

Conference Report

Securing Archives at Risk

Conference held on 1 October 2015, Bern, Switzerland

swisspeace, November 2015

in collaboration with



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Directorate of Political Affairs DP
Human Security Division:
Peace, Human Rights, Humanitarian Policy, Migration

Federal Department of Home Affairs FDHA
Swiss Federal Archives SFA

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Schweizerische Friedensstiftung
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Swiss Peace Foundation

Introduction

The conference “Securing archives at risk” was organized on 1 October 2015 in Bern, Switzerland by swisspeace in collaboration with the Swiss Federal Archives (SFA) and the Swiss Federal Department of Foreign Affairs (FDFA) in the scope of their joint [“Archives and Dealing with the Past” project](#).

This project provides support to actors in the field of dealing with the past related to the protection, preservation and management of human rights archives (namely, records and archives containing information on violations of human rights and international humanitarian law, which are relevant for dealing with the past mechanisms and processes, see Glossary). One of the goals of the project is to convene experts, policy-makers and other interested actors to stimulate discussions on relevant topics, and to capitalize on the experience accumulated in the mentioned fields.

The conference addressed the topic of the protection, security and access to archives relevant for dealing with the past, which are at risk. It aimed at understanding the risks associated with archives that contain information on violations of human rights and international humanitarian law; to understand the current national and international legal standards; and to identify what can be done in the respective contexts and if needed, in cooperation with other actors to protect, secure and give access to such archives. It is important to mention that the subject of the conference was not limited to formal archives¹ but included all documentation that could be relevant for dealing with the past and transitional justice, even if not contained in a formal archive.

The conference was introduced by a message of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence Pablo de Greiff, followed by the keynote speech of the Executive Director of the Syria Justice and Accountability Centre, Mohammad Al Abdallah who shared the challenges and lessons learnt from Syria regarding the protection, security of and access to archives for dealing with the past. The subsequent sessions focused on identifying (1) the current nature of risks and the national and international legal standards for the protection, security of and access to archives at risk (2) local and national solutions and (3) the complementary solutions to protecting, securing and giving access to archives at risk, whenever solutions at local or national level are not sufficient or possible. These topics were addressed by renowned experts from different fields of expertise such as archives, emergency response, human rights law, international humanitarian law, information technology and policy-making, working at the local, national, regional and international level, including speakers from Egypt, Hungary, Iraq, Lebanon, Syria and Zimbabwe.

The conference brought together a diverse group of actors from governments, international organizations, academia, and civil society. A total of 105 people participated in the conference.

This report aims at summarizing the main findings of the conference, and at presenting recommendations to different actors who could play a role in securing archives at risk. It does not follow the program of the conference and the panels, but is structured along thematic lines. This report also includes expert input from a closed follow-up expert workshop that took place on 2 October 2015 at swisspeace and a round of consultation with experts on the draft text. The following experts (in alphabetical order) have kindly provided their valuable inputs and we would like to thank them: Mohammad Al Abdallah, Executive Director of the [Syria Justice and Accountability Centre \(SJAC\)](#); Monika Borgmann, Board member of [UMAM](#); Saa'd Eskander, former Director General of the [Iraq National Library and Archives](#); Trudy Huskamp Peterson, archivist and Chair of the [ICA Human Rights Working Group](#); Gabriella Ivacs, Chief Archivist of the [Open Society Archives](#); Anne-Marie La Rosa, Lawyer and Senior Diplomacy Advisor with the Legal Division of the International Committee of the Red Cross ([ICRC](#)); Maria Liouliou, Project Coordinator at the [UNESCO Memory of the World Programme](#); Andreas Nef, archivist at [docuteam](#); Serge Rumin, Deputy Head of the Taskforce Dealing with the Past and Prevention of Atrocities of the [Human Security Division](#) of the Swiss FDFA; Brigitte Troyon, Head of the Division Archives and Information Management of the [ICRC](#).

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The contents of this report do not necessarily reflect the views of the FDFA or the SFA.

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List of abbreviations

| | |
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| FDFA | Federal Department of Foreign Affairs |
| ICA | International Council on Archives |
| ICRC | International Committee of the Red Cross |
| IHL | International humanitarian law |
| SFA | Swiss Federal Archives |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |

Glossary

| | |
|---|--|
| active / current records | Records that continue to be used with sufficient frequency to justify keeping them in the office of creation; Note: The frequency of use that qualifies records as current is subjective. The distinction between active and inactive records attempts to relate the costs of storing records in the office against the costs of retrieving them from off-site storage. If records continue to be active, the cost of frequent retrieval from off-site storage will negate any savings in office storage. ² |
| archives/archive | - 1. Materials created or received by a person, family, or organization, public or private, in the conduct of their affairs and preserved because of the enduring value contained in the information they contain or as evidence of the functions and responsibilities of their creator, especially those materials maintained using the principles of provenance, original order, and collective control; permanent records. - 2. The division within an organization responsible for maintaining the organization's records of enduring value. - 3. An organization that collects the records of individuals, families, or other organizations; - 4. The professional discipline of administering such collections and organizations. - 5. The building (or portion thereof) housing archival collections. - 6. A published collection of scholarly papers, especially as a periodical. ³ |
| born digital | Information created in electronic format; Note: Born-digital information is distinguished from digitized information, the latter describing a document created on paper that has been scanned (and possibly transformed into character data using OCR). A document created using a word processor may be described as born digital. ⁴ |
| curator | An individual responsible for appraising, acquiring, arranging, describing, preserving, and providing access to a collection of original documents; used as a synonym for archivist. ⁵ |
| documentation | Materials created or collected to provide facts for reference, especially when created to substantiate decisions, actions, or events. ⁶ |
| human rights/dealing with the past archives | For the purpose of this report, this term describes widely, records and archives containing information related to violations of human rights and international humanitarian law, which are relevant for current or future dealing with the past mechanisms and processes, including informal archives pertaining to non-state actors. |
| provenance | 1. The origin or source of something. - 2. Information regarding the origins, custody, and ownership of an item or collection; Note: Provenance is a fundamental principle of archives, referring to the individual, family, or organization that created or received the items in a collection. The principle of provenance or the <i>respect des fonds</i> dictates that records of different origins (provenance) be kept separate to preserve their context. ⁷ |

1 Main issues raised during the conference

1.1 Archives containing information associated with violations of human rights or international humanitarian law face diverse threats.

All types of archives can face the kinds of threats, both man-made and others, which are listed below, independently of whether they are government or non-governmental records, and including religious archives, archives of hospitals, morgues or schools, for the following reasons:

- **Armed conflicts and/or contexts of repression and authoritarian regimes** constitute a serious risk to archives and records. This is especially true for archives bearing witness serious human rights violations and breaches of international humanitarian law, which can potentially be used for accountability mechanisms. Further, there is a special risk in situations of a **power vacuum** created during and in the aftermath of armed conflicts or during the fall of an authoritarian regime⁸ (e.g. representatives of a former government destroying their own archives, etc.).
- The evolving nature of conflicts towards increased internal, inter-religious or inter-ethnic conflicts with non-state armed actors who often do not respect the rules of international humanitarian law raises **increased threats in terms of attacks on cultural property, including archives.**
- **Natural hazards** (e.g. flooding and earthquakes), including the rising of the sea level due to climate change, represent a threat to archives, for instance in the context of small island nations in the Pacific.
- **Lack of resources**, both financial and of personnel, which lead to inappropriate preservation measures, improper storage and inadequate use, may also damage archives. Technological obsolescence also constitutes a factor of destruction or loss of archives.

Different forms of threats require different and adapted answers at different policy and operational levels. Some potential solutions and preventive measures are discussed in the following sections.

1.2 A legal framework for the protection and security of archives at risk exists at the international level but its application is limited, it needs to be strengthened and its implementation at the local and national levels needs to be improved.

At the international level, a specific legal framework is in place for the protection of cultural property, including archives, in times of armed conflict. This mainly includes:

- The 1954 United Nations Educational Scientific and Cultural Organization (UNESCO) **Convention for the Protection of Cultural Property in the Event of Armed Conflict**⁹ (1954 Convention) and the two additional Protocols dating from 1954 and 1999¹⁰. However, applying a broad understanding of archives, not all documentation relevant for dealing with the past can be defined as “cultural property” under the 1954 Convention and its protocols¹¹.
- The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.¹² Nevertheless, the international convention does not cover all ways of illegally transporting archives out of a country and is also limited in its scope of application to documents, records and archives that qualify as “cultural property”¹³. The rule that the occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory is considered a norm of international customary law.¹⁴
- The **UNESCO Draft Recommendations concerning the Preservation of, and Access to Documentary Heritage in the Digital Age**¹⁵, constitute the most recent effort to complement this legal framework. These Draft Recommendations raise the issue of documentary heritage at risk, encouraging member states to take **preventive measures**. The draft was submitted to the UNESCO General Conference for consultation at its 37th session in 2013.

Additionally, international humanitarian law offers protection to archives at risk in situations of armed conflict:

- The **general protection of civilian objects in international humanitarian law** covers archives as long as they do not qualify as military objectives and thus fall under the definition of civilian objectives according to Art. 52 to Additional Protocol I to the Geneva Conventions.¹⁶ In this legal framework, intentionally attacking civilian objects is not only a violation of international humanitarian law but constitutes a grave breach and therefore qualifies as a war crime.¹⁷ The **principle of distinction** between civilian objects and military objectives is considered to be a norm of customary international law applicable in both international and non-international armed conflicts.¹⁸ However, some archives that contain potentially incriminating material may be defined by international humanitarian law as military objectives and are thus not protected.
- Specific rules apply with regard to the responsibility of occupying powers under the law of occupation.¹⁹
- International humanitarian law also obliges the parties to the conflict to take **all feasible precautions to protect civilian objects under their control** against the effects of attacks, which should be established not only in times of armed conflict but also in times of peace in order to prevent the destruction of archives.²⁰ These obligations are considered to be customary international law, both in international and non-international armed conflicts.²¹
- Further, states are obliged by international humanitarian law to maintain, and as a consequence to preserve and protect lists of detainees in prisons and other detention centres.²² The rule that the **personal details of persons deprived of their liberty must be recorded** is considered “a norm of customary international law applicable in both international and non-international armed conflicts.”²³

At the **international policy level**, the United Nations is increasingly condemning the targeting of cultural heritage sites and the illicit trafficking of cultural heritage (e.g. 2015 UN Security Council Resolution 2199²⁴, §15-17), yet it falls short of qualifying these acts as international crimes. Furthermore, not all documentation and archives of interest for dealing with the past may here again qualify as cultural heritage.

Generally, the current normative framework and policy debate does not take into account informal data gathering, namely archives produced for instance by civil society actors, such as non-governmental organisations (NGOs), victims and faith based organisations. Even formal archives produced in state institutions and current records (see Glossary) still in use such as police or military records, may not qualify as “cultural heritage” or “cultural property”. However, both kinds of records are of utter importance for dealing with the past and need better protection.

Louis Joinet underlined in his 1997 Report to the Commission on Human Rights (Joinet Principles against Impunity)²⁵ the importance of archives relating to human rights violations. In Principle 13 to 14 he outlined the most important basic aspects of archives containing information on human rights violations, such as the **obligation of states to preserve such archives and to take all possible measures to safeguard and secure them**, including protective and punitive measures against the removal, destruction or misuse of archives (Principle 13).

Finally, there are many examples of states recognising in their **national legislation** the importance of the protection of cultural property, including archives against seizure, wilful damage and pillage. Many national laws include also provisions for criminalisation.²⁶ However, this protection usually does not cover those archives that do not qualify as cultural property, as mentioned above. The provisions on cultural heritage both on the national and international level mostly do not make a distinction between archives as the permanently valuable records and archives as a building or an institution.

Despite the fact that a certain legal framework is in place at the international, and in many cases at the national, level there is a **need for more specific rules that are adapted to human rights/dealing with the past archives** and a **better domestication of the existing international legal framework**. Furthermore, gaps exist in the international legal framework with regard to the protection of archives that do not qualify as cultural property. The reality in the field in situations of emergency is not properly addressed by the international legal framework and those gaps need to be filled.

1.3 [A number of preventive measures must be taken to secure archives associated with human rights violations.](#)

Independently of the obligations arising from national and international legal provisions, all possible **preventive measures** must be taken at international, regional and domestic level, by both state and non-state actors holding human rights/dealing with the past archives to:

- prepare secure storage places and take security measures for archives before a crisis situation arises (according to national and international obligations and standards);
- provide support to institutions and organisations with limited resources to prepare proper security measures applying different standards, depending on the actors;
- prepare emergency plans, including evacuation of archives, if necessary;
- keep descriptions and inventories in accordance with international standards in order to have information on the archives' content;
- raise awareness on the importance of archives and the risks they face in times of tension;
- develop frameworks, model agreements and guidelines for the transfer of archives in situations of emergency and their restitution.

In terms of **measures during armed conflict and crisis**, all entities should take all possible measures to:

- properly secure archives against attacks and wanton destruction;
- put the issue of archives at risk and their protection on the agenda (both domestically and internationally);
- establish safe havens abroad for archives at risk in accordance with pre-negotiated agreements and guidelines.

1.4 [Ethical principles and professional standards should be applied when documenting violations of human rights and international humanitarian law.](#)

All actors involved in the documentation of such violations, including media, national and international organisations and both governmental and non-governmental, should be strictly guided by the **principle of “do no harm”**. This applies when information is collected, stored and secured, and also when it is utilized.

Generally, sensitive information must be handled professionally and institutions and organisations with limited means should be supported to handle such information carefully and in accordance with international standards. This applies both to their handling of archives but also to the protection of the sources and persons giving testimonies, which should always be based on informed consent.

Expectations must be managed, namely those of the people giving testimonies who are often risking their life in doing so. If they do not see the purpose of providing information because there may be no immediate use of their testimonies, or not the one they expected, they may lose interest in sharing information and the hope that their testimony could bring any form of justice or any solution to the conflict.

Organisations, respectively curators, need to take decisions on what archives can be opened and to whom, and what archives cannot be accessed. **Clear access and restriction policies** are useful in this regard.

1.5 [Organisations and individuals engaged in documenting violations of human rights and international humanitarian law often face safety concerns.](#)

The main challenges pertain to issues of **safety of those collecting sensitive** information and those sharing their testimonies, as well as to the safety of human rights/dealing with the past archives. Safety concerns are particularly at stake when the documentation and archives work takes place in the **context of ongoing conflict**. In such contexts, moving records and documentation, within the country or outside of the country is often involved with high risks and thus often not possible.

Efforts in conflict contexts focus on humanitarian aid for obvious reasons. Additionally, the importance of such archives is not always recognised. Therefore, organisations engaged in documenting

violations of human rights and of international humanitarian law, or engaged in preserving such documents in those contexts, often face a **lack of financial support from donors**.

1.6 The focus and purpose of documenting violations of human rights and international humanitarian law should be defined and data protection legislation should be adapted to the needs of dealing with the past/transitional justice.

Documentation efforts related to violations of human rights and international humanitarian law often focus too narrowly on international criminal justice. A lot of work unfortunately ignores the **holistic nature of dealing with the past**²⁷, the different purposes which transitional justice can serve, such as truth-telling, memorialization, and the diverse mechanisms it entails, such as reparations, truth commission and institutional reforms. For any of these mechanisms and purposes, human rights/dealing with the past archives are of fundamental value and do not necessarily require the evidentiary standards of criminal justice.

However, the international community and donors often focus on the legal aspects of documentation only. In doing so, they often demand **high legal standards** with regard to the form of the testimonies and documents, applying standards of proof of tribunals, which are not necessarily required for other dealing with the past mechanisms.

The purpose of documenting violations of human rights and international humanitarian law must be explained clearly to those providing the information. This is also relevant for reasons of data protection. Without informed consent, the information may not be usable later on.

In the EU, new **data protection legislation**²⁸ is in the process of being finalized. This new regulation will severely hamper the preservation of relevant information on human rights violations contained in archives. The draft text foresees that the destruction of personal data information should be the rule, unless a reason exists to preserve them. An exemption might be introduced for historical reasons, however not for reasons of dealing with the past or the protection of human rights. It is important to make sure that new data protection legislation, at national, regional and international level, contains exceptions for transitional justice/dealing with the past mechanisms. Generally, if there is informed consent, data protection should not hinder access to documents, but if such informed consent is missing, solutions for dealing with the past mechanisms need to be found. Furthermore, it is important to know whether the document has an administrative, evidential or historical value.

1.7 Opportunities and risks of new technologies in documenting human rights violations and violations of international humanitarian law need to be considered.

Many **new technologies and tools** have been developed over the past few years (e.g. Martus; eyeWitness' App²⁹ etc.), which provide new solutions when collecting and preserving documents at risk. It is important that these new technologies and tools are **shared and disseminated widely** amongst actors working in the field of documenting human rights violations and preserving such information, for instance through the adoption of open access standards including open source and open format. This access to new technologies makes the work of many organisations more effective and prevents the duplication of efforts. New technologies allow for the effective and efficient management of huge amounts of information, e.g. by allowing easy cross-checking of sources, creating back-ups and comparing information.

However, such solutions are often expensive and require specific technical skills. While they help organisations and actors to guarantee the security of the data collected and allow for efficient data management, they also bring certain risks and increase the need for **professionalism in handling data**. The risks associated with technology enabled data collection are data authentication, data integrity and data provenance.

When documenting or preserving information, the following aspects should be taken into account:

- aim for **sustainable solutions** that guarantee the long-term preservation of records while taking into account the costs of such solutions;
- take into consideration the **aspect of verifiability** (legal standards for evidence, probative value etc.);

- aim for **high standards of preservation of records** even for organisations and institutions with limited means;
- **balance carefully the risks and opportunities**, taking into account the costs, the technical knowledge that is required, the staffing of projects (e.g. rather using IT experts than legal or human rights experts)

In addition, the **trustworthiness of the content** of information from social networks must be considered carefully. Such information may be manipulated and produced for very specific purposes. New technologies may allow for testing the reliability of information but it is also important to be aware of their limits. The collection of additional contextual information may be necessary.

Finally, whilst these new technologies present new opportunities, they also introduce a need for **managing the expectations** raised in terms of higher impact towards accountability and justice of the information collected by individuals on the ground, as they often put themselves or their families at great risk. Organisations using these tools or disseminating them need to be clear about what the realistic impact of these new tools is.

There is thus a need for solutions that are adapted to the specific risks and requirements of archives at risk, their usage and the needs of the actors involved.

1.8 [Risks which affect human rights archives should be addressed locally or nationally, wherever possible.](#)

Solutions *in situ* should be the rule and include capacity building of staff in conservation interventions, the financing of better storage and usage conditions and awareness raising for the importance of archives amongst key actors.

Safeguarding digitized and born digital material in safe and trusted repositories can help to protect them. However, digitizing information is a time consuming process and until archives are digitized, they continue to face the threats which have been listed above.

Relocation of archives in hard-copy abroad should only be envisaged exceptionally, if there is no other solution at the local or national level. As a general rule, the relocation of archives outside the country should only be the *ultima ratio*, in cases of extreme risk, such as for instance³⁰:

- **Natural hazards** (flooding, earthquake, accidental fire, dust, mould and humidity, pollution, bacteria, climate change leading to inexorable sea level rise, increase of storm surges and violent weather, geologic danger zones etc.)
- **Damage from lack of proper storage or protection and inadequate use** (bad storage conditions or bad restoration, lack of restoration capacity, neglect, loss while moving offices, damage from use, and theft)
- **Conflict** (civil disorder, terrorism, armed conflict, risk of removal by occupying forces; destruction by administrative order or unauthorized destruction)

Such complementary solutions for securing archives abroad raise a number of questions, including issues of **ownership and restitution** of the archives. Negotiating agreements which should remain in place decades later constitutes a challenge, e.g. in contexts where the receiving institution may disappear or the institutional memory of these agreements is lost. As a consequence, **clear agreements**, which include mechanisms to verify compliance, are needed. It is important to include monitoring mechanisms for such agreements and contingency planning for cases in which regimes change or organisations disappear. **Different interests** that may exist between the repositories and those who are handing over their records and documents present an additional difficulty. The repositories and the institutions providing the funding may have their own rules, interests and limits. It is important to be **absolutely transparent** about this.

1.9 [The sustainability of archives should be guaranteed.](#)

Securing archives at risk requires a **long-term engagement as well as long-term funding** solutions. In contexts of armed conflicts, this includes efforts before, during and after the conflict. Special attention has to be given to the pre-conflict phase in order to develop solutions in advance, including the prioritisation of materials for preservation.

Solutions need to guarantee the **sustainability of archives** which are relevant for human rights, i.e. making sure that the agency holding the archives is able to manage them in the long run, or guaranteeing a regular up-date of the storage technology.

2 Recommendations

2.1 General recommendations

1. **Awareness-raising** on the importance of securing archives at risk, and more generally on the importance of archives for transitional justice and human rights promotion **at the national and international level should be increased**.
2. **High professional standards and guiding ethical principles** (e.g. with regard to “do no harm” and expectation management) should guide the work of both collecting information and protecting human rights archives.
3. Existing technologies, tools and methods used in the field of documentation and archiving information on human rights violations should be **disseminated broadly and made known at different levels**. Actors at the local level are often in the best position to document because they usually have both the trust and the relevant networks to carry this work out. Solutions should be adapted to the possibilities of the respective institutions and organisations and should be sustainable, offering long term preservation.
4. Donors should take into account the **long term character of archival initiatives** and projects when funding such efforts.
5. A **typology should be developed** that differentiates between the types of threats, the speed of the action required and the duration of the solution (whether permanent or temporary).

2.2 Recommendations to the United Nations and other international organisations

1. **Risk preparedness, pre-crisis, pre-disaster and pre-conflict capacities must be strengthened** in order to allow for immediate emergency action, in particular in countries at risk of conflict and natural disaster.
2. **Model agreements for temporary and permanent deposit** of archives at risk should be drafted and made available. Such model agreements could also cover specific data, which is particularly sensitive and therefore requires particular precautions, such as DNA samples.
3. A **roster of institutions** willing to serve as recipient institutions (including annotations on what types of materials they are willing to hold and under what conditions) should be established and disseminated widely.
4. A **regularly up-dated list of threatened archives** as well as a **confidential channel for reporting archives at risk** should be established by UNESCO and/or ICA at the international level. A trusted international body should be identified or created to handle these issues. In contexts where archives are at risk, archivists need to be informed about the existence and location of these archives and be trained in executing a relocation plan.
5. ICA, UNESCO and other potential partners should convene a **special meeting of national archivists** of countries in danger from countrywide climate change on the one hand and nations/institutions willing to be a receiving institution on the other hand, in order to work out common and collective strategies for preservation.

2.3 Recommendations to states

1. States shall rigorously **implement and enforce the UNESCO 1954 Hague Convention** and the **rules of international humanitarian law** at national and regional level. This includes precautionary measures (e.g. relocation of archives from endangered zones to safer places) as well as enforcement measures (e.g. the criminalisation of certain acts in national penal law).
2. **Pre-crisis, pre-disaster and pre-conflict capacities** must be strengthened in order to increase the readiness for adequate responses in crisis situations and to allow for immediate emergency action, in particular in countries at risk of conflict and natural disaster.
3. Countries threatened by climate change or in known geologic danger zones must act to find a safe repository for some or all of their records. In addition, states in stable, democratic contexts are urged to **offer safe, trusted repositories at acceptable conditions** for the threatened archives.

4. States, ideally the national archives, should establish and maintain a **regularly up-dated list of their own archives which might be at risk** in a situation of emergency, be it man-made or due to natural hazards. The archivists in the relevant institutions need to know *what where* these records are and be trained in responsibilities for executing relocation plans in situations of emergency.

2.4 Recommendations to civil society (including NGOs, academia, and media)

1. Actors active in documenting human rights violations, **must rigorously apply the principle of “do no harm”** at all levels, including with respect to transfer of data, access policies, preserving and securing information. It must be clear that all actions which put individuals at risk, in particular in contexts of armed conflicts, must be avoided.
2. Organisations and activists must inform those who provide information clearly about the use of the data and the limits of their actions in order not to create false expectations and lose the support of the local networks and the people who provide information.
3. Actors documenting human rights violations should seek **more active cooperation both internationally, regionally, and also across disciplines**, in order to avoid duplication (in terms of software) and share important lessons learnt, tools and technologies used to document, store and protect information on violations of human rights and international humanitarian law.
4. A **division of labour** is important between organisations documenting and preserving information about violations of human rights and international humanitarian law on the one hand and organisations engaged in advocacy on the other hand.
5. Institutions and individuals creating records that are at risk shall establish a regular **means of transferring documents and records to a safe repository**, if necessary to an institution outside the country which can guarantee safe storage.
6. Civil society actors holding relevant archives should establish and maintain a **regularly up-dated list of their own records which might be at risk** in a situation of emergency, be it man-made or due to natural hazards. The archivists or persons in charge of the archives in the relevant institutions need to know *what* and *where* these records are and be trained in responsibilities for executing relocation plans in situations of emergency.³¹

¹ Diane Orentlicher introduced the following definition of archives in the 2005 “Updated Set of principles for the protection and promotion of human rights through action to combat impunity” as: “[...] *collections of documents pertaining to violations of human rights and humanitarian law from sources including (a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; (b) local agencies, such as police stations, that were involved in human rights violations; (c) State agencies, including the office of the prosecutor and the judiciary, that are involved in the protection of human rights; and (d) materials collected by truth commissions and other investigative bodies.*”, see: Report of the independent expert to update the Set of principles to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005 (Updated Set of principles for the protection and promotion of human rights) Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement> (05.10.2015), p. 6.

² See: Pearce-Moses, Richard (2005) A Glossary of Archival and Records Terminology, Society of American Archivists, available at: <http://www2.archivists.org/glossary> (12.11.2015)

³ *ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ E.g. During the fall of the communist system in East Germany, the former secret police, the Staatssicherheit (Stasi) destroyed large amounts of their own documents and records. Parts of the archives were secured by activists. Therefore the first priority of the Federal Commissioner for the Stasi records was gaining the custody of the Stasi documents and to ensure immediate protection from further destruction, theft, and deterioration. For further information consult URL:

http://www.bstu.bund.de/EN/Agency/_node.html;jsessionid=4692D1029ADF624D6BA5016D286C399A.2_cid344 (12.11.2015).

⁹ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954. Available at: http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html (05.10.2015).

¹⁰ Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict 1954, The Hague 14 May 1954 and Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, The Hague, 26 March 1999.

¹¹ Article 1 of the 1954 Convention defines “cultural property” as “irrespective of origin or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); (c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’.

¹² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. Available at: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/> (05.10.2015).

¹³ Article 1 of the 1970 Convention defines ‘cultural property’ as property “which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories: [...] (j) archives, including sound, photographic and cinematographic archives.”

¹⁴ See updated version of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC) and originally published by Cambridge University Press, available at: <https://www.icrc.org/customary-ihl/eng/docs/home>, Rule 123: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule123. (05.10.2015).

¹⁵ Draft Recommendations concerning the Preservation of, and Access to Documentary Heritage in the Digital Age. 2014. Available at: <http://unesdoc.unesco.org/images/0023/002339/233916e.pdf> (11.11.2015).

¹⁶ Military objectives are “objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” (Art. 52 para 2 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977).

¹⁷ E.g. Article 8 para 2 (b) (ii) Rome Statute of the International Criminal Court, 17 July 1998. Article 8 para 2 (b) (ix) further prohibits intentional attacks “against buildings dedicated to religion, education, art, science or

charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;” which could also include archives.

¹⁸ See updated version of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC) and originally published by Cambridge University Press, Rule 7, available at: <https://www.icrc.org/customary-ihl/eng/docs/home> (13.11.2015).

¹⁹ According to Article 53 of the Annex to the 1907 Hague Convention respecting the Laws and Customs of War on Land the occupying army can “take possession of [...] all movable property belonging to the State which may be used for military operations.” This includes “[b]attle maps, battle plans, organization charts, orders, architectural drawings of fortifications, engineering documents for weapons systems, plus any other government document that could be used by the military to disrupt the organization of the enemy is included here.”, see: Huskamp Peterson, Trudy (2006) Archives in Service to the State: The Law of War and Records Seizure, in Margaret Procter (et al, eds.) Political Pressure And the Archival Record, Society of American Archivists, pp. 259-277; Douglas Cox, Archives and Records in Armed Conflict: International Law and the Current Debate over Iraqi Records and Archives, 59 Cath.U. L. Rev. 1001 (2010; Available at: <http://scholarship.law.edu/lawreview/vol59/iss4/5> (p. 1017)

²⁰ According to the protection and precaution rules laid down in Articles 57 ff. of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument>,

²¹ See also updated version of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC) and originally published by Cambridge University Press, available at: <https://www.icrc.org/customary-ihl/eng/docs/home>, Rule 22 (05.11.2015).

²² Hague Regulations, Article 14, first paragraph; Third Geneva Convention, Article 122; Fourth Geneva Convention, Article 136; Third Geneva Convention, Article 123; Fourth Geneva Convention, Article 140; Third Geneva Convention, Article 125 and Article 126 ; Fourth Geneva Convention, Article 142, and Article 143.

²³ See updated version of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC) and originally published by Cambridge University Press, available at: <https://www.icrc.org/customary-ihl/eng/docs/home>, Rule 123: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule123. (05.10.2015).

²⁴ UN Security Council Resolution 2199 (2015). Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199 (05.10.2015).

²⁵ The Administration of Justice and the Human Rights of detainees. Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119. E/CN.4/Sub.2/1997/20/Rev 1. Available at: <http://193.194.138.190/Huridocda/Huridoca.nsf/0/a0a22578a28aacfc8025666a00372708?Opendocument> (05.10.2015).

²⁶ For state practice regarding the obligation to respect cultural property and the prohibition of attacks on cultural property as part of the conduct of hostilities see: ICRC, Customary IHL Database at ICRC Practice, relating to Rule 38. Attacks against Cultural Property: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule38 and ICRC Practice Relating to Rule 40. Respect for Cultural Property: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule40 (17.11.2015).

²⁷ As laid down in the Joinet/Orentlicher principles, op cit FN 1 and FN 25..

²⁸ Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final, 2012/0011 (COD). Available at: http://europa.eu/rapid/press-release_MEMO-14-186_de.htm (12.11.2015).

²⁹ See URL: <https://www.martus.org/> or URL: <http://www.eyewitnessproject.org/> (10.11.2015).

³⁰ Examples taken from: van Albada, Joan (1996) Report on destroyed and damaged archives, in: Saur Memory of the world at risk: archives destroyed, archives reconstituted, Archivum, Vol. XLII, International Council on Archives, K G Saur Verlag, Munich, p. 21.

About swisspeace

swisspeace is an action-oriented peace research institute with headquarters in Bern, Switzerland. It aims to resolve armed conflicts and to enable sustainable conflict transformation.

swisspeace sees itself as a center of excellence and an information platform in the areas of conflict analysis and peacebuilding. We conduct research on the causes of war and violent conflict, we develop tools for conflict resolution and formulate peacebuilding strategies. swisspeace contributes to information sharing and networking on current issues of peace and security policy through its analyses and reports as well as workshops and conferences.

swisspeace was founded in 1988 as the “Swiss Peace Foundation” with the goal of promoting independent peace research in Switzerland. Today swisspeace engages about 50 staff members. Its most important clients include the Swiss Federal Department of Foreign Affairs (FDFA) and the Swiss National Science Foundation. Its activities are further assisted by contributions from its Support Association. The supreme swisspeace body is the Foundation Council, which comprises representatives from politics, academia and the administration.

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