The Militarisation of Ireland's Foreign and Defence Policy: A Decade of Betrayal, and the Challenge of Renewal

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1. Introduction

This paper shows that Ireland's commitment to international peace, justice and disarmament has been progressively rolled back over the past decade.

The record of recent governments and, to a lesser extent, of opposition parties and independents, in the area of Ireland's foreign and defence policy is set out in three parts.

The first part focuses on the controversial use of Shannon airport, in particular its use as a staging post or refuelling stop for troops and/or munitions en route to a war in Afghanistan of dubious legality and an illegal war in Iraq, and its use by agents of the United States as a stopover point in secret abduction and torture operations.

The second part outlines the extent to which Ireland has become involved in various military structures outside the remit of traditional United Nations peacekeeping missions. These include NATO and the newly-formed EU Battlegroups.

The third part summarises the Government's response to Ireland's participation in the international arms trade.

Afri intends this paper to be a resource that will assist ongoing monitoring and debate in this important area of Irish policy. We also wish to suggest what the current government – elected by the 30th Dáil – must do to reverse the process of militarisation we have witnessed over the last decade, and how Ireland's foreign and defence policy might be demilitarised and renewed in the future.

2. Shannon

Summary: Shannon airport has been described as a "warport". Ireland has fundamentally altered course by allowing massive troop and munitions movements through Shannon en route to an illegal war in Iraq, and to a war in Afghanistan of dubious legality. There is compelling prima facie evidence that Shannon has been used by the US government as part of a secret kidnapping and torture circuit (euphemistically termed "extraordinary rendition"); and that the Irish government has not taken all measures, despite its obligations under the UN Convention Against Torture, to prevent Ireland's complicity in torture.

2.1 The use of Shannon as a staging post en route to conflicts in Afghanistan and Iraq

"It is not in dispute that a portion of such troops and munitions passed through Shannon Airport en route to the theatre of war."

Thus noted Judge Kearney in his ruling in *Horgan v. An Taoiseach* on 28 April, 2003. Edward Horgan, a retired officer of the Irish Defence Forces, challenged the facilitation by the Irish Government of overflight, landing and refuelling of US military and civilian aircraft, and the transit of troops and/or munitions through Irish territory.

The Judge refused to order restraint of the Government's actions, but did make significant rulings and observations in the course of his judgment. Apart from the above statement, based on the fact the Government as defendant in the case did not make any claim to the contrary, the Judge also held as follows:

> *"1907 Hague Convention V is asserted to be declaratory of customary international law. The various texts relied upon by the plaintiff certainly tend to support such an interpretation. The defendants have argued that a more qualified or nuanced form of neutrality also exists, being one which has been practised by this State for many years, and indeed throughout the Second World War. However, it does not appear to me that even that form of neutrality is to be seen as including the notion that the granting of passage over its territory by a neutral State for large numbers of troops and munitions from one belligerent State only en route to a theatre of war with another is compatible with the status of neutrality in international law. No authority has been offered to the court by the defendants to support such a view… 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*."[1]

The defendants in the Horgan Case (the Taoiseach et al) did not dispute in setting out their defence case that "large numbers of troops or munitions" of a "belligerent State"

[1] High Court Judgment, *Horgan v. An Taoiseach*, 28 April 2003.

(the United States) have been permitted to move through Irish territory "en route to a theatre of war with" Iraq or Afghanistan.

One can reasonably therefore infer from the judgement, that Ireland has egregiously violated any claim to the status of a neutral state, as set out in the 1907 Hague Convention, or along the lines of the "more qualified or nuanced form of neutrality" argued by the Government in that case, and continues to do so with ongoing troop movements through Shannon to the Iraq and Afghanistan theatres of war.

RTÉ reported the number of troops that passed through Shannon airport in 2005 was 330,000, or over 900 a day, more than double the number for the previous year.[2]

The Government argued in the Horgan case that there was no change in Irish policy, and the granting of landing rights to US aircraft was merely the continuation of "longstanding arrangements". There is no doubt that the Government did previously accede to requests to grant landing rights to US aircraft carrying US troops through Ireland, but no argument was proffered to counter the argument that the now massive extent of the troop movements was indeed a change of policy – there is no precedent for such massive numbers to move through Irish territory on their way to a war theatre.

As Judge Kearney pointed out:

> *"Nothing in the material submitted by Mr. Cooney [for the Government defendants], however, suggests that at any time between 1939 — 1945 were large movements of troops or munitions en route to any theatre of war permitted to avail of Irish national territory or Irish ports."*

Equally, no Irish government official or spokesperson has argued that there is precedent in Irish political practice for such massive, almost daily, movements of foreign troops en route to a theatre of war. One would assume that had such a precedent existed, it would have been cited, given that the Government made what appears to have been an exhaustive trawl through its own records in setting out its defence in the Horgan case.

2.2 The (il)legality of the invasion of Iraq

The invasion of Iraq was an illegal invasion, according to Richard Perle, former chairperson of the US defence policy board, which advises the US defence secretary, speaking to a London audience in November 2003.[3] The US, UK and some others have tried to argue otherwise, but they have found little support for their position from anywhere else, including from then UN Secretary-General Kofi Annan:

[2] RTÉ website, 5 January 2006.
[3] *Guardian*, 20 November 2003.

"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."[4]

It would be difficult to find many international law scholars who do not agree with him.[5]

Despite the war having no legal authority, the Irish government facilitated the build up of troops to invade Iraq. The Chief State Solicitor, setting out the facts in a letter in the run-up to the Horgan case, stated "on the basis of the most recent data available, that the total number of US troops and associated civilian personnel passing through Shannon Airport in the period from 1 January 2003 to 19 March 2003 was around 34,500". The Solicitor also wrote that "41 US military aircraft were given permission to land at Shannon Airport from 1 January 2003 to date [4 April 2003]". Furthermore, 180 exemptions were granted by the Department of Transport, "in relation to the carriage of weapons or munitions on flights landing in Ireland or overflying its airspace", the "vast majority" of which "were in respect of aircraft carrying troops accompanied by their weapons and ammunition".[6]

2.3 The (il)legality of the occupation/reconstruction of Iraq

Despite subsequent UN resolution 1483 in which the UN Security Council recognised the US and the UK as occupying powers in Iraq, it has been argued that the occupation is illegal to the extent that the following clause of the resolution –

> *"The States participating in the Coalition will strictly abide by their obligations under international law, including those relating to the essential humanitarian needs of the people of Iraq"*

– has not been adhered to.[7]

Indiscriminate killing, due in part to "disproportionate/excessive use of force including aerial bombardment of residential areas", "use of white phosphorous", "destruction of homes, vital facilities and infrastructure", and "regularly-experienced serious water shortages", were some of the humanitarian impacts partly or fully attributable to the war on Iraq, identified in a report by the NGO Coordination Committee in Iraq.[8] The report also notes that funds that were originally allocated to improving Iraq's water and electricity infrastructure were being cut back to pay for soaring security costs.[9]

According to an April 2006 RAND report, US reconstruction efforts in Iraq following the 2003 invasion failed to maintain and improve basic sanitation and provide safe drinking water in heavily populated areas.[10]

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[4] www.bbc.co.uk, 16 September 2004.
[5] See, for example, the views of 16 professors of international law: 'War Would Be Illegal', *Guardian*, 7 March 2003.
[6] High Court Judgment, *Horgan v. An Taoiseach*, 28 April 2003.
[7] http://www.globalpolicy.org/security/issues/iraq/attack/law/2005/1222belligerent.htm
[8] NGO Coordination Committee in Iraq, *Iraq Emergency Situation,* May 2006.
[9] Ibid, pg. 11.
[10] RAND Corporation, *Securing Health – Lessons from Nation-Building Missions,* April 19 2006.

According to Medact, by Spring 2006 a quarter of Iraq's 18,000 physicians had fled the country since the invasion, there was a chronic shortage of medical supplies (hospitals lacked staff, medicine, disinfectants, sheets, cleaning aids, and IV fluids and cannulae, antibiotics, and oxygen) and only four of the 180 health clinics planned by the US had been built, while none had opened by the first half of 2006.[11]

2.4 Civilian deaths resulting from US-UK-led invasion of Iraq

The Iraq Body Count Project[12] is "an ongoing human security project which maintains and updates the world's only independent and comprehensive public database of media-reported civilian deaths in Iraq that have resulted from the 2003 military intervention by the USA and its allies".[13]

At the time of going to press (March 2008), the count has surpassed 81,500 civilian deaths (minimum) with a maximum of over 89,000 civilian deaths.

7,400 civilian deaths were recorded by the Project in the six-week "Shock and Awe" invasion phase (19 March – 1 May, 2003).[14] This figure alone is more than twice the death toll due to the recent conflict on this island, which spanned more than 30 years. It also means that during the six-week invasion, on average over 160 civilians were being killed per day in Iraq.

These figures do not include combatant casualties; nor do they include civilian wounded, which the Project records as "at least 110,000" from the invasion to March 2007.[15]

The civilian death toll in Iraq curved dramatically upwards since the invasion:

> *"There were 6,332 reported civilian deaths in the 10.5 months following the initial invasion in year one, or 20 per day; 11,312 in year two, 55% up on year one's daily rate; 14,910 in year three (32% up on year two); and a staggering 26,540 in year four (78% up on year three, and averaging 74 per day)."*[16]

The illegal invasion, based on a false claim that Saddam Hussein was developing weapons of mass destruction, has unleashed untold carnage and suffering in Iraq. One could add to this the opportunity cost of the wasted resources, both political and financial,

[11] Medact Iraq Update, Spring 2006.
[12] www.iraqbodycount.org
[13] "The count includes civilian deaths caused by coalition military action and by military or paramilitary responses to the coalition presence (e.g. insurgent and terrorist attacks). It also includes excess civilian deaths caused by criminal action resulting from the breakdown in law and order which followed the coalition invasion. Casualty figures are derived from a comprehensive survey of online media reports from recognized sources. Where these sources report differing figures, the range (a minimum and a maximum) [is] given."
[14] http://www.iraqbodycount.org/press/pr15.php
[15] http://www.iraqbodycount.org/analysis/numbers/year-four/
[16] http://www.iraqbodycount.org/press/pr15.php

of the Iraq war.[17] Promoting or supporting illegal wars such as the war on Iraq has the double effect of causing massive suffering, damage and pollution, and of wasting resources desperately needed by the global community.

The Taoiseach Bertie Ahern was reported as saying after a meeting with President Bush:

> *"I explained that while we facilitate a large number of American troops and we are happy to do that… there is concern about extraordinary renditions and concern about CIA flights."*[18]

In the context of over 80,000 civilian deaths resulting from the US-led war on Iraq, it is difficult to see how the Taoiseach could say "we" – the Government or the Irish people – could possibly be "happy" that "we" had a hand in causing such suffering.

2.5 The war on Afghanistan

Article 51 of the UN Charter allows States recourse to self-defence when under "armed attack". Under customary international law, armed attack means "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation", and furthermore that any action taken must be proportional, "since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it."[19] No-one, including the United States, has argued the US was under an "armed attack" of this nature – one which could justify the invasion of Afghanistan.[20]

No UN resolution authorised the bombing of, and deployment of troops in, Afghanistan by the United States, beginning 7 October 2001. For example, Security Council resolutions of 12 September (1368) and of 28 September (1373) authorised no such use of force against Afghanistan. The Security Council did authorise the International Security Assistance Force (ISAF) on 20 December 2001 (1386) after the war had begun. ISAF was authorised "to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment".[21] Therefore, it may be concluded that the war on Afghanistan was also illegal; at best, its legality is in doubt.

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[17] "A proposed supplemental appropriation to pay for the wars in Afghanistan and Iraq of $141.7 billion brings proposed military spending for FY 2008 to $647.2 billion, the highest level of military spending since the end of World War II", according to William D. Hartung, World Policy Institute, http://www.worldpolicy.org/projects/arms/updates/020707.html

[18] *Irish Times*, 18 March 2006, cited by Edward Horgan in submission to TDIP, European Parliament, 20 April 2006.

[19] Letter from Mr. Webster to Mr. Fox of April 24, 1841, 29 British and Foreign State Papers 1129, 1138 (1857), quoted in Damrosch, Lori, *International Law: Cases and Materials* (2001), at 923, quoted in turn in David M. Ackerman, RS21314 -- *International Law and the Preemptive Use of Force Against Iraq*, Updated 23 September 23 2002.

[20] http://www.chomsky.info/interviews/20020116.htm

[21] http://www.un.org/Docs/sc/unsc_resolutions.html; also: http://www.americansc.org.uk/Online/Forum/Afghanlegality.htm

2.6 The use of Shannon by agents of the United States for the purposes of "extraordinary rendition"

The US Government has been operating a system of rendition and "extraordinary rendition" for about 20 years – before and after September 11, 2001. Extraordinary rendition is the "transfer involving US agents to foreign or military jurisdictions outside the effective control of American civilian courts of law".[22]

It is alleged that such extraordinary renditions can involve the transfer of persons to jurisdictions which have a record of torturing prisoners; a number of people have alleged that they have been the subject of such renditions and that they have been tortured in custody.

One such person is Ahmed Agiza who, with Mohammed al-Zery, was transported from Sweden on 18 December 2001 and transferred to Cairo. His mother, Hamida Shalibai, who visited her son in prison many times, described his treatment in prison as follows:

> *"When he arrived in Egypt, they took him, while hooded and handcuffed, to a building. He was led to an underground facility, going down a staircase. Then, they started interrogation, and torture. Whenever they would ask him a question, and he provided the answer, they wouldn't do anything. But as soon as he was asked a question, and he replied by 'don't know', they would apply electric shocks to his body, and beat him. All of this was happening while he was naked. He was completely naked, without any clothes to cover his body! Not even underwear! He almost froze to death."*[23]

Allegations have been made by the Council of Europe, the European Parliament and Irish elected representatives that planes involved in such extraordinary renditions have, since September 11, 2001, been using Shannon airport as a re-fuelling or stopover point. No allegations have been made by these bodies or representatives to date that persons who are the subjects of such renditions have ever been on planes when they have been on Irish soil. However, it has been alleged that the 'get-away vehicle' – the plane – has been allowed to land at, and depart from, Shannon without being challenged by Irish authorities.

For example, the plane involved in the rendition of Ahmed Agiza – a Gulfstream V, registration number N379P – has been recorded as having departed from Shannon for Dulles Washington on at least 12 occasions between 19 September 2001 and 18 January 2003. A plane with the same registration number landed in Shannon from Alger, Athens, Rabat, Amman, Dayir-Bakir, Larnaca, Istanbul, and Northolt on dates from 7 September 2001 to 18 January 2003.[24]

[22] *Ghost Plane*, Stephen Grey, Hurst, 2006, pg. 245.
[23] Ibid, pg. 28.
[24] www.ghostplane.net

Another plane, a Boeing 737 Business Jet, registered as N313P, has landed in Shannon from 11 January 2003 to 1 August 2004 on 16 occasions. The N313P was used in the kidnapping of Khaled el-Masri, a German used-car salesman who was abducted on 31 December 2004 and held for 3 weeks by the Macedonian authorities, before his transfer to US custody in Afghanistan. He spent almost 5 months in captivity, suffering extreme mental distress, and compelled to go on hunger strike. ("*On day 37 of my hunger strike I was dragged into an interrogation room, tied to a chair, and a feeding tube was forced through my nose to my stomach*."[25]) While Khaled was held in Macedonia, the N313P Business Jet stopped in Shannon on 17 January before flying to Larnaca in Cyprus, then later to Morocco, Afghanistan, Palma, and then to Skopje from where Khaled was flown to Afghanistan on the 23 January.[26]

Even more indicative of guilt is the landing in Shannon of a Gulfstream IV, registration N85VM, which was used in the rendition of Abu Omar to Cairo on 17 February 2003 from Milan, "where he was tortured before being released and re-arrested".[27] Flightlogs record this plane as having landed in Shannon the following day, 18 February. The case of the abduction of Abu Omar is now public knowledge in Italy and worldwide, in particular following the publication of a report of his abduction on 23 March 2005 by Armando Spatoro, Milan Deputy Prosecutor. Charges relating to his kidnapping have been pressed against members of the CIA and members of the Italian authorities.[28]

> *"It is an established fact that Mr. Abu Omar was kidnapped in Italy and transferred to Egypt by the CIA.... The very plane used in that kidnap operation, known as the 'Guantanamo Express', stopped-over, presumably to refuel, at Shannon airport on 18 February 2003. It was returning to Washington directly from the rendition of Abu Omar. That clearly makes Ireland an accomplice to that illegal operation."*[29]

Mr. Omar was released in February 2007, but then banned from leaving Egypt. His lawyer said he had suffered "grave psychological damage because of the torture inflicted".[30] He is seeking damages from the Italian government.[31]

A European Parliament report on the CIA and Extraordinary Rendition which was carried with a substantial majority (389 for, 137 against, with 55 abstentions, with support coming from members in most political groups in the parliament) noted that the Irish Minister for Foreign Affairs had "failed to answer all questions" when giving testimony on extraordinary rendition. The report endorsed the view of the Irish Human Rights Commission "which considers that acceptance by the Irish government of diplomatic

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[25] Statement by el-Masri, http://www.aclu.org/safefree/extraordinaryrendition/22201res20051206.html
[26] Ghost Plane, pg. 75.
[27] Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, 12 June 2006, pg. 37.
[28] Ibid, pgs. 170-191.
[29] Proinsias De Rossa MEP, *Government complicit in rendition flights*, 28 November 2006 http://www.derossa.com/asp/showdoc.asp?ID=1840&AREA=3
[30] http://www.muslimnews.co.uk/news/news.php?article=12530 Muslim News, 30 March 2007.
[31] http://www.voanews.com/english/2007-04-05-voa52.cfm Voice of America, 5 April 2007.

assurances do not fulfil Ireland's human rights obligations, which oblige the government actively to seek to prevent any actions that could in any way facilitate torture or ill-treatment in Ireland or abroad".[32]

The Council of Europe in their interim report of 12 June 2006 stated that Ireland "could be held responsible for collusion – active or passive (in the sense of having tolerated or having been negligent in fulfilling the duty to supervise) – involving secret detention and unlawful inter-state transfers of a non specified number of persons whose identity so far remains unknown" and for being a stopover "for flights involving the unlawful transfer of detainees".[33] It noted that "making available civilian airports or military airfields as 'stopover points' for rendition operations, whereby an aircraft lands briefly at such a point on the outward or homeward flight, for example to refuel" was to act "wilfully or at least recklessly in violation of their international human rights obligations", and was a form of "collusion with the United States".[34]

It appears to be a requirement of Irish law that all flights landing on Irish territory must seek permission from state authorities. According to the Council of Europe:

> *"Under **Irish** law, both military and non-military State aircraft must seek permission to overfly or land in Irish territory if immunities are to apply. It is usually required that the application for permission contains a statement of the purpose of the flight, the aircraft used, its route and final destination. However, States applying for overflight permissions are not systematically requested to provide passenger lists or information about cargo, even though this would be possible*."[35]

The question then arises, as to what purpose, if any, the operators of the Gulfstream IV, N85VM, gave to the Irish authorities as to its purpose for landing at Shannon on 18 February 2003, the day after the same plane deposited Abu Omar in Cairo, where there is credible evidence he was tortured in Egyptian custody after having been kidnapped by CIA operatives in Milan.

No system of inspections of planes landing at Shannon has been instigated. Asked by *The Irish Times* why he does not institute a regime of Garda inspections to help allay public fears that kidnapped prisoners are being transported through Irish airspace, Minister for Foreign Affairs, Mr. Dermot Ahern, has given the following explanation:

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[32] European Parliament, *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners* (2006/2200(INI)), 26 January 2007.
[33] Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, 12 June 2006 http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf
[34] Ibid. par 10.
[35] Council of Europe, *Secretary General's report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies*, 28 February 2006.

> *"Because I can't tell the guards to go in and inspect your house, can I? It's private property… We are subject to the rules of private property. The guards are entitled to go on these planes if they suspect, have a reasonable suspicion, that there is an offence being committed on our soil. They have an entitlement and indeed a duty to inspect. But I can't determine that for them."*

Mr. Ahern maintains there are "legal consequences" of making a swoop out of the blue. He argues there is a difference between this and the fact that the Government has brought in random breath-tests for drivers of cars:

> *"There's a difference. They are on a public thoroughfare, they are in a public place. If you look at any summons, it's a public place. If you're boarding a plane, it's private property. You cannot enter private property".*

He goes on to maintain that "When a plane is transiting it is not required to give any information about who is on the plane, what's on the plane, it's only required to give its last point of exit out of European airspace". Finally he is reported as accepting the word of US secretary of state Condoleezza Rice and other US officials that no prisoners are coming through Shannon.

But Mr. Ahern accepts that the "guards are entitled to go on these planes if they suspect, have a reasonable suspicion, that there is an offence being committed on our soil". [36] There is now clear prima facie evidence that at least one plane was making a get-away after being used in kidnapping and transporting a prisoner (Abu Omar) to be tortured. This fact has not been disputed by the Irish Government.

Surely these are grounds for "reasonable suspicion" that those on board a plane or planes landing at Shannon have been breaking the law, or may have information leading to the arrest and interview of those who have so broken the law. Yet to date, no inspection regime has been instigated.

While the Minister states that Gardaí cannot board planes without "reasonable suspicion", even this does not appear to be the case. Section 33 (1) of the Air Navigation and Transport Act, 1988 has the following provision:

> "**33.**—(1) An authorised officer, in the interest of the proper operation, or the security or safety, of an aerodrome, or the security or safety of persons, aircraft or other property thereon, may do all or any of the following things—
>
> (*a*) 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;
> (*b*) 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;

[36] *Irish Times,* 29 December 2006.

(iii) account for any baggage or other property which may be in his possession."

Other sections of the legislation covering airports and air transport explicitly empower authorised officials to board planes.

Also notable is the power conferred upon the Minister for Transport:

> "Every foreign military aircraft flying over or landing in the State on the express invitation or with the express permission of the Minister shall comply with such stipulations as the Minister may make in relation to such aircraft."[37]

Mr. Ahern fails to mention that Article 16 of the Convention of International Civil Aviation 1944 ("the Chicago Convention") gives States the following powers:

> *"Search of aircraft*
> The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention."[38]

The then minister for justice Michael McDowell said:

> *"But the fact is that the US government, which is a friendly state and which is hugely friendly and supportive of everything that happens in this State, has given us unqualified and absolute assurances that they have not, do not and will not use Irish airports for the transference of prisoners other than in accordance with Irish law and I accept that."*[39]

Pointing out that the aircraft are commercially registered, Mr. McDowell said Gardaí could not "forcibly enter" the aircraft unless they had evidence of criminal activity, a point which is false, according to Mark Hennessy of the *Irish Times*:

> *"Under the 1944 Chicago Convention, states are entitled to search civilian aircraft at their airports, contrary to the points made by Minister for Justice, Equality and Law Reform Michael McDowell on Monday*."[40]

Even if either the Minister for Foreign Affairs or the Minister for Justice still believed the legislation was inadequate, or the Convention was somehow inadequately transposed into Irish law, to enable him or a cabinet colleague to introduce a regime of blanket or random inspections, or to enable the Gardaí or other officials to board planes at Shannon, such legislation could be passed easily in the Dáil.

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[37] Air Navigation Act, quoted in Dubsky 1952 Order v. 1973 Order of 1946 Act
[38] Convention on International Civil Aviation, ninth edition 2006.
[39] *Irish Times,* 6 December, 2005.
[40] *Irish Times,* 7 December, 2005.

Apart from the possibility that Ireland could be sued for complicity in torture,[41] Ireland may be in violation of the UN Convention Against Torture, to which it is a party:

Article 2.1 states:

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

Article 4.1 states:

> *"Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture*."

Article 5.2 states:

> *"Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article*."

Torture "at any time and in any place whatsoever, whether committed by civilian or by military agents" is also forbidden by the Geneva Conventions.[42]

The Government, it can be argued, has an incentive to accept US assurances, rather than establishing that the assurances are borne out in fact. Or, in other words, it has no incentive to find out that planes landing on Irish territory have been involved in the "rendition circuit". To do so would be to admit that the Irish Government was complicit in torture and kidnapping.[43]

In response to a Dáil question by John Gormley TD, who asked the then Minister for Justice Michael McDowell's views on establishing an inspection system for flights landing at Shannon Airport in order to ensure that special rendition flights are not passing through airports here, the minister concluded his reply by stating:

> *"I consider that all reasonable, appropriate and sufficient measures have been and are being taken to ensure that Irish airports are not being used for any unlawful activity."*[44]

[41] Sunday Tribune, 16 July 2006, 'US lawyers may sue Ireland over "rendition"', cited by Ed Horgan, www.indymedia.ie
[42] http://www.genevaconventions.org/
[43] *http://hrw.org/english/docs/2005/05/12/eca10660.htm* for a similar argument made in a slightly different context.
[44] Michael McDowell, Tánaiste, in response to John Gormley, 7 December 2006.

This argument is negated by stubborn facts. Sufficient measures were obviously not taken when the plane used in the kidnapping of Abu Omar landed in Shannon. The regime (of non-inspections) now in place is the same regime which did not prevent the landing in Shannon of this kidnapping get-away plane. Therefore a plane coming from a similar or other kidnapping and torture operation today would also, it follows, get away without detection.

The Irish Human Rights Commission, a statutory body, with a duty to advise the Government on human rights, has advised the Government that,

> *"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"*[45],

the Government cannot rely on 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."*[46]

The Commission called on the Government "to seek the agreement of the US authorities to the inspection of aircraft suspected of involvement in this traffic", a recommendation which the Government has not to date accepted or implemented.

The Government has argued that it is entitled to accept the diplomatic assurances of the US authorities:

> *"There is... no authority to suggest that Ireland is obliged under the Convention [Against Torture] to disregard an explicit assurance from the US Government. Any Irish Government would be loath to do so."*[47]

The Irish Human Rights Commission has argued the opposite, exchanging detailed legal argumentation with the Government.

Article 2.1 of the UN Convention on Torture, however, could not be clearer:

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

The acceptance of diplomatic assurances from a State against which allegations of sponsoring kidnapping and torture have been levelled would appear to fall well short of

[45] Irish Human Rights Commission, *Resolution in relation to claims of US aircraft carrying detainees*
[46] Ibid.
[47] Dermot Ahern, Minister for Foreign Affairs, to Irish Human Rights Commission, 4 April 2006.

taking “effective legislative, administrative, judicial or other measures to prevent acts of torture”.

In February 2008, it emerged that diplomatic assurances given to the UK that CIA rendition stopovers on British soil did not carry prisoners have now been admitted as false in the case of two prisoners.[48] As this report goes to press, the UN torture investigator says there are “credible” allegations that not only were prisoners landed on the British island of Diego Garcia, but that they were also detained there.[49] This emerging evidence sets at nought the contention that US diplomatic assurances are sufficient.

[48] *CIA Confirms Rendition Flights to Brits*, AP, 21 February 2008.
[49] *UN: 'Credible' Diego Garcia Allegations*, AP, 3 March 2008.

3. Ireland's integration into EU/NATO military structures

Summary: Ireland is becoming steadily enmeshed in EU/NATO military structures, through its EU treaty obligations, its joining of the NATO-sponsored "Partnership for Peace", its commitment of troops to first the EU Rapid Reaction Force, and more recently to the EU's Battlegroups. There has also been a steady erosion of Ireland's primary commitment to the United Nations: EU forces do not specifically require a UN mandate, and Irish domestic legislation has been weakened to allow troops to serve overseas without one in some cases – the "triple lock" of UN mandate, Dáil approval, and Cabinet decision has been picked.

As John Maguire demonstrates in his book, *Defending Peace*[50] not only are emerging EU military structures "influenced by" NATO, they are "legally obliged to be compatible with NATO's nuclear alliance".[51]

Although attempts were made by Afri and others to draw attention to the ongoing entanglement of Ireland, through the European Union, in NATO, this entanglement has only been debated at the margins of public consciousness. This is partly due to the lack of openness, transparency and accountability that exists in many facets of EU and NATO decision-making, including decisions taken in the realm of common foreign and security policy.

Kosovo provides one example of the gravity of such decisions. Ireland did not sit on the fence when NATO undertook its illegal bombing of Kosovo and Serbia in 1999 – the bombing had no UN mandate – it actively supported the bombing by co-signing a Statement of the European Council on Kosovo in March 1999.[52]

Not only was the bombing illegal, it was also severely criticised as being counter-productive:

> *"…the intervention failed to achieve its avowed aim of preventing massive ethnic cleansing… it was also a serious mistake by the NATO countries not to foresee that the bombing would lead to severe attacks on the Albanian population.*"[53]

In other words, the bombing *accelerated* 'ethnic cleansing'. Earlier, NATO may have deliberately provoked a breakdown in the search for a negotiated solution, through its insistence that NATO and not the UN should have control of the peacekeeping operation post-settlement.[54]

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[50] John Maguire, *Defending Peace,* Cork University Press, 2002.
[51] Ibid, pg. x.
[52] Ibid, pg. 81.
[53] Independent International Commission on Kosovo, *Kosovo Report,* 2000, cited in Maguire, op. cit, pg. 75.
[54] Maguire, op. cit. pg. 81.

During the bombing campaign, as Andy Storey has pointed out:

> *"NATO committed a number of war crimes, including the cluster bombing of the city of Nis in May 1999, killing 15 people and destroying a hospital; NATO also bombed a passenger train, an old-folks home, an open-air market, a Serb radio station, and the Chinese embassy… The NATO bombardment killed between 1,200 and 2,000 civilians in total, not counting those subsequently killed by initially unexploded cluster bombs…"*[55]

The Kosovo bombing had other unhealthy consequences, such as some 200,000 people fleeing their homes, the boosting of the militaristic elements of Kosovar (and later Macedonian) society, and the marginalisation of the previously progressive and pacifist Kosovar leadership.[56]

3.1 "A breach of faith… fundamentally undemocratic": joining NATO's PfP without a referendum

NATO set up Partnership for Peace (PfP) in 1994. William J. Perry and Ashton Carter, the brains behind PfP, said in their book, *Preventive Peace:*

> *"The objective of a renewed Partnership for Peace should be to make the experience of partnership as close as possible, in practical military terms, to the experience of membership in NATO… PfP combined exercises and other military-to-military activities should advance from the partnership's early focus on peacekeeping and humanitarian operations to true combat operations".* [57]

Partner countries give a commitment "to develop the capacity for joint action with NATO in peacekeeping and humanitarian operations."[58]

Dick Spring, then minister for foreign affairs, announced he was in favour of Ireland's joining NATO's PfP, and Ireland's joining became part of the debate in the run-up to the White Paper on Defence, eventually published in February 2000. Fine Gael also supported such a move: Alan Dukes TD, as Chairperson of the Joint Committee on Foreign Affairs, and Gay Mitchell TD, were particularly vocal in their support.

Fianna Fáil was vehemently against joining at this stage. Ray Burke TD, as spokesperson for foreign affairs, said PfP "amounts to second class membership of Nato" and that it had "a nuclear capability which is anathema to Irish people".[59]

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[55] Andy Storey, *Village,* 22 February 2006.
[56] Ibid.
[57] Fintan O'Toole, *Irish Times,* 28 May 1999.
[58] http://www.nato.int/issues/pfp/index.html accessed 19 February 2007.
[59] *Irish Times,* 29 March 1996.

On 28 March, 1996 opposition leader Bertie Ahern stated in the Dáil that any attempt to join the PfP without a referendum would be a "serious breach of faith and fundamentally undemocratic". His speech is worth quoting at length:

> *"While the Government may reassure the public that there are no implications for neutrality — and that may be technically true at this time — it will be seen by other countries as a gratuitous signal that Ireland is moving away from its neutrality and towards gradual co-operation in NATO and Western European Union in due course. It is the thin end of the wedge which will be justified for all sorts of practical reasons and to increase our alleged influence, whereas in reality we will have no influence on alliance thinking as junior or second-class partners…*
>
> *"…Our view is that any decisions involving a closer association with NATO or the Western European Union would represent a substantial change in defence policy, and would have long term if not immediate implications for our policy on neutrality. Any such proposals must be put to the people in a referendum before a decision is taken… We would regard any attempt to push Partnership for Peace or participation in Western European Union tasks by resolution through this House without reference to the people who under our Constitution have the right 'in final appeal to decide on all questions of national policy', as a serious breach of faith and fundamentally undemocratic… Under our Constitution this is a matter for the people to decide and any sleight of hand in trying to put it through the House would be fundamentally undemocratic."*[60]

Fianna Fáil's 1997 election manifesto opposed Irish participation "in NATO-led organisations such as the Partnership for Peace".[61]

The Department of Foreign Affairs later started to raise the prospect of joining PfP through a presentation by its Secretary-General Padraic MacKernan to the Joint Oireachtas Committee on Foreign Affairs on 28 October, 1998 in which he said there was "much to be said for, and little to be said against, participation in PfP".[62]. This was followed by an opinion piece by then minister for foreign affairs David Andrews TD on 28 November 1998, who welcomed a "discussion of the issue: it is important that the public debate should be as informed and broad-ranging as possible".[63] No mention was made in this article of the earlier promises either not to join PfP or to hold a referendum.

As Taoiseach, Bertie Ahern seemed to confirm in the Dáil on 25 November 1998, in reply to a question tabled by Green Party spokesperson on foreign affairs John Gormley TD, that a referendum would be held on PfP:

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[60] Dáil Éireann - Volume 463 - 28 March 1996.
[61] "We oppose Irish participation in NATO itself, in NATO-led organisations such as the Partnership for Peace, or in the Western European Union beyond observer status", quoted in *European Defence Debate: The PfP: Road from Neutrality to NATO and the WEU*, Peace and Neutrality Alliance, January 1999.
[62] *Irish Times,* 29 October 1998.
[63] *Irish Times,* 28 November 1998.

"Mr Gormley: When may we expect legislation for a referendum on the so-called Partnership for Peace which the Taoiseach stated previously would be required as far as Fianna Fáil is concerned?

> *The Taoiseach Bertie Ahern:* No referendum is planned at this stage.
> *Mr Gormley:* Does that mean we will join Partnership for Peace without a referendum? The Taoiseach gave a commitment that we would have a referendum... Is the Taoiseach saying we will join Partnership for Peace without a referendum?
> *The Taoiseach Bertie Ahern:* No."[64]

The following day, 26 November 1998, the Tánaiste, Mary Harney, made clear she was aware of Fianna Fáil's commitment to hold a referendum on PfP:

> *"Mr Gormley: [...]* On the Order of Business yesterday I asked the Taoiseach if we would join Partnership for Peace without a referendum to which he replied "No." Yesterday the Minister for Defence indicated that the pathway to joining Partnership for Peace is now clear. Is the Taoiseach saying we will have a referendum on that?
> *The Tánaiste Mary Harney: […]* There are no proposals at present. I understand the Taoiseach gave a commitment that there would be a referendum in the event of Ireland joining Partnership for Peace. When he replied "no" to the Deputy's question yesterday I believe he meant that nothing is being considered with regard to the matter at present."[65]

Just two months later, on 28 January, 1999 the Taoiseach announced Ireland planned to join PfP by the end of the year. The Government insisted no referendum was necessary.[66] According to an MRBI poll published in November 1999, 68% of voters wanted a referendum on whether or not to join PfP.[67] However this poll was ignored, the promises broken, and government TDs, backed by Fine Gael, voted to join PfP on 9 November, 1999.[68]

Ireland joined NATO's Partnership for Peace at a signing ceremony at NATO headquarters on 1 December 1999. NATO was represented by Lord Robertson, Ireland by foreign minister David Andrews. Ireland now has to agree bi-annual Partnership Goals (PG) with NATO through the Planning and Review Process (PARP).[69] There is little or no discussion or transparency of what these Partnership Goals contain. The overseas *perception* was certainly that Ireland had softened its stance towards NATO; for example, then NATO secretary general Lord Robertson used Ireland's joining of PfP to attack the Scottish National Party's negative attitude to NATO: "Ireland is moving forward and

[64] www.oireachtas.ie
[65] www.oireachtas.ie
[66] *Irish Times,* 29 January 1999.
[67] *Irish Times,* 11 November 1999.
[68] *Irish Times,* 9 November 1999.
[69] Defence Forces, Annual Report, 2005, pg. 57.

recognising that common security is the only way forward."[70] This perception can only have been reinforced by Ireland's co-endorsement soon after joining PfP of the illegal NATO bombing of Kosovo and Serbia.[71]

Indeed Ireland not only uses PfP for training purposes, but Irish military personnel have served and currently serve under NATO command, for example in Afghanistan (ISAF, 7 staff) and in Kosovo (KFOR, 276 staff),[72] and in Bosnia and Herzegovina up to 2 December 2004 when Irish troops came under EU command (SFOR becoming EUFOR).[73]

Leaving aside the merits or otherwise of "a closer association with NATO", to use the earlier words of the Taoiseach, it was indeed "a breach of faith and fundamentally undemocratic" to march Ireland into NATO's PfP without a referendum, particularly since such a referendum was promised, and the government was elected partly on that basis.

Fine Gael and the Progressive Democrats always advocated joining PfP, and did not advocate a referendum on the issue. The Labour Party's position was more complex. At first, under Dick Spring's leadership, membership was supported. However, when Mr Spring stepped down as leader, the new spokesperson on foreign affairs, Proinsias de Rossa, opposed joining, bringing the party, then led by Ruairí Quinn, with him. The Green Party, Sinn Féin and the Socialist Party have consistently opposed membership of PfP, as have some independent TDs.[74]

3.2 Joining the EU Rapid Reaction Force

"PfP has been an essential building block in the European Security and Defence Identity which the EU's Rapid Reaction Force is intended to express".[75]

During the first attempt to secure a 'yes' vote on the Nice Treaty in Ireland – in 2001 – attention was focussed by Afri and others on the military implications of the Treaty.[76] The military implications became central to the debate on the Treaty, and according to a subsequent poll were one factor in its defeat – though less pronounced than concerns over the decision-making process of the EU.[77] Some in Ireland worried about an increasingly militarised EU saw the lack of transparency and accountability of EU structures as

[70] www.bbc.co.uk, 1 December 1999.
[71] *Statement by the European Council Concerning Kosovo*, quoted in Maguire, pg. 81, op. cit.
[72] Defence Forces website: http://www.military.ie/overseas/ops/europe/kfor/index.htm and http://www.military.ie/overseas/ops/asia/isaf/index.htm (accessed 11 March 2008).
[73] Defence Forces Annual Report 2005, pg. 49.
[74] www.oireachtas.ie, Dáil Éireann - Volume 510 - 9 November 1999.
[75] *Irish Times*, Editorial, 1 November 2000.
[76] See in particular: Andy Storey, *The Treaty of Nice, NATO, and a European Army: Implications for Ireland*, Afri, 2001.
[77] Patrick Keatinge, Ben Tonra, *The European Rapid Reaction Force*, Institute of European Affairs, 2002, pg. 4.

inseparable from concerns about Ireland's enmeshment in a nascent EU military wing.[78] Therefore concerns about democracy and militarization and their interrelation appear to have been the main reasons why Irish people voted 'no'.

The Irish Government moved to assuage concerns about Ireland's increasing enmeshment in EU military structures through what could be called a sleight of hand. Firstly it made a Declaration at Seville in the run-up to the second Nice Treaty referendum – in 2002 – and organised its EU partners to make a second Declaration at the same time. Neither declaration is legally binding. Secondly, it presented as part of the second referendum on the Nice Treaty a clause to be inserted on approval into the Irish Constitution prohibiting Ireland from entering an EU common defence without a further referendum, ignoring concerns about a common *offence* raised during Nice I. Carol Fox has argued that gaining approval for this constitutional amendment under cover of responding to what then minister for foreign affairs Brian Cowen TD termed "people's concerns on the issue of neutrality"[79] was unnecessary:

> *"The proposed additional clause preventing Irish participation in an EU mutual defence pact would not stop the Government taking part in the Rapid Reaction Force or joining NATO. Even without the extra clause there would still have to be a referendum on joining an EU common defence."*[80]

The amendment, in fact, may have the effect of teeing up a future referendum on common defence, as solicitor and specialist in constitutional law Joe Noonan has stated:

> *"I now want to make it clear that a Yes vote on the 26th Amendment will not prevent Ireland joining a common EU defence. Instead it envisages that Ireland will join such a defence in due course and sets out the procedures by which this could happen."*[81]

Sleights of hand aside, the Government presented *exactly the same* treaty to the Irish people again. The rules of the second Nice Treaty campaign debate were also changed, causing an overwhelming shift in the power relations between those advocating yes and no votes: the requirement of an independent body to present both sides of the argument was removed. So although the Government managed to massage voters' concerns with non-binding declarations, raise their fears of massive disinvestment from Ireland, and arouse guilt by implying the Treaty was necessary for EU enlargement (which it was not), it also may have confirmed a large sector of the electorate in their belief that the Government and the EU did not really care about transparency and democracy as long as they got their way.

In other words, concerns about arrogance and unaccountable EU structures, and by extension, concerns about involving Irish troops and taxation revenue in such

[78] See, for example, John Maguire, op. cit.
[79] Dáil Debates, Volume 557 - 13 November 2002.
[80] *Irish Times*, 1 October 2002.
[81] *Irish Examiner*, 9 October 2002.

untransparent and unaccountable decision-making structures, were heightened, not assuaged, by Nice II. Nice II thus compounded the broken promises on NATO's PfP. Ireland committed 850 troops to the EU Rapid Reaction Force (RRF) at a pledging conference in Brussels on 20 November 2000.[82] These are the same troops which had already been committed to the United Nations Stand-by Arrangements System (UNSAS). The RRF aims to have up to 60,000 troops available at 30-60 days notice. The Political and Security Committee of the Council of Ministers, on which a representative of the Irish Department of Foreign Affairs sits, is responsible for the "political control and strategic direction of crisis-management operations" and thus of the RRF, which aims to deploy up to 4,000km outside the borders of the EU.[83]

Worried that the RRF had no legal requirement to act under UN mandate, and questioning if the Irish Government argued that it should, Proinsias de Rossa MEP of the Labour Party said that for the EU "to act unilaterally outside its own territory would be an invitation to every tinpot despot to act similarly. A bland commitment to act in conformity with UN principles but without a UN mandate cannot be acceptable to this small state or any other small state".[84]

Outlining the Government's approach to participation in the EU Rapid Reaction Force, the then minister for foreign affairs Brian Cowen, according to a report, "indicated that Irish involvement would be limited to operations mandated by the UN Security Council and in accordance with the UN Charter".[85] Implying that Ireland's new commitment to the RRF and the UN were somehow intimately linked, he said: "It is no accident that our commitment to the Headline Goal is for up to 850 members of the Defence Forces from within the current United Nations Standby Arrangements System Commitment of 850."[86]

In a speaking note apparently prepared for Minister Brian Cowen in response to a potential question on why political promises (viz. the Seville Declarations) should be sufficient (as opposed to a legally binding treaty protocol, or an amendment to the Irish Constitution) to ensure Irish troops always serve under UN mandate, the following argument was drafted:

> *"I do not believe that this is a matter for the Constitution. The Defence Acts already require that in order for a troop contingent to be sent abroad three pre-conditions must be fulfilled: a) it must be as part of an operation endorsed by the UN; b) it must be approved by the Government; and c) it must be approved by the Dáil. I believe that these are sufficient safeguards. The Government has no plan to change them and, even if, in the future, an effort was made to remove the requirement of UN endorsement, I doubt that it would be possible to obtain a majority in both Houses of the Oireachtas."*[87]

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[82] 'EU states pledge 66,000 troops to rapid force', *Irish Times,* 21 November 2000.
[83] Andy Storey, *The Treaty of Nice, NATO and a European Army,* Afri, pg. 3.
[84] Proinsias De Rossa, *Irish Times,* 26 August 2000.
[85] *Irish Times*, 25 November 2000.
[86] Ibid.
[87] *Seville Declarations and the Treaty of Nice, Index to Questions and Answers,* unpublished speaking notes.

This argument is now in tatters, due to the truncated debate and vote amending the Defence Acts in 2006.

3.3 Picking the triple lock: EU Battlegroups and the Defence Acts

As Afri pointed out during the Nice II campaign:

> *"If the government wishes to enter into a mutual defence pact, it is currently obliged to ask the people in a referendum. But the Government can enter into offensive operations without reference back to the people. The Government says there is a "triple-lock" on all decisions to enter into military operations: a UN mandate, cabinet approval, and a decision of the Dáil. But the Government, not the people, holds the key to this lock."* [88]

Indeed, the Government has recently been picking the lock.

Apart from the fact that defence forces personnel have served and currently serve in EU-led operations[89], and an Irish army officer sits on the EU Military Committee,[90] the latest development in Ireland's integration into EU military structures is the Government's decision to join the EU's Battlegroups.

A Battlegroup is a "battalion sized force and reinforced with Combat Support and Combat Service Support elements" which is "designed for a range of possible missions". One Battlegroup will be composed of "+/- 1500 troops" capable of being sustained in the field for 30 days, extendable to 120 days if "re-supplied appropriately". "Prior training and interoperability" are required, and one of its requirements is that it "could be on request of the UN or under UN mandate". Its "potential area" is "outside EU (possibly for long range operations)".[91]

The Government announced it was opening negotiations on joining the EU Battlegroups on 9 February 2006, amending Irish legislation on 5 July of the same year:

> *"The Government will be able to deploy the Defence Forces on foreign emergency humanitarian missions, reconnaissance and training without the approval of the Dáil under legislation rushed through the Dáil in little over two hours early today."*[92]

This is despite an earlier commitment in February of that year by defence minister Willie O'Dea TD:

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[88] *Nine Questions on Nice*, Afri, 2002.
[89] www.military.ie, (accessed 11 March 2008): Irish military personnel serve in EU-led operations in Chad and Bosnia Herzegovina.
[90] Andy Storey, *The Treaty of Nice, NATO and a European Army (Revised and Updated)*, Afri, pg. 7.
[91] EU Council Secretariat Fact Sheet, *Battlegroups*, EU BG 01, November 2005, http://ue.eu.int/uedocs/cmsUpload/BattlegroupsNov05factsheet.pdf.
[92] *Irish Times*, 5 July 2006.

> *"The triple-lock of UN, Government and Dáil approval will continue. Participation of our troops in individual missions will be decided by our own national decision-making process, on a case-by-case basis. A UN mandate will be a pre-requisite for our participation in any battlegroup peace support operation, just as it is now."*[93]

This lock has now been picked, setting at naught countless promises and intimations both in the Dáil and outside it – and indeed in the Seville Declaration[94] by Ireland – that the lock would remain.

Why this haste to pick the lock? Perhaps the Lisbon Treaty gives some hint of what the EU's architects are contemplating.

The EU's military capability can currently be used for "humanitarian and rescue tasks, peacekeeping tasks and the tasks of combat forces in crisis management, including peacemaking".[95] If the EU's new treaty is adopted, such forces could be used for "joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation". The treaty adds that "all these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories".[96]

Section 1 of the Defence Bill 2006, which amended the Defence Acts, changes the definition of "International United Nations Force" to now read as follows:

> *""International United Nations Force" means an international force or body established, mandated, authorised, endorsed, supported, approved or otherwise sanctioned by a resolution of the Security Council or the General Assembly of the United Nations".*

The requirement for a clear and unambiguous UN Security Council *mandate* has been significantly diluted: not only can such a force now be "established, mandated, authorised", but also "endorsed, supported, approved or otherwise sanctioned by a resolution of the Security Council or the General Assembly of the United Nations".[97]

UN operations still need Dáil approval as Section 2 of the 1960 Act remains in force. However, Government, and not Dáil, approval, alone, for some operations, is now legal: "a contingent or member of the Permanent Defence Force may, with the prior approval of and on the authority of the Government, be despatched for service outside the State" for various purposes including "filling appointments or postings outside the State…

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[93] *Irish Times*, 10 February 2006.
[94] http://www.taoiseach.gov.ie/attached_files/Pdf%20files/TreatyOfNiceAndSevilleDeclarations2002.pdf
[95] http://www.military.ie/overseas/opstype/missions.htm; and Treaty of Nice, Article 17.2.
[96] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0010:0041:EN:PDF (Lisbon Treaty, Article 28B)
[97] John Gormley TD, *Irish Times*, 4 July 2006.

conducting or participating in training... undertaking monitoring, observation or advisory duties… participating in or undertaking reconnaissance or fact-finding missions… undertaking humanitarian tasks in response to an actual or potential disaster or emergency".[98] Irish troops can now roam around the world at the whim of the Cabinet, without having to inform the Dáil, let alone seek its approval.

Furthermore, and more worryingly, Section 8 contains the following:

> *"(3) A contingent or member of the Permanent Defence Force may, with the prior approval of and on the authority of the Government, be despatched for service outside the State as part of a force to be assembled or embarked before being deployed as part of a particular International United Nations Force if, but only if, the contingent or member is not so deployed until a resolution under subsection (1) of this section has been passed by Dáil Éireann approving of their despatch for such service".*

This means troops can be committed to battle, without Dáil approval, whilst waiting for what can be construed as a UN nod (i.e. that the body they will eventually engage in can be interpreted as having been 'established, mandated, authorised, endorsed, supported, approved or otherwise sanctioned by a resolution of the Security Council or the General Assembly of the United Nations'*),* at which *later* time Dáil approval will be required.

Both of these passages make a mockery of the various political pronouncements, declarations and promises made regarding the triple lock of Dáil approval, UN mandate and Cabinet decision. Now there will sometimes be a UN mandate, sometimes there won't; there will sometimes be Dáil approval and sometimes there won't.

Fianna Fáil, the Progressive Democrats, Fine Gael and a number of Independent TDs supported passage of the Bill. Labour, having raised some questions in a truncated midnight debate, and having termed it "unsatisfactory legislation"[99], abstained. Sinn Féin, the Green Party, and TDs Joe Higgins (Socialist Party), Tony Gregory, Finian McGrath, and Catherine Murphy voted against.

[98] Section 3 (1), Defence Act 2006.
[99] Joe Costello TD, Dáil Debates, 5 July 2006.

4. Ireland's participation in the international arms trade

Summary: Ireland's arms trade is significant, despite denials. Although legislation to license this arms trade is a welcome step, a total ban on the production or sale of military equipment would signal Ireland's commitment to conflict reduction and prevention.

Ireland is involved in the arms trade, although the Government continues to deny the fact.[100] The extent of Ireland's arms trade participation began to be documented with Afri's *Links* report in 1996.[101] Amnesty International's Irish Section subsequently did its own investigations, publishing *Ireland and the Arms Trade: Decoding the Deals* in 2001, and more recently *Claws of the Celtic Tiger* in 2004.

The arms trade in Ireland may be perceived as small, even by those who are prepared to acknowledge there is such a trade. However in GDP per capita terms, it can be described as 25% the size of the UK's arms trade, or 30% that of Germany's, two of the EU's top arms exporters.[102]

Due perhaps to the pressure generated by the ongoing exposure, the Department of Enterprise, Trade and Employment requested Forfás to examine Ireland's military and dual-use control system and how it compares with international practice.[103] Forfás published *Export Licensing of Military and Dual-Use Goods in Ireland* in May 2004.

The key legislative recommendation of this report – commissioned by the Department – was as follows:

> *"introduction of new dedicated primary arms control legislation which will bring Ireland into line with international practice, and strengthen the legal base for establishing and enforcing the necessary controls in Ireland"*[104]

Almost three years later, minister of state Michael Ahern TD introduced legislation dealing with the control and licensing of military goods for export,[105] which was passing through various legislative stages at the time of going to press.

As demonstrated by students of Scoil Chríost Rí Presentation College Portlaoise, who managed to import an electro shock stun gun and leg irons into Ireland, brokering has been possible – and, at the time of going to press, is still possible – from Ireland – "a country totally free of brokering controls", according to Mark Thomas, presenter of a

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[100] "Ireland is not a producer of arms in the normal sense of the word." http://www.entemp.ie/trade/export/faqs.htm accessed 3 March 2008.
[101] Afri, *Links: Ireland's Links with Arms Trade and Military Industry,* 1996.
[102] *Export Licensing for Military and Dual-Use Goods*, Fitzpatrick Associates, June 2003, pg. 7. The value of military licences for 2000/2001 for the UK was €44.82 per capita; it was €39.71 for Germany. Ireland's per capita figure was €11.27.
[103] *Export Licensing for Military and Dual-Use Goods*, Fitzpatrick Associates, June 2003.
[104] Forfás, *Export Licensing of Military and Dual-Use Goods in Ireland*, May 2004, Pg. 6
[105] *Control of Exports Bill*, 2007.

Channel 4 documentary on the subject in 2006.[106] Despite an EU Common Position adopted in June 2003[107], and a recommendation by Forfás[108], the Government only moved to introduce legislation to control brokering some four years later.[109]

The question of whether or not Ireland should have an arms trade, licensed or unlicensed, at all, has not been addressed by the Government. It has been raised, for example, by Senator Feargal Quinn:

> *"I would argue against Ireland being involved in any way in the production or sale of military equipment because of the moral standing that would be conferred upon it if it were to adopt such a position. If we have a stake, however small, in the production of military equipment, it will inevitably compromise our independence when we argue for the peaceful resolution of disputes — be they internal to one country or between different states — across the globe."* [110]

Contributing to the global arms trade potentially contributes to international instability and violence. As a country which has suffered decades of violence in the recent past, Ireland could contribute positively to a non-violent agenda by prohibiting all arms sales overseas, and encouraging the Northern Ireland Executive to do likewise.[111]

[106] *After School Arms Club,* Channel 4, 30 April 2006.
[107] EU Common Position 2003/468/CFSP of 23 June 2003.
[108] "filling agreed gaps in the Irish system, including meeting existing EU commitments in relation to the control of arms brokering", in Forfás *Export Licensing of Military and Dual-Use Goods in Ireland*, May 2004, pg. 6.
[109] *Control of Exports Bill*, 2007.
[110] Seanad Debate, *Control of Exports Bill, 2007, Second Stage.*
[111] See Afri, *What Price Peace? – The Irish Peace Process and the International Arms Trade* for a discussion of the arms trade in Northern Ireland.

5. Conclusions and Recommendations

5.1 A decade of betrayal

The period 1997-2007 has seen the increasing militarisation of Ireland's foreign and defence policy. This is most starkly evidenced in the recent and almost daily use of Shannon in support of the United States-led wars on Iraq and Afghanistan despite dubious claims to their legality under international law, but also in the tardiness of the Government's response to credible allegations that Shannon has been used as part of a US kidnapping and torture circuit. The ongoing integration of the Irish Defence Forces into non-UN military structures such as NATO's PfP and the EU's Battlegroups signals a departure from a truly internationalist and peace-promoting vision based on a radically-reformed United Nations. Finally, the Government's lack of urgency in at least regulating Ireland's significant arms trade further points to a lack of seriousness in promoting the causes of peace and disarmament overseas.

5.2 The challenge of renewal

The increasing militarisation of Ireland's foreign and defence policy is particularly saddening given the breakthroughs in promoting peace and demilitarisation in Northern Ireland through protracted negotiations between the parties and governments of the United Kingdom and Ireland.

Although significant damage has been done, it is not too late to change the course of Irish foreign and defence policy onto a trajectory more in line with that which has been achieved by our own Peace Process: a trajectory of non-violence and demilitarisation. For this to happen, the government elected by the 30th Dáil must carry out the following actions:

- Refuse permission for any further stopover and refuelling facilities being granted to aeroplanes ferrying troops or munitions to the wars in Afghanistan and Iraq.

- Institute a thorough regime for the inspection of aeroplanes at Irish airports to ensure that 'extraordinary rendition' is not being facilitated. In addition, landing facilities should not be accorded to aircraft known to have participated in renditions even if the aeroplanes are not actually carrying prisoners when transiting through an Irish airport. If such aircraft do land, the occupants should be detained and questioned concerning illegal activities, including torture.

- Withdraw Irish participation from all NATO/PfP and EU military operations overseas, including both participation on the ground and participation in command and control functions.

- Negotiate a (legally-binding) protocol with our EU partners along the following lines: "With regard to measures adopted by the Council in relevant articles, Ireland does not participate in the elaboration and implementation of decisions

and actions which have defence implications but will not prevent the development of closer cooperation between member states in this area. Therefore Ireland shall not participate in their adoption. Ireland shall not contribute to the financing of the operational expenditure arising from such measures."

- Amend the Defence Acts to ensure that Irish troops can only serve overseas in an operation with an explicit and unambiguous UN mandate, and only deploy Irish troops when they are directly requested by the UN as part of such a mandated operation.

- Reallocate the savings accruing from withdrawal from NATO/EU military commitments and structures towards alternative measures to enhance global security. For example, global warming poses a far greater threat to human life and to the planet than non-state terrorism: increasing Ireland's contribution to the fight against global warming would be a meaningful contribution to the struggle for a more secure world.

- Prohibit the sale of all armaments, and related equipment, from the Republic of Ireland, and encourage the Northern Ireland Executive to do likewise.

These may seem like extremely radical and ambitious proposals. Certainly, Afri does not expect that all of them are likely to be implemented during the lifetime of the 30th Dáil, though there is no reason why a committed and progressive government could not make substantial strides towards their achievement. At the very least a start must be made to roll back the regressive record of the past decade and more, and to begin to reassert the centrality of morality and justice as core values underpinning Irish foreign and defence policy.