

Shannonwatch

Submission in respect of Ireland's Second *Universal Periodic Review* Examination

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As part of the first UPR examination of Ireland's human rights record Shannonwatch raised two areas of concern. These were (i) Ireland's role in the U.S. rendition programme and (ii) the transit of munitions, weapons and armed soldiers through Irish airspace and territory. These related to Irish State involvement in human rights abuses of a very serious nature as they involve facilitating or being complicit in torture and war crimes. Neither of the concerns was addressed during or since Ireland's first UPR examination but given the ongoing use of Shannon Airport in the "war on terror", without any oversight by the Irish authorities, they cannot continue to be ignored.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Ireland is a party to the International Covenant on Civil and Political Rights (ICCPR) which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹ It is also a party to UN Convention Against Torture (UNCAT)² which it has ratified through the Criminal Justice (United Nations Convention against Torture) Act 2000³. Under this domestic law, Ireland has an obligation to arrest and charge anyone reasonably suspected of having committed torture or cruel, inhuman or degrading treatment.

Ireland is also bound to protect human rights and fundamental freedoms by the European Convention on Human Rights (ECHR)⁴, which has been carried into domestic law by the European Convention on Human Rights Act, 2003⁵. Article 3 of the ECHR states that "No-one shall be subjected to torture or to inhuman or degrading treatment or punishment", and the European Convention on Human Rights Act, 2003 creates an obligation on "every organ of the State" to perform its functions compatibly with the ECHR.

The Irish government has relied on diplomatic assurances from the U.S. Administration that prisoners had not been and would not be transported illegally through Irish territory. It has been repeatedly reminded by (among others) the Irish Human Rights Commission⁶ ⁷, Amnesty International⁸ ⁹ and the European Parliament¹⁰ that the reliance placed on these diplomatic assurances is not sufficient to comply with Ireland's international human rights obligations under the aforementioned conventions. Specifically such assurances are insufficient to prevent torture or ill-treatment taking place in Irish territory or airspace and to ensure that its territory is not being used in any way to facilitate extraordinary rendition to another State where a person may be tortured.

As a UN member state, Ireland also has obligations to impose controls on arms transportation to prevent unauthorised or illegal international arms transfers. It is a party to the Convention on International Civil Aviation (the Chicago Convention) which states in Article 35 that "no munitions of war may be carried in or above the territory of a State, except by permission of such State"¹¹. The provisions of the Chicago Convention have come into effect in Ireland through the Air Navigation and Transport Acts of 1944¹² to 1988¹³. These Acts make provision for Ministerial Orders to give effect to the terms of the Convention, and gives authorised persons the power to "enter any aircraft at any aerodrome and inspect any apparatus, equipment or other thing therein or thereon" (Air Navigation and Transport Act, 1988, Article 18)

Nonetheless Ireland's failure to inspect and adequately control the transport of weapons through its airports and airspace makes it possible for state and private actors to move conventional weapons

and munitions to countries where they could be used to commit human rights violations and war crimes.

It should be noted that Article 16 of the Chicago Convention states that the appropriate authorities of each of the contracting states “shall have the right, without unreasonable delay, to search aircraft of the other contracting states on landing or departure, and to inspect the certificates and other documents prescribed by the Convention”. This is also relevant in the case of the use of Irish airports by known and suspected rendition planes.

Renditions

Ireland has failed to uphold its international human rights responsibilities by refusing to investigate allegations that aircraft linked to renditions have landed in Ireland or have crossed Irish airspace, and by failing to take measures to prevent such acts.

Evidence from Amnesty International indicates that six planes known to have been used for renditions by the U.S. authorities made approximately 800 flights in or out of European airspace up to 2005, including 50 landings at Shannon airport¹⁴. Council of Europe and European Parliament inquiries have identified Shannon airport as a stopover point in the U.S. renditions programme. Ireland was one of the countries named in a 2006 report by Council of Europe Parliamentary Assembly rapporteur Dick Marty as having passively colluded in U.S. renditions by allowing Shannon Airport to be used by aircraft linked with renditions without restriction or oversight.¹⁵

Since 2006 Shannonwatch have documented ongoing use of Shannon Airport by aircraft suspected of involvement in renditions, including the presence of 5 suspected aircraft in 2009¹⁶. To date no investigation has been undertaken nor has preventative action been taken by the Irish government.

It has relied on U.S. assurances as the sole basis for its claims that Ireland has not been used for rendition purposes. These claims fail to recognise that Ireland’s cooperation with aircraft crews engaged in rendition activities means it has facilitated rendition. Even where rendition aircraft are not carrying detainees while in a state’s territory, but are known to be en route to/from the transfer of a person to a location where they are at risk of torture or are known to be furthering an act of enforced disappearance, the state is violating its human rights obligations if it fails to take measures to prevent or investigate the circumstances. These human rights obligations include its responsibilities under the Convention Against Torture (UNCAT), which Ireland has ratified through the Criminal Justice (United Nations Convention against Torture) Act 2000.

In addition, the UN Human Rights Committee’s consideration of the third periodic report of Ireland under the ICCPR (CCPR/C/IRL/CO/3)¹⁷ expressed concern about allegations that Irish airports have been used as transit points for so called rendition flights of persons to countries where they risk being subjected to torture or ill-treatment. The Committee noted the state party’s reliance on official assurances (from the U.S). and recommended that it should exercise the utmost care in relying on these. It also said that State party should “establish a regime for the control of suspicious flights and ensure that all allegations of so-called renditions are publicly investigated”

Additionally, the Irish Human Rights Commission has repeatedly advised the Irish Government that the only effective way of ensuring that it does not become complicit in dispatching people to be tortured or ill-treated is through establishing an effective regime of monitoring and inspection.

Currently the Irish authorities put the onus on NGOs, journalists and citizens to provide evidence relating to the presence of known and suspected rendition aircraft, but fail to act on the basis of evidence provided. The Irish government should review, and if necessary, strengthen legislation governing the search and inspection of suspected rendition flights to ensure that it’s civil and police authorities have the necessary power in this regard. If it is found that they do not have adequate powers to search suspect aircraft the legislation should be strengthened to ensure they have the necessary powers.

The Irish authorities cannot proactively identify foreign aircraft engaged in illegal activities such as renditions, as its systems for the collection of information from unscheduled civilian aircraft making

technical and other stopovers are inadequate. It should establish a robust and transparent system for identifying aircraft, operators and crews using Irish territory or airports to commit or assist abuses of human rights, including renditions. Procedures should be put in place so that requests for landing authorisation or overflight by foreign aircraft, other than regularly scheduled commercial flights, require the provision of sufficient information to allow effective monitoring of all persons on board, the purpose of the flight, and its final destination.

In addition to taking the necessary steps to ensure that Ireland is not knowingly or unknowingly facilitating aircraft, crews and operators committing human rights abuse, the Irish government should establish an independent and impartial inquiry into the use of Irish territory, and in particular Shannon airport, in renditions over the last decade. The outcome of this review should be made public.

Transit of weapons and munitions

The right to life is the most basic and most important human right on which all other human rights are dependent. Mindful of this, it is important to note that Ireland is obliged as a member of the United Nations and as a declared neutral state to comply with the provisions of the Charter of the United Nations and other customary international law, including the Hague Convention on neutrality, and the Geneva Conventions on war.

Nonetheless Ireland is failing to provide adequate oversight and control over the transit of munitions, weapons and armed soldiers that may lead to serious human rights violations and/or war crimes through its territory and airspace.

Notwithstanding the absence of a normative framework to guide state decisions regarding arms transfers, there are a range of legal obligations to prevent unauthorised or illegal export and transiting of arms, munitions and related equipment, in particular to embargoed regions or entities. The 2007 report of the UN Group of Governmental Experts on combating illicit brokering in small arms and light weapons recommended that all states should be encouraged to adequately regulate activities of “arms brokering, including transport [and] freight forwarding”, through their national laws¹⁸.

International humanitarian law contains basic principles and rules that prohibit or restrict the employment of certain weapons, and Ireland has legal responsibilities in relation to these. It has signed and ratified the Convention on Cluster Munitions¹⁹ which prohibits all use, stockpiling, production and transfer of cluster munitions and has worked actively to promote its universalisation. It is a party to the The Chemical Weapons Convention (CWC)²⁰ which outlaws the production, stockpiling and use of chemical weapons.

Commercial aircraft carrying U.S. troops and their weapons routinely pass through Shannon Airport, as do U.S. registered cargo planes contracted by the U.S. military. A 2010 report by Amnesty International notes that transport companies registered in the five permanent members of the UN Security Council are able to move conventional weapons and munitions to countries where they could be used to commit human rights violations and war crimes²¹. There are grounds for concern therefore that some of the aircraft passing through Shannon Airport and Irish airspace may be carrying munitions and weapons that are being used to commit human rights violations and/or war crimes.

The carriage of weapons and munitions of war through Irish territory or airspace on civilian aircraft is prohibited under the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Orders, 1973²² and 1989²³, unless an exemption from this prohibition is granted by the Minister for Transport. A flight plan must be filed for all civil and military flights across international borders, and applicants for an exemption under the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Orders must specify the destination of the flight in their application for an exemption. However the final destination of these flights may not be known²⁴. As a result there are insufficient safeguards to ensure the munitions and weapons are not used to commit human rights abuses and/or war crimes.

Procedures should be put in place to ensure that weapons, munitions and associated equipment being transited through Irish territory and airspace are not destined for countries where they could be used to commit human rights violations and war crimes. These include but are not restricted to embargoed countries. Applicants for an exemption under the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Orders should be required to provide sufficient information to allow effective monitoring of transited weapons and munitions, including details of all munitions on board the aircraft and its final destination.

The Irish government should review, and if necessary, strengthen legislation to ensure that its civil and police authorities have the necessary power to inspect any aircraft suspected to be carrying munitions of war. This is necessary to ensure that they are not destined for countries where the recipients may use them to commit human rights abuses and/or war crimes.

RECOMMENDATIONS

1. The Irish government should review and if necessary strengthen legislation governing the search and inspection of suspected rendition flights to ensure that its civil and police authorities have the necessary power in this regard.
2. The Irish government should establish a robust and transparent system for identifying aircraft, operators and crews using Irish territory or airports to commit or assist abuses of human rights, including renditions. This would include procedures so that requests for landing authorisation by foreign aircraft, other than regularly scheduled commercial flights, require the provision of sufficient information to allow effective monitoring of all persons on board, the purpose of the flight, and its final destination.
3. The Irish government should establish an independent and impartial inquiry into the use of Irish territory, and in particular Shannon airport, in renditions. The outcome of this review should be made public.
4. Procedures should be put in place to ensure that weapons, munitions and associated equipment being transited through Irish territory and airspace are not destined for countries where they could be used to commit human rights violations and war crimes. These include but are not restricted to embargoed countries. Applicants for an exemption under the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order should be required to provide sufficient information to allow effective monitoring of transited weapons and munitions, including details of all munitions on board the aircraft and its final destination.
5. The Irish government should review and if necessary strengthen legislation to ensure that its civil and police authorities have the necessary power to inspect any aircraft suspected to be carrying munitions or war.

¹ Article 7, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>

² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>

³ *Criminal Justice (United Nations Convention Against Torture) Act, 2000*, No. 11/2000, Dublin: Stationery Office.

⁴ *European Convention on Human Rights* Rome, 4 November 1950

⁵ *European Convention on Human Rights Act, 2003*, No. 20/2003, Dublin: Stationery Office.

⁶ Irish Human Rights Commission, *Resolution In Relation To Claims Of US Aircraft Carrying Detainees*, available at: http://www.ihrc.ie/download/doc/resolution_rendition_200512.doc

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- ⁷ Irish Human Rights Commission, *Submission to the European Parliament's Temporary Committee on Rendition*, 28 November 2006, available at: <http://www.ihrcc.ie/download/doc/submission-to-european-temporary-committee-on-rendition-of-the-european-parliament.doc>
- ⁸ Amnesty International, *European Governments Putting People At Risk Of Torture*, Press Release, 12 April 2010, available at <http://www.amnesty.ie/news/european-governments-putting-people-risk-torture>
- ⁹ Amnesty International, *Irish Government Misleads UN On Secret Detentions*, Press Release, 27 January 2009, available at <http://www.amnesty.ie/news/amnesty-irish-government-misleads-un-secret-detentions>
- ¹⁰ European Parliament, *Report on The Alleged Use Of European Countries By The CIA For The Transportation And Illegal Detention Of Prisoners* (2006/2200(INI)), Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, A6-9999/2007, 26 January 2007.
- ¹¹ International Civil Aviation Organization (ICAO), *Convention on Civil Aviation ("Chicago Convention")*, 7 December 1944, (1994) 15 U.N.T.S. 295, available at: <http://www.unhcr.org/refworld/docid/3ddca0dd4.html>
- ¹² *Air Navigation and Transport Act, 1946*, No 23/1946, Dublin Stationery Office.
- ¹³ *Air Navigation and Transport Act, 1988*, No. 15/1988, Dublin: Stationery Office.
- ¹⁴ Amnesty International USA, *800 Secret CIA Flights Into And Out Of Europe*, Press Release, 5 December 2005, available at: <http://www.amnesty.ie/our-work/usa-800-secret-cia-flights-and-out-europe>
- ¹⁵ Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions And Unlawful Inter-State Transfers Involving Council Of Europe Member States*, Draft Report Part II, Rapporteur: Mr Dick Marty, AS/Jur (2006) 16 Part II, 7 June 2006
- ¹⁶ Shannonwatch, *Shannon Airport may still be a Stop-off for Illegal Rendition Flights*. Press Release 21 December 2009. Available at: <http://www.shannonwatch.org/story/shannon-airport-may-still-be-stop-illegal-rendition-flights>
- ¹⁷ United Nations CCPR (2008) *HUMAN RIGHTS COMMITTEE Ninety-third session, Geneva, 7 – 25 July 2008. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT. Concluding observations of the Human Rights Committee IRELAND*, CCPR/C/IRL/CO/3
- ¹⁸ Amnesty International, *Deadly Movements Transportation Controls In The Arms Trade Treaty*, July 2010, London.
- ¹⁹ Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, *Convention on Cluster Munitions*, 30 May 2008, CCM/77, available at: <http://www.unhcr.org/refworld/docid/4843e59c2.html>
- ²⁰ *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention)*, Geneva, 3 September 1992, available at: <http://www.opcw.org/chemical-weapons-convention/articles/>
- ²¹ Amnesty International (2010) *Deadly Movements: Transportation Controls in the Arms Trade Treaty* available from <http://www.amnesty.org/en/news-and-updates/report/states-failing-control-movement-weapons-human-rights-abusers-2010-07-19>.
- ²² *Air Navigation (Carriage Of Munitions Of War, Weapons And Dangerous Goods) Order, 1973*, S.I. No. 224/1973
- ²³ *Air Navigation (Carriage Of Munitions Of War, Weapons And Dangerous Goods) (Amendment) Order, 1973*, S.I. No. 130/1989
- ²⁴ Noel Dempsey, *Minister for Transport, Written Answers – Landing Rights*, 19 January 2010, Dáil Eireann Debate, Vol. 699 No. 1.