutionary idea was out there and it was hard to stop. It has inspired particularly one group to understand the potencies of cyber space and the importance of not giving the state or leaders the total power to regulate information. So after the detention of Julian Assange, a number of hackers called '*Anonymous*' took to cyber battle filed and initiated the 'Operation Payback' in revenge

⁸⁶ *Ibid.*

⁸⁷ DOBBIE A., *WikiLeaks among nominees for Nobel Peace Prize*, Reuters, 2nd of February 2011.
<http://www.reuters.com/article/2011/02/02/us-nobel-wikileaks-idUSTRE7115QP20110202>

⁸⁸ *Ibid.*

⁸⁹ TOWNSEND M. – HARRIS P. – SMITH. A. D and others, *WikiLeaks backlash: The first global cyber war has begun, claim hackers*, The Guardian, 11th of December 2010.
<http://www.guardian.co.uk/media/2010/dec/11/wikileaks-backlash-cyber-war>

for attacking WikiLeaks. The motivation states that they are campaigning for free speech:⁹⁰

The message is simple: freedom of speech. Anonymous is peacefully campaigning for freedom of speech everywhere in all forms. Freedom of speech for: the internet, for journalism and journalists, and citizens of the world at large. Regardless of what you think or have to say; Anonymous is campaigning for you.⁹¹

‘Operation payback’ was a cyber attack on those who have targeted WikiLeaks, among them icons of the corporate world, credit card firms and some of the largest online companies. As a result, attacks on *Mastercard*, *Visa* and *Paypal* were launched because all of them blocked donations to the site; the Swiss post office website was hacked for freezing *WikiLeaks*’ bank account⁹² and the Swedish government’s website too, for the county’s accusations of rape against Assange.⁹³ The actions have been attacks by volume, known as (DDoS) or Distributed Denial of Service, in which the target site is hit with massively increased numbers of visitors with the intention of exceeding its capabilities and forcing it to crash:

In this case, hundreds of volunteers have downloaded something called a botnet, which aids the distribution of the command to attack the site. The volunteers wait until they are given a signal on an Internet chat room, before launching the massed attack.⁹⁴

Nowadays, NATO is debating the extent to which it should count Cyberwar as a form of “armed attack” that would oblige its members to come to the aid of an ally,⁹⁵ as Cyberspace has become the “fifth domain of warfare, after land, sea, air and space.”⁹⁶ However, the chief security technology officer of the communications company BT, Bruce Schneier states that:

⁹⁰ BLOXHAM A.- SWINFORD S., *WikiLeaks cyberwar: hackers target Paypal*, The Telegraph, 9th of December 2010.

<http://www.telegraph.co.uk/news/worldnews/wikileaks/8190871/WikiLeaks-cyberwar-hackers-target-Paypal.html>

⁹¹ *Ibid.*

⁹² *Cfr.* TOWNSEND M. – HARRIS P. – SMITH. A. D and others, *WikiLeaks backlash: The first global cyber war has begun, claim hackers*, The Guardian, 11th of December 2010.

<http://www.guardian.co.uk/media/2010/dec/11/wikileaks-backlash-cyber-war>

⁹³ *Cfr.* BLOXHAM A.- SWINFORD S., *WikiLeaks cyberwar*, 9th of December 2010.

<http://www.telegraph.co.uk/news/worldnews/wikileaks/8190871/WikiLeaks-cyberwar-hackers-target-Paypal.html>

⁹⁴ *Ibid.*

⁹⁵ THE ECONOMIST, *Cyberwar, It is time for countries to start talking about arms control on the Internet*, 1st of July 2010.

<http://www.economist.com/node/16481504>

⁹⁶ NATO, *NATO and cyber defence*, 8th of June 2011.

http://www.nato.int/cps/en/SID-D54B5C63-C0689145/natolive/topics_78170.htm?

We don't have good definitions of what cyber war is, what it looks like and how to fight it. [...] The notion of a cyber war was based on several high-profile incidents from recent years, which "include blackouts in Brazil in 1998, attacks by China on Google in 2009 and the Stuxnet virus that attacked Iran's nuclear facilities."⁹⁷

Schneier added that: "Stuxnet and the Google infiltration are not cyber war - who died?". It is rather considered a for the first time a "clash between the established order and the organic, grassroots culture of the net."⁹⁸ Furthermore, Richard Stallman, an American software freedom activist and computer programmer, added that the *Anonymous* are equivalent to a physical mass demonstration; a protest in a digital space, as they did not take control of Amazon's website, or extract any data from MasterCard:

The internet cannot function if websites are frequently blocked by crowds, just as a city cannot function if its streets are constantly full by protesters. But before you advocate a crackdown on internet protests, consider what they are protesting: on the internet, users have no rights. As the WikiLeaks case has demonstrated, what we do online, we do on sufferance.⁹⁹

In January 2012, *Anonymous* entered a further 'Cyber battle' against various international agreements such as the Anti-Counterfeiting Trade Agreement (ACTA); an international agreement that aims to establish multinational standards on intellectual property rights enforcement; the Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA). The Anti-Counterfeiting Trade Agreement is a plurilateral agreement involving a number of countries including the US, Australia and Japan, as well as the European Union. The UK and 21 other European Union member states signed the agreement on January 26, and June 2012 is scheduled to its ratification at the European Parliament.

According to the Columbia Broadcasting System (CBS), this has triggered, "the biggest organized effort to blackout websites in solidarity over the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) was a huge success."¹⁰⁰ In an unprecedented

⁹⁷ SHIELDS M., *Cyber war threat exaggerated claims security expert*, BBC News, 16th of February 2011.
<http://www.bbc.co.uk/news/technology-12473809>

⁹⁸ TOWNSEND M. – HARRIS P. – SMITH. A. D and others, *WikiLeaks backlash: The first global cyber war has begun, claim hackers*, The Guardian, 11th of December 2010.
<http://www.guardian.co.uk/media/2010/dec/11/wikileaks-backlash-cyber-war>

⁹⁹ STALLMAN R., *The Anonymous WikiLeaks protests are a mass demo against control*, the Guardian, 17th of December 2010.

<http://www.guardian.co.uk/commentisfree/2010/dec/17/anonymous-wikileaks-protest-amazon-mastercard>

¹⁰⁰ NGAK C., *Megaupload Anonymous hacker retaliation, nobody wins*, CBS, 20th of January 2012.

move, more than 7,000 websites¹⁰¹ joined the ‘blackout battle’ and Reporters Without Borders shut down its English-language website for 24 hours and stated:

We have decided to close our English-language website for 24 hours to symbolize the oppressive gag that would spread over the Internet as we know it if SOPA and PIPA are adopted. [...] These bills would affect an incalculable number of Internet users who are innocent of any kind of intellectual property violation by forcing websites to block access to other sites suspected of vaguely-defined copyright breaches. “Such legislation would discredit the US government’s advocacy of worldwide online freedom of expression and would really hurt netizens who use censorship circumvention tools and open-source communities. We appeal to US senators and representatives to reject these repressive bills and to find other ways to protect intellectual property rights.¹⁰²

The largest online encyclopedia Wikipedia joined the battle and stated on their partial blackout site: “imagine a world without free knowledge”¹⁰³. Accompanied to the ‘online’ demonstrations were various physical ones in European Union cities over.¹⁰⁴ The fear is that the ratification will lead to open a legal door to online censorship, massive online surveillance and criminalization for simply exchanging material online. In other words it would threaten the Internet Freedom. However many, including insiders, say the document jeopardizes Internet freedoms. The former European Parliament *Rapporteur* for ACTA, Kader Arif, resigned his post last Friday after the treaty was signed by the European Union, condemning the whole process that led to the signature of the agreement.¹⁰⁵

Having presented the unprecedented power a free Internet has, as a neutral tool in waging both peace and war. It is vital to understand the ‘chilling effects’ on human rights and freedom of speech, such a treaty can have when it is in forced. This leads to

http://www.cbsnews.com/8301-501465_162-57362764-501465/megaupload-anonymous-hacker-retaliation-nobody-wins/

¹⁰¹ HUFFINGTON POST, *Wikipedia Blackout: 11 Huge Sites Protest SOPA, PIPA On January 18*, 18th of January.

http://www.huffingtonpost.com/2012/01/17/wikipedia-blackout_n_1212096.html

¹⁰² REPORTERS WITHOUT BORDERS, *Reporters without borders close its English-language site for 24 hours*, 17th of January 2012.

<http://en.rsfs.org/etats-unis-reporters-without-borders-to-close-17-01-2012,41695.html>

¹⁰³ WALTER T., *WWW: World Without Wikipedia, Is life better when the biggest-ever (but not necessarily most accurate) encyclopaedia is out of the picture? On its day of blackout, Tim Walker searches for answers – even in books*, *The Independent*, 19th of January 2012.

<http://www.independent.co.uk/life-style/gadgets-and-tech/news/www-world-without-wikipedia-6291597.html>

¹⁰⁴ BEUTH P., *Acta-Gegnern läuft die Zeit davon*, *Zeit Online*, 30th of January 2012.

<http://www.zeit.de/digital/internet/2012-01/acta-protest-deutschland>

¹⁰⁵ LEE D., *European Parliament rapporteur quits in Acta protest*, *BBC News*, 27th of January 2012.

<http://www.bbc.com/news/technology-16757142>

the second chapter, which in a practical national-specific case study in which a country practices massive surveillance and online censorship on its highest levels.

CHAPTER TWO

CHINA'S GREAT FIREWALL, GOLDEN SHIELD AND THE FREEDOM OF EXPRESSION

“Freedom of expression is a fundamental human right which is a prerequisite to the enjoyment of all human rights. Where it is suppressed other human rights violations follow. Freedom of expression has been variously described as crucial for the freedom to develop and discuss ideas in the search for truth and understanding (sometimes evoked as the ‘marketplace of ideas’=, autonomy and self-fulfilment of the individual, and effective participation in the political life of a democratic society.”¹⁰⁶

This chapter is a specific national case study on the freedom of expression in China, and the role of the Chinese great firewall on the social media platforms and on the Internet. The study is divided in two main parts.

The first part analyses the enemies of Internet's freedom of expression: the censorship and the surveillance techniques, which constitutes the violation of the right of freedom of expression and the right to privacy creating domino effect by violating various other human rights. The focus is based on three main pillars: The first pillar underlines the strategic mechanisms of the People's Republic of China (PRC) uses in order to suppress politically sensitive or undesirable content online. Through the 'Great Firewall', a high sophisticated censorship/ auto-censorship systems. The second pillar studies the so-called 'Orwell's Big Brother' project; a Chinese government's massive surveillances system. The last pillar analysis the effects these two mechanisms have on the human rights defenders and journalists in China.

After having presented the three pillars, its possible to pass to the second part of the analysis on China's International and domestic obligation regarding these the right to freedom of expression, the right to privacy.

1. Human rights and China's censorship and surveillance techniques

Since the foundation of the People's Republic of China (PRC) in 1949, the

¹⁰⁶ AMNESTY INTERNATIONAL, *Undermining freedom of expression in China, the role of Yahoo!, Microsoft and Google*, The Human Rights Action Centre, UK, 2007, p. 8.
<http://www.amnesty.org/en/library/asset/POL30/026/2006/en/1ce1ac2d-d41b-11dd-8743-d305bea2b2c7/pol300262006en.pdf>

restriction and the control of the flow of information has been always very present. Through out the years, the Chinese Communist Party (CCP) “has always controlled all the traditional news media (print media, radio and TV), banning independent news and information and foreign participation”.¹⁰⁷ The combination of 1979 China’s open policies, 1997 market-oriented reforms, the economic ties with the U.S.¹⁰⁸ and the introduction of the Internet in 1994, (and commercialized in 1995), lead many observers to believe that “Internet growth and economic openness would bring about greater freedom of expression and political openness in China”.¹⁰⁹ However, it had led the CPC to other extreme measurements, in order to maintain its grip of power.

As a result, China submitted itself to the ‘Golden Shield Project’, many times colloquially referred to as the Great Firewall of China; a censorship and surveillance project operated by the Ministry of Public Security (MPS)¹¹⁰. The goal is to control content regarded as ‘politically sensitive’ information to the official Communist party’s view,¹¹¹ rating China to “the only country in the world to have tens of thousands of cyber-censors and cyber-police.”¹¹²

2.1. The Internet and China’s Great Firewall

*“Since the Internet was born free, don’t put chains”
Abid Hussain UN Special Rapporteur on Freedom of Expression¹¹³*

Since the country’s first connection in 1993, the Internet has experienced exponential growth in China and its use is continuing to spread. According to the China Internet Network Information Centre (CNNIC), the number of Internet users reached in

¹⁰⁷ REPORTERS WITHOUT BORDERS – CHINESE HUMAN RIGHTS DEFENDERS, *China: Journey to the heart of Internet censorship*, Investigative report, October 2007.

http://www.rsf.org/IMG/pdf/Voyage_au_coeur_de_la_censure_GB.pdf

¹⁰⁸ Cfr. LAU M. W., *Internet Development and Information Control in the People’s Republic of China*, Congressional Research Service, Order Code RL33167, 22nd of November 2005.

<http://www.au.af.mil/au/awc/awcgate/crs/rl33167.pdf>

¹⁰⁹ *Ibid.*

¹¹⁰ Cfr. EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China, the it wheel of India, Google inc., and Internet regulation*, *Journal of Internet Law*; Vol. 15 Issue 3, p3-14, Sep 2011, p. 6.

¹¹¹ CHINA INTERNET NETWORK INFORMATION CENTER, *16th Statistical Survey Report on the Internet Development in China*, July 2005.

<http://www.cnnic.net.cn/download/2005/2005072601.pdf>

¹¹² REPORTERS WITHOUT BORDERS – CHINESE HUMAN RIGHTS DEFENDERS, *China: Journey to the heart of Internet censorship*, Investigative report, October 2007.

http://www.rsf.org/IMG/pdf/Voyage_au_coeur_de_la_censure_GB.pdf

¹¹³ HICK S. – E. F. HALPIN - HOSKINS E., *Human rights and the Internet*, Macmillan Press LTD, London, 2000, p. xii.

2010 has reached 420 million¹¹⁴ of a total population of 1.34 billion¹¹⁵ with an increase of 2.9% compared to previous year¹¹⁶ as Liu states: “China has an internet population of almost half a billion, and half of them use social media”¹¹⁷. The blogging activities have enlarged to include 231 million blog sites, with an increase of 4.5%. The utilization rate of web news is 78.5%; the number of users has reached 330 million with an increase of 7.2%, challenging the traditional media with the transition of web media. In addition, the proportion of mobile phones to surf the internet increased to 65.9% and the ratio of laptop computers to surf the internet arrived at 36.8%. And the ratio of net citizens who use other devices to surf the Internet also increased by 0.3%.¹¹⁸ China has, in addition the biggest smartphone market with its 23,9 million customers in exceeds for the first time the 23.3 million United States customers.¹¹⁹

However, the Chinese government considered the Internet exclusively as a tool to revitalize the economic Chinese infrastructure, science, technology and education and not a medium for political communication. This new medium has been perceived, if not controlled, as a threat to the government’s stability. As a result it has made Internet development and its massive regulation a national priority. Any attempt to any ‘politically sensitive’ information is perceived and as a threat to the public order and considered subversion against the state and against the constitution¹²⁰ and against Chinese governmentality, which can be best expressed as following:¹²¹

The governmentality of China is grounded in the political supremacy and monopoly of the

¹¹⁴ Cfr. CHINA INTERNET NETWORK INFORMATION CENTER (CNNIC), *Statistical Report on Internet Development in China*, July 2010.

<http://www.cnnic.cn/uploadfiles/pdf/2010/8/24/93145.pdf>

¹¹⁵ Cfr. WINES M. – S. LA FRANIÈRE, *New Census Finds China’s Population Growth Has Slowed*, New York Times, 28th of April 2011.

<http://www.nytimes.com/2011/04/29/world/asia/29census.html>

¹¹⁶ Cfr. CHINA INTERNET NETWORK INFORMATION CENTER (CNNIC), *Statistical Report on Internet Development in China*, July 2010.

¹¹⁷ LIU J., *Renren under pressure as shares in China’s Facebook debut*, BBC NEWS, 4th of May 2011.

<http://www.bbc.co.uk/news/13264314>

¹¹⁸ Cfr. CHINA INTERNET NETWORK INFORMATION CENTER (CNNIC), *Statistical Report on Internet Development in China*, July 2010.

<http://www.cnnic.cn/uploadfiles/pdf/2010/8/24/93145.pdf>

¹¹⁹ SPIEGEL ONLINE, *China ist der größte Smartphone-Markt weltweit*, 24th of November 2011.

<http://www.spiegel.de/netzwelt/gadgets/0,1518,799695,00.html>

¹²⁰ Cfr. EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China, the it wheel of India, Google inc., and Internet regulation*, *Journal of Internet Law*; Vol. 15 Issue 3, p3-14, Sep 2011, p.

5.

¹²¹ Cfr. *Ibid.*, p. 3-4.

Communist Party of China, state-directed capitalism, and the hierarchical, harmony-oriented values of Confucianism. [...] Internet law also is partly based on Confucianism and a combination of capitalism and authoritarianism. The Confucianist Internet regulation model is based on Confucian philosophy, a centralized, bureaucratic, hierarchical, and paternalistic model that emphasizes national solidarity, social civility, moral education, and content regulation.¹²²

The Internet was regulated within the Chinese governmentality, the biggest gatekeeper worldwide, the so-called Great Firewall of China: a massive, sophisticated, national censorship system, which controls the access to information on the global Internet, on its national territory for its own citizens. Since 2003 several online suppressing anonymity were introduced, which required the Internet users in China to register with the police in order to access the network.

The “administrative Measures on Record-Keeping in Non-Commercial Internet Information Service” decree issued by the Ministry of Information Industry in 2005 made it clear that ICPs were not allowed to provide Internet services to non-commercial user whose records were not being kept by the government.¹²³

Many different techniques are exercised such as the: the tampering of Internet address and domain name system, IP address blocking, key-word filtering, various regulations imposed on multinational technology corporation (such as Google and Yahoo!) to sign an agreement to comply with China’s censorship policies. In addition Web site of international human rights International NGO and news agencies were blocked; such as the *Human Rights Watch*, *Amnesty International*, *Reporters Without Borders*, the *Nobel Peace Prize Foundation* website, *the Voice of America* (Chinese service), the BBC's Chinese-language service, Wikipedia and many others.¹²⁴

If Western companies do not comply with China’s state-censorship requirements, they will remain excluded from the world’s largest (and growing) online market.¹²⁵

But while these social media networks were blocked, new Chinese-manipulation social media architected to monitor and repress the activities of its ‘netizens’ emerged.

¹²² *Ibid.*

¹²³ *Ibid.*, p. 6.

¹²⁴ *Cfr. Ibid.*, p. 4- 6.

Cfr. MACMAHON R. – I. BENNETT, U.S. *Internet Providers and the ‘Great Firewall of China’*, Council On Foreign Relations, 23rd of February 2011. <http://www.cfr.org/china/us-internet-providers-great-firewall-china/p9856>

¹²⁵ SWISS FEDERAL INSTITUTE OF TECHNOLOGY ZURICH (ETH), *China, Corporations and Internet Censorship*, 24th of February 2012. <http://www.isn.ethz.ch/isn/Current-Affairs/Special-Feature/Detail?lng=en&id=138039&contextid774=138039&contextid775=138031&tabid=138031>

Twitter-copy (*Sina's Weibo.com*) for example exceeded with its magnitude of 160¹²⁶ million users (50 million active monthly users and its new 10 million accounts signed up each month)¹²⁷ the Twitter market, which includes only a total of 56 million accounts. Other social media alternative copycats include Chinese-Youtube: Youku, Google-copy: *Baidu*, and Facebook-copy: *Renren* (meaning: everyone).¹²⁸ These statistics help to explain why the Internet has become the front-line battleground in China's new "informational politics"¹²⁹

The censorship policy is to blocked sites and filter search agencies of content, information or keywords linked to: China's human rights record, Tibetan independence, the June Fourth Movement (1989), Falun Gong (A Chinese cult banned in 1999), Taiwan' independence, the 1989 Tiananmen crackdown, Jasmin (a call for a "Jasmin Revolution"), Egypt, Libya, Tunisia, democracy, Freedom of Expression, the Communist Party of China, human activists and freedom of speech defenders names such as: Liu Xiaobo, Teng Biao, Yu Jie, were considered 'word crimes' and have been blocked in search engines.¹³⁰

All foreign Internet companies and multinational cooperation that desire to operate in China had and sign a pledge to comply Chinese Internet censorship policies. A good example is Google, which compromised their corporation values and with their interest of the Chinese market.

These companies are seen to be facilitating or sanctioning the governments' s effort to control the free flow of information, and in this way they are undermining the self-proclaimed corporate values, as well as the human right to freedom of expression and information.¹³¹

¹²⁶ Cfr. HOLLMAN F., *Twitter ist gesperrt, Millionen nutzen Weibo*, ARD, Tagesschau, 27th of July 2011. <http://www.tagesschau.de/ausland/weibo100.html>

¹²⁷ THE GUARDIAN, *Weibo: The Chinese Twitter that dwarfs Twitter*, The digital content blog accessed 7th of March 2012.

<http://www.guardian.co.uk/technology/pda/2011/jul/15/weibo-twitter-china>

¹²⁸ Cfr. LIU J., *Renren under pressure as shares in China's Facebook debut*, BBC NEWS, 4th of May 2011.

<http://www.bbc.co.uk/news/13264314>

¹²⁹ YANG G., *Activists beyond Virtual Borders: Internet-Mediated Networks and Informational Politics in China*, First Monday, Special Issue number 7, 2008.

<http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1609/1524>,

¹³⁰ EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China* Sep 2011, p. 3-4.

¹³¹ LAU M. W., *Internet Development and Information Control in the People's Republic of China*, Congressional Research Service, Order Code RL33167, November 22nd of November 2005. <http://www.au.af.mil/au/awc/awcgate/crs/rl33167.pdf>

In the year 2006, Google CEO, Eric Schmidt's reassured in his statement that the company will run its service under the principles of the initial founder's letter, which states that it will "provide unbiased, accurate and free access to information for those who rely on us (Google) around the world"¹³². In the same year the company launched its censored-version in China:

Despite the 'Don't be evil' motto and assertion that Google is a company that holds strongly to steadfast and unwavering principles, the company accounted in January 2006 the launch of **Google.cn**- a self-censoring Chinese search engine. This is an alternative to Google's existing search engine based outside China (Google.com) The non-censored one continues to be available to all Chinas Internet users, but searches need to pass through China's 'firewall', which censors a great deal and slows down the search proves.¹³³

Special *Rapporteur* Frank La Rue states that not only the state has the duty to protect the right of freedom of expression, but private multinational corporation have just the same duty, stating:

While States are the duty-bearers for human rights, private actors and business enterprises also have a responsibility to respect human rights. In this regard, the Special Rapporteur highlights the framework of "Protect, Respect and Remedy" which has been developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The framework rests on three pillars: (a) the duty of the State to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication; (b) the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing the rights of others and to address adverse impacts with which they are involved; and (c) the need for greater access by victims to effective remedy, both judicial and non-judicial.¹³⁴

As a result, any of content containing the 'crime words' was automatically censored or blocked:

For example, typing the keyword "Tiananmen Square" in Google.cn would only provide pictures of tourists in the Tiananmen Square and no pictures about the Tiananmen demonstration and their violent suppression in 1989.¹³⁵

During the following years a game of cat and mouse between Google and the government proceeded, as the government has been blocking and restoring the search engine. In 2010, Google tried to avoid the censorship mechanism through the redirecting

¹³² AMNESTY INTERNATIONAL, *Undermining freedom of expression in China*, 2007, p. 21.

¹³³ *Ibid.*

¹³⁴ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 16 May 2011, p. 13.

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

¹³⁵ Cfr. EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China*, Sep 2011, p. 7.

the results of Google China (Google.cn) to its unfiltered server in Google Hong Kong (Google.com.hk).

Google redirected all traffic from Google.cn to Google.com.hk, a website located in Hong Kong and thus not subject to the censorship rules of the Mainland. Visitors to Google.cn would be automatically redirected to Google.com.hk. But this doesn't mean that a search on Google.com.hk, when conducted from the Mainland, is free from censorship. The results from such a search are in fact censored - it's just that Google itself is no longer doing the censoring; instead, China's internet technology does the censoring.¹³⁶

This was possible because “under international law, it has independent juridical power, and is not subject to Chinese laws that mandate censoring or filtering Internet content”.¹³⁷ The Chinese government warned this redirecting mechanism and threatened the non-renewal of its business license in the country, which led Google with no choice but to comply with these laws. Google's decision irritated many human rights organizations and the international users, accusing Google of being unethical and - according to Amnesty International- stating that a company in these circumstances “run the risk of being complicit in a violation through its provision of equipment, technology or service to a repressive government.”¹³⁸ And contrary to facilitating freedom, it has been charged with aiding or complying with Chinese Internet censorship regime.¹³⁹

In addition to these massive firewall and intrusive software, the government launched the “Fifty Cent Party”, a project, which employs thousands of paid commentators who pose as ordinary Web users to counter criticism of the government. Nobody knows the exact size of these employees that shapers of public opinion and which are often paid 50 Chinese cents a posting, some however, estimate them to a several hundred thousand.¹⁴⁰

Extensively, the Chinese government applied in 2009, a new policy: to fit all computers manufactured computers with a software the “*Green Dam Youth-Escort*”, claimed to protect children from harmful content in the Internet, which macerated the

¹³⁶ LYNCH E., *Slip Slidin' Away: Google in China*, Huffington Post, 2nd of July 2010.

http://www.huffingtonpost.com/elizabeth-lynch/slip-slidin-away-google-i_b_633310.html

¹³⁷ EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China*, Sep 2011, p. 7.

¹³⁸ AMNESTY INTERNATIONAL, *Undermining freedom of expression in China*, p. 5.

¹³⁹ LAU M. W., *Internet Development and Information Control in the People's Republic of China*, Congressional Research Service, Order Code RL33167, 22nd of November 2005.
<http://www.au.af.mil/au/awc/awcgate/crs/rl33167.pdf>

¹⁴⁰ SWISS FEDERAL INSTITUTE OF TECHNOLOGY ZURICH (ETH), *China, Corporations and Internet Censorship*, 24th of February 2012.

true government's intention to monitor the activities of internet users and censor any information linked to the so called 'word crimes':

However, in reality, the software monitors Internet activity, keeps individual surfing profiles, and censors Web sites that the government finds politically, religiously, and morally objectionable. This software was recommended by the official China Internet Illegal Information Reporting Centre, and approved by the Ministry of Industry and Information Technology. The technical specifications of this software were leaked to WikiLeaks, the whistle-blowing Web site, translated into English and published on the Internet.¹⁴¹

1.2. *The Olympic Games and Orwell's Big Brother*

China's first sought of the Olympic Games was in the early nineties, "when China was still recovering from the upheavals of the 1970s Cultural Revolution and adapting to the 1980s market revolution".¹⁴² This bid failed, as China was not ready to host the Games, as Chinese Journalist Li Datong put it:

A Successful application would go a long way to boosting national pride, and would heal a lot of the damage done to the regime... However, when the application was made in 1993, the sound of the gunshots in Beijing were still ringing in people's ears. China was also not as powerful then as it is now. It was entirely predictable that the bid failed.¹⁴³

The cornerstone to be an Olympic host chase was the improvement of human right. As a result, the Chinese applied major reforms in the following years in order to ensure the 2008 Games in their country. Some of the reforms were for example "allowing international reporters unfettered access across the country,"¹⁴⁴ or the 'partially' unblocking of *Amnesty International's* website, the *BBC* Chinese website, including various human rights organizations and media outlets. At the time, *Amnesty International* welcomed the move and expressed hope that this signalled a more open attitude toward human rights.¹⁴⁵ These temporary reforms enabled Beijing to be awarded the Olympic Games in 2008. The theory was that international community would - through the Games- force China's government to grant and ensure the protection of more

¹⁴¹ EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China*, Sep 2011, p. 5.

¹⁴² WORDEN M., *China's Great Leap*, 2008, p. 25.

¹⁴³ WORDEN M., *China's Great Leap*, 2008, p. 26.

¹⁴⁴ *Ibid.*

¹⁴⁵ AMNESTY INTERNATIONAL, *China blocks Amnesty International website*, 13 January 2009. <http://www.amnesty.org/en/news-and-updates/news/china-blocks-amnesty-international-website-20090113>

rights and freedom to its people.¹⁴⁶ As for the Chinese government, it was the moment to regain its international respect, boost domestic credibility and reengage with the international community with new positive images rather than the ones of the Tiananmen Square of 1989. This can be reflected Beijing Mayor and Bidding Committee president Liu Qi's speech, which proclaimed in 2001:

I want to say that the Beijing 2008 Olympic Games will have the following special features: They will help promote our economic and social progress and will also benefit the further development of our human rights cause.¹⁴⁷

Despite the Olympics pressure in improving human rights, which had rather 'temporary regulations', China lacked permanent reforms or follow ups for the commitment the government made regarding the respect of international human rights standards such as the freedom of the press, Internet freedom, health and environmental crises, protections for civil society, political accountability and labor rights for one side.¹⁴⁸ And moreover, the government commitments to avoid human rights violations; such as the detention without trial, the repression of religious freedom and of minority groups, child labor, death penalty, violations resulting from family planning policy, abduction and trafficking of women, discrimination in employment and education, torture and ill-treatment of prisoners¹⁴⁹, the restriction the media, free speech and opinion and as Amnesty International has reported:

Amnesty International has documented widespread human rights violations in China. An estimated 500,000 people are currently enduring punitive detention without charge or trial, and millions are unable to access the legal system to seek redress for their grievances. Harassment, surveillance, house arrest, and imprisonment of human rights defenders are on the rise, and censorship of the Internet and other media has grown. Repression of minority groups, including Tibetans, Uighurs and Mongolians, and of Falun Gong practitioners and Christians who practice their religion outside state-sanctioned churches continues. While the recent reinstatement of Supreme People's Court review of death penalty cases may result in lower numbers of executions, China remains the leading executioner in the world.¹⁵⁰

However, that one side of the medal the Olympic Games carried. The other side of the Games is that it has opened up a backdoor for the regime to massively upgrade its

¹⁴⁶ Cfr. KRISTOF N. (in) WORDEN M., *China's Great Leap*, 2008, p. 18.

¹⁴⁷ WORDEN M., *China's Great Leap*, 2008, p. 26.

¹⁴⁸ *Ibid.*, p. 29.

¹⁴⁹ Cfr. UNIVERSAL PERIODIC REVIEW, *Responses to recommendation, China*, Review in the Working Group: 9th of February 2009, Adoption in the Plenary: 11th of June 2009. <http://www.upr-info.org/-China-.htm/HUMAN RIGHTS WATCH, World Report 2012: China. http://www.hrw.org/world-report-2012/world-report-2012-china>

¹⁵⁰ AMNESTY INTERNATIONAL, *China human rights*.

<http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/china>

systems of population control, surveillance, censorship and repression.¹⁵¹ It has given the opportunity to practice policies, which would have been banned in other circumstance Naomi Klein, the Canadian investigative Journalist and worldwide bestseller states:

What the Olympics have provided for Western firms is a palatable cover story for this chilling venture. Ever since the 1989 Tiananmen Square Massacre, U.S. companies have been barred from selling police equipment and technology to China, since lawmakers feared it would be directed, once again, at peaceful demonstrators. That law has been completely disregarded in the lead up to the Olympics, when, in the name of safety for athletes and VIPs (including George W. Bush), no new toy has been denied the Chinese state.¹⁵²

As a consequence, Beijing has served as a testing ground for the next phase of this vast social experiment, as some 300,000 surveillance cameras have been installed throughout the city, reportedly 100,000 of them on Olympics duty¹⁵³. All taken place under the banner of "Olympic Security." The Chinese internal security market is set to be worth \$33-billion: "between October 2006 and October 2007, China Security and Surveillance's stock went up 306 percent."¹⁵⁴ The closed-circuit TV cameras are connected to a single, nationwide network, "an all-seeing system" that will be capable of tracking and identifying anyone who comes within its range which includes the iris scanners, the "anti-riot robots" and the facial recognition software, which stayed active after the Olympic games and are now tracking down the identity of the population, especially in chase of striking workers and rural protestors.¹⁵⁵ Klein underlines the role of international cooperations that represent the main sponsors of the Olympic games:

The security cameras are just one part of a much broader high-tech surveillance and censorship program known in China as "Golden Shield." The end goal is to use the latest people-tracking technology — thoughtfully supplied by American giants like IBM, Honeywell and General Electric — to create an airtight consumer cocoon: a place where Visa cards, Adidas sneakers, China Mobile cellphones, McDonald's Happy Meals, Tsingtao beer and UPS delivery (to name just a few of the official sponsors of the Beijing Olympics) can be enjoyed under the unblinking eye of the state, without the threat of democracy breaking out.¹⁵⁶

Activists in China now find themselves under intense pressure; unable to function

¹⁵¹ KLEIN N., *The Olympics: Unveiling Police State 2.0*, Naomi Klein, 7th of August 2008. <http://www.naomiklein.org/articles/2008/08/olympics-unveiling-police-state-2-0>

¹⁵² *Ibid.*

¹⁵³ *Cfr. Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Cfr. Ibid.*

¹⁵⁶ KLEIN N., *China's all-seeing eye*, Naomi Klein, 14th of May 2008. <http://www.naomiklein.org/articles/2008/05/chinas-all-seeing-eye>

even at the limited levels. Internet cafes are filled with surveillance cameras, and surfing is carefully watched. At the offices of a labor rights group in Hong Kong, I met the well-known Chinese dissident Jun Tao. He had just fled the mainland in the face of persistent police harassment. After decades of fighting for democracy and human rights, he said the new surveillance technologies had made it "impossible to continue to function in China."¹⁵⁷ Naomi Klein states in her published article *China's all-seeing eye* the following:

This is how this Golden Shield will work: Chinese citizens will be watched around the clock through networked CCTV cameras and remote monitoring of computers. They will be listened to on their phone calls, monitored by digital voice-recognition technologies. [...] In Beijing, where state power is absolute and civil liberties non-existent, American-made surveillance technologies can be taken to absolute limits. [...] With political unrest on the rise across China, the government hopes to use the surveillance shield to identify and counteract dissent before it explodes into a mass movement like the one that grabbed the world's attention at Tiananmen Square.¹⁵⁸

These tools that facilitate freedom of expression in other countries are transformed in China into a method of repression and control. And just as various foreign companies had to comply to censorship laws in order to function in the country, various other U.S. companies are actually assisting the government in strengthening and developing the surveillance techniques:

However, contrary to facilitating freedom, some private U.S. companies have been charged with aiding or complying with Chinese Internet censorship. Private U.S. companies that provide Internet hardware, such as routers, as well as those that provide Internet services such as web-log (blog) hosting or search portals, have been accused of ignoring international standards for freedom of expression when pursuing business opportunities in the PRC market.¹⁵⁹

Having presented the two faces of the Olympic medal, the surveillance and the censor techniques, it's possible to analyze the consequences it has on human rights, especially on human rights activists and journalists.

¹⁵⁷ KLEIN N., *The Olympics: Unveiling Police State 2.0*, 7th of August 2008.

¹⁵⁸ KLEIN N., *China's all-seeing eye*, Naomi Klein, 14th of May 2008.

¹⁵⁹ LAU M. W., *Internet Development and Information Control in the People's Republic of China*, 22nd of November 2005.

1.3. Violating Freedom of expression and harming journalists

*“ If you don’t dare to let people speak... you will sow the seeds of disaster. It is bound to trigger collective resistance and set off turbulence... History shows that only in totalitarian systems do you need media controls. This is in the mistaken belief that you can forever keep the public in the dark.”*¹⁶⁰

According to Amnesty International, China correctly has the largest recorded number of imprisoned journalist and cyber-dissidents in the world. It has documented at least 54 human rights activists and freedom of expression activists who use the Internet as a tool in their battle.¹⁶¹ Minky Worden, the Media director of Human Rights Watch states in her book *China's Great Leap*, that China “continues to abuse basic human rights and to jail more journalists than any country in the world, often for reporting on abuses committed by local and central authorities.”¹⁶²

As a result, any Journalists or activist reporting content that is undesirable or that implicate government officials in corruption, signing petitions, calling got an end to corruption, disseminating ‘politically sensitive’ information, expressing opinions and publishing information that the government deems ‘subversive’ or even plans to establish pro-democracy groups have been harassed, sometimes with violence or even jailed.¹⁶³ According to the Special *Rapporteur’s* report on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue:

The types of action taken by States to limit the dissemination of content online not only include measures to prevent information from reaching the end-user, but also direct targeting of those who seek, receive and impart politically sensitive information via the Internet. Physically silencing criticism or dissent through arbitrary arrests and detention, enforced disappearance, harassment and intimidation is an old phenomenon, and also applies to Internet users. This issue has been explored in the Special Rapporteur’s report to the General Assembly under the section on “protection of citizen journalists” (A/65/284). Such actions are often aimed not only to silence legitimate expression, but also to intimidate a population to push its members towards self-censorship.¹⁶⁴

¹⁶⁰ Cfr. AMNESTY INTERNATIONAL, *Undermining freedom of expression in China*, 2007, p. 13.

¹⁶¹ *Ibid.*

¹⁶² WORDEN M., *China's Great Leap*, 2008, p. 26.

¹⁶³ Cfr. LAU M. W., *Internet Development and Information Control in the People’s Republic of China*, 22nd of November 2005.

¹⁶⁴ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, 16 May 2011, p. 10. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

Liu Xiaobo, a high-profile human rights activist was detained, imprisoned and put under house arrest many times for his writing regarding human rights condition in China. The detentions included a 20-month sentence (June 1989 to January 1991) for participating in the 1989 Democracy Movement, and a three-year Reeducation-Through-Labor sentence (October 1996 to October 1999) for criticizing government corruption.¹⁶⁵ During the years, Liu wrote various essays regarding the human rights condition in China and advocating non-violent political reforms. In addition, he was a co-author of the *Charter 08*; a petition issued in December 2008 calling for human rights protection and political reform. In the weeks before Liu's trial, more than 450 co-signatories of *Charter 08* signed an online petition accepting collective responsibility. On the 23rd of December 2009 he was sentenced to 11 years of imprisonment and two years' deprivation of his political rights after being tried by the Beijing court of "inciting subversion of state power" a crime under Article 105 of China's Criminal Law.¹⁶⁶ Liu Xiaobo underlines the following:

I have no enemies, and no hatred. None of the police who have monitored, arrested and interrogated me, the prosecutors who prosecuted me, or the judges who sentence me, are my enemies. While I'm unable to accept your surveillance, arrest, prosecution or sentencing, I respect your professions and personalities, including Zhang Rongge and Pan Xueqing who act for the prosecution at present. I was aware of your respect and sincerity in your interrogation of me on December 3. [...] I do not feel guilty for following my constitutional right to freedom of expression, for fulfilling my social responsibility as a Chinese citizen. Even if accused of it, I would have no complaints.¹⁶⁷

The statement, titled "I have no enemies", was later read in the 2010 Nobel Peace Prize ceremony when winning the 2010 Nobel Peace Prize in recognition of "his long and non-violent struggle for fundamental human rights in China."¹⁶⁸

Another example is the journalist Shi Tao, who in 2005 was sentenced by the Supreme People's Court of Hunan Province for 10 years in prison. According to court for divulging state secrets:

¹⁶⁵ Cfr. HUMAN RIGHTS IN CHINA, *Liu Xiaobo's Guilty Verdict and 11-Year Sentence Send Message of Zero Tolerance for Universal Human Rights*, 25TH of December 2009.

<http://www.hrichina.org/content/359>

¹⁶⁶ *Ibid.*

¹⁶⁷ MACKEY R., *Jailed Chinese Dissident's 'Final Statement'*, New York Times, 8th of October 2010.

<http://thelede.blogs.nytimes.com/2010/10/08/jailed-chinese-dissidents-final-statement/>

¹⁶⁸ *Ibid.*

Shi Tao's crime was that he had forwarded to a New York-based Web site, an email containing Chinese government internal directives to journalists, ordering them to practice self-censorship.¹⁶⁹

According to Amnesty International, U.S. multinational company Yahoo! has assisted the government in imprisoning Shi Tao, stating that:

[...] Yahoo! has also admitted to providing the Chinese authorities with information that led to the eventual arrest and imprisonment of at least two journalists. Li Zhi and Shi Tao, considered by Amnesty International to be prisoners of conscience.¹⁷⁰

Other journalists were forced to leave their jobs and accused of disseminating "false news". Reporters Without Borders report that:

Investigative journalist Long Can was fired on 21 January from Sichuan province daily Chengdu Shangbao and a colleague Li Jianjun, dismissed on 17 February for criticising the move in print.¹⁷¹

These two claims of "inciting subversion" and "revealing state secrets" laws has imprisonment of at least 34 journalists in China according to Human Rights Watch.¹⁷² As a result, human rights defenders and journalist have been imprisoned for the accusation by the Criminal Code of China 1997 by two main Articles: Article 105 as incite subverting the state political power for their criticism of the Chinese government, and Article 110 considering state security, stability and acts of espionage. Provisions in Article 105, paragraph 2 of the Criminal Law may also violate the Constitution and should be submitted to the National People's Congress for a review of their constitutionality.¹⁷³ Xiaobo states:

Criminatlizing speech does not conform to the human rights principles established by the Chinese Constitution, violates international human rights conventions promulgated by the United Nations, and runs contrary to universal human principles and historical trends.¹⁷⁴

¹⁶⁹ EKO L. – A. KUMAR– QINGJIANG Y., *Google this: the great firewall of China*, Sep 2011, p. 6.

¹⁷⁰ AMNESTY INTERNATIONAL, *Undermining freedom of expression in China*, 2007, p. 18.

¹⁷¹ REPORTERS WITHOUT BORDERS, *Censorship reaches new heights*, 23rd of February 2011. <http://en.rsf.org/china-censorship-reaches-new-heights-23-02-2011,39617.html>

¹⁷² *Cfr.* HUMAN RIGHTS WATCH, *World Report 2012: China*. <http://www.hrw.org/world-report-2012/world-report-2012-china>

¹⁷³ HUMAN RIGHTS IN CHINA, *My Self-Defense*, Liu Xiaobo 23rd of December 2009.

<http://www.hrichina.org/crf/article/3207>

¹⁷⁴ *Ibid.*

United Nations *Rapporteur* La Rue underlines that the use of criminal law to sue human rights activists and journalists who exercise their freedom of expression as a violation of various human rights:

The Special Rapporteur is of the view that the arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a “chilling effect”, but also leads to other human rights violations, such as arbitrary detention and torture and other forms of cruel, inhuman or degrading treatment or punishment.¹⁷⁵

Despite the criminalization of speech, several demonstrations were organised through online appeals and held on the 20th of February in a total of thirteen cities, including Beijing, Shanghai, Guangdong all inspired by the Arab Spring uprisings in the Middle East.¹⁷⁶ The government leadership’s got nervous over these initiatives and cracked down demonstrations by banning the Journalists of covering the events, blocking any online attempts to discuss the uprising and turning out with police force towards the demonstrators.¹⁷⁷

However, the harsh-response the online activists did seek alternative ways to surpass the firewall and several attempts were developed in order to circumvent the censoring of ‘controversial’ online posts. One of the successful attempts is the creation of an alternative Internet language: “so instead of writing “government” on online forums (which is easy to monitor) many began to use “zf” (the Chinese word for government is 政府 or Zhèngfǔ) in order to confuse the censors.”¹⁷⁸ A second successful attempt is the using of a software called “*freegate*”, which enables the ‘netizens’ to cross the Great Firewall effectively and access blocked, censored and banned information.¹⁷⁹

¹⁷⁵ UN GENERAL ASSEMBLY, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, 16 May 2011, p. 7. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

¹⁷⁶ Cfr. HUMAN RIGHTS WATCH, *China: A Year of Illegal, Politically-Motivated Disappearances*, 24TH of January 2012.

<http://www.hrw.org/news/2012/01/23/china-year-illegal-politically-motivated-disappearances>

¹⁷⁷ Cfr. REPORTERS WITHOUT BORDERS, *Censorship reaches new heights*, 23th of February 2011. <http://en.rsf.org/china-censorship-reaches-new-heights-23-02-2011,39617.html>

¹⁷⁸ SWISS FEDERAL INSTITUTE OF TECHNOLOGY ZURICH (ETH), *China, Corporations and Internet Censorship*, 24th of February 2012.

¹⁷⁹ FOWLER A. G., *Great Firewall Chinese Censors Of Internet Face 'Hacktivists' in U.S.*, *The Wall Street Journal*, 13th of February 2006.

2. Freedom of expression: China international obligation

As early as 1948, China has been a permanent member state of the United Nations Security Council and the Vice-chairman of the Commission on Human Rights Dr. Peng-Chun Chan, has participated in drafting the Universal Declaration of Human Rights. Fifty years later, in (1997) the Chinese government made a solemn commitment to the international community in signing the two international human rights covenants drawn up by the United Nations. Moreover, the People's Republic of China (China) has ratified in total six of nine International core human rights treaties and is also considering ratifying the International Covenant on Civil and Political Rights (ICCPR), which it signed in 1998. Amnesty International reiterated its call for the Chinese authorities to ratify the ICCPR, which China signed in 1998. The Chinese authorities have repeatedly stated their intention to ratify.¹⁸⁰

Despite the non-ratification of the ICCPR, a signature indicates a State's intention to be bound by the treaty at a later date and also “creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty.”¹⁸¹ As a result, China as a signing state is obliged to take any positive actions against the purpose of the treaty. Article 18 of the Vienna Convention on the Law of Treaties (1969) underlines that:

- A State is obliged to refrain from acts which would defeat the object and purpose of a treaty:
- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;
 - (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.¹⁸²

¹⁸⁰ AMNESTY INTERNATIONAL, *China's new human rights plan emphasizes economic rights at expense of civil liberties*, 14th of April 2009.
<http://www.amnesty.org/en/news-and-updates/news/chinas-new-human-rights-plan-economic-rights-expense-civil-liberties-20090414>

¹⁸¹ UNITED NATION, *Participating In Multilateral Treaties*.
http://untreaty.un.org/ola-internet/Assistance/handbook_eng/chapter3.htm

¹⁸² VIENNA CONVENTION ON THE LAW OF TREATIES, 1969.

Moreover, as a permanent member state of the United Nations Security Council and a member of the United Nations Human Rights Council, China has an obligation to abide by the human rights convention drawn up by the United Nations and the responsibility to honor its commitments.

2.1. The violations of the right to freedom of expression

Freedom of expression is a fundamental human right, which is a prerequisite to the enjoyment of all human rights. The right to freedom of expression is central to achieving individual freedoms and developing democracy and plays a critical role in tackling the underlying cause of poverty.¹⁸³ Article 19 of the Universal Declaration of Human Rights proclaims:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁸⁴

Existing international human rights standards, in particular article 19, paragraph 3, of the International Covenant on Civil and Political Rights states that:

- (a) Everyone shall have the right to hold opinions without interference;
- (b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;
- (c) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
- (d) for respect of the rights or reputations of others
- (e) for the protection of national security or of public order (*order public*), or of public health or morals;¹⁸⁵

However, freedom of expression is not an absolute right. Under international law, governments may, in defined circumstances, restrict certain forms of expression or

¹⁸³ AMNESTY INTERNATIONAL, *China's new human rights plan emphasizes economic rights at expense of civil liberties*, 14th of April 2009, 8.
<http://www.amnesty.org/en/news-and-updates/news/chinas-new-human-rights-plan-economic-rights-expense-civil-liberties-20090414>

¹⁸⁴ UNIVERSAL DECLARATION OF HUMAN RIGHTS, <http://www.un.org/en/documents/udhr/>

¹⁸⁵ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS,
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

information on narrow grounds such as national security, the protection of public morals or to protect the rights and reputations of others, but only to the extent strictly necessary. As a result, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (‘hate speech’) should be prohibited.

Imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the legitimate aims under article 19, paragraph 3, of the International Covenant on Civil and Political Rights. The Special Rapporteur would like to reiterate that defamation should be decriminalized, and that protection of national security or countering terrorism cannot be used to justify restricting the right to expression unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.¹⁸⁶

Frank La Rues underlines the main three misuses States practice of in its censorship policies: first, the lack of a clear established law regarding the censorship; second the secrecy of the practice and last the lack of a possible review by a juridical or independent body:

However, States’ use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression. The specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively.

Secondly, blocking is not justified to pursue aims which are listed under article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose.

Thirdly, even where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal. Lastly, content is frequently blocked without the intervention of or possibility for review by a judicial or independent body.¹⁸⁷

Moreover, international human rights law does not permit restriction or criminalization if authorities say that it poses a risk to public order.

Additionally, the Special Rapporteur reiterates that the right to freedom of expression includes expression of views and opinions that offend, shock or disturb. Moreover, as the Human Rights Council has also stated in its resolution 12/16, restrictions should never be applied, inter alia, to discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy;

¹⁸⁶ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, 16th of May 2011, p. 11. http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

¹⁸⁷ *Ibid.*

and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.¹⁸⁸

International and regional human rights treaties apply strict criteria that any such restriction must be set down in law have a legitimate aim and be a proportionate response. The onus of demonstrating the validity of the restriction rests with the government.¹⁸⁹ However, any type of restriction or any limitation to the right to freedom of expression must pass three-parts:

- (a) It must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); and
- (b) It must pursue one of the purposes set out in article 19, paragraph 3, of the Covenant, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and
- (c) It must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality).¹⁹⁰

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- (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.¹⁹¹

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¹⁸⁸ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 16th of May 2011, p. 11.

¹⁸⁹ Cfr. AMNESTY INTERNATIONAL, *China's new human rights plan emphasizes economic rights at expense of civil liberties*, 14th of April 2009, p. 8.

<http://www.amnesty.org/en/news-and-updates/news/chinas-new-human-rights-plan-economic-rights-expense-civil-liberties-20090414>

¹⁹⁰ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 16th of May 2011, p. 8.

¹⁹¹ *Ibid.*, p. 11.

¹⁹² UN General Assembly, A/HRC/RES/12/16, *promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Freedom of opinion and expression, 12th of October 2009.

[Http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement)

restrictions should never be applied, inter alia, to discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.¹⁹³

According to China's State Council, Internet services providers may not disseminate information with content that:

(1) opposes the fundamental principles determined in the Constitution; (2) compromises state security, divulges state secrets, subverts state power or damages national unity; (3) harms the dignity or interests of the state; (4) incites ethnic hatred or racial discrimination or damages inter-ethnic unity; (5) sabotages state religious policy or propagates heretical teachings or feudal superstitions; (6) disseminates rumors, disturbs social order or disrupts social stability; (7) propagates obscenity, pornography, gambling, violence, murder or fear or incites the commission of crimes; (8) insults or slanders a third party or infringes upon the lawful rights and interests of a third party; (9) disturbs the public order by instigating illegal gatherings, associations, parades, demonstrations, or assemblies; (10) organizes activities in the name of illegal civil organizations; contains other content prohibited by the laws and administrative regulations, or by the state.¹⁹⁴

However, the Chinese government considers the censorship a mechanism to protect the China's cultural and moral codes, and its constitution. President Hu Jintao called at a conference on 19 February 2011, for new censorship as a social monitoring strategy:

[...] urging provincial leaders to step up online monitoring and develop new ways to 'channel online opinion' so as to improve social 'harmonisation', a term the authorities often use to mean censorship.¹⁹⁵

Freedom of speech means that every person has the right to voice "correct speech" and, moreover, the right to voice "wrong speech." (If only "correct speech" is allowed and "wrong speech" is prohibited, then it cannot be called "free speech.")

[The exercise of] public power can not only not intervene [in this right], it cannot deprive [someone of this right to voice views] nor can it censor; it can only uphold [this right]. This is the foundation of Article 35 of the *Constitution of the People's Republic of China*. In its verdict, the court of first instance, which was exercising government power, not only

¹⁹³ UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, p. 11.

¹⁹⁴ KAPLAN G. B., *Testimony Before The Congressional - Executive Commission On China, Hearing On "China's Censorship Of The Internet And Social Media: The Human Toll And Trade Impact"*, Congressional- Executive Commission on China, 17th of November 2011. <http://www.cecc.gov/pages/hearings/general/hearing1/statement5.pdf>

¹⁹⁵ REPORTERS WITHOUT BORDERS, *Censorship reaches new heights*, 23rd of February 2011. <http://en.rsf.org/china-censorship-reaches-new-heights-23-02-2011,39617.html>

intervened and deprived Liu Xiaobo of his right to voice “wrong speech” in this case, it also sentenced Liu Xiaobo to a fixed term of eleven years’ imprisonment because he voiced his views. This is an abuse of public power and, moreover, a subversion of the commonly-held definition of “free speech.”¹⁹⁶

2.2. *The violation of the right to privacy*

The right to privacy is guaranteed by article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights. The latter provides that:

(1) no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; (2) everyone has the right to the protection of the law against such interference or attacks.” Although “correspondence” primarily has been interpreted as written letters, this term today covers all forms of communication, including via the Internet.³⁶ The right to private correspondence thus gives rise to a comprehensive obligation on the part of the State to ensure that e-mails and other forms of online communication are actually delivered to the desired recipient without interference or inspection by State organs or by third parties.¹⁹⁷

Activities that are linked to the surveillance techniques of a certain state on their citizens communicating via the Internet breaches the international human right standards regarding the rights to privacy. Many often these techniques are justified broadly as being necessary to protect national security or to combat terrorism, which are legitimate under international human rights law. Surveillance however takes place most of the times for political, rather than security reasons.¹⁹⁸ *Special Rapporteur, La Rue* states:

Such practices can constitute a violation of the Internet users’ right to privacy, and, by undermining people’s confidence and security on the Internet, impede the free flow of information and ideas online.¹⁹⁹

Moreover, as stated in the Human Rights Committee’s general comment on the right to privacy:

[...] in order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to

¹⁹⁶ HUMAN RIGHTS IN CHINA, *Concerning Liu Xiaobo’s Appeal against the Charge of Inciting Subversion of State Power*, 28th of January 2010.
<http://www.hrichina.org/crf/article/3210>

¹⁹⁷ UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948.

¹⁹⁸ *Cfr.* UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 16 of May 2011, p. 16.

¹⁹⁹ *Ibid.*, p. 15.

ascertain which public authorities or private individuals or bodies control or may control their files.²⁰⁰

Sharon Hom, Human Rights In China's (HRIC) executive director states:

By using the police and security apparatus and the legal system to violate the rights of its citizens, the Chinese government may find itself, in time, subverting its own state power.²⁰¹

Special *Rapporteur* La Rue states that the right to privacy can be subject to restrictions or limitations under certain exceptional circumstances: "This may include State surveillance measures for the purposes of administration of criminal justice, prevention of crime or combating terrorism."²⁰²

According to the Universal Periodic Review (UPR) of China report, issued by the UPR Working Group this morning, China has while accepting some recommendations on the promotion of human rights in general. But it has rejected many of the recommendations made by United Nations member states to implement specific measures and reforms to advance genuine human rights in China.

The rejected recommendations include measures that would: provide freedom of information and expression; ensure the independence of the judiciary and lawyers; safeguard detainees' access to counsel; protect lawyers from attacks and harassment; and grant freedom of religion and movement to ethnic minorities such as Tibetans and Uyghurs.²⁰³

As a test of a state-driven process aimed at advancing human rights among member states through constructive dialogue, consensus decision-making, and cooperation, the Universal Periodic Review, with regard to China, is a failure," said Sharon Hom, Executive Director of Human Rights in China.

Instead, the process has given China a 'cover' for impunity." In a glaring act, China not only rejected recommendations to protect human rights defenders, but in fact accepted a recommendation by Cuba to target "people who are qualifying themselves as human rights

²⁰⁰ HUMAN RIGHTS COMMITTEE, General Comment No. 16 on article 17 of the International Covenant on Civil and Political Rights, para. 10.

²⁰¹ HUMAN RIGHTS IN CHINA, *Liu Xiaobo's Guilty Verdict and 11-Year Sentence Send Message of Zero Tolerance for Universal Human Rights*, 25th of December 2009.
<http://www.hrichina.org/content/359>

²⁰² UN General Assembly, A/HR/17/27, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 16th of May 2011, p. 16.

²⁰³ HUMAN RIGHTS IN CHINA, *China Rejects UN Recommendations for Substantive Reform to Advance Human Rights; HRIC Summary*, 11th of February 2009.
<http://hrichina.org/content/247>

defenders with the objective of attacking the interests of [the] state and the people of China.²⁰⁴

Roseann Rife, Amnesty International notes:

For China's human rights action plan to have real impact on the ground, authorities will have to take concrete steps that will meaningfully improve life for the people [...] These include steps to address specific civil and political human rights violations such as those highlighted in concluding observations and recommendations of UN human rights monitoring mechanisms and treaty bodies.²⁰⁵

On the other hand, the lack of ratification of the ICCPR does not mean that China has no laws and regulations to protect relevant civil and political rights. Besides the ICCPR, it is also important for Chinese courts to implement other human rights treaties that China has ratified, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Children's Rights (CRC), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on Elimination of Discrimination against Women (CEDAW), the Convention on Elimination of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD).

In addition, the human rights standard of national law is an important key in ensuring the protection of the freedom of expression.

3. China's domestic obligation

This part explores two main aspects: first an analysis the implementation of international human rights standards at a domestic level, as it is well recognized crucial for protecting human rights; second, the analysis of Chinese domestic law regarding the protection of human rights and its legal enforcement through its national courts.

²⁰⁴ *Ibid.*

²⁰⁵ AMNESTY INTERNATIONAL, *China's new human rights plan emphasizes economic rights at expense of civil liberties*, 14th of April 2009. <http://www.amnesty.org/en/news-and-updates/news/chinas-new-human-rights-plan-economic-rights-expense-civil-liberties-20090414>

3.1. *Applicability of international law in national law*

The relationship between international human rights treaties and domestic courts varies from State to State. However, the crucial issue of China is that neither the general applicability of International Treaties in Chinese domestic courts nor the effective status of the General Comments, is mentioned in its Constitution.²⁰⁶ In other words, the status of treaties is unclear in the Chinese legal system. There is an existing gap between *de jure* and *de facto* implementation (the legal implementation and practical implementation) of human rights treaties.

However, domestic courts normally apply national laws rather than human rights treaties to protect human rights.²⁰⁷ Article 2 (3) of the ICCPR underlines that States are required to take appropriate and/or effective measures, including judicial ones, to protect and promote human rights to and ensure that any person whose rights are violated shall have an effective remedy, and that those who claim a remedy have the right thereto determined by competent judicial or other authorities:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.²⁰⁸

Having said this, the state sure ensure within its domestic law should the protection of human rights. In China the human rights law regarding freedom of expression and the freedom of speech provisions are in its Constitution.

²⁰⁶ *Cfr.* SANZHUAN G., *Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects*, Chinese Journal of international law, 2009.

<http://chinesejil.oxfordjournals.org/content/8/1/161.full>

²⁰⁷ *Cfr. Ibid.*

²⁰⁸ ICCPR, <http://www2.ohchr.org/english/law/ccpr.htm>

3.2. Human rights protection in the Chinese domestic law

Article 35 of the Chinese Constitution, provides for freedom of speech, of the press, of assembly, of association, of procession and of demonstration for all citizens. However, the major shortcoming of rights under the Constitution lies in the non-enforceability in courts of constitutional provisions: “Put simply, the rights provisions in the Constitution cannot be applied directly by Chinese courts.”²⁰⁹

In 1955, China's highest court, the Supreme People's Court (SPC), issued a reply to the Xinjiang High Court saying that “the PRC's Constitution is not proper to be the legal basis of conviction and punishment in criminal judgment.”²¹⁰

As a result courts cannot interpret the Constitution, courts shall not quote the Constitution as a legal basis in any judgment.²¹¹ To implement international human rights standards in China, we must refer to specific laws and regulations rather than rely on the Constitution:

Due to the broad scope of human rights, human rights legislation in China is also distributed in many areas and laws. Some scholars place China's human rights legislation with in criminal justice.²¹²

But there are several factors that weaken the protection of these human rights. First, the laws are to be applied in guidance of the “Four Basic Principles” of the constitution and any information, which is unaligned with these four principles, cannot be disseminated. The “Four Basic Principles”- also called “Four Cardinal Principles” - were introduced by Deng Xiaoping in 1979, and which are the following:

We must keep to the socialist road
We must uphold the dictatorship of the proletariat
We must uphold the leadership of the Communist Party
We must uphold Marxism-Leninism-Mao Zedong Thought²¹³

²⁰⁹ SANZHUAN G., *Implementation of Human Rights Treaties by Chinese Courts*, 2009.

²¹⁰ KUI S., *Is it the beginning of the era of the rule of the constitution? Reinterpreting China's "first constitutional case*, Pacific Rim Law & Policy Journal Association, 2003.
<http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/723/12PacRimLPolyJ199.pdf?sequence=1>

²¹¹ *Cfr.* SANZHUAN G., *Implementation of Human Rights Treaties by Chinese Courts*, 2009.

²¹² *Ibid.*

²¹³ Li P. – M. H. Li – MARK S., *Culture & Politics in China, An Anatomy of Tiananmen Square*, Transaction Publisher, New Jersey, 2009, p. 177.

The vague provisions of laws governing access to the Internet should therefore be interpreted in the light of the guiding principles of the Constitution, which takes precedence over those laws and which should be applied with reference to international human rights standards.

The State Council Order No. 292, promulgated in September 2000 a “guidance on content restriction for Internet Content Providers, stipulates under article 15 that information cannot be disseminated, which is against the principles prescribed in the Constitution.”²¹⁴

However, various Chinese scholars agree that human rights legislation in China has been improved greatly along with various initiatives to improve the human rights standards, as in 2004, the National People’s Congress amended to declare Article 33, which states: “the state respects and safeguards human rights”²¹⁵. This making the guarantee of human rights a constitution principle of running the country according to law. In addition, the government has promised to formulate and implement a “National Human Rights Action Plan” in 2009. However, the Charter 08 states that:

But so far, this political progress has largely remained on paper: there are laws, but there is no rule of law; there is a constitution, but no constitutional government; this is still the political reality that is obvious to all. The ruling elite continues to insist on its authoritarian grip on power, rejecting political reform. This has caused official corruption, difficulty in establishing rule of law, the absence of human rights, moral bankruptcy, social polarization, abnormal economic development, destruction of both the natural and cultural environment, no institutionalized protection of citizens’ rights to freedom, property, and the pursuit of happiness, the constant accumulation of all kinds of social conflicts, and the continuous surge of resentment.²¹⁶

However, on the 14th of March 2012, China’s legislature, the National People’s Congress (NPC) has passed a new controversial amendment to China’s Criminal Procedure Law that would have granted police new powers of secret detention. The new draft provision, Article 73, expanded and in effect legalized the widespread practice of secret residential surveillance not authorized by existing law. It enshrines the right of law enforcement to carry out secret detentions and disappearances of political suspects. The article drew heavy criticism from Chinese and international legal experts. Sophie Richardson, China Director at Human Rights Watch notes that:

²¹⁴ AMNESTY INTERNATIONAL, *Undermining freedom of expression in China*, 2007, p. 24.

²¹⁵ HUMAN RIGHTS IN CHINA, *Charter 08*, 9th of December 2008.

<http://www.hrichina.org/content/238>

²¹⁶ *Ibid.*

The draft criminal procedure law contains many positive provisions, but the government's stated goal of improving due process will be severely undermined by allowing incommunicado detention of people in undisclosed locations. [...] Such provisions represent a clear danger for government critics and human rights activists, and are in clear contravention of China's international obligations.[...] under the revised law's "residential surveillance" provision (article 73), law enforcement agencies would still have the power to detain national security or terrorism suspects in a designated location of the agencies' choice for up to six months. Although the law enforcement agency imposing the measure would have to notify relatives within 24 hours, the notification would not require them to disclose the whereabouts of the person. The draft provision would also allow police to deny suspects' access to a lawyer for the duration of the detention. [...] Other provisions in the proposed legislation that would allow the secret detention of criminal suspects in "national security, terrorism and major bribery" cases for up to 37 days are found in articles 37 and 83. These exceptions suspend the requirement to notify relatives within 24 hours if the law enforcement agency believes that such notification could "impede the investigation."²¹⁷

The bill, which comes into effect in 2013, was passed overwhelmingly with 2,639 delegates voting for it, and just 160 against.²¹⁸

²¹⁷ HUMAN RIGHTS WATCH, *China: Don't Legalize Incommunicado Detentions*, 12th of March 2012.
<http://www.hrw.org/news/2012/03/12/china-don-t-legalize-incommunicado-detentions>

²¹⁸ *Cfr.* ALJAZEERA, *China premier calls for political reforms*, 14th of March 2012.
http://me.aljazeera.net/?name=aj_standard_en&i=8790&guid=20123145268387804&showonly=1

CONCLUSION

The birth of the Universal Declaration of Human rights and the Internet both belong to the XX century and are both interrelated to each other, especially to the right of freedom of speech, which when used through the Internet, is one of the fastest tools to protect all the other human rights and challenge the monopoly of information. However, Internet itself does not trigger automatically the protection of human rights, democracy and freedom of expression.

The Internet is a neutral tool. It can be used in positive and negative ways, in promoting both peace or wage conflicts, depending on the 'netizen's' intention. There is also a very thin line between calling an activist: a human rights defender or terrorist, a Nobel Peace Primer or a criminal. A person could be considered by some as a respected investigate journalist, and by others as a serious threat to national security. It is left to the audience to decide what picture they want to draw out from all the different multiple views, information and knowledge they easily find on the net, regarding a giving issue.

The Internet can be a tool for freedom of expression and an enabler for all the other rights, but it could only be accomplished if it is born without restrictions. The People's Republic of China violates the rights of freedom of expression and the right to privacy, despite its domestic and international obligations and duty to protect, regard and promote them. As the right of Freedom of Speech is protected internationally by article 19 of the Universal Declaration of Human Rights and of the International Covenant On Economic, Social and Cultural Rights (ICCPR), which China has signed. Moreover, freedom of speech is an International Customary Law, which binds every state of the International community.

Furthermore, China's case-study illustrates the counter effect a censored and surveilled Internet can have on freedom of speech, human rights and democracy. In other words, the Internet can be an enabler for rights if and only if it is free, since the contrary would be a weapon to suppress free speech through the censorship mechanism and violate human rights defenders through the surveillance techniques. As a result, the role of Internet in promoting freedom of expression and human rights can only be

accomplished first, if the Internet is unserveilled and uncensored; and second, if it is managed with good intentions and in harmony with the International journalistic codes.

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