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Business Complicity in State Human Rights Violations

Autora: Rouco Rodríguez, Irene

Tutor: González Cantón, César

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1. INTRODUCTION

1.1. Management of Human Rights in a Globalized World

Business management of human rights in a globalized world, where the activity enterprises carry out directly impacts on people's lives, is increasingly important. A point has been reached where the private sector cannot be a merely observer. It is true that globalization has improved the ability of civil society to work across borders, but at the same time, other actors have also gained power to violate human rights (Shelton, 2002). Globalization is a phenomenon of increasing independence between different countries due primarily to advances in technology, communications and media. Today, globalization is more often associated with economic interdependence, deregulation and market dominance, including a shift of responsibilities from State to non-State actors. Times are changing and an increasing number of companies are becoming involved in social and individual well-being. We should always be moving in this direction: the more globalization there is, the more movement there should be towards greater social responsibility. Otherwise, we would become a very advanced society in some respects, while lagging behind in the most basic and fundamental principles.

1.2. Business Complicity in China

“And of course, the information society’s very life blood is freedom. It is freedom that enables citizens everywhere to benefit from knowledge, journalists to do their essential work, and citizens to hold government accountable. Without openness, without the right to seek, receive and impart information and ideas through any media and regardless of frontiers, the information revolution will stall, and the information society we hope to build will be stillborn.” Kofi Annan, UN Secretary General.

This paper examines the foundations of corporate social responsibility and corporate complicity and applies them directly to a recent case: Google’s development of a search engine in China. My interest in Google and tech companies is based on the fact that Internet and freedom of expression represent a new frontier for human rights. Despite the great advances made over the last decade in the field of human rights and business, companies - more specifically tech companies - have increased their influence in nearly every aspect of human life. The impact they have over our actions is huge. They own and run the platforms through which we communicate, as well as carrying out services

in the public sector, like healthcare and utilities. Consequently, the decisions they make have a great effect on the field of human rights, especially if we speak in terms of freedom of expression, privacy and security. (Lee & Vali, 2018). Internet has the potential to empower and educate, enabling any individual who possesses a computer to participate in a free flow of information and ideas with others across the world. However, the Internet can also be a way to control communications by filtering information. This is the case of China, which uses it to restrict the freedoms of its citizens (Amnesty International UK, 2006). I chose Google because its Chinese search engine represented the most controversial experiment to date in internet diplomacy. To get into China, the young company that had defined itself by the motto “Don’t be evil” agreed to censor the search results shown to Chinese users (Sheehan, 2018). Now, ideas, as well as information, can circulate freely. So, it's ironic that one of the world's leading nations doesn't accord with this point. The information revolution has limited the ability of governments to control the flow of information between individuals. Free flow increases the ability to inform all people of their rights and freedoms, makes it harder for states to conceal wrongdoing, and allows citizens to make demands on governments. In China this is not happening. Moreover, the sophisticated technology that allows the government to block and filter Internet content is primarily designed by foreign companies. I considered it to be important that in the information era there are countries where the most basic freedoms still have to be fought for and that, even worse, there are companies like Google that do nothing to prevent this.

1.3. Normative Framework

In this paper I rely specially on The United Nations Guiding Principles, an internationally accepted framework for enhancing standards and practice regarding business and human rights. I also rely on The Universal Declaration of Human Rights. Thanks to these documents, a global framework has been established to enable accountability in the event that states, or companies commit acts that violate human rights. By using this ethical regulatory framework, I will make a value judgment on Google's actions in China.

2. DEFINITION OF CORPORATE COMPLICITY

Corporate complicity is defined as assisting a state to carry out major human rights violations or participating - directly or indirectly - in these crimes. Such crimes include genocide, torture, crimes against humanity, war crimes, etc. These types of corporate actions can include direct complicity in criminal violence (conspiracy to commit such acts), violation of human rights under labor laws and exploitation of workers (labor in slavery conditions), direct funding to governments (benefiting economically from such violence), etc. Corporate complicity does not necessarily require ideological affinity between the company and the state of which it is an accomplice. In fact, in most cases companies deny that it was a voluntary collaboration, justifying their actions with the pretext that they were subjected to enormous pressure (Payne & Pereira, 2016). In most cases the reason why companies do business with dictatorial governments is usually economic. In the case of Google in China, the company was looking to expand into the vast Chinese market, and therefore to gain more profit and power through market dominance. Companies can also be accomplices simply by doing business, even if its intention was not directly wanting to cause harm or carry out an illegal conduct.

New developments in this interconnected world have made it possible for us to communicate better and document human rights abuses. The international community has been dismayed by the huge number of documents that prove the complicity of many companies with governments, armed groups, or others, in order to commit human right abuses. An interest in certain corporate behaviors of high moral significance has also emerged. Many of these cases date back to the last sixty years and demand accountability.

3. THE CORPORATE COMPLICITY PROBLEM

3.1. Human Rights as Normative Framework

It is true that the limits of what a company is expected to bring to society are not yet entirely clear-cut. On the one hand, the most loyal advocates of human rights expect companies to take sides when human rights violations are widespread. But on the other hand, these companies know that they cannot carry out the duties of a government, nor have the same responsibilities, since the latter is the one responsible for the well-being of a country and its citizens. Therefore, no matter how much a company wants to contribute to the field of human rights, under international law, it will never have the same legal obligations as a government, nor will it be expected to be a substitute for it. The Universal Declaration of Human Rights stands as an internationally accepted framework for human rights. Its preamble states that “*a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.*” Considering a company as an “*organ of society*”, they have a moral and social obligation to respect the rights imposed in this declaration. If they do not do so, they will find later, in their regret, that society will condemn them.

3.1.1. Contextualizing Complicity in The Globe: China

The complicity in the technology sector manages to give the dictatorial government an authority capable of further controlling the citizens, due to the censure over political issues. In China, for example, there have been way too many cases of corporate complicity. In this country, the right to freedom of expression or the right to association is just as absent in Intel’s China factories as it is in Yahoo!’s blogosphere (Hoffman & McNulty, 2019). The deprivation of human rights is not sector-or country-specific. This is why a company operating within the borders of a country with weak protection of fundamental human rights should be more closely monitored. Sometimes it looks like globalization is blurring the boundaries and it seems that it is not so clear what is foreign and what is local. Economic progress has not kept pace with the spread and establishment of norms and China is a good example of this problem. China is one of the most powerful economies on the planet. It has grown, in part, due to the great

support of Western multinationals that ironically have codes of conduct inconsistent with those the Chinese Communist Party wants to maintain in Chinese society (Hoffman & McNulty, 2019).

3.2. Categories of Complicity

Many business leaders have emphasized how unclear the definition of complicity is and how this can damage a company's reputation. It is suggested that there are three categories to classify complicity (Clapham & Jerbi, 2001):

- **Direct Corporate Complicity:** When a company is aware that the goods and services provided to the government are causing some kind of harm (Ratnert, 2001). This kind of complicity requires intentional participation, not necessarily with the intention to do harm, but just by being aware that it is going to cause it.

For example, the sale of surveillance cameras to dictatorial regimes, such as Egypt or Syria, or how western tech firms are helping Arab dictators (Trevor & York, 2012).

Although the use of the internet can be a positive thing, as it was during the Tunisian revolution of 2010-2015, in the same case it can also be a negative factor for pro-democracy protestants. Many American companies sold technological material to authoritarian governments that was used against democratic movements. These tools, acquired from Western companies, caused breakdowns in the activists' technology, intercepting the users' communications, or even tracing their location. In many cases, this technology resulted in detention, torture and death of many individuals whose only crime was to exercise the universal right of freedom of expression.

At the same time, and based on empirical cases, there are four types of cases in which a company can abuse human rights (Olson, 2015): (i) The company and the managers are the main perpetrators; (ii) the company provides material as a commercial relationship that is then used for actions that violate human rights, (iii) companies are accused of having provided information or financial assistance to human right abusers, (iv) when corporations are accused of being complicit in human right abuses by investing in projects, joint ventures, or regimes with poor human right records or relations with abusers.

- **Beneficial Corporate Complicity:** When the company benefits from human right abuses, even though it didn't directly cause them or was not directly involve.
- **Silent Corporate Complicity:** When the company remains silent in the face of continuous human right abuses. This last type of complicity is probably the most

usual, or at least the most documented. It should be noted that silent complicity puts the company in a moral dilemma, expecting it to protect human rights in countries where they are being violated. Silent complicity implies that companies have moral obligations beyond not wanting to do harm (Wettstein, 2012).

3.3. International Criminal Law

“With great power comes great responsibility. And in the context of multinational business, with great responsibility comes a great risk of criminal liability for violating human rights” (Olson, 2015).

International law and its application are henceforth more relevant for companies in the time of decision-making. Although the parameters of this field are not fully defined, the list of responsibilities that a company should address in the field of human rights is growing. A TNC can be defined as a huge company that does business in many countries. Because of its large size, it can have a great impact on society. Typically, these TNCs can be richer than many countries in the less developed world and could enrich an entire nation or, conversely, take advantage of workers and exploit the population of this underdeveloped economy. As of 2001, 500 of the world’s largest TNCs had annual sales larger than the GDP of 100 countries and just Wal-Mart’s were higher than the GDP of 40 countries of Sub-Saharan Africa. This is why companies should be more aware of what could constitute an illegal action within the field of human rights protection under international law. Without this understanding, many companies may be tempted to engage in corporate complicity in human rights violations availing themselves to criminal liability under international law. From assisting governments or armed groups to commit human rights abuses, to providing weapons, vehicles or money to groups that will then use that to attack.

3.3.1. History of Jurisdiction for Corporate Criminal Liability

The first formal cases of corporate responsibility originated from criminal law arose after World War II when Nazis were brought to trial for their support, financial and material, to the regime. This support supposed a violation of customary international law proscribing genocide. In fact, the concept of “transitional justice” was born as a result of the Nuremberg trials and the value it had in holding state leaders accountable, correcting the mistakes made and advocating for the "never again" of mass atrocities (Teitel, 2000). In the United States vs Nuremberg Trial, the Tribunal found that:

“Those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it . . . He had to have the cooperation of statesmen, military leaders, diplomats and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent . . . if they knew what they were doing.” After these trials, the International Military Tribunal had the power to convict groups or organizations that knew of the existence and had been members of a criminal organization. However, the International Criminal Court (ICC) does not provide jurisdiction to companies or corporations, only to individuals, as well as to their directors, representatives or employees.

3.3.2. International Criminal Law and Corporate Responsibility

Since the Nuremberg trials, the main focus of international courts has been not only to imprison wrongdoers, but also all those who allowed, facilitated, controlled or knew about the existence of the crime. Therefore, even if a company as such cannot be submitted to jurisdiction in international courts, the people responsible for the crimes can be prosecuted individually. Although sometimes this does not directly bring legal consequences for the company, the fact that a member of the company is involved in crimes that violate human rights can seriously damage the image of the company, as well as its income (Ratnert, 2001).

Despite all the cases of corporate complicity, very few have reached the courts, and even fewer have ended up with companies being guilty of the crime. Accountability for corporate complicity in authoritarian and civil conflict situations has thus been referred to as the “missing piece of the puzzle, to pursue the full spectrum of justice and remedy for authoritarian and civil conflict periods” (Bohoslavsky & Opgenhaffen, 2010). Legal experts discuss the reasons behind the failure to prosecute companies that are complicit with authoritarian governments. For some, the legal responsibility of the company in violations under international human rights law constrains accountability efforts. As one scholar stated, “it cannot be said that international human rights law involves direct legal duties for businesses” (Ford, 2015). Meanwhile, for others, corporate complicity has been “legitimized and incorporated into the fabric of international law” (Skinner, 2008). In any case, corporations, as such, cannot be held accountable under International Law. There is a big debate within international law about why companies are complicit, and states do not comply with the law. On the one hand, some suggest

that states are unlikely to sanction companies that are part of key industries in the country's GDP growth or that are part of the country's security. On the other hand, states fear that companies threatened with legal action may relocate to countries with a more permissive investment environment. They could also suffer consequences if they are perceived as countries hostile to foreign investment. Some academics see persuasion and low-cost mechanisms as a safer route than litigation to ensure corporate compliance with human rights standards. Others, however, argue that companies will only comply with international standards where the violation of human rights has a negative impact on the company. Either because profit decreases or because production costs increase. (Payne & Pereira, 2016).

These social science approaches, combined with law, resemble the multidimensional four-factor approach (Payne, et al., 2015): This approach speaks of how overcoming impunity for human rights violations requires four factors; international pressure, national judicial leadership, civil society demand and the weakness of the veto actors. Currently, international pressure regarding business and human rights protection norms emphasizes on soft-law and voluntary norms, instead of binding and enforceable obligations (Ruggie, 2013). This is quite critical because of the growing belief that compliance with standards for human rights protection is something voluntary. There is much criticism of the regulatory approach of companies for not promoting greater international pressure for accountability.

4. CORPORATE RESPONSIBILITY IN CHINESE INTERNET CENSORSHIP

Everyone is aware of the size of China, as well as the vast number of people who live in the country. Chinese population constitutes almost 20% of the world's total population. Internet censorship makes citizens unaware of everything that is going on in the world,

without any possibility for Chinese citizens to challenge corruption, the inequitable development of its economy and pollution.

More and more companies want to invest in the Asian giant. Its cheap labor force and high market growth rate make China an attractive destination for many companies. There are a lot of theories that claim that the greater the economic development, the more regulation there is to protect human rights (Sethi, et al., 2011). Sadly, this is not the case in China. The Chinese Communist Party, with a Leninist ideology, is the backbone of the country. In China, citizens have no say, especially the poor ones. It is the country with the highest number of authorized government executions, but the list of human rights violations can go on and on. The country has the most advanced internet censorship system in the world. With thousands of people employed by the Chinese Communist Party to make sure that this system is implemented, no one would ever expect private sector to support this – including some of the world's major international technology and Internet companies (Human Rights Watch, 2006). Many of these companies not only accept the censorship of certain materials imposed on them by the Chinese government, but also engaging in self-censorship by using their technology to predict and then censor the material they believe the Chinese government wants them to censor. Microsoft, Google, Yahoo! and Cisco, companies based in the United States, had to explain their performances in China. Due to the Global Online Freedom Act of 2006, it is illegal to any business in the United States to locate “user identifiable” data in any “internet restrictive country”, in this case China, and companies are required to be transparent about the material that the restrictive country is claiming to censor. This act was done in order to protect the rights and interests of Internet users and to promote freedom of expression on the Internet globally. However, these previously mentioned companies collaborated with the Chinese communist government.

It is relevant to use the term "Network Authoritarianism", invented by the author Rebecca MacKinnon and used to define “when an authoritarian regime embraces and adjusts to the inevitable changes brought by digital communications”. Nowadays, people in China use the internet to have fun, be informed and feel free, all this unthinkable ten years ago. However, they are allowed to do this because the government has done much to monitor its people and manipulate the conversations to such an extent that no opposition movement to the current government has ever been yet organized. The system is not effective enough to control everyone all the time, but it is effective

enough that the country's brightest don't realize the level of censorship and manipulation of their country's information - let alone the world's (MacKinnon, 2011).

4.1. Introduction to Chinese Law

It is important to refer to the laws governing the so-called people's republic. Firstly, the country signed, but not yet ratified, the International Covenant on Civil and Political Rights (ICCPR). On the other hand, the Chinese constitution states that the “State respects and preserves human rights”. Also, article 35 of the constitution guarantees citizens “freedom of speech, of the press, of assembly, of association, of procession and of demonstration”. The language of the article seems quite legitimate and it compares well with other countries' constitutions. In theory, Chinese citizens have the fundamental right to “criticize and make suggestions regarding any State organ or functionary.” Anyhow, although the 1982 constitution guarantees freedom of speech, the Chinese government often uses the "subversion of state power" and "protection of state secrets" clauses in their law system to imprison those who criticize the government.

4.2. Google

4.2.1. History of Google in China

Google's participation in the Chinese market was a short-lived experiment. Google.cn, the new search engine was launched in 2006 and abruptly pulled from mainland China in 2010, in the middle of a major hack of the company and controversy over search results. In August 2018, a journalist from The Intercept reported that the company was working on a secret project that included a new censored search engine for Google in China, called Project Dragonfly. There were major protests by human rights activists and even by many company employees. Mike Pence, vice president of Google in the US, called on the company to kill Dragonfly, and said that it would “strengthen Communist Party censorship and compromise the privacy of Chinese customers.” Three months later, The Intercept reported that Google had suspended its secret project in response to complaints from the company's own privacy team, who learned about the project from the investigative website's reporting.

The first ten years of the company in China with Google.cn can be summarized as follows (Lau, 2010):

- In 2000: Google offers a Chinese version of Google.com. However, this search engine is slow and unreliable.
- Fall 2002: It's impossible to access Google.com for two weeks. Google says it has been faithful to its principles and has not complied with Chinese laws. This happened again in December 2003.
- July 2005: Kai-Fu Lee is appointed vice-president, in charge of China.
- During 2006: Google.cn is launched at the beginning of the year. In the following months, Google.com is blocked again, only Google.cn is available.
- February 2008: Guo Quan, a Chinese human rights activist, published that "to make money, Google has become a servile Pekingese dog wagging its tail at the heels of the Chinese Communists". Guo is sentenced to 10 years in prison in 2009.
- October 2008: Google, Microsoft and Yahoo sign a set of voluntary guidelines aimed at reducing the risk of their actions leading to human rights abuses in China and other countries. The document, drafted with human rights advocates, calls on companies to comply with censorship only when they receive a formal legal request to do so.
- January 2009 - Chinese regulators criticize Google for making pornography available to the public through its search engine.
- June 2009 - Chinese regulators announce that they are "punishing" Google China for not removing pornographic content from its search results. The punishment includes the suspension of its ability to search foreign websites and its associative word search function, a move that distances Google users from its rival Baidu, China's biggest internet search engine.
- June 2009 - Google's global website is blocked in China for the first time in years after the company appears to be resisting the order to suspend some functions. Official media accuses Google of allowing pornographic content.
- September 2009 - Kai-Fu Lee is resigning after a controversial four-year period in which the company has used a censored version of its search engine to gain a foothold in the world's biggest Internet market.
- January 2010 - Google says it will end censorship of its search service in China and is ready to withdraw from the market.

- January 2010 - Eric Schmidt, CEO, says that Google intends to stay in China even if it is forced to close its local search services, as the company has other business opportunities on the mainland.
- January 2010 - US Secretary of State Hillary Clinton calls on Beijing to conduct a "transparent" investigation into the cyber-attacks Google said were triggered by its announcement to stop censorship in China.
- March 2010 - According to someone close to the company, Google is confident that "99.9%" will go ahead with plans to close its Chinese search engine. China, meanwhile, says it is unwilling to let go Internet censorship to prevent Google from leaving.
- March 2010 - Google announces that it has stopped censoring its search services on its Chinese local service after talks with the Chinese authorities failed over whether it could continue to operate an uncensored service from within the country. All search requests on Google.cn are being redirected to its Hong Kong headquarters.
- June 2010 - Google says it is making a final attempt to maintain a presence in China, after the government threatened to close it down at the end of June. The Internet group will put a voluntary link to its Hong Kong site on the Google.cn home page, rather than automatically redirecting users, in an attempt to appease the authorities before the license renewal scheduled for the end of the month.
- July 2010 - The Chinese government is renewing Google's license to operate in the world's largest Internet market, appearing to accept a compromise offered by the U.S. search engine on Internet censorship. Google initially redirected all its traffic from China to a Hong Kong-based site out of the reach of the censors.

It then stopped the automatic redirection and created a static "landing page" that gave Chinese users the option of clicking on a link to the uncensored Hong Kong site.

4.2.2. Google.cn (2006)

In 2006, Google launched Google.cn., a search engine that notifies users when the results they are trying to search in the Internet are censored. It shows no other information than the mere notification. Back in 2002, Chinese Google users began to report problems with the search engine, which was not available on a regular basis. When the fall came, they received more emails than ever reporting that the server was completely unavailable (Schrage, 2006). Soon more trouble came. Certain politically

sensitive issues could not be searched from the Google server in China. Access to Google in the country was often slow and unreliable. Although Google did not apply any self-censorship, the results were filtered out anyway. Users were often even redirected to local search engines. Google found itself at a crossroads: either abandoning the Chinese market altogether or developing a new search engine for Chinese users that would submit to the Communist Party's demands for censorship. It is important to note that the government did not tell Google which elements to censor. It was Google who, thanks to a study carried out by the company itself, investigated what material was sensitive to the party. Without this censorship, Google would not have been able to obtain the necessary permits to operate in the Chinese market. (Brenkert, 2009). The argument that Google is doing something immoral is based on Article 19 of the Universal Declaration of Human Rights, which 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". This has nothing to do with any good intentions a government has in censoring material that may be harmful to society or some groups of the population. An example would be The Child Online Protection Act (COPA), a law that emerged in the United States under the Bill Clinton administration to restrict access to material that may be harmful to minors. On the contrary, censoring material that criticizes a government's performance, as well as different political or religious ideals, only shows how authoritarian governments hide their failures and abuse of power.

Kai-Fu Lee, head of operations for Google in China for years -including the year Google.cn was developed and released- has spoken about the importance of "liberating power of technology in China". He believes that Chinese students are among the brightest on the planet and that access to the Internet could raise the level of education for those students from rural families who have no means of giving their children a good education. Once the country's small villages are connected, he says, students living thousands of miles from major cities will be able to access documents from the world's best universities.

With this version of Google adapted to China's censorship laws, the company agreed to purge search results from websites that disapproved of China's authoritarian government. Among these websites are those advocating democracy and freedom of expression for the Chinese people, those promoting Falun Gong, a spiritual movement

banned by the government, or any mention of the 1989 Tiananmen Square massacre. If you search for "Tibet" or "Falun Gong" anywhere in the world you will find a thousand links to blogs, websites, articles, etc. If one performs this same search within China on Google.cn, these links will not exist, as Google has taken care of deleting them (Thompson, 2006). Time proved that Google's decision was not the right one. In 2010, Google pulled out of China and just one month after, Google's top officials were called to Congressional hearings and compared to collaborators of the Nazi regime. The company's share price fell, and demonstrations were organized outside Google's California headquarters. There are more than twice as many people on the Internet in China as there are residents in the U.S., and after giving up access to this enormous market, the company's stock price fell drastically.

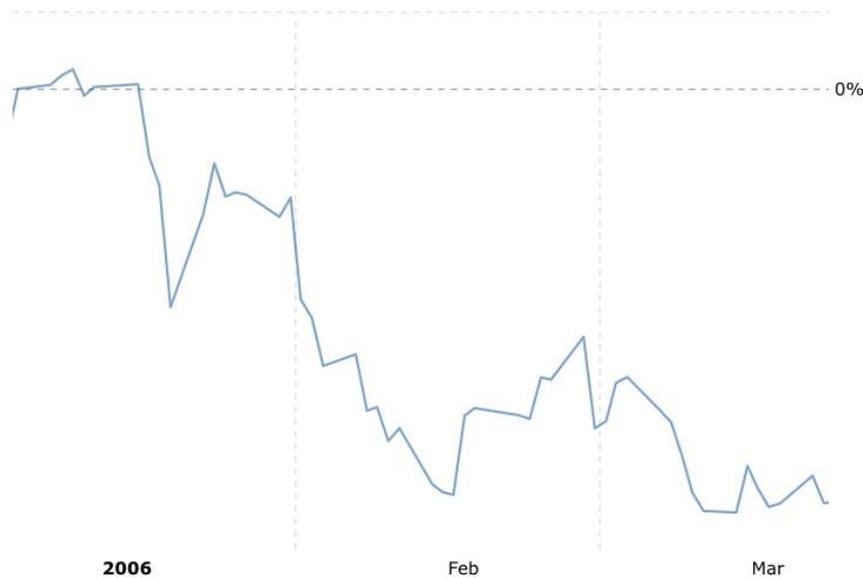


Table n°1 - Google's stock price from January 2006 to March 2006

Source: Macrotrends

Date	Open	High	Low	Close	Adj Close	Volume
2006-01-01	210.471100	234.371521	208.329132	231.960556	231.960556	114372500
2006-01-08	232.334152	236.667908	229.609375	232.254456	232.254456	97721100
2006-01-15	230.665405	234.072632	196.632965	198.984161	198.984161	169452300
2006-01-22	202.929367	226.266891	202.107452	215.935623	215.935623	157234900
2006-01-29	213.813568	218.979218	185.589371	190.062592	190.062592	176392000
2006-02-05	191.935577	194.222015	175.910645	180.627960	180.627960	147571800
2006-02-12	172.672775	185.375168	168.284225	183.686493	183.686493	166530400
2006-02-19	182.535812	189.908173	181.250626	187.995346	187.995346	68652100
2006-02-26	189.923126	198.027740	168.622955	188.383896	188.383896	184695800
2006-03-05	189.743790	190.984146	165.155960	168.119843	168.119843	129081700
2006-03-12	169.828445	175.527084	165.688950	169.260574	169.260574	127335700
2006-03-19	170.530807	184.353989	168.119843	182.217010	182.217010	101277700
2006-03-26	182.859604	198.755020	181.818497	193.494736	193.494736	99789600

Table n°2 - Google's stock price from January 2006 to March 2006

Source: Macrotrends

4.2.3. Project Dragonfly (2018)

Google comes back for more when developing Dragonfly, another censored search engine tailored for the Chinese market. It started as a secret project during the spring of 2017 and it got discovered in 2018. This search engine filters out websites and search results about human rights, democracy, religion, and protests—all based on web censorship requirements imposed by the Chinese government.

At Senate Judiciary hearing in July 2019, Karan Bhatia, vice president of Google, confirms that they have abandoned the “secret” project of launching Dragonfly in China, after Senator Josh Hawley told him “You’re happy to censor for the repressive authoritarian Chinese regime like for instance with Google.cn. Happy to censor away any mention of Tiananmen Square, happy to help the Chinese government maintain control of all information within the country, happy to help them control the information flow to their own citizens. You're happy to do all of that. Wouldn't you call that censorship with an ideological agenda?” (Su, 2019). It is important to note that during the same hearing Bhatia did not commit to not supporting censorship in China in the future. Bhatia defended himself by saying that Google left the Chinese market in 2010, not only because of cyber-attacks, but also because of the high level of censorship that the Chinese government wanted to impose on Google.

The employees were shocked to find out about Google's decision. They were so disappointed that they signed a letter demanding more transparency in their management. In the letter, obtained by The New York Times, it said that the company's decision “raises urgent moral and ethical issues”. They also added “Currently we do not have the information required to make ethically-informed decisions about our work, our projects, and our employment”. This represented an obstacle for Google when wanting to return to the Chinese market, only 8 years after publicly retiring from the country on protest of censorship and government hacking (Conger & Wakabayashi, 2018).

John Hennessy, the chair of Google’s parent company, Alphabet Inc., said “Anybody who does business in China compromises some of their core values. Every single

company, because the laws in China are quite a bit different than they are in our own country” (Poulson, 2018). The project, once secret, was terminated due to the huge internal confrontation within the company. Many complained that the project had been hidden from them and that they were playing with issues of great moral significance.

5. ETHICAL EVALUATION

What role should business play in conflict prevention? They are asked to take more responsibilities, but they sure cannot play the role of the government. What should be the behavior of a company in a country where fundamental human rights are violated? What should the enterprise do if a dictatorial government asks for its support? Should the company intervene in the role of the government? Should it influence the government in such case?

When a company enters a local market, it must take into account the local traditions and customs in order to be successful. Therefore, if a company is to be sensitive to local practices, the ethical principles that constitute the companies' codes of conduct must presuppose universality. If a company were to adopt different ethical standards according to the country in which it operates, those rules would be meaningless and the company would have to adapt to the law of the country in which it is operating, with or without ethical content. However, ethics are essential, more than compliance. It is based on a sense of what is right, fair and good, regardless of national boundaries or even periods of history. Clearly, standards change from place to place, but to be fair they must not violate fundamental ethical principles, such as those in the Declaration of Fundamental Human Rights. For example, driving rules in Spain dictate that one should drive on the right while in the United Kingdom they are obliged to drive on the left. However, the basic ethical principle of safe driving is the same in all countries, which is a manifestation of the most basic principle of acting in a way that minimizes the risk of harm to others. If a government were to pass a law that established different penalties for those who cause harm on the road, depending on a person's religion or ethnicity, such a law would not be fair because it would violate universal ethical principles that require all people to avoid exercising penalties based on factors that are not relevant to the alleged violation (Hoffman & McNulty, 2019).

In theory, all moral dilemmas have an ethical solution. However, in reality, to protect certain principles or values, sometimes others must be sacrificed. And while in the process, the moral integrity of certain individuals, or legal entities, comes into question. (Schrage, 2006). This was the case of Google.

For the purpose of this value judgement, I will rely on the United Nations Guiding Principles on Business and Human Rights (2011). These are so important because they offer a transformational roadmap to a future where businesses and people can prosper and thrive. These principles define parameters for both companies and governments. They provide states more clarity about their existing obligations to protect human rights against adverse impact caused by enterprises. They also give companies practical guidance on how to act to respect those same rights. They are based on the United Nations ethical framework of "Protect, Respect, and Remedy". I would first like to clarify that these principles were not made with the intention of creating new

international rules or restricting the obligations of governments. They were made with the intention of protecting those populations that for some reason are more vulnerable than others. These principles are as follows:

- States duty to protect human rights

Governments have existing obligations to respect and protect fundamental freedoms and human rights.

- The corporate responsibility to respect human rights.

Companies as organs of society are required to comply with the law and respect human rights

- Access to remedy.

By stating the need for obligations and rights to be matched by appropriate and effective remedies when breached.

In summary, what these principles mean is that the state has an obligation to protect these fundamental freedoms, the company as an organ of society should respect them and if not, provide easy access to a remedy.

5.1. States Duty to Protect Human Rights

The first one here doing something immoral is the Chinese government. According to its constitution, the state respects and protects human rights, guaranteeing freedom of expression in Article 35. Furthermore, according to the UN Guiding Principles, the state is not fulfilling its obligation, and even less is it ensuring that companies domiciled or generating income on its territory do so as well. According to this same principle, the state should “exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights” and “promote respect for human rights by business enterprises with which they conduct commercial transactions”. As expected, the Chinese government does not follow these ethical principle.

5.2. The Corporate Responsibility to Respect Human Rights

Businesses should respect the basic and internationally recognized human rights, and these are expressed in The International Bill of Human Rights and the principles

concerning fundamental rights set out in The International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

First of all, Google violated the Global Online Freedom Act of 2006. It is illegal to any business in the United States to locate "user identifiable" data in any "internet restrictive country", in this case China, and demands companies to be transparent about the material that the restrictive country is claiming to censor.

In second place, the argument that Google is doing something immoral is based on Article 19 of the Universal Declaration of Human Rights, which 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."

In third place, according to UN principles, Google also failed to respect these human rights when it developed Google.cn in 2008 and, even worse, Dragonfly years later in 2018. True, they do not have an "obligation" like the state does, but they do have a corporate responsibility. They do have to comply with the rules and respect human rights, but again, there are no rules in the Chinese constitution that allow human rights abuses. The UN Guiding Principles state that enterprises should "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur" and "Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

One of the foundational sub-principles of this second part, The Corporate Responsibility to Respect Human Rights, states that "The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts". The means by which companies fulfil their responsibility to respect human rights will be proportionate to, among other things, their size. A company the size of Google, whose actions will be the steps followed by many other companies, should be a promoter of ethical and exemplary behaviour. In the data and technology era, Google is a leading company that must set an example for other small and medium-sized

enterprises. This is why the secret project of wanting to bring the new Dragonfly search engine to market is so contemptible. Google's corporate complicity sends a message to the rest of the companies in the same sector which will think "If Google has done it, so can we", instead of being the example to follow.

Another sub-principle within this section talks about how, in order to identify and prevent problems within the sphere of human rights violations, companies should carry out "human rights due diligence". This process of human rights due diligence, according to the UNGPs, should include an assessment of the real impact that their actions would have on the protection of human rights, follow-up of cases and ensuring that there is good communication on how to address the impact. The United Nations states that this concept should cover adverse human rights impacts that the enterprise may cause or that may be linked through its activities, which should vary depending on the size of the enterprise and the risk of the impact, and that this should not be the same every time, but should be modified over time as the operations and context of business operations change. Clearly, Google did not carry out this process. If there were a statement that indicated that process should be carried out, Google would have done so and would have prevented employee strikes, bad reputation and loss of money trying to enter a market they would eventually leave.

One of the sub-principles of the second principle, The Corporate Responsibility to Respect Human Rights, talks about companies establishing a Policy Commitment within the company that is supported by management, stipulating the expectations of employees, colleagues and activities directly related to the company, regarding human rights. This should be public and communicated internally and externally, reflecting in all the company's operations the corporate ethics discussed in the statement. Google has no such thing, so it does not comply with this sub-principle. After the two scandals in China for being complicit in the censorship that the Chinese government wants to impose upon its citizens, this measure should be considered. Google should be an example to follow given its size and influence.

An example of a company that complies with this would be Ferrovial. The Corporate Social Responsibility section of the company is based on four pillars, one of which is the protection of human rights. On its website, Ferrovial refers to the Universal

Declaration of Human Rights, communicating its responsibility and commitment to defend human rights. Since 2014, the company has had a specific human rights policy in line with its Business Ethics Code, The Principles of the United Nations Global Compact, the United Nations Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights, the OECD guide for multinational companies and the standards of the International Labour Organization.

Ferrovial not only guarantees compliance with human rights, but also promotes their dissemination, extending its commitment to the entire value chain.

Since 2017, the enterprise has had its own Ethical Channel, which has many points related to human rights, allowing users to report discrimination or abuse practices in any of the countries in which the company operates.

The company carries out an ongoing analysis of the social and environmental impact of its activities. In addition, all of its acquisitions are subject to a comprehensive analysis process to ensure compliance with our policies on Human Rights, Corporate Responsibility and the Code of Business Ethics.

Ferrovial is committed to the 31 principles of the National Business and Human Rights Action Plan developed by the Spanish Government.

5.3. Access to Remedy

According to the UNGPs, “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Google did one thing right in 2010, and that was to abandon its activities in China.

Anyhow, eight years after leaving the Chinese market, Google secretly develops its second search engine adapted to the Chinese government's requests for censorship.

Two sub-principles within this principle state that “business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted” and “Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available”.

Google did nothing to remedy the damage caused by its cooperation with the communist regime. What Google could have done was:

- Reaffirm their belief in freedom of expression, which is one of their core values according to the company.
- Work with other companies in the same sector to develop a common code of conduct for all companies to adhere to. Here I allude to the size and power that Google has within the industry: if Google takes the first step, other companies will follow.

It is believed that Internet companies should draw a much clearer line between ethical and unethical corporate practices and should revise their operations in countries where governments censor the Internet openly. If they cannot do so, concerned citizens around the world should use their power as consumers and investors to demand a commitment by internet and technology companies to respect and uphold the fundamental human rights of their customers.

The Chinese user, like many other customers in the world, attaches great importance to transparency and truthfulness. In addition, the way in which companies treat customers in a particular country can have a great impact on the company's overall image.

The truth is that there need not be only two options; to continue doing the same, having as an ally a government that violates human rights, or to leave the country. Companies should make ethical choices about the goods and services they sell to Chinese citizens and how this is delivered. So far, none of these companies have spoken publicly about the competitive advantages over Chinese competitors. In the long term, user loyalty will depend on the level of trust placed in the company.

Google has been complicit with the Chinese government in censoring political or religious material. Of course, other multinationals have also been involved with the Chinese Communist Party by complying with party's demands without the companies standing in the way or taking the opposite view. However, this case is one the most famous and best publicly documented.

Google did not publicly clarify which Chinese laws they are violating exactly, nor which words or websites are censored. Therefore, it is impossible to verify the company's excuse that they were only following Chinese laws.

In addition, any regulation should be accompanied by efforts made by the companies, government representatives and international bodies to lobby against all those Chinese

laws, or any other oppressive government, that force companies to censor many of their materials. If this were the case, the Chinese market would become a playing field in which companies would not compete on commercial merits, but on their level of cooperation with a Leninist communist party.

6. RECOMMENDATIONS

There are many ways to improve the protection of human rights worldwide:

6.1. Integrating Human Rights into Company Operations:

The last decade has seen a great deal of involvement by big corporations in the human rights field, with great benefits for workers, businesses and communities. The next step is for SMEs to be involved in the same way. In the current scenario, many stakeholders

are beginning to understand the risks, challenges and opportunities hidden within this issue. The UN human rights council's endorsement of the Guiding Principles on Business and Human Rights in 2011 represents the greatest progress made in this field. The last decade has seen a great deal of involvement by big corporations in the human rights field, with great benefits for workers, businesses and communities. The next step is for SMEs to be involved in the same way. In the current scenario, many stakeholders are beginning to understand the risks, challenges and opportunities hidden within this issue. The UN human rights council's endorsement of the Guiding Principles on Business and Human Rights in 2011 represents the greatest progress made in this field. Many companies are seeing this as an opportunity to retain their employees, increase the number of customers and to satisfy their investors. In addition, the negative impact of bad practices in the arena leaves the company in a very bad position, with respect to its reputation and risking legal or financial consequences, in addition to losing customers.

Sometimes it is difficult for enterprises to move from intention to action. This is why these six best practices have been established, along with the UN Guiding Principles, so that companies can also respect and include human rights more easily in their practices (Lee & Vali, 2018):

1. Identify the risks that may exist within your company, understand the impact it may cause and assume responsibility.
2. Educate employees by ensuring that they are aware of the basic principles so that they can better integrate them into the company's daily practices.
3. Communicate publicly the company's involvement in the area of human rights through a statement or company policy.
4. Integrate human rights into existing business systems and processes.
5. Be transparent when communicating with stakeholders. Share risks and challenges with them.
6. Provide remedy: create an adequate remedy where the company has caused harm.

6.2. The Declaration on the Universal Rights and Duties of Business

A good idea would be to publish and promulgate a declaration for companies that is comparable to the Universal Declaration of Human Rights. Something like a corporate version of the declaration. The suggested name would be “The Declaration on the Universal Rights and Duties of Business.” (Hoffman & McNulty, 2019). This is

becoming increasingly necessary, since a common framework is needed for all those companies in the world. It is not enough to criticize the companies for being morally corrupt. As I stated previously in this document, a company cannot be a rule-maker, what can they do if they have to operate at a country with poor human rights? How can they assure that they are doing the right thing? Is there some kind of guidance? This is why it is necessary to establish recognized and authoritative rules in the form of a declaration in order to guide companies and to exert pressure in the right direction.

6.3. The International Arbitration Tribunal for Business & Human Rights

It is important to notice the absence of an established international law (Payne & Pereira, 2016). The lack of an international law established specifically for corporate complicity limits international pressure for justice. Local judicial institutions feel very little international pressure, nor can they use international law to advance the case in domestic courts. An increasing number of lawyers, business and human rights advocates are calling for the creation of an international tribunal for corporate cases. Relying again on the United Nations Guiding Principles, on which I have based my Ethical Review, there are three fundamental pillars, with particular reference to the third: access to remedy. This would be the pillar that an International Arbitration Tribunal would address. As already mentioned, criminal courts are generally not empowered to regulate human rights abuses, as the remedy for such violations is nearly always financial restitution in the contrary to criminal sanctions. On the other hand, civil courts could do better, but they will be faced with many delays, judges and lawyers unfamiliar with human rights norms and, above all, issues of extraterritorial jurisdiction. This last point is significantly important as most abuses occur in developing countries with poor and underdeveloped judicial systems. Victims of human rights abuses have little or no access to justice. This is why these cases should be dealt with on an international basis, where the victims may have remedies and resources. "The International Arbitration Tribunal for Business and Human Rights" would be the ideal place to address these issues. It would be a neutral place with experienced actors in the field. Mediators would know what possible claims, sanctions, and processes to follow, and they would be able to avoid the ambiguous outcome of a trial for multinationals (Cronstedt & Thompson, 2015).

There is very little international pressure to meet the established human rights standards (Kaleck & Saage-MaaB, 2010). To begin with, none of the United Nations procedures for reporting human rights violations has a mandate to monitor the activities of companies as such. There is one exception; the International Criminal Court (ICC), however, has no place at the international level to report the acts of individual corporate officers, nor does it have jurisdiction over legal entities. Moreover, regional human rights courts have no jurisdiction over corporate legal entities or individual corporate officers. It is true that the ICC can judge the participation of companies in international crimes, judging individuals individually, however, due to the limited capacity of the court, it can only deal with a small fraction of international criminal cases. This is why the Court focuses on the individuals directly involved in the crimes. Since corporate officials often only play a support role and are also often located at a considerable distance from the crime scene, they are not considered a priority in the legal strategy of the Office of the Prosecutor to date.

Other international standards have been developed in the field of human rights and business, such as: The Conventions of the International Labor Organization (ILO) and the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD). However, these standards are not binding and are known as so-called "soft law".

7. CONCLUSION

Expectations of companies to use their influence for doing good are growing. Still, civil conflicts and cases of human rights violations have been a great dilemma, with which very few companies have been able to deal with. It is true that a company will not usurp the role of government but its influence on the global political economy and their presence affects the societies in which they operate. As stated in the Universal Declaration of Human Rights, organs of society -such as enterprises- should respect and promote the rights and freedoms of individuals.

Consequently, if they do not respond adequately to conflicts where human rights are being violated; their reputation will be seriously damaged. For the first time in modern history there is a pattern to be followed regarding international values that can guide companies under certain situations. This is also important for companies because their primary mission - to create value, provide goods and services, and obtain a financial benefit - will be affected by the acceptability they have in the international community in which they perform. In the era of hyper-globalized economies, it is important for multinationals to fight against human rights violations. As it should be, the greater the economic development, the more regulation there is to protect human rights. There are still barriers to be destroyed and measures to be implemented, such as the three recommendations described above.

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