

## **Report of the Advisory Committee on Historical Diplomatic Documentation January 1-December 31, 2017**

The Advisory Committee on Historical Diplomatic Documentation to the Department of State (HAC) has two principal responsibilities: overseeing the preparation and timely publication of the *Foreign Relations of the United States (FRUS)* series by the department's Office of the Historian (HO), and monitoring the declassification and release of State Department records.

The Foreign Relations Authorization Act of 1991 (Public Law 102-138 [105 Stat. 647, codified in relevant part at 22 U.S.C. § 4351 *et seq.*]) mandates these responsibilities. Known as the *FRUS* statute, it calls for publishing a "thorough, accurate, and reliable" documentary record of United States foreign relations no later than 30 years after the events that they document.

Although the HAC continues to applaud the performance and capabilities of HO and the staffs of both the National Archives and Records Administration (NARA) and the State Department's Office of Information Programs and Services (IPS), and while 2017 produced notable successes, the year presented a number of challenges that threaten the continued progress the HAC has reported in its annual reports over the past several years. Throughout the year, the pace of the reviews of *FRUS* volumes submitted to the Central Intelligence Agency (CIA) and Department of Defense (DoD) and the declassification of documents was disappointing. The impressive number of *FRUS* volumes published in 2017 masks this behavior, but it will be evident in a noticeable decline in coming years. NARA and IPS, moreover, remain underfunded and understaffed.

Potentially exacerbating both these phenomena are the retirements in 2017 of Stephen Randolph, who as the State Department's Historian was so integral to HO's positive trajectory since his appointment in 2012, and Sheryl Shenberger, whose performance during her seven year tenure as the director of NARA's National Declassification Center (NDC) was a boon to scholars. Further, the unexpected and unprecedented decision of the State Department's leadership in December to reject HO's request to renew three HAC members unsettled both the committee and the office.

### **Publications of the *Foreign Relations* Series**

Compiling the multiplicity of records necessary to document an administration's foreign relations, culling from them the limited number that can be managed in one volume while still providing a "thorough, accurate, and reliable" documentary history, and then receiving authorization from the appropriate agencies to publish previously classified documents, poses an arduous and time-consuming challenge. The difficulty of this challenge underscores that the eight volumes HO published in 2017 constitutes a very impressive achievement. These volumes are:

1. *FRUS, 1977–1980, Volume XV, Central America*
2. *FRUS, Iran, 1951–1954*
3. *FRUS, 1977–1980, Volume XXII, Southeast Asia and the Pacific*
4. *FRUS, 1977–1980, Volume XXIV, South America; Latin America Region*
5. *FRUS, 1977–1980, Volume XVII, Part 3, North Africa*
6. *FRUS 1981–1988, Volume XLI, Global Issues II*

7. *FRUS, 1917–1972, Volume VI, Public Diplomacy, 1961–1963*
8. *FRUS, 1969–1976, Volume XLII, Vietnam: The Kissinger-Le Duc Tho Negotiations, August 1969–December 1973*

Headlining this list is *Iran, 1951-1954*. More than 15 years in the making, this is a retrospective volume intended to supplement *FRUS 1952–1954, Volume X, Iran, 1951–1954*, published in 1989. The initial *FRUS* volume on Iran distorted history by omitting all references to the CIA. This was the catalyst for the 1991 *FRUS* statute. Also noteworthy, 2017 was the capstone to a four-year run during which HO published 35 volumes (for budgetary reasons the recent volumes were only published electronically, but cloth-bound volumes will ultimately follow), a record rate of production that has enabled the office, after years of failures, realistically to envision meeting the legally mandated 30-year timeline. The current state of the interagency declassification process places at risk continued progress toward that goal.

HO's project to digitize and post online fully-searchable versions of the entire catalogue of *FRUS* volumes dating back to its origin in 1861, however, will maintain its momentum. The project was launched in 2008, and in 2017 it added 81 more volumes. As a result, currently available on HO's website is a complete set of digitized *FRUS* volumes beginning in 1900.

### **The Challenge of the 30-Year Requirement**

Despite the prodigious efforts of HO's compilers, reviewers, and editors, the office is unlikely to maintain its extraordinary rate of *FRUS* publication in 2018 and continue to progress toward meeting the 30-year timeline. Part of the problem inheres in the explosion of documents which HO's historians must locate among the multiple departments, agencies, and executive offices that participate in the foreign relations process. An increasing number of these documents cover covert actions or are otherwise sensitive. The time required to declassify these documents is frequently prolonged—considerably—because in most cases diverse agencies and departments hold an “equity” (interest or concern) in the document and therefore are entitled to approve or deny its release in part or full. Further, because the same declassification offices in many agencies handle Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) requests as well as *FRUS* reviews and declassification, growing numbers of FOIA/MDR requests often are given priority over *FRUS*' requirements. For a volume such as the one on the Iran Hostage Crisis, moreover, intractable legal issues can cause indefinite delays.

The HAC commends the Systematic Review Program (SRP) division of IPS for the rigor and vigor of its reviews. The National Security Council's (NSC) Office of Access Management likewise warrants plaudits. And despite such burdens as the Kyl-Lott Amendment, which requires page-by-page reviews of documents for Restricted and Formerly Restricted Data related to nuclear matters, the Department of Energy (DOE) has improved the pace of its reviews.

But the Department of Defense (DoD), which the HAC criticized in last year's annual report for its failure to meet *FRUS*'s statutory timeline and substandard record of reviews and declassification, has performed more negligently—and violated the statute more egregiously. The 1991 *FRUS* statute requires the DoD (along with all departments and agencies) to conduct a declassification review of a *FRUS* volume compilation within 120 days of receiving it from HO. Should DoD determine that it must withhold a record from declassification in order to protect

national security information that remains sensitive, it must try to redact the text in an effort to make it releasable. When HO appeals a decision to deny the release of a document in part or in full, the statute requires DoD to respond to the appeal within 60 days.

In 2017 the Defense Office of Prepublication and Security Review (DOPSR), which is responsible for DoD's reviews, was unconscionably tardy and inattentive. It completed only one out of eleven volumes submitted for review throughout the entire year. Perhaps worse, when in the last month of 2017 DoD finally responded to ten outstanding *FRUS* referrals, it denied in full the release of 589 historically significant documents. These volumes had been under DoD review for an average of 429 days—more than 300 days beyond the deadline established by the 1991 statute. And DOPSR made no effort to sanitize documents to make them releasable. Accordingly, the HAC cannot assess any of the *FRUS* volumes in which DoD has an equity as “thorough, accurate, and reliable,” and HO cannot publish any of them.

Although in 2017 CIA did not behave nearly as irresponsibly as DoD, it performed below the expectations produced over the several preceding years. Because of personnel changes and time constraints imposed by director-mandated special projects, the CIA requested that the NSC suspend the process of convening High Level Panels (HLPs). These panels determine whether or not to acknowledge covert actions by declassifying records pertaining to them. 2017 lacked a single HLP approval. This has produced already at least a two-year delay in publishing any *FRUS* volumes that must include covert action documentation to meet the “thorough, reliable, and accurate” standard. And the number of volumes which require the release of sensitive information continually increases. HO referred six such volumes to the CIA for review in 2017, and projects referring more than double that number in 2018. In December 2017 the HAC met with CIA personnel and its Historical Review Panel to discuss these challenges. The HAC is optimistic about the agency's commitment to *FRUS* but appreciates the hurdles.

The State Department's IPS, conversely, continues to serve as a model for the other agencies. In 2017, its SRP division completed the reviews of all the volumes referred to it by HO. On average it completed the reviews well ahead of the 120-day statutory deadline. Moreover, the quality of SRP's reviews and IPS's efforts to coordinate reviews throughout the State Department were uniformly exemplary. No less exemplary were the contributions of the NSC's Office of Access Management. In addition to completing its reviews of referred documents with White House equities in advance of the statutory deadline, it provided constructive commentary on other agencies' declassification decisions.

### **The Review, Transfer, and Processing of Department of State Records**

The HAC in 2017 also carefully monitored the progress made in reviewing, transferring, and processing State Department records. It regularly received briefings from and questioned representatives from IPS and NARA, including the NDC and Office of Presidential Libraries.

Funding and staffing personnel continue to pose challenges to each of these entities, and in some cases the federal government's hiring freeze exacerbated the challenges. The HAC congratulates them all for how well they have performed under these constraints. IPS's SRP characteristically overachieved. Taking full advantage of its first full year in its renovated Newington facility, despite its staffing vacancies it met all its 2017 reviewing requirements: In addition to 13 *FRUS*

volumes, it reviewed 6,685,000 pages of paper and 2,059,424 pages of electronic records. Further, after assuming responsibility for all State Department Mandatory Declassification (MDR) cases, it reviewed 2411 of them, shattering the all-time annual record that it set last year.

NARA likewise performed admirably. Indeed, it substantially completed processing the records of the United States Information Agency (Record Group 306) which have been declassified, which it established as a priority for 2017. It also progressed on its Finding Aids initiative, which entails inventorying the paper finding aids, working to resolve problems found in the electronic inventory, and creating folder lists for new and frequently-requested series. Meanwhile, NARA's NDC is meeting its processing goals, with a release rate of over 96 percent for records identified for State review. In addition, its popular Indexing on Demand program remains a success.

NARA also continued to accession valuable permanent valuable records, dating to the 1980s, transferred by the Department of State. At present, however, this transfer does not include certain State central files dating from 1980 and later. These inter-related sub-sets of files provide researchers with crucial insight into issues the files document. The HAC will continue to monitor State's efforts to resolve the technological issues that prevent its transfer of these files.

The HAC is concerned about the Obama Foundation's decision not to house any of the presidential records in a brick-and-mortar library at the Obama Presidential Center in Chicago, Illinois. NARA currently plans to assume custody of these records at National Archives II, which potentially poses space and other challenges. This issue will require close monitoring.

#### **Recommendations:**

Following up on a 2017 meeting with staff from the US Senate Foreign Relations Committee, the HAC offers the following recommendations:

- In 22 USC 4353 (b) (2), the underlined sentence should be added to the end of the paragraph:

If the Historian determines that the meaning of the records proposed for inclusion in a volume of the *FRUS* series would be so altered or changed by deletions that publication in that condition could be misleading or produce an inaccurate or incomplete historical record, the Historian shall take steps to achieve a satisfactory resolution of the problem with the originating agency. Within 60 days of receiving a proposed solution from the Historian, the originating agency shall furnish the Historian a written response agreeing to the solution or explaining the reasons for the alteration or deletion. If the Historian determines the alteration or deletion would still lead to an inaccurate or incomplete historical record, the Historian may appeal to the Interagency Security Classification Appeals Panel.

- Each United States government agency engaged in foreign policy formulation, execution, or support shall prioritize *FRUS* declassification review. The Central Intelligence Agency and Department of Defense should establish a dedicated *FRUS* Declassification Review Coordinator to serve as a liaison with HO. *FRUS*

Declassification Review Coordinators should be authorized to make declassification review decisions on behalf of their Agency and to consult directly with component reviewers, desk officers, or other decision-making authorities. Proposals to withhold historical information 20 years old or older shall be accompanied by a credible and specific description of anticipated damage to national security resulting from release

- The *FRUS* series shall disclose for the historical record significant covert actions undertaken as a matter of United States foreign policy unless the Assistant to the President for National Security Affairs, after a deliberative process engaging senior officials in the Department of State, the Central Intelligence Agency, and the National Security Council staff, determines that disclosure would result in significant demonstrable harm to U.S. national security. Such determinations shall be reported to the HAC.
- In 22 USC 4352 (a) (2), the number of years for historian access should be reduced from less than 26 years to less than 21 years. Other departments, agencies, and entities of the United States Government shall cooperate with HO by providing complete access to the records pertinent to United States foreign policy decisions, and actions and by providing copies of selected records in accordance with the procedures developed under section 4353 of this title, except that no access to any record, and no provision of any copy of a record, shall be required in the case of a record that was prepared less than 21 years before the date of a request for such access or copy made by the Office of the Historian.
- The Director of National Intelligence and the Director of the Central Intelligence Agency shall consult with the Office of the Historian prior to mandating special projects or discretionary releases. The purpose of this consultation will be to align the projects and releases to the extent possible with the compilation of in-progress *FRUS* volumes.

Minutes for the closed portions of the committee's meetings may be found at <https://history.state.gov/about/hac/meeting-notes>."

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