

SHANNON AIRPORT, WAR AND RENDITIONS

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John Lannon - Shannonwatch



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WARPLANES
OUT OF
SHANNON

SHANNON
GATEWAY
TO U.S.
TORTURE
CAM

SHANNON
AIRPORT
STILL
OPEN
FOR
TORTURE
FLIGHTS

WELCOME TO SHANNON AIRPORT

Shannon Airport

WE GO OUT OF OUR WAY
SO YOU DON'T HAVE TO

SLOW
SPEED RAMP
AHEAD

CONSTITUTION OF IRELAND Enacted by the People, 1st July, 1937

Article 28

- 3 1° War shall not be declared and the State shall not participate in any war save with the assent of Dáil Éireann.

Article 29

1. Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.
2. Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination.
3. Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States.

On 20th March 2003 Dáil Éireann approved a government motion authorising the use of Shannon Airport for the US-led invasion and occupation of Iraq. Since then Ireland has been actively involved in the US wars of occupation in Iraq and Afghanistan, despite the country's proud history of neutrality and constructive participation in peacekeeping missions around the world. This shift in policy happened without any consultation with the Irish people, and with little regard for the consequences in the occupied regions.

In the case of Iraq the human cost of the invasion and occupation includes over one million deaths, up to five million people displaced from their homes, widespread rape and other crimes against women and girls, and ongoing lack of basic services such as clean water and medical care.

The situation in Afghanistan is equally bad, with the US / NATO occupation contributing to weak security, ongoing human rights abuse and widespread corruption. The occupation forces in Afghanistan have killed hundreds of civilians, opposition groups are causing ongoing carnage and human rights abuse, opium production is continuing to rise, and more than half the country's families live in extreme poverty. There is a massive human rights deficit in Afghanistan, as well as widespread impunity for war crimes.

The United Nations Security Council (UNSC) did not authorise the US-led military attacks on Afghanistan in 2001 or Iraq in 2003. These wars were therefore in contravention of the UN Charter.

Nonetheless, despite repeated statements from Irish Government politicians that Ireland remains a neutral state, over two million armed US troops have been allowed to transit through Shannon Airport on their way to and from these warzones. **Around 5,000 US troops plus their weapons passed through Shannon Airport every week in 2011, as did contracted cargo planes and other military aircraft.**



Omni Air International is the main carrier of US troops through Shannon Airport

In addition to Shannon's participation in these illegal and unnecessary wars, successive Irish governments have failed to live up to their human rights obligations by failing to monitor or inspect suspect rendition aircraft passing through Shannon. The Irish Human Rights Commission, Amnesty International and others have called for a range of measures to address this, including the provision of detailed information about a flight before it lands on Irish soil. There have also been calls for legislation to ensure that any aircraft alleged to be involved in rendition cannot leave the State before an inspection is carried out.

In 2008 the Fianna Fail/Green Party Government set up a Cabinet Committee on Aspects of International Human Rights to review and strengthen legislation governing the search and inspection of such planes. However this committee did nothing to end Ireland's cover-up of serious human rights abuse.

The transportation of munitions through Shannon by aircraft registered in other parts of the world is also of grave concern. There is no transparency with regard to the content or purpose of these cargos, and they may well present a serious risk to the health and safety of everyone in and around the airport. An even greater risk to humanity is the possibility that they are destined for end-users likely to commit war crimes or human rights violations.

At the end of 2011 there was cause for hope when the new Fine Gael/Labour Party government made a commitment in their Programme for Government to "enforce the prohibition on the use of Irish airspace, airports and related facilities for purposes not in line with the dictates of international law". To date they have done nothing to implement this, and as a result Irish airspace and Shannon Airport are still being used in contravention of international law.

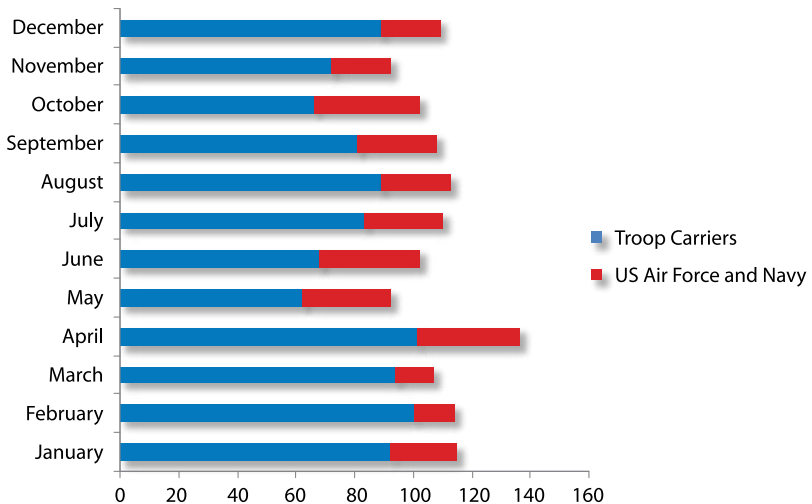
U.S. Troops Passing Through Shannon 2002 – 2011

Year	Total
2002	73,000
2003	122,000
2004	159,000
2005	341,000
2006	281,000
2007	263,000
2008	256,000
2009	265,000
2010	229,000
2011	250,000

**Over 2.2 million
U.S. troops in 10 years.**

**Over 650 armed
foreign troops a
day passed through
Shannon in 2011.**

Monthly Count of U.S. Military Aircraft at Shannon (2011)



Figures based on landings recorded by Shannonwatch. Actual figures may be higher.

While the number of troops passing through Shannon has declined in 2012, the Irish government has not taken any steps to end the US military use of Irish airports or airspace. The use of Shannon Airport to support the US occupation of a foreign state in any way is indefensible, as is its role in the CIA's kidnapping and torture operations. Even more worrying is the likelihood that Shannon may now be playing

a part in US drone (unmanned aerial vehicle) attacks in Pakistan and other parts of the world.

The use of drone strikes by the US flouts international law and may encourage other nations to follow suit, according to Christof Heyns, the UN special investigator on extrajudicial killings. In June 2012 he told a UN conference in Geneva that some of the attacks may constitute war crimes and that the US needs to be held legally accountable for the use of armed drones.

Shannon Airport and Ireland have contributed directly to the daily suffering and human rights abuse of men, women and children – from the men tortured in Guantanamo Bay to the children in Afghanistan who are injured or orphaned by airstrikes and roadside bombs. It is for people like these that opponents of Shannon's militarization continue to campaign and to seek accountability. They do so on the basis of a wide range of legal instruments, both national and international, that support their moral arguments.

These instruments relate to four key areas:

1. the application of **aviation law** in relation to the transportation of munitions of war and other explosive substances;
2. suspected breaches of international and European **human rights law**, as well as domestic Irish law, in relation to known and suspected involvement in rendition;
3. possible breaches of **international humanitarian law**;
4. policy and practice relating to the concept of **Irish neutrality**.

AVIATION LAW

International civil aviation is governed by the 1944 Convention on International Civil Aviation which is also known as the Chicago Convention⁽²⁾. This established a framework of rules and best practice for the operation of civil aviation internationally. It also established the International Civil Aviation Organization (ICAO)⁽³⁾ which provides general aviation rules and mediates international concerns regarding aviation law. The ICAO is an agency of the United Nations.

The provisions of the Chicago Convention do not apply to military, customs, police or any other State aircraft. An aircraft is designated as a State aircraft if it is on State business.

The US military charts civilian aircraft from companies like Omni Air International to transport troops through Shannon on their way to and from theatres of war. These are not classified as State aircraft, which means the provisions of the Chicago Convention apply to them.

The CIA have also used civilian aircraft to hide their covert rendition operations at Shannon and other airports around the world.

In addition to these civilian aircraft, US Air Force and Navy (military) aircraft and other US State aircraft also pass through Shannon. Shannonwatch flight logs indicate that on average 25 of these US State aircraft pass through Shannon Airport every month.

Irish Legislation

Ireland is a signatory to the Chicago Convention. It is given effect in domestic law through the Air Navigation and Transport Act, 1946⁽⁴⁾. This makes provision for the making of Ministerial Orders to give effect to the terms of the Convention.

Definitions⁽¹⁾

Military aircraft means any aircraft

- (i) operated by the armed forces of a State;
- (ii) bearing the military markings of that State;
- (iii) commanded by a member of the armed forces; and
- (iv) controlled, manned or preprogrammed by a crew subject to regular armed forces discipline.

State aircraft means any aircraft owned or used by a State serving exclusively non-commercial government functions.

Civilian Aircraft means any aircraft other than military or other State aircraft.

There is also an Air Navigation and Transport Act, 1988⁽⁵⁾ which covers provisions to promote security and safety of civil aviation, as well as provisions in relation to aerodromes and aircraft. Section 33 of this Act provides that an “authorised officer” - meaning a member of An Garda Síochána (police) or other person designated by the Minister for Transport - may, in the interests of the security or safety of those in the aerodrome “stop, detain for such time as is reasonably necessary for the exercise of any of his powers under this section, and search any person or vehicle on an aerodrome”.

The 1988 Act also allows an authorised officer to

... require any person on an aerodrome to –

- (i) give his name and address and to produce other evidence of his identity;
- (ii) state the purpose of his being on the aerodrome;
- (iii) account for any baggage or other property which may be in his possession;

The Minister and the authorities are not known to have used this provision in relation to planes suspected of involvement in renditions or arms transportation. However they regularly use it to impede peaceful protest and the monitoring of US military planes, resulting in local activists being repeatedly ordered to leave the aerodrome, forcibly removed, and/or arrested.

Aviation Law and Suspect Rendition Flights

According to Article 1 of the Chicago Convention, every State has complete and exclusive sovereignty over the airspace above its territory. Article 5 allows civil aircraft such as those not operating regular, scheduled services to fly over other States or to



Suspect rendition aircraft N478GS which has stopped at Shannon many times.

Photograph: Chuck Fager, North Carolina

land in them without prior permission. Article 16 states however that the appropriate authorities of each state shall have the right, without unreasonable delay, to search aircraft of other states on landing or departure.

This is relevant in the case of the use of Shannon Airport by known and suspected rendition plane⁽⁶⁾.

While there is no requirement under the Convention to provide information on passengers, crew or cargo for a transit flight, this does not preclude states from unilaterally making transit or overflight dependent on the provision and verification of such information. In other words there is nothing in the Convention to prevent the Irish authorities from demanding this information and from refusing clearance if it is not provided⁽⁶⁾.

Furthermore the right to search aircraft on landing or departure under Article 16 of the Convention is not made subject to any requirement of “reasonable grounds” or other suspicion of wrong-doing. According to Amnesty International this seems to leave open the possibility of a system of inspection of suspected rendition planes.

Aviation Law and Munitions Transportation by US Troop Carriers and Other Non-State Aircraft

The Chicago Convention is relevant in relation to the movement of war munitions through Ireland by the US (or any other foreign power). Article 35 states that “no munitions of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State”.

The provisions of the Chicago Convention in relation to the carriage of munitions have been put into law in Ireland through the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order, 1973⁽⁷⁾. This was amended in 1989⁽⁸⁾.

Under this Order any civilian aircraft seeking to land or overfly the State requires the permission of the Minister for Transport is empowered to exempt a specified aircraft from this prohibition by granting a permit to allow for carriage of munitions of war. Under Section 5 of the Order (as amended in 1989), the Minister for Transport is empowered to exempt a specified aircraft from this prohibition to allow for carriage of munitions of war.

Permits were granted to bring munitions of war through Shannon Airport on almost 1200 planes in 2011. Most of the requests were made by US civil airlines.

Permits Issued to Carry Munitions of War through Ireland or Irish Airspace*

Year	Number of Applications Received **	Number of Permits Issued
2007	1517	1495
2008	1387	1359
2009	1306	1276
2010	1352	1307
2011	1393	1382

* Issued by the Minister for Transport

** The vast majority of permit requests were from American civil airlines, chartered by the US military

Munitions Transportation by Military and Other State Aircraft

State aircraft can only fly over or land in the territory of another State with permission from the authorities in the host State. However once permission for overflight or landing is given, State aircraft cannot be searched unless that was part of the original agreement. This applies to US military aircraft landing at Shannon. The Irish authorities have not insisted on the right to search such aircraft although they could have done so as a condition of allowing them to land⁽⁹⁾.



Human Rights Law – International, European and National

The body of international human rights law that promotes and protects human rights is made up of international treaties and customary international law.

A number of international treaties apply to Shannon in relation to rendition flights. The main one is the United Nations Convention Against Torture (UNCAT)⁽¹⁰⁾ which came into force on 26 June 1987. Ireland is a party to UNCAT, and has ratified it through the Criminal Justice (United Nations Convention against Torture) Act 2000⁽¹¹⁾.

According to Article 2 of the UNCAT,

“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

Furthermore Article 12 states:

“Each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

Another treaty to which Ireland is a party is the International Covenant on Civil and Political Rights (ICCPR)⁽¹²⁾. Article 7 of the ICCPR states

“No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...”

This is a non-derogable provision which cannot be suspended or set aside even in times of war or crisis.

Europe

The European Convention on Human Rights (ECHR)⁽¹³⁾ is an international treaty to protect human rights and fundamental freedoms in Europe. It established the European Court of Human Rights⁽¹⁴⁾ to which any person who feels his or her rights have been violated under the Convention by a State party can take a case. Judgments finding violations are binding on the states concerned and they are obliged to execute them.

Ireland is bound by the ECHR which has been carried into domestic law by the European Convention on Human Rights Act, 2003⁽¹⁵⁾.

Article 3 of the ECHR states:

“No-one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

This too is non-derogable.

Irish Legislation

Ireland has an obligation to arrest and charge anyone reasonably suspected of having committed torture or cruel, inhuman or degrading treatment, and legislation has been put in place to provide for that. The Criminal Justice (United Nations Convention against Torture) Act 2000 came into effect in June 2000. Its main purpose was to create the statutory offence of torture with extra-territorial jurisdiction⁽¹⁶⁾. Section 2 (1) of the Act states that

“A public official, whatever his or her nationality, who carries out an act of torture on another person, whether within or outside the State, at the instigation of or with the consent or acquiescence of, a public official, shall be guilty of the offence of torture”.

In terms of preventing torture, there have been a number of cases before the European Court of Human Rights in which it has been held that there is an obligation on public authorities to intervene to prevent serious harm to someone. This applies in the case of Ireland as the European Convention on Human Rights Act, 2003 creates an obligation on “every organ of the State” to perform its functions compatibly with the European Convention on Human Rights.

The Irish government has relied on diplomatic assurances from the US Administration that prisoners had not been and would not be transported illegally through Irish territory. According to the Irish Human Rights Commission, the reliance being placed

by the Government on these diplomatic assurances was not sufficient to comply with the State's obligation to prevent torture or prohibit ill-treatment taking place in its territory or airspace, or 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⁽¹⁷⁾.

In March 2011 Shannonwatch called on an Garda Síochána to review a large body of information which they presented in relation to suspect CIA and US military flights through Shannon Airport(18). They also called on them to provide a comprehensive report on the actions that will be taken to ensure Ireland complies with its international legal obligations.

Seventeen months later, on 14th August 2012, the Gardai provided a brief half-page response that simply said *“No evidence has been uncovered by the Gardai which indicate [sic] any alleged breach of Irish and International laws resulting from the transit of armed U.S. troops and CIA associated aircraft in connection with wars and military aggression in Iraq, Afghanistan and elsewhere, and in connection with unlawful detention and torture of prisoners at Guantanamo prison and elsewhere”*

This response seems to ignore a large body of evidence that already exists in the public domain (see www.shannonwatch.org for more information). It also calls into question how the laws outlined in this publication are being applied.



John Lannon, Edward Horgan and Niall Farrell presenting information at Shannon Garda station on 18 March 2011.

Photograph: Brian Arthur/Press 22

International Humanitarian Law

The protection of civilians from the effects of armed conflict is a long-standing and important branch of international law, known as international humanitarian law (IHL). IHL is best known through the Geneva Conventions. These comprise four treaties and three additional protocols, and they set the standards in international law for humanitarian treatment of the victims of war⁽¹⁹⁾.

In addition, the Hague Convention (IV) 1907⁽²⁰⁾ represents commonly accepted rules of engagement that outline the means and methods of warfare. These conventions are binding on all states as international customary law.

The 1907 Hague Regulations and the Fourth Geneva Convention, plus certain provisions of Additional Protocol I to the Geneva Conventions, spell out the duties of an occupying power⁽²¹⁾.

The Fourth Geneva Convention sets rules intended to protect civilians in times of war and to minimize the harm inflicted by armed conflict, including harm to internees and the population in occupied territories. According to many scholars, the Fourth Geneva Convention is considered to be international customary law, which all states should abide by regardless of their status as a State party to the convention.

The killing and harming of innocent civilians by the US forces in Iraq and Afghanistan are in violation of the Fourth and Third Geneva Conventions. Furthermore Article 49 of the Fourth Geneva Convention prohibits forcible transfer of protected civilians from occupied territory⁽²²⁾, and as a result extraordinary renditions from Afghanistan and Iraq are grave breaches of the Geneva Conventions. Shannon Airport has played a part in these violations for many years.

International humanitarian law also contains basic principles and rules governing the weapons used in war. It prohibits or restricts the employment of certain weapons, means and methods of warfare. Combatants are prohibited from using weapons that are inherently indiscriminate or are of a nature to inflict suffering greater than that required to take combatants “out of action”. The use of weapons that cause widespread, long term and severe damage to the natural environment is also prohibited⁽²³⁾.



Specific treaties prohibit or restrict the use of certain weapons. These include biological, chemical, blinding laser or incendiary weapons or bullets which explode or flatten easily in the human body. There are reasonable grounds for believing that some of these may pass through Shannon Airport.

Biological warfare and chemical warfare both involve the use of toxins produced by living organisms. Their production, stockpiling and use are outlawed by the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (the Biological Weapons Convention)⁽²⁴⁾ which entered into force in 1975, and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention)⁽²⁵⁾ which entered into force in 1997.

The use of landmines is outlawed by the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty)⁽²⁶⁾ which entered into force on 1 March 1999. Ireland ratified it in December 1997, and became a State Party on 1 March 1999.

National implementation of the Mine Ban Treaty in Ireland was achieved by the Explosives (Landmine) Order of June 1996⁽²⁷⁾, which is based on the Explosives Act of 1875. This prohibits the manufacture, importing, conveyance or sale of landmines.

The Convention on Cluster Munitions (CCM)⁽²⁸⁾ is an international treaty that prohibits all use, stockpiling, production and transfer of cluster munitions. These are a type of explosive weapon that scatter small explosive bomblets over an area. The convention was adopted in May 2008 in Dublin. Ireland has signed the Convention.



The use and transiting of depleted uranium (DU) is another area of grave concern. This is a chemically toxic and radioactive compound which is used in armour piercing munitions because of its very high density. DU is also used as armour in certain battle tanks and in small amounts in some types of landmines.

The birth of large numbers of children with deformities and deaths from rare cancers in Fallujah, Iraq has been linked to DU munitions and white phosphorous shells that were used by US forces during the brutal siege of the city in November 2004. It has been alleged that the US is still using DU weapons, resulting in deformities, cancers and other unusual diseases. Without proper oversight or inspection of US military aircraft passing through Shannon, nobody can say with certainty that DU weapons are not being brought through.

The International Coalition to Ban Uranium Weapons (ICBUW)⁽²⁹⁾ believes that the use of weapons containing uranium is already illegal under international humanitarian, human rights and environmental law. It also believes that an explicit treaty is the best solution for confirming their illegality, as in the case of chemical and biological weapons, land mines and cluster bombs.

War Crimes

War crimes are serious violations by a country, its civilians or its military personnel of international humanitarian law. The concept is based on the idea that an individual can be held responsible for the actions of a country or that nation's soldiers.

War crimes are divided into two broad categories. The first are crimes against peace. These include the planning, preparation, or initiation of a war of aggression. The second are crimes against humanity. These are violations of the rules covering the means and manner by which war is to be conducted once begun. They include the

killing of civilians, indiscriminate bombing, the use of certain types of weapons, killing of defenseless soldiers, ill treatment of prisoners of war and attacks on non-military targets.

The main body of laws that define war crimes are the Geneva Conventions. Article 147 of the Fourth Geneva Convention defines them as:

“Willful killing, torture or inhuman treatment, including... willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or willfully depriving a protected person of the rights of fair and regular trial, ...taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

On becoming party to the Geneva Conventions, states undertake to enact any legislation necessary to punish persons guilty of grave breaches of the Conventions. States are also bound to prosecute in their own courts any person suspected of having committed a grave breach of the Conventions, or to hand that person over for judgment to another state. In other words, perpetrators of grave breaches, i.e. war criminals, must be prosecuted at all times and in all places, and states are responsible for ensuring that this is done.

Under the principle of universal jurisdiction, Ireland may investigate and prosecute foreign nationals when their country of residence or origin won't, can't, or hasn't for any reason. As many of the people suspected of war crimes in Iraq, Afghanistan and the Occupied Palestinian Territories use Shannon Airport, they could and should be arrested by the Irish authorities.



Neutrality

As was noted in a submission to the Oireachtas Joint Committee on Foreign Affairs by a group of peace activists in December 2005⁽³⁰⁾, neutrality is only important insofar as it helps to promote peace and security for the Irish people, and international peace. It is therefore not an end in itself. However neutrality is an important matter of international law, which gives privileges to neutral states.

The US Invasions and the UN Security Council

Iraq

The 2003 invasion of Iraq was illegal. An article in Dissident Voice by Edward Jayne and Ronald Kramer⁽³⁵⁾ sums up the situation quite well:

The invasion of a single nation by another nation or group of nations is only legal under the UN Charter if such an invasion has been sanctioned by the vote of the UN Security Council. This did not happen in the case of the recent Iraq invasion, since the US and Great Britain, led by the U.S. Secretary of State Powell, withdrew on March 17, 2003 their resolution to stage such an invasion from consideration by the UN Security Council when they realized that the majority of its members would vote against it. Instead, Powell and others insisted that this approval was unnecessary, since UN Resolutions 687 and 1441 (the latter of 8 November 2002) had already granted this right. However, this is simply not true. As demonstrated by a close examination of the UN Charter and these particular resolutions, there is no possible interpretation that preempts the need for a final decision by the Security Council. Because the U.S. and U.K. withdrew their resolution, there could be no decision permitting an invasion. As a result, the invasion of Iraq was illegal, and those who brought it about can be held responsible for war crimes by an impartial international tribunal, for example the International Criminal Court (ICC).

This was confirmed by the then Secretary General of the United Nations, Kofi Annan, who said on September 16, 2004: "I have indicated it was not in conformity with the UN Charter. From our point of view, from the charter point of view, it was illegal."⁽³⁶⁾

Afghanistan

The invasion of Afghanistan in 2001 was also illegal despite the many UN resolutions that were adopted after the September 11, 2001 attacks. Resolution 1368 said the Security Council "unequivocally condemns in the strongest terms the horrifying terrorist attacks ... and regards such acts, like any act of international terrorism, as a threat to international peace and security." The preamble recognized the inherent right of individual or collective self-defence in accordance with the Charter, but the US invasion of Afghanistan was not a legitimate act of self defence. Nonetheless the US used the language in the preamble of resolution 1368 to claim legitimacy for its actions.

In a 2006 article *Échec à la Guerre*⁽³⁷⁾ explained that

The US aggression against Afghanistan in October 2001 more closely resembles the new doctrine of “preventive war” which the White House subsequently made official in its National Security Strategy of September 2002. With this doctrine, the US claims the right to attack unilaterally, “preventively,” any country perceived as a serious threat to its vital interests or those of its allies. This doctrine was used as a cover for the invasion of Iraq and will likely serve the same purpose in any future aggression against Iran, Syria, or other countries. Under international law, such acts and “strategy” are totally illegal and illegitimate. All they are is the doctrine of “might makes right” dressed up in fancy language.

On 28 September 2001, the Security Council adopted another related resolution. This was Resolution 1373, which set forth certain anti-terrorism measures. But it didn't mention Afghanistan.

It was a full five weeks after the bombardment of Afghanistan began before the UN Security Council took a position on the war conducted by the US and its “coalition.” Yet Resolution 1378 (14 November 2001) does not even mention it. Instead, it condemns the Taliban and supports “the efforts of the Afghan people to replace the Taliban regime”. After that, Resolution 1383 (6 December 2001) simply ratified the Bonn Agreement⁽³⁸⁾ signed the day before by representatives of several different anti-Taliban factions and political groups. This established a roadmap and timetable for establishing peace and security, reconstructing the country, reestablishing some key institutions, and protecting human rights. It also contained provisions addressing military demobilization and integration, international peacekeeping, and human rights monitoring.

On 20 December 2001 the Security Council authorized the establishment for 6 months of an International Security Assistance Force (ISAF) with Resolution 1386.

It is clear therefore that no Security Council mandate was ever given for the invasion of Afghanistan. Afghanistan did not attack the US - in fact 15 of the 19 September 11 hijackers came from Saudi Arabia but that country was not invaded by the US. And there was no imminent threat of armed attack on the US from Afghanistan after September 11.

The Hague Conventions

The Hague Conventions (V)⁽³¹⁾ and (XIII)⁽³²⁾ define the rights and duties of a neutral state. This is a state that declares itself to be neutral towards the belligerents in a particular war. The conventions are part of international customary law.

According to Article 2 of the Hague Convention V, belligerents are forbidden to move troops or convoys of munitions of war or supplies across the territory of a neutral power.

Irish Neutrality

Neutrality is not enshrined in the Irish Constitution. However at the time of the Constitution's adoption there was overwhelming political support for neutrality among the Irish people⁽³³⁾ and since 1939 all successive Irish Governments have pursued a self-declared policy of neutrality which incurs both the benefits and duties of neutrality on the Irish State. Public opinion supports a concept of 'active' neutrality which embodies a commitment to the legal definition of neutrality as described by the Hague Convention V and subsequent customary international law on neutrality. It has the following characteristics and foreign policy goals: peace promotion; non-aggression; the primacy of the UN and the confinement of state military activity to UN peacekeeping; not being involved in wars; impartiality and maintaining Ireland's independence; identity; and independent foreign policy decision-making (especially in the context of "big power" pressure). This is different to the concept of 'military' neutrality which recent successive Irish governments have sought to embrace⁽³⁴⁾.

Ireland has a history of allowing military aircraft, mainly from the US, to refuel at Shannon. Up until 2001 confirmation was required that these were unarmed; carrying no arms, ammunition or explosives; and that the flights in question did not form part of military exercises or operations. In taking this position Ireland was complying with and even exceeding international law requirements on neutrality. However after the September 11, 2001 attacks on the US, these conditions were waived by the Irish Government in respect of aircraft that it claimed were operating in pursuit of the implementation of Security Council Resolution 1368.

Resolution 1368 was the UN Security Council's response to the 9/11 attacks. It condemned the acts of terrorism carried out against the US and sought international cooperation in bringing the perpetrators to justice. However it did not authorise the US and other states to wage war on Afghanistan (or Iraq).

For the last decade Irish governments have claimed that allowing military aircraft to use Irish soil does not constitute participation in any particular conflict and is compatible with a neutral stance. This is not a valid claim.



Horgan v An Taoiseach, 2003⁽³⁹⁾

Even though Ireland hasn't ratified the Hague Convention, a 2003 High Court judgment in *Horgan v An Taoiseach et al.* stated that Ireland was in breach of the Hague Convention V by allowing US troops to use Shannon airport on their way to and from the war in Iraq.

The State argued that because Ireland had not signed nor ratified the Hague Convention V on neutrality it was not bound by its provisions. However expert witness (for Horgan) Dr Ian Scobie noted that despite the fact that Ireland is not bound by this treaty as such, is bound to apply its provisions because, as customary law, these constitute generally recognised principles of international law binding on all States.

Accordingly, the ruling from Judge Kearns stated that:

"The court is prepared to hold ... 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."

This judgment effectively declared that Ireland, as a self-declared neutral state, was (and consequently still is) in breach of its international law obligations. Arguably it is therefore no longer entitled to the protection and benefits that international law provides for neutral states.

Since this judgment, Irish Government ministers have argued that Irish neutrality is either military neutrality or non-belligerence, and that Ireland is not politically neutral. Based on the work of experts in the field, these arguments do not stand up. International law experts Oppenheim and Lauterpacht say

"...[A]ll States which do not expressly declare the contrary by word or action are supposed to be neutral, and the rights and duties arising from neutrality come into existence, and remain in existence, through the mere fact of a State taking up an attitude of impartiality, and not being drawn in to the war by the belligerents." (p. 653-654)⁽⁴⁰⁾

while Michael Bothe says: "Neutrality ... is defined in international law the status of a state which is not participating in an armed conflict between other states" and that: "It is incompatible with this conflict restraining function of neutrality that states should try to evade their duties flowing from their neutral status by styling themselves non-belligerents."⁽⁴¹⁾

Notwithstanding the ruling in relation to belligerent troop movements across neutral territory, the High Court did not hold the Government to account for their clear breach of international customary law. Nonetheless the State should still be bound in this regard by Article 29, sub-section 3, of the Irish Constitution which states: 'Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States'. However Judge Kearns followed the 1960 decision in *Re O'Laghleis* [1960] I.R. 93 in ruling that this provision only governs relations between states, and confers no rights upon individuals. As Symmons points out, the phrase "in its relations with other States" is 'an example, par excellence, of a phrase in the Constitution being largely seized upon by the judiciary in a literal manner never contemplated by the framers of the 1937 Constitution'⁽⁴²⁾.



The Defence Act

Finally it is important to note that under Section 317 of the Defence Act, 1954⁽⁴³⁾ military personnel are forbidden to enter or land in the State while wearing a uniform, except with written Ministerial permission. However the US Embassy sought and was granted ministerial permission to wear duty uniform in the "immediate vicinity of an arrival/departure airfield." Any requests for exceptions to this policy must be submitted to the Department of Foreign Affairs⁽⁴⁴⁾.

Responsible Bodies

The Department of Transport⁽⁴⁵⁾ is responsible for ensuring that aviation practices and procedures comply with best international standards. It is also responsible for the provision of adequate airport infrastructure, competitive airport services and the development of the aviation sector in Ireland.

The Department of Transport's Airports Division⁽⁴⁶⁾ is responsible for aviation policy relating to airports in Ireland. The principal objective of this policy is to ensure that Irish airports are efficient and have appropriate infrastructure to meet the current and future needs of users.

The Dublin Airport Authority plc (DAA)⁽⁴⁷⁾ which is primarily responsible for the management and development of Dublin Airport has also had responsibility for the State Airports, including Shannon Airport. This is provided for in the State Airports Act 2004.

The DAA is a public limited company which comes under the aegis of the Department of Transport.

In May 2012 the Government announced plans to separate Shannon Airport from the DAA and bring it and Shannon Development⁽⁴⁸⁾ together into a single entity which would have a commercial mandate and be in public ownership. Shannon Development is a government owned regional development company dedicated to promoting and developing the Shannon Region.

A report by the international consultants Booz said Shannon faced a significant threat to its future viability under its current ownership arrangements with the DAA, and that separation from it offered the best opportunities for growth. Despite the much touted economic benefit of the US military business at Shannon, the airport was reported as having annual losses of €8m, and a long-standing debt of €100m⁽⁴⁹⁾.

Safety Regulation and Air Traffic Control

The Irish Aviation Authority (IAA)⁽⁵⁰⁾ is responsible for the regulation of safety aspects of air travel. It carries out a range of operational and regulatory functions and services relating to the safety and technical aspects of civil aviation. The Authority ensures that Irish civil aviation operates to international and European safety standards and systems in accordance with international agreements. It is also responsible for providing Air Traffic Control (ATC) services to Ireland's three main airports, including Shannon. The IAA is a state owned company

The Commission for Aviation Regulation⁽⁵¹⁾ regulates the air traffic control charges at airports with over 1 million passengers per year. This includes Shannon Airport.

Military Flights

Responsibility for the granting of overflight permission for foreign military aircraft rests with the Minister for Foreign Affairs. The Minister also grants permission to US military aircraft to land at Shannon in accordance with Air Navigation (Foreign Military Aircraft) Order, 1952 and on the basis of advance clearance requests.

The Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order, 1973, amended in 1989, which governs transiting military personnel on board civilian aircraft falls under the responsibility of the Minister for Transport. Any civilian aircraft seeking to overfly or land in the State therefore requires the permission of the Minister for Transport to carry military weapons or munitions.

Acts of Torture and War Crimes

The Department of Justice, Equality and Law Reform, and in particular An Garda Síochána have a responsibility to act in accordance with the Criminal Justice (United Nations Convention against Torture) Act 2000 to investigate and prevent the commission of acts of torture in Ireland. They have the same responsibility with regard to acts of torture committed or likely to be committed 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.

The Gardai also have responsibility to investigate and take preventative and punitive actions in the case of war crimes committed outside the Irish jurisdiction.

Numerous requests have been made to the Gardai at Shannon to search US military and other suspicious aircraft at Shannon. These requests were made on the basis of evidence that they and the persons operating them were likely to be involved in an illegal war in Iraq, or war crimes, or the rendition of prisoners to other states where





Garda Inspector Tom Kennedy is presented with a copy of the Amnesty International Report, Breaking the Chain: Ending Ireland's Role in Renditions, outside Shannon Airport (June 2009)

they were liable to be tortured⁽⁵²⁾. None of these have been acted upon by the Gardai as far as is known.

US Pre-clearance

In 1986 a US border pre-clearance facility was opened at Shannon, eliminating the need to go through immigration on arrival in the United States.

Pre-clearance for US-bound commercial passengers has been in place since August 2009. The facility which is available to all US bound commercial aircraft offers full immigration, customs and agriculture pre-clearance facilities at Shannon. It is the only airport in Europe to offer the service. However Aer Lingus has opted not to use this facility at Shannon until similar facilities are in place in Dublin.

In March 2010 the airport's US pre-clearance and customs and border protection facility was extended to private aircraft.

Lawful Excuse: Criminal Trials Vindicate Direct Action at Shannon Airport.

Mark Price B.C.L, Irish Anti-War Movement

In late January 2003 Mary Kelly broke into Shannon Airport and carried out acts of sabotage on a US Navy C-40 transport plane, which was stationed there en route to the invasion of Iraq. A week later, Deirdre Clancy, Nuin Dunlop, Karen Fallon, Damien Moran and Ciaran O'Reilly, known variously as the Pitstop Ploughshares or the Shannon Five, went and did roughly the same things to the same aircraft. A Peace Camp had been established some time earlier to draw attention to, and register the almost universal disapproval of, the tacit Irish government policy of allowing the US military to treat Shannon as a transfer and logistics base.

The criminal trials 2003-2006.

All of the activists were charged with trespass and criminal damage. The criminal charges resulted in a series of mistrials before verdicts were eventually reached. The jury in Mary Kelly's first trial in Kilrush in July 2003 couldn't agree on a verdict on the criminal damage charge, so she was sent for retrial. Her second trial was discontinued when her lawyers withdrew. At the third attempt in October 2004, a jury at Ennis Circuit Criminal Court found her guilty of criminal damage. She received a sentence of two years imprisonment, which was suspended for four years.⁽⁵³⁾

The first trial of the Pitstop Ploughshares fell apart in 2005 when the judge accepted that he had ruled on a legal matter without hearing submissions from counsel, thereby giving the impression of bias. In November of that year their second trial collapsed when it transpired that the judge had attended George W Bush's inauguration in 2001. Finally in July 2006, the Ploughshares were acquitted on the charges of criminal damage by a jury in Dublin.⁽⁵⁴⁾

The reason why the Ploughshares were acquitted and Mary Kelly was convicted has to do with the admissibility of the defence of 'lawful excuse'. A person charged under the Criminal Damage Act is accused of damaging property 'without lawful excuse'. Lawful excuse is defined in section 6 as acts done honestly to protect life or property⁽⁵⁵⁾. All of the defendants claimed that they had acted in order to protect lives in Iraq (when Mary Kelly was arrested in Shannon in 2003, she said "I'm here to damage the plane, to prevent it from going to Iraq to prevent the killing of innocent Iraqi people"). Mary Kelly's trial judge, and the first two judges in the Ploughshares' trials, refused to allow the defence to be put to the jury.⁽⁵⁶⁾

The reason given by Mary Kelly's trial judge for disallowing the defence was that there was 'insufficient nexus in time and place' between the threat which she was trying to avert (the loss of life in Iraq), and the act of damage which she carried

out at Shannon.⁽⁵⁷⁾ The Ploughshares' third trial judge however found no such limit to the defence. She appears to have accepted legal argument which referred to an English Court of Appeal ruling, the so-called 'Fairford Case'⁽⁵⁸⁾, to the effect that the only reason why lawful excuse could be withheld from a jury would be if the act of damage could not in fact have saved lives or protected property. She directed the jury to defence evidence from a military logistics expert, which went to prove that military supply vehicles were necessary for waging war. In other words, damaging a supply plane could have saved lives, because it could have impeded the military action. Beyond that, all the defendants need to show under the Act was that they honestly believed that they were acting to save lives, and the Ploughshares' jury had no trouble accepting this.

Mary Kelly's appeal against conviction

Following the acquittal of the Pitstop Ploughshares the Irish Minister for Foreign Affairs told the American ambassador that the Government was 'seriously disturbed' by the verdict and was looking into ways to 'close off the legal loopholes' which led to it.⁽⁵⁹⁾ No such change in the law has taken place. In 2005 Mary Kelly lodged her appeal against conviction, arguing that the trial judge was wrong to withhold the defence of lawful excuse from the jury: it had in fact amounted to a direction to convict her, because she had admitted the damage, and had offered no other excuse.

In February 2011 the Court of Criminal Appeal ruled in her favour and she was acquitted. The court based its ruling on the fact that her trial judge hadn't acknowledged that section 6 of the Criminal Damage Act had been amended in 1997, and that the amendment had removed the requirement that the defendant believed the property or life to be in immediate need of protection.⁽⁶⁰⁾ The 1997 amendment had been made in order to partly codify criminal defences according to recent common law developments⁽⁶¹⁾, which had originated with a notorious English rape case from 1975, DPP v Morgan.⁽⁶²⁾ The effect of this was that a defendant would be entitled to an acquittal if her actions were (objectively) reasonable, in circumstances which she (subjectively) believed to exist. In other words, a judge might be allowed to withhold the defence from the jury if he considered the defendant's reaction to have been disproportionate, but he would be required by law to do this from the point of view of the defendant's actual perception of the threat. The 'inexorable logic' of this reasoning of Lord Hailsham's in Morgan has been much criticized, including by the leading Irish commentator⁽⁶³⁾, but it would appear to be consistent with the requirement that specific criminal intention forms a necessary part of the definition of any serious crime.

Justification

While the reasoning in Mary Kelly's appeal is technical, and confines itself to the 'narrowest issues capable of resolving the case'⁽⁶⁴⁾, it has enormous implications

for the status of US military equipment at Shannon. The courts have acknowledged that it is entirely lawful to do what Mary Kelly and the Ploughshares did. Neither in Ireland nor the UK have they been able to distinguish, in terms of necessity, direct action cases from those involving (non-political) private defence.

This is extraordinary when one considers that Section 6 has been described by the Irish Law Reform Commission as a 'statutory example of justifying necessity'.⁽⁶⁵⁾ Successful defendants are not merely excused (despite the name of the defence), but rather, they are regarded as being justified, of having done the right thing in the circumstances.

The implications of this for the rights of parties affected by such action are obvious, and judges have been reluctant to admit the existence of any such general defence⁽⁶⁶⁾. For example, if there exists a right to rescue, does that not mean there is also a corollary duty to rescue?⁽⁶⁷⁾ And if such rights were widely known, would this information encourage the criminally-minded to take liberties, thereby undermining the deterrent effect of the law⁽⁶⁸⁾? As Lord Denning put it in the context of trespass, 'If homelessness were once admitted as a defence to trespass, no one's house could be safe'⁽⁶⁹⁾. Mary Kelly's trial judge declared (somewhat dramatically) that society at large expected him as a judge to stop and prevent the social anarchy that would prevail if people were allowed to take the law into their own hands.

In the most general sense, the defence of necessity might be said to pose what one writer calls a 'democracy problem': justificatory defences are not merely concerned with 'liability for an admitted wrong, as with excuses, but [with] the question of what is right and what is wrong. But at least in some contexts we may feel that this latter question is the exclusive province of the legislature.'⁽⁷⁰⁾

Section 6 of the Criminal Damage Act overcomes this problem by providing a means of balancing interests according to that hierarchy of rights, which is inherent in the very idea of right⁽⁷¹⁾. In such a scheme the right to enjoy property can always be trumped by the right to life. How this plays out in cases of direct action will inevitably cause embarrassment to the government, particularly if the threat has been caused by the authorities themselves. But as one of the commentators above remarked, 'any worry about anarchic consequences would of course be dispelled if the authorities themselves took the initiative in obviating the threat to the right concerned, so that no space for direct action remained'⁽⁷²⁾.

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SHANNONWATCH

Shannonwatch's objectives are to end the US military use of Shannon Airport, to stop the unimpeded passage of torture flights through the airport, and to hold Irish political leaders and authorities accountable for their complicity in human rights abuse. It campaigns against the integration of Ireland into US and other military structures. Shannonwatch hold monthly protest vigils at Shannon Airport on the second Sunday of every month from 2 – 3pm. It also does continuous monitoring of all military and CIA-linked aircraft using the airport.

Contact: Shannonwatch, PO Box 476, Limerick DSU, Dock Road, Limerick, Ireland
Tel: (+353) (0)87 8225087 • **Email** shannonwatch@gmail.com • **Website:** www.shannonwatch.org



PEACE AND NEUTRALITY ALLIANCE

The Peace & Neutrality Alliance campaigns for the right of the Irish people to have their own independent foreign policy, with positive neutrality as a key component, pursued primarily through a reformed United Nations.

Contact: PANA, Dalkey Business Centre, 17 Castle Street, Co. Dublin, Ireland
Tel: (+353) (0)1 2351512 • **Email:** info@pana.ie • **Website:** www.pana.ie



IRISH ANTI-WAR MOVEMENT

The Irish Anti-War Movement campaigns for peaceful solutions to war and conflict situations across the world, and for an end to the poverty, inequality and injustice that are the underlying causes and results of conflict.

Contact: Irish Anti-War Movement, PO Box 9260, Dublin 1, Ireland
Tel: (+353) (0)1 8727912 • **Email:** info@irishantiwar.org • **Website:** www.irishantiwar.org