

INSTITUTE AND CENTRE OF AIR AND SPACE LAW

McGill University

Annual Report

2001-2002

Prepared by

Professor Armand L.C. de Mestral
Acting Director

7 August 2002

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GENERAL

This year the Institute of Air and Space Law of McGill University completed its 51st year as a unique place of graduate studies and research in the field of international law of aviation and of the law of space applications. Since its foundation in 1951 the Institute has achieved considerable international recognition and over 800 students from 123 countries have completed here their graduate specialization, most of them now working in positions of high responsibility in the field with governments, international organizations, airlines, in private law practise, aviation insurance, other related businesses or as academics. In supporting the IASL, the Faculty and the University are making a significant contribution to the development of global governance.

In accordance with past practice the Report is presented jointly for the Institute and the Centre since they are fully integrated in their aims, program, management and personnel. This Annual Report is prepared by the Acting Director, Professor Armand de Mestral, in consultation with the former Director, Prof. Dr. Michael Milde, Professor Richard Janda and Dr. Ram Jakhu and others participating in the work of the Institute during the year. This has been a year of further renewal marked by the nomination of a new Director, Prof. Paul Dempsey, and the holding of a highly successful 50th Anniversary Conference in April 2002.

The life of the Institute has continued without diminution. There has been a solid class of Master's students and also one student (Joseph Wilson) who completed his doctoral studies with honours. Dr Milde and his team edited another volume of the *Annals of Air and Space Law*, an internationally recognized publication in its field, which was published in May 2002. The Institute has received many distinguished visitors over the

year and has been invited to participate in a number of important seminars and conferences.

The Institute performs pedagogical functions in graduate studies and is the focus of research in the fields of air law and the law of space applications within McGill University. The Institute is funded by the budget of the Faculty of Law at a rate which successive Deans have recognized is inadequate. The University has reached the same conclusion and has taken a major step in funding and supporting the salary of the Director and holder of the Tomlinson Chair, as well as, by agreeing to fund an additional one half position for the next five years. It is to be hoped that this additional half position will be filled by the incoming Director in the next months. On this solid basis supporters of the Institute should be able to raise considerable sums of additional money for teaching, research and publications and for scholarships.

The Centre, which continued to be directed by Dr. Milde this year, continues as an informal and widely international circle of graduate students working on their thesis research, other research programs or on the development of the databases of the IASL homepage. The Centre also includes alumni, associates and friends from the broader academic world, legal practitioners and officers of international public and private organizations who participate in the co-ordination and research, and contribute to the publication of the *Annals of Air and Space Law*. The Centre also serves as a medium for the organization of conferences, symposia or colloquiums or seminars at McGill and in different parts of the world and is a networking forum for the IASL students in 123 countries who are members of the IASL Alumni Association, a loyal and very supportive body of alumni whose equal would be hard to find at McGill University.

One of the most striking features of the life of the Institute this year, as in the past, has been its devoted support and close contact with alumni throughout the world. It is not an exaggeration to say that the Director of the Institute is welcome in virtually every airport and Ministry of aviation or major airline throughout the world because he will find graduates of the Institute working there. This is something which the Institute can build upon in the future as it initiates its major fund raising campaign. At no point was this more evident than during the 50th Anniversary Conference. This conference brought together

many of the leading experts of the World with some 200 participants from 38 countries. The spirit of the conference was extremely positive and cordial. Clearly there is massive support in the air and space communities for the Institute and the IASL remains the leading institution of its kind in the World. The incoming Director and Acting Director used the Conference to build ties with other sister institutions.

Contact with alumni as well as contact with students in the programme this year has served only to confirm in the mind of the Acting Director his long-standing opinion of the value of the Institute as a teaching and research institution and its importance for McGill and the broader community of air and space lawyers. Air law continues to be a dynamic and ever-changing field of law. As with many other areas of law, traditional boundaries may be crumbling but the core function continues to be of great commercial and intellectual significance. The whole field of space applications and in particular space communications technology has continued to increase in commercial importance and to give rise to an ever-increasing range of intellectually challenging legal problems. This has happened to the point that the Institute may well need to set-up two separate streams: one dealing with air law and the other dealing with space law.

The central challenge facing the Institute in the last few years has been renewal of its professors and the related issue of funding. Ten years ago Professors Haanappel, Vlastic and Dr. Jakhu devoted themselves largely to air and space law. Professor Haanappel has left definitively. Professor Vlastic has retired but fortunately Dr. Jakhu has now returned to Montreal and is teaching on a half time, but long-term basis, in the Institute, thus ensuring greater permanence to courses in space law. He taught an additional seminar and took on a number of thesis supervisions this year. Professor Janda has continued to teach a very valuable course in government regulation of civil aviation. His contribution to the Institute is considerable. It would be valuable if more professors in the Faculty could devote part of their time to air and space law. Further bridges need to be built in both directions.

However, in the last few years, the Faculty is able to support only one and half-professorial positions. This is not sufficient to maintain the quality of teaching and research required by the subject matter and to attract the best students. It is therefore imperative

that money be raised in order to support at least one other full-time professorial position. The Macdonald Report recognized these problems and made extensive recommendations to resolve them. In essence the Report suggested that the IASL merits Faculty and University support and that it should be given adequate tools to do the job. As indicated above, the University has accepted the recommendations of the Macdonald Committee and has committed significant new resources to the Institute, including the Tomlinson Chair for the Director and an additional half position for the next five years. On this foundation, Institute supporters should be able to raise considerable additional money.

With respect to the long-term development of the curriculum, the Acting Director did not feel it appropriate to take major decisions. However, it is his recommendation that a new Director should give early consideration to revision of the programme both in the field of air law and space law. The present courses in public and private air law are intellectually sound but a further integration of air law into the broader fields of international trade and international commercial law, as well as corporate law, would only serve to further enhance the relevance and importance of our programme. Similarly in the field of space applications, greater concern for the commercial dimensions of this field of law and, in particular, for space telecommunications would clearly be an attractive feature for students and would respond to fast-moving commercial and legal and technical developments. It is also the strong recommendation that more intellectual bridges between Institute and Faculty be built both with respect to teaching and research. The Macdonald Report made valuable suggestions as to more theoretical and interdisciplinary content of the future curriculum.

The Law Library collection in Air and Space Law is adequate but the departure of Mr. Li from the Library some years ago created a great void which the Central Library has regrettably failed to fill. This statement was made in 2000 and unfortunately remains true two years later.

Fund-raising will be an important priority in the years ahead. The Advisory Committee chaired by Dr Peter Nsgos of New York is ready to begin a major campaign as soon as the Director and the McGill Development staff consider it appropriate. One donor has come forward lately with the offer of an essay prize. A group of IATA lawyers

wish to honour the memory of Sheila Macbrayne. The Bombardier Aerospace Company should be open to requests from the Institute. IATA is eager to enter into partnerships with the Institute to further professional development courses. Many opportunities exist to partner with private institutions to develop a renewed research agenda for the Centre.

Finally the creation of a full-time teaching programme in Air Law at the University of Leiden creates a competitor for the first time. Competition can be very valuable and there is room for two Institutes but the IASL cannot rest on its laurels. It is essential to strengthen the teaching staff programme in 2002-2003.

I. HIGHLIGHTS OF 2001-2002

1. Appointment of Paul Dempsey as Director and holder of the Tomlinson Chair in Global Governance in Air and Space Law.
2. A very successful 50th Anniversary Conference was held in Montreal in April 2002 attended by over 200 participants.
3. The Conference was sponsored by the following list and generated revenues of over \$50,000.

Sponsors - Cash Gifts	Amount:
Bombardier - Daniel Desjardins	\$2,500
Condon & Forsyth - R. Margo	\$15,400
Dr. Nikolai Ehlers	\$1,000
EUROCONTROL -	\$5,000
Prof. Armand de Mestral	\$1,000
Langlois Gaudreau - Dimitri Maniatis	\$2,500
Milbank, Tweed, Hadley & McCloy LLP - P. Nesgos	\$1,520
Prof. Masao Sekiguchi	\$50,000
Dr. Lucy Stojak	\$150
TOTAL	\$79,070
Gifts in Kind	
Transport Canada	\$5,000
TOTAL SPONSORSHIP	\$84,070

4. A new Latin American Alumnae Association was founded at the Conference
5. Volume XXVI of the *Annals of Air and Space Law* was published in 2002 under the Editorship of Professor Milde.

6. The Acting Director was invited to make three presentations to the ICAO Air Transport Committee on different aspects of liberalisation of air transport services.
7. The IASL Alumni Association held meetings in various parts of the world and has continued its active support of the work of the Institute. The Association has some 800 members in 123 countries. The Acting Director made special efforts to meet with alumni both in Europe and in the United States in order to assure them of the Faculty's continued support of the Institute and to seek their participation and support for a fund raising campaign. The reception was very cordial.
8. An agreement in principle has been reached with the Legal Advisor of the International Civil Aviation Organization to establish a legal database of bilateral treaties. The funding of this effort is one of the objectives of the fund-raising campaign.
9. The Institute and Centre in the person of Professor Milde co-operated with UNIDROIT on the Draft Convention on the international interests in mobile equipment (including aircraft and satellites) which is now emerging as a major development in international commercial law.
10. The Institute again designed and delivered the specialized course in air law for the MBA in airline management at Concordia/IATA programme
11. Professor Milde acted as an expert consultant for ICAO technical assistance projects in Uganda, Venezuela, and the six CIS central Asian Republics
12. Professor Janda was invited to deliver talks at ICAO's Trade and Air Transport seminar in August and at the OECD's Third Services Experts Meeting in Paris in March. He also presented a paper entitled "Aviation Governance in the Wake of September 11" at the University of Michigan Law School, Trade Law Workshop in January.
13. Professor Jakhu provided consultation for Davies Ward Philip & Vineberg in New York regarding "Draft Satellite Supply Contract: He was also invited to give lectures in Telecom Law and Space Law by Wits University, Johannesburg, South Africa and participated in the Workshop "International Legal Regimes Governing Space Activities", organized by the American Astronautical Society in Arizona, USA,
14. A number of distinguished visitors addressed students in the LL.M. programme during the course of the year either by way of special lectures or participation in the established courses. Several new adjunct professors were appointed.

15. Dr. Saba led several field trips to the following important air and space law related institutions:

- International Air Transport Association (Fall/2001)
- Canadian Space Agency (St. Hubert) (Fall/2001)
- Bombardier Aerospace (Ville St-Laurent) (Feb. 19/2002)
- International Civil Aviation Organization (March 8/2002)
- Ottawa visit to:
 - 1) Transportation Safety Board;
 - 2) Civil Aviation Tribunal; and
 - 3) CSA David Florida Laboratory (March 15/2002)
- EMS Technologies (Ste. Anne de Bellevue) (March 19/2002)
- Aéroports de Montreal (Dorval) (March 22/2002)
- Air Canada (Dorval) (April/2002)

II. REVIEW OF THE OBJECTIVES OF THE INSTITUTE

The overall objectives of the Institute and Centre remain constant but their specifics need to be constantly adjusted and modernized. They include:

- a) to provide specialized graduate teaching of the law of international civil aviation and of the law of space applications with high academic standards of the theoretical approaches in the context of the policy and industry environment and their practical needs;
- b) to carry out focussed and co-ordinated research in the fields of international air law and the law of space applications and disseminate its results (in particular through the McGill *Annals of Air and Space Law*); and
- c) to act as an international academic hub for networking among specialists in all parts of the world for the co-ordination of research, exchange of ideas, organization of international Conferences, colloquia, symposia and seminars.

The Institute since its inception in 1951 benefits from the proximity of the Headquarters of the International Civil Aviation Organisation (ICAO) in Montreal, from its close *Cupertino* with the ICAO leadership and experts; the vast ICAO archives and library resources are available to Institute's students and they also have frequent opportunity to attend ICAO meetings in the legal field and to follow the multilateral diplomacy in the aviation field. Similarly, Montreal is one of the seats of the International Air Transport Association (IATA) and of the Société internationale des télécommunications

aéronautiques (SITA) with whom the Institute and its students closely cooperate. The Canadian Space Agency (CSA) also has its headquarters close to Montreal (St. Hubert, QC) and its documentary resources and personnel are very helpful to the Institute's mission. Closer cooperation has been established with Aéroports de Montréal to study the privatization of airport operations and with NavCanada - a recently privatized Air Traffic Services (ATS) entity.

The Institute's tradition of almost half a century, its collection of specialized literature and theses of its alumni and its location in Montreal - the "world capital of civil aviation" - are in themselves unique assets facilitating the Institute's objectives and mission and serve to attract students and researchers to McGill.

These objectives are broadly accepted by the Macdonald Report although extensive changes and improvements are recommended.

III. EVALUATION OF PAST YEAR'S ACTIVITIES AND PERFORMANCE IN TEACHING, RESEARCH AND SERVICE TO THE ACADEMIC AND BROADER COMMUNITY

The Institute was the object of peer review during the period 1999-2000 by a Committee composed of Roderick Macdonald, Patrick Glenn, Ivan Vlastic and John Keenan. The Institute's teaching program as described in the 1997-98 Annual Report was continued essentially unchanged in the area of air law. Dr. Jakhu has given an additional research seminar in space law, given on an optional basis in the academic year 2001-2002.

Research production is reflected in the *Annals of Air and Space Law* - Volume 26 and a variety of publications by both Professors Milde and Janda and Dr. Jakhu are available on the Institute's webpage: www.iasl.mcgill.ca.

IV. PEER INSTITUTIONS

For the first time in its history the Institute does have a "peer" in academia. The University of Leiden, as of October 2000, offers full time graduate teaching and research in air (but not space) law - on a full time basis and leading to Master's degree (LL.M.) or Doctorate (D.C.L.) in air law. However, nowhere in the world is it possible to duplicate the direct access to ICAO and IATA and their research resources.

While there is no comparable Canadian institution, there are other "sister" Institutes such as the University of Cologne, but they do not offer full time teaching leading to a specialized degree. The Argentine *Instituto del derecho aeronautico y espacial* is a military institution supporting specialized research (far removed from the primary resources) but not offering teaching. The air law program at the Southern Methodist University in Texas focuses predominantly on US law (as does their excellent *Journal of Air Law and Commerce*). These related institutions cooperate closely with the Institute and use its personnel resources - in particular in the evaluation of theses and doctoral defences. The Institute's syllabus serves as a guidance for some of their courses.

V. Staff Listing:

Teaching Staff:

MILDE, Michael, Professor
VLASIC, Ivan, Professor Emeritus
JAKHU, Ram, Associate Professor
JANDA, Richard, Associate Professor

Full-time Administrative and Clerical Staff

SMITH, Lionel, Associate Dean (Graduate Studies and Research)
de MESTRAL, Armand, Acting Director
BARATTA, Margaret, Administrative Assistant
VAN LEYNSEELE, Ginette, Graduate Programmes Coordinator
D'AMICO, Maria, Institute Secretary
PICCIONI, Dalia, Receptionist

IASL Advisory Committee

BUNKER, Dr. Donald, Dubai
CHRYSTAL, Philip, Zurich
EHLERS, Nicolai, Munich
FORTIER, Me Jean Marc, Montreal
KEENAN, Me John, Montreal
MARGO, Dr. Roderick, Los Angeles
NESGOS, Dr. Peter, *Chair*, New York
PETSIKAS, Me George, Montreal

Part-time and auxiliary staff:

Sessional Lecturers

BUNKER, D., Adjunct Professor
12 hours on: Comparative Air Law
HARAKAS, Andrew, Adjunct Professor
MARGO, Rod D., Adjunct Professor
NESGOS, P., Adjunct Professor
3 hours on: Law of Space Law Applications
SABA, J., Adjunct Professor
9 hours on: Comparative Air Law
and organizer of 6 field trips
SCHUBERT, F., Adjunct Professor
12 hours: GNSS
VAN FENEMA, H.P., Adjunct Professor
12 hours on: Government Regulation of Air Transport
5 hours on: Law of Space Law Applications
VAN HASSELT, L., ICAO
1 hour: Government Regulation of Air Transport
WASSENBERGH, Henri, Adjunct Professor
WEBER, L., Adjunct Professor
24 hours on: Comparative Air Law
3 hours on: Public International Air Law

Guest Lecturers

ALECK, Jonathan, Representative of Australia to ICAO
3 hours on: "Complimenting Liberalization"
DUCHARME, Edward
3 hours on: Law of Space Law Applications
EDDY, Andrew
1 hour on: General Principles of Space Law
GABRYNOWICZ, Joanne Irene
6 hours on: Law of Space Law Applications

HUANG, Jiefang
2 hours on: General Principles of Space Law
LACHAPELLE, Guy
1 hour on: General Principles of Space Law
LACK, Peter
6 hours on: Private International Air Law
STOJAK, M-Lucy
3 hours on: General Principles of Space Law

N.B.: The IASL is relying to a large degree on the services of Adjunct Professors and visiting lecturers not only to make up for the lack of permanent staff resources but to keep the students exposed to up-to-date contact with prominent practising experts.

VI. ADDITIONAL INFORMATION ATTACHED

- a) List of IASL students enrolled in 2001-2002
- b) List of theses topics
- c) Consulting Activities
- d) Publications
List of publications is also presented separately at www.iasl.mcgill.ca in the prescribed form.

Institute of Air and Space Law
Students who have registered for 2001/02

LL.M./G.C. 1st year: (13 LL.M./2 G.C.)

Aguilar Cortes, Carlos		
Allard, Mathieu	G.C.	France
Banerjea-Brodeur, Nicolas	G.C.	Canada
Benguira, Audrey		France
Bhattacharya, Raja		India
Del Rey-Ubago, Beatriz		Spain
Giard, Timothee		France
Jallow-Sey, Aisatou		Gambia
Moore, Joe Wesley		U.S.A.
Oh, Sang-Eun		Korea
Pechberty, Sébastien		France
Pereira-Baia, Liliane		France
Rodriguez-Contreras, Pablo		Spain
Waithaka, Kuria		Kenya
Yodmani, Suvong		Thailand

LL.M. 2F (paying full-time fees) (4)

Addy, Naa Adoley	2F	Ghana
De Ryck, Kristina	2F	Belgium
Grossman, Louis	2F	U.S.A.
Lelieur, Isabelle	2F	France

LL.M. Additional Sessions (7)

Amana, Idorenyin	3A	Nigeria
Ancel, Marie-Eve	3A	France
Bensoussan, Denis	3A	France
Dietrich, George	4A	Canada
Khadjavi, Hodjat	3A	Iran
Luqui, Claudio	3A	Argentina
Van de Velden, Aster	2A	Holland

Doctoral Students (full-time) (5)

Bourbonniere, Michel	3F	Canada
Hermida, Eduardo	3F	Argentina
Hoerl, Kay-Uwe	3F	Germany
Maeng, Sung Kyu	4F	Korea
Naji, Alaa	3F	S. Arabia

Doctoral Students (Additional Sessions) (2)

Guermazi, Boutheina	5A	Tunisia
Wilson, Joseph	5A	Pakistan

**Theses submitted and approved
in the Institute of Air and Space Law
in 2001-02**

Alphabetical List:

Air Law:

Addy, Naa Adoley	LLM	Aviation: The new order (deregulation, the environment, health, safety and security)	May 2002
Amana, Idorenyin Edet	LLM	The Montreal Convention of 1999: problems & prospects	May 2002
Ancel, Marie Eve Zoé	LLM	Les aspects juridiques du transport des oeuvres d'art	May 2002
Geoffroy, Marion	LL.M	La sécurité du transport aérien européen: approche institutionnelle et juridique	October 2001
Giesecke, Christian	LL.M	Unruly passengers and passengers' rights (a legal perspective on handling unruly behavior taking into account the rights of passengers)	February 2002
Lamy, Christophe	LL.M	Technical board of aircraft accidents investigation in the United States and France	October 2001
Lelieur, Isabelle	LLM	Law and policy of substantial ownership and effective control of airlines: Prospects for change	May 2002
Maniatis, Dimitrios	LL.M	The seizure and detention of aircraft by Canadian airports and the convention on international interests in mobile equipment	October 2001
Naji, Alaa	LL.M	Islamic fight and the contract of international carriage of passengers by air	October 2001
Vergote, Brecht Geert	LL.M	Migrating to the web: the legal dimension of the e-travel revolution	October 2001
Wilson, Joseph	DCL	Globalization and limits of national merger control laws: gaps in global governance and the need for an international merger control regime	May 2002

Space Law:

Hornik, Jiri	LL.M	Navigation in airspace – a legal trichotomy	February 2002
Petras, Christopher	LL.M	The convergence of U.S. military and commercial space activities: self-defense and cyber attack, “peaceful use” and the space station, and the need for legal reform	October 2001

CONSULTING ACTIVITIES
June 1, 2001 – May 31, 2002

Name of Faculty Member	Number of days			Total
	Private Sector Consulting	Public Sector Consulting	Other (please explain)	
Dr. Michael Milde		53		53
Dr. Ram Jakhu	32	23	15	70
Prof. A. de Mestral	N/a in relation to air law			0
Prof. R. Janda	N/a in relation to air law			0

PUBLICATIONS 2001-2002

MILDE, Michael,

Annals of Air and Space Law, Vol. XXVI - 2001 - as Editor-in-Chief and author of a substantive article

---“Aviation Safety Oversight: Audits and the Law”, *Annals of Air and Space Law*, Vol. XXVI (2001), pp. 165-177

---“Unruly Passengers and the Law”, *SAA Review*, December 2000 (appeared in March 2001), pp. 3-4

---“Aeronautical Incidents and International Law”, *The Air & Space Lawyer*, Vol. 16, No. 2, Fall 2001, pp. 1-16

JAKHU, Ram

---“Safeguarding the Concept of Public Service and the Global Public Interest in Telecommunications”, 5(1) *Singapore Journal of International and Comparative Law*, 2001, pp 71 *et seq.*

---“International Law Regarding the Acquisition and Use of Satellite Imagery”, *Journal of Space Law*, 2001.

---“A Brief Analysis of the Indian Communication Convergence Bill (2001)”, a paper for a Conference on Convergence: Issues and Opportunities in the Indian Telecom Sector held on 2nd & 3rd November, 2001, New Delhi, India.