

1962

## "John Cobb Cooper and McGill's Institute of Air and Space Law"

A. B. Rosevear

Follow this and additional works at: <https://scholar.smu.edu/jalc>

---

### Recommended Citation

A. B. Rosevear, *"John Cobb Cooper and McGill's Institute of Air and Space Law"*, 28 J. AIR L. & COM. 346 (1962)  
<https://scholar.smu.edu/jalc/vol28/iss4/5>

This Essay is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

run the risk that its claims of recourse would be rejected by the State of the person having caused the damage. Therefore the German Legal Committee proposed to channel the liability to the operator of the spacecraft to a certain maximum, and then to require the Contracting State which licensed the spacecraft to assume liability for the damages in excess of the limits. This regulation was, as already explained, patterned after the example given in the German Atomic Law (Article 38) and in the Euratom draft of an additional Convention to the Convention of Paris on third party liability in the field of nuclear energy (July 29, 1960) framed by the Organisation for European Economic Cooperation.

It is to be hoped that Professor Cooper will be able to continue his productive work concerning Air and Space Law for a long time to come.

## JOHN COBB COOPER AND MCGILL'S INSTITUTE OF AIR AND SPACE LAW

BY A. B. ROSEVEAR†

PROFESSOR John Cobb Cooper has enjoyed a much longer and active career in the profession of the law than is accorded to most men. He has been a railway and airline lawyer, an adviser to his government, a writer, a professor and a lecturer. Not being entirely satisfied with aviation law as his sole field of endeavour, he has, since reaching three score and ten years, become the father of the law of outer space.

### I. THE FOUNDING OF AN AIR LAW INSTITUTE

Professor Cooper will reach his seventy-fifth birthday on September 18, 1962. As one of his friends I now wish to pay tribute to him as an international lawyer and personality. Professor Cooper's activities, during a long career, have been many and varied. In this article, however, I shall confine myself to the story of the founding and the subsequent work of Professor Cooper as Director of McGill's Institute of International Air Law.

I first met Professor Cooper in Geneva in May of 1948, where we were attending the meeting of the Legal Committee of the International Civil Aviation Organization (ICAO), which was engaged at that time in drafting the Geneva Convention (International Recognition of Rights in Aircraft). Neither of us realized that our paths would cross many times in the succeeding years, both professionally and at friendly luncheons and social events. In 1948 neither Professor Cooper nor I had any thought of founding an Institute of International Air Law at McGill University, in Montreal, Canada. Little did we know at the time that Professor Cooper was destined to become one of the founders of the Institute and its first Director and that I would eventually be one of his successors.

In 1946 the assembly of the Provisional International Civil Aviation Organization met in Montreal and in accordance with the power vested in it chose Montreal as the permanent seat of ICAO.<sup>1</sup> The International

---

† A. B. Rosevear, Q.C., Director, Institute of Air and Space Law, McGill University.

<sup>1</sup> See Article 45 of the Chicago Convention.

Air Transport Association (IATA) at about the same time also made Montreal its permanent seat. These decisions had the effect of making Montreal the world headquarters for international civil air transport. If, therefore, an air law institute were to be established, Montreal seemed to be the logical place for it.

In 1951 Professor Cooper, who was then acting as Counsel for IATA, representatives of ICAO, IATA and of McGill University held a series of conferences on the subject of establishing such an institute at McGill University, where air law would be taught to graduate students and original research work in the subject would be undertaken by competent persons. In due course the Institute of International Air Law was founded, Professor Cooper was appointed its Director, and its first session commenced in the autumn of 1951. Professor Cooper brought to the Institute a vast knowledge of air law and air transport problems, sound judgment and administrative experience.

When the Institute was founded it was sponsored by an advisory committee consisting of John P. Baldwin of Canada, Major K. M. Beaumont of the United Kingdom, Professor John C. Cooper, Maître André Garnault of France, Sir William P. Hildred of IATA, Dr. Luis Machado of Cuba, Mr. E. T. Nunneley of the United States, Dr. E. P. Warner of ICAO and Mr. R. O. Wilberforce, now the Honourable Mr. Justice Wilberforce, of the United Kingdom. All these gentlemen are well known in aviation circles throughout the world.

As a result of Professor Cooper's efforts and with the support of Dr. F. Cyril James, Principal of McGill University, the Rockefeller Foundation and the Carnegie Corporation of New York agreed to make grants of money to provide fellowships for worthy graduate students attending the Institute. These fellowships secured the success of the Institute in its formative years.

## II. THE STUDENTS ARRIVE

There were twelve students in the 1951-52 class of the Institute. They came from Canada, Egypt, England, Formosa, Greece, Italy and the United States. The 1952-53, 1953-54 and 1954-55 classes had an average attendance of fifteen students. They also came from many parts of the world and the international character of the Institute's work was, therefore, well established and has been maintained ever since.

Realizing the hazard of omitting references to students who merit recognition, I cannot refrain from mentioning that, during the first four years of the Institute's existence, among those in attendance were Professor Huibert Drion of the University of Leiden, Professor Kurt Grönfors of the School of Economics, Göteborg, Sweden, Ian E. McPherson, now General Attorney of Trans-Canada Air Lines, Professor Ming-Min Peng of National Taiwan University, Dean J. E. Richardson of the Faculty of Law, School of General Studies, Canberra, Australia, and others.

## III. THE COURSES OF STUDY

In 1953 Professor Cooper wrote an article for the *Journal of the Society of Public Teachers of Law* respecting the Institute of International Air

Law. After explaining his concepts of the meaning and scope of air law he wrote as follows:<sup>2</sup>

The Institute, therefore, starts with the premise that air law comprises the body of legal principles and rules, from time to time effective, which govern and regulate:

First:

- (a) Flight-space;
- (b) Its relationship to land and water areas on the surface of the earth;
- (c) The extent and character of the rights of individuals and states to use or control such space for flight or other similar purposes.

Second:

- (a) Flight;
- (b) The instrumentalities with which flight is effected, including their nationality, ownership, use or control;
- (c) The surface facilities used in connection with flight, such as airports and airways.

Third:

- (a) The relationships of every kind affecting or between individuals, communities or states arising from the existence or use of the area of flight (flight-space), or the instrumentalities or facilities used in connection therewith or to make flight effective.

Accepting for convenience the definition of international law as stated in 1927 by the Permanent Court of International Justice in the case of the *S.S. Lotus*, to the effect that "International Law governs relations between independent states," the Institute seeks to deal with public international air law as the body of legal principles and rules which are included in the general definition of air law stated above and which, at the same time, govern relations between independent states. The Institute has also sought to deal with certain subjects that may be classed as private international air law, such as the relations between air carriers and passengers, air carriers and shippers, air carriers and third persons on the surface, and other similar problems.

Each year four basic courses are given which are required for all those admitted to the Institute. These courses may generally be described as follows:

(1) Development of International Transport Law—its history since the fifteenth century; the development of the law of the relation of a state to its territory; the extent of the right of each state to control transport activities within its territory; historic controversies as to whether and to what extent usable space above the land and water territories of a state is part of the territory of that state; the legal status of usable space over the high seas and other non-sovereign surface areas.

(2) Public International Air Law—the background, drafting and significance of the international conventions, which include many of the present concepts of air law, namely, the Paris Convention 1919, the Madrid Convention 1926, the Havana Convention 1928, and the Chicago Convention 1944; the development and content of the present system of bilateral agreements under which air carriers of one state are authorized to fly into the territory of another state; problems of jurisdiction to be applied to occurrences on board aircraft of one state when flying into or over the land territories of another state; general questions of the concept of nationality of aircraft and other flight instrumentalities.

(3) Private International Air Law—a general consideration of conflicts of law applicable to the rights and liabilities of air carriers and the extent to which such conflicts have been or can be eliminated by international conven-

---

<sup>2</sup> Cooper J. C., "The Institute of International Air Law," (1952-54) 2 J. of the Soc. of Public Teachers of Law (New Series) 122.

tions, with particular reference to (a) the Warsaw Convention 1929 covering the relationship and liability of air carriers to passengers and shippers, (b) the Rome Conventions 1933 and 1952 covering the relationship and liability of air carriers to third persons suffering damage on the surface, and (c) the Geneva Convention 1948 dealing with title to and liens on aircraft; also an analysis of the standard conditions of carriage used by international air carriers and other similar problems.

(4) International Air Regulation—an analysis of the implementation of the Chicago Convention 1944 through the setting up of the International Civil Aviation Organization at Montreal; its practical handling of the authority given to it by the Chicago Convention looking towards the regulation of air navigation; its adoption of standards and recommended practices; the relation of its work to regulation of aviation in the several states of the organization.

Professor Cooper's programme of studies for the Institute was well conceived for, apart from changes made by his successors to suit their respective concepts of the emphasis which should be placed on particular aspects of air law, the courses are basically the same as they were in 1953, except for the addition of a course on the law of outer space.

Needless to say, the initial planning required to place the Institute of International Air Law on a sound basis, on top of the immense amount of work which went into the preparation of material for his lectures, speak eloquently of the energy and scholarship exhibited by Professor Cooper. The task would have daunted many younger men.

#### IV. RESEARCH WORK AND PUBLICATIONS

Professor Cooper, during his term as Director of the Institute of International Air Law, laid great stress on his students performing original research in and writing on air law subjects. As a result a number of papers written by students appeared in various publications. Professor Cooper himself managed, in addition to his many other duties, to write a number of articles which were published during his tenure of the Directorship. A list of the articles written by Professor Cooper and by his students is set out below.

#### CONCLUSION

Former students of the Institute will all remember Professor Cooper's wife, Martha, who died early in 1962. Mrs. Cooper was Professor Cooper's constant companion and helpmate, not only at home but on the many journeys to far off places, to which Professor Cooper was called in connection with his duties as Counsel for IATA. It is a tribute to his courage that he is carrying on alone but all his friends know how much he must miss the companionship of his devoted wife.

The Institute of Air and Space Law, as it is now known, represents only one of the many accomplishments of Professor Cooper. The past and present students as well as the Director and staff of the Institute of Air and Space Law extend hearty congratulations to Professor Cooper on his seventy-fifth birthday and wish him many more useful years in the work which he loves best.

## APPENDIX

*Publications of Professor Cooper 1951-1955*

- Aviation Cabotage and Territory: a research study of the Institute of International Air Law, McGill University, [1952] U.S. & Can. Av. R. 256.
- Air Law—A Field for International Thinking. 4 Transport and Communications Rev. 1 (1951).
- Canada and the Warsaw Convention. 13 Rev. du Bar. (Quebec) 68 (1953).
- The International Air Navigation Conference, Paris 1910. 19 J. Air L. & Com. 127 (1952).
- United States Participation in Drafting Paris Convention 1919. 18 J. Air L. & Com. 266 (1951).

*Publications of Students 1951-1955*

- Drion, H.—Limitation of Liabilities in International Air Law, 317 pp. Thesis, McGill University, published by Martinus Nijhoff N.V., The Hague, 1954.
- Fenston, J.—Res Ipsa Loquitur in Aviation. 1 McGill L.J. 209 (1952-55).
- Fenston, J.—DeSaussure, H.—Conflict in the Competence and Jurisdiction of Courts of Different States to Deal with Crimes on Board Aircraft and the Persons Involved therein. 1 McGill L.J. 66 (1952-55).
- Heller, P.P.—The Grant and Exercise of Transit Rights in Respect of Scheduled International Air Services, 213 pp. Published by the Air Department, Civil Aviation Administration, Wellington, New Zealand, 1954.
- Heller, P.P., Bhatti, D.S., Drion, H.—Prohibited Areas in International Civil Aviation. [1953] U.S. & Can. Av. R. 109.
- Hesse, N.E.—Some Questions on Aviation Cabotage. 1 McGill L.J. 129 (1952-55).
- Hughes, D.M.—Airspace Sovereignty over Certain International Waterways above Various Sea Areas, Canals and Straits, 19 J. Air L. & Com. 144 (1952).
- MacBrayne, S.F. (Miss)—Right of Innocent Passage, 267 pp. Thesis, McGill University, published in part 1 McGill L.J. 270 (1952-55).
- Martial, J.E.—State Control of the Airspace over the Territorial Sea and the Contiguous Zone, 30 Can. Bar Rev. 245 (1952).
- Murchison, J.T.—The Contiguous Air Space Zone in International Law, 77 pp. Thesis, McGill University, published by the Department of National Defense, Ottawa, 1955.
- Peng, Ming-Min—Le statut juridique de l'aéronef militaire, 244 pp. Thesis, McGill University, published by Martinus Nijhoff, N.V., The Hague, 1957. (Manuscript submitted in 1952).
- Le vol à haute altitude et l'article I de la Convention de Chicago, 1944. 12 Rev. du Bar. (Quebec) 277 (1952); 6 Rev. Fr. de Dr. Aérien 390 (1952).
- Richardson, J.E.—Private Property Rights in the Air Space. 31 Can. Bar Rev. 117 (1953).
- Toepper, A.—Comments on Article 20 of the Rome Convention of 1952. 21 J. Air L. & Com. 420 (1954).