

and may be consulted for scholarly purposes without observing the 30-year limit.

Documentation of services rendered by public officers

The second responsibility which became a significant part of the archivist's work was the documentation of the past of former public – civil and military – officers including the interpretation of the individual circumstances and their relationship to post-war legislation. I, therefore, often answered questions from former public servants to document their career (for instance because of their pensions) in the morning and informed the Ludwigsburg office about them and their address in the afternoon in case they were wanted because of crimes against human rights. Had an officer violated human rights or received a job because of Nazi party affiliation only, his pension was reduced or not granted at all. This job is quantitatively decreasing, but is not finished for those very aged people who lived in the GDR before October 1990 and afterwards had or still have to document their professional career during the Nazi period for pension or other legal purposes.

Restitution of property and recompense for prosecuted Nazi victims

The third obligation was the documentation of Nazi crimes in case the victims asked for restitution or compensation. Since many records were destroyed during and at the end of the war, it was never enough just to confirm that the relevant records were not available, but to comment on whether or not the circumstances described in such an application were probably true. I may just give an example: In the early Seventies I was asked whether in 1941 Jews were persecuted by German SS forces in Italian-occupied Africa. I consulted the files documenting decorations given to SS officers in Italy in 1944 and found out that they were decorated because of their crimes committed against Jews in Africa in earlier years.

This kind of work is still going on. The discussion on the so-called Nazi gold affected some neighbouring countries at least to the same extent as Germany itself. For German archives this discussion led to professional progress insofar as the Federal Archives Act was amended in order to extend the time limits earlier imposed on tax and similar files from the Nazi period.

The fall of the Iron Curtain made it possible for Germany to grant compensation to individual forced labour victims, in particular those from central and eastern Europe. However, the domestic archival institutions of the people concerned and the International Tracing Service of the Red Cross (ITS) cannot document the fate of all these Nazi victims, and the documentation about them in Germany is in principle not available at the Reich, federal or central level. Consequently, the Bundesarchiv with the financial support of the responsible German "Foundation [for] Remembrance, Responsibility, and Future", the ITS and a private association taking care of people prosecuted by the Nazis, jointly established a limited internet system to speed up the research in state, local government and business archives or other competent institutions (among which many Polish state archives are to be mentioned in particular). Since most of the documentation by which forced labour can be proved was regarded as of no permanent value and, therefore, was destroyed continuously, it is a big success story that, despite that, we have been able to help more than 20,000 foreigners forced to work in Germany during the war. The online co-operation of more than 200 German, Polish and other foreign archives institutions, with a commercial company providing technical support, deserves a more detailed description.

Although compensation legislation in favour of Nazi victims has existed since Adenauer's time, Jewish victims of the holocaust era in particular did not receive compensation for insurance policies due to be paid out during the time of the Nazi regime, since they could not document their claims properly. The International Commission on Holocaust Era Insurance Claims (ICHEIC), the German Foundation mentioned above and the German Association of Insurance Companies (GDV) concluded an

agreement on 16 October 2002 by which all German archival materials, and in particular those originating from the Reich finance administration, were consulted in order to find as many confiscated insurance policies as possible. Furthermore, they agreed to establish an electronic list of Jewish residents in Germany within the borders of 1937 and a second list of all policy holders from the holocaust era in order to match them and thereby retrieve information on individual persons who, up to then, could not prove their claims. The Bundesarchiv was charged with collecting data for the first list and succeeded, in co-operation with the same IT company, in collecting more than 2.5 million names from more than 200 sources kept in archival or memorial institutions, libraries and administrations not only in Germany, but also in Israel, the United States, Poland and the Czech Republic. Had we had more than just three months, even more institutions, particularly from abroad, could have contributed. Yad Vashem and the Bundesarchiv agree that these raw data be used to establish a list of German Jews during the Nazi regime.

The generation to which most Nazi criminals belong is dying out. Those who were younger than 18 years old in 1945 fell under the Allied amnesty for youthful ex-Nazis, the older ones are now at least 73. Those who committed the most frightening crimes are considerably older, of course. But this does not mean that all problems in this respect are settled. For more than a decade, and in particular in the former GDR, the debate about the Nazi past of deceased or still living grandfathers, fathers and other male relatives has been increasingly taken up. Has a grandson or daughter the right to know about the Nazi past of the family's older generation who might have become, for example in the former GDR, active Communists in the meantime? If yes, under what conditions, and is the permission of the person concerned or his legal heir required? This conference is not discussing the legal problems of access to archives, but it might note that there is a problem of balance between privacy and the need to know within the same family. What about the tension of the moral obligation of remembrance in case of people murdered because of mental illness and the right of a family to forget or at least to avoid a discussion in a small village where everybody knows everybody. The best legislation cannot settle such matters. I do not suggest anything other than just to ask you what you yourself would have done if the case had concerned your own family. This method is proper for all kinds of repressive systems.

The Communist Past

Within the territory of the Soviet zone of occupation which became the German Democratic Republic in 1949, people got rid of the Nazis in 1945, but lived under a dictatorship again from 1948/49 onwards. The Communist GDR did not kill six million Jews nor start a cruel World War, but the repression and persecution of opponents to the regime became fiercer and fiercer. The Iron Curtain, the Berlin Wall and the order to kill everybody who tried to cross the German-German border, fortified with barbed-wire fences and minefields by the GDR, were the cruel symbols of this development. The violation of human rights is documented not only in the files of the Political Police ("Stasi" for short), but also in so many other archival materials.

The investigations against Nazi criminals, the documentation of services rendered by public officers before 1945, the restitution of property and the recompense for victims prosecuted by the Nazis and the problems of human rights within the same family had to be taken up again after reunification for the population of the GDR as well as for old cases which now could be documented by archives kept in the GDR. The problems in dealing with the second repressive system were similar, the differences are insignificant except for two facts: a longer period of time had elapsed and the Russian Federation has not returned 3km of public and party records dating from pre-1945.

Government archives

When preparing Germany's unification in the field of archives, the Parliament of the old Federal Republic (West Germany) had passed a modern Federal Archives Act less than three years previously. So we were legally well prepared and there was no controversy between east and west at all that the scope of this law be extended to the public archives of the GDR. The access rules were not changed, since the principle of equal treatment had to be, and could be, observed. Violations of human rights could be documented, and the only major problem was that this dictatorship concerned one fifth of the population of the united country and not all of it. More than 40 years of socialism had, of course, influenced opinions about human rights including their violations and the proper ways of healing the wounds. The personal concerns of the transgressors, the victims and the archivists in charge were in many cases not mitigated by time. The prosecution of violations of human rights was never a job of the former Allies, but German business from the very beginning. In my daily Potsdam practice from October 1990 to October 1993, there were, in the beginning, many misunderstandings with my new colleagues from former East Germany, but when I explained and proved that my decisions were not based on personal political conviction and observed the principle of equal treatment, the difficulties became fewer. We reached a good basis for co-operation comparatively early on. GDR Government archives, therefore, were never a serious problem for us. I am pretty sure that the experiences of the Bundesarchiv in documenting Nazi violations of human rights were of the greatest value when handling the same or similar problems following the socialist dictatorship.

The archives of the parties and mass organisations

The archives of the parties and mass organisations, in particular of the so-called leading Communist party of the working class, the United Socialist Party of Germany (SED), were taken over by a non-independent foundation established within the Bundesarchiv by an amendment to the Federal Archives Act. This act did not change any title to property and required agreements between the (former) owners and the Bundesarchiv in many details, not in principle. It was clear from the very beginning in early 1991 that these archives are of highest importance in cases of violations of human rights committed by the government authorities instructed by the Communist Party. On the other hand, the principle of equal treatment had, for example, in the field of privacy to be observed in favour of members of the SED and of its brother parties in the same way as it was observed for the victims. So a lot of discussion was needed before an agreement was reached among the other political parties over and above the successor party of the SED.

Finally, contracts under civil law were concluded between the Bundesarchiv and the successor party and the other (former) owners which guarantee the consultation of the archives in a way so that criminals could and can be punished and legitimate privacy was and is observed. In the united Germany the problem of finding a compromise between the legitimate interests of the victims, the officers responsible for real or alleged crimes, and the different political experiences of the easterners concerned and the westerners who were personally not concerned was not just a legal one only, but at a high level a psychological one, too. I do hope that the solution we found will be successful: the legislator did not apply the normal 30-year rule to these archives, but protected privacy in the same way as happens with any other archives under the Federal Archives Act.

Furthermore, Parliament decided wisely and the Bundesarchiv accepted this wisdom without hesitation, not just to transfer the archives to the Bundesarchiv, but to establish a basis whereby the owners or legal successors to the former owners can co-operate and, thereby, influence developments. This system works, and I cannot imagine a better solution.

In 2019/20, when the collapse of the GDR and the German unification will be 30 years old we shall know whether my optimistic perspective of today was justified. Then and not now we shall know the differences between the personal situation and feelings of archivists who have served two or three, if not four, political systems from the democ-

atic, but very unstable Weimar Republic and the Nazi regime, the West German democracy, the East German dictatorship up to the democracy in united Germany.

The Archives of the "Stasi"

The most difficult task of the legislative preparation for German unity in the field of archives was the treatment of the huge amounts of records produced by the GDR political police which documented more violations of human rights than any other materials. Some politicians, many lawyers and other public officers, many historians and almost all representatives of the media, and last but not least the GDR civil movement did not trust the Bundesarchiv to take care of this problem. The reasons why are another story.

The result was and still is special legislation with an authority independent of the Bundesarchiv. After my experiences with my paper at the 1992 ICA Congress held in Montreal I am not prepared to continue a long-lasting domestic German discussion abroad, but I feel obliged and entitled to make some general remarks:

- The tension between the public's need to know and privacy for individuals should be bridged by common legal and political principles irrespective of the provenance of archival materials.
- Archival materials stolen by the political police are to be returned to the originally responsible archival institution.
- Appraisal is without any exception, I repeat *any*, the responsibility of competent archivists, not of politicians or of lawyers. Even the legislator should avoid any intervention in this field.
- The right of an individual to get access to information on herself or himself has to be granted irrespective of whether or not a repressive system has produced the information.
- True democracy should not continue to give a special legal status to the political police of former repressive systems including their archives.

I am happy to inform you that there is some progress in Germany, since historians and archivists succeeded in convincing Parliament immediately before the 2002 federal elections to delete a paragraph in the Stasi Records Act granting the right to destroy files of individuals prosecuted by the Stasi. Other questions are still pending, but the discussion has become more subject-oriented so that one may be optimistic for the future.

Conclusion

If you as an archivist have experienced two repressive systems in your own country during your own professional career, you arrive at least at one conviction which does not allow any exception: the principle of equal treatment.

As, from the late Fifties, the Bundesarchiv had been in charge of all kinds of documentation of the Nazi past – criminal and tragic at the same time, its staff did not understand why special legislation and a special public body were needed to do the same with the Communist past. The similarities between dictatorships are, most of the time, much bigger and more important than the differences; well trained archivists could have done the job much better and cheaper than anybody else. Several members of the GDR civil movement are now honest enough to admit that earlier they had not expected that the Bundesarchiv would follow a more liberal access policy than would a special institution. You can afford to be liberal if you observe the principle of equal treatment irrespective of any personal party sympathy and know your responsibilities within the tension created by conflicting demands, in particular that of access against privacy

My advice for all countries including my own is very simple: The "normal" public archival institutions can document human rights and the violations thereof for any past much better than any "special" institution.

Klaus Oldenhage

Bibliographical References

- Ernst Ritter, Erfahrungen bei der "Bewältigung der Vergangenheit". Die private und amtliche Benutzung von Archivalien, in: Aus der Arbeit des Bundesarchivs. Hrsg. von Heinz Boberach und Hans Booms, Boppard 1977, S. 218 – 226.
- Josef Henke, Das Schicksal deutscher zeitgeschichtlicher Quellen in Kriegs- und Nachkriegszeit, in: Vierteljahrshefte für Zeitgeschichte 30 (1982), S. 557 – 620.
- Georg Dillgard, Die Zentralnachweisstelle des Bundesarchivs und die Abwicklung militär- und wehrrechtlicher personeller Angelegenheiten aus der Zeit bis zum 8. Mai 1945, in: Aus der Arbeit der Archive. Festschrift für Hans Booms. Hrsg. von Friedrich P. Kahlenberg, Boppard 1989, S. 257 – 269.
- Klaus Oldenhage, Die Gesetzgebung zur Sicherung des Archivguts der Parteien und Massenorganisationen der DDR, in: Historisch-Politische Zeitschrift, München 1994.
- Heinz Boberach, Die Beteiligung des Bundesarchivs an der Verfolgung und Wiedergutmachung nationalsozialistischen Unrechts in den sechziger Jahren, in: Archiv und Geschichte. Festschrift für Friedrich P. Kahlenberg. Hrsg. von Klaus Oldenhage, Hermann Schreyer und Wolfram Werner, Düsseldorf 2000, S. 264 – 274.
- Zwangsarbeit in Deutschland 1939-1945. Archiv- und Sammlungsgut, Topographie und Erschließungsstrategien, hrsg. von Wilfried Reininghaus und Norbert Reimann, Bielefeld 2001.
- Klaus Oldenhage, Was bringt das neue "Stasi-Aktengesetz?", in: Der Archivar 55 (2002), S. 335 f.
- Klaus Oldenhage, Persönlichkeitsschutz contra Gedenken, in: Psychiatrie im Dritten Reich - Schwerpunkt Hessen. Hrsg. vom Arbeitskreis zur Erforschung der nationalsozialistischen "Euthanasie" und Zwangssterilisation, Band 2, 2002, S.149 – 156.
- Simone Walther, Hatte "Janus" eine Chance? Das Ende der DDR und die Sicherung einer Zukunft der Vergangenheit. Wissenschaftliche Tagung der BStU vom 27 bis 29. November 2002, in: Archiv zur DDR-Staatssicherheit, hrsg. von Dagmar Unverhau, Band 6, Münster 2003.

ADDRESS to CITRA

By the
Registrar of the International Criminal Tribunal for Rwanda

Ladies and Gentlemen

It is a pleasure to send this address to the 37th International Conference of the Round Table on Archives being held in Cape Town. The theme of the conference "*Archives and Human Rights*" is very relevant in these uncertain times in which we all live. I am also pleased that the CITRA conference has again come to Africa after a long absence. The International Council on Archives, as the peak international body for all things archival, should be proud of its achievements and support of developments in African archival practice and theory. The so-called "African renaissance" in many different fields of endeavor promises much for this continent and we can consider ourselves privileged to be part of the future. We note that Dr. Dominy, the Director of the national archives of South Africa, will be addressing the conference on this issue in his paper "*Archives and the African Renaissance*".

The tragic events of 1994 in Rwanda have been well documented by the media and academics. Suffice to say that since that time the ICTR has been working closely with the Rwandan authorities to ensure not only justice for the victims but also reconciliation of the nation. Our core function is to provide a forum for all the parties to adjudicate on the issue of guilt or otherwise of individuals. As a result of this work the ICTR has set many precedents in its judicial decisions and judgements. As you all may be aware, precedents are of vital interest to lawyers. Even to this day reference is made in the ICTR deliberations to the jurisprudence of the Nuremberg and Tokyo war crimes trials of the 1940's. It will also be the case that future international criminal justice organisations will refer to the work of the ICTR. Hence, it is vital to permanently retain a complete record of our judicial work.

The ICTR has been at the forefront of ensuring that the legacy of our work is preserved over time. It is clear that the judicial work being undertaken at the Tribunal is of prime importance but also that we maintain the records of the trials in a manner conducive to future accessibility. This requires much effort in terms of human and financial resources. In the course of developing technical solutions to our information management concerns we have been able to positively influence the pace and flow of the trials before the Chambers. As an added benefit, we can also state that we have widened the scope for the general public to access our public judicial records by the innovative application of technology. The use of technology in information management is never the whole answer of course, but it has been a welcome enhancement to the recordkeeping culture at the ICTR.

Given the current state of our information systems and expertise, the ICTR feels that we can be of real benefit to African information managers and in this respect we will embark on several landmark projects next year. We will be inviting African information managers from national archival institutions and from judicial organisations to participate in a knowledge exchange program. This program will be funded by the voluntary contributions of member states of the United Nations to the ICTR trust fund. Our desire is to provide a centre for the continued professional development of staff who may not have the resources available to work with the latest technology or be exposed to international developments in archival practice.

Another project that the ICTR will embark upon next year is to develop close working relations with several national archives in Africa to deposit copies of our jurisprudence. The purpose of this project is to facilitate the access to these records within Africa. The ICTR is an ad-hoc organisation and as such, we have a limited mandate. On expiration of this mandate, we will be depositing our archival collection at United Nations HQ archives in New York. This of course does not make things easy for researchers in Africa to consult the records, hence our desire to address this issue by depositing complete copies of our records in several archives in Africa.

Finally, let me wish the CITRA conference well and I implore you as an international organisation to continue to assist and encourage the archival work being done in Africa. Our future depends on the migration of skills to Africa but unfortunately; it mostly seems to be the other way around. Many talented young Africans feel they need to leave the continent to seek their future. With the assistance of organisations such as the ICA, we can play our part in ensuring that at least African archivists have a bright future on this continent rich in potential and prospects. Thank you.

Adama Dieng



Logo ICTR/TPIR

Archives and International Prosecutions – Genocide, Justice and Innovative Archival Practice

The International Criminal Tribunal for Rwanda (ICTR) has been in existence since late 1995 after the United Nations (UN) Security Council issued Resolution 955 in 1994. Since that time many new and important developments have taken place in the area of international criminal jurisprudence. The Judicial Records and Archives Unit of the ICTR has developed a system that serves well the goal of assisting the judicial process. Prosecuting those most responsible for the crimes perpetrated in Rwanda in 1994 is currently the main reason for the recordkeeping and archival services of the ICTR. This however does not mean that we have neglected the long-term accessibility and preservation aspects of the collection.

As it is with economics, culture and the environment, so it is with justice. Justice is no longer exclusively local. It is going global. The globalisation of justice has been spurred by evolutionary shifts in the concept of sovereignty in the past decade. These shifts have been marked by the rise of the individual in international intercourse. And in no sphere of international affairs has the rise of individual legal personality been more profound than in the area of human rights law and protection.¹

Following on from this statement of UN Assistant Secretary-General Adama Dieng, one can state that globalisation is a multi-faceted phenomenon. It is therefore also a valid statement of fact that an international criminal justice recordkeeping tradition is emerging as a result of the process of globalisation. It is emerging due to the fact that there are some unique issues that need to be addressed when creating and maintaining the records of international criminal justice cases. The Registrar of the ICTR has spoken eloquently on the mood of an international community that will no longer stand by to watch so-called internal conflicts result in the deaths of innumerable citizens of nations in turmoil. Recent examples abound with international intervention since the horrendous events of 1994 in Rwanda.

The UN admits that it was at fault to a certain degree when it withdrew from the Great Lakes nation in 1994 in an era when international interventionist policy was being pared back after the televised drama of Somalia.² More recently, Sierra Leone and East Timor are examples of what the international community under the auspices of the United Nations can do. In East Timor, the UN Prosecutor-General of the UN Transi-

¹ 'Africa and the Globalization of Justice: Contributions and Lessons from the International Criminal Tribunal for Rwanda.' Paper presented by Mr. Adama Dieng, United Nations Assistant Secretary-General and Registrar, International Criminal Tribunal for Rwanda, at the Conference on 'Justice in Africa' Wilton Park, Sussex, England, 30 July – 2 August 2001 <http://www.ictor.org/ENGLISH/speeches/index.htm>.

² The ICTR public records database at <http://www.ictor.org> contains copies of the US State Department documents on Rwanda. To access them perform a 'title word' search using the term 'declassified'. Also, see comments by Kofi Annan, 'While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the more recent conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community.' Secretary-General's Annual Report to the United Nations General Assembly, September 20 1999. <http://www.globalpolicy.org/secgen/sg-ga.htm>. See also the information at <http://www.willum.com/articles/information19nov1996/> on the controversy surrounding the detail of UN knowledge about events leading up to the 100 days of civil war in Rwanda from April 1994.

tional Administration in East Timor (UNTAET) has already filed several indictments³ and cases are well advanced at the Special Court for Sierra Leone.⁴

The other fundamental issues surrounding recordkeeping in this environment are historical revisionism, the value of evidence [*sic* records], and melding different and varied national systems into one global body of jurisprudence and legal practice. On the issue of revisionism and the concept of minimisation of the evidence, it has been said, "As every attorney knows, it is often easier to create doubt and win than it is to prove what actually took place."⁵ The concept of burden of proof and evidential value of the "record" should be the fundamental *raison d'être* of any recordkeeping program in this legal field. On the point of melding into a homogenous entity people from all over the world, the Prosecutor of the ad-hoc Tribunals Mme Carla del Ponte remarked,

Holding together an international team of lawyers is itself no easy feat. Their methods of working and their approach to evidence are so different that forging a mutually accepted legal process is highly challenging. Lawyering can be a frustrating business in the bureaucratic milieu of the UN, whose rules must be respected by the tribunals.⁶

The ICTR, along with its sister tribunal for the former Yugoslavia (ICTY), is unique in that many legal precedents have been set since 1995. However, the ICTR as opposed to the ICTY has a formal archival program in place. The ICTY does not have a judicial archivist. In terms of drawing upon examples of international criminal justice archival practice, there is no real example from which to set ones goals. The work of the ICTR is a developing field of archival knowledge. The organisational structure demands that issues like remote document filing from many parts of the world be addressed. Defence counsels come from parts of the world all of which have different levels and types of technology. Our mandate is to provide viable solutions to practical problems. These seemingly constant new problems or issues demand exploration and then innovation in their resolution. (See ICTR Recordkeeping Architecture page 88).

So how has the prosecution work of the ICTR influenced the archival practices of the records and archives unit? Firstly, the act of investigation and formation of a case that leads to an indictment is particularly problematic. The office of the prosecutor in Kigali Rwanda has several teams of investigators who come from many different backgrounds. They bring to their work some basic tenets of investigative fieldwork but then they return this recorded information or evidence to the evidence unit. It is here that the recorded information is turned into evidence as one normally associates the term. It is then the responsibility of the prosecution counsel to determine what they need to use in court and disclose to the defence counsel. Not all the gathered information ends up as part of the judicial archives collection. Only if it is used in a given case will it become part of the case files in the final judicial archives. Here I wish to highlight the first of several issues that need to be addressed in the next five to six years before the completion of the

³ In late 2001, the UN Transitional Administration in East Timor (UNTAET) Prosecutor-General in the territory's capital, Dili, filed the first indictments containing charges of crimes against humanity committed in East Timor. The indictments were presented before the Dili District Court's Special Panel for Serious Crimes. The indictment accuses eleven persons of committing crimes against humanity, including murder, torture, deportation and forcible transfer of civilian population in Los Palos between 21 April and 25 September 1999.

⁴ The Special Court for Sierra Leone will not be like the ad-hoc Tribunals for Rwanda and the Former Yugoslavia. It will be fully integrated with the judiciary and government bodies of Sierra Leone. The Functioning of the Special Court will be shared between the UN and Sierra Leone. This is a direct attempt to give ownership of the judicial process to the people of Sierra Leone with international assistance. There was a planning mission to Sierra Leone in January 2002 to 'lay the groundwork for the Special Court' according to the Terms of Reference of Planning Mission document prepared by Office of Legal Affairs, UN HQ.

⁵ Samuel Totten, William S. Parsons and Israel W. Charny [eds] *Century of Genocide – Eyewitness Accounts and Critical Views*, pp. xxi-xxii. Garland Publishing Inc, New York & London 1997.

⁶ *The Guardian*, Wednesday, March 6, 2002. 'The grand inquisitor - Prosecuting Slobodan Milosevic and an entire African government at the same time' by Helena Kennedy.

ICTR's mandate. How will the collective prosecution information base be dealt with once the ICTR has completed its work? Will they hand over copies to the Rwandan authorities to continue any pending cases? Will they form part of the more general judicial archives? This is not an easy question to answer as much of the gathered information is very sensitive and can lead to identification of witnesses and sources of information whether used in court or not.

Another thorny issue is the definition of the term "evidence". The ICTR has as its basis a publication called the "Rules of Procedure and Evidence". However, the term is slightly misleading as there is not firm "definition of evidence". It is more implied that explicit.

To highlight the innovations of the archival program at the ICTR as a model for self re-engineering and adapting to the vagaries of the Tribunal's physical location in East Africa, I will explore the themes of innovation and exploration.

Innovation

- *How the genocide has influenced the operating culture of the records and archives unit as well as the entire Tribunal*

It has not been easy to deal with some of the subject matter that forms part of the archival collection. The exhibits in the collection can be extremely horrific and graphic. To be exposed to this material on a daily basis year after year has had a profound effect on many staff members. I myself have had cause to rethink my future at the ICTR on several occasions. As recently as two months ago I was on the point of resignation. I had felt that I was becoming immune to the whole genocide of 1994 in Rwanda. I have two small children of my own and seeing photographic exhibits of what occurred to thousands upon thousands of women and children has an effect on most people. I found it difficult to reconcile my life with what had happened in 1994. I had internalized the feeling that I had become part of the genocide. Many staff members who have worked at the ICTR for up to seven years also have this feeling of guilt that we seem to the outside world to be profiting from the events of 1994. It is a very unjustified but understandable reaction from those external observers especially in the press.

- *Judicial recordkeeping metadata*
We have developed a set of metadata for our recordkeeping system. This was developed in conjunction with the legal officers of the ICTR. It is also based on the Dublin Core and NAA sets.
- *Criminal justice keyword thesaurus*
Again as with the metadata set we worked collaboratively with the legal officers to develop a useable and workable set that was meaningful to the users.
- *Electronic records database implementation project.*
This includes the TRIM system that is used at the Tribunal and also remote access to other offices around the world.
- *Implementing audio-visual and evidence control regimes.*
- *Paper and audio-visual digitisation projects.*

Exploration

- *Public access via the Internet to all judicial records*
A public access module has been implemented which is accessible through our website. This was a bold step for us and we have made some mistakes in the vetting process of the classified material. However, we have learnt from the project and now have a robust regime in place to ensure that only public material is made available.

- *Remote filing of judicial documents*
The defense counsel of the ICTR are located all over the world.
- *Training program development.*
Developing an access regime to extremely sensitive and potentially life threatening records.
- *Changing the culture of the Tribunal in terms of recordkeeping.*
- *Plans to establish the International Criminal Court (ICC) in The Hague* and how we have been involved with recordkeeping developments.

What can best practice recordkeeping do for the Rwandan Victims of 1994? According to Professor Eric David of Université Libre de Bruxelles,⁷ making publicly available the records and documents of the ICTR one will address several very important issues.

These issues are central to the Rwandan community or in another sense the "victims"

- "Catharsis: for those who remain, for those who lived the ultimate evil, for those who despaired of seeing the world react, the ICTR becomes a tremendous place to speak. There people can give voice to their suffering, ritualise it, objectify it, reopen the wound to better let it out, let it heal, let it scar over. Mourning becomes possible.
- Memory: the ICTR is a unique way of fixing in History the unbearable narrative of baseness of which man is capable. It has at its disposal the means, of which a historian could only dream, by which to establish and clarify in all its horror the sordid reality of the Rwandan genocide and the indifference of what is sometimes called the "international community".
- Teaching: the jurisprudence of the ICTR is and must be a "treatise on behaviour for use by younger generations" (R. Vaneigem), for use by all generations, even if we should not get carried away with its educational potential. The Nuremberg and Tokyo judgments could not prevent the massacres of millions from the four corners of the globe: Madagascar (1946), French Algeria (1954-1962), Indonesia (1965), Vietnam (1965-1975), Nigeria (1968-1970), East Pakistan (1970-1971), Cambodia (1975-1979), Afghanistan (1979-...), Iran-Iraq (1979-1988), Iraq-Kuwait (1990-1991), Yugoslavia (1991-1999), Algeria (1992-1999), Burundi (1962, 1993-...), Rwanda (1994), Congo (1998-1999), etc, just to name a few, reminding us that, when it comes to respect for even the most sacred of values, nothing can ever be taken for granted.
- Law: the most normal but not the least task of the Tribunal is to serve as a touchstone for the development of international humanitarian law. The jurisprudence of the Tribunal helps give content to terms whose meaning has tended to be lost in the subjectivity of each person's personal experiences, terms that no-one had ever really sought to codify or define inasmuch as it seemed intolerable to want to codify or define notions like rape, persecution or inhuman, cruel, humiliating and degrading treatment. On a more technical level, the decisions of the ICTR are the expression of a procedural law which, though still strongly influenced by Anglo-Saxon procedure, is borrowing more and more from the Romano-Civilian system. From this meeting of the two systems must be born a form of international criminal procedure to influence the system of procedure of the International Criminal Court and, in the longer term, perhaps to lead States themselves to rethink certain aspects of their own procedure.

Catharsis, memory, teaching, law: the ICTR performs these different tasks at the same time. It is from these variations on the theme of genocide – in which the voices of accuser and accused, of witnesses and victims, of judges last of all, meld into one – that a judicial

⁷ *ICTR, Reports of Orders, Decisions and Judgements* Prof. Eric David, Université libre de Bruxelles. Pierre Klein, ed. Bruylant, 2000.

truth, unique but reproducible in the future, can be born. This is the prize to be won and what justifies the Tribunal's existence. It is this that underpins the desire of those responsible for this collection to distribute its fruits.

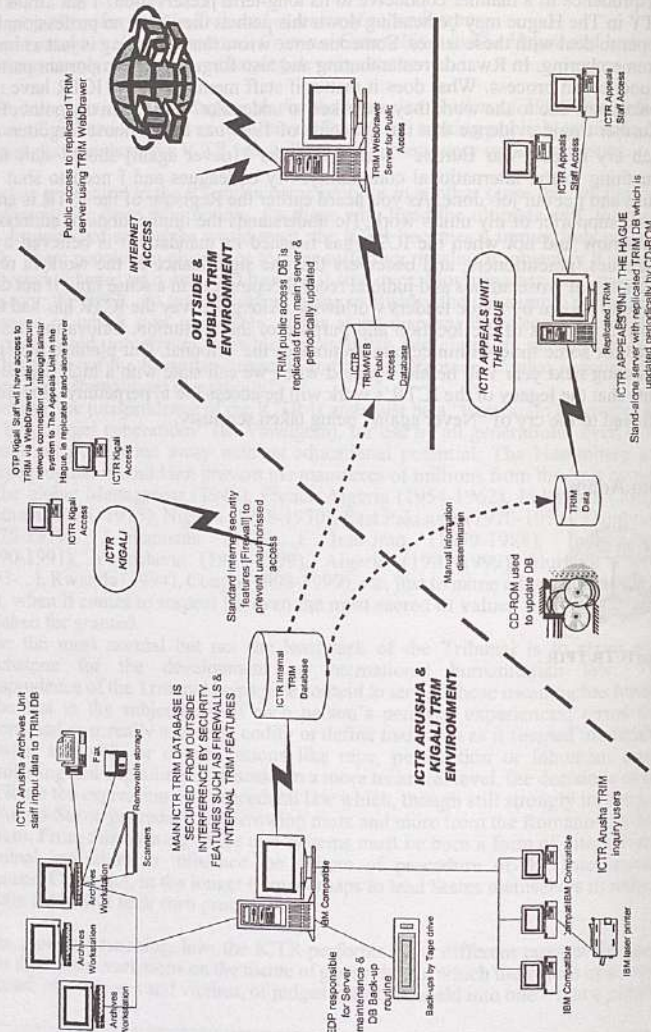
So in conclusion what does it matter if the ICTR does not deal with its documented jurisprudence in a manner conducive to its long-term preservation? I am afraid that the ICTY in The Hague may be heading down this path as they have no professional record keeper to deal with these issues. Someone once wrote that forgetting is just as important as remembering. In Rwanda remembering and also forgetting are important parts of the reconciliation process. What does it matter if staff members of the ICTR have nervous breakdowns due to the work they are asked to undertake? Well from my point of view it is further tragic evidence that the genocide of 1994 has been almost forgotten and the catch cry of post-war Europe "Niemals wieder" [never again] should start to mean something to the international community. My colleagues and I need to shut out the critics and get our job done. As you heard earlier the Registrar of the ICTR is an enthusiastic supporter of my unit's work. He understands the implications of addressing the issues now and not when the ICTR has finished its mandate. It is believed by many academics, practitioners, and observers that the significance of the work in regard to international prosecutions and judicial recordkeeping can in a sense limit if not decrease impunity shown by rogue leaders worldwide. Along the way the ICTR has had to adapt to the exigencies of the location and purpose of the institution. Innovation has been a motto for some time within certain sections of the Tribunal. Our planned new projects beginning next year will herald a period when we can state with a high degree of certainty that the legacy of the ICTR's work will be accessible in perpetuity. Hopefully this will lead to the cry of "Never again" being taken seriously.

Tom Adami



Logo ICTR/TPIR

ICTR Recordkeeping Architecture



“Taking Sides”: National Archives and the Defence of Human Rights in a Multicultural Society

Solon (c 640/635-after 560 B.C.), the Athenian statesman and lawgiver, decreed the “disenfranchisement of any citizen who, in the event of revolution, [did] not take one side or the other. Solon’s intention was... that men should not remain indifferent or apathetic to the public interest or safeguard their private affairs while congratulating themselves upon having nothing to do with the disorders and misfortunes of their country; he wished instead to encourage them to attach themselves at once to the better cause, share its dangers and give it their support, not to sit back in safety waiting to see which side would win.”

Viewing Solonic justice from the vantage point of Roman culture and some six centuries after Solon’s time, Plutarch, saw this decree as “very peculiar” and “unexpected.” Yet, nearly 2,000 years after Plutarch, from our post-9/11 perch, the kernel of Solon’s idea, while logistically impracticable seems remarkably modern and prescient.

The decree poses an interesting question for national archives: In times of peace or revolution, what role does a state archives play in contributing to the protection of the rights of its citizenry? And what about state archivists, whose salaries and job security flow from the state whose records are being selected, preserved and safeguarded? Is a state archivist shielded from “taking sides” by virtue of dealing primarily with the documentary evidence of the “disorders and misfortunes” of his country and not the citizenry? What does this mean in the context of protecting human rights² in a multicultural³ society such as Canada? And what part does Canada’s documentary heritage, preserved at the *Library and Archives of Canada*, play in the continuing challenges faced by First Nations and cultural communities to achieve substantive equality⁴ and “ad-

Due to unforeseen circumstances, Gabrielle Nishiguchi has been unable to deliver the full text of her paper. Please note that this is the summary and the full text will be published later.

1 Plutarch, *The Rise and Fall of Athens: Nine Greek Lives*, Translated by Ian Scott-Kilvert (Harmondsworth, Middlesex, England: Penguin Books, 1970).

2 *The National Archives of Canada* (NA) defines its corporate mission in terms of preserving the “collective memory of the nation and the Government of Canada” and contributing to the “protection of rights and the enhancement of a sense of national identity.” <http://www.archives.ca>.

3 “Canadian Multiculturalism: An Inclusive Citizenship: In 1971, Canada was the first country in the world to adopt multiculturalism as an official policy. By so doing, Canada affirmed the value and dignity of all Canadian citizens regardless of their racial or ethnic origins, their language, or their religious affiliation. The 1971 Multiculturalism Policy of Canada also confirmed the rights of Aboriginal peoples and the status of Canada’s two official languages.” / “Le multiculturalisme canadien : une citoyenneté ouverte à tous et à toutes. En 1971, le Canada a été le premier pays au monde à adopter une politique officielle de multiculturalisme. Ce faisant, il a proclamé la valeur et la dignité de tous les Canadiens et Canadiennes, sans égard à leurs origines raciales ou ethniques, à leur langue ou à leur confession religieuse. La politique canadienne du multiculturalisme de 1971 a confirmé également les droits des peuples autochtones et le statut des deux langues officielles du pays.” www.pch.gc.ca.

4 Law Society of Upper Canada. *Accommodation Policies and Procedures - Law Society of Upper Canada*. Toronto: Law Society of Upper Canada, May 2001. http://www.lsuc.on.ca/equity/pdf/model_policy_accomodations_oct01.pdf.
 “The Law Society of Upper Canada acknowledges that treating people identically is not synonymous with treating them equally. Substantive equality requires the accommodation of differences that arise from personal characteristics ...”.

vancement" within a "free and democratic society"⁵ This paper will look at several archival examples from Canada's historical past. All of them involve 20th century policy choices which empowered the federal government of the day to deploy its bureaucratic and legislative muscle against an ethnically or racially identifiable group. All of these historical events have given rise, many decades later, to community redress movements, which have made or are making use of the archival record. All of these communities bear witness to both the need to "re-build the truth" before it "relocates itself" and the fragile, ferocious relationship between this archival reconstruction of the truth and communal reconciliation.

Examples will be drawn from the experience of some 23,000 Japanese Canadians during the Second World War, including their forced evacuation, internment, federal dispossession, dispersion and even (in the case of 20% of the wartime community) deportation to Japan; the treatment of "80,000 Ukrainian-Canadians during the First World War designated as "enemy aliens" on the basis of their status as former subjects of states then at war with Canada"⁶—5,000 of whom were interned as prisoners of war; the abuse of thousands of Aboriginal children in nation-wide Residential Schools, currently the basis of a "multi-billion dollar class action [against the Government of Canada]," supported by claims of former residents of these schools for "neglect, sexual and physical abuse and for the systematic destruction of their cultural and family relationships from 1920 to 1996"⁷; and finally, the outstanding claims of 4,000 (in 2001) Chinese-Canadians seeking redress for the discriminatory immigration practice, between 1885 and 1923, of charging 81,000 Chinese immigrants "head tax" landing fees totaling \$23,000,000.⁸

Speaking about the residential schools issue, Matthew Coon Come, former National Chief of the Assembly of First Nations, admonished: "Before there can be reconciliation, there must be truth, and this is a threshold that we in Canada have yet to cross."⁹ This paper will argue that the archival record can help move a nation across the critical threshold of truth, memory, validation and identity.

But the records must survive. The four historical examples cited also underscore the inherent danger of the acquisition of a nation's documentary heritage by a state archives vigorous in the "pursuit of budget efficiency, [and] tight schedules,"¹¹ but timid and

⁵ From the preamble of the Library and Archives of Canada Bill now before Parliament: "Whereas it is necessary that (a) the documentary heritage of Canada be preserved for the benefit of present and future generations; (b) Canada be served by an institution that is a source of enduring knowledge accessible to all, contributing to the cultural, social and economic advancement of Canada as a free and democratic society." Canada Library and Archives of Canada Bill Information Session, 8 May 2003; "Attendu qu'il est nécessaire: a) que le patrimoine documentaire du Canada soit préservé pour les générations présentes et futures; b) que le Canada se dote d'une institution qui soit une source de savoir permanent accessible à tous et qui contribue à l'épanouissement culturel, social et économique de la société libre et démocratique que constitue le Canada." Projet de Loi Bibliothèque et Archives du Canada, Séance d'information, le 8 mai 2003.

⁶ Victor Wong quoting Meerai Cho in "Across Currents: Canada-Japan Minority Forum. Proceedings of the conference "Culture in Struggle," held in Vancouver, November 22-25, 1995 at the Vancouver Japanese Canadian Citizens, Association. Vancouver, British Columbia: JC Publications, 2001, page 66.

⁷ Bohdan S. Kordan, *Righting Historical Wrongs: Internment Acknowledgement and Redress* (Saskatoon, Saskatchewan: Ukrainian Canadian Congress, Saskatchewan Provincial Council, 1993), page 12.

⁸ www.thomsonrogers.com

⁹ "Across Currents: Canada-Japan Minority Forum. Proceedings of the conference "Culture in Struggle," held in Vancouver, November 22-25, 1995 at the Vancouver Japanese Canadian Citizens, Association. Vancouver, British Columbia: JC Publications, 2001, page 66.

¹⁰ *The Healing Has Begun: An Operational Update from the Aboriginal Healing Foundation*. Ottawa, Ontario: Aboriginal Healing Foundation, 2002, page 17.

¹¹ Barrie McKenna, "Shuttle probe blasts NASA's dysfunctional atmosphere," *The Globe and Mail*, 27 August 2003, p.A10: [A] scathing U.S. government inquiry has concluded that the root cause of the fatal crash [of the space Shuttle *Columbia*] was the culture at NASA, which for two decades had sacrificed safety in the pursuit of budget efficiency and tight schedules... "NASA had conflicting goals of cost, schedule and safety." Major-General John Barry, a member of the 13-member investigation board, told reporters. "Unfortunately, safety lost out."

costive in distinguishing between "necessary compromise and ethical choice."¹² They illuminate the growing 21st century need for a state archivist, who is capable of taking the side of the less powerful against the state during the process of record selection. And finally, they show us that records can help heal the historic wounds of a multicultural society - wounds inflicted by those in positions of power who have consciously or unconsciously surrendered their humanity to reason.

Gabrielle Nishiguchi

Selected Bibliography

Wartime Experience (1941-1949) of the Japanese-Canadians

Adachi, Ken. *The Enemy that Never Was*. Toronto, Ontario: McClelland & Stewart, 1991. See Chapters 9-14.

Nishiguchi, Gabrielle. "Innocence Lost: The Wartime Experience of Japanese-Canadian Children." *The Archivist*, Number 112 (2003): pages 9-13. *The Archivist* is free. To be put on our mailing list, write to *The Archivist*, Library and Archives of Canada, Publications, 395 Wellington Street, Ottawa, Ontario K1A 0N3 Canada / "L'Enfance Perdue: La vie des enfants nippon-canadiens durant la guerre," *L'Archiviste*, n° 121(2003). La revue *L'Archiviste* est gratuite. Pour vous abonner: La revue *L'Archiviste*, Bibliothèque et Archives Canada, Publications 395, rue Wellington Ottawa (Ontario) K1A 0N3 Canada.

"Throwaway Citizens." Canadian Broadcasting Company, *the fifth estate*, 24 October 1995. Host: Linden McIntyre. Producer: Margaret Slaght.

Re-shaping Memory Owning History: Through the Lens of Japanese Canadian Redress. Vancouver, British Columbia: Japanese Canadian National Museum, 2002. Tri-lingual edition: English, French and Japanese. For a copy, contact The National Nikkei Heritage Centre, Burnaby British Columbia, at info@NikkeiPlace.org

"Les Canadiens d'origine japonaise." *Tribune Juive*, Vol. 5 numéro 1, juillet-août 1987.

First Nations and Residential Schools

Frank, Steven. "Schools of Shame." *Time Magazine* (Canadian Edition), 28 July 2003, pages 30-39.

Milloy, John S. A National Crime: *The Canadian Government and the Residential School System: 1879-1986*. Winnipeg, Manitoba: University of Manitoba Press, 1999.

The Healing Has Begun: An Operational Update from the Aboriginal Healing Foundation. Ottawa, Ontario: Aboriginal Healing Foundation, 2002. For a copy: email programs@ahf.ca

¹² John Ralston Saul, *On Equilibrium* (Toronto, Ontario: Penguin/Viking, 2001): page 74.

La Guérison est en marche: Mise à jour opérationnelle sur la Fondation autochtone de guérison. Ottawa, Ontario: Fondation autochtone de guérison, 2002. Pour une copie: courriel: programs@ahf.ca

Native Residential Schools in Canada: A Selective Bibliography. Compiled by Amy Fisher and Deborah Lee, April 2002. This bibliography is available from the National Library of Canada's Web Site at: www.nlc-bnc.ca/native-residential.

Pensionnats Autochtones au Canada: Une Bibliographie Sélective. Compilée par Amy Fisher and Deborah Lee, Avril 2002. Cette bibliographie est aussi disponible sur le site Web de la Bibliothèque nationale du Canada à l'adresse: www.nlc-bnc.ca/pensionnats-autochtones

Ukrainian-Canadians during the First World War

Kordan, Bohdan S. *Enemy Aliens, Prisoners of War: Internment in Canada during the Great War.* Montreal, Quebec: McGill-Queen's University Press, 2002.

Kordan, Bohdan S. *Righting Historical Wrongs: Internment Acknowledgement and Redress.* Saskatoon, Saskatchewan: Ukrainian Canadian Congress, Saskatchewan Provincial Council, 1993.

Other publications of interest

Cardozo, Andrew and Louis Musto. Eds. *The Battle Over Multiculturalism.* Ottawa, Ontario: Pearson-Shoyama Institute, 1997.

Berger, Thomas R. *Fragile Freedoms: Human Rights and Dissent in Canada.* Toronto, Ontario: Irwin Publishing Inc., 1981. See Chapter 4: "The Banished Canadians: Mackenzie King and the Japanese Canadians"; Chapter 8: "The Nishga Indians and Aboriginal Rights"

Saul, John Ralston. *On Equilibrium.* Toronto, Ontario: Penguin/Viking, 2001. See pages: 65-114: Chapter 3: "Ethics"; pages 213-263: Chapter 6: "Memory."

Across Currents: Canada-Japan Minority Forum. Proceedings of the conference "Culture in Struggle," held in Vancouver, November 22-25, 1995 at the Vancouver Japanese Canadian Citizens, Association. Vancouver, British Columbia: JC Publications, 2001. See pages 65-67 (Victor Wong, On the Head Tax Issue); pages 72-83 (Loretta Todd, On Redress for Aboriginal People); pages 85-88 (Mildred Poplar, Strategies and Recommendations for Making Change)

Voting For or Against Access to Archives of Special Services Responsible for the Violation of Human Rights: Reviewing the Last Decade in Ukraine

The history of the twentieth century was rich in events which resulted in the major violation of human rights. Without even mentioning two awful world wars, it is sufficient to refer to dictatorships and totalitarian regimes which existed world-wide during the century: in Europe, Asia, Africa and South America. Such a brutal fate was probably only avoided by Australia, Antarctica and North America together with a few European countries.

The problems concerned with archives of such repressive regimes, especially those where a great deal of information relating to human rights violations is available, are taking the leading place in our forum. I would like to pay attention only to some aspects of these problems, those which arise from modern archival practice in Ukraine, and namely, to questions of protection of and compliance with human rights when using the archives of repressive authorities of past regimes in today's conditions.

These questions do not have specifically Ukrainian relevance. It is obvious that such problems have to be addressed by archivists in Germany, who inherited archives of two totalitarian regimes, the Gestapo and the Stasi. They are also current problems in the countries of South America which got rid of totalitarian regimes in the 1980s and 1990's (Argentina, Salvador, Uruguay and Chile), in many Asian and African countries, including South Africa, in all post-Soviet and post-socialist countries after 1990-1991, and now for today's temporary and future democratic governments of post-Saddam Iraq.

Ways of solving the problem of access to the archives of the special services of former totalitarian and repressive regimes in various countries are different. United Germany aimed at complete and unconditional unveiling of the Stasi archives, as it was with those of the Gestapo. The democratic governments of Salvador, Chile, Cambodia, and South Africa which opened the archives of former governments in order to initiate the process of national reconciliation, have done the same.

But, according to the famous specialist in human rights protection, American Professor Bruce P. Montgomery, Reconciliation without prosecution of those responsible for committing crimes against humanity, however, has been a highly dubious affair. In the past, accountability and justice have abandoned as the price for maintaining fragile stability.¹ Probably those were the reasons why, in Tajikistan, one of the Central Asian republics of the former USSR, the archives of special services have been totally destroyed. But it did not prevent the beginning of civil war in the country and the establishment of a new authoritarian regime.

Let us remind ourselves that this was not the first example of the destruction of archives of repressive authorities on the territory of former Russian Empire. After the February revolution of 1917, which overthrew the czar's regime, the archives of Okhranka – the Guards Department of Ministry of Interior of Russian Empire – was burned in Petrograd.

By a twist of fate, those documents of the czar's punitive authorities which were saved were immediately classified by the new Bolshevik regime and were actively used by their newly-created special services – the All-Union Extraordinary Commission

¹ Montgomery, Bruce P, 'The Iraqi Secret Police files: a documentary record of the Anfal genocide', *Archivaria* 52 (Fall 2001), pp. 71 – 72.

(VChK), the OGPU and the KGB. Full access to them has only been granted some 80 years after the October revolution – at the beginning of the 1990's.

We also should bear in mind the fate of the all-Union archives of repressive services after 1991, after the collapse of the USSR, which still keep data about the violation of rights not only of Russian citizens, but of many inhabitants of the new independent states (CIS). According to Russian archivists, there was a kind of "privatization of archival information, based on the usurpation of official opportunities".²

In other words, there is a struggle around the archives of the former KGB: some information from them appears in the press, but at the same time there is no complete unveiling of special services' archives.

Special attention of the world's archival and academic community in the above-mentioned problems is confirmed by the fact of recent international conference in Liverpool (UK). It was held on 22-25 July 2003 with the main topic "Political Pressure and the Archival Record and had representative membership from many countries of the world, but unfortunately only one report from "post-socialistic" countries (Slovenia).³ I think that the organizers of this conference should have taken care to invite reporting representatives at least from Russia and Ukraine, who could have illustrated the current situation on these topics in post-Soviet countries.

These examples are given to show complexity of the problem and prove that, in our opinion, there is still no exact and definitive answer to the question posed in the title of my paper. On the contrary, experience shows the existence of important contradictions and even collisions – not so much in archival practice as exclusively in national and international legislation. The essence of these collisions may be formulated very approximately and briefly as follows: on the one hand, provision of as wide as possible access to archives of totalitarian special services and at the same time ensuring the renewal of rights of those repressed and persecuted by these services. The disclosure of the truth about their crimes against mankind and violation of human rights is not subject to discussion.

On the other hand, we must at the same time ensure the protection of personal data, whose public disclosure is undesirable due to the necessity to comply with rights of the repressed and persecuted themselves for their own personal information, as well as many other people involved in the terrible mill of the repressive machine. Under pressure from investigators, under threats and tortures these people sometimes provided information which threatened other people: their families, relatives, colleagues, or even unknown people. Nowadays, no one has the right to accuse them; thus, in my opinion we are obliged to avoid uncontrolled distribution of information which might harm both them and their descendants.

Returning then to the practice in my own country. The republican special services as branches of such authorities of the USSR were liquidated on 24 August 1991. Two weeks later, on 9 September 1991 the Parliament of independent Ukraine passed a decree "On the transfer of archival documents of the KGB of Ukraine to state archives of the republic".⁴ It was noted that documents of KGB of Ukrainian SSR "are of great importance for objective evaluation of social and political processes, massive repressions, rehabilitation and guaranteeing of legal interests of citizens", and required their transfer to the central archival authority and its local branches.

In Ukraine, this decree abolished completely the archival system of special services, founded in 1918, which had been separate from, and uncontrolled by, the public authorities. But further developments, unfortunately, were not of the radical character expected by the decree. The National archival law approved at the end of 1993 allowed

² Maksymova, Ella. "Prodavtsy sensatsii iz Arkhiva Prezidenta" [Sellers of Sensations from the Presidential Archives], *Izvestia* (July 13, 1994).

³ See: <http://www.liv.ac.uk/lucas>

⁴ See: *Arkhivy Ukrainy [Archives of Ukraine]*, No. 5-6 (1991), p. 6.

for the creation of special branch archives of certain authorities for permanent keeping of their documents; the first one was the State archives of the Security service of Ukraine, which inherited almost all the KGB documents of the Ukrainian SSR.

Public archives in Kiev city and regions received only two categories of documents from the KGB archives: archival-investigation materials of rehabilitated persons and the so-called "filtration files" of former Ostarbeiters (Eastern workers) and captives of the Second World War, who came through a "filtration" process by the state security authorities after returning to their motherland. In addition, due to lack of storage space, the state archives of Donetsk and Odessa regions were completely unable to implement the Parliamentary decree.

It should be noted that archival institutions received first of all those documents which were necessary for the social protection of citizens and restoration of historical justice concerning repressed people. Between 1992 and 2002 information from these documents was requested by 1,180,471 persons, including 1,134,902 Ukrainian citizens and 45,569 foreigners (from Russia, Byelorussia, Kazakhstan, Israel, Poland and other). They were given 836,581 positive responses, and 343,890 negative answers. There was a great number of rehabilitated citizens who requested certification of the fact of their being persecuted by totalitarian regimes.

But from the start of using the information from the Security Service of Ukraine archives, state archives came up against the problem of protecting citizens' interests. Mostly those were issues surrounding access to negative information about other individuals contained in files of judicial and extra-judicial processes, in transcripts of accused persons' interrogations and so on. At their own initiative archivists had to become those "gatekeepers", described by American archivists and librarian M. Lane, and restrict the access to files transferred from Security Service of Ukraine, in order to guarantee constitutional rights of citizens, the untouchability of personal and private life.⁵

One further aspect of this problem lies in necessity of professional criticism of documents of secret services archives. As two of the main methods of working of the Soviet special services were provocation and deception, it is clear that these were widely used in working with those arrested. There was forgery of interrogation transcripts, falsification of evidence and investigation files, the distribution of false information. That is why each piece of information taken from the archives of special services requires a thorough examination, a search for confirmation from all related documents, and checks as to whether the sensationalist publication of such documents would be likely to cause much harm to a certain person, rather than historical justice being obtained.⁶

The work of the State archives of the Security service of Ukraine, created according to decree of the Cabinet of Ministers in 1994, also involves meeting the informational needs of society and the state, assisting in the realisation of the rights and interests of citizens.

These archives inherited all documents created by the republican authorities of national security between 1919 and 1991, material about criminal trials which were not followed with rehabilitation. Access to those which contain information about individuals is based on the Constitution of Ukraine, and on laws i.e. "On Rehabilitation of Political Repressions Victims in Ukraine", "On Information", "On State Secrecy" and

⁵ Hyka, V.M. "Z dosvidu roboty volynskyykh arkhivistiv po pryjomu ta obliku dokumentiv arkhivno-slidchyykh sprav represovanykh ta vyrishenniu problem jikh vykorystannia" [From the Experience of Processing the Archival Investigatory Files of Repressed Persons and Solving the Problems of their Use], *Arkhivno-slidchi sprav represovanykh: Naukovo-metodychni aspekty jikh vykorystannia*. Kyiv, 1998, s. 132-133.

⁶ Pyrih, R., and Hrankina, O. "Arkhivno-slidchi sprav represovanykh jak istorychne dzherelo: Naukovo-metodolohichni aspekty vykorystannia" [Archival Investigatory Files of Repressed Persons as Historical Source: Problems of Use], *Ibid.*, s. 26-28.

"On the National Archival Fond and Archival Institutions".

Article 32 of Constitution of Ukraine guarantees the citizen the right to familiarisation with information about him or her collected by public authorities, as long as there are no state or other secrets protected by law. It is also prohibited (with some exceptions) to use and distribute confidential personal information. Article 34 of the Constitution provides that the right to the free collection, maintenance, use and distribution of information may be restricted in the interest of national security, territorial integrity, keeping of civil order, for protection of reputation or rights of other people and so on.⁷

These provisions completely correspond with the requirements of European Convention on Human Rights of 1950, the main international convention on human rights and freedoms. The provisions of the Constitution of Ukraine are extended in the several laws mentioned above.

This is why the State archives of the Security service of Ukraine separately studies each inquiry for access to archival documents which contain information about a person, taking into account the above-mentioned legislation. A final decision depends on the inquirer's right to request such information, correlation of such a right with the rights of other people, existence of an individual's permission to provided personal information, regulations of access to this information provided for by the Law "On State Secrecy", and so on.

According to Ukrainian legislation foreigners may use archival documents in the same way as can citizens of Ukraine. This corresponds to the norms of international law and confirms our aspiration to adapt to international democratic legislation. This norm is applied at state archives as well as at branch archives of Security service of Ukraine. Its documents are heavily used.

In 2002 the State archives of the Security service of Ukraine received 350 applications from research institutions, universities, social organisations, another 550 applications from citizens of Ukraine and 17 from foreigners. These inquiries are concerned with documents containing information about the policy of the totalitarian regime, the mechanics of mass repression, and the activity of National security authorities.

At the same time, in the opinion of specialists of the State archives of Security service of Ukraine, one of the unresolved issues is the problem of access to archival criminal files, where court rulings came into effect and were not cancelled. (It should be noted that must be mentioned that the majority of political opponents of Soviet regime were accused of criminal offences.)

These files, dated 1919–1960, regardless of any logic, but according to the letter of Soviet law, are not accessible to any citizen, even to relatives.⁸ Even now, as regulated by the provisions of the Criminal-Procedural Code of Ukraine, only personnel from the prosecutor's office and the courts can use them. The question of access to such files needs to be resolved at legislative level.

The necessity of introducing changes to the Law of Ukraine "On Rehabilitation of Political Repression Victims in Ukraine" (passed in 1991) is quite clear, since it deprives individuals who struggled against Soviet power, of the right for rehabilitation though it is evident that they were real Ukrainian patriots

So, the political processes of the last decade in Ukraine concerned with the disclosure of archives of former secret services, are rather contradictory. On the one hand, society in general, and the majority of the radical political elite and the academic community requires complete cancellation of all restrictions on the use of these archives.

⁷ Konstytutsiia Ukrainy [Constitution of Ukraine], article 32.34.

⁸ See: Bilokin, S. *Masovyi teror iak zasib derzhavnoho upravlinnia v SRSR (1917-1941) [The Mass Terror as Means of State Government in the USSR (1917–1941)]*. Kyiv, 1999, s.37.

The practice of certain legislative and public authorities is aimed at keeping a balance between the level of revelation of the crimes of the totalitarian regime and guarantees of human rights, primarily by securing the confidentiality of personal data collected by the former regime, since uncontrolled use of such data may harm certain individuals and their descendants. Under such circumstances, archivists, including archivists of the Security service of Ukraine, have a very responsible task in becoming "gatekeepers" and guarantors of the protection of human rights. The execution of these functions requires a legislative base, which is not yet completely realised in Ukraine.

Hennadii Boriak