

A balancing act: The revised rules of access to the ICRC Archives reflect multiple stakes and challenges

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Abstract

The International Committee of the Red Cross (ICRC) revised the access rules to its archives in 2017 for reasons that are complex, fascinating and deeply contemporary to our times. As these rules define when and to what extent the ICRC Archives are made available to the public, their contents are important for the institution as well as for wider audiences. The ICRC must ensure that it can implement its humanitarian mandate to protect and assist victims of armed conflicts and other situations of violence and preserve confidentiality, while sharing its past with the world at large. This article offers a historical overview of the ICRC Archives and

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the development of their access regulations until their latest revision in 2017. It shows that both today and in the past, the rules of access to the archives have resulted from choices made by the ICRC on how to balance its mandate and long-standing interests with contemporary opportunities and risks related to independent scrutiny.

Keywords: access rules, archives, confidentiality, heritage, history, memory, protection.

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Introduction

The International Committee of the Red Cross (ICRC) revised the rules of access to its archives in 2017. Although this may seem an inconsequential development, it is worthy of attention since the ultimate purpose of archives, including the ICRC Archives, is their communication to internal and external audiences.¹ The interesting questions are: why were the rules revised, and in what ways?

This article focuses on the rules of access to the ICRC Archives and explores different factors that influenced the creation and the content of those rules, both today and in the past. It shows that the archives, and the rules governing access to them, are tools that support the ICRC in fulfilling its humanitarian mandate to protect and assist victims of armed conflicts and other situations of violence. As such, the access rules have been created and adjusted according to the circumstances at the time in order to serve institutional duties and interests, while embracing wider ambitions and opportunities. The access rules have nevertheless maintained the same purpose over time. They are aimed at protecting people, promoting research and preserving memory.

This article starts by recalling the main aspects that define the ICRC as a unique, independent and neutral humanitarian organization, and that influence the management of and access to its archives. It follows with a historical overview of the ICRC Archives and the development of their access rules from the mid-1990s to 2004. It then discusses the main contextual factors that led to the latest revision of the access rules. Finally, the article outlines key elements of the 2017 access rules and closes with concluding remarks. In addition to various

1 For more on the aim of archives, see the International Council on Archives (ICA), Universal Declaration on Archives, adopted by the 36th Session of the General Conference of UNESCO on 10 November 2011, available at: www.ica.org/en/networking/unesco/unesco-officially-endorses-uda (all internet references were accessed in May 2019). “Archives record decisions, actions and memories. [They] are a unique and irreplaceable heritage passed on from one generation to another. ... Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens’ rights and enhances the quality of life. ... We undertake to work together in order that ... archives are made accessible to everyone, while respecting the pertinent laws and the rights of individuals, creators, owners and users.” And see ICA Code of Ethics, ICA, 1996, and Swiss Association of Archivists, 1998, available at: www.ica.org/en/ica-code-ethics. “Archivists should promote the widest possible access to archival material and provide an impartial service to all users” (Art. 6); “Archivists should respect both access and privacy, and act within the boundaries of relevant legislation” (Art. 7).

public sources, a number of internal sources were consulted in the drafting of this article.²

This article aims to be a useful reference for the general public and for colleagues within the ICRC and other organizations. Its purpose is not to justify decisions that were made, but rather to acknowledge them for the long-term record. By providing a historical perspective, the discussion provides an opportunity to put in context the current rules of access of the ICRC Archives by showing how the changing social context prior to 2017 had a comparable influence on the content, and very existence, of these rules.

The article also aims to promote and highlight the value of the ICRC Archives and encourage their use. The ICRC Archives represent an exceptional legacy and a unique source of information about the past, as they cover more than 150 years of the history of humanitarianism and warfare and account for the experiences of millions of people worldwide during armed conflict. The ICRC Archives therefore provide an invaluable source of reflection, debate, inspiration and learning for the present and future.

The ICRC and its archives

On 17 February 1863, Henry Dunant, as secretary, signed off the minutes of the first meeting of the International Committee for Relief to the Wounded, the precursor of the ICRC.³ Still unaware of what would follow but hopeful that Dunant's vision⁴ would bear fruit, the young Committee preserved this document and the ones that followed in order to account for their decisions and actions. Thus, as the ICRC was born, so were its archives.

The ICRC is an independent, impartial and neutral organization with the exclusively humanitarian mission to protect the life and dignity of persons affected by armed conflicts and other situations of violence, and to bring them assistance. The ICRC endeavours to prevent suffering by promoting and strengthening universal humanitarian principles, in particular through international humanitarian law (IHL) and its implementation in national law.⁵

Archives are comprised of records and other documentary materials produced in various formats through any human activity and selected to be

2 According to the current access rules to the ICRC Archives, documents created after 1975 cannot be cited in external publications. Some points are nevertheless paraphrased in the text in order to support the arguments made.

3 ICRC Archives (ICRCA), A PV PL (minutes of committee meeting), 17 February 1863.

4 Henry Dunant, *Un souvenir de Solferino*, Geneva, 1862, re-edited by ICRC, Geneva, 1950–1990. Following his experience of war and suffering during the Battle of Solferino on 24 June 1859, between the Franco-Sardinian Alliance and the Austrian Army, the Swiss businessman Henry Dunant proposed the creation of “voluntary relief societies” in every country to care for the wounded in times of war in conjunction with the formulation of an international principle, sacred and conventional, to support their duties. His vision led to the creation of the ICRC and the foundation of the International Red Cross and Red Crescent Movement (the Movement) and the Geneva Conventions.

5 For more information see ICRC, “The ICRC’s Mandate and Mission”, available at: www.icrc.org/en/mandate-and-mission.

preserved over time in order to attest to what was done in the past. Archives should contain authentic, reliable and complete information that, once made accessible to the public, can offer an authoritative source of knowledge and learning. Archives are an indispensable tool for decision-making through critical and transparent assessment and understanding of the past.⁶ Archives are set within specific regulatory frameworks⁷ derived from international public law, national constitutions, national, federal, State or municipal laws (e.g. cantonal law in a political confederation such as Switzerland), governmental decrees, and/or in the case of private archives, such as the ICRC Archives, internal rules and guidelines. Archivists ensure a professional process of evaluation, preservation, protection, description, exploitation and promotion of archives, according to internationally recognized norms and standards.⁸

Since 1863, the ICRC has created and preserved its unique archives that account for its actions and history as much as they document the history of IHL, the International Red Cross and Red Crescent Movement (the Movement) and the history of warfare over the last two centuries. As living archives, they also preserve the memory of beneficiaries who were assisted by the institution. And yet, the ICRC is first and foremost an operational humanitarian organization and the guardian of IHL. Based on its mandate, it has a duty to ensure the integrity of its humanitarian endeavours, to help ensure that the individuals it serves are protected through the respect of IHL, and to ensure the safety of its staff. Consequently, the institution must manage its archives and the access thereto in light of these priorities. It is useful therefore, as a start, to recall the main aspects of the ICRC that influence the management of and access to its archives.

The ICRC works according to the Fundamental Principles of the Movement⁹ and following a confidential approach.¹⁰ The willingness of parties to armed conflict to develop an open dialogue with the ICRC, to provide it with access to affected persons and to ensure the security of ICRC staff on the ground is dependent on the ICRC's respect of the fundamental principles of neutrality and independence, as well as on its commitment that information exchanged is treated in confidence and is not shared with third parties.

The international community has recognized confidentiality as an essential tool for the ICRC to fulfil its humanitarian mandate. In this respect, the institution benefits from a privilege of non-disclosure of confidential information based on

6 For more on the definition of archives, see ICA, "What Are Archives?", available at: www.ica.org/en/what-archive; Universal Declaration on Archives, above note 1.

7 Taken from Jürg Schmutz, Cantonal Archives of Lucerne, presentation at the Association Suisse des Archivistes, Bern, November 2017.

8 Archivists use common standards relating to the structure and content of archival fonds (e.g. the General International Standard Archival Description) and to other elements such as the producer, the process of archiving, and the processes of indexing and digital preservation (for an explanation of archival fonds, see note 14 below). For more on the responsibilities of archivists, see ICA, "Who Is an Archivist?", available at: www.ica.org/en/discover-archives-and-our-profession; ICA Code of Ethics, above note 1.

9 The ICRC is guided at all times by the fundamental principles of the Movement, which are humanity, impartiality, neutrality, independence, unity, universality and voluntary service.

10 See "The International Committee of the Red Cross's Confidential Approach", *International Review of the Red Cross*, Vol. 94, No. 887, 2012.

international and domestic law.¹¹ This privilege allows the ICRC to effectively work on the basis of a confidential approach and to live up to its commitment to confidentiality, requiring that the confidential nature of its information be respected. Such respect implies that the ICRC and its staff may not be compelled, including by way of testimony, to share information in the framework of judicial processes, public inquiries, transitional justice mechanisms or other proceedings of a legal nature.

The ICRC manages and preserves information, including personal data, relating to all aspects of its work.¹² In order to ensure adequate, legally sound and consistent processing of personal information through its various activities centred on helping individuals, the ICRC has developed a comprehensive framework of rules relating to the protection of personal data.¹³

It comes as no surprise that the key aspects of the ICRC's identity and ways of working have played an important role in discussions about making its archives public. Combined with contextual elements, they represent various stakes and challenges that had to be taken into account when the ICRC assessed opportunities to promote independent scrutiny into its past via the archives. In order to bring us up to 2017, when the rules of access were last revised, this article now takes a historical look at the ICRC Archives and the development of their access policies.

The history of the ICRC Archives

From operational tool to world heritage

As noted earlier, since its creation the ICRC has preserved documents that it has produced and received from parties involved in armed conflicts and other sources. The ICRC Archives cover the organization's history, activities and functioning, and preserve the memory of persons it assisted, spanning over 156 years without any major chronological gap. Institutional archives were constituted

11 See "Memorandum: The ICRC's Privilege of Non-Disclosure of Confidential Information", *International Review of the Red Cross*, Vol. 97, No. 897–898, 2016, available at: www.icrc.org/en/download/file/19024/irc_97_1-2-18.pdf.

12 ICRC activities, be they related to protection, assistance, cooperation, operational and public communication or humanitarian diplomacy, all require and produce information. Since the creation of the institution, different types of information have been collected, centralized, protected, shared in confidentiality, managed in accordance with their quality, quantity and the means available at the time, selected, preserved and constituted as archives. A significant portion of this information comprises personal data relating to individuals who were registered and followed individually by the ICRC such as prisoners of war and missing persons. See note 18 below.

13 ICRC Rules on Personal Data Protection, adopted by the Directorate of the ICRC on 24 February 2015, updated 10 November 2015, available at: www.icrc.org/en/publication/4261-icrc-rules-on-personal-data-protection. The term "personal data" refers to any information relating to an identified or identifiable natural person. This may include an identifier such as a name, audiovisual material, an identification number, location data, online identifiers, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a data subject. It also includes data identifying or capable of identifying human remains.

over the years and throughout the wars of the nineteenth, twentieth and twenty-first centuries, up to today. Photographs joined paper documents in 1863; films arrived in 1921, and audio in the early 1950s. Some paper documents were copied onto microfilm in the 1980s, while electronic filing was systematized in 2010.

The ICRC Archives are constituted in different categories and archival fonds.¹⁴ They include the archives of the decision-making bodies of the organization, the general operations archives,¹⁵ the audiovisual archives and the archives of the various prisoner of war (PoW) agencies, regrouped today as the archives of the Central Tracing Agency and Protection Division.¹⁶

The ICRC Archives preserve the history of the institution and much more, including the history of humanitarian ideals and the humanitarian profession; the development of IHL; the history of captivity in war; the history of war's victims, particularly detainees; and the development of the Movement. The Central Tracing Agency and Protection Division archives hold personal information about families, men, women and children who were assisted by the ICRC, often in collaboration with National Red Cross and Red Crescent Societies around the globe since 1870, mainly to clarify the fate of loved ones and restore contact with one another. These archives constitute a memory of those individuals and attest to the burden they bore as victims of armed conflict or of other situations of

14 An archival fonds is a group of documents that share the same origin. The ICRC Archives are made up of seven main fonds: A/Committee (1854–ongoing); B/General Services (1917–ongoing); C/Central Tracing Agency and Protection Division (1870–ongoing); D/Delegations (1921–ongoing); O/Humanitarian Organizations (1921–ongoing); P/Private archives (1895–1991); V/Varia (1840–ongoing). Documents are managed by field delegations before being handed over to the archives. Finally, the administrative, financial, accounting, logistics and human resources files are managed by their respective units, who hand them over to the archives for evaluation and selection procedures.

15 The current ICRC general public archives cover the history of the institution since its foundation in 1863 until 1975. The periods covered include the initial creation, development and evolution of the Movement (1863–1914); the Schleswig–Holstein conflict between Prussia and Denmark (1864); the Franco-Prussian War (1870–71); the Great War (1914–18); the diverse armed confrontations during the 1920s and 1930s (such as the Greco-Turkish War, the struggle between China and Japan, the Italo-Ethiopian War and the Spanish Civil War); the Second World War (1939–45) and its aftermath; the decolonization process and the Cold War, including the French Indochina War (1946–56); the Korean War (1950–53); the Suez Crisis and the Hungarian Revolution (1956); the Algerian War of Independence (1954–62); the War of Independence of the Belgian Congo and the subsequent civil war that broke out in the country (1960–65); the civil war in Yemen (1962–64); the Middle East conflicts (1967 and 1973); the Nigeria–Biafra War (1967–70); the 1967 Greek military dictatorship; the military coup against President Allende in Chile (1973); and the end of the Portuguese colonial empire (1975). Other topics include the management and corporate transformation inside the ICRC itself; the implementation of IHL (particularly connected to the adoption and application of the Geneva Conventions ratified by the international community in 1864, 1906, 1929 and 1949); and legal and humanitarian improvements discussed during different International Red Cross and Red Crescent Conferences between 1928 and 1975.

16 The first PoW agency was the Basel Agency (1870), followed by the agencies of Trieste (1877) and of Belgrade (1912–13); the International Prisoners of War Agency was active during the First World War (1914–23), followed by the Spanish Civil War; then came the gigantic Central Prisoners of War Agency during the Second World War. This agency continued to respond to needs in the post-war period and in relation to the conflicts that followed the Second World War, such as in Palestine (1948–50). In 1960, the Central Prisoners of War Agency acquired a permanent status within the ICRC, and it has since become known as the Central Tracing Agency. For more information, see Gradimir Djurović, *L'Agence Centrale de Recherches du Comité international de la Croix-Rouge*, Institut Henry Dunant, Geneva, 1981.

violence.¹⁷ As such, they are of critical value to those directly concerned, along with their families and descendants. These are living archives that are still used today to clarify relevant experiences and to support individuals in their quest to obtain some form of compensation. In general, the ICRC Archives have a powerful and far-reaching historical and cultural value in addition to their significance to individuals. As they preserve the memory of millions¹⁸ of victims of war, they constitute a legacy for mankind.

Notions of historical memory and preserving memory for the sake of all humanity in relation to the archives only developed in the ICRC after the First World War. This is not unusual, as archives are not constituted primarily to serve history or the social sciences more generally. A comparatively small number of documents produced acquire a historical value over time. When they do, those documents become part of a broader legacy, beyond the institution that produced them – a national or even a global heritage.¹⁹

The ICRC Archives were initially conceived to account for the institution's humanitarian mandate; in recording diplomatic and State correspondence that was produced in the process, the archives ensured institutional accountability and operational continuity. The ICRC's Archives Commission initially oversaw the basic conservation of and access to the volumes of documents, which were preserved primarily for internal consultation and reference.²⁰

By the time the First World War (1914–18) had come to a close, the ICRC had assembled exceptional records, notably about PoWs.²¹ These documents testified to the experience of millions of persons during the Great War and to its tragic humanitarian consequences. The ICRC came to recognize the importance of its archives for history and for mankind around this time. Plans for long-term conservation of the archives were thus made, reflecting the acknowledgment of the perennial value of this patrimony.

The ICRC intended to centralize the archives relating to its humanitarian action during the First World War in Geneva. First, a request was made to the Danish Red Cross, who had been leading humanitarian activities on the Eastern Front, to send its archives to the ICRC. Second, the ICRC discussed with the municipal authorities of Geneva the opportunity to donate to them its archives

17 As a memory of events and experiences of individuals during different conflicts, the ICRC Archives also have an important value and role in countering theories of historical negationism and revisionism.

18 The Central Tracing Agency archives alone hold 36 million index cards with individual information in relation to the Second World War. Five million index cards relating to the First World War, now digitized, are available at: <http://grandeguerre.icrc.org>.

19 Association des Archivistes Français, *Abrégé d'Archivistique*, Paris, 2004, p. 11: "Ensemble de documents produits dans l'exercice d'une activité pour garder trace de certaines actions, les archives ne sont pas conçues à l'origine pour servir l'histoire. Ce n'est qu'au fil du temps qu'une partie d'entre elles acquiert une finalité historique, après avoir été considérées outil pour le fonctionnement des institutions. Elles deviennent dès lors un élément constitutif du patrimoine national."

20 ICRC, A PV, Commission des Archives, 27 May 1943: "La Commission a vérifié la mise en place ... dans des casiers appropriés des archives de 1863 à 1914 mises à plat; des archives de 1914 à 1918; des rapports des missions qui ont suivi la guerre de 1914–1918. ... La Commission a constaté avec satisfaction les progrès réalisés rendant possible la consultation des archives et a demandé que ce travail soit continué."

21 See note 18 above.

relating to the First World War, for the sake of preserving this information for posterity and providing access to interested families and researchers.²²

These steps echoed a general interest of the municipality of Geneva, as well as of the ICRC and the recently founded League of Nations, to make the emblematic city of peace a site of remembrance for all the victims of the Great War. With the hope that this global conflict would be the last of its kind, there was an ambition to constitute a comprehensive account of that war. A central element of that vision was the long-term conservation of the ICRC Archives and key documents from other sources in Geneva, rendering the city a universal library safekeeping the memory of the Great War for humanity.²³ While several aspects of this plan did not materialize, the recognition of the long-term historical value of the ICRC Archives was established.

The astronomical growth of the ICRC's activities during the Second World War, and in particular of its Central Prisoners of War Agency, gave rise to a large volume of valuable personal and operational data. By the end of the Second World War, moreover, a great part of the world's archives pertaining to the First World War had been partially or completely destroyed, further enhancing the extraordinary value of the well-preserved ICRC Archives.

The ICRC introduced its first filing system in 1942 and created an Archives Division in 1946 to manage what was by then a major institutional and international reference. A general comprehensive filing plan was then adopted in 1950 – the so-called “Pictet Plan”, in reference to its creator, Jean Pictet, who was then director of the Division of General Affairs, which included the archives. The filing plan comprised both thematic and geographic referential numbering.²⁴ It applied to the whole institution until 1972 and to the Archives Division until 1997. This was followed by a similar though more detailed filing plan which included computerized documents, providing new opportunities for indexation. In 2010, the ICRC formally adopted an electronic filing system.²⁵

Public access to the ICRC Archives

Even internal access to information was restricted according to levels of confidentiality attributed to documents. Moreover, since 1925, documents that were considered particularly sensitive at any given period were stored in a safe at ICRC headquarters, a procedure still in practice today.

22 See correspondences in ICRC, First World War General Documents, C G1 A 06-07, 10 April 1918–30 January 1919, “Projets de dépôt des archives de l’agence de la Croix-Rouge danoise au CICR et des archives de l’AIPG à la Bibliothèque publique de la ville de Genève. Inventaire des archives de la direction de l’Agence (série 400)”, including a correspondence dated 12 April 1918 to the Danish Red Cross and a correspondence dated 17 April 1918 to the Municipality of Geneva.

23 See correspondences in ICRC, First World War General Documents, C G1 A 06-07, 10 April 1918–30 January 1919, including a note from the Commission des Archives de la Guerre de la Bibliothèque Publique de la Ville de Genève dated 26 June 1918.

24 The filing plan is known as B AG (*Services généraux – Archives générales*).

25 Filing plan B AI (*Services généraux – Archives institutionnelles*) and since 2010, B RF (*Services généraux – Archives générales des unités*, Reference Files).

The general rule was that public access was not granted; nonetheless, the director of the ICRC's Division of General Affairs could consider individual requests on a case-by-case basis and decide to grant access in certain circumstances. Proposals to consider granting public access to the ICRC Archives based on a certain protection period had been evoked as early as 1943 but were not implemented.

As the ICRC celebrated its centenary in 1963, the institution developed an interest in making its archives available to external researchers, although specifically in areas where it saw an added benefit for itself. In 1973, the practice of considering case-by-case requests for access was formalized by the ICRC Assembly, its supreme governing body, in a first regulations document.²⁶ Case-by-case exceptions were to be granted by the executive committee of the Assembly.

The regulations of 1973 (revised in 1981) gave the ICRC full control over the information selected in the archives and shared with the researchers, and access to manuscripts before publication. While derogation from the general rule of non-disclosure was provided when this suited the interests of the ICRC, the objective was to prevent any prejudice towards the institution and to safeguard the ICRC's confidential approach. Both the (limited) research opportunities and the monitoring measures were therefore means for the ICRC to manage its image and reputation.

The system of *ad hoc* derogations allowing access to select archival materials was however denounced by researchers as being incoherent, partial and subjective. Furthermore, by the late 1970s and 1980s, the social mood began channelling growing criticism towards the ICRC's perceived role and stance during the Second World War, specifically regarding the Nazi genocide and concentration camps.²⁷ Voices were raised across society calling for accountability for the perceived lack of action by the ICRC, and for transparency in relation to its past.²⁸ The institution's reputation was being challenged from several angles.

If prior to this the ICRC had managed its image by mostly keeping its archives out of the public arena, it seemed that maintaining its reputation depended on bringing them to the fore, albeit with due respect for confidentiality. In terms of public image, transparency was becoming a stronger tool than secrecy.

Resonating with social pressure and in order to safeguard its interests and reputation, the ICRC thus changed its attitude towards independent research in its archives in 1979. For the first time, the ICRC gave unlimited access to the archives to

26 ICRC, PV HC A, 20 September 1973.

27 Criticisms were made in relation to the protection of civilian victims of the Nazi dictatorship. It must be noted that Geneva Convention IV of 1949, protecting civilians in armed conflict, had not yet been adopted, despite efforts by the ICRC to make that happen after the First World War. See also "Press Conference given by the President of the ICRC", Geneva, 30 May 1995, available at: <https://blogs.icrc.org/ilot/2018/04/03/press-conference-given-president-icrc-geneva-30-may-1995/>; "Remembering the Shoah: The ICRC and the International Community's Efforts in Responding to Genocide", speech given by ICRC President Peter Maurer, 28 April 2015, available at: www.icrc.org/en/document/rememering-shoah-icrc-and-international-communitys-efforts-responding-genocide-and.

28 Starting in 1945, the ICRC was put under pressure regarding its actions during the Second World War, namely its failure to obtain access to many concentration camps. The Jewish community in Europe and in the United States voiced most criticisms. See, for example, ICRC, Tartakower Case, B G59/7-329. See also Sébastien Farré, "The ICRC and the Detainees in Nazi Concentration Camps (1942–1945)", *International Review of the Red Cross*, Vol. 94, No. 888, 2012.

an independent researcher from Geneva, Professor Jean-Claude Favez, creating a precedent. Favez's study about the role of the ICRC in Nazi deportations during the Second World War, published in 1988, was acclaimed by the public as a sign of transparency and accountability by the ICRC with regards to its past.²⁹ The door was now open, and requests came flowing in from other researchers and institutions.³⁰ They asked for access to the archives for independent research, especially on the Second World War period.

The world wanted answers regarding the accountability of States and institutions during the Second World War. The ICRC showed that it understood this significant social, cultural and historical outcry and wanted to contribute to it as part of its humanitarian mission. It set out to formally discuss more decisively than ever before the need to have a public access policy for the wealth of archived material that it possessed since 1863.

The newly appointed president of the ICRC, Cornelio Sommaruga, sensing what was to come, gave the institution the opportunity to reform its archiving system in the late 1980s. The ICRC's first archiving policy was approved by its Assembly on 10 May 1990. It confirmed the mandate given to the Archives Division to organize, preserve and communicate the archives in line with principles of modern archiving. It recognized the ICRC Archives as a world heritage as well as a cultural heritage of Switzerland.³¹ It further underlined that the institution had, by virtue of its humanitarian mandate, a moral obligation to preserve this legacy and to be accountable for it to humanity. Crucially, the policy proposed developing rules of access for the archives.

The ICRC Assembly adopted the first access policy for the archives in its 17 January 1996 session. The 1996 rules of access provided that the general public had access to "public archives" – that is, files that had been inventoried by archivists so as to become available for research.³² Archives were classified as "public" after a protection period meant to ensure that public consultation did not prejudice the ICRC or the persons that it was mandated to protect, or any other public or private interest.³³ Protection periods were of fifty years for general archives and 100 years for material that contained mostly personal data.³⁴

It is worth noting that some within the ICRC had proposed even longer protection periods. However, those arguments were rejected and the ultimate

29 Jean-Claude Favez, *Une mission impossible? Le CICR, les déportations et les camps de concentration nazis*, Editions Payot, Lausanne, 1988.

30 E.g., the Yad Vashem Institute in Jerusalem and the United States Holocaust Museum in Washington. See also Arieh Ben-Tov, *Facing the Holocaust in Budapest: The International Committee of the Red Cross and the Jews in Hungary, 1943–1945*, Kluwer Academic Publishers, Dordrecht, 1988.

31 The ICRC's archives relating to the International Prisoners of War Agency during the First World War were granted UNESCO World Heritage status in 2007. See UNESCO, "Archives of the International Prisoners of War Agency, 1924–1923", available at: <https://tinyurl.com/yy7h58x3>.

32 ICRC, Rules Governing Access to the Archives of the International Committee of the Red Cross, adopted by the ICRC Assembly on 17 January 1996 and revised by the ICRC Assembly on 29 April 2004 (1996–2004 Access Rules), Art. 6.

33 *Ibid.*, Art. 6.

34 *Ibid.*, Art. 7. Information from individual files could, however, be shared after fifty years for autobiographical or biographical purposes via the services of an archivist.

protection periods corresponded to similar practices in Swiss and European legislation and those found in most Western democratic States at the time.³⁵ Some of these same files were already available to the public via other archives and historical research centres.

General archives from 1863 to 1950 were made accessible to the public in full, including all information that had been classified as confidential when it was created, or that had been stored in the safe at ICRC headquarters. The issue of data protection was addressed by requiring a signed, written statement from each person coming to consult the archives acknowledging that they were bound by Swiss law regarding the adequate use of personal data, with the aim of respecting the integrity and privacy of individuals concerned.

As one can see, in 1996 the first access policy for the ICRC Archives was already a balancing exercise. It was a political tool used to safeguard long-standing institutional duties and interests related to the protection of victims and the safety of staff while upholding integrity, confidentiality, accountability and the reputation of the organization. The access policy also provided a means to achieve wider contemporary ambitions related to transparency, a moral duty of memory towards victims, independent and critical research, allowing access to a world heritage, data protection issues, and so on.

The impact of opening the archives to the public

Under these new policies, information managed by the ICRC might be confidential and subject to restricted access; at the same time, some information might be openly shared with the public after the requisite number of years. Far from suffering from this apparent contradiction, the institution thrived on this practical combination of interests.

In the 1990s, the time was ripe for transparency in many parts of the world, including through the promotion of greater access to archives.³⁶ Several democratic States and organizations reflected this trend by giving wider access to their archives,³⁷ even though information and its management were increasing in

35 Jean-François Pitteloud, "Un nouveau Règlement d'accès ouvre les archives du Comité international de la Croix-Rouge à la recherche historique et au public", *International Review of the Red Cross*, Vol. 78, No. 821, 1996, p. 595. The protection delays for consulting personal data in cantonal archives in Switzerland vary between fifty years or ten years after the death of the person concerned (e.g., canton of Lucerne, Archivgesetz, 16 June 2003) to 100 years or ten years after the death of the person concerned (e.g., canton of Vaud, Loi sur l'Archivage, 14 June 2011).

36 ICA, "ICA: 70 Years of International Influence – Timeline", 9 June 2018, available at: www.ica.org/en/international-council-archives-0/ica-70-years-of-international-influence-timeline. From 1993 onwards, the ICA developed strong cooperation with the Council of Europe "to promote the modernisation of archives in Europe". The ICA also promoted more extensively the importance of access to archives. In 1994, the ICA published its first standard, the International Standard on Archival Description (General), which was rapidly adopted by archivists around the world, including at the ICRC. In 1996, the ICA adopted its Code of Ethics for archive professionals across the world.

37 National legislations and policies of international organizations relating to archives generally evolved in the 1990s towards a trend of decreasing retention periods. The Swiss Federal Archives followed the principle of a thirty-year general retention period and fifty years for personal data, while the United Nations adopted a twenty-year general protection period.

stakes and complexity; the public interest was particularly tuned towards accountability and transparency.

For example, Switzerland's role during the Second World War underwent a critical reappraisal as the country faced criticisms for its links with the German National Socialist regime. There was such pressure to provide answers that in 1996 the Swiss Federal Parliament voted to set up an Independent Commission of Experts to research relevant issues and publish several reports. In 1998, a report was published on gold transactions in Switzerland during the Second World War; a report on refugees in Switzerland related to the Nazi regime came out in 1999.³⁸

The ICRC was, to its advantage, a few years ahead of others in this domain.³⁹ As the Swiss independent research project was unfolding between 1996 and 1999, the ICRC was drawn into many debates on pertinent matters. The organization found itself in a strong position to answer sensitive questions, thanks to the 1996 rules of access to its archives and to the hundreds of researchers who had since published the findings of their research.

Pointing to such concrete signs of transparency and an evident will to be accountable to the victims it served, and to the world at large, provided the ICRC with its best arguments. Moreover, open dialogue and partnerships established with other archive centres and institutions⁴⁰ were further constructive steps towards transparency taken by the ICRC.

The evolution of the rules of access to the archives, 2004–16

The rules of access to the ICRC Archives were never meant to be set in stone. Their initial content, indeed their very existence, was due to the fact that they served the ICRC's interests in a particular time and circumstances. The ICRC had a sustained and strategic interest in capitalizing on the world's positive response to the opening of its archives in 1996. Thus, in 2004, when the second set of materials from the archives (concerning the period from 1951 to 1965) was being declassified, the ICRC Assembly decided to modify the 1996 access rules by reducing the retention period on public access from a period of fifty years to a general period of forty years, and from a period of 100 years to a period of sixty years for documents containing mainly personal data.⁴¹ According to the ICRC's deputy archivist at the time,

38 Commission Indépendante d'Experts Suisse – Seconde Guerre Mondiale (ed.), *La Suisse et les transactions sur l'or pendant la Seconde Guerre Mondiale*, Berne, 1998, and *La Suisse et les réfugiés à l'époque du national-socialisme*, Berne, 1999.

39 See, for example, a recent study by the Dutch Red Cross on its actions during the Second World War: Regina Grüter, *Kwesties van leven en dood: Het Nederlandse Rode Kruis in de tweede wereldoorlog*, Uitgeverij Balans, Amsterdam, 2017.

40 For example, the Archiwum Poslki Podziemnej and Commonwealth Ex-Services Association of Pakistan.

41 See 1996–2004 Access Rules, above note 32, cited in Jean-François Pitteloud, "The International Committee of the Red Cross Reduces the Protective Embargo on Access to Its Archives", *International Review of the Red Cross*, Vol. 86, No. 856, 2004, pp. 959–962. These rules later included audiovisual material, most of which was and is created with a view to becoming public.

[by] reducing the embargo period, the ICRC is seeking to comply with current trends regarding public access to archives and is at the same time confirming its policy of openness and transparency as defined in 1996. It is also reasserting its wish to make the history of the ICRC known.⁴²

It is interesting to note that this public notice did not mention the ICRC's responsibility towards the integrity of its operations and the protection of victims of armed conflict or other situations of violence. It goes without saying that the protection periods, though shortened, aimed to continue to safeguard these duties;⁴³ it seems that the issue was simply taken for granted. The centre of the public stage was taken by concerns of openness and transparency, and apparently these were the focus of the ICRC and the public discourse.

In the years following 2004, the ICRC pursued its humanitarian responses in conflict-affected areas in a world undergoing rapid transformations in key sectors such as information and communication technology. The use of the Internet and social media boomed over the following decade.⁴⁴ Digital documents became the norm at the ICRC, and systematic electronic filing was adopted in 2010, alongside the continued use of paper documents.

Despite the new type of world that was dawning in terms of developments in information technology, in 2011 the ICRC Assembly re-confirmed its prior assessment that forty- and sixty-year protection periods, respectively, were adapted to the institution's interests. The protection periods were still deemed sufficient to reasonably exclude the possibility that declassified material would prejudice the ICRC, the affected persons it has the duty to protect or any other private or public interests. In 2011, the ICRC Assembly confirmed that general archives would be opened by chronological portions of ten years each.⁴⁵

Thus, in principle, the 1996 rules of access (as revised in 2004) would apply when the next ten-year period of general archives (from 1966 to 1975) was to be made public in 2015. In preparation, these archives were inventoried, so as to be more accessible for researchers. During this inventory phase, the ICRC also conducted an assessment of potential risks related to certain archives being made public at that time.⁴⁶ As a result, some files were in effect transferred into the

42 J.-F. Pitteloud, above note 41, p. 958.

43 1996–2004 Access Rules, above note 32, Art. 6: “The general public has access to archives classified as ‘public’ after a set period of time, to ensure that such access will in no way be detrimental to the ICRC, to the victims that it is its duty to protect, or to any other private or public interests requiring protection.”

44 “Global social networking audiences surpassed 2 billion users in 2016. The most popular social network worldwide is Facebook; with 1.86 billion monthly active users by the end of 2016.” Statista, “Daily Social Media Usage Worldwide 2012–2018”, available at: www.statista.com/statistics/433871/daily-social-media-usage-worldwide/.

45 By contrast, the individual archives of the Central Tracing Agency and Protection Division have instead a yearly opening time, based on the applicable protection period. See the document “Consultation of Agency Archives”, a procedure relating to the Central Tracing Agency archives as defined in the 2017 access rules, available at: www.icrc.org/sites/default/files/wysiwyg/About/history/access_to_the_icrcs_agency_archives_2017.pdf.

46 This was done taking into account the ICRC Rules on Personal Data Protection, above note 13, which were adopted in 2015.

category of documents to be declassified only after sixty years (rather than forty). This was made public, and each document that had been made unavailable for consultation for an additional twenty years was outlined in the public inventory in a transparent way.

The period of the ICRC general archives covering 1966 to 1975 was opened in June 2015, to the great interest of researchers and the general public. It is now possible to delve freely into fascinating reports relating to ICRC operations in the Middle East, Cyprus, South America or the Nigeria–Biafra conflict, among other contexts.⁴⁷

Having opened this latest section of its archives in 2015, the ICRC was prompted to engage in a review and analysis of the complex features that define the contemporary world, sensing that this exercise was becoming essential to adequately manage access to the archives in the future. Considerations that have always been key for the ICRC, such as ensuring confidentiality, security and the protection of personal data, now found themselves intertwined with several challenging realities, whether in relation to advances in information technology, ongoing armed conflicts or security concerns.⁴⁸ Reflection on these interconnected elements took place within the institution in 2015 and 2016, leading to a revision of the rules of access to the ICRC Archives in 2017.

The article will now look at the key elements that influenced the revision process. It will then lay out the new rules of access to the ICRC Archives, which aim to balance these multiple stakes and challenges.

Factors that influence today's access to the ICRC Archives

Ensuring confidentiality in operational settings and legal proceedings

Nowadays, many armed conflicts are considered to be more complex and last over several decades. They are colloquially known as protracted conflicts,⁴⁹ in which what is at stake for the population, the parties to the conflict and the ICRC

47 See above note 15. Today, the ICRC receives up to 250 external researchers per year at its headquarters in Geneva who work on the general public archives during an average of 600 days of consultation. Archivists respond annually to some 3,000 written requests from families of ex-PoWs and the public regarding both general and individual archives, which reflects only part of the total demand. The great majority of individual requests relate to the Second World War, though genealogical research relating to the First World War continues to be an important field of interest. Among the requests received yearly by the ICRC's individual archives, approximately 65% concern the Second World War, 25% concern the First World War and 10% concern conflicts since 1948. The majority of requests about the Second World War concern French PoWs, followed by British/Commonwealth, German and Italian PoWs. In 2018, the ICRC's website containing the individual records of prisoners of war during the First World War received more than 145,000 visits (see above note 18). Finally, the unique audiovisual archives of the ICRC also reveal many gems: see ICRC Audiovisual Archives, available at: <https://avarchives.icrc.org/>.

48 See "Message from the President of the ICRC", in ICRC, *Annual Report 2017*, Geneva, 2018, pp. 8–9 (ICRC 2017 Annual Report), available at: www.icrc.org/en/document/annual-report-2017.

49 ICRC, *Protracted Conflict and Humanitarian Action: Some Recent ICRC Experiences*, Geneva, 2016.

remains critical over a long period of time.⁵⁰ Examples include the armed conflicts and their decades-long humanitarian consequences in Colombia, Afghanistan and Iraq.⁵¹ Information relating to these types of conflicts, the authorities or armed groups involved and the needs of affected populations is likely to remain sensitive over many years. Keeping in mind the necessity of the ICRC's confidential approach to gain trust from authorities and access to beneficiaries, protecting confidentiality over longer periods may be required, meaning that the protection period effectively imposing an embargo on access to the ICRC Archives would need to be adjusted.

Whether armed conflicts are long or short, suspected war criminals may be prosecuted several decades on, for which information and testimonies are required. Transitional justice mechanisms emerging in post-conflict situations may also require information for judicial bodies and reconciliation processes.⁵² As mentioned before, the ICRC's confidential approach requires it not to share information forming part of bilateral and confidential dialogue with authorities and parties to armed conflict in the context of legal proceedings. The international recognition of the ICRC's confidential approach has further led to the recognition of the ICRC's privilege of non-disclosure of confidential information, which protects ICRC confidential information from being used, and ICRC staff from being compelled to testify, as part of legal proceedings.⁵³ It is therefore important for the ICRC to ensure that information contained in its classified archives is not used in such proceedings. Revised protection periods for access to the ICRC Archives are therefore also meant to address this issue, bearing in mind that the ICRC has no direct control over the use of the information once it is made public.

50 "Protracted armed conflicts are characterized by their longevity, intractability and mutability. This is not a new phenomenon, but some particular trends seen in today's protracted conflicts, such as emerging technologies, pervasive media coverage, and so on, are specific to our times. The lack of respect for international humanitarian law is a major source of suffering in protracted conflict. Due to the prolonged nature of these conflicts, they may fuel a cycle of revenge, undermining respect for the law. ... The needs of affected people are wide-ranging and extend over many years, sometimes even generations. As a result, humanitarian agencies need to adapt their programming to respond both to urgent and long-term needs. Effective operations in protracted conflicts are an institutional priority for the ICRC." ICRC, "Protracted Armed Conflict", 27 June 2017, available at: www.icrc.org/en/international-review/article/protracted-armed-conflict.

51 Colombia has experienced violence for more than fifty-four years; the ICRC has been working there since 1980. Iraq has experienced violence for more than fifty years; the ICRC has been working in that context since 1980. Afghanistan has experienced violence for more than forty years; the ICRC has been working there since 1978. For more details, see the exhibition "Stretched" at the Humanitarium, ICRC Headquarters, Geneva.

52 The ICRC promotes the right to justice and the right to know of victims of conflicts through transitional justice mechanisms and tribunals. It will act, for example, as a neutral intermediary and promote the issue of clarifying the fate of missing persons. It will not, however, share information in legal proceedings, in line with its confidential approach and privilege of non-disclosure, except in particular cases where the ICRC decides to waive its testimonial immunity. See "Memorandum", above note 11; Elem Khairullin, "5 Things that Make ICRC Confidential Information Unsuitable for Legal Proceedings", *Humanitarian Law and Policy Blog*, 31 January 2019, available at: <https://blogs.icrc.org/law-and-policy/2019/01/31/5-things-make-icrc-confidential-information-unsuitable-legal-proceedings/>.

53 For more information, see "Memorandum", above note 11.

Prior to being made public, ICRC documents are classified according to a scale ranging from “strictly confidential” to “confidential” to “internal”. When sections of archives are declassified, however, this should normally include the entirety of their contents. This means that, at a certain point in time, confidential documents are changed to a declassified status. The protection periods should therefore enable files to be made accessible to the public at a given time in their entirety, while ensuring that ICRC operations are not jeopardized.

Developments in technology and information management: The protection of personal data and the right to be forgotten

Current trends point to the dematerialization and, its corollary, the digitization of human activities. Data made available online is naturally more widely accessible than in paper format. Digitizing archives that were originally produced in a non-digital format is the favoured option for conservation and communication across borders, notwithstanding the complexity, length of time and cost of the exercise. Posting data online presents as many opportunities as risks, which are particularly prevalent with regards to personal data. Digitization brings additional challenges related to access and security. Managing access rights and the security of online data is a global concern today.⁵⁴

Digital information that includes personal data is being shared between people more than ever before via the Internet. Globally, people are becoming critically aware of the risks to privacy associated with this trend. Overall, the mood has shifted in just a few years from a desire to champion transparency and openness to a more individual-centred concern to protect privacy (despite the fact that the wide sharing of information simultaneously continues). Regional and national legal frameworks have been put in place with a view to protecting individuals’ right to privacy.⁵⁵

54 See, for example, “Switzerland Unveils New Measures to Fight Cyber Attacks”, *The Local*, 28 August 2018, available at: www.thelocal.ch/20180828/switzerland-unveils-new-measures-to-fight-cyberattacks. As we know, new technologies also allow for the widespread sharing of confidential data, through platforms such as Wikileaks. The ICRC is confronted with this risk and has experienced such incidents in recent years. While the past is less of a concern, it is recent or ongoing operations which could be put at risk if confidential information becomes public.

55 For example, EU data protection law: see Directive 95/46/EC, 1995, Art. 2(a), according to which “personal data” means “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”; and Art. 8(1), according to which “sensitive personal data” are “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and data concerning health or sex life”. Sensitive personal data are special categories of personal data that are subject to additional protections. See Detlev Gabel and Tim Hickman, “Chapter 5: Key Definitions – Unlocking the EU General Data Protection Regulation”, *White & Case*, 5 April 2019, available at: www.whitecase.com/publications/article/chapter-5-key-definitions-unlocking-eu-general-data-protection-regulation. See also, for example, the national Swiss law in this regard: *Loi fédérale sur la protection des données (LPD)*, 19 June 1992, available at: www.admin.ch/opc/fr/classified-compilation/19920153/index.html.

The ICRC Rules on Personal Data Protection, which were adopted in 2015, are applicable to all ICRC operations and activities whenever personal data are processed, including to its archives.⁵⁶ The rules of access to the ICRC Archives therefore necessarily reflect this framework.

Moreover, the ICRC believes that protecting individuals' personal data is an integral part of its mandate to protect their life and dignity. In order to offer guidelines in this important contemporary field of work, the ICRC published a *Handbook on Data Protection in Humanitarian Action* in 2017.⁵⁷

Clarifying the relationship between individuals and data pertaining to them promises to be a long and winding journey. It is likely to become the main highway of our reality, both in times of peace and conflict. Ongoing debates in various circles reflect this complexity – for example, in relation to the right to be forgotten,⁵⁸ which is supported by some and criticized by others as a challenge to freedom of expression and the right to know.⁵⁹ The right to be forgotten allows individuals to request that certain data relating to them be deleted or removed from internet search engines when the data's presence on the latter is perceived to harm their lives.⁶⁰ One risk is arguably creating an open door to “rewriting history” in a selective way, where key information about the past is erased. Those in favour of the concept promote instead the right of individuals to develop their life in the present without being hindered by sensitive information resurfacing that specifically relates to their own past. A related contemporary concept is the right to request rectification of one's personal data in open files and archives.⁶¹

Any private or public institution that holds archives is confronted with dilemmas and debates surrounding these rights, including the ICRC. As mentioned earlier, archivists are committed to respecting the code of ethics and professional standards in the practice of their profession. They preserve the memory of individuals and of society through the conservation of archives and their communication to the public. It would thus appear fundamentally contrary to archival ethics to change or remove information from archives, since this would affect their integrity. In this debate, the perspectives and duties of archivists have been highlighted.⁶² That being said, those who manage archives

56 ICRC Rules on Personal Data Protection, above note 13.

57 Christopher Kuner and Massimo Marelli (eds), *Handbook on Data Protection in Humanitarian Action*, ICRC and Brussels Privacy Hub, Geneva, July 2017.

58 See, for example, Valérie Junod, “Droit à l'oubli, archives numériques et respect de la vie privée”, *Le Temps*, 29 August 2018, available at: www.letemps.ch/opinions/droit-loubli-archives-numeriques-respect-vie-privee; Paul Chadwick, “Should We Forget about the ‘Right to Be Forgotten?’”, *The Guardian*, 5 March 2018, available at: www.theguardian.com/commentisfree/2018/mar/05/right-to-be-forgotten-google-europe-cj-data-spain.

59 See, for example, Owen Bowcott, “‘Right to Be Forgotten’ Could Threaten Global Free Speech, Say NGOs”, *The Guardian*, 9 September 2018, available at: www.theguardian.com/technology/2018/sep/09/right-to-be-forgotten-could-threaten-global-free-speech-say-ngos.

60 See General Data Protection Regulation (GDPR), EU 2016/679, 2016, “Right to Be Forgotten”, available at: <https://gdpr-info.eu/issues/right-to-be-forgotten/>. A definition of this concept by Oxford Research Encyclopedias is available at: <https://tinyurl.com/y4vcolkp>.

61 *Ibid.*, Art. 16, “Right to Rectification”, available at: <https://gdpr-info.eu/art-16-gdpr/>.

62 “The scope and practical application of the right to be forgotten and the right to erasure ... have been the subject of heated debate, and these rights are not absolute. Obligations on data controllers to erase

today must integrate new norms and standards relating to the variety of rights of individuals concerning their data.

Since the ICRC Archives primarily contain personal data, they are at the front line of these contemporary debates. Furthermore, the nature of the ICRC's humanitarian mission to protect victims of armed conflicts and other situations of violence implies that the ICRC acknowledges these concerns and will find ways to protect individuals, their rights and their data.

Overall, the digitization of its operational activities, and of key sections of its archives, is currently a discussion point at the highest level of the ICRC. As the future points towards a more comprehensive digitization strategy for the institution, the challenges, risks and opportunities that will accompany it, such as issues around the protection of personal data, were considered in the discussion on the rules of access to the ICRC Archives.

Ensuring security and assessing risks

As discussed above, ensuring the protection of people affected by armed conflict and violence and the security of its staff are the highest priorities for the ICRC, even though these tasks involve major challenges for the institution today. Contemporary conflicts and other situations of violence are often complex because of the many different actors and vested interests involved. Compounding this, situations where IHL is not respected can create a volatile environment in which it is all the more difficult for the ICRC to ensure these priorities.⁶³

The ICRC is critically aware that stakes are high in terms of ensuring that no further harm is done to beneficiaries of its assistance and protection programmes, and ensuring the safety of its staff on the ground when managing trust and dialogue with parties to a conflict.⁶⁴ No effort can be spared by the institution in order to be perceived as a neutral and independent humanitarian actor and thereby gain the trust of parties to armed conflicts, including by ensuring confidentiality. In certain contexts and with certain armed groups, however, this is an arduous task; results are often imperceptible and are measured

personal data and inform third parties do not apply 'to the extent that processing is necessary' for various reasons, including: Exercising freedom of expression and freedom of information; Complying with Union or member state law; Performing a task for the 'public interest ... in the area of public health' or 'for archiving purposes [or] scientific or historical research purposes,' or 'in the exercise of official authority vested in the controller'; [and] Establishing, exercising, or defending legal claims." Müge Fazlioglu, "Top 10 Operational Responses to the GDPR – Part 7: Accommodating Data Subjects' Rights", 8 March 2018, available at: <https://iapp.org/news/a/top-10-operational-responses-to-the-gdpr-part-7-accommodating-data-subjects-rights/>.

63 See ICRC 2017 Annual Report, above note 48. Also see, however, the IHL in Action database on instances of respect for IHL by parties to conflict, available at: <https://ihl-in-action.icrc.org/>.

64 Among others in recent times, "[s]even ICRC staff members were killed in two incidents in northern Afghanistan [in 2017]. Six died in an attack on an ICRC aid convoy in February; two others travelling with the convoy were abducted and released seven months later. The seventh staff member was shot and killed at an ICRC-run physical rehabilitation centre in September." ICRC 2017 Annual Report, above note 48.

in the long term. Risks must be mitigated to the extent possible in both short- and long-term perspectives.

In relation to the rules of access to the ICRC Archives, which define to whom and when access to information will be granted, there is a need to assess security risks decades in advance. The objective is to preserve records of the past intact and make them accessible to public scrutiny as soon as this no longer involves security risks for individuals.

This being said, assessing risk is itself a challenge. Risks are to a large extent contextual and temporal. One issue that could be sensitive today may no longer be of concern twenty years on; or, on the contrary, what seems to be of less importance today may unexpectedly become a source of risk for individuals concerned in the future. There also need to be safeguards against subjective factors influencing the assessment, such as concerns for an individual's personal reputation.

Once archives are made available to the public, the institution must accept responsibility for what was said, written or done in the past and stand ready to explain how contextual circumstances prompted certain attitudes, choices of words or courses of action. There is dignity in accounting for one's past, a gesture that requires courage and humility but leads to a positive impact.

The new rules of access to the ICRC Archives

The discussions that took place within the ICRC in relation to the rules of access to its archives between 2015 and 2016 brought together multiple perspectives, from the operations and programme managers to the top hierarchy of the institution, to the archivists and historians. The various elements discussed in the article so far were laid out as a puzzle, presenting the challenge to identify adequate rules of access and protection periods that would ensure the security and integrity of the ICRC's humanitarian operations, maintain its reputation as a neutral, impartial and independent humanitarian actor, and promote transparency and accountability. The result of the discussions was a revised set of rules to govern access to the ICRC Archives in 2017.

Overall, the revised rules of access to the ICRC Archives⁶⁵ have similar objectives to their precursors: to continue to protect people, promote research and preserve memory. As stated, their aim is to ensure that the ICRC Archives "are preserved, shared and protected and that they are consulted in accordance with applicable standards, in particular regarding the protection of personal data, while safeguarding the integrity of the ICRC's work and the individuals and communities concerned".⁶⁶

65 ICRC, Rules Governing Access to the Archives of the International Committee of the Red Cross, adopted by the ICRC Assembly on 2 March 2017, in force since 1 April 2017, available at: www.icrc.org/sites/default/files/wysiwyg/About/history/rules_access_icrc_archives.pdf.

66 *Ibid.*, Art. 1.

The ICRC Assembly decided to maintain differentiated protective periods but increased them both by ten years each. The Assembly also reserved the right to extend either period in case of need.⁶⁷ The rules include the possibility of exceptions and derogations.

General archives can now be consulted after fifty years; archives that contain mostly personal data can be consulted after seventy years.⁶⁸ This being said,

[a]rchives digitized by the ICRC may be published online 90 years after the date of the last document included in the file. The ICRC nonetheless reserves the right to publish archives online early, namely 70 years after the date of the last document. Online publishing of ICRC archives digitized by third parties requires specific authorization.⁶⁹

The Assembly retains the right to extend the protection period for documents “containing information whose disclosure would violate the protection of personal data or jeopardize the safety and dignity of the individuals and communities concerned or the integrity of the ICRC’s work”.⁷⁰

Exceptional early individual access is granted to “any person who was the subject of individual monitoring as part of ICRC protection activities”; such persons are allowed to obtain information about themselves contained in the archives of the Central Tracing Agency, in line with the ICRC Rules on Personal Data Protection. The same applies to staff of the ICRC, who are entitled to access their personal file in the human resources archives at any time.⁷¹

Special access to certain archives may be authorized prior to their official opening for research purposes, based on a number of conditions and ensuring that the protection of personal data is guaranteed.⁷² The revised rules also recall that “[a]ny use of ICRC archives that jeopardizes the dignity or physical and mental integrity of the human person is strictly prohibited” and that “all forms of commercial use of ICRC archives are strictly forbidden”.⁷³

According to the rules of access, the next section of the ICRC general archives, covering the period from 1976 to 1985, will be opened to the public in 2035. Since January 2019, the ICRC’s Central Tracing Agency archives, containing mainly individual data, have been accessible by the public up to the year 1948.⁷⁴

The 2017 revision of the rules of access to the ICRC Archives can be seen as a positive sign from the institution, since it arguably reflects a sense of responsibility, perspicacity and pragmatism in the face of a reality made up of sometimes contradictory interests, stakes and challenges.

67 This possibility existed in the past rules but is not as explicit as in the new ones.

68 *Ibid.*, Art. 5.

69 *Ibid.*, Art. 12.

70 *Ibid.*, Art. 8.

71 *Ibid.*, Art. 6.

72 *Ibid.*, Art. 7.

73 *Ibid.*, Art. 11.

74 See “Consultation of Agency Archives”, above note 45.

This is the first time since the initial access policy to the ICRC Archives was drafted in 1996 that the protection periods have been raised. While this may reflect certain trends and challenges in today's world, it does not necessarily reflect increased embargo periods of archives at other institutions.⁷⁵

It is notable that the ICRC's 2017 rules of access contain an exception allowing the ICRC Assembly to bypass the defined protection periods and extend them for certain files, when deemed necessary. This could reflect that the institution is maintaining a form of ultimate control over access to some of its archives. This is the fair prerogative of a private institution, and the objectives presented are justified. Still, one could ask what specific criteria such a decision would be based upon, in order to remain objective and consistent over time. If previously unforeseeable risks were suddenly to surface, it is likely that a renewed internal discussion would follow, similar to the one held in 2016, aimed at reaching a new balance between transparency and accountability on the one hand, and the ability to provide protection and assistance to affected people and ensure the safety of ICRC staff on the other.

Conclusion

This article has outlined the history of the ICRC Archives and the development of the rules that govern their public access. It was demonstrated that both in 2017 and in the past, the rules of access to the archives resulted from a choice made by the ICRC on how to balance its duties and long-standing interests with contemporary opportunities and risks related to independent scrutiny. Overall, the access rules have continually aimed at protecting people, promoting research and preserving memory.

Archives have been a part of the ICRC since the day of its creation. More than a useful appendix, they are fully constitutive of this humanitarian institution as a comprehensive historical and living repository. The archives, and the rules that govern access to them, also support the ICRC in fulfilling its humanitarian mandate. The ICRC is under no legal obligation to communicate its operational archives to the public, but it has recognized over time that it has a moral duty to do so, given their unique historical and cultural value as well as their importance for individuals, as long as fundamental institutional requirements are also fulfilled.

The latest revision of the rules of access to the ICRC Archives arguably serves as a reminder of what the institution is confronted with today more globally: the challenge of decrypting multilayered dynamics and shifting front lines of armed conflicts and other situations of violence, but also in relation to new and evolving modes of communication, channels of trust, means of protection, and expectations from beneficiaries and from society.

75 For example, the archives of the United Nations (UN) are in principle opened to the public after a period of twenty years. See the UN Archives and Records Management website, available at: <https://archives.un.org/content/public-reference-services-0>.

In a rapidly changing world, it seems evident that ever-changing parameters will regularly prompt reflection that could possibly lead to further updates in the rules of access to the ICRC Archives. The balance reached in 2017 may not be the balance that is needed in the future. Ongoing critical reflection is therefore expected and encouraged on this issue. As the ICRC strives to protect people in armed conflicts and other situations of violence in the future, it might have to revise the rules of access to its archives in order to support its humanitarian mission in both possible directions: on the one hand, a stronger protection of documents containing personal data might be deemed necessary, with longer retention periods, while on the other, general documents might be declassified sooner, with due precautions for the use of data online.

The ICRC Archives undoubtedly have the standing and the potential to take centre stage at any future time. Considering the intensity today with which families, historians, genealogists, the media and the general public request information from the ICRC's archives relating to the Second World War, one may, for example, project an increased interest in that field in the coming twenty years, reaching the time of the centenary by 2039. At that time, hopefully part or most of those archives would be available online. In conclusion, the ICRC must continue to preserve, value and communicate its extraordinary historical archives in the decades and centuries to come and ensure that current activities are well recorded to become the archives of the future.