

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

(IN THE MATTER OF the trust deed of 9 June 1994 of an organisation called the Project on Demilitarisation.)

BETWEEN

(1) PETER MARTIN SOUTHWOOD

(2) DAVID RONALD PARSONS

Plaintiffs

- and -

HER MAJESTY'S ATTORNEY GENERAL

Defendant

SKELETON ARGUMENT

of

Peter Martin Southwood

on behalf of the Trustees of the
Project on Demilitarisation (PRODEM)

Summary

1. 'Universal peace' or peace in general is a legally charitable object so the study of a process by which such peace is to be established may be an educational one.
2. PRODEM's Aim 1 focuses on the study of a process leading to peace or war and contains within itself a method for evaluating this process that is
 - (i) balanced and objective; and
 - (ii) applied consistently to the material facts.
3. Therefore the main purpose of the Project on Demilitarisation is educational within the legal conception of charity and the appeal may be allowed.

1. Relevant Principles of Law

1.1 The grounds of our appeal against the decision of the CC, as stated in our O/S, are:

... if all the relevant legal cases and material facts presented had been fully and correctly taken into account then PRODEM would have been found to be for the public benefit in a manner which the law would regard as charitable. [A/16]

1.2 We accept that paras 12 - 26 inclusive of the High Court judgment (hereafter called 'the judgment') 'fully and correctly' take into account all the relevant legal cases for determining the charitable status of the Project on Demilitarisation (PRODEM).¹ (See E/790-95.) Consequently grounds (a) and (c) of question (1) of our appeal, as stated in our O/S, have been dealt with as far as they need to be.²

1.3 The sole remaining question is whether the dominant purpose of PRODEM is educational rather than political (ground (b) of our O/S) and this is to be demonstrated by applying the relevant legal principles, as the High Court determined them to be, to the material facts. We accept that paras 27 and 28 inclusive of the judgment (E/795-6) set out the correct approach for doing this, with the added proviso that the basis of funding PRODEM after the incorporation of its main activities into the University of Leeds from December 1993 (C/38) - together with the willingness in principle of the Department of Peace Studies, University of Bradford to have done the same (D/766-7) - support the conclusion, as in Attorney General v Ross (1986) WLR 252 at 265, that the predominant purpose for which PRODEM was founded is charitable. Whilst not decisive on its own this extrinsic evidence strongly supports our contention that the facts surrounding this case should be taken into account as 'fully and correctly' as the legal principles in order to determine whether PRODEM's educational purposes are, as clause 3.1 of the Trust Deed claims, for the public benefit.

(1.) Additionally, we accept the trial judge's understanding of the Court's jurisdiction (based on Order 55 Rule 7) as explained in para. 31 of the judgment. (See E/796-7.)

(2.) The Respondents have provided us with three new cases not considered by the High Court. The only relevant question is whether they give grounds for varying the views expressed by the trial judge esp. at para. 26 of the judgment (E/795). We think not, for reasons to be given at the appeal hearing, if required. See Re Blyth (1997) 2 QdR 567; Public Trustee v A-G of N.S.W (1997) 42 NSWLR 600; and Re Collier (1998) 1 NZLR 81.

2. The Study of Peace and War

2.1 The judgment, para. 26 (read with para. 22) is now authority for the proposition that two educational perspectives on peace may exist: one having an 'irenical perspective'; and the other being indifferent as between peace and war and as between peaceful and military techniques for resolving international disputes. The former we call 'peace studies' and the latter 'war studies'.³ (See AG's affidavit for list of higher education courses at D/759-61).

2.2 The evidence confirms that peace studies as taught at the University of Bradford has an irenical perspective including a course on 'Arms and Disarmament' and another covering 'war and militarism' (see esp. D/640-8). In the terms used by the trial judge, it starts from the premise that:

- (i) 'peace is preferable to war'; and
- (ii) 'puts consequent emphasis on peaceful, rather than military, techniques for resolving international disputes.'

One purpose of such education is to 'create a public sentiment' in favour of peace because

(iii) the 'desirability of peace as a general objective' is not controversial. Hence peace in general or 'universal peace' is a legally charitable object⁴ and the study of a process by which such a peace is to be established may be an educational one. (Cf. disarmament, a political object).

2.3 However, in the case of a war studies perspective, none of (i) to (iii) above apply so there can be no question of the study of a process leading to 'universal peace'. As Picarda suggests, each particular conflict is examined (in itself) by asking the question: peace on what terms?⁵ This undoubtedly focuses on the political objects of a given peace settlement but ignores the means used to attain that end and the consequences for future peace or war e.g. cf. peace settlements imposed by military means at the end of World War I and II with the Joint Declaration and Charter of Paris involving peaceful conflict resolution between States at the end of the Cold War (see NATO Statements esp. D/596-601).

(3.) For the sake of legal argument we accept that war studies is value-free - whether or not it is in fact. However, the theory of realism associated with military security is not because it views militarism positively (see 3.2 below).

(4.) This is shorthand for Rugg CJ's words in Parkhurst v Burrill 117 NE 39 (1917) at 40: 'The final establishment of universal peace among all the nations of the earth manifestly is an object of public charity.'

(5.) H. Picarda, The Law and Practice Relating to Charities, 2nd ed. (Butterworths, London, 1995), p. 154.

2.4 Consequently we conclude
peace studies \neq war studies.

Moreover the Court has no means of determining which has the greater educational value so the latter should not be favoured over the former. Provided PRODEM's purpose falls within the legal understanding of education in peace studies then this appeal may be allowed.

3. The Aim 1 PRODEM Briefings (to 9 June 1994)

Definitions of militarism

3.1 The judgment rightly identifies (at para. 30) Aim 1 in PRODEM's background paper (C/50) as its dominant purpose. Yet in comparing the Parkhurst v Burrill case with our own the learned judge did not note a significant difference: the Aim 1 PRODEM Briefings (i.e. no. 1 and Series A), unlike the work of the World Peace Foundation, do acknowledge that both peaceful and military means for promoting national security have their rightful place. So the definition of the term 'militarism', which appears in clause 3.1 of the Trust Deed and in Aim 1, and how it was applied in practice by the Editor of the Aim 1 Briefings should have been examined in terms of whether and, if so, how it is possible to speak of a 'balance' between peaceful and military (or warlike) means to achieve universal peace, as a legally charitable object.

3.2 Accordingly para. 29 of the judgment should, consistent with para. 26, have considered the expression 'militarism and disarmament' in relation to universal peace and not just in itself (cf. analogous peace studies courses referred to in 2.2 above). Dictionary definitions of the term 'militarism'⁶ are provided by the AG (D/763-5) and the 1st P. (D/770) showing three main understandings of the term:

(i) The first attaches no (positive or negative) value to the meaning of militarism, e.g., 'The spirit and tendencies characteristic of the professional soldier' (Oxford English Dictionary). PRODEM Briefing A/2 applies this understanding of the term (see esp. App. B at C/454-67).

(ii) The second attaches a positive value to the meaning of militarism, e.g., 'the policy of maintaining a strong military capability' (Shorter Oxford Dictionary). Briefing A/1 applies this understanding of the term within the limits set by the balance of power and public policy (see esp. C/322 last para.).

(6.) There was no legal controversy as between the parties to this action over the meaning of the term 'disarmament' in the Trust Deed, clause 3.1 or Aim 2 of the PRODEM background paper.

(iii) The third attaches a negative value to the meaning of militarism, e.g. 'a tendency to overvalue military power or to view things from the soldier's point of view' (Chambers English Dictionary).

Briefing No. 1 focuses on this understanding of the term within the limits set by the balance of disarmament (see 3.5 below).

This category includes the definition of militarism given in the PRODEM background paper (C/50), drawing on the Concise Oxford Dictionary, as 'an undue prevalence of warlike values and ideas' and described as the 'new militarism' in Briefing No. 1 (C/235 at para. 4).

In view of what is said at para. 18 of the judgment concerning trusts to promote the security of the nation by military means it would appear that understandings of militarism in categories (i) and (ii) above would in general pose no barrier to charitable status. If category (iii) were applied tendentiously to the Aim 1 Briefings (i.e. any level of military forces and armaments is excessive) PRODEM would not qualify as a charity. Conversely, though, if category (ii) were applied tendentiously (i.e. no level of military forces and armaments is too much) then universal peace would be impossible because the law on charities understands peace in general not as a particular political policy but as a condition amongst all the nations of the world in which disputes (and injustices) can always be resolved by peaceful means whenever they arise. In principle, then, it is possible to speak of a balance between military and peaceful means of achieving universal peace, unless public policy declares otherwise.

Method

3.3 Neither of the lower tribunals were able to determine whether the term 'militarism' had been applied tendentiously on the basis of the PRODEM background paper alone. Yet neither considered the method written into Aim 1 to determine whether it was educational i.e. balanced and objective.

Para. 30 of the judgment considers only the first half of Aim 1. (Cf. Slade LJ in Re Koepler's Will Trusts (1986) Ch 423 at 437H quoted as ground (b) of our O/S at A/16.) This method is elaborated in Appendix C of Briefing No. 1 where much of the background paper is reproduced (C/235-9).

3.4 Aim 1 is 'To fundamentally question the new forms of militarism arising in the West' and the means of doing this is 'in relation to' a process (past/present/future) i.e.

- its recent record;
- current official policies;
- the likely consequences for the future.

A clear conceptual distinction is drawn between policies in themselves and the consequences of such policies.

Militarism in itself (categories (i) and (ii) above) is a military means of promoting national security.

Disarmament in itself is a peaceful means of promoting national security.

The problem is how to determine when

militarism falls into category (iii) so that the likelihood of war increases; or
disarmament increases the likelihood of peace (rather than war).

(This is why the Court does not know whether specific policies aimed at disarmament will or will not be for the public benefit although disarmament in itself is undoubtedly a peaceful means of promoting national security and not contrary to public policy.)

3.5 The proposed solution to this problem (in 3.4 above) is given at C/235, last para. where the use of the terms 'the road to war' and 'the road to peace' link 'the likely consequences for the future', referred to in Aim 1, to two competing theories: an armaments-based (or military) concept of security; and common security including economic, social and environmental as well as military factors. The evidence in the Aim 1 Briefings shows that the Editor's understanding of the term 'balanced and objective' is applied by examining in relation to the ending of the Cold War:

- (i) **The balance between military and non-military aspects of security.**
[Briefing No. 1.]

These cannot be compared directly - although they are closely related - because they are qualitatively different so each component is first analysed on its own terms using (see C/172):-

- (ii) **The balance between power of cooperation and power of coercion**
i.e. the balance of disarmament (re. military factors) in App. A and the balance between mutual assistance and rivalry (re non-military factors) in App. B.

Only then, when the dominance of 'warlike' over peaceful means to promote national security in the West has been demonstrated objectively in relation to all relevant military and non-military factors, taken separately, does the Editor conclude that the military concept of security is at odds with itself because unbalanced and will lead to war not peace (C/185-6).

(His views are clearly distinguished from those of PRODEM or its trustees and even other staff members at C/163.)

- (iii) **The balance of (military) power.**
[Briefing A/1]

A traditional 'realist' theory, linked to military security, is applied to NATO in relation to global threats to security using NATO's own criteria for assessing former enemies and contrasted with a common security perspective. The means by which the truth or falsity of the latter theory over the former is to be demonstrated is clearly stated at C/325:

We believe that only if the explanatory and predictive power of the common security approach is eventually proven to be superior to the military security approach will the former supplant the latter.

Where an imbalance of military power exists in a local conflict the Editor argues the case for restoring the military balance through the supply of arms (see C/361, last para.) as vigorously as he has argued the case against over-armament. So the concept of the balance of power is consistently applied.

The underlying proposition which the Aim 1 Briefings as a whole 'test' is that the likelihood of peace in general is greatest where (i) to (iii) above are balanced, allowing for off-setting imbalances. Conversely the likelihood of war is greatest the more imbalances there are in (i) to (iii) above, again allowing for off-setting imbalances.

3.6 The understanding of 'balanced and objective' in the previous paragraph may be contrasted with that implied by the CC's Statement of Reasons (D/583-5):

- (i) **A balanced case for and against a policy of**
 - (a) militarism; and
 - (b) disarmament.
- (ii) Political power is coercive (so there can be no question of a balance between peaceful and military means to achieve peace in general.)
- (iii) Peace itself is, anyway, a political object (so the balance of power means any balance not balanced power).

In short, no 'irenical perspective'.

Conclusion

3.7 The view of a 'balanced and objective' carrying out of Aim 1 in 3.5 above is based on a peace studies (irenical) perspective and that in 3.6 on a war studies (value free) perspective. The essential elements of the former are all to be found in the applicants' submission to the CC (C/128-57). A decision on the charitable status of PRODEM should, then, have been taken on the basis of whether, within a peace studies (irenical) perspective:

- the objects of the Aim 1 Briefings are charitable in law (see 'Statement of Purpose' at C/162, 312 and 426);
- the method written into Aim 1 is educational; and
- the main conclusions of the Aim 1 Briefings are compatible with public policy, notwithstanding that some of the particular views of the Editor may be such as other educated people might disagree with.

[Cf. Parker LJ on the right way to interpret a book in Bowman v Secular Society Ltd (1917) A.C. 406 at 442.] Unfortunately the Statement of Reasons ignores the objects, does not consider the method and quotes selectively from our submission and the Conclusion to Briefing No. 1 in order to arrive at the opposite conclusion to the one the Editor himself arrived at, viz. that (one-sided) disarmament (would contribute to peace not war and) was (therefore) assumed to be 'desirable'. With great respect, set against the Conclusions of the High Court judgment the CC, even if they reached the right decision, did not do so for the right reasons.

3.8 It is respectfully submitted that the factual evidence shows that PRODEM's Aim 1 focuses on the study of a process leading to peace or war and contains a method for evaluating this process that is (i) balanced and objective and (ii) applied consistently to the material facts. It meets the concept of education as explained in the cases but from a peace studies (irenic) basis.

4. The Aim 1 PRODEM Briefings (to Oct. 1995)

4.1 When the High Court came to consider this matter it had, inter alia, a final PRODEM Briefing (D/488-580) which was not available to the CC. Although para. 8 of the judgment claims that this Briefing A/3 '...was prepared after the Charity Commissioners' decision' and that 'In appendix E an attempt was made to address criticisms of the one-sided nature of the earlier briefings',⁷ we contend

- it would have been a physical impossibility to prepare Briefing A/3 between 5 Sep. 1995 when the CC's decision was published and Oct. 1995 when the Briefing (79pp) was published;
- Appendix E is an integral part of the Briefing and not ancillary to it;
- the Briefing A/3 incorporates key findings from the earlier Aim 1 briefings. (See esp. D/506, para. 1; D/507, para. 3; D/509, para. 2; D/517, para. 1; D/524, para. 1; D/539, para. 1; and references section D/545-50.)

Nevertheless the learned judge was right to draw on this Briefing, too, in arriving at his conclusions because it was part of the original programme of Aim 1 briefings (see C/53) and it has 'probative value on the question whether the main purpose for which the organisation was formed was charitable or non-charitable.' (AG v Ross (1986) 1 WLR 252 at 264.)

4.2 Accordingly central findings of fact and conclusions of the judgment (at paras 8 and 30), derived in part from Briefing A/3, may be summarised as follows:

- 'realist military security'
- = 'current policies relating to military security in the West'
- (or 'current policies of the Western governments')
- = 'militarism'

(7.) Cf. with our O/S at A/16, last sentence of middle para. and our submission to CC which spoke of 'one-sidedness' at C/137, penultimate para. and C/145, last para.

However, 'realist military security' is an abbreviation for 'realism, associated with military security' (D/574, para. 3). This relates to the concept or theory of military security which from the first Aim 1 Briefing has been acknowledged as the base of ideas and values from which Western security policies are formed (see 3.5 above). A conceptual distinction should be made between political policies, on the one hand, and ideas on political subjects, on the other hand, as Scott J. did in AG v Ross

...the proposition that an educational charity, be it a school, polytechnic or university, cannot consistently with its charitable status promote and encourage the development of political ideas among its students has only to be stated to be seen to be untenable. (p. 263)

So we respectfully submit that

realist military security

≠ current policies relating to military security in the West.

(Nor does common security itself translate into any particular political policies, as far as PRODEM or the Editor of the Aim 1 Briefings is concerned.)

Moreover where power is balanced in the states system (see again 3.5 above)

then on PRODEM's definition of militarism

realist military security ≠ militarism.

4.3 The sole remaining question is whether, as the learned judge concluded, militarism (in the Aim 1 PRODEM Briefings) is intended to define the current policies of the Western governments (relating to military security in the West)? In this respect the Court is invited to note:

- over-armament in other states (within understanding (iii) of the term 'militarism' in 3.2 above) has been recognised as threatening by Western governments (see NATO statements esp. D/588-93);
- there is no stated policy in NATO which would preclude the possibility of militarism arising within the Alliance itself of the kind covered by understanding (iii) in 3.2 above so, if such militarism exists, it could be based on their mis-perception or unwillingness to recognise it rather than our pre-determined purpose to present its policies as such;
- in support of the former inference a theory of realism, linked to military security has been incorporated into the concept of common security in the Aim 1 Briefings (from the start of the Series) which itself acknowledges that if power is unbalanced in the states system then war is more likely (D/513, para. 1).

4.4 The decisive point, though, is that in keeping with para. 26 of the judgment militarism (and disarmament) do not stand in isolation but in relation to universal peace, as a legally charitable object. It is respectfully submitted that the criticisms of Western policy, in terms of its theoretical underpinning, whether that policy constitutes militarism (understanding (iii) in 3.2 above) or not, should have been understood in relation to the criteria the High Court itself had determined are the premises of the 'irenical perspective' viz.,

- (i) peace is preferable to war;
- (ii) puts consequent emphasis on peaceful, rather than military (warlike), techniques for resolving international disputes.

Thus the predictions made in the Aim 1 Briefings, on the basis of the method outlined at 3.3-3.5 above, are relevant evidence (item (ii) of the factual matrix placed before the CC as stated in our O/S at A/16) because they 'test'⁸ and enable readers to evaluate the analysis offered in relation to the course of international events, according to the objective criteria (i) and (ii) above i.e. has there been war or peace in Europe; have our and our former enemies use of peaceful methods increased or diminished? (See D/527, para. 2.)⁹ The Court itself is obviously not expected to determine or pass comment on the 'explanatory and predictive power' of the theory of common security. Suffice to acknowledge that a prima facie case has been established that public policy may be at odds with itself, pursuing an object - universal peace - by means (and a theory) which cannot attain that end. (See Conclusion to Briefing A/3 at D/543, para. 1.) So the predominant purpose of PRODEM is not criticism of Western security policies per se but of their theoretical basis in relation to that very 'irenical perspective' which Western governments and publics had themselves adopted.¹⁰

5. A Future PRODEM Briefing Series

5.1 While the judgment itself, at para. 31, acknowledges that PRODEM's framework for a future briefing series (in Appendix E of Briefing A/3) 'on its face would be more objective and closer to the concept of education in the cases' the trial judge concludes

... it is not possible to see how the ideas would work in practice.

(8.) Cf. use of this term in PRODEM background paper at C/50, para. 4; submission to CC at C/147, para. 5; and Briefing A/3 at D/537, last para. and D/574, paras 1-3.

(9.) Cf. with realist theories at D/512 section 2.2.3 up to D/514, para. 1.

(10.) Cf. our submission to CC at C/153, para. 4.

It is respectfully submitted that Briefing A/3 is itself an illustration of the method, derived from the Aim 1 Briefings as a whole and Aim 1 itself, comprising the following elements:

- the peace studies (irenic) perspective on ... two competing theories of peace
 - (i) realist military security
 - (ii) common security ...
 - ... applied to the post-Cold War peace settlement
 - ... and, within that, to individual conflict areas
 - ... in order to arrive at a (conceptual) framework to test the explanatory and predictive power of theories (i) and (ii) above in preventing and resolving armed conflicts.
- (see D/500 para. 2; cf. D/641, centre para.)
- (see D/574, para. 3)
- (see D/501, para. 1)
- (see D/529, para. 1 and cf. former Yugoslavia esp. 'long term' conclusions at D/532 section 3.1.3)
- (see D/537, last para.)

The use of two different people to present theories (i) and (ii) (at D/578, para. 3) is not because the law on charities requires this (since universal peace - unlike disarmament - is a legally charitable object) but because the 'prima facie case' against theory (i) established through the Aim 1 Briefings (4.4 above) is such as to 'challenge' proponents of theory (i) to defend it (provided Aim 1 is of a charitable nature).

5.2 Consequently the dominant purpose of PRODEM for the future, based on a revised Aim 1 for a continued briefing series, may be deduced as follows:

To fundamentally question whether the new forms of militarism arising in the West would be likely to lead to peace and thereby to construct a (conceptual) framework for the prevention and resolution of armed conflicts (or, in full, see D/574 section E1 'Objective').

6. The PRODEM Aim 2 Briefings

6.1 Although the judgment did not give detailed attention to Aim 2 of the background paper a quotation at para. 8 was cited, purporting to describe the term 'common security' (C/265, para. 4), derived from one of the two briefings edited by my esteemed colleague Dr Schofield. This quote was wrongly attributed to the Editor of the Aim 1 Briefings (cf. C/246, para. 2)

(11.) If resolving international disputes by peaceful, rather than military, techniques may be an acceptable premise for education in peace studies then, a fortiori, so is preventing them from arising in the first place.

whose own definition of 'common security' at C/235^{last para.} was repeated in subsequent Aim 1 briefings (C/339, note 16; C/447, note 2; and D/545, note 4) and never equated with any particular political policy. Aim 2, like Aim 1, describes a process not a policy so it is also potentially charitable but, unlike universal peace, disarmament is a political object. Thus the learned judge's remarks at para. 30 of the judgment may have greater force against Briefings B/1 (C/241-307) and C/1 (C/365-421).¹² Nevertheless, even if the latter were deemed by the Court of Appeal to be of a non-charitable nature, the main purpose (Aim 1) being charitable, these two briefings could be taken as just illustrations of one of the ways (i.e. Aim 2) by which that main object might be achieved. (Cf. Slade J. in McGovern v AG 1 Ch 321 at 341B to E citing Re Hood (1931) 1 Ch. 240, 241).

7. Conclusion

7.1 The trial judge concluded that 'As a description of an academic subject, the expression "militarism and disarmament" is obscure' and that the suggestions for a future briefing series 'do not overcome the problem posed by the wording of the Trust Deed itself' (paras 29 and 31). We most respectfully contend that the term 'militarism' fits a peace studies (irenical) perspective better than, say, 'rearmament' would do and that our analysis at 3.1 - 3.8 above shows that it was applied consistently, in a balanced and objective way, covering all three understandings of the term (see (i) -(iii) at 3.2). There never was a problem with the term 'disarmament' and 'militarism and disarmament' together are to be understood in relation to peace in general, as a legally charitable object. The continuation of the Aim 1 Briefings reinforces these findings (4.1 - 5.2 above). So the dominant purpose of PRODEM is educational not political as our Notice of Appeal claims (ground 1).

7.2 We conclude that, on the objective test for determining charitable status (1.1 above), the trust Deed constitutes a valid charitable trust. Furthermore it is the educational work of the Trust not the Trust Deed itself which is in abeyance (cf. para. 31 of the judgment) and were the Court of Appeal to allow our appeal the trustees believe it is likely that further sums of money would be received to pursue its charitable objects (see D/785, item 2 in response to

(12.) However, the Court is invited to compare these two Briefings with a sample of publications by existing registered charities undertaking educational activities in the field of peace studies (see D/666-753).

AG's request for information at D/783, item 2). The trustees resolved in principle at their meeting on 27 December 1999 to remove the ambiguity in the title of the organisation by amending its name (and that of the Aim 1 Briefing Series). We would envisage the Trust fulfilling a comparable role to the Atlantic Council of the United Kingdom (see D/777, first para.) but from a peace studies (irenical) perspective. [Cf. Re Bushnell (1975) 1 WLR 1596 at 1605E.]

PETER MARTIN SOUTHWOOD
(for Plaintiffs in person)

25 January 2000