

# **INSTITUTE AND CENTRE OF AIR AND SPACE LAW**

**McGill University**

**Annual Report**

**1999 - 2000**

*Prepared by*

Professor Armand L.C. de Mestral  
Acting Director

21 June 2000

**INSTITUTE AND CENTRE OF AIR AND SPACE LAW  
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**GENERAL**

This year the Institute of Air and Space Law of McGill University completed its 49<sup>th</sup> 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 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 difficult year, marked by the breakdown of the process of appointing a new Director and launching a major fund-raising campaign.

However, the life of the Institute has continued without diminution. There has been an excellent class of Master's students. One person 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 and its follow-up.

The difficulties surrounding the selection and approval of Mr. Jeffrey Wool and the subsequent decision not to complete the appointment led to the naming by Dean Leuprecht of a committee led by former Dean Macdonald to review the role, mission and future of the Institute. This report delivered in June 2000 should have a very positive impact if its many recommendations are accepted by the Faculty and the University.

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 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 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. 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, 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.

The Macdonald Report recognizes these problems and makes extensive recommendations – which the Acting Director fully supports – to resolve them. In essence the Report suggests that the IASL merits Faculty and University support and that it should be given adequate tools to do the job.

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 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 makes 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 creates a great void which the Central Library has regrettably failed to fill.

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 name a Director and strengthen the teaching staff programme in 2000-2001.

#### **I. Highlights of 1999-2000**

1. The Macdonald Committee issued its report in June 2000 after extensive consultations (see Annex).

2. Due to various concerns no permanent Director was appointed.
3. The fund raising campaign could not be formally launched due to difficulties surrounding the Directors appointment.
4. The departing of Mr. Li from the Law Library.
5. Creation of a full-time teaching programme in Air Law at the University of Leiden.
6. Volume XXIV of the *Annals of Air and Space Law* was published in 1999 under the Editorship of Professor Milde.
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 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.
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. The Institute in the person of Professor Milde co-organized the international Conference on air law in Seoul in October 1999.
12. Professor Milde acted as an expert consultant for ICAO technical assistance projects in Sri Lanka and in Bosnia-Herzegovina, an advisor to the UK Government

- and an expert before US Courts.
13. 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.
  14. Dr. Ram Jakhu returned to Montreal after three years as Professor at the International Space University in Strasbourg, France. Dr. Jakhu has taught courses and a new seminar in space law and space applications on a half time, long-term basis with the title of Associate Professor. This is an important step towards strengthening the offerings in space law and dealing with the consequences of the retirement of Professor Vlasic.
  15. Dr. Ram Jakhu drafted a Telecom Law for Trinidad and Tobago.
  16. Dr. Saba led several field trips to important air and space law related institutions.

## **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 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 1999-2000.



Research production is reflected in the **Annals of Air and Space Law** - Volume 24 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](http://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 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:**

##### Teaching Staff:

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

**Full-time Administrative and Clerical Staff**

SMITH, Stephen, Associate Dean (Graduate Studies and Research)  
De MESTRAL, Armand, Acting Director  
BARATTA, Margaret, Administrative Assistant  
VAN LEYNSEELE, Ginette, Graduate Programmes Coordinator  
D'AMICO, Maria, Secretary  
PICCIONI, Dalia, 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, Los Angeles  
NESGOS, Dr. Peter, Chair, New York  
PETSİKAS, Me George, Montreal

**Part-time and auxiliary staff:**

**Sessional Lecturers**

BUNKER, D., Adjunct Professor  
12 hours on: Comparative Air Law  
3 hours on: Private Practice of Air Law

HARAKAS, Andrew, Adjunct Professor  
MARGO, Rod D., Adjunct Professor  
NESGOS, P., Adjunct Professor  
SABA, J., Adjunct Professor  
9 hours on: Comparative Air Law  
and organizer of field trips  
SCHUBERT, F., Adjunct Professor  
12 hours: GNSS  
VAN FENEMA, H.P., Adjunct Professor  
12 hours on: Government Regulation of Air Transport

VAN HASSELT, L., ICAO  
9 hours: Government Regulation of Air Transport  
WASSENBERGH, Henri, Adjunct Professor  
WEBER, L., Adjunct Professor  
21 hours on: Comparative Air Law  
9 hours on: Public International Air Law  
2 hours on: Practice of International Air Law

Guest Lecturers

ABEYRATNE, T., ICAO  
3 hours: Trade in Aviation Services & Dispute Settlement  
ALECK, Jonathan, Representative of Australia to ICAO  
3 hours on: "Complimenting Liberalization"  
DE MESTRAL, A.,  
3 hours: International Trade Law & World Trade Organizations  
LACK, Peter  
6 hours on: Private International Air Law  
WOOL, Jeffrey

*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) 1999-2000 IASL Class list;
- b) Faculty of Law - Graduate Student Statistics;
- c) List of IASL students enrolled in 1999-2000;

- d) Macdonald Report on the Future of the Institute of Air and Space Law
- e) Consulting Report;
- f) Publications  
*List of publications is also presented separately at [www.iasl.mcgill.ca](http://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 1999-2000**

Alvarsson, Karl	LL.M.	Iceland
Amana, Idorenyin	Grad. Cert.	Nigeria
Ancel, Marie-Eve	Grad. Cert.	France
Bastien, Jean-Claude	Grad. Cert.	Canada
Bensoussan, Denis	LL.M.	France
Bochinger, Steve	LL.M.	France
Boteva, Meglena	LL.M.	Bulgaria
Cloppenburg, Jurgen	LL.M.	Germany
Delgado Soto, German	Grad. Cert.	Venezuela
Ferrante, Olivier	LL.M.	France
Gomez-Perez, Alfredo	Grad. Cert.	Mexico
Guelfi, Audrey	Grad. Cert.	France
Hermida, Eduardo	LL.M.	Argentina
Hoerl, Kay-Uwe	Grad. Cert.	Germany
Hoversten, Michael	LL.M.	U.S.A.
Keller, Klaus	LL.M.	Germany
Khadjavi, Hodjat	LL.M.	Iran
Koulikova, Julie	LL.M.	Russia
Lamy, Christophe	LL.M.	France
Luqui, Claudio	LL.M.	Argentina
Naji, Alaa	LL.M.	Saudi Arabia
Piera, Alejandro	LL.M.	Paraguay
Sarrocco, Claudia	LL.M.	Italy
Vergote, Brecht	LL.M.	Belgium
Warriner, Vanessa	LL.M.	France
Wei, Chia-Lee	LL.M.	Taiwan

## PUBLICATIONS

- MILDE, Michael**, "Liability in international carriage by air: the New Montreal Convention", *Uniform Law Review* (UNIDROIT), Vol. IV 1999-4, pp. 835-861
- "The Warsaw system of liability in international carriage by air: History, merits and flaws...and the new "non-Warsaw" Convention on 28 May 1999", *Annals of Air and Space Law*, Vol. XXIV 1999, p. 155-186.
- "Status of military aircraft in international law", Singapore Ministry of Defence, *Proceedings of the 1999 International Conference*, pp. 9.37.
- "Aviation Law in the 21<sup>st</sup> century", *Journal of Aviation Management 2000*, Singapore, pp. 21-31.
- "Some question marks about the price of 'Russian air'", *Zeitschrift fuer Luftrecht*, Cologne 2000/2