

Dr. Maurice Manning
President

21 December 2005

An Taoiseach
Department of An Taoiseach
Government Buildings
Upper Merrion Street
Dublin 2

Dear Taoiseach,

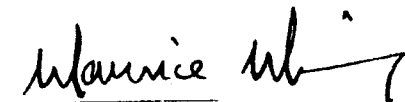
The Irish Human Rights Commission at its plenary meeting last week discussed the reports that US aircraft landing at Shannon airport may be involved in the transport of persons to secret locations where they may be at risk of being subjected to torture, cruel or inhuman treatment and is seriously concerned about the implications of these reports.

It is the view of the Commission that in light of Ireland's international legal obligation to ensure that no one is sent to a jurisdiction where they may run this risk we call on the Government to seek agreement from the US authorities to inspect the aircraft in question on landing at Shannon or any other Irish airport.

The reasons for the Commission's concerns are detailed in the accompanying document.

With best wishes.

Yours sincerely,


Maurice Manning

Encl.



Irish Human Rights Commission

Resolution in relation to claims of US aircraft carrying detainees

The Irish Human Rights Commission is seriously concerned about reports that US aircraft landing at Shannon airport may be involved in the transport of persons to secret locations where they may be at risk of being subjected to torture, cruel or inhuman treatment.

In view of Ireland's international legal obligation to ensure that no one is sent to a jurisdiction where they may run this risk we call on the Government to seek agreement from the US authorities to inspect the aircraft in question on landing at Shannon or any other Irish airport.

Reasons for the Resolution:

Human Rights Commission Act.

Section 8 (a) of the Act establishing the Commission states that one of its functions is "to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights". Section 8 (d) authorises the Commission to make recommendations to the Government about measures "to strengthen, protect and uphold human rights in the State".

United Nations Convention Against Torture.

Article 1 of the United Nations Convention against Torture, to which Ireland is a party, defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Torture, cruel, inhuman or degrading treatment is also prohibited by the provisions of the Constitution and the carrying out of an act of torture "whether within or outside the State" is specifically prohibited by Section 2 of the Criminal Justice (United Nations Convention Against

Torture) Act, 2000. Attempting or conspiring to commit an act of torture within or outside the State, is also an offence under Section 3 of the same Act.

Article 3 of the United Nations Convention against Torture prohibits the expulsion or return ('refoulement') of a person to a jurisdiction where there are substantial grounds for believing that the person would be in danger of being subjected to torture. A summary of the jurisprudence in this regard is usefully provided in a recent report by the UN Special Rapporteur on Torture, Cruel, Inhuman and Degrading Treatment in August 2005 (Professor Manfred Nowak).¹ A reading of the relevant case-law strongly suggests that diplomatic assurances that individuals will not be subjected to such treatment are not, in themselves, sufficient to fulfil a state's obligations to guard against torture or ill-treatment. The relevant treaty monitoring body – the UN Committee against Torture – has made it plain that Article 3 of the Convention against Torture is absolute. Furthermore, the Committee has found that "the procurement of diplomatic assurances, which moreover provided no mechanism for their enforcement, did not suffice to protect against [a] manifest risk" [*Agiza v Sweden* [2005]]².

In 2004 the Committee against Torture closely scrutinised the reported reliance by the United Kingdom on diplomatic assurances from other countries and it:

...requested that within one year, the United Kingdom provide it with details of how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases³.

The UN Special Rapporteur concluded in his August 2005 Report (para 51):

It is the view of the Special Rapporteur that diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment: such assurances are sought usually from States where the practice of torture is systematic; post-return monitoring mechanisms have proven to be no guarantee against torture; diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated. States cannot resort to diplomatic assurances as a safeguard against torture and ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.

European Convention on Human Rights

Article 3 of the *European Convention On Human Rights* (1950) to which Ireland is also party (and which is incorporated into domestic law by the *European Convention on Human Rights Act* 2003) provides that states shall secure to "everyone within [their] jurisdiction" the right to be free from torture, inhuman or degrading treatment or punishment.

¹ A/60/316 (30 August, 2005).

² Id. at para 44.

³ Id at para 40.

The European Court of Human Rights has previously ruled that the obligation in Article 3 also protects against *refoulement* of an individual to a state where there is are substantial grounds for believing that the person faces a real risk of ill-treatment in violation of Article 3.⁴ It has also ruled that states parties to the Convention are under a procedural obligation in respect of Article 3 to conduct an effective, official investigation where an individual raises an arguable claim that he or she has been seriously ill-treated by the police or other agents of the State unlawfully and in breach of Article 3.⁵

In the case of *Chahal v the United Kingdom*,⁶ the European Court of Human Rights specifically ruled that diplomatic assurances are an inadequate guarantee in relation to the proposed return of individuals to countries where torture is “endemic” or a “recalcitrant and enduring problem.”

In July 2004 the Council of Europe High Commissioner for Human Rights (Mr. Alvaro Gil-Robles) stated:

The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture or ill-treatment. Due to the absolute nature of the prohibition on torture or inhuman or degrading treatment, formal assurances cannot suffice where a risk nonetheless remains⁷.

Analysis of the Irish Human Rights Commission:

In the Commission’s view, the State must conduct an official investigation where an arguable claim is raised that a breach of Article 3 of the European Convention is being committed by third parties (including agents of a foreign state) within the jurisdiction of the receiving state. Moreover, the principle of ‘non-refoulement’ inevitably requires that such an investigation must also take place where the state’s territory is being used to facilitate the transportation of any person to places where there is a real risk of ill-treatment in violation of Article 3. This conclusion is buttressed by the fact that Article 3 is one of the only articles of the European Convention on Human Rights which admits of no exceptions. The Court has specifically pointed out that torture, inhuman or degrading treatment is never excusable, under any circumstances, including for the purposes of interrogating terrorist suspects.⁸

Credible international human rights NGOs such as Human Rights Watch and Amnesty International have reported that particular US-owned aircraft have been used for the transport or “rendition” of detainees to secret detention facilities or to third countries and that some of the detainees concerned may have been tortured or subjected to severe ill-treatment.⁹ It has also been reported that some of the aircraft suspected of involvement in the transport of these detainees have been recorded as stopping at Shannon airport.

The Rapporteur of the Parliamentary Assembly of the Council of Europe, Mr Dick Marty, who is investigating allegations about the transport of detainees to secret detention centres in Council of Europe member states, stated on 13th December last that “the information gathered to date

⁴ *Cruz Varas v Sweden*, Judgment of the European Court of Human Rights, 20 March 1991.

⁵ *Asenov v Bulgaria*, Judgment of the European Court of Human Rights, 28 October 1998.

⁶ Judgment of the European Court of Human Rights, 15 November 1996.

⁷ CommDH(2004) 13, 8 July, 2004, para 9.

⁸ *Tomasi v France*. Judgment of the European Court of Human Rights, 27 August 1992.

reinforced the credibility of the allegations concerning the transfer and temporary detention of individuals, without any judicial involvement in European countries".¹⁰

The Secretary General of the Council of Europe, Mr Terry Davis, has taken these reports so seriously that he has formally requested information from all members of the Council of Europe as to whether any public officials have been involved in any way, "whether by action or omission" in the detention or transport of any of the detainees and whether any official investigation has been held into this matter.¹¹ In a statement on 15th December last, he said that:

"... respect for the [European] Convention imposes a positive obligation. In other words, the Convention may also be violated through an omission to act. Not knowing is not good enough regardless of whether ignorance is intentional or accidental.

... the obligation of our member states to ensure respect for the rights protected by the Convention is linked to the exercise of their effective jurisdiction, which includes the airports on their territory and the airspace above it...."¹²

The Irish Government has a clear obligation both under the Convention against Torture, the ECHR and under domestic law to prevent any actions on our soil which could in any way facilitate torture or ill-treatment even in another country. Thus far, the Government has said that it has received assurances from the US authorities that they are not using planes which are landing at Shannon in connection with the transport of detainees to locations where they may be tortured or ill-treated. In the Commission's view, and in light of Ireland's international legal obligations in this field, reliance on diplomatic assurances is not sufficient to protect against the risk of torture and other forms of ill-treatment.

In the Commission's view, given the fact that the obligation on the state to protect against all forms of torture, inhuman and degrading treatment is an absolute one, and given the gravity of the allegations that have been made to date and which are under active investigation by the Council of Europe, it is not sufficient for the Government to rely on such assurances.

Accordingly, the Commission calls on the Government to seek the agreement of the US authorities to the inspection of aircraft suspected of involvement in this traffic.

⁹ Human Rights Watch statements on "Us Secret Detention Facilities in Europe", 7 November 2005; "CIA Whitewashing Torture", 21 November 2005; "List of 'Ghost Prisoners' Possibly in CIA Custody", 30 November 2005.

¹⁰ Council of Europe Press Release 690a(2005) "Alleged existence of secret detention centres in Council of Europe member states: statement by Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights".

¹¹ Council of Europe Press Release 636a(2005) "Reports of illegal detention and 'rendition flights' in Council of Europe member states – the Secretary General activates the procedure under Article 52 of the European Convention on Human Rights"

¹² Council of Europe Press Release 703a(2005) "Secretary General sets the parameters of the Council of Europe inquiry into alleged CIA activities in Europe"