

The International Human Rights Movement: How Should Archivists Respond

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ABSTRACT

This paper surveys the principal documents supporting human rights, internationally, and briefly discusses the source documents which would help to direct archivists in conforming their work to human rights principles. The survey starts with the origins of the human rights movement in the Enlightenment, and in somewhat more detail in the period since the Second World War. It comments on the basic relevant documents, especially the Universal Declaration on Human Rights (1958), the Universal Declaration on Archives (2011) and the Principles of Access to Archives (2012). There are additional comments on international developments, including the International Court of Human Rights, the International Criminal Courts, and the various Truth and Reconciliation Commissions in certain countries. The effects of data privacy laws and Freedom of Information laws are noted. The general conclusion is that most archives services (and not only those of central or provincial governments) hold materials whose management is or should be affected by human rights provisions, and that therefore there is a need for specific training in the subject.

Key words: Universal Declaration on Human Rights, Universal Declaration on Archives, access to archives, International Criminal Courts, Truth and Reconciliation, data privacy, freedom of information

Il movimento internazionale dei diritti umani: come dovrebbero rispondere gli archivisti

SINTESI

Il presente lavoro analizza i principali documenti a sostegno dei diritti umani a livello internazionale e parla brevemente dei documenti originali, che dovrebbero contribuire a guidare gli archivisti nel loro lavoro sui principi dei diritti umani. L'indagine inizia con le origini del movimento per i diritti umani nell'Illuminismo e va un po' più nel dettaglio nel periodo dopo la seconda guerra mondiale. Vengono commentati i relativi documenti fondamentali, soprattutto la Dichiarazione universale dei diritti dell'uomo (1958), la Dichiarazione universale sugli archivi (2011) ed i Principi di accesso agli archivi (2012). Ci sono ulteriori commenti sugli sviluppi internazionali, tra cui il Tribunale internazionale dei diritti umani, il Tribunale penale internazionale e le varie Commissioni per la verità e la riconciliazione in alcuni Paesi. Sono noti gli effetti delle leggi sulla privacy dei dati e le leggi sulla libertà d'informazione. La conclusione generale è che la maggior parte dei servizi archivistici (e non solo quelli delle amministrazioni centrali o locali) detengono materiali la cui gestione è o dovrebbe essere influenzata dalle disposizioni sui diritti umani, e che pertanto vi è bisogno di una formazione specifica in materia.

Parole chiave: dichiarazione universale sui diritti umani, dichiarazione universale sugli archivi, accesso agli archivi, Corte criminale internazionale, verità e riconciliazione, riservatezza dei dati, libertà d'informazione

Mednarodno gibanje za človekove pravice: kako naj se na to odzovejo arhivisti

IZVLEČEK

Ta prispevek daje pregled nad najpomembnejšimi dokumenti, ki podpirajo človekove pravice na mednarodni ravni, in na kratko razpravlja o izvornih dokumentih, ki bi arhivistom pomagali pri usklajevanju njihovega dela z načeli človekovih pravic. Raziskava se začne z nastankom gibanja za človekove pravice v razsvetljenstvu in nadaljuje, nekoliko podrobneje, v obdobju po drugi svetovni vojni. Pojasnjuje nekatere osnovne dokumente, zlasti Splošno deklaracijo o človekovih pravicah (1958), Splošno deklaracijo o arhivih (2011) ter Načela dostopa do arhivskega gradiva (2012). Prav tako daje dodatne pripombe na mednarodne dogodke, vključno z Mednarodnim sodiščem za človekove pravice, Mednarodnim kazenskim sodiščem ter raznimi komisijami za resnico in spravo v nekaterih državah. Opozarja na zakonodajo o varstvu osebnih podatkov in o pravici do dostopa do informacij. Splošna ugotovitev je, da večina arhivov (in ne le tisti, centralnih ali deželnih vlad) hrani

arhivsko gradivo, na upravljanje katerega vplivajo ali bi morale vplivati določbe o človekovih pravicah, in da zato obstaja potreba po posebnem izobraževanju na tem področju.

Ključne besede: Splošna deklaracija o človekovih pravicah, Splošna deklaracija o arhivih, dostop do arhivskega gradiva, Mednarodno kazensko sodišče, resnica in sprava, zasebnost podatkov, svoboda obveščanja

During most of my career, I have been accustomed to hearing people declare that we are living in the information age. I have never found this observation of much value until 2013, when two most significant events occurred: Wikileaks and the Edward Snowden revelations. Both of these, and particularly the Snowden adventure are directly relevant to us. Once we understand that everything we write or speak is open to surveillance in another country, we can for the first time begin to see ourselves as information workers in an information age. We both create information and store information created by others, much of it very sensitive; we do both in an environment of global availability, and we understand that nothing, whether saved or active, is truly private, but that the rules of openness and privacy are paramount in our work.

We also live in a cultural atmosphere that is global, contains universal rules and applications, and is developing. This culture began with the movement called the Enlightenment. It began emerging in the middle of the 18th century, and took explicit form during the two great revolutions of that century - the American one in 1776, and the French one in 1789. These events, and the documents that were produced by them, began the process, which still continues, and is still developing new documents, laws and protocols. The important step was the acceptance that every human being had rights which were (in principle) enforceable at law, and which could be codified. The process of codification began quite quickly (with the First Amendment to the American Constitution) but then lapsed for a long time¹. The process began again at the end of the Second World War, and has proceeded rapidly ever since.

From this point, I will deal only with those documents that directly impinge on archives work (though indeed no human right can be defended except by recourse to documentary evidence of some kind).

The basic document is of course the Universal Declaration on Human Rights (UDHR), passed by the United Nations in 1958². There is a Human Rights Council that meets in Geneva, and many institutions and movements refer to the Declaration³.

A detailed analysis of the implications of this standard is set out in a series of the monthly newsletters of the Human Rights Working Group of the International Council on Archives (ICA/HTWG)⁴. The series starts in March 2008. An indication of some of its contents follows.

Article 1 of UDHR states that all human beings are born free and equal. Consequently, records of birth registration and citizenship are vital to support this principle. The case of Haiti is cited as an example, where many of these records were lost in the earthquake, and individuals suffered directly in consequence. By extension, all records that give personal information may fall under this article. Such documents exist in all countries. The link between the archives service and the registration of vital statistics is explicit in some countries and should be clarified in all⁵.

Article 6 of UDHR sets out the principle that every individual has the right to recognition as a person before the law. This therefore bears on the records dealing with migrant workers, and the disabled, among others. Article 16 states that the family is the basic unit of society. Article 17 deals with the right to own property, and article 22 gives the right of access to social security provisions. All of these have archival implications.

1. Retrieved from <http://civilliberty.about.com/od/firstamendment/tp/First-Amendment.htm>.

2. Retrieved from <http://www.un.org/en/doc>.

3. Retrieved from <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx#uments/udhr/>.

4. Retrieved from <http://www.ica.org/?lid=12315&bid=1082>.

5. For example in Scotland, where an amalgamation of the National Archives with the civil registration body is now entitled the National Records of Scotland.

The whole Declaration is of course couched in very general language, and at first glance, it might seem that it (like so many broad legal statements) skates over archival questions unconsciously. Probably those who framed the document were not in fact conscious of these questions. However, read by an archivist with open eyes the professional implications are clear, and concern archivists working in all sectors of society, including those working with private archives. It would seem desirable that the UDHR, together with the other documents that derive from it, should form an explicit part of professional formation for archivists and records managers.

UDHR has given rise to a number of initiatives; in fact, so many that it is not possible to set them all out here. Probably the most important for us are the publications of the ICA/HRWG. The monthly newsletter (referred to above) has been published on the internet since July 2010. It is available from the ICA website, but it is possible to join the group that receives it directly by email. This important source of information is principally the work of Trudy Peterson, but she receives information from a wide network of informants worldwide. Clearly, it is also possible for any of us to send in information.

The newsletter has developed a standard format. There is an introductory section in which there is comment on a currently hot issue. For example, the issue for February 2014 discusses the problems involved in recovering, preserving and giving access to the records of political repression. After this, there is a section dealing with international news (in the issue of 2/2014 this included the question of recording the deaths of children in the Syrian civil war). Following this two sections deal with bilateral and multilateral events (those which concern two or more countries or a region), and then items listed country by country. A very wide range of countries is always included. Thus in the issue for March 2014 the list includes references from Bosnia and Serbia (war crimes cases), and Slovenia (destruction of police records). Coming at the end of the alphabetical sequence, there is usually a long list from the USA.

ICA/HRWG has projects to develop professional standards in its area. It has published the Basic Principles of the Role of Archivists in Support of Human Rights⁶. There is an application of ISAD(G) for HR archives⁷. There is a Human Rights Archives Directory⁸.

Next in importance perhaps is the organisation known as Swisspeace⁹. Founded in 1988, this body researches archives dealing with past conflicts. It aims to be a hub, providing support for governments, international organisations and NGOs on the protection of archives that document human rights violations. It runs several projects, which currently include the former Yugoslavia.

The Human Rights Watch (HRW) was established in New York, and is largely funded by the Soros Foundation, which has also been significant in other archive projects, notably the Open Society Archive in Budapest¹⁰. HRW publishes an annual world report, both in printed text and on the internet. The latest issue, for 2014, includes a commentary on the surveillance carried out by the American National Security Agency. This issue also introduced, for the first time in this series, a discussion on the general question of data protection.

The Centre for Peacebuilding also deals with violations against UDHR and publishes a newsletter¹¹. It is currently running a project, which employs archivists to assemble documentation on the Marcos regime in the Philippines. Other projects range widely round the world. This is another organisation that could be approached by archivists facing problems of documenting troubles in their own country.

The UDHR was itself a product of the movement towards the creation of international government agencies, headed by the United Nations. Other international groupings (apart from Unesco) such as the Council of Europe, the European Union and NATO have influenced the way archivists

6. 16 November 2011, Available from ICA/HRWG.

7. Retrieved from <http://www.ica.org/3331/resources/archives-and-human-rights-resources.html>.

8. Retrieved from <http://www.hrarchives.org/>.

9. Retrieved from <http://www.swisspeace.ch/>.

10. Retrieved from <http://www.hrw.org/>.

11. Retrieved from <http://www.cpbinternational.org/>.

work. Very significant for them has been the establishment of international courts of law. In Europe, the European Court of Human Rights is an obvious case¹². The network of International Criminal Courts is in the process of developing laws bearing upon archives¹³. When these courts are involved, there is work-identifying records, bringing them into manageable situations, making them available to participants, and subsequent preservation. The section of the court dealing with the genocide in Rwanda, for example, has raised questions about granting access to populations divided by terrible experiences – but these archives clearly belong, in a real sense, to the people who suffered. The ICC, in its various branches, has established the practice of employing professional archivists.

As so many countries experienced repressive regimes during the 20th century, it is not surprising that many of them have set up various kinds of enquiry, with published reports. The archetype is perhaps South Africa, which as is well known, established its Truth and Reconciliation Commission at the end of the apartheid regime there¹⁴. With its sessions held in public and chaired by Archbishop Tutu, this Commission has in many ways set standards for the world. Its proceedings have included many matters of concern to archivists: the preservation and management of records, publication of findings, giving access to the families of victims and modifying national archival laws. Many countries, widely spread through the world, have set up similar commissions, including some, like Canada, that have not undergone repressive government but which have had problems, historically, with the treatment of minorities¹⁵. The archival implications are obvious.

The Truth and Reconciliation movement has given rise to, or reinforced, two legal principles that have become dominant in the world: data protection and freedom of information. Both of these have had revolutionary effects on the management of archives. In particular, in countries where T&R Commissions have operated, it has been necessary to amend the archives law; in those of them in which the archives as an institution has been weak or side-lined, it has been necessary to reinforce the legal powers of the archives over the records of government, police and security agencies.

In Europe, Data Protection Law is based on the Council of Europe Convention 108, case law at the European Court of Human Rights and the Court of Justice of the European Union¹⁶. Under the Treaty of Lisbon 2009, all member countries have had to modify their own laws¹⁷. This area has already had profound effects on archival practice, and has a bearing on fundamental professional procedures: appraisal and access. Further developments are now to be expected from the Snowden revelations. “Metadata absolutely tells you everything about somebody’s life” (Rusbridger, 2013).

Freedom of Information law has also been adopted, or is in the process of being adopted, by a very wide range of countries¹⁸. In the UK, it was introduced in 2000, by the government of Tony Blair, who notoriously subsequently denounced it as a terrible mistake. Despite this view, the way it has been established in the UK demonstrates some of the features that best show its potential impact on archival practice. The law gives the right of access to government records to anyone who makes a request, irrespective of date (there are of course exceptions for records of official security or commercial confidentiality). Government departments are obliged to make the records specified available; if they refuse, there can be an appeal to the Information Commissioner, or, as a second stage, to the Information Tribunal¹⁹. The Information Commissioner is empowered to levy fines for non-compliance, and such fines are in fact often imposed. All requests and their outcome are in the public domain, and details are regularly published on the website. This aspect is essential to the successful working of FoI. Countries (there are several) that introduce FoI legislation without providing for (a) an infrastructure of records management, and (b) a power of enforcement, will inevitably find that the law is ineffective. Failure to find a record negates the whole operation. FoI often explicitly extends to categories of private records.

12. Retrieved from <http://www.echr.coe.int/Pages/home.aspx?p=home>.

13. Retrieved from http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx.

14. Retrieved from www.justice.gov.za/trc. See also the *Proceedings of the International Conference of the Round Table*, Cape Town, 2003, <http://www.ica.org/?lid=3715&bid=225>.

15. Retrieved from www.trc.ca/.

16. Retrieved from http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm.

17. Retrieved from http://ec.europa.eu/archives/lisbon_treaty/index_en.htm.

18. Retrieved from <http://www.pdpjournals.com/overview-freedom-of-information>, passim.

19. Retrieved from www.informationtribunal.gov.uk/.

All these developments of course deeply affect the basic operations of an archive service. Because of their general application, the first change is that procedures become driven, or at least affected, by international developments. Consequently, the role of the ICA in developing standards becomes more essential. We are now long accustomed to the ICA's work in connection with archival description. The next important development has been the publication of the Principles of Access to Archives (2012)²⁰. This document refers to two previous ones: the Universal Declaration on Archives (2010), and the Code of Ethics (1996)²¹. All such documents are necessarily conservative rather than radical, because they have to fit the circumstances of a variety of users; but nevertheless, the Principles insist on the equal right of access by all persons, the special rights of access by persons specially interested, the obligation of archivist to give and promote access, and the right of archivists themselves to have access to all records in their jurisdiction, however sensitive. It is interesting to see some of the effects in the UK, where the date of transfer of government records to the National Archives has been reduced from 30 to 20 years, but where even this date restriction is rendered ineffective by the FoI laws²².

The principles of access are therefore an essential document in the construction of an archival training curriculum. Equally, essential as a topic, but without authoritative documentation, is the question of appraisal. If the theory and application of access principles are based upon human rights, because they apply across the board to all potential users, then the selection of materials to be included in the archives must no less be of general application.

The purpose of this paper is to put forward the suggestion that archival training should always include a central module based upon human rights legislation and practice. It has discussed some of the ideas and documents that underlie this subject. As a final thought, I would like to add that the principles that belong to human rights are not confined to official archives. Private archives are in some respects administered differently from official ones, but it is important to recognise that human rights considerations apply equally urgently to them.

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SUMMARY

This paper surveys the principal documents supporting human rights, with a view to their possible use in structuring archival education. This element in such education is shown to be increasingly important by the recent revelations by Wikileaks and Edward Snowden. Human rights as a formal judiciable subject originated in the Enlightenment, and were first formulated in the American and French Revolutions. Since then there has been further elaboration in the form of formal documents and judicial institutions. The basic document is the Universal Declaration on Human Rights (1958), supported by a Human Rights Council. Several articles in the Declaration directly refer to archives and have implications for archival practice. These are reported monthly in the ICA's Human Rights Working Group newsletter (from 2010), available through the International Council on Archives (ICA). This group has also published the Basic Principles of the Role of Archivists in support of human Rights, and an application of ISAD(G) for use in connection with human rights. An important organisation is Swisspeace (1988), which investigates notable breaches of human rights, and there are also the Human Rights Watch and the Center for Peacebuilding, which publish annual reports bearing upon violations and the relevant archives. International organisations have been established to enforce human rights, under the aegis of the United Nations, the European Union, the Council of Europe and NATO. The European Court of Human Rights and the International Criminal Courts are influencing professional practice in archives. Many countries have set up Truth and Reconciliation Commissions, which directly influence archival legislation. Freedom of Information and Data Protection laws have been widely introduced, and these provide structures for archival appraisal and access. The ICA has developed the Principles of Access to Archives (2012), and this relates to its Code of Ethics (1996). These documents and practices are increasingly affecting national legislation and methods. These documents and the practices that underlie them could and should form the basis of an important stream in archival formation.

Typology: 1.02 Review article

Submitting date: 14.01.2014

Acceptance date: 07.02.2014