



OIFIG AN AIRE GNÓTHAÍ EACHTRACHA
(OFFICE OF THE MINISTER FOR FOREIGN AFFAIRS)

BAILE ÁTHA CLIATH 2
(DUBLIN 2)

4 April 2006

Dr Maurice Manning
President, Irish Human Rights Commission
4th Floor, Jervis House
Jervis Street
Dublin 1

Dear Dr Manning

I refer to your letter to the Taoiseach of 21 December 2005, and the Irish Human Rights Commission's *Resolution in relation to claims of US aircraft carrying detainees*, ("the Resolution"), and would wish to reply.

I should like, in the first place, to attach a copy of the Government's submission in response to the Article 52 questionnaire from the Secretary-General of the Council of Europe, which deals with many of the issues raised in the Commission's Resolution, and in particular the question of the right to search. The submission makes clear that, contrary to the apparent assumption of the Commission, the consent of the US Government would not be required to engage in searches of civil aircraft of the type which have been the subject of allegations.

I wish also to address more fully the issue of the assurances the Government has received from the US Authorities on extraordinary rendition. In the Resolution, it is claimed that it is impermissible for the Government to rely on these assurances. The assurances, it will be recalled, are that prisoners have not been transferred through Irish airports, nor would they be, without our permission.

It is the Government's view that this claim of impermissibility is based on a misunderstanding and misinterpretation of the relevant international case-law. This does not in fact deal with assurances generally but rather, and explicitly, with assurances given in the context of the extradition or expulsion of a particular individual from a Contracting State to another State.

Article 3 of the European Convention on Human Rights

Article 3 of the European Convention on Human Rights provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This prohibition is absolute. The European Court of Human Rights ("the Court") has ruled that the Article prohibits a Contracting State from extraditing or deporting a person from its territory in circumstances where it knows that there are substantial grounds

for believing that that person faces a real risk of being subjected to torture in the requesting country.

The Court has considered the application of the above principle in cases where the requesting State has given assurances ("diplomatic assurances") to the effect that the requested person would not be subjected to torture or inhuman or degrading treatment or punishment. It has ruled that the existence of such a diplomatic assurance does not automatically relieve a Contracting State of its obligations under Article 3.

For example, in *Soering v UK*¹, the Court held that a US District Attorney's undertaking that he would urge a Virginian court not to impose the death penalty on the requested person was deemed an insufficient guarantee against the death penalty being imposed, given the limits of his authority over the judicial process.

Further, in *Chahal v UK*², the Court examined the Indian Government's assurance to the UK Government that the applicant, if deported to India, would be safe there. It found that, while the assurance was made in good faith, it was not credible in light of the well documented unrest being experienced in the relevant province at that time.

The cases in which the Court has examined diplomatic assurances, therefore, have involved concrete situations in which a known individual is being deported to a particular State, and assurances are given relating to matters over which the State does not exercise full control.

Assurances on Extraordinary Rendition

The recent allegations of extraordinary rendition, on the other hand, involve unsubstantiated claims that unidentified persons might be, or might have been, illegally transported through Irish territory en route to unspecified destinations. The assurances given by the US Authorities are factual, are unqualified by any reference to the purpose or nature of any hypothetical transfer, and are to the effect that no persons have been so transported through Irish territory. This is clearly a matter entirely within the control of the US Authorities. As such, these assurances are clearly of an entirely different nature to those considered by the European Court of Human Rights.

Even if the Court's case-law outlined above were to be used as a guideline for reliance on diplomatic assurances more generally, it must be pointed out that (contrary to some suggestions) the Court has not ruled that such assurances should be disregarded. While the Court has previously held that a particular assurance was insufficient (*Soering*), or that the relevant State would not be in a position to honour its assurance (*Chahal*), it has never held that a factual assertion by a State on a matter directly within its full control cannot be relied upon.

It is highly relevant in this context to note that the Court has stated its respect for the comity of nations, and has also held that the Convention must be interpreted in harmony with other rules of international law of which it forms part.

¹ *Soering v the United Kingdom*, Judgment of the European Court of Human Rights, 7 July 1989.

² *Chahal v the United Kingdom*, Judgment of the European Court of Human Rights, 15 November 1996

There is, therefore, no authority to suggest that Ireland is obliged under the Convention to disregard an explicit assurance from the US Government. Any Irish Government would be loath to do so.

The State's positive obligation to prevent torture

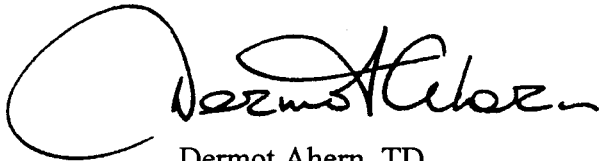
It is appropriate also to refer to the positive obligation on all Contracting Parties to prevent violations of Article 3 of the European Convention. In considering the nature of this obligation, the Court has held that a State's positive obligation is not unlimited and that not every claimed risk "can entail a Convention requirement to take operational measures to prevent that risk from materialising". It has also ruled that the obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the relevant Authorities (*Osman v UK*³).

I would reiterate that the Government has responded to the allegations of extraordinary rendition by seeking and obtaining the explicit assurance of the US Authorities that no persons have been transported illegally through Irish territory and that no person would be so transported. The Government has also called upon persons with any evidence of wrongdoing to present this to the Gardaí, who have the powers needed to investigate any such claim.

Accordingly, the Government remains satisfied that it has discharged its obligations under both the European Convention on Human Rights and the Convention Against Torture.

I hope this clarifies the situation.

Yours sincerely



Dermot Ahern, TD
Minister for Foreign Affairs

³ *Osman v the United Kingdom*, Judgment of the European Court of Human Rights, 28 October 1998