

To: Superintendent John Kerin, An Garda Siochana, Ennis, Co. Clare
Copy to: Sergeant Dermot O'Connor, Station Sergeant, Shannon Garda Station.

Re: Failures to Investigate Serious Crimes at Shannon Airport.

Date: 12 December 2005

I refer to your letter dated 30 Nov 2005 concerning my complaint to Garda O'Shea at Shannon.

Thank you for the information you provided concerning the cargo and purposes of this plane at Shannon. May I ask, incidentally, did the Gardai actually search this aircraft as requested, or any other of the aircraft that peace activists have requested should be searched since December 2002? You state that: "Why you sought the search of this plane escapes me". I asked for this aircraft to be searched because it was unusual in that it had no external markings apart from its registration number, A6GDP, and I was unable at that time to verify which country or airline owned it. It was also parked in a secure area that is normally used for overnight parking of US military aircraft. However, since I now believe that this aircraft is owned by the Dubai Air Wing, Dubai being part of the United Arab Emirates Federation, in the Persian Gulf, which is assisting the US in its war on Iraq, it should not be taken for granted that it "had absolutely nothing to do with the U.S. or its military". Drugs and other illegal materials are regularly found on commercial trucks coming through Dublin and Rosslare harbours, and sometimes on horse-transporting trucks. Since the CIA in particular are known to be involved in covert operations, and exist partly for such purposes, their illegal activities may be conducted in a covert manner. When it is suspected that the CIA may be involved in illegal activities, and there are now very clear indications, and evidence, that this is the case, then the Gardai should be taking all necessary steps to expose and stop such illegal activity and bring the perpetrators to justice. My request to have this aircraft searched was therefore justified under the circumstances.

As you are well aware I, and several others, have sought the search of US military aircraft, and other suspicious aircraft at Shannon airport, because many of these aircraft, and the persons operating these aircraft, are involved in an illegal war in Iraq, and some of them have been used for the process known as "rendition" of prisoners to other states where they are liable to be tortured. You should also be aware that *you* have a responsibility to investigate and prevent the commission of crimes outside the jurisdiction of Ireland, if persons from Ireland, or facilities and locations within the Irish Republic are implicated in, or facilitate, the commission of such crimes outside the jurisdiction. I cite the Omagh bombings as an example of such crimes outside the jurisdiction of the Irish Republic, which the Gardai investigated and have as far as I know brought charges against individuals who were complicit in these crimes. The responsibility of the Gardai applies equally to the investigation of crimes in Iraq, which may have been facilitated in some way from within the Irish Republic, as it does to crimes committed in Northern Ireland. As I am sure you are aware also, the Gardai and the Irish authorities also have responsibility to investigate and take preventative and punitive actions in the cases of certain serious crimes such as genocide and torture, committed totally outside the Irish jurisdiction.

Because I am aware that aircraft owned or hired by the US government have been using Shannon airport for the purposes of transporting prisoners for torture, and for transporting troops and munitions in connection with the unlawful war and occupation of Iraq, I suspected that this particular aircraft serial no. A6GDP might have been engaged in illegal activity. I am also aware from previous such complaints that I made that Gardai have failed to search specific US aircraft at Shannon in the past. I was informed by Garda Sgt Dermott O'Connor that my previous complaints had gone to the office of the DPP, and that the DPP's decision had been that no action was to be taken.

I am also aware from public statements made by the Ministers for Justice and Foreign Affairs, that the Gardai, have been instructed not to search such US military aircraft and other aircraft on specific US government business at Shannon airport. I refer in particular to the statement by the Minister for Justice, on RTE that the Gardai are not empowered to search such US aircraft. I believe that this statement by the Minister is wrong, and that by publicly making such a statement, the Irish Government is acknowledging that it has handed over an element of Irish national sovereignty at Shannon airport to the US Government. I believe that it is unlawful for the Minister, or for the Government to do this without the authority of the Irish people or the Oireachtas.

During the course of the trial of the Catholic Workers peace activists in Dublin during November 2005, I was present in the Circuit Court when Detective Sergeant Michael Houlihan gave evidence on oath that he had not been aware of any complaints about, or requests to search US military or chartered aircraft at Shannon. Because I was aware that this evidence was false, because I had made several requests to have such planes searched, I considered that it was important to ensure that I made formal written requests to the Gardai to have *any* suspicious aircraft, that I noticed at Shannon airport, searched.

As the senior Garda Officer responsible for the Shannon airport region, you, Superintendent Kerin, bear a serious responsibility to ensure that you and Gardai under your supervision and control do not assist with the commission of any crimes, especially serious crimes such as have been committed in Iraq by US forces, or agents of the US Government. By knowingly and wilfully failing to investigate the use of the facilities at Shannon airport for unlawful purposes, and by failing to take all necessary measures to prevent such crimes, and to prevent the facilitation of such crimes, you, and your subordinates are complicit in the commission of any such crimes.

I am aware also, that you, Superintendent Kerin, in your capacity as the Superintendent in charge of the Shannon airport regions have directed members of the Gardai at Shannon airport to arrest, search, and prosecute several dozen peace activists, including me, Edward Horgan, who have been endeavouring to expose the crimes being committed in Iraq and elsewhere, and the connection between US aircraft being refuelled at Shannon airport, and these crimes. We have been endeavouring to expose the role of Shannon airport, the Irish Government, and its agents including the Gardai, in the facilitation of, and/or complicity in, the crimes of engaging in unlawful wars in Afghanistan and Iraq, and the crimes of facilitating torture contrary to the UN Convention Against Torture.

It is my opinion that you, Superintendent Kerin, have committed an offence in that you have knowingly facilitated the transport of prisoners for possible torture by agents of the US, by failing to instruct Gardai under your command to have these aircraft, that are under the control of the CIA and the US Government, searched and prevented from participating in this unlawful process. You are, or should be, aware that I, and others, have publicly stated that such aircraft are likely to be used for such illegal purposes. This information and evidence of possible crimes is publicly available in the Irish and international media, and you, and the Garda officers under your command, have failed to investigate or take steps to prevent these possible crimes. Whether these aircraft are actually carrying prisoners through Shannon airport or not, the refuelling of these aircraft at Shannon airport while these aircraft and the US personnel on these aircraft are engaged in and being used for the process of rendering prisoners to locations where they are likely to be tortured, constitutes a serious offence against the UN Convention on Torture, and there aiding and abetting this process is also an offence.

You state in your letter to me that: "I have no authority to arrest any of these soldiers as I have no evidence to suggest that they have breached any law in this Country or International Law. I should also remind you that 'internment' is not permitted under the laws of our country." I believe that all aspects of this response are incorrect in matters of fact and in matters of law.

Taking the last point first, "that 'internment' is not permitted under the laws of our country". You are not doubt aware that internment has been used in this country several times since the foundation of the state, and that it was used specifically during World War II to intern both British and German military personnel in separate internment camps, for the duration of World War II in compliance with Ireland's obligations under the Hague Convention V, 1907, as a declared neutral state in that war. In times of war or 'emergencies' therefore, the state is empowered to, and has in fact, interned foreign troops who were deemed to be in violation of international laws of neutrality.

I wish to point out to you that Ireland is not obliged by the Bunreacht na hEireann, nor by international law, to be, or to declare itself to be, a neutral state in particular conflicts. However, when a government, through its authorised Ministers or leaders, declare that their country is a neutral country, they are then *obliged* under the Hague Convention V, and under the totality of what is known as 'customary international laws on neutrality' which includes certain aspects of the UN Charter, to implement those international laws on its territory.

I also bring to your attention part of the findings of Judge Nicholas Kearns in the *Horgan v Ireland* [case No. 3739P, ruling delivered on 28th April 2003]

"The court is prepared to hold therefore that there is an identifiable rule of customary law in relation to the status of neutrality whereunder a neutral state may not permit the movement of large numbers of troops or munitions of one belligerent State through its territory en route to a theatre of war with another."

[I enclose a copy of the Hague Convention for your information, and point out that while it is the foundational convention on neutrality, it has been updated by subsequent treaties and customary international law and practices on neutrality]

I wish to draw you attention in particular to Articles 2 and 11 of the Hague Convention which is as follows:

Art. 2. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

Art. 11. A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

An Taoiseach, and specific Irish Government Ministers, particularly the Ministers for Defence and Foreign Affairs, have repeatedly stated, before and during the unlawful War in Iraq, and during the consequential unlawful occupation of Iraq, beginning on 20 March 2003, that Ireland was, and remains, a neutral state. The Irish Government therefore, have brought the obligations of international laws on neutrality on themselves, on onto the state of Ireland, and have by default, imposed on you and all other members of the Irish security services, the duty to arrest and intern all foreign troops passing through or over Irish territory, or Irish territorial waters and airspace. If there are legislative difficulties with the matter of 'internment' as you have suggested, then the very least the Irish Government must do under the Hague Convention is to take positive steps to prevent the use of Irish territory towards the facilitation of any war. If you do not know the law on such matters, it is your duty for seek it out, and to get the appropriate legal advice from your superiors, and from the Attorney General.

Secondly, you state that: "I have no authority to arrest any of these soldiers as I have no evidence to suggest that they have breached any law in this Country or International Law." I have the following points to bring to your attention:

The UN Charter has been the most definitive piece of international jurisprudence, and of international law since its signing and ratification by fifty-one states in 1945.

[I enclose a copy of the UN Charter for your information.]

You will note that Article 2.5 of the UN Charter states that:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." This means that without a UN Security Council Resolution, specifically authorising 'collective security' military measures against a state, that it is unlawful for any member of the UN to attack another state. This is one of the clearest and most direct pieces of international law, and it is widely accepted by the most eminent of international law experts that the US and its military forces are in clear breach of international law by attacking Iraq in March 2003.

The above aspects of international law, as evolved into Irish law by the mechanism of customary international law, therefore give you and the Gardai, not only the necessary authority, but the obligation to arrest all US troops passing through Shannon airport for the purposes of engaging in an unlawful war, or to prevent them from passing through Irish territory by denying them, passage and landing facilities, including refuelling, and denying them over-flight permission through Irish airspace. This is the international law on these matters.

Your statement that you "have *no evidence* [emphasis added] to suggest that they have breached any law in this Country or International Law" is not credible, given that numerous verbal and written complaints on these matters have been made by me and others, to the Gardai at Shannon. In addition these matters have been debated on Irish and international media, and expert reports on all aspects of the breaches of international laws, and killing of thousands of innocent people, in contravention of

almost every rule and convention of international law and the Geneva rules of war, have been widely published. You cannot but be aware of the UN Charter, and that the US war against Iraq, is in contravention of that charter. You cannot but be aware that in 2005 in excess of 300,000 US troops have passed through Shannon airport, the vast majority of whom have been directly involved in the unlawful Iraq war and unlawful occupation of Iraq. Reports of all major atrocities committed by US troops in Iraq have been widely published in Irish and international media. The torture of Iraqi prisoners at Abu Graib prison in Baghdad, and destruction of the town of Fallujah and the killing of thousands of people, including many innocent non-combatants are just two very clear examples, and clear evidence of crimes committed by US troops, most of whom have passed through Shannon airport. Moreover, it is known and available in published international media reports, which particular US military units perpetrated these crimes, and the names of the commanding officers, or senior generals are also widely known. It is also known to me, and presumably also to you, Superintendent Kerin, that these US Generals pass through Shannon airport on a regular basis, sometimes in special US military and air force executive jets. Because the bulk of the US soldiers serving in Iraq are rotated back to the US through Shannon airport, at specific times of the year [normally about six months after they have been deployed to Iraq through Shannon airport] it should be relatively easy for the Gardai and the Irish authorities to established when the military units, and their commanders, guilty of perpetrating these crimes, are at Shannon on their way home to the US. Since the Gardai are already aware that crimes have been committed, and aware of the specific group that may have committed those crimes, and should be aware when these criminals are passing within the Irish jurisdiction, then there is a clear obligation on you and the Gardai to apprehend these criminals. Whether you refer to such 'denial of personal freedom,' as being, apprehending, internment, arrest, or detention, is a legal nicety, which you should be capable of resolving.

I also bring to your attention the matters published in the Sunday Times, 11 Dec. 05. page 11, and ask you to investigate whether a person named Binyam Mohammed was transported by US agents through Shannon airport at any time, but particularly during the month of September 2004. I enclose also the News Review section of this newspaper for the same date, and refer you to pages 4.1 and 4.2 and request that you investigate whether any of the matters reported in these sections are relevant to the possible abuses of Shannon airport for the rendition of prisoners for torture.

I wish to bring to you attention the Ireland on Sunday newspaper of 11 Dec. 05, and to page 2, page 3, and page 41, and request you to investigate whether any of the matters reported in these pages are relevant to the misuse of Shannon airport for the rendition of prisoners for torture.

I wish to inform you, that in view of the likelihood that at least 85 CIA flights landed at Shannon airport, it is inconceivable that none of these flights were carrying prisoners, especially those flights bringing prisoners to and from Guantanamo prison in Cuba, which flights would have needed to refuel at a Western European location. These publications are just a tiny sample of the 'evidence' and information that is publicly available to you and your Garda officers should you decide to carry out your legal obligations to investigate serious crimes being committed within the region for which you are personally responsible.

With regard to the specific issue of evidence, I am aware, and I am now informing you that I am so aware, that I have seen a specific A4 size log-book at Shannon Garda station, in which I believe that the movement of US military aircraft, and aircraft

chartered to the US military, as well as aircraft used by the CIA and US diplomatic aircraft, are carefully logged. I have seen a member of the Garda at Shannon in the process of logging such aircraft in this logbook, and this was also witnessed by at least one other person, who is known to me. I have strong reasons to believe therefore that there is direct evidence available to you on the CIA aircraft that are being used for unlawful purposes of rendering prisoners for Torture, and that it is false for you to say otherwise.

I wish to draw your attention to the “UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.

[I enclose a copy of the UN Convention Against Torture for your information.]

I also wish to draw to your attention the [Irish] Criminal Justice (United Nations Convention Against Torture) Act, 2000.

[I enclose a copy of the Criminal Justice (United Nations Convention Against Torture) Act, for your information.]

I wish to draw your attention especially to Section 3. Related offences: which states: “A person, whatever his or her nationality, whether within or outside the State, who – (b) does an act with the intent to obstruct or impede the arrest or prosecution of another person, including a person who is a public official, in relation to the offence of torture, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”

It is my opinion, that you Superintendent Kerin, and other members of the Gardai at Shannon who perform duties at Shannon airport, have been guilty of offences as outlined in the above section of the above act. It is my considered opinion that Gardai at Shannon will continue to be guilty of offences for as long as they fail to search US aircraft at Shannon, which may be part of the ‘Rendition’ of prisoners process. With regard to the arrest of US soldiers, Gardai at Shannon will continue to be guilty of offences until such time as the Irish Government withdraws its public announcements that Ireland is still a neutral state, and separately, for as long as US troops passing through Shannon airport are engaged in wars that are not approved under the UN Charter.

I further point out that some Irish Government Ministers have asserted that the current occupation of Iraq has UN approval, by the citing UN Security Council Resolution 1483, [Resolution 1483 (2003) adopted by the Security Council at its 4761st meeting, on 22 May 2003] and that this phase of the Iraq War is therefore lawful. This is not the case, because international law prescribes that any such occupation that has been based on an unlawful military attack cannot be legitimised in hindsight. This was first specified in the Stimson Doctrine of 1932 “in the wake of Japan’s occupation of Manchuria. It held that any situation brought about by aggression would not be accorded legal recognition by the United States. ... Importantly, this doctrine was endorsed by the UN General Assembly as a principle in 1970.”¹ This means that since the US-led invasion of Iraq and the overthrow of the Iraq regime did not have UN approval in the first instance, it was an unjustified act of aggression, and that the subsequent occupation of Iraq was a contravention of a Principle of the UN General Assembly. In addition, UN resolution 1483 also “Calls upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;” Therefore, not only does

¹ Malcolm D Evans, ed., *International Law* (Oxford, OUP, 2003), p. 51.

this UN resolution not give legitimate status to the ongoing war and occupation of Iraq, it highlights ongoing abuses of international laws by countries such as Ireland and the US.

I further assert that it is my opinion that soldiers of the Irish Defence Forces may be guilty of offences under Section 3 above, and under Section 6 of the Criminal Justice (United Nations Convention Against Torture) Act, which relates to the amendment of Section 169 of the Defence Act, 1954. These soldiers, who provide security for US aircraft at Shannon airport, and for the US personnel on them, who may be engaged in, or may have been engaged in, criminal activity, including unlawful killings and torture, could be guilty of offences because the provision of such security could be assisting with a crime or preventing the arrest of a criminal, unless those soldiers first ascertain the purposes of the aircraft being at Shannon, and who and what is being carried on such aircraft. This would require that all such aircraft should be searched by the Gardai, backed up by Defence Force personnel if necessary.

In view of the foregoing, it is clear therefore that you are incorrect to state that you have no evidence to suggest that events at Shannon airport involve breaches of “any law in this Country or International Law.” There is plenitude of such evidence available to you, including evidence held at Shannon Garda Station, in the form of the records of that Garda station and detailed complaints submitted by peace activists, in addition to the evidence that is being published on a daily basis on Irish and international media. While some of this evidence may not be sufficient to support a conviction in a court, it certainly warrants a level of investigation that you and your subordinates have failed to initiate. Instead, Gardai at Shannon appear to have concentrated their efforts in preventing such evidence becoming public knowledge, by confiscating photographic equipment and arresting peace activists who have endeavoured to provide such evidence, and to expose the wrongdoing at Shannon airport.

Since your letter to me was drafted on 29th November 2005, there have been considerable additional revelations in Ireland and internationally concerning the issue of the use of Shannon airport for refuelling US aircraft involved in the ‘rendition’ of prisoners for possible torture. I wish to know if you have taken any action at all, on the foot of either past evidence presented to Gardai at Shannon, or the more recent evidence that is emerging internationally.

I request an urgent response to the matters raised in this submission, and unless I receive a satisfactory response, I will be obliged to take further actions on these matters, even though it is greatly inconvenient, and expensive for me, as an ordinary citizen, to devote my time and resources on matters that are your proper responsibility, and for which you are a paid employee of the state. I should not have to point out to you that it is your job to collect and collate evidence on specific reported or suspected crimes.

I urge you to do your duty, sir.

Signed:

Edward J. Horgan Commandant (Retd.)
International Secretary Irish Peace and Neutrality Alliance.