

CO/3028/2003

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

IN THE MATTER OF
AN APPLICATION FOR
A JUDICIAL REVIEW

Wednesday, 15 October 2003

BEFORE:

LORD JUSTICE BROOKE

MR JUSTICE SILBER

REGINA

on the application of

ROBERT LEWIS MANSON
(CLAIMANT)

- versus -

THE BOW STREET MAGISTRATES' COURT

(The Judgement of Judge Timothy WORKMAN - being the Senior District Judge
(Chief Magistrate) for the Court).

(FIRST DEFENDANT)

and

CARMARTHEN JUSTICES
(SECOND DEFENDANT)

**THE PRIME MINISTER & FIRST LORD OF THE TREASURY
and THE RIGHT HON MR TONY BLAIR MP**

**HM Principal Secretary of State for FOREIGN &
COMMONWEALTH AFFAIRS
and THE RIGHT HON MR JACK STRAW MP**

**The Secretary of State for DEFENCE
and THE RIGHT HON MR GEOFF HOON MP**

(INTERESTED PARTIES)

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(Official Shorthand Writers to the Court)
as subsequently amended and corrected by the Claimant in Person

THE CLAIMANT APPEARED IN PERSON

THE DEFENDANTS DID NOT APPEAR AND WERE NOT REPRESENTED

TRANSCRIPT OF HEARING

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Proceedings

1. **LORD JUSTICE BROOKE:** You probably have been told the procedure. You have lodged these interesting papers with the court and if there are matters on which you want to address us orally, you have up to 20 minutes in which you are allowed to do so.
2. **CLAIMANT:** I am most grateful indeed, my Lord. I think it would be unusual if in opening I did not say from the very outset that I appreciate myself, most specifically, that the cause of action I seek to ask your Lordships' permission on this morning is not any ordinary or run-of-the-mill matter. I am peculiarly conscious, if I can put it that way, that I appear this morning before a Court which, by statute, is required only to consider matters in which the Claimant has a sufficient interest. I am, I hope, the rare case of someone who, let me be perfectly candid about it, seeks to bring before you a matter which, at its basis, is of what I think is of general public importance, and of which I hope you and I both share, my Lord, a common interest, as it were, in what I would term the requirement to

uphold the rule of law. Having said that, my Lord, and to close my opening remarks, I would say this: I am very conscious indeed that, as a general proposition, the courts of law in this country are not a place in which anybody is entitled to bring in their hobbyhorse and, as it were, to sit upon it in order to have an opportunity to speak about their personal views.

3. **LORD JUSTICE BROOKE:** They often do, Mr Manson.
4. **CLAIMANT:** I am sure that must be the case. I hope, my Lord, If I do nothing else by the close of my submissions before you this morning, that I hope, at the very least, I transfer to your Lordship that such is not my desire, wish or intention - to misuse and abuse your Lordships' honourable court in that way. I bring this matter as a matter of principle. I cannot and I do not seek to deny that I stand here, as it were, as a matter of principle. Because the circumstances, my Lord, which I am sure I do not need to tax your Lordship's court in terms of the facts of the contemporary situation, in my view, they demand that this area of law now be questioned, as it were, but I do not do it in order to try and create a platform in any shape or form for my own particular perspective.
5. That being said then, my Lords, Can I ask if you have the pieces of paper which I submitted with the List Office early yesterday morning. I think the first one is entitled "Statement on Preliminary Matters". Does that ring any particular bell? I intend to go through that if I can in less than five minutes. ... (Pause) ... If, my Lord, Silber J, has it that is certainly sufficient.
6. **LORD JUSTICE BROOKE:** I certainly had it. I may have left my copy in my room. (The Clerk of the Court hands up a Copy)I have the file copy.
7. **CLAIMANT:** I lodged three or four copies.
8. **LORD JUSTICE BROOKE:** I have it.
9. **CLAIMANT:** I am very grateful, my Lord. I think the first matter that is there I have already touched on, as it were, and it is merely to say that, as far as the facts behind this case are concerned, they are of course of such public notoriety in any event, and they were in no way, as far as I can understand it, relied upon by the decision-maker whose decision I seek to challenge before your Lordships' court, that, unless your Lordships' court is of a different view, I do not propose to take you to the facts in my presentations at all really.
10. **LORD JUSTICE BROOKE:** No.
11. **CLAIMANT:** Thank you. I am grateful, my Lord. The second matter is of passing great importance procedurally. It is headed up "The Territorial Jurisdiction of the Second Defendant". My Lord, you will be aware that the Second Defendant in this case is the Magistrates' Court in Carmarthen.
12. **LORD JUSTICE BROOKE:** Yes.

13. **CLAIMANT:** I took the position when I appeared before them, of -- I have described it here as apprehension and concern -- regarding their statutory territorial jurisdiction to issue the process sought. At no point either when I was in the court, which I did obviously in person, or subsequently in correspondence and talking to the learned clerk, did the court ever raise this issue. But it is my position, particularly as a person who puts himself forward as a prospective prosecutor, as it were, and given that there is a well-known doctrine that one should administer to the administration of justice in that role, that goes to the issue of their statutory territorial jurisdiction to issue summonses. It is my position now, my Lords, I have to say, given that the Defendants with whom this case is and continues to be concerned, that is to say the three persons who I cite as interested parties, are clearly not in any way resident or, shall I say, particularly or peculiarly involved with the Commission Area of their Worships' court in Carmarthen. I do not think, frankly, that they have the territorial statutory jurisdiction to issue a summons. I think that is a very important matter.
14. **LORD JUSTICE BROOKE:** Let us just proceed against the First Defendant.
15. **CLAIMANT:** I am most grateful, my Lord, and we can move on quickly. My Lords, the second matter in the Statement is with regards to the issue of the view of Judge Workman -- am I okay to describe him as such?
16. **LORD JUSTICE BROOKE:** I see in the papers he is called Senior District Judge, Chief Magistrate, Workman. Let us call him Mr Workman.
17. **CLAIMANT:** I am very grateful.
18. **LORD JUSTICE BROOKE:** I am sure he will not mind.
19. **CLAIMANT:** I was not too sure --
20. **LORD JUSTICE BROOKE:** He is not one of these people who stand on ceremony.
21. **CLAIMANT:** Mr Workman, in that case, said at one point in his written decision, and which I seek to bring before your Lordships, and that is quoted at the top of that page that ... *"I am not satisfied that there is at present an international crime of waging a war of aggression"*. My Lords, this has caused me a great deal of concern as to how I should deal with that particular matter because, obviously, it is involved. However, Mr Workman immediately then goes on in his judgment to say, I think I quote him exactly correctly, *"However, even if I am wrong about this, ... I find that I am unable to accept the proposition that an offence against customary international law is automatically incorporated into the English common law"* for which view he goes on to give reasons to which I want to come on to deal with this morning.
22. That being the case, my Lords, and given that I have quoted there, at the very

bottom of the page, the words that were used by my Lord, Geoffrey Lawrence LJ, as he then was, in handing down what I, perhaps a little pretentiously submit, is perhaps one of the most famously important judgments in the history of English jurisprudence, namely the judgment of the Tribunal in Nuremberg in 1946, in which I think it clearly takes a different view on that position. But, my Lords, given that it is the case, as I see it, that this is a subsequent matter, and not the grounds with which Mr Workman was particularly concerned, and with which I would want to present the contrary case ; the position I take on this matter, the issue of whether or not the crime exists, for the purposes of this argument, would be to say that, unless your Lordships wish to hear from me on that issue again this morning, I propose to leave it until we have dealt with the more substantive issue of the adoption question.

23. **LORD JUSTICE BROOKE:** Very well.
24. **CLAIMANT:** I am grateful, my Lord. I can conclude on this whole section, what I have termed "preliminary matters", to say merely this, my Lords, that regarding these other issues I am here to plead ignorance in terms of the correct procedure on this matter and really to seek from you your directions. I am peculiarly and candidly conscious that there are any number of issues going to questions such as the constitutional relationship between the criminal courts and the Crown, going to matters such as what is judiciable and cognisable before your Lordships' courts in relation to matters such as what is customarily termed the 'defence of the realm' and 'national security'. There are any other number of other matters around criminal procedure and so forth which, it could be said, are raised by my attempt earlier this year to put these matters before Mr Workman. My position, that which I should like to adopt with your Lordships' consent on those matters, and also in relation to the last issue on these papers which I have headed "potential defences", is as follows, my Lords. Since I am myself here today in order to give you grounds to consider that the judgment of Mr Workman is suspect -- capable-- I should say of judicial review, and since Mr Workman chose not to raise any of these issues, and for that matter, although we have just dismissed it from the case, neither were they alluded to by the learned clerk at Carmarthen.; and, further, since manifestly they are not issues which, in my submission, can be read into the few and commendably short words that were given to me by your colleague, Sullivan J, it would be my understanding that, as regards to all of those matters, I shall leave it to your Lordships to raise them before me, if you think they are relevant, rather than to take up your Lordships' time by myself, as it were, trawling through all those matters which I suspect might be relevant. My Lords, I do that on the presumption that I am entirely happy to deal with such matters if your Lordships feel they are relevant, but they are not raised by the words of Mr Workman's judgment which I seek to challenge, and that I should confine myself to that judgment this morning unless indicated otherwise by your Lordships.
25. **LORD JUSTICE BROOKE:** That seems very sensible.
26. **MR JUSTICE SILBER:** The point that concerns me is that the offences which

you refer to all occurred in Iraq, did they not?

27. **CLAIMANT:** No, my Lord, I must choose to differ there. The offence, as defined within the Nuremberg Principles, if your Lordship is with me on this, is the planning, the preparation, the initiation or the waging of a war.
28. **LORD JUSTICE BROOKE:** Planning?
29. **CLAIMANT:** "*Preparation, initiation or (disjunctive) the waging of a war of aggression or against international treaties, agreements or accords*". Since the interested parties to the present proceedings -- the persons who were subject to the informations before the courts below -- were at no time themselves in Iraq, until after hostilities were commenced, I take the position that, so far as I am able to make out an *actus reus*, if I can put it that way, on this charge ; it was perpetrated, if that is the right word, by those persons whilst they were within the ordinary territorial jurisdiction. I hope that addresses your point, my Lord. (Pause)... I will state that that is why I am saying that I am not attempting to get the Bow Street Magistrates' Court to exercise a territorial jurisdiction over an *actus reus* which occurred in Iraq. I am grateful, my Lords.
30. That being the case, I think that deals with all of the preliminary matters and I shall go straight on to Mr Workman's statement and what I have to say on it, if that is okay with your Lordships.
31. **LORD JUSTICE BROOKE:** Yes.
32. **CLAIMANT:** I am most grateful. Can I just, before doing so, say that I think there are a couple of papers which I am injudicious enough to say I hope I am putting before you in a helpful manner and which I would like you possibly just to confirm you have available because they do summarise the issues. In the little section which on Brooke LJ's papers is headed "summaries" --
33. **LORD JUSTICE BROOKE:** Yes.
34. **CLAIMANT:** There are two or three pages which is my attempt to boil the things down, as it were, to its very basis. The first is headed "Summary". I am told that it is the usual form in summarising to try and put the whole case in no more than a single sheet of paper. That is my best effort in that regard, my Lord. So if I can just point out that that is there. The second is headed up with the title "In the Bow Street Magistrates' Court", and that is a copy -- it is a copy, it is not an original -- of the exact words that were attached to the correspondence I received from Mr Workman. I draw your Lordships' attention to the penultimate paragraph, which I have underlined, as it is, in essence, everything that Mr Workman says there which I intend to bring before your Lordships' attention today.
35. The third and final page is my own efforts, and I do apologise for being so unlearned in these matters, but I do feel it is important to offer my own attempts at visualisation of what I think is a complicated area of law, if I can be so immodest to

say that.

36. **LORD JUSTICE BROOKE:** It has my enthusiastic support, Mr Manson.
37. **CLAIMANT:** I am most grateful to you, my Lord. I think it is quite useful when one talks about "interaction of laws", -- I do not know if that is necessarily a learned phrase-- but if one can visualise what on earth one is talking about, I think it may help.
38. **LORD JUSTICE BROOKE:** If I had my way there would be a screen up there and you would be putting it all up there, but they will not give me the money for it yet.
39. **CLAIMANT:** More fool they if I may say so, my Lord. If I can go straight to the skeleton argument. The first statement made by Mr Workman in his judgment of which I seek to take issue with is the statement at the very top of the page which is headed "introduction":

" . . . I find that I am unable to accept the proposition as(sic) an offence against customary international law is automatically incorporated into the English common law."

40. My Lords, what I seek from you today, no more and no less, what I ask from you today, is set out in bold in the next paragraph. Because I say that that is a mistaken view of the English law as it stands today. I say that it is a matter of the most pertinent and germane general public importance in the times in which we live, and I say that the question which I then disclose in the bold typing is one which merits a preliminary hearing by your Lordships' court and *inter partes*. My Lords, the question, if I may read it briefly, is this:

"Is the law creating a 'crime against peace' capable of being adopted into, and thus forming part of the English common law, cognisable before and justiciable by the ordinary criminal courts of this country -- or instead does the internal or domestic recognition of such a criminal offence, first require an incorporation by way of statute?"

41. So my Lords, what I seek of you today is the opportunity to say why I think that question is answered in favour of the adoption, and the opportunity to hear argument from Treasury counsel as to why, I am assuming, he thinks I am wrong about that. I say that that is a matter of general public importance which, even though my interest (procedurally) is peculiar because, I have chosen to put my head above the parapet in this. Generally, however, I say it is a narrow point. I acknowledge that it raises many other questions, but I say it merits consideration.
42. My Lords, I say that there is a presumption that I have a case to argue because there has been in English common law a well-established and historically well travelled line of authorities which suggest that customary international law is 'adoptable', and should be adopted, albeit when it passes through a series of most important tests

and most important restrictions. My Lords, I say what Mr Workman ought to have done is, he ought to have considered whether my attempt to invoke this adoptive law, passed those tests and restrictions. I say Mr Workman chose not to do that but rather instead, without my appearing before him to argue my position, he chose to adopt the view that common law could not be, as he termed it, "*incorporated automatically*" from the beginning -- *ab initio* as it were. I say that is wrong, my Lords, and I rely on the cases I cite.

43. The first page culminates in the view of -- I think we would have to accept a learned author on this subject -- Sir William Blackstone, when he summarises much of the English common law in the 17th and 18th Centuries. I cite the leading cases there which set this doctrine in train. My Lords, they form quite old law now. I propose to turn the page and deal much more with the 20th century authorities. It is my proposition that the 20th century authorities that I have set down there -- I have numbered them in groups 1 through 5 -- set out a number of important restrictions and limitations on that adoption. It is my submission that my attempt to adopt the law concerned here passes each and every one of them.
44. My Lords, in conclusion on this point about the adoption, I would say this. I would actually agree with Mr Workman in so far as at first flush his statement that this law is not susceptible to automatic incorporation is true. But then I never really suggested to Mr Workman that, in this country, such is the condition that we simply automatically incorporate international custom without first looking at it from the point of view of a rigorous and rigid regime of testing. My Lords, I say that, so far as what Mr Workman was actually saying, was that unless and until Parliament acts, we have nothing whatever to do in our common law with the principles and the rules of customary international law. He is wrong, and he has got it wrong in principle, against those 20th century authorities.
45. My Lords, unless you want to take me to a particular authority, that is the substance of my claim on the principle issue. The only authority which I feel is perhaps worthy of reiterating very briefly and to conclude on this before your Lordships, would I think be the one offered by my Lord, Nourse LJ, in the Court of Appeal -- that is on page 9, my Lord, where he says:

"For up to two and a half centuries it has been generally accepted amongst English judges and jurists that international law forms a part of the law of this country, at all events if it can be shown that there is an established rule which, first, is derived from one or more of the recognised sources of international law . . .

"The doctrine of transformation had a rival in the doctrine of incorporation, which holds that the rules of international law from time to time in force are automatically incorporated [emphasis added] into the common law and, subject always to statute, are supreme. That rivalry was resolved in favour of incorporation by the decision of this court which established the restrictive doctrine of state

immunity in English Law: *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529 . . . "

46. But that, as I say my Lords -- I am under a great deal of pressure here in terms of time -- that was one of several authorities of the superior courts of this country, as I say, which suggests that there are tests which ought to have been applied by Mr Workman. It ought to have been not an absolute prohibition, but it should have been an application of tests. My Lord, if I may then continue. Mr Workman goes on in the next sentence to give, by way of grounds for his ruling, the following observation:

" . . . recent offences with an international element have been introduced by way of statute."

47. My Lords, I go on in the rest of that section to say that whilst this is true, I submit it is true because of two particular and peculiar observations. One is, and I think this is trite law that I do not want to exemplify further, that the incorporation or adoption, as I would say, of international conventional law must, and can only, come by way statute. It is a consequence of our constitutional settlement that otherwise would allow the Crown to make law on the international plane, which without incorporating such treaty law by way of statute, would otherwise breach the supremacy of Parliament. That, together with what I submit is an equally important consideration, namely that the criminal courts in this country require the authority of statute before they can ever exercise, or attempt to exercise, jurisdiction beyond the shores of this country. These are the two reasons why in practice those statutes, which I think Mr Workman had in his mind, were required in order to incorporate the law in that way. The statutes I am referring to are things such as the Geneva Conventions Act, the Genocide Act, the Criminal Justice Act, which incorporated the treaty on torture, and most recently, I think probably the War Crimes Act 1991, which attempted to provide a jurisdiction against crimes committed in Germany, or in the German Occupied Territories during the last World War, and finally, most recently the International Criminal Court Act 2001. I say, therefore, that far from those being examples of the only way in which international law, as a bulk, if I can put it that way, putting together custom and convention, is incorporated ; those statutes are examples of these two principles, namely incorporation by statute is required of conventional law-- remember we are talking about treaty provisions -- and incorporation is also required wherever Parliament wants to give the courts an extra territorial jurisdiction. But the law that I relied on before Mr Workman requires neither of those principles to be invoked, and therefore I think his reliance on the history of saying modern examples were all by way of statute is misplaced. My Lord, that being the case I would proceed to my conclusions.
48. There are statements there -- I recognise my pressure of time -- about the very notable recent case of *Pinochet* and what was said by their Lordships in *Pinochet*. I think it is very relevant and if I had the time and your Lordships' intimation I would take you to it. There is one other case which I commend to your Lordships, and which I am here to submit to your Lordships is the leading modern authority on this

issue. *Nulyarimma v. Thompson*. It is a case in the Federal Court of Australia -- if I have this wrong I apologise -- I think that is a court of equivalent weight, as it were, to your Lordship's Court but in the Australian criminal justice system. It is a court with an appellate jurisdiction, therefore, and in this instance an appeal from a decision which I believe was taken by Crispin J in the Supreme Court of the Australian Capital Territory, It is therefore, I think, an interesting and persuasive authority. The decision was of three judges, but the decision of Merkel J on the question of whether the customary international crime of genocide had been incorporated into the common law of Australia is worthy of the utmost commendation in my humble submission. I submit it is the leading modern authority, having itself trawled through 300 years of this doctrine on adoption. I would commend it to your Lordships. In his conclusions, Merkel J said this, my Lords:

"The above analysis ..[stretching to something like 150 paragraphs].. commencing with the jurisdiction in respect of piracy vesting in the Admiralty Court without legislation prior to 1536 and concluding with Lord Millett's observations in *Pinochet* ..[as recently as 1999].., does not support the view that customary international law, whether civil or in respect of universal crimes, can only be incorporated into municipal law in common law states, like Australia, by legislation. A different situation arises in respect of international criminal law in respect of non-universal international crimes where extra-territoriality and the status of *jus cogens*, is absent . . .

49. Pausing for a moment there, that is not the case with a crime, of such well-established provenance, as "a crime against peace". He concludes:

"In my view, there is no binding authority or persuasive jurisprudential support for the Commonwealth's submission that adoption of customary international civil law or criminal law in relation to universal crimes, as such, into Australian municipal law requires legislation to that effect."

50. My Lord, I pray that in aid in these circumstances. My Lord, given time I would take you to his 5-point rule which, I think, reflects favourably and fairly carefully of the restrictions, limitations and caveats which have been the culmination of the many 20th century case review's of your own Lordships' courts and other superior courts on the position. My Lords, whilst I am clearly with Merkel J on that, it is incumbent upon me to point out that he did not find the support of his brethren, Wilcox J and Whitlam J, in the matter, and I have pointed out there briefly why I would seek, if I was required to, to distinguish what they had to say. I have only time left to mention one issue which is to say that, in Whitlam J's conclusion, he based, in my view -- the bullet point, if one can use that expression, of his opposition to adoption into Australian law, on the premise that it is now effectively a Code country -- the so-called "Griffith Code" on criminal law -- and that in modern Australia, if you cannot find the offence in the Griffith Code, then it does

not exist. My Lords, I would naturally distinguish the law of England, at least as it currently is, if I can put it that way, from the situation that entails in the criminal code country of Australia.

51. **LORD JUSTICE BROOKE:** You are addressing two former law commissioners and perhaps there may be one day when we hold the criminal Code, but it has not arrived yet.
52. **CLAIMANT:** I hope to be able to remind whoever writes that code about this matter. My Lords, in conclusion if I may summarise. You have that document which I called "the Summation" and which has the points and these would be my last words on the topic, my Lord. I do not suspect, I know, that it will be said against me that most of these authorities, upon which I rely, certainly if we confine ourselves to the early 17th and 18th Century authorities, deal with subject matters which are at best peripheral to what we understand in this country as strict criminal law. They deal mostly with sovereign immunity and diplomatic immunity and such like matters. It is said against me, therefore, that the authorities on adoption do not deal specifically with customary international criminal law. My Lords, I say that that is not true of modern authorities and it is certainly not true of the trend which those modern authorities are following. I cite on my last page (17) the rationale of my Lord, Lord Denning, in the *Trendtex* case, which I referred you to, in which he relies heavily on a reference to the law of slavery. Slavery, my Lords, is a criminal offence under contemporary customary international law. My Lords, in the case of *Pinochet*, which I have already referred you to, the issue that was involved in there was the international law offence, both conventional and customary, of torture. That is a criminal offence. My Lords, in the case of *Nulyarimma v Thompson*, and in particular the judgment of Merkel J which I commended so heavily to your Lordships, the issue that was involved in that case was genocide against the Aboriginal people of Australia. My Lords, that too is a criminal matter.
53. In conclusion on this point I would say this. In this country today, and this is set out in detail in the Statement of Claim, it would be a rare, indeed perhaps an exceptional and wholly extraordinary thing, if the Royal Navy were to capture somebody and bring them into Portsmouth harbour in irons accused of being a pirate, but it could still happen ; and if they were to appear before the courts in Portsmouth or Plymouth or wherever, it is my contention that they would be liable to be charged with "piracy". If they had committed their crime on the high seas (that is in international waters), unless they had specifically brought themselves within the terms of a particular statute which deals with attempted murderous piracy, which dates from, I think, 1832, if I am right, my Lords, then the provision today is still that they would have to be charged with *Piracy Jure Gentium*, as was the title of the Privy Council case; that is to say, with piracy under the international law. That would be an example not of something novel, but of something which has happened in this country's criminal courts for many hundreds of years where we have adopted customary international law, in that particular field at least, and used it in order to, I would say, promote this doctrine which gives our country an internationalist personality -- to use the words of Brennan J in the case of

Polyukhovich.

54. My Lords, my concluding words are these. It is difficult for me to encapsulate such an issue, which I say is so great, so briefly and still do it justice, but I say to you this, my Lords. We live, I think, in dangerous times. We are here privileged by the protection of these walls from the matters which are to do with politics and diplomacy, and which I know do not thankfully impinge upon your Lordships' considerations. But I do think it is incumbent upon me to point this out, my Lords. There are people beyond the walls of this court who, it seems to me, are, as we speak, actively surveying the grave site for those fundamental principles of international customary law which at Nuremberg were declaimed as making international aggression a "crime against peace". My Lords, it is my view that the words of Mr Workman, the first Defendant in this case, invite you, as it were, to bring down a gavel, so as thereby to drive home a last nail in the coffin of those principles in this country. In so much as this my Lords. I think his words invite you to close down the development and the progress of what I regard as one of the most important aspects of the doctrines of our common law, that is to say the importance of the adoption of international custom into our common law, subject to very important restrictions and caveats.
55. My Lords, clearly I do not have a personal grievance or any interest in this more than anybody else, but I come before you today because I think this narrow issue, as narrow and esoteric as it is, is of the utmost concern to people out there in this country and so should be of concern to the common law of England.
56. I conclude with these views, my Lords. I think that if my conclusion is right and Mr Workman asks to close that doctrine down, all I seek is the honour of having the issues argued *inter partes*, one time before your Lordships' court, so that it is done or not done according to proper considerations. My Lords, that is all I seek from you today. You may say I am a dreamer. If that is the case, then I say that I am not the only one. My Lords, I am most grateful for your extra time and consideration. I stand ready to answer any considerations or questions you may have.
57. **LORD JUSTICE BROOKE:** I do not think we have any considerations but we will retire for a moment to consider the matter and before we do, I would like to compliment you for the extremely clear and concise way you presented your submissions on this important matter today. Thank you very much.

----- (Their Lodships retired for 10 mins. to consider their decision) -----

Judgement

1. **MR. JUSTICE SILBER :** Mr Robert Lewis Manson seeks permission to challenge the refusal of Mr Timothy Workman, the Senior District Judge, sitting at

the Bow Street Magistrates' Court, to issue summonses against the Prime Minister, the Secretary of State for Foreign Affairs and the Secretary of State for Defence for the commission of "crimes against peace under the common law and against the peace of the Realm." He had originally also sought permission to challenge the refusal of the Carmarthen Magistrates to issue a summons, but in the course of his oral submissions before us, he withdrew that application. This is a renewed application because the initial permission application was refused on paper by Sullivan J.

2. The background to this application is the war that was waged by the United Kingdom in Iraq earlier this year. The thrust of the case for the Claimant is that the District Judge made errors of law in reaching his decision.
3. The summonses that the Claimant sought to issue stated that the alleged offence was that of commissioning a crime against peace under common law and against the peace of the Realm. It was explained to us by the Claimant that these acts consisted of planning for war, preparing for war, initiating and waging war. So far as the claim in respect of waging war is concerned, the first issue that has to be considered is whether the English courts have any jurisdiction. English criminal jurisdiction is territorial so that the function of the English courts is to maintain the Queen's Peace within Her Realms. Therefore, with the exception of statutory offences, the court is not concerned with conduct abroad. Indeed, the whole body of the criminal aspects of the common law of England deals with acts committed in the United Kingdom. It therefore follows that in so far as the claims made in respect of waging war outside England and Wales are concerned, there is no basis for criticising the decision of the District Judge to refuse to issue a summons.
4. I turn now to the allegations that the Defendants were committing an offence by planning, preparing and initiating war. The Claimant has made a number of interesting legal submissions and has supplied us with much written material. The Claimant has made a number of interesting legal submissions and has supplied us with much written material. His claim raises the question of whether the offences of planning, preparing and initiating war abroad amount to crimes recognised in English law. The Claimant says that carrying on an aggressive war is recognised as being against customary international law and that this has been incorporated into the criminal law of this country. Even if there was an international crime of planning, preparing and initiating a war of aggression, which is a matter on which I do not express a final opinion, I am unable to accept the proposition that such an offence has been incorporated in any way into English criminal law. It follows, therefore, that the English courts were correct not to issue summonses relating to the Claimant's complaints.
5. Thus, it follows that the learned District Judge was correct. For my part, I conclude that, notwithstanding the clear, concise and detailed submissions of the Claimant, this application must be dismissed.

6. **LORD JUSTICE BROOKE** : I agree.