

INSTITUTE AND CENTRE OF AIR AND SPACE LAW

McGill University

Annual Report

1998 - 1999

Prepared by

Professor Armand L.C. de Mestral
Acting Director

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GENERAL

This year the Institute of Air and Space Law of McGill University completed its 48th 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 121 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 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, and Dr. Ram Jakhu and others participating in the work of the Institute during the year.

In a sense, this has been a transition year, waiting for a new permanent Director to take over and put their stamp upon the curriculum and research work of the Institute and Centre. However, the life of the Institute has continued without diminution and indeed, I believe, this has been a successful and full year in which the ground has been prepared for the arrival of a new Director and the initiation of the changes to be carried out by the new Director. There has been an excellent class of Master's students. Two persons completed their doctoral studies and another volume of the *Annals of Air and Space Law*,

an internationally recognized publication in its field, has been published. The Institute has received many distinguished visitors over the year and has been invited to participate in a number of important seminars and conferences including the major diplomatic conference on the revision of the Warsaw Convention held in Montreal in May 1999.

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 and which in the long run must increase, either by way of further Faculty contribution or by way of private donation. 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 coordination 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 121 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.

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, Vlasic and Dr. Jakhu devoted themselves largely to air and space law. Professor Haanappel has left definitively. Professor Vlasic 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. 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, at the present time, 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.

This year the Dean generously gave his time and support to the Acting Director's proposal that a major fund raising campaign be organized as a priority in the Faculty. This has now been done and the Faculty's financial advisor, Ms. Kelly Hurtibise, has spent a good part of her year laying the ground work for such a campaign. An Advisory Committee has been convened, led by a distinguished alumnus and a group of other equally

distinguished and committed alumni. This Committee has held an initial meeting in the presence of Dean Toope and Dean Leuprecht and will begin its work in earnest during the summer months of 1999. The objective of this Committee will be to raise some \$4 million for at least one new Chair in Air and Space Law which would support another professor in the Institute, as well as, money for scholarships, fellowships, publications and research including the preparation of a major legal database in conjunction with the International Civil Aviation Organization. It is hoped that the successful completion of this fund raising campaign will give a new impetus to the Institute and will serve as an indication of both McGill's commitment to this field of law and serve to rally the many friends of the Institute.

An indication of the future success of this campaign can be found in the establishment of the Robert E. Morrow, Q.C. Fellowship worth \$250,000, organized by the Honourable Brian Mulroney and his colleague in the law firm of Ogilvy Renault, Tom Gillespie in memory of their deceased colleague and mentor. This is an extremely positive development. It will allow the Institute to attract and support at least one and possibly more of the very best students who might not otherwise be able to attend.

The Acting Director is of the view that, given the very high number of international students and the very substantial career potential of the Master's degree, that it would be possible and indeed advisable to give serious consideration to "privatization" of the programme at least as it concerns foreign students. The Acting Director initiated discussion on this subject with Mr. del Degan and with Dean Toope. It was agreed with Dean Toope that it would be premature to take a decision in this regard before a permanent Director had taken over. It is however the Acting Director's recommendation that early consideration be given to putting the presence of foreign students on a fully-funded basis.

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 the incoming permanent 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 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.

I. Highlights of 1998-1999

1. Establishment of the Robert E. Morrow Q.C., Fellowship.
2. Volume XXIII of the *Annals of Air and Space Law* was published in 1998 under the Editorship of Professor Milde.
3. The search for a Director of the Institute of Air and Space Law was initiated. At the time of preparing this Report an announcement by the Dean was imminent.
4. 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 121 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.
5. 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.
6. The Institute and Centre in the person of Professor Milde cooperated 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.

7. The Institute in the person of Professor Milde participated in the work of the International Conference on Renewal of the Warsaw Convention in May 1999.
8. Professor Milde designed and delivered an international seminar in February 1999 in Colombo, Sri Lanka in preparation for the ICAO Diplomatic Conference (May 1999) on the unification of private air law; 110 participants from 26 countries took part in the seminar.
9. In August 1998 Professor Milde worked on the drafting of aeronautical legislation for the Republic of Kyrgyzstan under a program sponsored by the European Union (TACIS).
10. Under the ICAO Technical Assistance Program Professor Milde prepared the legal framework for aviation safety oversight for Sri Lanka and drafted the *Civil Aviation Authority of Sri Lanka Act* and the *Civil Aviation Act of Sri Lanka*.
11. The Institute again designed and delivered the specialized course in air law for the MBA in airline management at Concordia/IATA programme.
12. 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.
13. Dr. Ram Jakhu returned to Montreal after three years as Professor at the International Space University in Strasbourg, France. Dr. Jakhu will be teaching courses in space law and space applications on a half-time, long-term basis with the title of Visiting Professor. This is an important step towards strengthening the offerings in space law and dealing with the consequences of the retirement of Professor Vlastic. Professor Vlastic graciously agreed to teach the first term course in space law pending the arrival of Dr. Jakhu.

II. Review of the Objectives of the Institute

The overall objectives of the Institute and Centre remain constant and their specifics are 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 coordinated 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 coordination 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 Organization (ICAO) in Montreal, from its close cooperation 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.

III. Evaluation of Past Year's Activities and Performance in Teaching, Research and Service to the Academic and Broader Community

The Institute was not the object of peer review during the period 1998-99. The Institute's teaching program as described in the 1997-98 Annual Report (pages 6 and 7) was continued essentially unchanged in the area of air law. Upon his return Dr. Jakhu made some incremental changes to the course in the winter term of space law and has proposed the adoption of a search seminar to be given on an optional basis in the academic year 1999-2000.

Research production is reflected in the **Annals of Air and Space Law** - Volume 23 and a variety of publications by both Professor Milde and Dr. Jakhu are available on the Institute's webpage: www.iasl.mcgill.ca.

IV. Peer Institutions

The Institute does not have a "peer" in the academia anywhere in the world. There is no other academic institution anywhere which offers full time graduate teaching and research in the highly specialized disciplines of air and space law - on a full time basis and leading to a graduate certificate, Master's degree (LL.M.) or Doctorate (D.C.L.) in air and space law. Moreover, 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 "sister" Institutes at the Leiden University and 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 focusses 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:

Full-time Teaching Staff

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

Full-time Administrative and Clerical Staff

De MESTRAL, Armand, Acting Director
BAKER, Blaine G. Associate Dean (Graduate Studies and Research)
BARATTA, Margaret, Administrative Assistant
VAN LEYNSEELE, Ginette, Graduate Programmes Coordinator
D'AMICO, Maria, Secretary
KNOCK, Melissa, Receptionist

Advisory Committee

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

Post-Doctoral Fellows:

Professor James Fox on sabbatical from Dickinson School of Law, Carlisle, Pennsylvania.

Part-time and auxiliary staff:

Sessional Lecturers

BUNKER, D., Adjunct Professor
12 hours on: Comparative Air Law
LESSARD, Stéphane, Adjunct Professor
3 hours on: Air and Space Law Applications
MARGO, Rod D., Adjunct Professor
NESGOS, P., Adjunct Professor
3 hours on: Air and Space Law Applications
VAN FENEMA, H.P., Adjunct Professor
12 hours on: Government Regulation of Air Transport
WASSENBERGH, Henri, Adjunct Professor
WEBER, L., Adjunct Professor
24 hours on: Comparative Air Law
9 hours on: Public International Air Law

Guest Lecturers

ABEYRATNE, T., ICAO
3 hours: Trade in Aviation Services & Dispute Settlement
DE MESTRAL, A.,
3 hours: International Trade Law & World Trade Organizations
FINNSSON, G., Air Transport Bureau (ICAO).
3 hours: Airport and Other Charges & Cost Recovery
FOSTER, W., Professor, Law Faculty (McGill)
2 hours: Space Law and Institution
GUNTHER, J., ICAO
3 hours: Trade in Aviation Services & Dispute Settlement
OSTERLINCK, R, European Space Agency
3 hours: Air and Space Law Applications
SABA, J.,
9 hours on: Comparative Air Law

SCHUBERT, F., SWISSCONTROL

6 hours: GNSS

VAN HASSELT, L., ICAO

6 hours: Government Regulation of Air Transport

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) 1998-99 IASL Class list;
- b) Faculty of Law - Graduate Student Statistics
- c) list of IASL students enrolled in 1998-99; and
- d) a report on consulting activities;
- e) list of publications is presented separately at **www.iasl.mcgill.ca** in the prescribed form.

Completed by:

Prof. Armand de Mestral
Acting Director, IASL

INSTITUTE OF AIR AND SPACE LAW
Class of 1998-99

Andries, Stéphanie	LL.M.	Belgium
Bouvet, Isabelle	LL.M.	France
Dietrich, George	LL.M.	Canada
Hlseyé, Daphne	LL.M.	Holland
Iglesias-Badillo, Eduardo	LL.M.	Puerto Rico
Irvine, Hugh	LL.M.	U.K.
Nikanpour, Darius	G.C.	Canada
Ramey, Robert	LL.M.	U.S.A.
Renaud, Jean-François	LL.M.	Canada
Rodriguez Serrano, Virginia	LL.M.	Spain
Salazar, Juan	LL.M.	Colombia
Schrenzel, Guy	LL.M.	Switzerland
Serrao, Jacqueline	LL.M.	U.S.A.
Snyman, Coenraad	G.C.	South Africa
Tafazoli, Siamak	G.C.	Canada
Vosberg, Mona	LL.M.	Canada
Wang, Yan	LL.M.	China