

INSTITUTE AND CENTRE OF AIR AND SPACE LAW

McGill University

Annual Report

2000-2001

Prepared by

Professor Armand L.C. de Mestral
Acting Director

September 25, 2001

GENERAL

This year the Institute of Air and Space Law of McGill University completed its 50th 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 Prof. Ram Jakhu and others participating in the work of the Institute during the year. This has been a year of renewal, marked by the Macdonald Report and the University decision to establish the Tomlinson Chair in Global Governance in Air and Space Law and the preparation of the 50th Anniversary Conference to be held in September 2001.

The life of the Institute has continued without diminution. There has been a small but solid class of Master's students. Miss Valerie Kayser completed her 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.

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 very positive report delivered in June 2000 has had a very positive impact on the morale of all involved in the work of the

Institute. The process of selection of the future Director and Holder of the Tomlinson Chair in Global Governance in Air and Space Law has been slow but is well under way at time of writing of this report.

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 the supporting the salary of the future Director and holder of the Tomlinson Chair as well as by agreeing to fund an additional one half position for the next five years. 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 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 law 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 Jakhu devoted themselves largely to air and space law. Professor Haanappel has left definitively. Professor Vlastic has retired but fortunately Prof. 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 recognizes these problems and makes extensive recommendations 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. As indicated above, the University has accepted the recommendations of the Macdonald Committee and has committed significant new resources to the Institute. 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 would only serve to further enhance the relevance and importance of our programme. Similarly in the field of space law, 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. This statement was made in 2000 and unfortunately remains true a year later.

Finally the creation of a full-time teaching programme in Air and Space 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 2001-2002.

I. Highlights of 2000-2001

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 but a search committee has been struck and is close to a recommendation.
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 and Space Law at the University of Leiden.
6. Volume XXV of the *Annals of Air and Space Law* was published in 2000 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.

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.
9. The Institute again designed and delivered the specialized course in air law for the MBA in airline management at Concordia/IATA programme
10. Professor Milde acted as an expert consultant for ICAO technical assistance projects in Germany, Sri Lanka, Syria and Kyrgyzstan.
11. Professor Jakhu gave lectures on various aspects of Space Law to (a) an Astrobiology class in the McGill Astrobiology Department, (b) via video-conference to a Space Colonization class of Pennsylvania State University, USA, (c) School of International Studies, Jawaharlal Nehru University, New Delhi, India, and (d) Space Law Class of the Faculty of Law, Wits University, Johannesburg, South Africa.
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. Several new adjunct professors were appointed.

13. Dr. Saba led several field trips to important air and space law related institutions.
14. Extensive preparations have been made for a major conference on Air and Space Law to celebrate the 50th Anniversary of the Institute. This will take place in September 2001.

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 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.

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. Prof. Jakhu has given an additional research seminar in space law, given on an optional basis in the academic year 2000-2001.

Research production is reflected in the **Annals of Air and Space Law** - Volume 25 and a variety of publications by both Professors Milde and Janda and 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, 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
- HARAKAS, Andrew, Adjunct Professor
- MARGO, Rod D., Adjunct Professor
- NESGOS, P., Adjunct Professor
3 hours on: Air and Space Law Applications
- SABA, J., Adjunct Professor
9 hours on: Comparative Air Law
and organizer of field trips
- SCHUBERT, F., Adjunct Professor
12 hours: CNS/ATN
- VAN FENEMA, H.P., Adjunct Professor
15 hours on: Government Regulation of Air Transport and Space
Law
3 hours on: Legal Issues Related to Space Transportation
- VAN HASSELT, L., ICAO
- WASSENBERGH, Henri, Adjunct Professor
- WEBER, L., Adjunct Professor
30 hours on: Comparative Air Law
9 hours on: Public International Air Law

Guest Lecturers

- DUCHARME, E., Representative of IRIDIUM
3 hours: Air and Space Law Applications
- FARAND, A., European Space Agency
3 hours on: Legal Aspects of International Space Stations
- LACK, Peter
3 hours on: Private International Air Law
- STOJAK, L.
3 hours on: Militarization of Outer Space and International Law
- WOOL, Jeffrey, Perkins & Coie
9 hours on: Applied Aerospace Law: UNIDROIT/ICAO Convention

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) 2000-2001 IASL Class list

b) Consulting Report

c) Publications

List of publications is also presented separately at
www.iasl.mcgill.ca in the prescribed form.

d) List of IASL students enrolled in 2001

Completed by:

Prof. Armand de Mestral
Acting Director, IASL

Class List
Institute of Air and Space Law Association
2000 - 2001

<i>Addy, Naa Adoley</i>	<i>Ghana</i>
<i>Bunker, Thomas</i>	<i>Canada</i>
<i>De Ryck, Kristina</i>	<i>Belgium</i>
<i>Giesecke, Christian</i>	<i>Germany</i>
<i>Grossman, Louis</i>	<i>U.S.A.</i>
<i>Hornik, Jiri</i>	<i>Czeck Republic</i>
<i>Lelieur, Isabelle</i>	<i>France</i>
<i>Petras, Christopher</i>	<i>U.S.A.</i>
<i>Van de Velden, Aster</i>	<i>Holland</i>

PUBLICATIONS

MILDE, Michael,

Annals of Air and Space Law, Vol. XXV - 2000 - as Editor-in-Chief and author of the Preface and Dedication.

---“Aviation Law in the 21st 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

---“Unruly passengers and the law”, *SAA Journal*, Singapore 2000

---“Military Aircraft in international air law”, Venezuela, Proceedings, 2000

---“ICAO aviation safety oversight”, Venezuela, Proceedings 2000

---“Air rage - legal responses”, Venezuela, Proceedings 2000

JAKHU, Ram

“The New United States Export Control Regime: Its Impact on the Communications Satellite Industry”, *XXV Annals of Air and Space Law*, 2000, pp. 157 et seq. (with Joseph Wilson)

“Emerging Legal Issues of Satellite Telecommunications and Broadcasting”, *Proceedings of the 43rd. Colloquium on the Law of Outer Space*, (2000), pp. 428 et seq.

“International Regulation of Radio Frequencies for Space Services”, *Proceedings of the Workshop on Telecommunications, Project 2001 on Legal Framework for the Commercial Use of Outer Space*, Berlin, 2000, pp. 41 et seq. (with Virginia R. Serrano).