

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

2005

Part Three. Judicial decisions on questions relating the United Nations and related
intergovernmental organizations

Chapter VIII. Decisions of national tribunals



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	<i>Page</i>
1. Judgements	510
2. Decisions of the Appeals Chamber	510
3. Decisions of the Trial Chambers	510
G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA	510
 CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS	
CANADA	511
ANNEX. CHART OF THE UNITED NATIONS	515

Part Four. Bibliography

A. INTERNATIONAL ORGANIZATIONS IN GENERAL	
1. General	519
2. Particular questions	519
B. UNITED NATIONS	
1. General	521
2. Principal organs and subsidiary bodies	
General Assembly	524
International Court of Justice	524
Secretariat	527
Security Council	528
3. Particular questions or activities	
Aviation law	531
Collective security	531
Commercial arbitration	531
Consular relations	532
Definition of aggression	532
Diplomatic relations	533
Disarmament	533
Environmental questions	534
Financing	535
Friendly relations and cooperation among States	535
Human rights	535
International administrative law	539
International criminal law	540
International economic law	541
International terrorism	541
International trade law	543
International tribunals	545
International waterways	552

Chapter VIII
DECISIONS OF NATIONAL TRIBUNALS

Canada

Court of Appeal*

Province of Quebec, District of Montreal, 2 November 2005**

*Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the Staff Association of the International Civil Aviation Organization and Wayne Dixon, Respondents****

*Gérald René Trempe, Applicant, against the Attorney-General of Canada, Intervener, and the International Civil Aviation Organization and Dirk Jan Goossen, Respondents*****

QUESTION OF IMMUNITY OF AN INTERNATIONAL ORGANIZATION AND ITS OFFICIALS—
ACT RESPECTING THE PRIVILEGES AND IMMUNITIES OF FOREIGN MISSIONS AND
INTERNATIONAL ORGANIZATIONS—HEADQUARTERS AGREEMENT BETWEEN THE
GOVERNMENT OF CANADA AND THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
(ICAO)—IMMUNITY FROM JURISDICTION OF OFFICIALS OF ICAO—FUNCTIONAL
IMMUNITY—IRRELEVANCE OF SENIORITY OF OFFICIAL FOR THE PURPOSE OF
IMMUNITY—IMMUNITY WITH RESPECT TO AN ORGANIZATION'S INTERNAL OPERATIONS

Decision

1. The Court had before it the appeal of a judgement issued on 20 November 2003 by the Superior Court, District of Montreal (The Honourable Claude Tellier, presiding). The judgement granted the request of the Attorney-General of Canada that case No. 500-05-061028-005 be declared inadmissible and that the action brought by the Applicant against the Staff Association of the International Civil Aviation Organization and Wayne Dixon be dismissed, and also granted the Attorney-General's request that case No. 500-05-063492-019 be declared inadmissible and that the action brought by the Applicant against the International Civil Aviation Organization and Dirk Jan Goossen be dismissed.

* Composition of the Court: the Honourables René Dussault, J.C.A., Pierre J. Dalphond, J.C.A., Jacques Dufresne, J.C.A.

** Case No. 500-09-014074-033. Translated from French by the Secretariat of the United Nations.

*** Case No. 500-05-061028-005. (See the *United Nations Juridical Yearbook, 2003* (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)

**** Case No. 500-05-063492-019. (See the *United Nations Juridical Yearbook, 2003* (United Nations publication, Sales No. E.06.V.1), chapter VIII, p. 585.)

2. The judge of the court of first instance reached this conclusion on the grounds that ICAO and its staff enjoyed immunity pursuant to the Act respecting the privileges and immunities of foreign missions and international organizations (the Act).^{*} The Act incorporates the full text of a number of international treaties.^{**}

3. The Court of Appeal reviewed the record, heard the parties and deliberated, as described below:

I

4. ICAO is an international organization within the meaning of the Headquarters Agreement,^{***} with Headquarters in Montreal.

5. The Applicant was hired as a contractual employee by ICAO for the period 27 June 1990 to 12 October 1992. The contract was subsequently renewed for the period 1991–1992. The Applicant thus occupied a clerical post at ICAO from 27 June 1990 to 30 December 1992.

6. His employment contract stipulated that the appointment could be cancelled on one month's notice.

7. On 6 November 1992, the Secretary General notified the Applicant that his contract would not be renewed on 31 December 1992.

8. The Applicant claims in his pleading that Respondent Dirk Jan Goossen, at the time ICAO's deputy director of personnel, informed him that his contract had not been renewed because the number of General Service posts, including his clerical position, was being reduced and that therefore his post would not be filled in 1993.

9. On 5 January 1993, the Applicant noticed that his post had not been abolished and that, on the contrary, it had been filled.

10. The Applicant then attempted to appeal the decision of 6 November 1992 not to renew his contract through internal ICAO mechanisms but was rebuffed on the grounds that he had not submitted his appeal within one month of receipt of the notice of 6 November 1992 informing him that the contract would not be renewed.

11. The Applicant filed an unsuccessful appeal with the United Nations Administrative Tribunal (UNAT).

12. The Applicant faults Respondent Goossen for having deliberately thwarted his appeal to UNAT by sending an internal note to the ICAO Secretary General indicating that no exceptional circumstances justified granting permission to the Applicant to address UNAT regarding the Secretary General's refusal to waive the time limit for appealing the decision of 6 November 1992.

^{*} L.C.C. c. F-29.4.

^{**} The Vienna Convention on Diplomatic Relations of 18 April 1961 (Schedule I); the Vienna Convention on Consular Relations adopted on 24 April 1963 (Schedule II); and the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946 (Schedule III).

^{***} Headquarters Agreement between the Government of Canada and the International Civil Aviation Organization, R. T. Can. 1992, No. 7.

II

13. The nature of the pleadings the Applicant has lodged is germane here.

14. The Applicant deems ICAO responsible for malicious actions on the part of its employee, Dirk Jan Goossen. He blames Respondent Goossen for having failed properly to apprise him of his rights and for providing the Secretary General with erroneous information which misled the Secretary General regarding the Applicant's situation, thereby depriving him of his right of appeal.

15. The Applicant also lodged a separate pleading against the ICAO Staff Association for refusing to assist him even though he was a member of the Association at the time his employment ended (500-05-061028-005). In the same pleading, he requested damages from Wayne Dixon, an ICAO staff member and president of the Federation of International Civil Service Associations (FICSA), blaming him for wrongful and malicious actions which, he claimed, unduly influenced the ICAO Staff Association's decision not to support his efforts to have UNAT reconsider its decision.

III

16. The claim against ICAO and Dirk Goossen, an ICAO official at the time, clearly conflicts with the immunity granted by Canada to ICAO and its officials. Indeed, the claim stems from the allegation that Mr. Goossen, in providing information of a particular nature to the ICAO Secretary General, prevented the Applicant from seeking redress from an international organization.

17. It is clear that the Applicant is requesting damages in connection with the conduct of his former employer, ICAO, and an ICAO supervisor. As the Superior Court recognized in *Miller v. Canada* [2001], 1 R.C.S. 407, ICAO, as an employer, has immunity conferred by the Headquarters Agreement,* and this immunity naturally applies as well to the actions of ICAO's representatives.

18. All the actions for which Respondent Dirk Jan Goossen is blamed relate to his duties at ICAO. Whether he performed the actions in his capacity as a senior official or as an ordinary staff member, he enjoys immunity under the Act.

19. The second complaint was lodged against the ICAO Staff Association and Wayne Dixon, an Association supervisor at the time. In his statement to the Superior Court, the Applicant blames the Association and Mr. Dixon, one of his colleagues at the time, for failing to represent him following the decision by ICAO not to renew his contract. The complaint clearly was prompted by the termination by ICAO of the Applicant's employment contract and is a matter governed by ICAO's staff rules and Service Code. In other words, the internal operations of ICAO apply to the case. To attempt to compel compliance with such rules through recourse to the Canadian courts conflicts with the immunity ICAO enjoys with respect to its internal operations.

20. For these reasons:

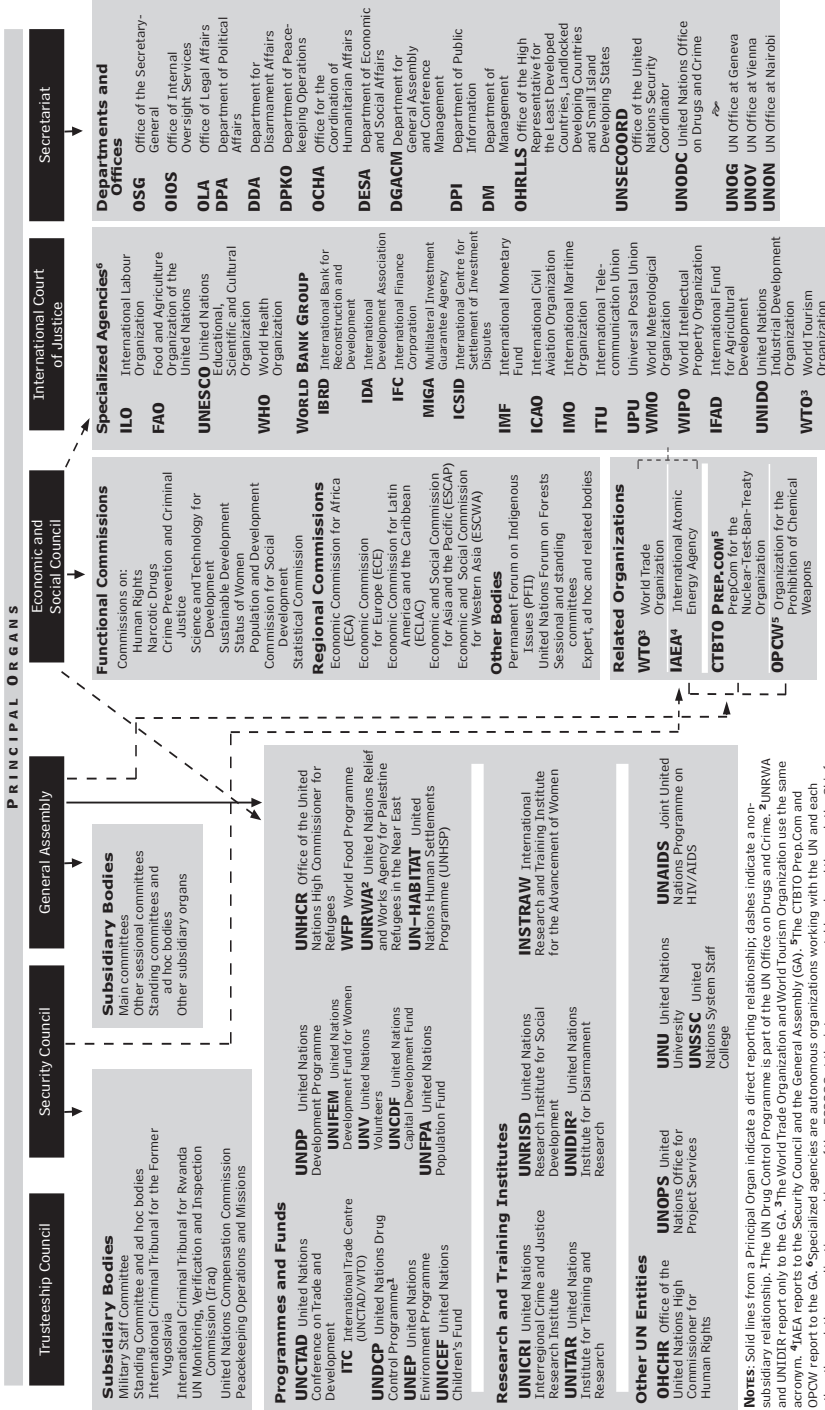
21. The court rejects the appeal, with costs.

* *Supra.*, note 3.

ANNEX



The United Nations system



NOTES: Solid lines from a Principal Organ indicate a direct reporting relationship; dashes indicate a non-substantive relationship. ¹The UN Drug Control Programme is part of the UN Office on Drugs and Crime. ²UNWAVE and UNIDF report only to the GA. ³The World Trade Organization and World Tourism Organization use the same acronym. ⁴IAEA reports to the Security Council and the General Assembly (GA). ⁵The CTBT Prep-Com and OPCW report to the GA. ⁶Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of the ECOSOC at the intergovernmental level, and through the Chief Executives Board for coordination (CEB) at the inter-secretariat level.