

## International Human Rights

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### I. United Nations Summit on the Millennium Development Goals

From September 20-22, 2010, world leaders convened at the United Nations in New York for a High-Level Plenary Meeting (“the 2010 MDG Summit”) to review progress and adopt an accelerated plan of action to achieve the Millennium Development Goals (“MDG”s) by 2015.<sup>1</sup> The MDGs are rooted in the Millennium Declaration adopted by 189 U.N. Member States in 2000.<sup>2</sup> In February 2010, in preparation for the 2010 MDG Summit, the U.N. Secretary-General, Ban Ki-Moon, issued *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*,<sup>3</sup> a report summarizing MDG progress and proposing an agenda to achieve the goals in the next five years.<sup>4</sup> The report affirmed the role of human rights in achieving the MDGs, stating that “international human rights instruments must continue to provide the foundation for engagement, in

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1. *Keeping the Promise: United to Achieve the Millennium Development Goals*, G.A. Res. 65/1, ¶¶ 1, 8, U.N. Doc. A/RES/65/1 (Sept. 22, 2010), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/512/60/PDF/N1051260.pdf?OpenElement>.

2. See U.N. Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

3. See U.N. Secretary-General, *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda to Achieve the Millennium Development Goals by 2015: Rep. of the Secretary-General*, U.N. Doc. A/64/665 (Feb. 12, 2010) [hereinafter *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda*].

4. *Id.* ¶¶ 2-4, 7.

### III. European Union: Impact of Airport Security Regulations on Sikhs\*

On April 29, 2010, Commission Regulation (EU) No. 185/2010 ("EU Regulation") concerning airport screening procedures came into force and immediately became "binding in its entirety and directly applicable in all Member States."<sup>32</sup> These procedures could be construed as requiring physical pat-downs of turbans or their removal altogether. Upon implementation of this regulation, Sikhs<sup>33</sup> in many EU Member States objected to the screening procedures as humiliating and undignified because of the way screening operators treated their article of faith (the turban). The treatment of the Sikh turban at some European airports<sup>34</sup> has raised objections on whether the EU Regulation unfairly restricts the freedom of movement of many Sikhs who fly into, out of, and within EU Member States.<sup>35</sup> The main provisions of the regulation are Articles 4.1.1.2.-4.1.1.5. These EU Procedures, specifically 4.1.1.2, depart from previous rules that made metal detection the primary form of screening.<sup>36</sup>

Under the new EU Regulations, hand pat-downs are part of the primary screening process; previously, pat-downs were used as a secondary screening method for individuals who triggered an alarm. After the EU Regulation came into force, the United Kingdom reverted to its pre-existing screening policies under EU Regulation Provision 4.1.1.7, which states that "[t]he appropriate authority may create categories of passengers that, for objective reasons, shall be subject to special screening procedures or may be exempted from screening."<sup>37</sup> After substantial advocacy by Sikh civil rights organizations, Secretary of State, Rt. Hon Philip Hammond, directed all UK airports to revert to screening procedures in place before April 29, 2010,<sup>38</sup> until a long term solution could be reached with the Sikh community.<sup>39</sup>

\* Prepared by Hansdeep Singh, Senior Staff Attorney, United Sikhs.

32. Commission Regulation 185/2010, Laying Down Detailed Measures for the Implementation of the Common Basic Standards on Aviation Security, 2010 O.J. (L 55) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:055:0001:0055:EN:PDF>.

33. Sikhism is a revealed, monotheistic, and egalitarian faith that originated over 500 years ago in Northern India and parts of current-day Pakistan. Sikhs are often known by their distinctive articles of faith, the most observable is the *dastar* (turban).

34. Dil Neiyar, *Sikh Concerns Delay Hand Search Plans at UK Airports*, BBC, June 30, 2010, [http://news.bbc.co.uk/2/hi/uk\\_news/8776146.stm](http://news.bbc.co.uk/2/hi/uk_news/8776146.stm) (Sikh refused to fly from Barcelona because screeners asked for the removal of his turban; incidents have also been reported in France and Italy.).

35. See *id.* (Vinder Singh, a British National, fell victim to the new Regulations while traveling through Spain. Singh was forced to find alternative travel arrangements after he refused to remove his turban for inspection despite allowing a hand search, even when metal detectors were not alarmed); *Letter to Prime Minister Manmohan Singh regarding Polish Airports' Turban Incidents*, UNITED SIKHS, Sept. 6, 2010, <http://www.unitedsikhs.org/PressReleases/Final%20letter%20to%20Indian%20PM%20from%20UNITED%20SIKHS%20and%20Central%20Gurdwara%20London.pdf>.

36. See Commission Regulation 185/2010, at 4.1.1.2-4.1.1.5.

37. *Id.* at 4.1.1.7.

38. See *U-Turn on 'Humiliating' Turban Airport Security Searches for Sikhs*, DAILY MAIL (U.K.), July 1, 2010, <http://www.dailymail.co.uk/news/article-1291119/U-turn-humiliating-turban-airport-security-searches-sikhs.html#ixzz0xmdTJhfv>.

39. See *Sikhs Move Closer to Agreement on Airport Security Procedures That Will Fully Respect the Sikh Turban*, SIKH FED'N (U.K.), July 1, 2010, [http://www.sikhfederation.com/index.php?option=com\\_content&view=article&id=164:sikhs-move-closer-to-agreement-on-airport-security-procedures-that-will-fully-respect-the-sikh-turban&catid=35:news](http://www.sikhfederation.com/index.php?option=com_content&view=article&id=164:sikhs-move-closer-to-agreement-on-airport-security-procedures-that-will-fully-respect-the-sikh-turban&catid=35:news).

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386 THE INTERNATIONAL LAWYER

It remains to be seen whether the EU Regulation causes discriminatory or disparate treatment of religious minorities with religious head coverings, specifically Sikhs, in a manner that violates the International Covenant on Civil and Political Rights ("ICCPR") or the Charter of Fundamental Rights for the European Union ("EU Charter") by creating impermissible barriers to the free movement of persons.

A. PROPOSED ALTERNATE SCREENING MECHANISMS

On June 15 2010, the final *Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU Airports* ("Report") was released.<sup>40</sup> The Report addressed several issues that hindered the uniform implementation of the scanners. One option is the Automatic Threat Recognition ("ATR"), which can assist the screener in identifying hazardous materials and objects.<sup>41</sup>

Similar to the EU, the United States is seeking to harmonize its screening technology by rolling out Advanced Imaging Technology ("AIT"), comparable to body scanners being used at European airports. AIT met with harsh criticism from civil rights advocates and general societal concern over privacy.<sup>42</sup> But, for some in the Sikh community, the new Transportation Security Agency ("TSA") policies single out Sikh turbans for two additional levels of screening.<sup>43</sup>

IV. U.S. Citizen Placed on Target List\*

In April 2010, media sources reported that the Obama administration had authorized the targeted killing of Anwar Al-Aulaqi, an American citizen living in Yemen.<sup>44</sup> Aulaqi is a leader of al-Qaeda in the Arabian Peninsula ("AQAP"), a Yemen-based terrorist group that has claimed responsibility for numerous attacks against American targets.<sup>45</sup> Aulaqi, who was born in New Mexico, is reportedly the first American ever placed on a CIA/Defense Department target list, and his inclusion required the approval of the National

40. *Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU Airports*, COM (2010) 311 final (June 15, 2010), available at [ec.europa.eu/transport/air/security/doc/com2010\\_311\\_security\\_scanners\\_en.pdf](http://ec.europa.eu/transport/air/security/doc/com2010_311_security_scanners_en.pdf).

41. *Id.* ¶ 57.

42. "See-Through" Body Scanners, AM. CIVIL LIBERTIES UNION, June 3, 2008, <http://www.aclu.org/technology-and-liberty/see-through-body-scanners>.

43. Letter from United Sikhs, Sikh Coalition, and Saldef to author (Oct. 2010), <http://unitedsikhs.org/rtr/pdf/Letter%20to%20TSA%20Administrator%20Mr.%20Pistole%20-%20Joint%20TSA%20Letter%20from%20Sikh%20Civil%20Rights%20Organizations.pdf>. At a meeting with personnel from TSA and the DOJ Office of Civil Rights, each Sikh civil rights organization was informed that Sikh turbans would be identified as anomalies per se by the AIT machines and subject Sikhs to three levels of screening: (1) AIT; (2) Explosive Trace Detection (ETD); and (3) metal detecting hand wand.

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44. See Greg Miller, *Muslim Cleric is First U.S. Citizen on List of Those CIA is Allowed to Kill*, WASH. POST, Apr. 7, 2010, at A8; Scott Shane, *U.S. Approves Targeted Killing of Radical Muslim Cleric Tied to Domestic Terror Suspects*, N.Y. TIMES, Apr. 7, 2010, at A12.

45. See Unclassified Declaration in Support of Formal Claim of State Secrets Privilege for Defendants at ¶¶ 13-17, *Al-Aulaqi v. Obama*, Civ. A. No. 10-cv-1469 (D.D.C. Sept. 24, 2010), available at [http://ccrjustice.org/files/15%282%29-Al-Aulaqi%20Public%20DNI%20Clapper%20Decl\\_09-25-10.pdf](http://ccrjustice.org/files/15%282%29-Al-Aulaqi%20Public%20DNI%20Clapper%20Decl_09-25-10.pdf).