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THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:

an archival commentary

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Foreword

As the 70th anniversary of the adoption of the Universal Declaration of Human Rights approached, I began to revise brief commentaries I had written in the early 2010s on the Articles that make up that essential document. This publication is the result of the reviewing and updating the original essays.

Originally a commentary on one Article of the Declaration was published each month in the *Human Rights Working Group News* of the International Council on Archives, beginning in December 2009, until all 30 Articles had been discussed. Each essay described the background of the Article, provided examples of contemporary issues related to it, and suggested archival materials that would have information on the topic. Articles that relate to a similar topic, such as the three that deal with judicial processes, by necessity meant suggesting the same archival sources. Because of the time lapse between the monthly publications, that repetition did not matter; however, as a single publication it is evident. I considered eliminating the repetition, but that would have left some of the Articles denuded of the references. Since I hope that readers who are interested in the topic of a particular Article will use the commentary as a suggestion for sources but may not look at either the entire text or that of related Articles, I ultimately decided to leave the repetition in the commentaries.

In a brief commentary is impossible to provide examples for all the issues an Article raises, both the stated issues and those that may be called “penumbras” or shadows that surround the statement. Environmental issues, gender issues, privacy issues of genetic testing results, impacts of artificial intelligence: all of these are implied by the texts of the Articles but could not have been foreseen by even the brilliant drafters of the 1948 Declaration. Readers are encouraged to think of other examples for the use of the Articles as they read the brief discussions I have included.

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Introduction

On 10 December 1948 the Third General Assembly of the United Nations adopted the Universal Declaration of Human Rights by a vote of 48 to 0 with 8 abstentions. The drafters were clear: this was a *universal* declaration, not a *United Nations* declaration. The Preamble of the Declaration begins by proclaiming that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” As archivists know, the nexus between human rights and archives is strong and complex, because records are essential both to protecting these rights and to obtaining recourse when these rights are violated. This essay is intended to illuminate some of the relationships of records to rights, looking at each of the Articles in turn.

But first a bit of history about the Declaration and its drafters.¹ One of the constituent bodies of the new United Nations was the Economic and Social Council (ECOSOC). The UN Charter gave ECOSOC the authority to establish commissions “in economic and social fields and for the promotion of human rights,” and in June 1946 it established a Commission on Human Rights as a “standing body.” Reflecting on the legacy of the horrors of World War II and mindful of the failure of the inter-war League of Nations, the Commission was to prepare a document originally termed an “International Bill of Rights.” The Commission established a special drafting committee for it, which met over two years and produced the draft that became the Universal Declaration of Human Rights.

The drafting committee was chaired by Eleanor Roosevelt², the widow of former U.S. President Franklin D. Roosevelt, and included members from Australia, Chile, China, France, Lebanon, the USSR and the United Kingdom. John P. Humphrey, a Canadian lawyer who was the director of the Division of Human Rights in the new United Nations Secretariat, developed the first draft of the document.³ René Cassin,⁴ French jurist and future Nobel Peace Prize winner, provided alternative drafts on critical issues, and Chilean

¹ The Dag Hammarskjöld Library of the United Nations published a Research Guide “Drafting of the Universal Declaration of Human Rights” with links to the principal documents. <http://research.un.org/en/undhr>

² Mary Ann Glendon, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2001. Eleanor Roosevelt’s papers are in the Franklin D. Roosevelt Presidential Library.

³ *On the Edge of Greatness: the Diaries of John Humphrey, First Director of the United Nations Division of Human Rights*, 4 volumes. Edited by A.J. Hobbins and published as Fontanus Monographs 4, 9, 12 and 13. Montreal: McGill-Queen’s University Press, 1995-2001. John P. Humphrey’s papers are in the McGill University Archives.

⁴ Jay Winter and Antoine Prost. *René Cassin and Human Rights: From the Great War to the Universal Declaration*. Cambridge: Cambridge University Press, 2013. René Cassin’s papers are in the Archives nationales, France.

judge Hernan Santa Cruz⁵ argued for the inclusion of strong sections on social and economic rights, reflecting his knowledge of the provisions in the American Declaration of the Rights and Duties of Man that was adopted by the Conference of American States in April 1948. Other well-known members of the committee who offered significant philosophical considerations were Charles Malik⁶ of Lebanon, a philosopher by academic training and a diplomat, and P.C. Chang⁷ of the Republic of China, also a philosopher and diplomat.

The draft ultimately became 30 Articles. They are generally grouped into the first three, which provide the general, over-arching principles, Articles 4-21 that cover civil and political rights, followed by Articles 22-27 that cover general economic, social, and cultural rights and a final three that are a reflection of the whole. P. C. Chang, the delegate from China, argued that this order properly followed the chronology of “traditional rights derived from European history and philosophy before recognizing the modern set of economic and social rights.”⁸ Today’s United Nations High Commissioner for Human Rights smartly summarized that the drafters “spelled out what cannot be done to human beings and what must be done for them.”⁹

The Universal Declaration was considered at the United Nations General Assembly on 9 and 10 December 1948. At the request of Poland, a separate vote was taken on “each recital of the preamble, and on each article.”¹⁰ The Declaration, as a whole, was adopted by 48 votes, with 8 abstentions (Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, and Yugoslavia) and two states not voting (Honduras and Yemen). After passage, the President of the General Assembly said that while “the Declaration only marked a first step since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; not

⁵ Sarah Waltz, “Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights,” *Human Rights Quarterly* 23 (1001), p. 60.

⁶ Habib Malik, *The Challenge of Human Rights: Charles Malik and the Universal Declaration*. Oxford: Charles Malik Foundation, Centre for Lebanese Studies, 2000.) Charles Malik’s papers are divided between Notre Dame University, Lebanon, and the Manuscript Division, Library of Congress, Washington, DC.

⁷ Hans Ingvor Roth, *P.C. Chang and the Universal Declaration of Human Rights*. Philadelphia: University of Pennsylvania Press, 2018.

⁸ Quotations from Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice*. Bloomington, Indiana: Indiana University Press 2008, p. 190; see also Stephen P. Marks, “From the ‘Single Confused Page’ to the ‘Decalogue for Six Billion Persons’: The Roots of the Universal Declaration of Human Rights in the French Revolution,” *Human Rights Quarterly* 20 (1998), pp. 459-514.

⁹ Office of the High Commissioner for Human Rights, “Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles,” 2018-11-08, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23856&LangID=E>

¹⁰ Summary from the *United Nations Yearbook 1948, Chapter V., Social, Humanitarian and Cultural Questions; Section A., Human Rights*.

would it provide for enforcement; yet it was a step forward in a great evolutionary process.” And while the Declaration was followed nearly twenty years later in 1966 by two binding covenants (one on Civil and Political Rights and one on Economic, Social and Cultural Rights¹¹), Charles Malik, the Lebanese delegate, looked back in 1986 on the Declaration and the covenants and said, “Whenever the question of human rights has arisen throughout the world, the appeal has been far more to the Declaration than to the covenants.”¹²

Today the Declaration has been translated into over 500 languages. With the two binding international treaties, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Declaration is known as the international Bill of Human Rights. Scholar of the Declaration Johannes Morsink concluded that “human rights have become an independent third force in today’s world—a force fed by individuals who have organized themselves into hundreds of thousands of international and domestic nongovernmental human rights organizations of both religious and secular orientation. All of these share the moral code found in the UDHR.”¹³ Archivists have an important part to play in documenting these forces.

¹¹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>;
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. The Covenant on Civil and Political Rights now has two Optional Protocols and the Covenant on Economic, Social and Cultural Rights has one. To see the status of ratification of multilateral treaties deposited with the United Nations, see <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>

¹² Mary Ann Glendon, “The Rule of Law in the Universal Declaration of Human Rights,” 2 *Northwestern Law Journal of Human Rights* 1 (2004). <https://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/5>

¹³ Johannes Morsink, *The Universal Declaration of Human Rights and the Challenge of Religion*. Columbia, Missouri: University of Missouri Press, 2017, p. 13.

The General Assembly proclaims This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Members States themselves and among the peoples of territories under their jurisdiction.

Universal Declaration of Human Rights Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

These robust sentences start the list of Articles of the Declaration. Scholars of the Declaration have traced the roots of Article 1 to many sources, notably the French Declaration of the Rights of Man of 1789 and the American Declaration of the Rights and Duties of Man that was adopted by a conference of American States in April 1948. Despite that illustrious parentage, the Article was a late addition to the Declaration, and the delegates discussed placing it in the preamble rather than making it one of the Articles. There were disagreements over language, including over the meaning of the word “born,” an argument that remains part of today’s debates over abortion, and the words “human beings, which replaced the original draft that said “all men.” In ultimately deciding on the strong phrases and the placement of the sentences as the very first Article, the delegates were mindful of the dark human rights abuses during World War II. French delegate Rene Cassin, who was one of the drafters of the Article, explained to the delegates that it was essential to stress the “unity of the human race” because Hitler “started by asserting the inequality of men before attacking their liberties.”¹⁴

The principles in Article 1 are discussed further in subsequent Articles, especially Article 4 on the prohibition of slavery and Article 15 on the right to a nationality. But it is the clear, quotable statement of Article 1 that sets the rest of the Articles in context.

¹⁴ Johannes Morsink, *The Universal Declaration of Human Rights: Origin, Drafting and Intent*. Philadelphia: University of Pennsylvania Press, 1999. p. 38 (hereafter Morsink, *UDHR*). Morsink’s work is the definitive book on the drafting process.

Many records in archives help protect these rights. Prominent among them are birth registrations (whether registered by secular or religious bodies) and records of the issuance of identity documents, usually by a governmental entity (local, national, or international). In many parts of the world, the registration of births has been slow to develop; in December 2017 UNICEF estimated that “births of around one fourth of children under the age of five worldwide have never been recorded” with the lowest levels of birth registration are found in sub-Saharan Africa where only 43 per cent of births are registered.¹⁵ The records of births stabilize identities. They provide the fundamental underpinning for many rights, from the right to vote and the right to inheritance to the permission to drive and the permission to drink liquor (in countries where driving and drinking are based on age). And, as UNICEF points out, “Universal birth registration is also part of a system of vital statistics, which is essential for sound economic and social planning.”

The new power of genetic testing and the records it creates is challenging the born equal concept. “DNA accounts for about half of the psychological differences between people, with the remainder due to environmental factors,” and even environmental factors in raising children “are substantially influenced by genes,” *The Economist* reported in its review of Robert Plomin’s book *Blueprint*.¹⁶ Using a DNA test to see which job candidate is a better fit for a task is now at least theoretically possible, with all the equality questions that would raise. And the case of the twin boys born in Canada to a surrogate mother from the mixed sperm of two donors found that one of the twins was the child of a U.S. male and thus a U.S. citizen by birth while the other was a child of the Israeli male and therefore was not a U.S. citizen: both born free but not equal.¹⁷ Only the capacity to test the DNA and make a record of the results led to this unusual, unequal result.

Dignity is a fundamental part of this Article. The astonishing requirements in some countries, such as Afghanistan, that women applying for a job must take a virginity test (men are not similarly required) is an assault on dignity as well as being ragingly unequal.¹⁸ It was not until 2017 that the United Kingdom required the name of a mother to be

¹⁵ <https://data.unicef.org/topic/child-protection/birth-registration/>

¹⁶ “Destiny’s child,” *The Economist*. November 10, 2018. <https://www.economist.com/books-and-arts/2018/11/08/a-scientist-makes-the-case-for-the-power-of-dna>

¹⁷ Alene Tchekmedyan, “These twins were born 4 minutes apart. But only one is a U.S. citizen,” *Los Angeles Times*, January 27, 2018. <http://www.latimes.com/local/lanow/la-me-ln-twins-citizenship-20180127-story.html>

¹⁸ Zahra Nader and Mujib Mashal, “Despite Ban, Invasive Virginity Tests Remain prevalent in Afghanistan,” *New York Times*, January 6, 2017. https://www.nytimes.com/2017/01/06/world/asia/despite-ban-invasive-virginity-tests-remain-prevalent-in-afghanistan.html?_r=0

included on a marriage license; prior to that, only the father's name was included.¹⁹ And in 2016 Saudi Arabia finally allowed women to have a copy of their marriage contract; before that the contract was solely in the hands of the husband.²⁰ The concept of dignity is also in defending gay rights; in reversing India's constitutional ban, India's Supreme Court specifically wrote that LGBTQ persons had been denied "equal participation and dignity under the Constitution."²¹

In a negative sense, the records of slavery in all its forms are part of the records under Article 1, too. Work has been done to locate and preserve the records of the Atlantic slave trade (see, for example, the ICA and UNESCO slave route project²² or the Trans-Atlantic Slave Trade Database²³). Many more records and personal papers exist that document slavery in other parts of the world. And the documentation of slavery goes far beyond logs of voyages, as important as they are. Even a journal in the Scottish Catholic Archives sheds light on this abhorrent practice.²⁴ And, as will be discussed in Article 4, records of modern slavery sadly abound.

Archivists responsible for protecting and preserving the documentation of births and identities, whether in ledgers or files or databases, are handling powerful records indeed. And as archivists handling records of slavery, we are handling some of the most emotionally resonant records that exist.

Universal Declaration of Human Rights Article 2

(1) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex,

¹⁹ Caroline Wheeler and Nicholas Hellen, "Mothers' names put on wedding certificates," *The Times*, December 31, 2017. <https://www.thetimes.co.uk/edition/news/mothers-names-put-on-wedding-certificates-g70nk2j2n>

²⁰ "Saudi Arabia gives women the right to a copy of their marriage contract," *Agence France Presse*, May 32, 2016. <https://www.theguardian.com/world/2016/may/03/saudi-arabia-gives-women-the-right-to-a-copy-of-their-marriage-contract>

²¹ Ananya Bhattacharya & Suneera Tandon, "'History owes an apology': The key quotes from India's landmark ruling on gay rights," *Quartz.com*, September 6, 2018, <https://qz.com/india/1381551/section-377-india-supreme-courts-judgment-on-gay-rights/>

²² <http://www.unesco.org/new/en/social-and-human-sciences/themes/slave-route/>

²³ <http://www.slavevoyages.org/voyage/>

²⁴ "Unearthed: journal gives eye witness account of slavery," *The Herald*, January 1, 2010. <http://www.heraldscotland.com/life-style/real-lives/unearthed-journal-gives-eye-witness-account-of-slavery1.995613>

language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 2 focuses on non-discrimination in two distinct paragraphs. The first paragraph provides a list of categories that cannot be used to discriminate against persons; this list is an expansion of the United Nations Charter's prohibition of discrimination on the basis of "race, sex, language or religion." It provides a tool for every human rights campaigner who believes that discrimination has occurred in one of the categories listed.

In an example of the implied right covered by "other status," persons with disabilities assert the right to equal treatment, embodied in the UN Convention on the Rights of Persons with Disabilities.²⁵ The disproportionate impact of war on people with disabilities, such as the inability to flee in the face of hostilities, was the focus of a meeting of the UN Security Council in December 2018, the first time the Council centered a discussion on the issue. According to Human Rights Watch, around 15% of the world's population has some sort of disability, and an estimated "9.7 million people with disabilities are forcibly displaced as a result of conflict and persecution and are victims of human rights violations and conflict-related violence."²⁶

But discrimination is still omnipresent, and rises in ever divergent settings. For example, in November 2017 a German court found that the national airline of Kuwait had the right to deny a ticket to an Israeli man—and by implication to all residents of Israel.²⁷ Saudi Arabia's guardianship laws still control many aspects of women's lives, unlike the freedoms given to men.²⁸

The second paragraph must be read in the context of the times. In 1948 much of Africa and large parts of Asia were still under colonial rule; moreover, other areas were United Nations "trust territories." This paragraph sought to ensure that persons whose country

²⁵ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

²⁶ Human Rights Watch, "UN: War's Impact on People with Disabilities," December 3, 2018. <https://www.hrw.org/news/2018/12/03/un-wars-impact-people-disabilities>

²⁷ Alexander Pearson, "Kuwait Airways can bar Israeli passengers, German court rules," DW, November 16, 2017. <https://www.dw.com/en/kuwait-airways-can-bar-israeli-passengers-german-court-rules/a-41414435>

²⁸ Margaret Coker, "How Guardianship laws Still Control Saudi Women," *New York Times*, June 22, 2018. <https://www.nytimes.com/2018/06/22/world/middleeast/saudi-women-guardianship.html>

did not have self-rule were afforded all the rights of any person whose country was self-governing.²⁹

The archives implicated in Article 2 are sweeping. Records of governments, educational and religious institutions, corporations and businesses, lawyers and doctors, courts national and international, political parties and social groups: all these may contain information on the unequal treatment of persons. Discrimination based on language, for example, may be reflected in whether interpreters are provided if the person speaks a language other than that used by the courts; it also may be reflected in election records and the provisions made for ballots that accommodate persons who are illiterate or who speak a language other than one of the official languages of the country.

The second paragraph leads directly to the records of colonial and trust territory administration. While many of the colonial records were and are held in the colonial seat of government and other records of colonial administration were brought to the governing power from the colony before or at the time of independence, other very important colonial records were left in the former colony. Whether Belgian records in Burundi, British records in Sierra Leone, German records in Tanzania, or Spanish records throughout Latin America, these “left behind” colonial records are as crucial for human rights matters as those sent to or exported to London,³⁰ Berlin,³¹ Madrid³² or the Archives nationales d’outre-mer in Aix-en-Provence³³.

In addition, the United Nations has the responsibility for oversight of UN trust territories. The Department of Political Affairs administers the oversight through its Decolonization Unit, and the records of that office are part of the UN Archives in New York. Archivists, both in former colonial powers and former colonies, in national governments and the UN, in businesses and in faith-based institutions, preserve these unique records.

²⁹ “The United Nations and Decolonization.” <http://www.un.org/en/decolonization/maps.shtml>

³⁰ Katie Engelhart, “Exclusive: The UK Has Just Unearthed New ‘Top Secret’ Colonial-Era Government Files,” *VICE News*, May 11, 2015. <https://news.vice.com/article/exclusive-the-uk-has-just-unearthed-new-top-secret-colonial-era-government-file>

³¹ “German Bank caught in colonial land dispute,” *AFP*, November 13, 2018. <https://www.news24.com/Africa/News/german-bank-caught-in-drc-colonial-land-dispute-20181112>; Howard Rechavia Taylor, “US court hears case against Germany over Namibia genocide,” *Al Jazeera*, 31 Jul 2018. <https://www.aljazeera.com/news/2018/07/court-hears-case-germany-namibia-genocide-180731201918543.html>

³² “Des archives témoignent que le Sahara occidental n’est pas marocain,” *L’Expression*, August 15, 2018. http://www.lexpressiondz.com/autres/de_quoi_jme_mele/298099-des-archives-temoignent-que-le-sahara-occidental-n-est-pas-marocain.html

³³ “Macron advised to return looted African art treasures,” *AFP*, November 21, 2018. <http://artdaily.com/news/109331/Macron-advised-to-return-looted-African-art-treasures#.XA2E3fkXAdU>

Universal Declaration of Human Rights

Article 3

Everyone has the right to life, liberty and security of person.

Article 3 is the third and last of the general articles of the Declaration that reflect the French ideals of equality, fraternity, and liberty. As with the first two Articles, the background to Article 3 lay squarely in the Second World War. Johannes Morsinck points out that the Secretariat for the Declaration's drafting committee prepared a special report on war crimes trials, which examined "the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, 'useless eaters,' were transferred to special institutions where they were killed." This shows, writes Morsinck, "that the war experience lies just below the text of Article 3."³⁴

In 1989, citing Article 3, the United Nations General Assembly adopted a Second Optional Protocol to the International Covenant on Civil and Political Rights "aiming at the abolition of the death penalty." As of late 2018, only 86 countries had ratified the Protocol—in other words, less than half the members of the United Nations and not three of the Security Council Permanent Members (China, Russia, and the United States). In October 2018 the United Nations Human Rights Committee adopted General Comment 36, affirming, "The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."³⁵ Anti-abortion campaigners decried the action, complaining that the Committee did not include the right to life of the unborn.³⁶

Many, many archives support those who defend their rights citing Article 3 and those who believe their rights were violated in terms of Article 3. Among the most obvious are archives of medical institutions, hospitals and morgues; records of cemeteries (civil, military, religious, or UN); records of police, overt and secret, local and national; records of Interpol; records of prisons, civil and military; records of detention facilities (including those for persons being deported); and investigative records of all kinds. Whether we are talking

³⁴ Morsinck, *UDHR*, p. 40.

³⁵ United Nations Human Rights Committee, "General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life," CCPR/C/GC/36, October 3-, 2018. https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

³⁶ "Un Human Rights Committee Undermines the Life of the Unborn," ADF International, October 30, 2018. <https://adfinternational.org/news/un-human-rights-committee-undermines-right-to-life-of-the-unborn/>

about the records of the abuse of patients in Nazi hospitals³⁷ or the abuse of children by Catholic priests in Chile³⁸, the records in the archives tell the stories of life, liberty and personal security.

Universal Declaration of Human Rights

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 4 begins the Declaration's list of specific rights. World War II provided the immediate backdrop for the deliberations on slavery, with drafters aware of the Nazi use of slave labor and the Japanese military's archipelago of "comfort stations" housing enslaved women. While today slavery as an accepted system of labor has been eradicated, slave-like forms of labor continue to exist. Calling slavery a "grave and persistent problem," the United Nations High Commissioner for Human Rights (OHCHR) defines contemporary slavery as including but not limited to "debt bondage, serfdom, forced labour, child labour and child servitude, trafficking of persons and human organs, sexual slavery, children in armed conflict, sale of children, forced marriage and the sale of wives, migrant work, the exploitation of prostitution, and certain practices under apartheid and colonial regimes."³⁹ In 2007 the UN Human Rights Council established a Special Rapporteur on contemporary forms of slavery, its causes and consequences.

The varieties of contemporary slavery (such as bonded labor, involuntary servitude, and sexual slavery) are widespread. For example, OHCHR's Special Rapporteur in 2009 expressed her concern that up to half a million Haitian children are being sold, trafficked or kept in slave-like conditions.⁴⁰ North Korea abducted and enslaved at least 17 Japanese citizens during the 1970s and 1980s; since 2002 five of the abductees have returned to

³⁷ Brigitte Osterath, German research organization to identify Nazi victims that ended up as brain slides," DW, May 2, 2017. <https://www.dw.com/en/german-research-organization-to-identify-nazi-victims-that-ended-up-as-brain-slides/a-38664332>

³⁸ "Chile: Investigators Pursue Sexual Abuse Cases in Rectory Raids," *telesur*, July 14, 2018. <https://www.telesurenglish.net/news/Chile-Investigators-Pursue-Sexual-Abuse-Cases-in-Rectory-Raids-20180714-0014.html>

³⁹ <http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm>

⁴⁰ "Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, Addendum, Mission to Haiti," A/HRC/12/21/Add.1, September 4, 2009. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/152/70/PDF/G0915270.pdf?OpenElement>

Japan, but twelve are still unaccounted for.⁴¹ Human rights organizations actively document cases of virtual slavery, in industries such as commercial fishing⁴² and brick-making.⁴³ Nadia Murad, a Yazidi woman who was captured by ISIS in Iraq and sold into sexual slavery, won the Nobel Peace Prize in 2018 for her work to end sexual violence as a weapon in armed conflicts.⁴⁴

Many records in archives reflect the world's legacy of slavery and the slave trade. But what records document the slavery that exists today? Business records of the industries that hold workers in contemporary forms of slavery are key sources. Government records of police and border patrols, of social services and human welfare agencies, of labor ministries and agriculture ministries, all are sources of information on forced labor and trafficking. Diplomatic correspondence, too, may document the struggle against slavery. At least as important as the government records are the records of organizations—particularly faith-based groups and nongovernmental organizations—that try to help those unfortunate people caught in slave-like conditions. Journalists document some cases of bondage, as do social scientists and human rights activists; these may be in records of their employers or in personal papers. The UN and its entities that focus on labor, human rights, children and women all have records relating to the forms and practices of the contemporary scourge of slavery. Archivists are far from through appraising, managing, describing and preserving records relating to the practice of slavery.

⁴¹ For a discussion of the case, see “Help Bring Them Home,” *The Japan Journal*, April 2010, pp. 20-21.

⁴² International Labour Office, “Report of the Committee set up to examine the representation alleging non-observance by Thailand of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC) and the International Transport Workers’ Federation (ITF),” GB.329/INS/20/6, March 20, 2017. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf

⁴³ Anti-Slavery International, “Slavery in India’s brick kilns and the payment system,” September 2017. <http://www.antislavery.org/wp-content/uploads/2017/09/Slavery-In-Indias-Brick-Kilns-The-Payment-System.pdf>

⁴⁴ “Nadia Murad – Facts – 201,” NobelPrize.org, Nobel Media AB 2018, December 7, 2018. <https://www.nobelprize.org/prizes/peace/2018/murad/facts/>

Universal Declaration of Human Rights

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Torture was much in the news in the aftermath of the Abu Ghraib, Iraq, prison crimes of 2004 committed by U.S. Army and other U.S. personnel. Torture, like slavery that is prohibited by Article 4, has a long, sordid history. Its ubiquity led the drafters of the 1789 French Declaration of the Rights of Man, while not using the word “torture,” to write in its Article 9, “if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.”⁴⁵

But what exactly is considered torture and prohibited punishment, and therefore where would we find relevant records? The 1966 International Covenant on Civil and Political Rights adds to Article 5's definition the sentence, “In particular, no one shall be subject without his free consent to medical and scientific experimentation.” This is a clear reference to the medical experiments on prisoners carried out by Nazi doctors, but also applies to eugenics regimes, sterilizing those considered unfit, that occurred in many countries. Medical experiments, such as those testing antidotes for sexually transmitted diseases that were conducted on prisoners and other vulnerable people in Guatemala, also violate this Article.⁴⁶

The 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment includes the limitation that “such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” This seems to eliminate the possibility that non-state actors could inflict torture, which is manifestly untrue. The 1998 Rome statute of the International Criminal Court dropped this limitation, defining torture in Article 7, paragraph 2 (e) as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”⁴⁷

⁴⁵ English text at http://avalon.law.yale.edu/18th_century/rightsof.asp.

⁴⁶ Michael A. Rodriguez and Robert Garcia, “First, Do No Harm: The US Sexually Transmitted Disease Experiments in Guatemala,” *American Journal of Public Health*, 2013 December, pp. 2122-2126. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828982/>

⁴⁷ https://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf

As with most human rights, government records are crucial sources. The records of police, secret police, military police, juvenile and immigration detention centers, “reform” schools, workhouses, prisons and poor farms are all potential sources for information on torture and inhuman treatment of persons. But in addition to government records, we may find information about at least severe mental and physical pain and suffering of a person under the control of another in the records of some medical institutions, businesses, religious entities, para-military bodies, and extremist organizations. Some of the most dramatic evidence comes from personal sources, such as the appalling photographs of abuse at Abu Ghraib taken by U.S. military prison guards with their personal digital cameras.⁴⁸ Information on torture and abuse can be found in the records assembled by those trying to investigate the abusive behavior, from courts and prosecutors to NGOs, journalists and media organizations, academics, and international organizations ranging from the UN High Commissioner and its special rapporteur on torture (established in 1985) to the International Committee of the Red Cross. Sadly, many archives will find themselves holding records relating to infliction of severe pain and suffering and some will have the records of torture.

In 1997 the United Nations General Assembly designated June 26 as the International Day in Support of Victims of Torture, marking the day that the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁴⁹ came into force in 1987 and the United Nations Charter was signed in 1948. Archives with relevant holdings could use 26 June as a day for an educational program or public event that calls attention to the prohibition in Article 5 and the manifold violations of it, as shown in archives.

Universal Declaration of Human Rights

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 6 is the first of six Articles of the Declaration that deal with legal human rights. These constitute almost one-fourth of the articles of the entire Declaration.

⁴⁸ *Time* magazine called the photo of one man’s torture one of the “most influential images of all time.” “The Hooded Man” <http://100photos.time.com/photos/sergeant-ivan-frederick-hooded-man>

⁴⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Although the concept embodied in Article 6 seems obvious to most of us living in the 21st century, the idea of a “legal personality” was foreign to some of the drafters of the Declaration, including those from the United States, United Kingdom, and China. However, the French, Soviet, and Canadian delegates pushed for its inclusion, pointing out that governments such as Hitler’s arbitrarily deprived certain persons of legal life. The delegate from Chile, Hernan Santa Cruz, argued that “the interests of the individual [come] before those of the state and that the state should not be allowed to deprive the individual of his dignity and his basic rights.”⁵⁰

Article 6 has been incorporated into a number of international covenants that followed the Declaration. Article 16 of the International Covenant on Civil and Political Rights (1966) says, “Everyone shall have the right to recognition everywhere as a person before the law.” The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) says, in Article 24, “Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.”⁵¹ The Convention on the Rights of Persons with Disabilities (2008), Article 12, reads, “States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.”⁵² Restatements of the right are found in international conventions protecting women (Convention on the Elimination of All Forms of Discrimination against Women)⁵³ and children (Convention on the Rights of the Child).⁵⁴

An important issue falling under this Article is the matter of forced disappearances. With the fall of the military regimes in South American countries such as Argentina and Peru, resolving the fates of the “forcibly disappeared” persons became a central societal concern. In 1980 the UN Commission on Human Rights established a Working Group on Enforced or Involuntary Disappearances, and in 1992 the UN General Assembly adopted a “Declaration on the protection of all persons from forced disappearance.” Its Article 1, paragraph 2, states, “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading

⁵⁰ Morsink, *UDHR*, p. 38.

⁵¹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

⁵² <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

⁵³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁵⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

treatment or punishment. It also violates or constitutes a grave threat to the right to life.”⁵⁵ This was followed in 2006 by the International Convention for the Protection of All Persons from Enforced Disappearance,⁵⁶ and a Committee on Enforced Disappearance was established to monitor the implementation of the Convention.

With thousands of unresolved cases in countries around the world, some dating back to the Spanish Civil War or the more recent case of the 2014 disappearance of 43 students from the Mexican town of Iguala⁵⁷ to the 2018 disappearance of Saudi Arabian journalist Jamal Khashoggi,⁵⁸ disappearances unfortunately abound.

With the concept now so widely reiterated, are the archives that support this right easily identified? Certainly court records are key records here, including the records of military courts. But also important are records of deliberations in parliaments and in the committees of parliamentarians, records of military juntas and security services, records of chief executives and executive councils. Records of investigations by human rights groups, news media and public defenders are central sources, too, as are records of truth commissions. Whether they are the records of a legal case that considers a woman’s right to contract for her work in the absence of an approval by her father or husband⁵⁹ or the records of an investigation by a public defender into the complaints by a migrant worker that he is not paid the government’s minimum wage,⁶⁰ archives preserve them. After all, these records show a person, in the face of the might of the state, insisting that he or she be heard and the state recognizing the right of the individual to do so. The records are fundamental.

⁵⁵“Declaration on the Protection of all Persons from Enforced Disappearance,” adopted by General Assembly resolution 47/133 of December 18, 1992. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx> See also the Working Group on Enforced or Involuntary Disappearances, “General Comment on the right to recognition as a person before the law in the context of enforced disappearances,” <https://www.ohchr.org/Documents/Issues/Disappearances/GCRecognition.pdf>

⁵⁶ <https://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

⁵⁷ “Mexico missing students: New president creates truth commission,” *BBC News*, December 3, 2018. <https://www.bbc.com/news/world-latin-america-46434700>

⁵⁸ “Jamal Khashoggi case: All the Latest Updates,” *Al Jazeera*, December 6, 2018. <https://www.aljazeera.com/news/2018/10/jamal-khashoggi-case-latest-updates-181010133542286.html>

⁵⁹ International Federation for Human Rights, “Women’s Rights in the United Arab Emirates,” January 2010, in a note submitted to the United Nation’s Committee on the Elimination of Discrimination Against Women (CEDAW), reported that UAE Labor Laws restrict women from “working without the consent of a woman’s husband or male guardian.” https://www.fidh.org/IMG/pdf/UAE_summaryreport_for_CEDAW.pdf

⁶⁰ “Revealed: The New Zealand employers caught exploiting workers,” *Newshub*, August 31, 2018. <https://www.newshub.co.nz/home/new-zealand/2018/08/revealed-the-new-zealand-employers-caught-exploiting-workers.html>

Universal Declaration of Human Rights

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Johannes Morsink, a leading scholar of the Declaration, calls Article 7 “one of the most poorly written in the entire Declaration,” noting that it “seems redundant and overlaps in its second sentence with Article 2.”⁶¹ However, Article 7 makes two important contributions to the Declaration: the open-ended statement that everyone is entitled to equal protection and the prohibition against incitement to discrimination. The thrust of the Article is protection by the law, which in turn requires the state or international body administering the legal system to affirmatively protect the individual. This is, of course, a major problem when legal systems are corrupt, racist or otherwise discriminatory.

The phrase “without any discrimination” was intended to prohibit future types of discrimination that are not specifically enumerated in the Declaration. As the delegate from the Philippines said, referring to legislation that recently had been passed in South Africa, “certain rights, such as the right to travel on railroads without discrimination, were not [explicitly] mentioned in the Declaration but should certainly be covered.”⁶² In the early 21st century, international human rights advocates focused on protecting the rights of persons regardless of their sexual orientation, gender identity, gender expression or sex characteristics. A 2006 conference in Yogyakarta, Indonesia, developed the Yogyakarta Principles as an international guide for the treatment of LGBT people. This was updated in 2017, adding nine new principles and 112 additional state obligations “in response to documented human rights abuses against LGBT people worldwide.” The Yogyakarta Principles are used by the United Nations Human Rights Council when it reviews states’ human rights records, a process that could not have been anticipated by the members of the 1948 drafting committee.⁶³

The protection against incitement to discrimination appears to conflict with the rights of freedom of speech found in Article 19. It seems to support government action to prohibit hate speech and to require governments to balance the right to speech with the right to be protected from hate speech. The incitement clause makes another important

⁶¹ Morsink, *UDHR*, pp. 45-47.

⁶² Morsink, *UDHR*, pp. 69-72.

⁶³ “Yogyakarta Principles+10.” <http://yogyakartaprinciples.org/principles-en/yp10/>

contribution because it recognizes that the actual perpetrator of the discrimination may not be the intellectual author of it and that the author is equally culpable. This accountability is essential to prosecute higher-level officials in a bureaucracy that discriminates in violation of the Declaration.

Article 7 has increasing importance as Internet speech incites discrimination, a method of speech the delegates drafting the Declaration could not have imagined, although they were very familiar with Nazi incitement via radio. Radio incitement continues, of course. In 2003 the International Criminal Tribunal for Rwanda convicted Ferdinand Nahimana, the founder of Rwanda's Radio Television des Mille Collines, "for genocide, incitement to genocide, conspiracy, and crimes against humanity, extermination and persecution."⁶⁴ When sentencing Nahimana, Judge Navanethem Pillay told him, "You were fully aware of the power of words, and you used the radio – the medium of communication with the widest public reach – to disseminate hatred and violence....Without a firearm, machete or any physical weapon, you caused the death of thousands of innocent civilians." In April 2017, just months before Rohingya refugees began to stream out of Myanmar seeking safety across borders, the president of the Jammu, India, Chamber of Commerce and Industry told a press conference that if local Rohingya citizens didn't leave the state, "we would be left with no option but to launch a movement 'Identify and Kill' against foreign settlers who are criminals across the state."⁶⁵

The breadth of the Article suggests that many kinds of records would support the exercise of the rights to non-discrimination it seeks to protect. Court records, records of law-making bodies, and records of non-governmental organizations devoted to protesting discrimination are key sources. But so are the records of, for example, employers. *Business Daily Africa*, in an article titled "Can labour officials seize records from your office?" discussed the Kenya government's rights to review records of private businesses.⁶⁶ These are precisely the records that would be needed if employees allege discrimination in hiring, promotion, or assignment. Business archivists have special responsibilities for retaining records of employment, just as labor union archives are responsible for retaining records showing that all complaints made to them are handled equally and medical services are responsible for records documenting equal treatment.

⁶⁴ ICTR press release, December 3, 2003., <http://unictr.irmct.org/en/news/three-media-leaders-convicted-genocide>

⁶⁵ Syed Junaid Hashmi, "Jammu Chamber to launch 'Identify & Kill' campaign against Rohingya refugees," *KL News Network*, April 7, 2017. <http://www.kashmirilife.net/jammu-chamber-to-launch-identify-kill-campaign-against-rohingya-refugees-137095/>

⁶⁶ Jacqueline Mugo, "Can labour officials seize records from your office?" *Business Daily*, July 20, 2010. <http://www.businessdailyafrica.com/Can%20labour%20officials%20seize%20records%20from%20your%20office/-/539444/960678/-/u0qbu6z/-/>

Internet speech, especially hate speech by private individuals which will surely be the focus of extended litigation in the future.⁶⁷ According to a survey in 2017 by the U.S. Pew Research Center, four of ten of the over 4,000 persons surveyed said they had personally experienced on-line harassment, and in a startling finding, “Roughly half of those who have been harassed online (54%) say their most recent incident involved a stranger and/or someone whose real identity they did not know.”⁶⁸ The social media accounts, the “dark web,” and the sheer volume of traffic on the platforms represent a daunting task for companies like Facebook and Twitter to manage and governments to regulate. Archival preservation of the relevant hate speech, whether in investigative records (local police, university investigations) or when documenting distant events such as the speech of Islamic State propagandists, will be an increasingly important task.

Universal Declaration of Human Rights

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

We have Latin America to thank for Article 8. In April 1948 twenty-one nations of Latin America and the United States adopted the American Declaration of the Rights and Duties of Man, which said, in its Article XVIII, “Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”⁶⁹ When the draft of the Universal Declaration was debated, Mexico and Cuba each proposed to add language like that of the American Declaration in order to establish the right to an effective judicial remedy if a person believed his basic rights had been violated. Their proposal was accepted, and the Article adopted, giving protection to the individual from abuses by state authorities. The principle was underscored when the United Nations General Assembly in 1966 adopted

⁶⁷ The U.S. Holocaust Memorial Museum, alarmed by the links between hate speech and mass atrocities, in 2016 published *Hate: A Strategic Guide to Counteract Dangerous Speech*. <https://www.ushmm.org/confront-genocide/how-to-prevent-genocide/hate-speech-and-incitement-to-genocide/defusing-hate-a-guide-to-counteract-dangerous-speech>

⁶⁸ Maeve Duggan, “Online Harassment 2017,” Pew Research Center, July 11, 2017. <http://www.pewinternet.org/2017/07/11/online-harassment-2017/>

⁶⁹ <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>

the International Covenant on Civil and Political Rights that, in its Article 9, paragraphs 3 and 4, covers the same ground.

The Article has not been controversial in the six decades since it was drafted, but in the 2010s a new debate began. Brian Farrell, a legal scholar, proposed that Article 8 implicitly guarantees a right to habeas corpus (a legal action to release someone from unlawful detention). Noting the Latin American background to the Article, Farrell pointed to the widespread procedure in Latin America known as *amparo* that could be used “to remedy the violation of any fundamental rights, including those of personal liberty.” He argued that the final version of Article 8 is “equivalent to the general remedy of *amparo*” and because the right to habeas corpus “has assumed an enhanced importance in recent years due to practices employed in the fight against terrorism.”⁷⁰

Remedy includes reparations, including those able to put a victim back into the position she was in before the crime was committed, the compensation for loss, or by intangible acknowledgement of the wrong done, such as by an official apology or the erection of a memorial.⁷¹ Following the collapse of the military dictatorships in the last quarter of the 20th century, Latin American states faced demands for the truth of detentions and reparations. These led to complex reparations programs, depending heavily on documentary evidence supplied by victims or their families.⁷²

The focus on the state in Article 8 once again means that the archives of courts, prosecutors, and private attorneys (including those working for human rights NGOs) are important sources, as are the records of government agencies that may be perpetrators. Extending Article 8 to cover habeas corpus cases also means that the records of prison and other places of involuntary habitation are important. So are the records of NGOs documenting the acts that require remedy, the records of truth commissions and claims commissions, as well as personal papers.

But what if the question is whether the tribunals themselves were “competent” in terms of the language of Article 8? This leads us to the records of groups that serve as court monitors, watching the progress of trials to determine their basic adherence to fair judicial procedures. And it also takes us to the personal papers of judges, which judges traditionally

⁷⁰ Brian Farrell, “Does the Universal Declaration of Human Rights Implicitly Guarantee a Right to Habeas Corpus?” <https://digitalcommons.wcl.american.edu/hrbrief/vol16/iss1/1/>

⁷¹ For an overview of the variety of remedies, see United Nations High Commissioner for Human Rights, “Rule-of-law tools for post-conflict states: Reparations programmes,” 2008. <https://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

⁷² Trudy Huskamp Peterson, “Proof,” *Informatio*, Vol. 23, núm. 1 (2018). <http://informatio.eubca.edu.uy/ojs/index.php/Infor/issue/view/22/showToc>

take home with them when they leave the bench. Archivists need to be alert to the significance of the papers of judges and either acquire them or maintain a record of the location of them, particularly for judges who have recently retired.⁷³

Universal Declaration of Human Rights

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

The substance of Article 9 is rooted in 17th century European ideas of the natural rights of human beings. In England, for example, the Petition of Right of 1628 claimed the right to be free of arbitrary arrest and imprisonment, and in 1679 the English Parliament passed the Habeas Corpus Act establishing the right to be protected from arbitrary detention or imprisonment.⁷⁴ Given this long history, the Article's drafters had little debate over the principle embodied in Article 9; the vexing question was what standard should be used to determine what was "arbitrary." Various formulas were proposed by the drafters to establish a standard for legality (the reverse of "arbitrary"), most of which included the notion of a law that had been formally adopted. At the end of the deliberations, however, the drafters dropped any definition of "arbitrary" because they recognized that formally adopted laws could still unjustly deprive people of their liberty. Late in the drafting process, the USSR delegation proposed adding the phrase "or exile," which was adopted.⁷⁵

Article 9 is squarely about individual human rights. Not surprisingly, it has been used as a defense in an enormous variety of cases around the world, from prisoners detained at the U.S. military prison in Guantanamo Bay, Cuba,⁷⁶ to arbitrary arrests of gay men and women in Indonesia⁷⁷ to detention of illegal migrants in Hungary.⁷⁸ In 1980 the United Nations established the UN Working Group on Enforced or Involuntary Disappearances

⁷³For a brief discussion of the disposition of the personal papers of judges in the US and Canada, see Trudy Huskamp Peterson, *Temporary Courts, Permanent Records*, Woodrow Wilson International Center for Scholars, 2008, pp. 61, http://www.wilsoncenter.org/topics/pubs/TCPR_Peterson_HAPPOP02.pdf

⁷⁴ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*. Philadelphia: University of Pennsylvania Press, 1998, p. 14.

⁷⁵ Morsink, *UDHR*, p.50.

⁷⁶ "Closing Guantanamo," Human Rights First, October 10, 2018. <https://www.humanrightsfirst.org/resource/closing-guantanamo>

⁷⁷ "Indonesia: Four Arrested for Same-Sex Conduct," Human Rights Watch, April 2, 2018. <https://www.hrw.org/news/2018/04/02/indonesia-four-arrested-same-sex-conduct>

⁷⁸ "European rights court says Hungary must feed asylum seekers on border," *Reuters*, 2018-08-23. <https://www.reuters.com/article/us-europe-migrants-hungary-food-idUSKCN1L81R8>

and in 1991 established the UN Working Group on Arbitrary Detention; a glance at the work of these two bodies shows the immense reach of Article 9.⁷⁹

Primary sources for information on arbitrary arrest, detention and exile are government records of courts (open or secret), police, military, immigration services and border control regimes. Records of temporary government bodies, such as truth commissions, are important sources, as are the records of United Nations and regional bodies such as the Inter-American Commission on Human Rights and the United Nations High Commissioner for Refugees. National and international non-governmental organizations monitoring human rights, assisting prisoners, advocating for prison reform, and providing services to refugees all have relevant records. Churches, too, may hold records of assistance to refugees and to families of those detained or deported. University archives hold the personal papers of alumni who were involved in a case or cause as well as the records of university human rights centers and law schools that sponsor clinics for the assistance of prisoners and minority groups that are often disproportionately affected by Article 9 violations. Labor union records have information on arbitrary arrests and detention of union organizers, and business records hold similar information. In short, almost every type of archives may have holdings with Article 9 information.

Universal Declaration of Human Rights Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The drafters of this Article were determined to countermand the corrupted processes of the Nazi legal system. Originally the draft simply provided a right of access to “independent and impartial tribunals;” later the idea of a right to a public hearing was introduced. While a public trial does not necessarily make the trial either fair or impartial—and the drafters surely were aware of the public purge trials that had been held in the USSR between 1936 and 1938—open proceedings allow persons to monitor trials for fairness, as well as permitting family and friends to know both the charges and the results.

⁷⁹ <http://www2.ohchr.org/english/issues/disappear/index.htm>; <http://www2.ohchr.org/english/issues/detention/index.htm>

An enormous literature exists on the right to a fair trial. The United Nations Human Rights Committee twice issued a General Comment on this Article, as reflected in the related Article 14 of the International Covenant on Civil and Political Rights. General Comment 32 insists, ““Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.”⁸⁰ One helpful discussion is found in the guide “What is a Fair Trial?” prepared in 2000 by the [U.S.] Lawyers’ Committee for Human Rights (now called Human Rights First). This publication is aimed at persons who want to monitor trials for fairness, but it gives everyone a good overview of the fairness issues before, during and after a trial.⁸¹

For example, a fair trial is one that is prompt but not hasty. A U.S. academic, imprisoned in Iran, was arrested for nearly a year but his confinement “only became known . . . when Iran’s judiciary announced his sentence.”⁸² At the other extreme, Iraq’s trials of suspected ISIS militants lasted an average of 20 minutes.⁸³

Monitoring court processes is an important spur to fair trials. The nongovernmental Humanitarian Law Centre Kosovo published an overview of war crimes cases in Kosovo from 1999 to mid-June 2018, which was the result of systematic monitoring of war crimes trials.⁸⁴ Monitoring records also helps the public decide whether a trial is fair. In Germany, during the five-year trial of five members the National Socialist Underground (NSU), a neo-Nazi terror group, a coalition of individuals and groups formed NSU-Watch to monitor the trial on a daily basis, “writing reports, summaries and fact sheets into accessible forms (both translating into multiple languages and out of judicial speak) for the

⁸⁰ Human Rights Committee, “General Comment No. 32. Article 14: Right to equality before courts and tribunals and to a fair trial,” CCPR/C/GC/32, August 23, 2007. http://ccprcentre.org/page/view/general_comments/27741

⁸¹ “What is a Fair Trial?” Human Rights First, 2000. http://www.humanrightsfirst.org/pubs/descriptions/fair_trial.pdf

⁸² Adam Schreck and Didi Tang, Wife of Princeton researcher held in Iran urges his release, *Associated Press*, July 18, 2017. <https://apnews.com/18cbfc7bf38d4890bccddce7fc490b2>

⁸³ Ash Gallagher, “For captured ISIS fighters in Iraq, justice is swift and conviction is certain,” *Yahoo News*, December 13, 2017. <https://www.yahoo.com/news/captured-isis-fighters-iraq-justice-swift-conviction-certain-174952840.html>

⁸⁴ Die Morina, Drenushe Ramadani, “Kosovo Courts Try 111 War Suspects Since 1999,” *BIRN*, October 25, 2018. http://www.balkaninsight.com/en/article/111-accused-for-war-crimes-in-kosovo-during-1999-2018-10-25-2018?utm_source=Balkan+Insight+Newsletters&utm_campaign=7475d45642-BI_DAILY&utm_medium=email&utm_term=0_4027db42dc-7475d45642-319725265

social movements and broader public.” This was particularly important because the trial was not videotaped for public viewing.⁸⁵

The archival records that document the fairness of a trial begin with the records of the courts, whether civil, criminal or administrative, national, regional or international. The records of attorneys are relevant, both government prosecutors and private lawyers, as are the records of the ministry of justice. Human rights NGOs and legal aid lawyers have records documenting the trial process, as do associations of defense lawyers and bar associations.

For archivists, a major issue in handling the records of private attorneys and their associations is the strict privacy rule often imposed. Private attorneys and bar associations in many countries consider it unethical to make records of work for a client available to anyone unless the client agrees (attorney-client privilege). So while archives may preserve the records, the presumption of closure is very difficult to overcome, greatly limiting research use.

Universal Declaration of Human Rights Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 11 contains three ideas in two paragraphs: the presumption of innocence, the right to a defence, and the non-retroactivity of law (also known as no *ex-post facto* law). The first paragraph was adopted relatively easily by the Declaration’s drafting committee, but the second paragraph led to long debates. The principal problem arose from the war crimes trials at Nuremberg. One of the main defenses of the Nazis tried there was that they were “acting according to laws existing at the time,” pointing out that the existing

⁸⁵ Hilary Moore and Laura Frey, “Anti-fascists won’t let Germany return to normal after weak verdict in neo-Nazi trial,” Waging Non-Violence, July 13, 2018. <https://wagingnonviolence.org/feature/anti-fascists-germany-neo-nazi-nsu-trial/>

Hague and Geneva Conventions did not include either crimes against peace or crimes against humanity which formed two of the charges against the Nazi defendants. Although the judges rejected that defense, the drafters of Article 11 wanted both to ensure that no one would be judged guilty of an act which was not a crime at the time it was committed and to uphold the decisions reached at Nuremberg. After a great deal of drafting and redrafting, the second paragraph was adopted.⁸⁶

The non-retroactivity principle is a part of the 1966 International Covenant on Civil and Political Rights (Article 15, paragraph 1), as well as in the African Charter on Human and Peoples' Rights, the American Declaration on the Rights and Duties of Man, the Arab Charter on Human Rights, and the European Convention on Human Rights. The principle has featured in cases as varied as a 2003 case at the European Court of Human Rights against two Estonians for the deportation of civilians to the Soviet Union in 1949 (*Kolk and Kislyiy v. Estonia*),⁸⁷ cases at the International Criminal Tribunal on the Former Yugoslavia, and even in defense of Spanish Judge Baltasar Garzon's decision to investigate crimes against humanity committed during the dictatorship of Francisco Franco.⁸⁸

The archival records that support Article 11 are those of the courts (local, domestic, regional, international) including the judiciary, the prosecutors and defense counsel, and the NGOs that monitor the judicial process.

The Article requires public archives to preserve authentic official laws of the states; for some countries this is the published law (for example, Germany) and for others this is the signed law (for example, the United States). The difference between a publication requirement and a signature requirement was clearly demonstrated in 2010 when the Huntington Library in California transferred to the U.S. National Archives the Nuremberg Laws of 1935 signed by Adolf Hitler. At the end of World War II, U.S. General George Patton was given the laws, reportedly found in a German bank vault by U.S. soldiers, and took them to the Library for "safekeeping." Germany's Bundesarchiv holds the published Nuremberg Laws, which for Germany is the official copy and the signed original is not legally significant. For the U.S., with its legal tradition, the signed copy is the one that it valued and that is the one it now holds.⁸⁹

⁸⁶ Morsink, *UDHR*, pp. 52-58.

⁸⁷ European Court of Human Rights, Decision on the case of *Kolk and Kislyiy v. Estonia*, January 17, 2006. <http://www.derechos.org/nizkor/impu/kolk.html>

⁸⁸ "Open letter to Spanish judiciary authorities in solidarity with Justice Baltasar Garzon," 2010-03-23. <http://www.fidh.org/Open-letter-to-Spanish-judiciary-authorities-in>

⁸⁹ <https://aotus.blogs.archives.gov/2010/09/01/the-nuremberg-laws/>

Universal Declaration of Human Rights

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12 functions as a hinge between the Declaration's first articles focusing on judicial processes and protection and the later articles dealing with economic, social and cultural rights. It is a complex article, referring to rights ranging from interference with correspondence to attacks on honor. The "catch-all" nature was the result of many compromises in drafting or, as Johannes Morsink writes, "One of the difficulties with Article 12 had to do with the disparate character of the rights in question and how to capture that fact in one good sentence."⁹⁰ Furthermore, Article 12 is phrased in the negative (in other words, it doesn't say that people have a right to the sanctity of home and privacy but rather that there should not be interference with that right), which may have led the delegates to adopt the second sentence, proposed by the USSR, to clarify who is responsible for combating the interference.

Because this Article specifically covers correspondence, it is of particular interest to archivists. Morsink reports that many of the world's constitutions in 1947 had statements on the inviolability of privacy rights, including the inviolability of personal papers. He cites Egypt, Iraq, Lebanon, Belgium, Denmark, and Luxembourg, and quotes Argentina ("the domicile is inviolable, as also epistolary correspondence and private papers"); Bolivia ("epistolary correspondence and private papers are inviolable"); Yugoslavia ("the privacy of letters and other means of communication is inviolable"), and the United States ("the right of the people to be secure in their persons, houses, papers and effects"). Notice that these constitutions protect private papers generally, but Article 12 protects only correspondence (that is, as defined in the International Council on Archives' *Dictionary of Archival Terminology*, 2nd edition, "any form of addressed and written communication sent and received including letters, postcards, memoranda, notes, telegrams or cables") seemingly omitting items such as diaries and audiovisual materials.⁹¹

Currently the privacy element of Article 12 is cited in an enormous variety of arguments. The United Nations Population Fund uses Article 12 in support of the right to decide the

⁹⁰ Morsink, *UDHR*, pp. 135.

⁹¹ International Council on Archives, *Dictionary of Archival Terminology*, 2nd Edition, ICA Handbooks Series Volume 7. Munich: K.G. Saur, 1988.

number and spacing of one's children and to have access to contraception methods.⁹² OutRight International cites Article 12 when arguing for the privacy rights of gay men and women.⁹³ A human rights brief produced by the Center for Human Rights and Humanitarian Law at the Washington College of Law on virginity testing in Turkey says, "Virginity testing is a substantial intrusion upon women's privacy and is carried out in the context of questioning women's honor and reputation, clearly violating Article 12."⁹⁴ Surely if Wikileaks publishes private correspondence, whether email or another form, Article 12 could be cited in protest.

The overarching question of digital security and digital privacy affects us all. As Michelle Bachelet, the High Commissioner for Human Rights, said in a November 2018 speech, "[O]ne of the great tasks for the human rights community in the next few years will be to ensure the continued application of human rights in the way in which States operate in the digital age, and in the way in which they regulate the activities of companies in the digital space."⁹⁵

Given the breadth of the issues involved in Article 12, the records relevant to the Article are vast. Records of police, courts (local, domestic, regional, international), and military entities are, of course, central, but so are any media records that would show that someone has been libeled or slandered in "attacks upon his honour and reputation." Facebook and other social media postings, blog essays, recorded call-in radio programs: these are just a few of the records that might be implicated in an Article 12 "honour and reputation" case.

Universal Declaration of Human Rights

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each State.*
- (2) Everyone has the right to leave any country, including his own, and to return to his country.*

⁹² <https://www.unfpa.org/about-us>

⁹³ <https://www.outrightinternational.org/theme/privacy-and-family>

⁹⁴ Chante Lasco, "Virginity Testing in Turkey: A Violation of Women's Human Rights," <http://www.wcl.american.edu/hrbrief/09/3turkey.cfm>.

⁹⁵ Michelle Bachelet, "Human Rights in a New Era," speech at the University of Geneva, November 14, 2018. <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23874&LangID=E>

Article 13 begins the first of three Articles focused on rights of movement, asylum and nationality. The particularity of these three Articles is that in order to exercise the defined rights the participation of two countries is required: to leave a country or seek asylum means entering another country and to change a nationality means another nation must accept the applicant as a citizen. Like many of the first twelve Articles, the background of Articles 13-15 can be found in the experience of World War II Germany, where the ability to leave and be accepted elsewhere was literally a life and death matter.

Article 13's two paragraphs, the first focusing on movement with a country and the second on movement between countries, began as separate Articles but were combined during the drafting process. Three times the USSR proposed adding to the right to leave the country the additional phrase "in accordance with the established laws of the country"; this was voted down each time. Lebanon proposed that the right to leave included the right to return, which was adopted, with the Greece, the Philippines, and the United States speaking in favor of it.⁹⁶ Drafted during the period when Palestinians were fleeing the new state of Israel, the language of this Article and particularly the return clause were surely influenced by that mass refugee movement.

The issues of freedom of movement and right to return are incorporated in the UN's International Covenant on Civil and Political Rights (adopted in 1966, entered into force in 1976) and are reflected in a number of other international compacts. An important statement on the freedom of movement was adopted by the UN Human Rights Committee in 1999,⁹⁷ and in a path-breaking agreement, the freedom of movement was extended across multiple state boundaries in the European Union's Schengen Agreement (1985) and Convention (1990).⁹⁸

Since the Declaration was adopted, the Article has been cited in support of causes as varied as the right to maintain pastoralist lifestyles⁹⁹ and the opposition to human trafficking.¹⁰⁰ It has featured in discussions of the South African pass system during

⁹⁶ Morsink, *UDHR*, pp. 72-75.

⁹⁷ <http://www.unhcr.ch/tbs/doc.nsf/0/6c76e1b8ee1710e380256824005a10a9?Opendocument>.

⁹⁸ <https://www.schengenvisainfo.com/schengen-agreement/>

⁹⁹ United Organisation for Batwa Development in Uganda, Mount Elgon Benet Indigenous Ogiek Group, Coalition of Pastoralist Civil Society Organisations, and The Forest Peoples Programme, "Indigenous Peoples in Uganda: A Review of the Human Rights Situation of the Batwa People, the Benet People and Pastoralist Communities," Submitted to the 55th session of the United Nations Committee on Economic, Social and Cultural Rights, May 2015. <http://www.forestpeoples.org/sites/fpp/files/publication/2015/05/080515-alternative-ngo-report-cescr-uganda.pdf>

¹⁰⁰ Human Rights Watch, "Thailand: Trafficking Convictions Important Step Forward," July 24, 2017. <https://www.hrw.org/news/2017/07/24/thailand-trafficking-convictions-important-step-forward>

apartheid¹⁰¹ and the Cuban families separated between Havana and Miami.¹⁰² It was used to argue for the right of Jews who, starting in the 1960s, who were refused the general right to emigrate from the USSR to Israel.¹⁰³ It will become an important issue as climate change forces people to move from low-lying areas such as the Maldives and the Marshall Islands. Consequently, the records relating to this Article can be found in many, many archives.

At the international level, records of movement are in the archives of the United Nations High Commissioners for Refugees and Human Rights, the United Nations Relief and Works Agency for Palestine Refugees, the International Organization for Migration and regional bodies such as the European Union and the European Court of Human Rights. At national government levels the police, border control units, immigration services, courts and foreign ministries have relevant records. And in the non-governmental world the NGOs focusing on human rights and refugees hold key documents, as may NGOs that focus on a particular country. In special cases, such as when academic specialists are not permitted to take up teaching and lecturing posts abroad, academic associations also may have relevant records. As the people of the world migrate, become refugees, smuggle or are smuggled across borders, are trafficked, are displaced within their own country or expelled from it, seek asylum and migrate for education or work, more and more records of movement and return will flood into archives. Ensuring that these records are appraised and preserved to protect human rights and described so they can be used is a continuing duty for archivists.

Universal Declaration of Human Rights Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.***
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.***

¹⁰¹ <http://overcomingapartheid.msu.edu/multimedia.php?id=65-259-3>

¹⁰² Human Rights Watch, "Families Torn Apart: The High Cost of U.S. and Cuban Travel Restrictions," October 18, 2005. <https://www.hrw.org/report/2005/10/18/families-torn-apart/high-cost-us-and-cuban-travel-restrictions>

¹⁰³ David Feldman, "Toward a History of the Term 'Anti-Semitism'," *American Historical Review*, October 2018, p. 1148.

Two ghosts hovered over the debate on draft Article 14: the Jews who fled Nazi Germany and the Palestinian Arabs who fled Palestine during the 1948 Arab-Israeli war. These ghosts faced the defenders of national sovereignty, who stressed that states have the right to determine who resides within their borders. While the general right to seek asylum was agreed upon easily by the drafters of the Declaration, the question was whether a person has the right to be *granted* asylum, and here the delegates sharply disagreed. Eventually the United Kingdom proposed the phrase “to seek and to enjoy,” which the U.K. delegate made clear meant the “intention was not to grant to a person fleeing persecution the right to enter any and every country but to ensure for him the enjoyment of the right of asylum once that right had been granted him.” After debate and the defeat of “and granted” language, the British proposal passed.¹⁰⁴

The second clause, which prevents guaranteed asylum for war criminals as well as common criminals, was viewed at the time as the right of States not to extradite certain persons.¹⁰⁵ This clause was adopted with much less debate than the first. Today, however, the paragraph is in play when, for example, Macedonia’s fugitive former prime minister, sentenced to two years in jail for corruption, surfaced in Hungary and was granted “political asylum.”¹⁰⁶

The representative of the International Refugee Organization criticized the weak language of Article 14, as did the representatives of the World Jewish Congress and the International Union of Women’s Catholic Organizations. In 1951 the United Nations adopted the United Nations Convention relating to the Status of Refugees (and subsequently a 1967 Protocol) which now defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” In 2016 the United Nations General Assembly adopted the New York Declaration for Refugees and Migrants,¹⁰⁷ and in 2018 proposed a global compact on refugees¹⁰⁸ and a global compact for safe, orderly and regular migration.¹⁰⁹

¹⁰⁴ Morsink, *UDHR*, pp. 75-79.

¹⁰⁵ Sibylle Kapferer, “Article 14(2) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection,” *Refugees Survey Quarterly*, Volume 27, Issue 3, January 1, 2008, pp. 53–75, <https://doi.org/10.1093/rsq/hdn045>

¹⁰⁶ Pablo Forondi and Konstantin Testorides, “Macedonia’s fugitive ex-PM says granted asylum in Hungary,” *AP*, November 20, 2018. <https://www.kob.com/news/report-hungary-grants-asylum-to-former-macedonian-leader/5151199/>

¹⁰⁷ <https://www.unhcr.org/57e39d987>

At the end of 2018, the United Nations High Commissioner for Refugees reported an estimated 25.4 million people were refugees (about 5.4 of those Palestinian refugees), another 40 million people were displaced within their own countries, and yet another 3.1 million were seeking asylum abroad.¹¹⁰

The records of asylum-seekers abound. The United Nations High Commissioner for Refugees has its archives in Geneva, as does the International Organization for Migration; the records of the UN Relief and Works Agency for Palestine Refugees in the Near East are with the Agency; the records of the League of Nations' refugee office are with the League archives in Geneva; the records of the International Refugee Organization are at the National Archives of France. Most governments have records of refugee applications, as well as legal records on determinations of refugee status. Many NGOs specialize in refugee work including the legal representation of asylum-seekers; the International Committee of the Red Cross is prominent in refugee affairs, as are Red Cross and Red Crescent organizations in many countries, all of which have records. Religious bodies also have records on asylum-seekers they sponsor, and some educational institutions also have files. The persistence of the refugee problem and the controversies surrounding asylum are, unfortunately, all too present and result in very substantial bodies of records virtually everywhere.

Universal Declaration of Human Rights

Article 15

- (1) Everyone has the right to a nationality.*
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

Europe in 1948 staggered under the burden of refugees and displaced people. At the end September 1945, an estimated 1.8 million people in Europe were displaced, and many of them were stateless. Europe had known statelessness before—so many were displaced at the end of the First World War that in 1921 the League of Nations created a “High Commissioner on behalf of the League” to deal with refugee matters. Fridtjof Nansen of Norway, who was appointed the High Commissioner, created a new document known as

¹⁰⁸ <https://www.unhcr.org/5b6d574a7>

¹⁰⁹ <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>

¹¹⁰ <https://www.unhcr.org/figures-at-a-glance.html>

the “Nansen passport” to issue to stateless persons as an identity and status certificate. The League’s office collapsed as World War II neared, and in 1947 the United Nations created the International Refugee Organization (IRO) to help European refugees and to arrange for their resettlement. Consequently, by the time the Universal Declaration was being drafted, the problem of refugees and stateless persons had a United Nations history. The United Nations High Commissioner for Refugees (UNHCR) took over from the IRO in 1951, and eventually its mandate expanded to help refugees and internally displaced people wherever they may be, not just in Europe, excluding Palestinian refugees who live in Jordan, Lebanon, Syria, and the West Bank and Gaza.¹¹¹

The arguments over the language of Article 15 were much less heated than those over some of the other provisions. The most debate focused on the word “arbitrarily” in the second paragraph; as Rene Cassin of France pointed out, “arbitrary” could mean either that “no one could be deprived of nationality contrary to existing laws” or “those laws themselves must not be arbitrary.” After some wrangling, the delegates left the word without further definition.¹¹²

Because Article 15 was a general statement, the delegates discussed a proposed covenant to define its implementation. In fact, the United Nations eventually adopted two: the 1954 Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness.¹¹³ The 1954 Convention defined a stateless person as “a person who is not considered as a national by any State under the operation of its law.” And to make sure that women had a nationality, recognizing that in some States women lost or acquired their nationality “as a result of marriage, of its dissolution, or of the change of nationality by the husband during marriage,” the UN adopted a Convention on the Nationality of Married Women (1957, in force 1958).¹¹⁴ In May 2010 UNHCR convened an expert meeting in Prato, Italy, on “The Concept of Stateless Persons under International Law,” which produced the “Prato Conclusions” that clarify the definition of statelessness.¹¹⁵ Following that meeting, the Open Society Justice Initiative produced an eye-opening book on the worldwide problem of statelessness, with case studies from more than a dozen countries.¹¹⁶ Today UNHCR estimates that 10 million people are stateless.¹¹⁷

¹¹¹ UNHCR is responsible for Palestinian refugees living in all other countries.

¹¹² Mark Wyman, *DPs: Europe’s Displaced Persons, 1945-1951*, Associated University Presses, 1989, pp. 36-37; Johannes Morsink, *UDHR*, pp. 80-83.

¹¹³ <http://www2.ohchr.org/english/law/stateless.htm>;
http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf

¹¹⁴ https://treaties.un.org/doc/Treaties/1958/08/19580811%2001-34%20AM/Ch_XVI_2p.pdf

¹¹⁵ <http://www.unhcr.org/4cb2fe326.pdf>.

¹¹⁶ Laura Bingham, Julia Harrington Reddy & Sebastian Kohn, *De Jure Statelessness in the Real World: Applying the Prato Summary Conclusions*. Open Society Justice Initiative, March 2011.

Many issues impact statelessness. The lack of birth registrations makes it difficult for millions of nationals to defend their nationality; the UN promotes birth registration projects in countries with deficient registration systems. Shifting borders leave persons without identity documents for the country in which they now reside; see, for example, El Salvadorans who are now Hondurans.¹¹⁸ The Rohingya of Myanmar (Burma) are a case of politically created statelessness: Although they were resident in Burma, the Burmese authorities considered most Rohingya to be 'resident foreigners,' not citizens, and they were denied the right to register as citizens of Myanmar with an ethnic designation of Rohingya.¹¹⁹

Documentation of the stateless can be found in the archives of the United Nations High Commissioner for Refugees in Geneva, the records of the League of Nations' refugee office in the League archives also in Geneva, and the records of the International Refugee Organization at the National Archives of France. Governments have both the records of applications for citizenship and records of the revocation of citizenship. Many NGOs specializing in refugee work, the International Committee of the Red Cross, the Red Cross and Red Crescent organizations in many countries and religious bodies also may have files relating to persons seeking citizenship. Law firms and legal aid offices have records of those seeking citizenship and those who are fight against its revocation. The records of nationals are primarily government birth registers and in hospital or clinic archives if the birth occurred there. Many secondary sources can also help establish nationality, from passports to school records to tax and voter rolls. The records of nationality—its acquisition and its loss—abound.

<https://www.opensocietyfoundations.org/reports/de-jure-statelessness-real-world-applying-prato-summary-conclusions>

¹¹⁷ <https://www.unhcr.org/figures-at-a-glance.html>

¹¹⁸ Associated Press, "World Court Settles Border Dispute," *New York Times*, September 13, 1992. <https://www.nytimes.com/1992/09/13/world/world-court-settles-a-latin-border-dispute.html>

¹¹⁹ United Nations High Commissioner for Refugees, "Rohingya Emergency." <https://www.unhcr.org/en-us/rohingya-emergency.html> ; Engy Abdelkader, "The history of the persecution of Myanmar's Rohingya," *The Conversation*, September 20, 2017. <http://theconversation.com/the-history-of-the-persecution-of-myanmars-rohingya-84040>

Universal Declaration of Human Rights

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 16 was and is an exceedingly controversial Article. It encompasses the right to marry outside one's race and religion; it contemplates divorce and the right of women to share in the division of property; it opposes forced marriage; it defines family as a "natural" social unit without specifying who makes up such a unit; and it requires States to protect family life.

Before the Universal Declaration was drafted, the United Nations had already taken several important steps with regard to the rights of women that are stated in Article 16. The Charter of the United Nations affirmed "the equal rights for men and women;" the First General Assembly of the United Nations in 1946 passed a resolution asking member states to adopt "measures necessary to fulfill the purposes and aims of the Charter by granting women the same political rights as men," and the UN's new Economic and Social Council appointed a Sub-Commission on the Status of Women, which was shortly raised to the status of a full commission. During the drafting of the Declaration, the chair of the Commission on the Status of Women, Bodil Begtrup of Denmark, and the Soviet delegations consistently argued for equality of men and women and opposed drafts containing sexist language.

Remarkable statements were made during the debates. Shaista Ikramullah,¹²⁰ the extraordinary woman who represented Pakistan and was a delegate to the General Assembly's Third Committee on social, humanitarian and cultural matters (which in 1948 spent 81 meetings discussing the draft of the Universal Declaration of Human Rights), said "it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations, but also in domestic affairs." While she thought equal rights did not mean identical rights she wanted "to ensure protection of women after divorce and the safeguarding of their property." The delegate from Uruguay, Roberto Fontaina, during the debate on the nature of the family,

¹²⁰ <http://www.un.org/en/events/humanrightsday/women-who-shaped-the-universal-declaration.shtml>

argued that the word “natural” was unnecessary because “the family was the fundamental group unit of society and that it was the cell around which the state was formed; the way in which the family was constituted was of secondary importance,” which can be read to mean that the sexual orientation and composition of the family members are irrelevant to the right being protected. Jamil Baroody, the Saudi delegate, “emphasized the fact that apparently the authors of the draft declaration had for the most part taken into consideration only the standards recognized by western civilization.”¹²¹ All these ideas have been tested repeatedly in the years since the Declaration was adopted.

Opposition to the various drafts of Article 16 was widespread but divided, based on the point at issue. The explicit mention of divorce roused opposition from various Christian groups, and the debate on the nature of the family as a social unit found many delegates at odds with each other. The delegation from Saudi Arabia so deeply opposed the language about marrying outside one’s religion that Saudi Arabia eventually abstained from approving the entire Declaration, based largely on its opposition to Article 16.

Subsequent to the adoption of the UDHR, the United Nations passed a number of conventions and standards in support of the principles articulated in Article 16, among them the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962, in force 1964);¹²² Convention on the Rights of the Child (1989, in force 1990);¹²³ and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965).¹²⁴ These formal actions attest to the continued concern over the issues embedded in the “marriage Article.”

Child marriage remains a major problem in countries. In Egypt, although a 2008 law set 18 as the legal age for marriage, a November 2018 report said “117,000 children under the age of 18 in Egypt are or have been married, even as Egypt has been battling child marriage.”¹²⁵ A report in 2015 said that in Egypt’s rural areas officiants at weddings are paid bribes to falsify the age of the bride.¹²⁶ In Hyderabad, India, “wealthy men from Gulf states,” pay a broker to find a girl “under 18” for “time pass” marriages which would last only as long as the man was in the country. The age of the girl was falsified on the

¹²¹ All quotations from Johannes Morsink, *UDHR*, pp. 24-26, 116-125, 254-257.

¹²² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

¹²³ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹²⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RecommendationOnConsentToMarriage.aspx>

¹²⁵ Farah Tawfeek, “Child Marriage in Egypt reaches 117,000 children; CAPMAS,” *Egypt Independent*, November 21, 2018. <https://www.egyptindependent.com/child-marriage-in-egypt-reaches-117000-children-capmas/>

¹²⁶ Ahmed Fouad, “Here comes the . . . child bride? Despite legal restrictions underage marriage persists in rural Egypt.” *Al-Monitor*, August 26, 2015. <https://www.al-monitor.com/pulse/originals/2015/08/egypt-underage-marriage-wedding-law-officiant-bribery.html>

marriage certificate and “at the time of the marriage the men signed post-dated divorce documents, to be delivered to the brides after their new husbands had left the country.”¹²⁷

Inter-racial and inter-faith marriages also face discrimination. In 2016 Iran’s Interior Ministry declared invalid all marriages between Iranian women and Afghan men that took place after 2001.¹²⁸ In India in 2017, a Muslim man who intended to marry a Hindu woman in the state of Rajasthan was “hacked with a machete, set on fire, and burned alive.” Perpetrators videotaped the attack and posted the video on line.¹²⁹

Records relating to marriage are found in the public authorities that certify and sanctify marriages, usually civil registers, and in the records of faith institutions. The records of dissolution of marriage are found in courts, civil and religious as well. Court records also reflect struggles over same sex marriage, child custody and other family battles, while immigration services have records of family separations and reunions. Non-governmental organizations focusing on human rights, law firms and legal aid offices have records on both general patterns of family life and on particular cases. Adoption agencies and child welfare departments have records on families. News organizations and journalists that cover family issues have relevant files. Personal papers often contain copies of marriage licenses, birth certificates, and other documentation of family life. Just as Article 16 declares the family the “natural and fundamental group unit,” so are the records of family life a natural and fundamental part of archives, to be protected there.

¹²⁷ Roli Srivastava, “Indian child brides sold in 'package deals' to men from Gulf states,” *Thomson Reuters Foundation*, October 10, 2017. <http://news.trust.org/item/20171010114553-kz0cq/>

¹²⁸ Leila Alikarami, “Iran's political paranoia includes children of foreign fathers,” *Al-Monitor*, December 5, 2016. <http://www.al-monitor.com/pulse/originals/2016/12/iranian-mothers-foreign-fathers-children-citizenship-law.html#ixzz5Z1XdbWRp>

¹²⁹ Akash Vashishtha, “Caught On Video, Muslim’s Gory Slaying Angers Indians,” *Benar News*, December 10, 2017. http://www.eurasiareview.com/10122017-caught-on-video-muslims-gory-slaying-angers-indians/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+eurasiareview%2FVsnE+%28Eurasia+Review%29

Universal Declaration of Human Rights

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

According to Johannes Morsink, the discussions on Article 17 “were some of the most openly philosophical ones in which the drafters engaged.”¹³⁰ The drafters distinguished three types of property: personal property, including that which is essential for living (such as household furniture, utensils and articles of personal use); real property (land); and profit-making enterprises (the modes and means of production). (The issue of people as property was dealt with separately in Article 4.) Coming at the onset of the Cold War, the drafters were trying to linguistically encompass rights to property, whether the person was part of a capitalist, socialist, communist, or mixed economic system. The result was some of the simplest and sparest language in the Declaration.

In the years since the passage of the Declaration, the United Nations has repeatedly addressed property issues. The United Nations Conference on Human Settlements (Habitat I), held in Vancouver, Canada, in 1976, explicitly said that human settlement policies and strategies “must be in conformity with the [conference’s] declaration of principles and the Universal Declaration of Human Rights,” thereby incorporating the right to own property.¹³¹ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, underscored the right of women to inherit and own property and called for rural women’s rights to equal treatment in land.¹³² The right of indigenous peoples in their lands is included in the 2007 United Nations Declaration on the Rights of Indigenous Peoples.¹³³ For an interesting comparative study of both physical property rights and intellectual property rights (the subject of other Articles of the Declaration), see the International Property Rights Index developed by the Property Rights Alliance in partnership with 62 other institutions around the world.¹³⁴

And yet the right to property, whether land or a work of art, remains one of the most contested issues, nationally and internationally. A database of more than half a million pieces of property lost by Holocaust victims was opened by the Holocaust Era Asset Restitution Taskforce (Project HEART). The list was, reported the *New York Times*,

¹³⁰ Morsink, *UDHR*, p. 140; all quotations from pp. 139-156.

¹³¹ http://www.unhabitat.org/downloads/docs/924_21239_The_Vancouver_Declaration.pdf

¹³² http://www.unifem.org/gender_issues/women_poverty_economics/land_property_rights.php

¹³³ <http://www.un.org/esa/socdev/unpfii/en/drip.html>

¹³⁴ <http://www.internationalpropertyrightsindex.org/>

“compiled from hundreds of European archives, including tax records and voter registries.”¹³⁵ The right of a woman to own property or control it even if the title to the property is in her name has historically been controversial in many places. In some countries, classes of persons have been barred from owning property. Indigenous peoples fight for property rights in many nations. The recuperation of or fair compensation for property, whether land or personal effects or businesses, features in claims as varied as the compensation to the Uganda Asians deported by Idi Amin in 1972¹³⁶ to the question of who owns the Jewish material found in the basement of the police headquarters in Baghdad.¹³⁷ The question of who owns property in post-conflict Syria and the means by which the restitution of property will be achieved is extremely complex, not least because the “(often intentional) destruction of property records and forced evacuations have left many Syrians bereft of proper evidence.”¹³⁸

Archives relating to property are some of the oldest and often best preserved of any records. As Ernst Posner wrote in his magisterial *Archives in the Ancient World*, from ancient Mesopotamia to the present we have land surveys (cadastres), land records that establish legal ownership, and records of tax obligations owing to the ownership of real property.¹³⁹ The need to prove ownership of land was a factor in creating royal archives in European states in the Middle Ages, and the core archival principle of provenance¹⁴⁰ derives in part from the need to know with certainty what body had created the record of ownership of property. In modern archives, the records of land registries and notary publics support research to buttress claims of property rights, as do records of inheritance (including birth and marriage registries). Many countries have programs to digitize records of land recordation, giving archivists the need to preserve both paper and electronic records for the same transactions unless the country has accepted the electronic copy as legally valid.

Records of courts document the many quarrels over property, and compensation commissions, a feature of some transitional justice systems, are a key source of information on property of all types. Many non-governmental civil rights and advocacy organizations have records relating to property cases, as do law firms whether doing for fee or pro bono work. And international institutions, particularly the United Nations bodies, have

¹³⁵ Isabel Kershner, “Property lost in the Holocaust is catalogued on line,” *New York Times*, May 2, 2011. http://www.nytimes.com/2011/05/03/world/middleeast/03holocaust.html?_r=1

¹³⁶ Palash Ghosh, “Uganda: Forty Years after Idi Amin Expelled the Asians,” *International Business Times*, June 8, 2012. <https://www.ibtimes.com/uganda-forty-years-after-idi-amin-expelled-asians-739228>

¹³⁷ Sandi Fox, “Who owns the Jewish treasures that were hidden in Saddam Hussein’s basement?” *PBS Newshour*, April 29, 2014. <https://www.pbs.org/newshour/world/stolen-treasures-iraqi-jewish-community>

¹³⁸ Syria Justice and Accountability Centre, *Return is a Dream: Options for Post-Conflict Property Restitution in Syria*, Washington, DC, 2018, p. 13.

¹³⁹ Ernst Posner, *Archives in the Ancient World*. Cambridge, MA: Harvard University Press, 1972.

¹⁴⁰ International Council on Archives, *Dictionary*, op. cit.

records relating both to the general questions of property rights and to specific cases, such as the records at the United Nations High Commissioner for Refugees on the compensation for the Uganda Asians. Records of possession and records of dispossession are at the heart of archives.

Universal Declaration of Human Rights Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 2 of the Universal Declaration of Human Rights proclaims, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind” including any distinction by religion. Article 18 amplifies the right to religious freedom, stating that all persons have a right to freedom of thought, conscience and religion, including the right to gather for religious purposes and to teach about beliefs. Originally the draft of what is now Article 18 said simply, “There shall be freedom of conscience and belief and of private and public worship.” However, during the drafting process the delegates encountered many questions: Do people have a right not to believe in anything? Is there a right not to be compelled to take part in a religious act or to declare religious views? And what about proselytizing? The delegate from the USSR argued that not only should people have the right not to believe, but this “article should grant freedom of conscience not only for the practice of religion, but also for anti-religious propaganda.” The delegation from Saudi Arabia objected strenuously to the inclusion of a right to change religious affiliation, and this Article, along with Article 16 which includes a person’s right to marry anyone of any religion, led the Saudi delegation to abstain when the Declaration was put to the final vote. (Six Communist nations also abstained, but their objections were principally on the issue of the role of the State.)¹⁴¹

Given the sensitivity of the subject of religious practice, it is no surprise that international bodies have returned to the topic again and again in the decades since the Declaration was adopted. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights include statements on the freedom of religion.

Then, in its most comprehensive statement on religious freedom, the UN General Assembly in 1981 adopted the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. That Declaration says boldly in its Article 3:

¹⁴¹ Morsink, *UDHR*, pp. 21-28, 258-263.

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Another of that Declaration's major contributions was its Article 5, which outlines the rights of parents and children with respect to religious practice.

In 1993 the UN Human Rights Committee, the treaty body that oversees the Covenants, clarified the still ambiguous language on nonbelievers by stating that the Covenant protects "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief." The Committee commented that if there is a state religion or official ideology that encompasses a set of beliefs, it "shall not result in any impairment" or discrimination against the "adherent to other religions or non-believers." Further, the right to conscientious objection and the right to refuse to perform military service because of religious beliefs is a right that "can be derived from Article 18," the Committee declared.¹⁴²

The United Nations also considered the relationship between religious practices and minority populations. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities underscored the right of minorities "to profess and practice their own religion" (Article 2) and declared "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" (Article 1).¹⁴³ This was followed in 2007 by the UN Declaration on the Rights of Indigenous Peoples, which has repeated references to religious freedom, most importantly in Article 12: "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."¹⁴⁴

The rights of women in religious practices also have been a recurring issue. In 2000 the Human Rights Committee issued General Comment 28 on the equality of rights between

¹⁴² Human Rights Committee General Comment No. 22, <https://www.refworld.org/docid/453883fb22.html>

¹⁴³ https://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf

¹⁴⁴ <https://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>

men and women, which said, “State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all ICCPR rights.”¹⁴⁵

The universal nature of religious practice means that an enormous variety of records relate to the rights embodied in Article 18. The records of faith-based institutions of all kinds are fundamental, including records of religious courts. In addition, the records of legislatures (for example, the French debates over Muslim women wearing headscarves¹⁴⁶), courts, police, civil registries and notaries, non-governmental organizations that defend human rights, women’s and indigenous people’s organizations and media corporations all have records on the exercise or prohibition of religious freedom. And, as always, the personal papers of individuals involved in the issue contain information that is unique. The papers of anthropologists, found in university archives, may contain information on religious practices and audiovisual materials of events that were collected during fieldwork but whose release would be offensive to the culture in question.¹⁴⁷ Archivists can assume that the archives they manage will have some materials that relate to the sensitive principles of Article 18.

Universal Declaration of Human Rights

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to see, receive and impart information and ideas through any media and regardless of frontiers.

Before he set off to bomb central Oslo, Norway, and murder people on Utoya Island on July 22, 2011, Anders Behring Breivik posted on line a 1500 page manifesto and a 12 minute video full of hate speech. Should he have been able to do so? Does hate speech fall within the protection of Article 19?

¹⁴⁵ <http://www.unhcr.ch/tbs/doc.nsf/>

¹⁴⁶ “French Senate backs headscarf ban,” *BBC News*, March 3, 2004. <http://news.bbc.co.uk/2/hi/europe/3531151.stm>. In 2018 the UN Human Rights Committee found France’s ban on full face veils (niqab) “disproportionately harmed the petitioners’ right to manifest their religious beliefs.” “UN condemns French ban on full-face veils as violation of human rights,” *France 24*, October 23, 2018. <https://www.france24.com/en/20181023-france-un-ban-full-veil-human-rights>

¹⁴⁷ Ellen M. Ryan, Society of American Archivists case study, “Identifying Culturally Sensitive American Indian Material in a Non-tribal Institution,” September 2014. https://www2.archivists.org/sites/all/files/AmericanIndianMaterial_CEPC-CaseStudy3.pdf

When the drafters of the Declaration worked on Article 19, they struggled with this question. Their frame of reference was World War II, and as Alexandre Bogomolov, the USSR delegate, said, “Between Hitlerian racial propaganda and any other propaganda designed to stir up racial, national or religious hatred and incitement to war, there was but a short step.” Surely, some delegates argued, governments should be permitted, in the words of the British delegation, to take “steps against publications whose whole object was to destroy the rights and freedom which it is the purpose of the [Declaration] to establish.” But other delegates argued that the horrors of World War II were due partly to the isolation of peoples from the opinions of the outside world and therefore unrestricted speech was a partial remedy. Ultimately the drafters decided not to place any restrictive language in Article 19, but they pointed to protective language in Article 7 (“All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”) and Article 29, paragraph 2 (“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”). In other words, the delegates did not condemn hate speech per se but rather said that all persons have the right to be protected against such speech.¹⁴⁸

Adopting the Universal Declaration did not quiet the debate, and the International Covenant on Civil and Political Rights included in *its* Article 19 a third element stating that the exercise of the right to freedom of expression “carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: 1. For respect of the rights or reputations of others; 2. For the protection of national security or of public order (ordre public), or of public health or morals.” It went on, in Article 20, to extend this prohibition: “1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”¹⁴⁹

As the use of information technologies grew, the debate resumed with a new focus. In 1999 the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression issued a Joint Declaration on International Mechanisms for Promoting Freedom of Expression. The 2003 Geneva Declaration of the World Summit on the Information

¹⁴⁸ Johannes Morsink, *UDHR*, pp. 58-72.

¹⁴⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Society considered Article 19's applicability to the computing world.¹⁵⁰ And on 21 July 2011 the UN Human Rights Committee issued a new "General Comment No. 34" on Article 19.¹⁵¹

Cases relating to free speech abound. For example, Lithuania's national defense policy bans "irresponsible speculation that sets defense funding in opposition to other sensitive areas," barring Lithuanians from speaking on defense expenditures unless they support the official point of view.¹⁵² The Independent International Fact-Finding Mission on Myanmar's September 2018 report, after noting the use of Facebook to incite violence against the Rohingya community, recommended that "social media platforms active in Myanmar, including messenger systems, should enhance their capacity to combat the use for their platforms for the spread promotion of threats and the incitement to violence, hostility and discrimination."¹⁵³ For an overview of the wide variety of current issues concerned with freedom of expression and information, see the website of the nongovernmental organization aptly named Article 19.¹⁵⁴

And archives and Article 19? It is hard to think of an archives without relevant records. Records of courts, police, legislatures, political parties, media, non-governmental organizations, labor unions and organizers, and religious groups all have information on the exercise of Article 19 rights. Businesses, too, may have records about free speech; for example, in 2010 the Craigslist website was pressured to control the postings of sex advertisements, and several countries have banned violent video games, both before and after the Oslo attacks. Personal papers show the rights to free expression; some activists take their personal papers to another country for safety from seizure. Archives—their existence and their use—are Article 19.

¹⁵⁰ For a helpful comparison of the Geneva Declaration and the UDHR, see Loreto Corredoira, "A New Reading of Article 19 of the Universal Declaration of Human Rights (1948) in Our Information Societies," http://e-television.es/e-tv-docs/doc_download/8-a-new-reading-of-article-19-of-the-universal-declaration-of-human-rights-1948-

¹⁵¹ <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

¹⁵² Adomas Abromaitis, "Lithuania Violates Universal Declaration of Human Rights," *Eurasia Review*, September 13, 2018. <https://www.eurasiareview.com/13092018-lithuania-violates-universal-declaration-of-human-rights-oped/>

¹⁵³ "Report of the detailed findings of the Independent International Fact-finding Mission on Myanmar, A/HRC/39/CRP.2, September 18, 2018. <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

¹⁵⁴ <http://www.article19.org/>

Universal Declaration of Human Rights

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

On December 17, 2010, Mohamed Bouazizi, a Tunisian street vendor, set himself on fire in hopelessness and to protest his treatment at the hands of the authorities. That sparked nationwide protests, and on January 14, 2011, Zine El Abidine Ben Ali, the long ruling president of Tunisia, fled with his family to Saudi Arabia. By August of that year the Ligue Tunisienne des Droits de l'Homme could hold a national conference without fear of being harassed by the police.¹⁵⁵ By 2018, two dozen associations were actively promoting the long-suppressed Berber culture in Tunisia.¹⁵⁶ In an entirely different context, in 2011 and 2018 archival associations met--local, national, regional groups as well as the International Council on Archives. Whether human rights organizations or ethnic groups or professional colleagues, the right to peacefully assemble and associate is dear to us all.

The development of Article 20 on the right to assemble is confusingly entwined with the development of Article 23 on the right to form trade unions. Ultimately these two ideas were put into two separate Articles because the drafters, according to Johannes Morsinck in his study of drafting the Universal Declaration, “judged the right to unionize as sufficiently important to give it a place on the list of human rights and to rank it with the more abstract rights of association and work, rights it implements locally and domestically.” But the pure right of association was also debated, with the recent dark World War II heritage leading some delegates to argue that, as the USSR representative said, all organizations “of a fascist or anti-democratic nature” should be exempted from the right to assemble. In the end, the word “peaceful” was inserted before the words “assembly and association,” but fascist organizations were not specifically prohibited. The final issue was whether there was a right not to belong to an association, and this also was tangled with the question of whether a person could be forced to belong to a trade union. The delegate from New Zealand expanded the argument from the topic of trade unions, saying it was sometimes necessary to require a person to belong to an association: “An example

¹⁵⁵ “La Ligue tunisienne des droits de l'homme interdite de tenir son congrès par la police,” *Le Monde*, May 29, 2006. https://www.lemonde.fr/afrique/article/2006/05/29/la-ligue-tunisienne-des-droits-de-l-homme-interdite-de-tenir-son-congres-par-la-police_777216_3212.html

¹⁵⁶ Isabel Putinj, “How Tunisia is Finally Embracing Its Berber Culture,” *The Independent*, June 27, 2018. <https://www.independent.co.uk/travel/africa/tunisia-berber-villages-heritage-traditional-culture-tamezret-toujane-a8417791.html>

was that of professional associations responsible for supervising the conduct of those carrying on some special profession. In New Zealand that was the case with the bar associations.” It is unclear exactly what the delegates thought they were voting on in Article 20’s second paragraph, but it was adopted by a vote of 20 for, 14 against, and 9 abstentions.¹⁵⁷

It is no surprise that the right of association is found in many international conventions. In fact, on July 9, 1948, five months before the Declaration was adopted, the general conference of the International Labor Organization adopted a convention on “Freedom of Association and Protection of the Right to Organize,” which the Declaration’s drafters must have known. Subsequently the right has been incorporated in documents as varied as the 1951 Convention on the Status of Refugees, which says refugees have the same right to assemble as the nationals of the country in which the refugee is living, to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which says police must not interfere with lawful and peaceful assemblies.¹⁵⁸ For a look at how various nations are handling this right, if you search for the word “association” you will get nearly 500 hits in the Universal Human Rights Index of United Nations Documents.¹⁵⁹

And archives? Records of courts, police, legislatures, election commissions and monitors, media companies, non-governmental organizations, religious groups, professional associations: all of these are in archives and all have information on the peaceful (and not so peaceful) exercise of the right of assembly and association. And, of course, archival associations themselves should have their records preserved in an archives, thereby showing that the archival community associates and assembles and protects the records of our exercise of those rights.

¹⁵⁷ Johannes Morsink, *UDHR*, pp. 65-69, 168-181.

¹⁵⁸ For a list of important international treaties, declarations and commitments that include provisions for the protection of the freedom of association and assembly, see http://www.hrea.org/index.php?doc_id=406#instruments

¹⁵⁹ <http://www.universalhumanrightsindex.org/hrsearch/search.do?accessType=search&bodies=allBodies®ionCountry=country&bodyTypeBody=body&lang=en&orderBy=relevance&booleanQuery=association&countries=allCountries&clusterCategory=category¤tPage=6>

Universal Declaration of Human Rights Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
- (2) Everyone has the right to equal access to public service in his country.*
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Seated behind a bank of microphones, King Abdullah of Saudi Arabia announced on September 25, 2011, that starting in 2015 women in the Kingdom would have the right to vote in local elections and to stand as candidates in municipal elections.¹⁶⁰ When the Universal Declaration of Human Rights was adopted in 1948, 13 of the 56 countries voting did not give women the right to vote (including 12 countries who voted for the UDHR and one country—Saudi Arabia—that voted against it). Yet Article 21 speaks of “universal and equal suffrage,” and in the final vote it was adopted unanimously. How could this be, when women and minorities in many countries could not vote?

As with the debates over many of the Articles, international politics was at play in the debates over Article 21. The delegates had adopted Article 2, which contains sweeping language on non-discrimination, including freedom of “political or other opinion.” Article 21 underscored on the procedure of political life: periodic, equal, universal, direct and secret suffrage. The debate in the drafting process focused on the question of multiple parties. The Belgian delegate bluntly said that having more than one party “was essential to the efficient functioning of the democratic system,” to which the Russian delegate replied that “under the prevailing [Soviet] system” there was “no justification for the creation of other parties.” Article 21, as adopted, does not specifically call for a multi-party system, but scholars such as Johannes Morsink argue that the drafters knew that, read together, Article 2 with its right of free political opinion and Article 21 made multi-party systems the only logical conclusion.¹⁶¹

The drafters also used the third paragraph of Article 21 to hint at (another penumbra) but not explicitly state the right to self-determination. In an era of colonies and trust territories,

¹⁶⁰ [Asma Alsharif](http://www.reuters.com/article/2011/09/25/us-saudi-king-women-idUSTRE78O10Y20110925), “Saudi king gives women right to vote,” *Reuters*, September 25, 2011. <http://www.reuters.com/article/2011/09/25/us-saudi-king-women-idUSTRE78O10Y20110925>

¹⁶¹ Johannes Morsink, *UDHR* pp. 58-61, 112-113.

not to mention states that were conglomerations of ethnic groups, the idea of self-determination was political dynamite. To make matters even more fraught, when the Declaration's drafting began Palestine was a mandate of the U.K. but by May 1948 the new state of Israel had been proclaimed and Palestinians were fleeing. The idea of a separate Article on self-determination collapsed into the third paragraph here.

The 1966 United Nations Covenant on Civil and Political Rights reiterates in its Article 25 the provisions of the Declaration's Article 21. Thirty years later, in 1996, the United Nations Committee on Human Rights adopted a "General Comment" in which it interprets the rights defined in Article 25. The Comment begins, "Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant." The word "democratic," not used in the Declaration, now, in the post-Cold War years, is seen as the heart of the matter. The Comment briefly notes the right to public service employment stated in subparagraph 2 in the Declaration and subparagraph 3 of the Covenant, saying, "[T]he criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable." Surely this provision could be used in employment cases brought against governments.¹⁶²

Challenges to the Article continually arise. In Bahrain, a court in 2016 ordered the country's main Shia opposition group to be dissolved and its assets liquidated and transferred to the state treasury.¹⁶³ Hackers have been at work on voter records, if not actually changing the results of a vote.¹⁶⁴

Archival materials on voting and public employment are extensive. Government archives hold the official results of elections, as well as the legislative debates over suffrage and the court challenges in voting rights cases. How long to retain the actual ballots has been a matter of controversy in some countries and in some elections. And, of course, government archives hold the records of government employment, including the rules for employment and dismissal as well as the individual case files on personnel.

The United Nations plays an important role in supporting the electoral process in countries that are moving from a repressive system to a more democratic one, and the records of those activities are in the United Nations Archives. Many non-governmental organizations around the world monitor elections, and their records hold the reports of

¹⁶² <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>

¹⁶³ Adam Schreck, "Bahrain court orders Shia opposition group to be dissolved," *Associated Press*, July 17, 2016. <https://apnews.com/37086300d45e4e3aa3995e651d3c290b>

¹⁶⁴ Dell Cameron, "Sacramento Bee Leaks 19.5 million California voter records, promptly compromised by hackers," *Gizmodo*, February 8, 2018. <https://gizmodo.com/sacramento-bee-leaked-19-5-million-california-voter-rec-1822835127>

observers; the International Foundation for Electoral Systems highlights on its website “What Article 21 of the Universal Declaration of Human Rights Means to Democracy.”¹⁶⁵ Other NGOs monitor political processes generally, such as Freedom House, an NGO whose annual report *Freedom in the World* surveys global political rights and civil liberties, including electoral rights, using the standards of the Declaration.¹⁶⁶ Law firms and legally-oriented groups have records of their voting rights cases, as well as litigation in favor of persons seeking public employment or being dismissed from it. Labor unions representing government workers would also have relevant records. And personal papers of suffrage campaigners, election monitors, and persons seeking government employment are important archival materials. There is no lack of archival holdings on suffrage and public employment.

Universal Declaration of Human Rights Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

In the 2010s India embarked on a remarkable project: issuing an identification number to each of its 1.2 billion citizens. The project was designed to solve, among others, the problem of invisible persons; as an article on the project noted, “Hundreds of millions of Indians are barely visible to the state: they either have no I.D. at all or a weak form of it, issued by local authorities. Consequently, they can’t easily open bank accounts or buy cell-phone SIM cards, and *they can’t secure state services owed to them*” (emphasis added). It is exactly those state services that Articles 22 through 27 of the Declaration define as human rights obligations of the state.¹⁶⁷

The drafters designed Article 22 as an overarching introduction to economic, social and cultural rights, the cornerstone of this section of the Declaration. The debate over

¹⁶⁵ <http://www.ifes.org/Content/Publications/Opinions/2009/Dec/What-Article-21-of-the-Universal>

¹⁶⁶ <http://www.freedomhouse.org/template.cfm?page=15>

¹⁶⁷ The project has been extensively litigated; India’s Supreme Court ruled that the project could proceed. Manveena Suri, “India Supreme Court upholds controversial biometric database,” *CNN News*, September 26, 2018. <https://www.cnn.com/2018/09/26/asia/india-aadhaar-ruling-intl/index.html>

whether and how to include these rights in the Declaration was vigorously contested, according to the account in Johannes Morsink's history of the drafting process. Some delegates argued that political and civil rights had been recognized since the 18th century but the concept of social, economic and cultural rights was a 19th century development and therefore needed to be emphasized by inclusion in the Declaration. Count Carton de Wiart, the Belgian delegate, took this position, saying that Article 22 "introduced new ideas, while the preceding articles revived ideas as expressed in the Declaration of the Rights of Man and of Citizen of 1789 and in the American Bill of Rights." Eleanor Roosevelt, chairing the drafting committee, argued that the Declaration "should enunciate the rights of man and not the obligations of states." Hernan Santa Cruz of Chile disagreed, saying, "As those [social] rights differed from all other rights in that they required positive action by the State before they could be enjoyed, it was quite proper to impose a definite obligation on the State in that regard." The arguments for including these rights and for obliging states to take action to ensure them carried, and Article 22 was adopted.¹⁶⁸

A guide to human rights issues developed by the Levin Institute at the State University of New York calls Article 22 "remarkable" because it (1) "holds that economic, social and cultural rights help create the background conditions necessary for the realization of human dignity, which Article 1 had established as the foundation for all human rights," (2) "calls not only for national action to secure these rights but also for 'international co-operation,'" and (3) "recognizes that countries have different capacities" to achieve the objectives of the Declaration.¹⁶⁹

The rights outlined in Article 22 subsequently were incorporated in a number of international and regional human rights treaties. In 1966, the idea of the "the right of everyone to social security, including social insurance" was included as Article 9 of the International Covenant on Economic, Social and Cultural Rights. The United Nations Economic and Social Council in 2007 adopted General Comment No. 19, "The right to social security." It argues that every State must adopt "a national security strategy and plan of action to realize the right to social security" unless the State already has a "comprehensive social security system in place." The national security strategy should "be based on the principles of accountability and transparency," noting that "the independence of the judiciary and good governance are also essential to the effective implementation of all human rights." Remarkably, given the signal importance of archives to the effective provision of the right to social security, the comment makes no mention of the need to

¹⁶⁸ Morsink, *UDHR*, pp. 222-232.

¹⁶⁹ "The UDHR Document," The Levin Institute, n.d. <http://www.globalization101.org/the-udhr-document/>

maintain accurate records of the population, the beneficiaries and the government's actions to provide social services. It is a stunning oversight.¹⁷⁰

Archives hold massive quantities of records relating to the rights defined in Article 22. Records of social services institutions including those that monitor labor conditions, census data, records of government bodies dealing with indigenous peoples and records of self-governing bodies of indigenous peoples, records of colonial administrations, legislative archives, non-governmental organizations—the list goes on and on. The records of international bodies, such as UNESCO, the High Commissioners for Refugees and Human Rights, the International Labor Organization, the World Health Organization, the United Nations Human Settlements Program, the United Nations Development Program and the World Intellectual Property Organization reflect the world-wide exercise of economic, social, and cultural rights. The international and regional banks have records of social security issues that arise in the context of lending programs, credit agreements, structural adjustment programs and similar projects. All employers should have records of their workers and the contributions both employers and employees make to the social security system. And the relevant records are in all formats: databases with data on beneficiaries, photographs of living and working conditions, email that contains comments that denigrate a group, correspondence between a government and an international funder. These are records that combat invisibility.

Universal Declaration of Human Rights

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

¹⁷⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>

The background to Article 23's "protection against unemployment" phrase was the turmoil in employment during the Great Depression, the difficulties of absorbing into the workforce the demobilized and relocated persons following the Second World War, and the employment discrimination against Jews during the Nazi years. By the time the Declaration was drafted, Article 55 of the United Nations Charter had already committed the United Nations to promote "full employment," which might suggest that the basic outline of the employment right was established. But, in fact, the drafting of the Article was extremely conflictive; Johannes Morsink devotes an entire chapter to trying to explain it. Morsink concludes that a "very influential Latin American lobby dominated this segment of the Declaration's drafting history," but into the mix went the tensions between socialist, communist and capitalist economic organization, the interests of the International Labour Organization, and the pressures exerted by national and international trade unions, among others. In a haunting phrase that sadly was eliminated in the final drafting, French delegate Rene Cassin, paraphrasing a statement from the World Health Organization, summed up the purpose of Article 23: "Human Labour is not a merchandise."¹⁷¹

In 1966, the International Covenant on Economic, Social and Cultural Rights expanded on Article 23 in its Articles 6, 7 and 8. Forty years later, in 2005 the United Nations Economic and Social Council adopted General comment No. 18 which amplified the basic purposes and premises of the right to work found in both the Declaration and the Covenant. The General

Comment highlights "special topics of broad application," including the right to work for women, young persons and older persons, persons with disabilities and migrant workers and the protection of children "from all forms of work that are likely to interfere with their development or physical or mental health."¹⁷²

The application of Article 23 is understood to involve private enterprises, national and multinational. The International Council on Human Rights Policy published a report in 2002, "Beyond Volunteerism: Human rights and the developing international legal obligations of companies," while a meeting of experts the same year adopted the "Montreal Principles on Women's Economic, Social and Cultural Rights," which specifically calls for States to "prevent transnational corporations and other commercial entities from violating women's economic, social and cultural rights on their territory." And what one

¹⁷¹ Morsink, *UDHR*, pp. 157-190.

¹⁷² General comment 18 is at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/403/13/PDF/G0640313.pdf>; the Montreal Principles are at <http://www.cesr.org/downloads/Montreal%20Principles.doc>; "Beyond Volunteerism" is at http://www.ichrp.org/files/reports/7/107_report_en.pdf; migrant workers <http://www.wcl.american.edu/hrbrief/14/3varia.pdf?rd=1>; <http://www.wcl.american.edu/hrbrief/14/3misra.pdf?rd=1>

scholar calls “the push and pull of globalization” has thrown into sharp relief the vulnerability of migrant workers to the kind of exploitation that Article 23 warns against.

In 2011 the UN Human Rights Council endorsed the “UN Guiding Principles on Business and Human Rights,” a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. But, like the Universal Declaration, these Guiding Principles have no enforcement mechanism.¹⁷³ The UN Sustainable Development Goals, 2015-2030, include as Goal 8, “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”¹⁷⁴ Achieving this will not be easy. A study by the World Bank shows that gender equality in labor is still a serious problem, with 104 world economies in 2018 preventing women from working in certain jobs.¹⁷⁵ Unions have lost power and members in many countries,¹⁷⁶ and wages do not keep pace with price increases, as the 2018 fuel tax riots in France showed.

Archives of businesses and trade unions (local, national and international) are key resources for understanding the application of Article 23 rights. So, too, are the records of the non-governmental organizations that focus on right to work issues, the rights of migrant workers, child labor, human trafficking for labor exploitation, and age and sex discrimination in the workplace. The archives of the International Labour Organization in Geneva, Switzerland, provide information on labor issues that predate the United Nations, while the archives of international financial institutions, government labor and commerce departments, trade regulators, courts and prosecutors all have important documentation on the right to work. And, as for all the Articles, the personal papers of activists, journalists, labor leaders, and corporate chiefs contribute mightily to our understanding of the push and pull of labor in the global economy.

¹⁷³ “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” A/HRC/17/31, endorsed by the UN Human Rights Council June 16, 2011. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁷⁴ <https://una-gp.org/the-sustainable-development-goals-2015-2030/>

¹⁷⁵ Sarah Iqbal, *Women, Business, and the Law 2018 (English)*. Washington, D.C.: World Bank Group, 2018. <http://documents.worldbank.org/curated/en/926401524803880673/Women-Business-and-the-Law-2018>

¹⁷⁶ “Why trade unions are declining,” *The Economist*, September 29, 2015. <https://www.economist.com/the-economist-explains/2015/09/29/why-trade-unions-are-declining>

Universal Declaration of Human Rights Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

During holiday festivities many people around the world have a free day with pay. Few probably know that their right to a paid day of rest is protected by Article 24 of the Universal Declaration of Human Rights. This protection predates the Declaration by decades: it was first stated as a universal principle in Article 427 of the Treaty of Versailles ending the First World War. The Treaty's High Contracting Parties believed that "conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required." Their answer was to create the International Labour Organisation (ILO). The High Contracting Parties established nine "general principles" of "special and urgent importance" for the ILO to tackle, the fifth of which was "the adoption of a weekly rest of at least twenty-four hours which should include Sunday whenever practicable."¹⁷⁷ Accordingly, in 1921 the ILO promulgated "The Convention of Weekly Rest in Industry" which said that any worker in private or public industry should "enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours." Article 2, paragraph 3, eliminated the Christian-centric part of the fifth general principle, stating instead, "It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district." The convention was signed and ratified by 113 states.¹⁷⁸

In the debates over the Declaration, this ILO background and the supporting interests of trade unions were combined with the influence of the Latin American delegates whose state constitutions guaranteed the rights to rest and leisure (Brazil, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Nicaragua and Panama) and the influence of the communist states of Belarus, Ukraine and the USSR. These delegates argued that the right to paid leisure was crucial for, as the Yugoslav delegate said, "the right to rest without pay meant nothing." An interesting argument concerned the purpose of the period of rest. Several delegates urged that the Article specify the reason for the right to rest, with the Philippine and Argentine delegations proposing the text, "Everyone is entitled to due rest and leisure for his spiritual, cultural and physical well-being." As Johannes Morsink writes, these

¹⁷⁷ http://www.ilo.org/public/libdoc/ilo/1920/20B09_18_engl.pdf.

¹⁷⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C014>

proposals “were inspired by the socialist view that workers do not merely have the right to rest and leisure so that they can be better and more efficient producers of profit for those who own the modes and means of production.” Ultimately the delegates agreed that this level of detail should be left to a future convention, and Article 24 was adopted.¹⁷⁹

As the delegates expected, subsequent conventions amplified the right to rest as part of the just conditions of work. In 1957 the ILO adopted the convention “Weekly Rest in Commerce and Offices,” which said, “The traditions and customs of religious minorities shall, as far as possible, be respected,” which included respect for traditional days of festivals and commemorations.¹⁸⁰ The “Recommendation” supporting this convention explicitly recognized the importance of records in the assertion of this right, specifying in paragraph 6, “Appropriate measures should be taken to ensure the maintenance of such records as may be necessary for the proper administration of weekly rest arrangements and in particular of records of the arrangements made with respect to (a) persons to whom a special weekly rest scheme applies . . . (b) persons to whom the temporary exemptions provided for in Article 8 of the . . . Convention, 1957, apply.”¹⁸¹ A decade later the International Covenant on Economic, Social and Cultural Rights stated in Article 7(d) that everyone has the right to “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

Article 24 was controversial from beginning. What did it mean for peasants, farm workers, migrant laborers, domestic workers and others outside the “commerce and offices” covered by the ILO conventions? How would provisions be administered in states with many minority groups?¹⁸² How would it be administered in multinational and international organizations that draw employees from around the world? And yet the principle is now so widely accepted that the International Finance Corporation, a part of the World Bank Group that provides loans to private commercial enterprises, includes it in its “Guide to Human Rights Assessment and Management.”¹⁸³ And the UN Guiding Principles on Business and Human Rights states that companies have a responsibility to respect the right to leisure.¹⁸⁴

Like the archives useful for Article 23, archives with relevant records for Article 24 include archives of businesses, trade unions, and non-governmental organizations that are

¹⁷⁹ Morsink, *UDHR*, pp. 181-190.

¹⁸⁰ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C106>

¹⁸¹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R103>

¹⁸² A useful article on this issue is Ruth Gavison’s “Days of Worship and Days of Rest: A View from Israel,” 2005. <https://ruthgavison.files.wordpress.com/2015/10/days-of-worship-and-days-of-rest-2007.pdf>

¹⁸³ <http://www.guidetohriam.org/hriamtable/right-to-enjoy-just-and-favourable-conditions-of-work>

¹⁸⁴ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

concerned with labor and minority rights. For Article 24, the records of faith-based organizations may also contain information on efforts to gain recognition from employers and governments for religious holidays. The archives of governments, particularly the legislative archives that document the adoption of laws concerning public holidays and labor standards, are essential, and the archives of the International Labor Organization provide important international and depth perspectives on labor issues. And the personal papers of labor leaders, activists, and industrialists all may include information on the continuing debates over the extent and nature of rest and leisure for all working people.

Universal Declaration of Human Rights Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Quickly look at the text of Article 25. Notice that there are three ideas there: paragraph 1 states the right to an adequate standard of living and the right to have a social safety net, and paragraph 2 speaks to the social protection of mothers and children.

Originally, the drafters of the Declaration had separate articles for food and housing, for medical care, on social security generally, and on the protection of motherhood. The right to adequate clothing was added at the urging of the Philippine delegate. But how did they get pushed together in one, complex article, particularly when Article 22 had already stated that everyone has a “right to social security”? Even the major chronicler of the Declaration, Johannes Morsink, finds it hard to explain it, saying only that the Commission merged these elements because it “was very eager to keep things short and to the point.”¹⁸⁵ With hindsight, they failed.

¹⁸⁵ Morsink, *UDHR*, pp. 191-210.

Article 25, paragraph 1, has issues of concern to the World Food Organization, World Health Organization, International Labor Organization (unemployment and worker benefits), the High Commissioners for Refugees and on Human Rights, all national, regional and local governments, religious bodies, labor unions, and civil society organizations. Its very complexity means that it has been interpreted by many additional treaties, declarations, Commission on Human Rights resolutions and general comments, and the “outcome documents” from international conferences. The Office of the High Commissioner for Human Rights issued fact sheets on the right to adequate housing (fact sheet no. 21), harmful traditional practices affecting the health of women and children (no. 23), and the right to health (no. 31).¹⁸⁶ The UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment issued “Framework principles on human rights and the environment.”¹⁸⁷ The International Labor Organization’s program on the Global Extension of Social Security, a “global knowledge sharing platform” has much useful information on Article 25 topics.¹⁸⁸

As one would expect, advocates for an enormous variety of issues use this portmanteau Article. They range from advocacy for help for persons with AIDS to security for those with disabilities to a man in Canada who argued that a ban on keeping chickens in his city backyard violated his right to food security.¹⁸⁹ During the 1948 drafting of Article 25 the delegate from New Zealand objected to the phrase “himself and of his family,” arguing that the right to social services did not come “only through the head of the family;” women’s rights advocates using Article 25 explain that heads of families can be male or female. Labor organizations use Article 25’s right to unemployment compensation to urge protections for migrant workers, while environmental activists use the right to health to protest the effects of dumping on toxic and dangerous products and wastes. Roma rights organizations argue for adequate health care, in consonance with this Article.¹⁹⁰

“Circumstances beyond his control” certainly applies to the global impact of climate change, which no one person can stop but each person can affect. As Susannah Willcox wrote of small islands developing states,

¹⁸⁶ <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

¹⁸⁷ “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,” A/HRC/37/59, January 24, 2018. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/59

¹⁸⁸ <http://www.ilo.org/gimi/gess/ShowWiki.do?wid=9>.

¹⁸⁹ Heather Beyko, “Fowl Play? A Look into Recent Canadian Reform Efforts for Backyard Chicken Legislation,” *ABlawg.ca*, September 19, 2012. https://ablawg.ca/wp-content/uploads/2012/09/Blog_HB_Backyard_ChickensSept2012.pdf

¹⁹⁰ Maria Eva Földes and Alina Covaci, “Research on Roma health and access to healthcare: state of the art and future challenges,” *International Journal of Public Health*, February 2012, 57(1), 37-39. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3282005/>

The climate change-related impacts have adverse consequences for a range of internationally recognized rights. These include (but are not limited to) the right to life, which is threatened by an increased incidence of heat waves, drought, vector-borne diseases, malnutrition, and sudden weather events; the right to an adequate standard of living, including an affordable, accessible, and sustainable source of food, shelter and clean water, all of which are adversely affected by the destruction of arable land, freshwater supplies, and housing as a result of rising sea levels; the right to an adequate standard of health, which is compromised by the impact of climate change on health infrastructure, nutrition, and access to clean water and sanitation; the right to education, which may be adversely affected by the destruction of educational facilities and temporary or permanent displacement; and, finally, the right to ‘take part in cultural life,’ which is threatened by the impact of climate change on traditional land, ways of life, and living arrangements.¹⁹¹

By the time the delegates were considering the second paragraph of Article 25, they had already debated Article 1’s first sentence, which reads, in its final form, “All human beings are born free and equal in dignity and rights,” and Article 2, which prohibits discrimination based on, among other things, “birth.” Why then did they need to state that children “born in or out of wedlock” were equal? And if “everyone” had a right to “necessary social services” in paragraph 1 of Article 25, why did the drafters need to explain that mothers and children needed “special care and assistance”? Wasn’t that already covered by “necessary”?

Part of the answer to the question of “special care” is that the newly-adopted 1948 American Declaration on the Rights and Duties of Man said in its Article 7, “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” Part of the answer also comes from the constitutions of various states that explicitly called for protection of women and children, including France (whose delegate wrote the first version of the “special care” sentence), Brazil, Belgium, Cuba, Nicaragua, Panama and the USSR. Furthermore, the chairman of the new United Nations International Children’s Emergency Fund (UNICEF) was calling attention to the needs of children and the “abnormally high level” of infant mortality in the twelve European countries where UNICEF was working. All these encouraged the delegates to include a separate paragraph. The Danish delegate, who represented the United Nations

¹⁹¹ Susannah Willcox, “A Rising Tide: The Implications of Climate Change Inundation for Human Rights and State Sovereignty,” *Essex Human Rights Review* Vol. 9, No. 1, June 2012, pp. 4-5. <http://projects.essex.ac.uk/ehrr/V9N1/Willcox.pdf>

Commission on the Status of Women, had the drafters change the word “mothers” to “motherhood” to make sure the sentence would, in her words, “cover the prenatal state.”

The second sentence of paragraph 2, on children born out of wedlock, seems to have been added on the initiative of the Yugoslav and Norwegian delegations, but it reflected urgent post-war problems. During World War II large numbers of servicemen fathered children while stationed in Europe and returned home unaware of the related pregnancy or birth, leading to the sad images of orphaned children in displaced persons camps all over Europe, sometimes so young or so traumatized that they were unable to say who they were. Given these pressing contemporary concerns, when the United Nations General Assembly finally voted on the Declaration, Article 25 passed unanimously.¹⁹²

Many subsequent international agreements and declarations amplified the provisions of Article 25’s second paragraph. In 1959 the UN General Assembly adopted the Declaration of the Rights of the Child, which was followed 30 years later by the International Convention on the Rights of the Child. The 1979 Convention on the Elimination of All Forms of Discrimination against Women specified (Article 4) that special protection for maternity is not gender discrimination and that there is a need for special maternal health care (Article 12), which in turn was elaborated in 1999 in “General Recommendation 24 Women and Health” published by the United Nations High Commissioner for Human Rights.¹⁹³ The rights of children born out of wedlock were the focus of a 1967 statement by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities that emphasized the importance of equal treatment for children born either in or out of wedlock. This was followed by the 1975 European Convention on the Legal Status of Children Born out of Wedlock, which now is in force in 21 European countries.¹⁹⁴ And the 2015 United Nations Sustainable Development Goals, like the Millennium Development Goals that preceded them, reflect the rights outlined in Article 25.¹⁹⁵

Given the sweep of Article 25’s first paragraph, it is hard to think of an archives that does NOT have records related to it. From firms to families, unions to social services institutions, environmental agencies, courts and legislatures and international bodies: all have records that are pertinent to Article 25. Contemporary society is a massive creator of records on the social safety net—and the lack of it—and archives teem with these records.

¹⁹² Johannes Morsink, *UDHR*, pp. 257-258.

¹⁹³ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/77bae3190a903f8d80256785005599ff?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/77bae3190a903f8d80256785005599ff?Opendocument)

¹⁹⁴ <http://conventions.coe.int/treaty/en/Treaties/Html/085.htm>

¹⁹⁵ <https://una-gp.org/the-sustainable-development-goals-2015-2030/>

The records of medical facilities, social services institutions, courts and legislatures are vital to protect and assert the rights under Article 25's paragraph 2. Here are three examples: (1) In the U.S. state of North Carolina, the N.C. Justice for Sterilization Victims Foundation is dedicated to providing information and assistance to victims of the state's sterilization program that operated between 1933 and the mid-1970s. Persons who believe that they or someone in their family "may have been sterilized under the N.C. Eugenics Board" are to ask the Foundation to review the Eugenics Board records that are kept in the state archives.¹⁹⁶ (2) Although the "late Czech Ombudsman Otakar Motejl stated publicly in 2009 that he believed there were as many as 90,000 victims" of sterilization on the territory of former Czechoslovakia, which suggests a massive amount of records of the practice, no compensation has been awarded.¹⁹⁷ (3) And in Canada, at the Nanaimo Indian Hospital the treatment of First Nations children with tuberculosis was abusive and led to a class action lawsuit against the government, with the lawyer for the former patients saying he "has confidence they will find the documents needed" to support the claim.¹⁹⁸

It is clear that archivists have a crucial duty to protect the records related to the social well-being of mothers and children. The International Standards Organization in 2010 issued a set of guidelines and a technical specification document on "Health informatics – Security requirements for archiving of electronic health records," which are fundamental reading for everyone managing health records.¹⁹⁹

As the 19th century former U.S. slave and great educator Frederick Douglas said, "It is easier to build strong children than to repair broken men." Archivists have a role to play in both building and repairing.

¹⁹⁶ <https://files.nc.gov/ncdoa/JSV/JS-brochure.pdf>

¹⁹⁷ Claude Cahn, "Czech and Slovak victims of coercive sterilization await justice," The Guest Blog, *euractiv*, March 1, 2018. <https://guests.blogactiv.eu/2018/03/01/czech-and-slovak-victims-of-coercive-sterilization-await-justice/>

¹⁹⁸ Angela Sterritt and Manjula Dufresne, "'Canadians would be shocked': Survivors, lawyers describe treatment at Nanaimo Indian Hospital," *CBC News*, February 1, 2018. <http://www.cbc.ca/news/canada/british-columbia/canadians-would-be-shocked-survivors-lawyers-describe-treatment-at-nanaimo-indian-hospital-1.4513476>

¹⁹⁹ ISO/TS 21547:2010, *Health informatics – Security requirements for archiving of electronic health records – Principles*. March 18, 2010. <https://www.iso.org/news/2010/03/Ref1304.html>

Universal Declaration of Human Rights

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Although long in comparison with the other Articles of the Declaration, the proposal for an article on education was not controversial—at least until the third paragraph was proposed. The Brazilian delegate, for example, said “the right of all to education was indisputable,” adding, “The right to share in the heritage of mankind formed the basis of our civilization, and could not be denied to anyone.” The representative of the new UNESCO, with education in its mandate, urged the adoption of the Article, and the delegate from the World Jewish Congress noted that UNESCO had adopted what is now the second paragraph of Article 26 “as a basis for its efforts in Germany and in all other countries where it was necessary to work a change in the spirit of education.” Late in the drafting the final sentence of paragraph 2 was added making, as Johannes Morsink notes, “human rights education the new civics for the new world order the drafters envisioned.”²⁰⁰

Implicit in paragraphs 1 and 2 is the responsibility of the state to provide education, but in paragraph 3 the focus shifts to families and choice. Again, the background to paragraph 3 is the Nazi experience; the representative of the Netherlands “expressed the horror which the Nazi-occupied countries still felt at the thought that the State could compel children to be deformed morally and intellectually by the party in power,” and argued that family control was the bulwark against such coercion. The delegations from communist states, who did not distrust of the power of the state, objected, the USSR delegate noting, “A child had an absolute right to education, independently of the wishes of its parents. Education should be compulsory because a child could not claim the right as it had no

²⁰⁰ Johannes Morsink, *UDHR*, for paragraphs 1 and 2 pp. 212-217 and 335, for paragraph 3, pp. 263-269.

strength to defend it.” Paragraph 3 was adopted by a close vote of 17 for and 13 against with 7 abstentions.

Elaboration of the right to education came swiftly. In 1960 UNESCO adopted the Convention against Discrimination in Education; in 1966 the International Covenant on Economic, Social and Cultural Rights included strong statements on education in Articles 13 and 14; in 1974 UNESCO issued a *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*; and in 1981 the UN General Assembly affirmed the right to education in the Convention on the Elimination of All Forms of Discrimination Against Women. In 1998 the first UN Special Rapporteur on the Right to Education was appointed, followed by the 1999 General Comment 13 of the UN Economic and Social Council on the right to education, which begins, “Education is both a human right in itself and an indispensable means of realizing other human rights.” One of the Special Rapporteurs, Katarina Tomasevski, formulated a way to assess a state’s fulfillment of right to education by looking at four factors, now widely known as the 4 A’s of the right to education: availability, accessibility, acceptability, adaptability.²⁰¹

A glaring example of the violation of paragraph 3 is the 20th century practice in the U.S. and Canada of forcibly taking Native American/First Nations children from their families and placing them in schools that would educate them in the majority culture. The Canadian Truth and Reconciliation Commission exposed the damage done by the education outside the family culture; reparation, although ongoing, cannot compensate for the injustice.²⁰²

And archives of the right to education? There are the archives of the actual providers of education: public and private schools, religious and secular, elementary and secondary. There are the archives of the bodies that control education policy and education content: parliaments and departments of educations, state education commissions and courts. Human rights NGOs may have records relating to campaigns and litigation on the right to education, particularly for women and minority groups, and the records of the government’s attorney would have the records of the government’s defense in such cases. International intergovernmental bodies, from courts and human rights commissions to UNESCO and the High Commissioner for Refugees (who must ensure that refugee children have an education), all have records relating to the right to education. Personal papers, too, often include materials related to education, if not specifically to the question

²⁰¹ <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx>; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>.

²⁰² <http://www.trc.ca/websites/trcinstitution/index.php?p=905>

of rights. The means by which the right to education is provided varies by location and time, but the right is universal and archives document the state's delivery on that promise.

Universal Declaration of Human Rights Article 27

(1) Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 27 seems to both give and take away, to emphasize shared ownership and private ownership. The first paragraph gives everyone the right to “enjoy” and “share” while the second paragraph gives an individual the right to protect the “moral and material interests” in his or her work. However, as broad as the claim in paragraph one appears to be, Johannes Morsink points out that it says *the* community, thereby implicitly denying that multiple communities exist within states and that minorities have a right to participate within their own cultural communities. The debates over minority rights within the drafting sessions were contentious and complex, but ultimately the Declaration did not include a separate article on minority rights, although minority rights are expressly considered in the Articles on religion and education.²⁰³

The second paragraph put the drafters squarely within debates over copyright and patent law, and some delegates argued that these law-based concepts should not be included in the Declaration. The second paragraph also brought into the open conflicting international positions on whether creators have a “moral right” to control their work even after the work is sold or copyright lapses. Several factors contributed to the final addition of these two paragraphs: the influence of the newly created UNESCO with its emphasis on culture; the June 1948 conference of the Berne International Copyright Convention which revised the moral rights clause in the Convention; and the April 1948 American Declaration of the Rights and Duties of Man which included a copyright provision. Nonetheless, it remains an Article embodying two very distinct ideas.

²⁰³ Morsink, *UDHR*, pp. 269-280.

The 1966 International Covenant on Economic, Social and Cultural Rights followed the Declaration's lead, writing in Article 15(1)(c) that each state party must "recognize the right of everyone . . . [t]o benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author." Peter K. Yu notes, in his in-depth analysis of the Declaration's Article 27, the Covenant's Article 15 and human rights, that "the meaning of article 27(2) of the UDHR and article 15(1)(c) of the ICESCR has not changed significantly since the adoption of the instruments," giving them a "significant impact" on the development of property law regimes.²⁰⁴ The International Council of Archives has a Working Group on Intellectual Property that deals with copyright and related issues, and similar groups are found in organizations representing libraries and related fields. Emphasizing the scientific element in the Article, the American Association for the Advancement of Science established a Scientific Responsibility, Human Rights and Law Program to address "ethical, legal and human rights issues related to the conduct and application of science and technology."²⁰⁵

Courts have considered the question of destruction of cultural resources, as the protection of those cultural elements is implied in the right to enjoy them. In a milestone decision, in 2016 the International Criminal Court sentenced Ahmad Al Faqi Al Mahdi to nine years in prison, finding him guilty of the war crime of attacking historic and religious buildings in Timbuktu, Mali, in 2012.²⁰⁶ On March 24, 2017, the United Nations Security Council unanimously had adopted Resolution 2347 for the protection of heritage, which "Affirms that directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law, a war crime and that perpetrators of such attacks must be brought to justice."²⁰⁷ While that would seem to support the International Criminal Tribunal for the former Yugoslavia's 2013 conviction of six members of the Herceg-Bosna/HVO military force for the destruction of the old bridge in Mostar, Croatia, a UNESCO-designated World Heritage site, that decision was overturned by the appeals chamber in November 2017.²⁰⁸

²⁰⁴ Peter K. Yu, "Reconceptualizing Intellectual Property Interests in a Human Rights Framework," *University of California Davis Law Review* 40, pp. 1029-1149, 2007. https://lawreview.law.ucdavis.edu/issues/40/3/intl-rights-approaches-to-ip/DavisVol40No3_Yu.pdf

²⁰⁵ <http://shr.aaas.org/>

²⁰⁶ <https://www.icc-cpi.int/mali/al-mahdi>

²⁰⁷ S/RES/2347 (2017) 4/7 17-04802. <https://en.unesco.org/news/security-council-adopts-historic-resolution-protection-heritage>

²⁰⁸ <http://www.icty.org/x/cases/prlic/tjug/en/130529-2.pdf>. See also Pierre Hazan, "Was the destruction of old Mostar bridge a war crime?" *JUSTICEINFO.NET*, December 11, 2017. <https://www.justiceinfo.net/en/tribunals/35714-was-the-destruction-of-old-mostar-bridge-a-war-crime.html>

The phrase “to share in scientific advancement and its benefits” is part of the debates—and skepticism—about science, whether climate change or the effects of vaccinations. The November 2018 report by the Intergovernmental Panel on Climate Change, a body of the UN Environment Program, was unequivocal on the nature of climate change. In its report on the “emissions gap” (that is, the distance between global pollution and the efforts to combat it) “for the first time, political ideology is singled out for obstructing changes that would slow global warming.”²⁰⁹

As archivists know, the issues of cultural life and creator rights are a central theme of our work. Records of UNESCO and the World Intellectual Property Organization are key to understanding the development of these rights, as are those of governmental cultural agencies, patent, trademark and copyright offices, courts and legislatures. Private sector records extensively document these rights, too. Records of science are equally widely distributed, coming from university research arms, government laboratories, weather stations, ocean monitors, and a host of other technical and scientific institutions. Whatever the source, every archives holds items relevant to the rights outlined in Article 27.

Universal Declaration of Human Rights Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 28 begins the last section of the Universal Declaration of Human Rights, a section that French drafter Rene Cassin called the “pediment of the temple.” A “prolonged debate” in the drafting committee, centering on the different conceptions of the role of the state held by the United States and the Soviet Union, led to the development of Article 28. Charles Malik of Lebanon proposed the text of the Article, arguing that the Declaration should state “the conditions that would need to be in place before the Declaration’s rights could be fully realized,” without specifying the form of government required.²¹⁰

²⁰⁹ <https://www.unenvironment.org/news-and-stories/press-release/nations-must-triple-efforts-reach-2degc-target-concludes-annual> ; Eric Roston, “Climate Change Deniers Are Blocking Progress, UN Report Suggests for First Time,” *Bloomberg News*, November 27, 2018.

²¹⁰ Mary Ann Glendon, “The Rule of Law in the Universal Declaration of Human Rights,” *2 Northwestern Law Journal of Human Rights* 1 (2004). <https://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/5>

The Malik draft was accepted, although several delegates felt that it was unnecessary, given the language of other parts of the Declaration that had already been adopted. However, Australian law professor Peter Bailey calls Articles 28 and 29 “explosive in their significance,” adding, “Article 28 emphasises the responsibility of the whole international community for seeking and putting into place arrangements of both a civil and political and an economic and social kind that allow for the full realization of human rights.”²¹¹ When the UN General Assembly voted on this Article, it passed with 8 abstentions.

As referenced in the discussions of the preceding Articles, after the Declaration was adopted the United Nations began developing covenants that are legally binding on the signatory countries. Article 28 has not been covered by a specific covenant and therefore does not have legally binding force. However, actions of international criminal courts, work of truth commissions with international participants, and the norm, endorsed by the United Nations General Assembly, that both states and the international community have a “responsibility to protect” people from mass atrocities (known as R2P), all show that the ideas in Article 28 have had great influence on the subsequent development of human rights.²¹²

The challenges of maintaining an international order are many. A 2008 study by three economists argued that “international peacekeeping is highly cost effective in securing peace.”²¹³ And while the 14 United Nations peacekeeping operations existing in December 2018 may indeed be worth the expense, they are hardly the answer to the world’s need to maintain international order.²¹⁴ Further, the powerful development of artificial intelligence and its impact on societies and individuals suggests “that internationally protected human rights will be affected by developments in this field” and “the global human rights community of UN bodies, domestic human rights institutions, NGOs and activists” must “get serious” about the implications of artificial intelligence for everyone, “especially the most marginalized in every country.”²¹⁵

²¹¹ Peter Bailey, “The Creation of the Universal Declaration of Human Rights,” n.d. <http://www.universalrights.net/main/creation.htm>

²¹² Resolution adopted by the General Assembly on 16 September 2005, A/RES/60/1, October 24, 2005., paragraphs 138-139. <http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html>

²¹³ Paul Collier, Lisa Chauvet and Haavard Hegre, “The Security Challenge in Conflict-Prone Countries,” Copenhagen Consensus Center, April 2008. https://www.copenhagenconsensus.com/sites/default/files/CP_Conflicts_-_Collier.pdf

²¹⁴ <https://peacekeeping.un.org/en/where-we-operate>

²¹⁵ Christiaan van Veen and Corinne Cath, “Artificial Intelligence: What’s Human Rights got to do with it?” Data & Society: Points, May 14, 2018. <https://points.datasociety.net/artificial-intelligence-whats-human-rights-got-to-do-with-it-4622ec1566d5>

The records of social and international order are massive. Many are in the hands of governments or international organizations: the records of legislatures, police, colonial administrations, trusteeships, the components of the United Nations, the UN Relief and Works Agency for Palestine Refugees in the Near East, the international criminal tribunals and regional courts, international development and cooperation bodies. The records of social order are also found in the archives of non-governmental organizations striving to promote and protect social order and in the personal papers of activists, in the records of businesses and labor unions, in the records of religious communities and educational institutions. Understanding social order requires the viewpoint of both the government and the governed, and records of all parts of society are essential to protect the rights of order stated in Article 28.

Universal Declaration of Human Rights

Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.*
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.*

Article 29 declares that individuals have duties and responsibilities as well as the rights granted in the Declaration. Originally the second Article of the Universal Declaration, it was later moved to be part of the “pediment of the temple,” as French delegate Rene Cassin called the final three Articles. The language of Article 29 encompasses responsibilities from the local (the community) to the international (the United Nations). The Article was extensively debated, but ultimately the UN General Assembly adopted it unanimously.

The three parts of the Article were drafted and considered separately and then combined into one Article. The first paragraph focuses on the individual in society; scholar Johannes Morsink says the word “alone” in the paragraph “may well be the most important single word in the entire document, for it helps us answer the charge that the rights set forth in the Declaration create egotistic individuals who are not closely tied to their respective communities.” Notably, too, the drafters intentionally wrote that persons have duties to the community not duties to the State, for, as Charles Malik, the delegate from Lebanon

said, people in 1948 “had no need for protection against kings or dictators, but rather against a new form of tyranny of the State over the individual whom it was the duty of the [Human Rights] Commission to protect.”²¹⁶ The second paragraph states that there are limitations to rights, and these limitations must be “determined by law,” reinforcing the insistence on the importance of the rule of law that is stated in the Declaration’s Preamble.

Following the adoption of the Declaration, work began on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were finally adopted in 1966. Both Covenants include in their preambles a reference to duties, based on Article 29(1): “realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the Present Covenant.”

The end of the Cold War saw a renewed focus on the concept of duties. The UN Declaration on the Right to Development (1986) had contained a reference to personal responsibility for development (Article 2) that echoed the UDHR’s Article 29,²¹⁷ but private groups in the 1990s called for further discussions of responsibilities. In 1997 the InterAction Council, a group of international statesmen, issued a draft Declaration of Human Responsibilities, urging that it be adopted to complement the Universal Declaration on its 50th anniversary in 1998.²¹⁸ And the General Assembly agreed: in 1998 the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.²¹⁹

The following year, another group of international personalities under the chairmanship of Richard Goldstone of South Africa, the first Chief Prosecutor of the International Criminal Tribunals for Rwanda and the former Yugoslavia, gathered in Valencia, Spain, and wrote a “Declaration of Human Rights and Responsibilities,” that was presented to UNESCO in 1999 (colloquially called the “Valencia Declaration”).²²⁰ For an excellent discussion of the development of the concept of duties, see the publication by the International Council on Human Rights Policy, “Taking Duties Seriously: Individual Duties in International Human Rights Law, A Commentary,” 1999.²²¹

²¹⁶ Morsink, *UDHR*, pp. 239-252, quotations p. 248 and 242.

²¹⁷ <http://www.un.org/documents/ga/res/41/a41r128.htm>

²¹⁸ <http://www.universaldeclarationofhumanresponsibilities.info/>

²¹⁹ <http://www2.ohchr.org/english/law/freedom.htm>.

²²⁰ <http://globalization.icaap.org/content/v2.2/declare.html>

²²¹ *Taking Duties Seriously: Individual Duties in International Human Rights Law A Commentary*. International Council on Human Rights Policy, 1999. http://www.ichrp.org/files/reports/10/103_report_en.pdf

The “just requirements of morality, public order and the general welfare in a democratic society reverberate in the debates over the right to be forgotten. What does an individual have a right to know about other persons in society? Does he have the right to know that a neighbor was once convicted of molesting a child? Does she have the right to know the faith of a neighbor or the amount of taxes he paid? A 2018 judgment by the European Court of Human Rights tackled the public’s right of access to “archived material” online (about a murder conviction) and decided it took precedence over the right to be forgotten.²²² It remains to be seen what the future application of the European Union’s General Data Protection Regulation will have on this right of access and the “just requirements” for society.

Because Article 29 focuses on the duties of the individual, the personal papers of individuals are key resources. So are the records of community groups, non-governmental organizations, and the general social welfare system. The records of legislatures and courts clarify the rule of law requirements of the second paragraph, and the records of police and other law enforcement bodies inform persons investigating questions of the administration of public order under the rule of law. Finally, as archivists with responsibilities for maintaining records relating to human rights, the records of archives and archival organizations will tell future researchers how we thought about and how well we carried out those duties.

Universal Declaration of Human Rights

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Ten years after the Universal Declaration was adopted, Eleanor Roosevelt, the chair of the United Nations Commission of Human Rights which had drafted the Declaration, appeared before the United Nations to present a guide for community action to support the ideals of the Declaration. She said,

²²² M.L. and W.W., v. Germany, ECHR 237(2018). <https://inform.org/2018/07/04/case-law-strasbourg-ml-and-ww-v-germany-article-8-right-to-be-forgotten-and-the-media-hugh-tomlinson-qc-and-aidan-wills/>

Where, after all, do universal human rights begin? In small places, close to home--so close and so small that they cannot be seen on any map of the world. Yet they *are* the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.²²³

The thirtieth and final Article of the Declaration squarely places the responsibility for ensuring the protection of human rights on everyone, not just on States. Further, it does not limit an individual's responsibility to those in the community or the State where he or she resides but insists that these are universal responsibilities. The Article's original draft, as proposed by Charles Malik, the delegate from Lebanon, included only the responsibility of persons, with an option—quickly adopted—to include States. The French delegation proposed adding the word “group,” arguing that “experience had shown that it was rarely States or individuals that engaged in activities that aimed at the destruction of human rights; such activities in recent times had been pursued by groups sometimes acting on the instructions or with the connivance of states.” With the activities of twentieth century fascist groups and the U.S. Ku Klux Klan offered as examples, the drafters agreed to include “groups” and the whole Article was adopted unanimously by the drafting party.²²⁴

Governments, groups and persons: those are the sources of the materials that archives hold. It covers business archives and archives of faith-based bodies, archives of rebel groups and States, correspondence of men and women. We, as archivists, select, preserve, and provide access to materials that allow people to assert and protect the rights enumerated in the thirty Articles of the Universal Declaration. Archivists truly are duty-bearers for human rights.

²²³ <http://www.udhr.org/history/inyour.htm>

²²⁴ Johannes Morsink, *UDHR*, pp. 87-88.

