

May 8, 2015

Bill Carpenter, ISCAP Staff

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL (ISCAP): AN INTRODUCTION FOR THE ISOO OPEN HOUSE

What is the ISCAP?

- Interagency Security Classification Appeals Panel
- Created by President Clinton in Executive Order 12958 in 1995
- The ISCAP provides the public and users of the classification system with a forum for further review of classification decisions
- Four functions:
 - Decide on appeals for classification challenges
 - Approve exemptions to declassification at 25, 50, and 75 years
 - Decide on mandatory declassification review (MDR) appeals
 - Inform senior agency officials and the public of its decisions

Membership of the ISCAP

- **National Security Council:**
 - John Ficklin (Chair), Senior Director, Records and Access Management
- **Department of Defense:**
 - Garry P. Reid, Director for Defense Intelligence, Office of the Deputy Under Secretary of Defense (Intelligence and Security)
- **Department of Justice:**
 - Mark Bradley, Director of FOIA, Declassification, and Pre-Publication Review, National Security Division
- **Department of State:**
 - Margaret Grafeld, Deputy Assistant Secretary for Global Information Services
- **National Archives and Records Administration**
 - Sheryl Shenberger, Director, National Declassification Center
- **Office of the Director of National Intelligence**
 - Jennifer Hudson, Chief, Information and Data Management Group
- **Central Intelligence Agency (for discussions regarding CIA information only)**
 - Joseph Lambert, Director, Information Management Services

Membership and Staffing

- ISCAP members are senior agency leaders appointed by agency heads
- ISCAP members appoint Liaisons to meet on a biweekly basis
 - Liaisons are experienced senior managers of the records and information staffs of agencies
- The ISCAP Staff consists of staff members of ISOO
 - One Senior Program Analyst, five Program Analysts
 - ISOO Associate Director William Cira represents the Executive Secretary in Liaisons meetings
- ISCAP records are Presidential records, covered by specific release protections established by law

Classification Challenges

- Section 1.8 of the Order encourages any authorized holder of classified information to challenge the classification of improperly classified information
- The Order requires agencies to have a formal system for the adjudication and appeal of classification challenges
- The ISCAP is the highest level of appeal for classification challenges
- In 2014, the ISCAP received and decided upon one classification challenge: the Sarwar Jan intelligence report

Declassification Guides

- Agencies describe their declassification exemptions in declassification guides, which are reviewed, amended, and approved by the ISCAP
- Guides must be updated at least every five years
- 23 agencies have received approval from the ISCAP to exempt information from automatic declassification at 25 years
 - 20 agencies may exempt specific information from declassification at 50 years (information from 1970 and before)
 - 3 agencies have the ability to exempt *very specific* information from declassification at 75 years (from 1945 and before)
 - See ISOO Notice 2014-04, “Agencies Eligible to Receive Referrals from Automatic Declassification at 25, 50, and 75 Years.”

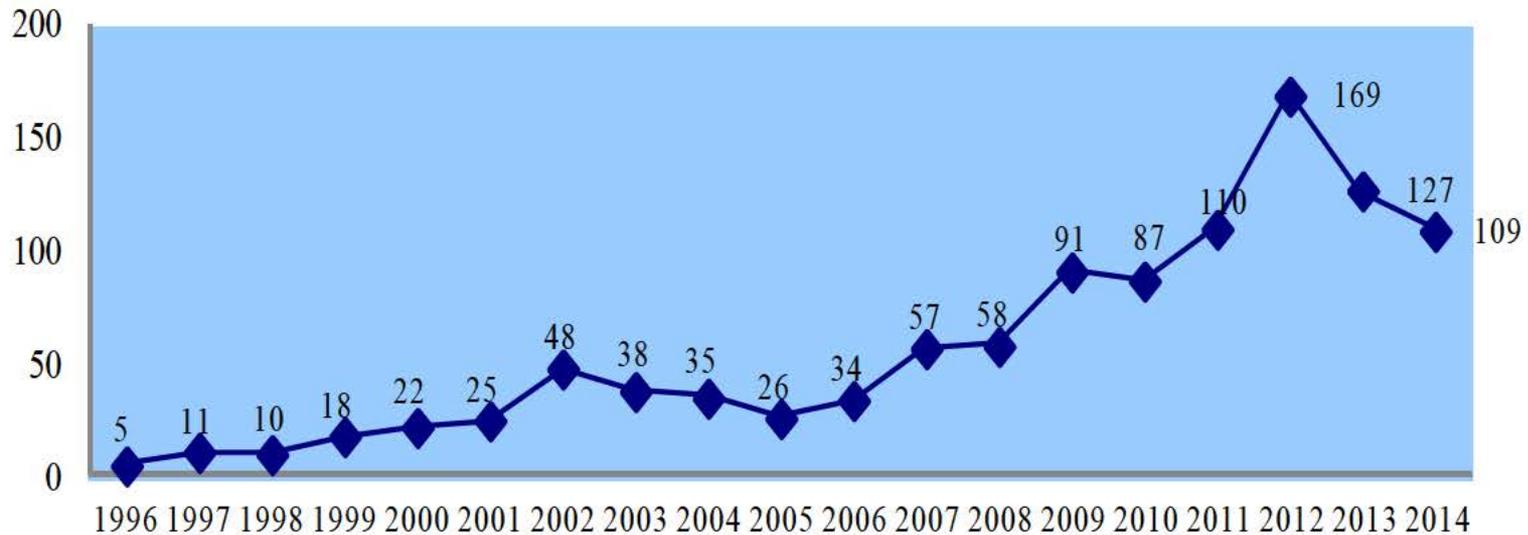
File Series Exemptions

- Section 3.3(c) allows for agencies to seek the delay of automatic declassification until 50 years for *specific file series* of records
- Information must be *almost invariably exempt* from automatic declassification at 25 years
- Requests are evaluated by ISCAP Staff and voted upon by the ISCAP
- FSEs approved before 2008 are valid for 10 years

MDR Appeals to the ISCAP

- Mandatory Declassification Review (MDR) requests may be appealed to the ISCAP after the agency has made an appeal decision *or if the requester did not receive a response after one year or a response to an appeal after 180 days*
 - Agencies must continue to process MDR requests that have been appealed to the ISCAP due to the expiration of a response deadline: See ISOO Notice 2013-03
- Decided in FY 2014: 48 MDR appeals
 - 451 documents
 - 4241 pages
- Received in FY 2014: 109 appeals

Appeals Received by the ISCAP



Total appeals received since 1996: 1078

Agency Interaction with the ISCAP

- ISCAP Staff will request responsive materials from agencies when appeals are received
- ISOO Notice 2013-03, “Processing of MDR Requests Appealed to the ISCAP:” notify the ISCAP Staff of additional information released after an appeal comes to the ISCAP
- Coordination during ISCAP deliberations
- Decision letters to agency Senior Agency Officials
- Appeal to the President
- Section 3.1(i): “When making decisions under sections 3.3, 3.4, and 3.5 of this order, agencies shall consider the final decisions of the Panel.”

Appeal Selection Criteria

- ISCAP not bound by “first in, first out”
- Factors for appeal selection described on ISCAP website:
 - **Age:** ISCAP is committed to resolving old appeals
 - **Type of appellant:** National Security Archive, or new appellant seeking a single document?
 - **Declassification breakthroughs:** Rwanda (new topic) vs. nuclear weapons employment policy (frequent topic)
 - **Size and complexity:** smaller, straightforward appeals may be discussed among large, complex appeals
 - **Self-prioritization** by appellant
 - **Type of appeal:** priority to rare classification challenges

How the ISCAP Works

- The ISCAP Liaisons have two three-hour meetings each month
- The ISCAP Staff prepare classified briefing books containing redaction proposals for review and discussion
- ISCAP Members vote on proposals discussed in Liaisons meetings

3. Berlin

a. Our initial assessment of the abolition of the Office of the Soviet Commandant leads us to suggest that: Khrushchev sees little chance now for further Western concessions and is concerned mainly with strengthening his position for signing a treaty; some move to subject civilian--but probably not Allied military--air access to East German control may be in the offing; we may see new requirements for entry into East Berlin.

b. So far, there has been no immediate practical effect on Allied military access and movements. Our military vehicles entered East Berlin this morning without difficulty.

c. Presumably Ulbricht was in on the Soviet decision, but at the moment he remains a bit of a mystery. Flights by his usual aircraft suggest that he returned to East Germany on Monday,

E.O. 13526, section 3.3(b)(1)

4. Cuba

a. Most of our information from within Cuba on the influx of Soviet equipment and technicians has come from Cuban sources. We now have several reports from the British Embassy whose people have been out looking.

For The President Only—~~Top Secret~~

From a President's Intelligence Checklist, 1962

The ISCAP Release Process

- The ISCAP Staff prepare declassified documents for public release
- Some information may be redacted under an agency's statutory authority
- All redaction reasons are indicated on the released documents
- Documents are released to the appellant and originating agency and posted on the ISCAP website

DECLASSIFIED UNDER AUTHORITY OF THE
INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL.
E.O. 13526, SECTION 1.4(C)
ISCAP No. 2007-020 Document 1 Date 7/26/13

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~~TOP SECRET~~

Withheld from public disclosure as provided for in
50 U.S.C. 403(g) section 6, the Central Intelligence
Agency Act of 1949.

Status of Iraq's WMD Programs

Baghdad's ability over the last three years to work on prohibited programs without risk of disclosure has grown immensely. Iraq's activities since 1998 clearly show that it has repaired and expanded dual-use WMD facilities, increased WMD production capabilities, and advanced clandestine production and procurement.

E.O. 13526, section 1.4(c)

Iraq maintains an active and capable BW program. Iraq is using transportable BW agent production plants, which we estimate could produce hundreds of metric tons of unconcentrated agent slurry per year. Iraq also has the dangerous capability to quickly convert vaccine, biopesticide, and other plants:

- Baghdad has rebuilt, expanded, and is now operating the vaccine plant at al-Dawrah, which produced 5,400 liters of Botulinum toxin in a few months before the Gulf war. The BW-associated Amriyah serum facility has also expanded its research, production, and cold storage capabilities.
- Iraq has been operating the Fallujah III castor oil plant since March 2000 and could be extracting ricin toxin from the leftover bean pulp, as it did in the early 1990s. Iraq is not openly destroying the pulp, nor is it operating the nearby brake fluid plant—the claimed destination of the castor oil.

Baghdad continues to work on unmanned aerial vehicles that we believe will be fitted with an indigenously made dissemination device for BW agents. Iraq is trying to move beyond the L-29 aircraft to the more capable L-39 and other vehicles. Over the last year, the program spent \$5-6 million on new UAV and autopilot technology.

Iraq is advancing its CW Program under cover of civilian chemical industries, the same tactic it used before the Gulf war. In particular, Iraq has rebuilt and expanded the facilities at Fallujah II that produce chlorine and phenol, key nerve agent precursor ingredients. Important parts of the plant are tied to Iraq's defense ministry and leading plant personnel come from Iraq's past CW program. Moreover, imagery shows that trailers previously used as CW filling stations were moved to the compound last year and have been partially assembled.

Withheld from public disclosure as provided for in
50 U.S.C. 403(g) section 6, the Central Intelligence
Agency Act of 1949.

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Recent ISCAP Decisions: 9/11 Commission

- Several appeals, including 9/11 Commission records from the Center for Legislative Archives and DoD records
- Notes, drafts, transcripts, memoranda for record

DECLASSIFIED UNDER AUTHORITY OF THE
INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL
E.O. 13526, SECTION 5.3(a)(3)
ISCAP APPEAL NO. 2012-047, document no. 2
DECLASSIFICATION DATE: September 29, 2014

Draft
6/9/2004

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Secretary Rumsfeld
"Day of" 9/11 Questions:

I. POSTURE & READINESS PRIOR TO 9/11

A. Rumsfeld on Homeland Defense:

In your interview with the DoD historian, you were asked to what extent you had begun to think about homeland security prior to September 11. You provided the following answer:

"We had been engaged in what was called the Quadrennial Defense Review. So, well prior to September 11 we had been talking about the defense of the homeland and discussing how we were going to be able to deal with that problem. *We had elevated it to the top of our priority list.*" (emphasis added)

(1) Please describe these discussions. Who was involved? What actions were contemplated? What threats were envisioned? Specifically, prior to 9/11, what were the priorities?

(2) To your knowledge -- in the context of these discussions or any other -- prior to 9-11 did DoD ever consider the threat to the homeland posed by a suicide hijacking? Prior to 9/11, was there any planning or training within DoD for such an attack?

B. NORAD Mission:

Last May, in testimony before our Commission, General McKinley of NORAD stated that:

"On the day of September 11th, 2001, [NORAD's] mission was to defend North America, to surveil, to intercept, to identify, and if necessary to destroy, those targets which we were posturing were going to come from outside our country. . . . It was [our responsibility] to look outward, as a Cold War vestige, primarily developed during the Cold War, to protect against Soviet long-range bomber penetration of our intercept zone."

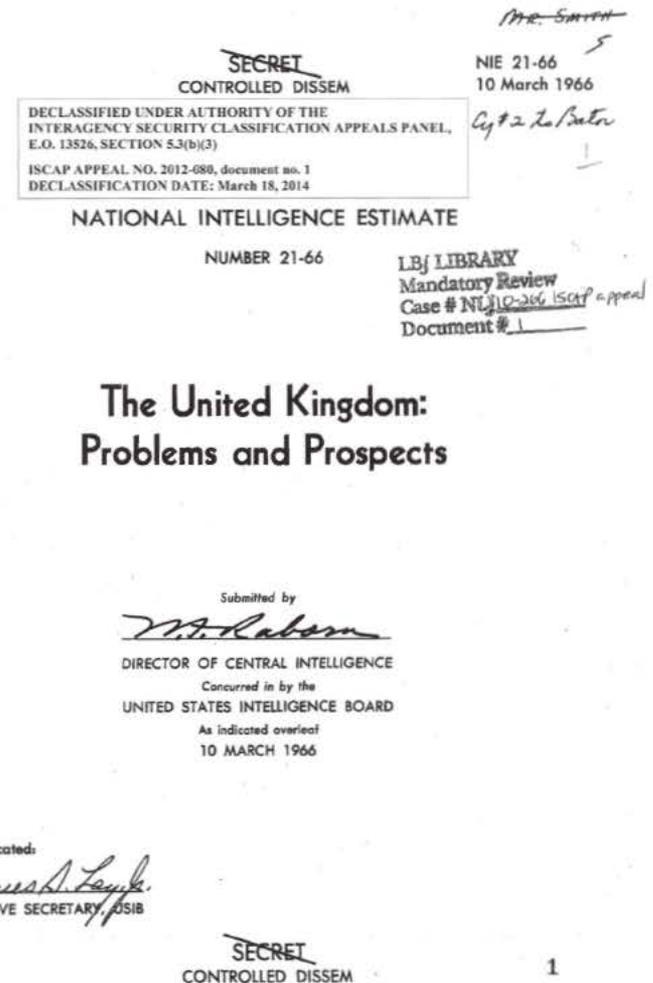
(1) If homeland security was at the top of DoD's priority list -- and if NORAD was the primary (or perhaps sole) Command with responsibility for safeguarding the nation prior to 9/11 -- why was NORAD only equipped to protect against Soviet long-range bomber penetration of our intercept zone? Do you agree that NORAD's mission was this limited?

(2) Prior to 9/11, was there any discussion of changing NORAD's mission to take account of new, emerging threats? If not, why not?

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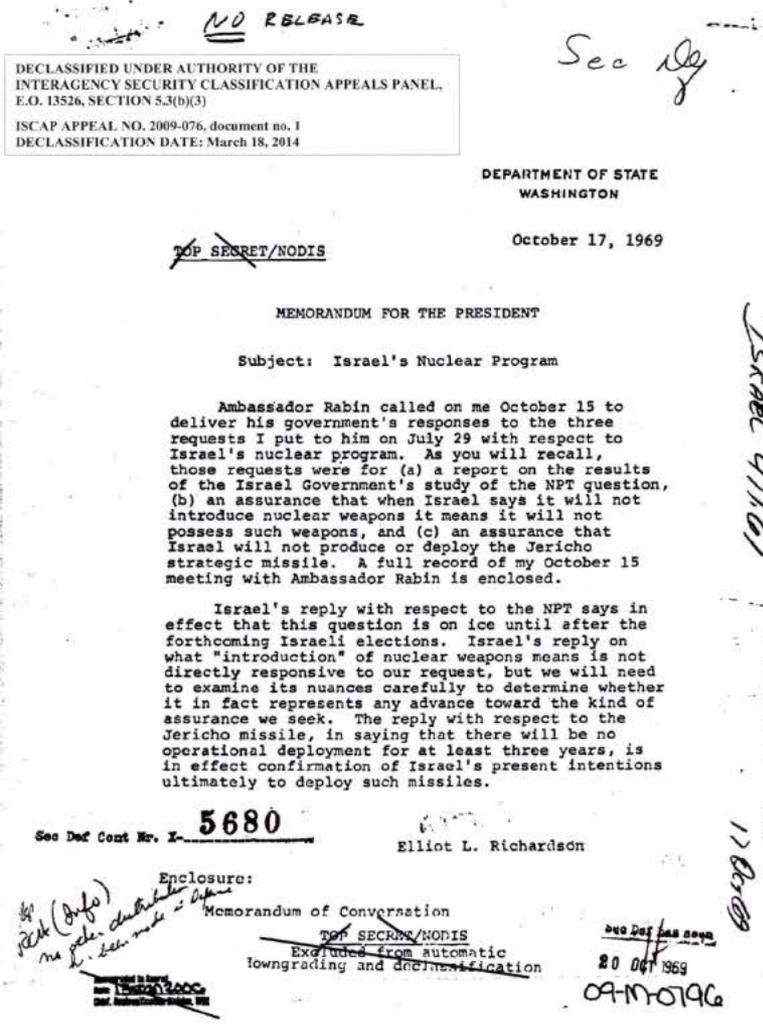
Recent ISCAP Decisions: UK NIE

- National Intelligence Estimate 21-66 on the United Kingdom
- Declassified in full
- Social and political conditions in Great Britain and Northern Ireland in 1966



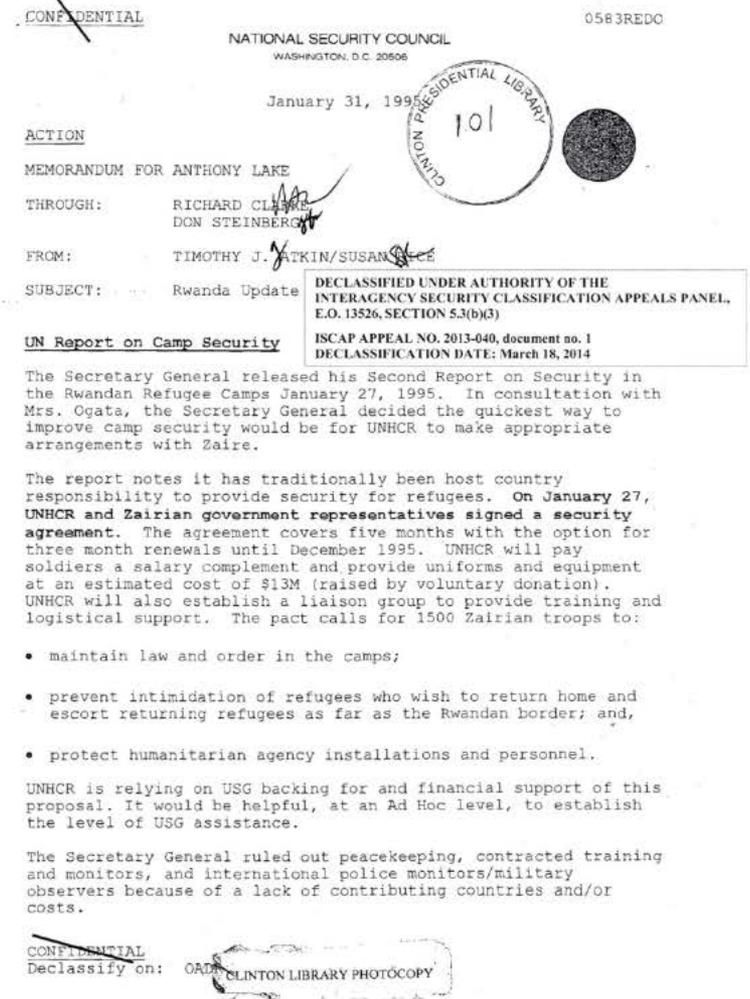
Recent ISCAP Decisions: Israeli Nuclear Program

- Ongoing interest in the Israeli nuclear program
- Several appeals contained RD information, 25X1, 25X6, and 50X1-HUM information



Recent ISCAP Decisions: Rwanda

- 58 documents from the Clinton Library regarding US reaction to the Rwanda crisis in the 1990s
- Some redactions under sections 1.4(b), (c), and (d)
- All approved for release by President Clinton's representative under the Presidential Records Act



ISCAP Transparency

- Lack of transparency of the ISCAP process can erode public confidence in it
- ISCAP Staff regularly fielded questions from appellants:
 - What is the status of my appeal?
 - Why has my appeal not been decided upon?
- ISCAP Chair John Ficklin directed the ISCAP Staff to be more open about the ISCAP process:
 - Release the criteria for appeal selection for ISCAP deliberation
 - Release an ISCAP appeal status log

ISCAP Appeals Status Log

- Available on ISCAP website as an Excel spreadsheet
- Lists all appeals active in the Obama administration
- Updated quarterly
- Status field:
 - Materials requested
 - Materials received
 - Administratively closed
 - Appeal under review
 - Decision reached

ISCAP No.	DATE OF REQUEST	Requestor (Last)	Source (Library or Agency)	STATUS
2013-104	7/22/2013	Johnson	Reagan Presidential Library	Materials Received from Agency
2013-105	7/29/2013	Larson	Department of Defense	Materials Requested from Agency
2013-106	8/1/2013	Weber	Department of Defense	Administratively Closed FY 2013
2013-107	8/5/2013	Ravnitzky	Central Intelligence Agency	Materials Received from Agency
2013-108	8/5/2013	Burr	Department of Defense	Materials Received from Agency
2013-109	8/6/2013	Burr	Department of Defense	Materials Requested from Agency
2013-110	8/12/2013	Pesavento	Central Intelligence Agency	Decision Reached FY 2014
2013-111	8/14/2013	Johnson	Department of Defense	Materials Requested from Agency
2013-112	8/14/2013	Vick	Central Intelligence Agency	Administratively Closed FY 2013
2013-113	8/15/2013	Burr	Central Intelligence Agency	Materials Received from Agency
2013-114	8/16/2013	Jones	Central Intelligence Agency	Appeal Under Review by the ISCAP
2013-115	8/21/2013	Rojas	Central Intelligence Agency	Decision Reached FY 2014
2013-116	8/21/2013	Rojas	Department of State	Materials Received from Agency

Links and Contact Information

- ISCAP Appeals Status Log:
 - <http://www.archives.gov/declassification/iscap/status-log-description.html>
- ISCAP Decisions:
 - <http://www.archives.gov/declassification/iscap/decision-table.html>
- Contact ISCAP Staff
 - iscap@nara.gov
 - william.carpenter@nara.gov
 - wcarpenter@nara.csp.ic.gov
 - william.c.carpenter52.civ@mail.smil.mil
 - 202-357-5466