

B.19.

ANNALS  
OF  
AIR  
AND  
SPACE  
LAW



McGill

ANNALES  
DE  
DROIT  
AÉRIEN  
ET  
SPATIAL

VOL. XXXVIII  
2013

# ANNALS OF AIR AND SPACE LAW



McGill

ANNALES DE DROIT  
AÉRIEN ET SPATIAL



The *Annals of Air and Space Law* is a journal produced and published annually by the Institute and Centre of Air and Space Law, Faculty of Law, McGill University, Montreal, Canada. Established in 1976, the *Annals* is devoted to fostering the exchange of ideas and information pertaining to the law applicable to aerospace activities.

**EDITORIAL INFORMATION:** The Editorial Board of the *Annals* welcomes submissions written in English or French. Original unpublished manuscripts in Microsoft Word format may be sent to the attention of the Editor-in-Chief via email. All submissions are subjected to an anonymous evaluation process conducted by the Editorial Board, in consultation with outside referees.

The *Annals of Air and Space Law* generally conforms to the *Canadian Guide to Uniform Legal Citation*, 7th ed. (Scarborough: Carswell, 2010).

The views expressed herein are the personal opinions of the individual authors. They should not be attributed to any organizations with which the authors are affiliated, the editors of the *Annals*, or to the Institute and Centre of Air and Space Law.

**CIRCULATION INFORMATION:** Individual subscription rate: CAN \$150.00 per volume, plus shipping and handling. Other rates are available upon request. Back issues and electronic versions are also available. All inquiries should be addressed to the Marketing Manager. Rates are subject to change.

**ADVERTISING INFORMATION:** Full page black & white: CAN \$2000.00 per volume. Half page black & white: CAN \$1200.00 per volume. Camera ready ads must be provided by client. All inquiries should be addressed to the Marketing Manager. Rates are subject to change.

**COPYRIGHT:** Copyright © 2013 Institute and Centre of Air and Space Law, McGill University. Unauthorized reproduction of the *Annals*, in whole or in part, whether by graphic, electronic or mechanical means, is prohibited. Reproduction for educational purposes is permitted without prior approval. Subsequent publication of material appearing in the *Annals* is generally permitted at the request of the author as long as the *Annals* is mentioned as the first publisher. Even so, written permission must be sought from the publisher.

Les *Annales de droit aérien et spatial* sont produites et publiées une fois l'an par l'Institut et Centre de droit aérien et spatial, Faculté de droit, Université McGill, Montréal, Canada. Fondées en 1976, les *Annales* ont pour objectif le développement et l'échange d'idées et d'information relatives au droit des activités aérospatiales.

**RENSEIGNEMENTS ÉDITORIAUX:** Le Comité de rédaction des *Annales* accepte les articles en anglais et en français. Les manuscrits originaux et inédits en format Word pour Windows sur compact disque peuvent être envoyés au soin du Rédacteur en chef par courriel. L'acceptation des articles dépend d'un processus d'évaluation anonyme effectué par le Comité de rédaction, en concertation avec des évaluateurs externes.

Les *Annales de droit aérien et spatial* se conforment de façon générale au *Manuel canadien de la référence juridique*, 7e éd., Scarborough (Ont.), Carswell, 2010. Les opinions émises reflètent les opinions personnelles de chaque auteur. Elles ne doivent en aucune façon être attribuées aux organisations avec lesquelles l'auteur est associé, aux éditeurs des *Annales* ou à l'Institut et Centre de droit aérien et spatial.

**INFORMATIONS TARIFAIRES:** Abonnement annuel: 150.00\$ CAN par volume, plus les frais d'envoi. D'autres tarifs sont disponibles, sur demande. Les anciens numéros et versions électroniques peuvent également être commandés. Adresser toutes questions au Responsable des ventes. Tarifs sujets à changement.

**TARIFS PUBLICITAIRES:** Page complète, en noir et blanc: 2000.00\$ CAN par volume. Demi-page: 1200.00\$ CAN par volume. Des annonces prêtes à l'impression doivent être fournies par le client. Adresser toutes questions au Responsable des ventes. Tarifs sujets à changement.

**DROITS D'AUTEUR:** © 2013 Institut et Centre de droit aérien et spatial, Université McGill. Toute reproduction des *Annales*, en tout ou en partie, par moyens graphique, électronique ou mécanique est interdite. Les reproductions pour fins académiques sont permises sans consentement préalable. La publication subséquente d'un article ayant déjà paru dans les *Annales* est généralement permise à la demande de l'auteur sous condition que les *Annales* soient mentionnées en tant que premier éditeur. Une permission écrite est toutefois requise.

**PUBLISHER'S ADDRESS / ADRESSE DE L'ÉDITEUR**

3690 rue Peel, Montréal, Québec, H3A 1W9, Canada

Facsimile / Télécopieur: (514) 398-8197

Internet: <http://www.iasl.mcgill.ca>

Editor-in-Chief / Rédacteur en chef: paul.dempsey@mcgill.ca

Editor / Rédacteur: edannals.law@mcgill.ca

Marketing Manager / Responsable des ventes: annals.law@mcgill.ca

---

**ANNALS OF AIR  
AND SPACE LAW**

**ANNALES DE DROIT  
AÉRIEN ET SPATIAL**



---

**EDITOR-IN-CHIEF**  
RÉDACTEUR EN CHEF

**PAUL STEPHEN DEMPSEY**  
McGill, Canada

**FOUNDER**  
FONDATEUR

**NICOLAS M. MATTE**  
Director Emeritus, IASL, McGill,  
Canada

**EDITORIAL BOARD**  
COMITÉ DE RÉDACTION

**RUWANTISSA ABEYRATNE**  
ICAO, Canada  
**DONALD BUNKER**  
Bunker & Associates, UAE  
**MARIA BUZDUGAN**  
European Commission, Belgium  
**AXELLE CARTIER**

Joint Aviation Authorities-  
Training Organisation,  
the Netherlands

**P. PAUL FITZGERALD**  
McGill, Canada  
**STEVEN FREELAND**  
University of Western Sydney,  
Australia  
**PETER P.C. HAANAPPEL**

Leiden University, the Netherlands

**ANDREW HARAKAS**  
Clyde & Co, U.S.A.

**BRIAN HAVEL**  
DePaul University, U.S.A.

**JIEFANG HUANG**  
ICAO, Canada

**RAM S. JAKHU**  
McGill, Canada

**GEORGE LELOUDAS**  
Swansea University, UK

**SERGIO MARCHISIO**  
European Centre for Space Law,  
Italy

---

**EDITORIAL BOARD**  
COMITÉ DE RÉDACTION

**RODERICK D. MARGO**  
Condon & Forsyth, USA  
**ALLAN I. MENDELSOHN**  
Cozen O'Connor, USA  
**PETER D. NESGOS**  
Milbank, Tweed, Hadley &  
McCloy, USA  
**ALEJANDRO PIERA**  
ICAO, Canada  
**KENNETH P. QUINN**  
Pillsbury, USA  
**FRANCIS SCHUBERT**  
Skyguide, Switzerland  
**MARTINE DE SERRES**  
Air Canada, Canada  
**JITENDRA S. THAKER**  
ICAO, Canada  
**PETER VAN FENEMA**  
Leiden University, the Netherlands  
**THOMAS J. WHALEN**  
Schott Johnson, USA

**EDITOR**  
RÉDACTEUR

**KUAN-WEI (DAVID) CHEN**  
McGill, Canada

**ASSISTANT EDITORS**  
RÉDACTEURS ADJOINTS

**TIMIEBI AGANABA-JEANTY**  
McGill, Canada  
**MARIÈVE BARCELLO DESPRÉS**  
McGill, Canada  
**JOHN BELLFLOWER**  
US Air Force, USA  
**ANDREA DI PAOLO**  
McGill, Canada  
**BRANDON HART**  
US Air Force, USA  
**RACHEL PACHOUD**  
McGill, Canada  
**PRITHVIRAJ SHARMA**  
McGill, Canada

**MARKETING MANAGER**  
RESPONSABLE DES VENTES

**MARIA D'AMICO**  
McGill, Canada



<i>Table of Contents .....</i>	i
<i>Preface .....</i>	iv
<i>Préface .....</i>	vii

<i>A tribute to Isabella Henriëtta Philepina Diederiks-Verschoor.....</i>	x
<i>Hommage à Isabella Henriëtta Philepina Diederiks-Verschoor .....</i>	xiii

<i>Nicolas Mateesco Matte: Celebrating 100 years .....</i>	xv
<i>Nicolas Mateesco Matte: fête ses 100 ans .....</i>	xix

**I. LEADING ARTICLES / ARTICLES DE FOND**

**AIR LAW/DROIT AÉRIEN**

CHARLES E. SCHLUMBERGER AND NORA WEISSKOPF LCCs for LDCs: the Transferability of the Low-Cost Carrier Business Model to Developing Countries.....	1
---	---

H.K. MARTONO AND AMAD SUDIRO Current Air Transport Regulations in Indonesia .....	55
--	----

DOO HWAN KIM Main Contents and Prospects of the Air Transport Law enacted newly in the Korean Revised Commercial Act.....	91
---	----

ANDREW HARRINGTON Foreign Ownership and the Future of the National Airline.....	123
--	-----

MATHIEU VAUGEOIS Le Ciel Unique Européen : Fonctionnement et Mise en Œuvre.....	157
--	-----

MARION HIRIART Modernisation du Transport Public Aérien Français: Service Public et Hélicoptère Civil.....	177
--	-----

**SPACE LAW/DROIT SPATIAL**

PHILIP DE MAN

- The Relevance of ITU Regulations for Clarifying the Space Debris Concept and Strengthening Guidelines on the Removal of Satellites at the End of their Functional Life.....203

UPASANA DASGUPTA

- Legal Issues on Sub-orbital Space Tourism: International and National Law Perspectives.....237

DIANE HOWARD

- Points of Connection: Relating ICAO Annex 14 to Spaceports.....281

PAUL STEPHEN DEMPSEY

- The Emergence of National Space Law.....303

DIEGO ZANNONI

- Conflict and Conciliation of National Space Laws.....343

CAIXIA YANG

- Overview of the Current Situation and Improvement of Chinese Space Legislation.....385

**II. SHORTER ARTICLES AND COMMENTS/  
DES ARTICLES PLUS COURTS ET COMMENTAIRES**

SEAN MCCONIGLE

- Assessing the APEC Multilateral Agreement after 5 years of inactivity.....429

NITHYA NARAYANAN

- Aircraft repossession in India – Turbulence ahead, buckle up! .....445

CHRISTOPH KAUPAT

- Just Culture and the Obligation on States to prosecute under the Chicago Convention.....461

FRANCESCA PELLEGRINO

- Just Culture Principles in Aviation Law from a European Perspective.....471

THOMAS WHALEN	
EU Regulation No. 261 and the US Department Of Transportation Regulation of Advertising, Tarmac Delays and Customer Service.....	491
PAUL STEPHEN DEMPSEY AND KUAN-WEI CHEN	
Aviation Safety Requires Global Uniformity: Taiwan, the Gap in the Global Aviation System.....	515
MARK ANDREW GLYNN	
Montreal Convention Ousts All: Canadian Courts Rule on Exclusivity.....	543
GEORGE ROBINSON	
Humankind Space Migration.....	563

### III. BOOK REVIEWS / CRITIQUES DE LIVRES

YAW OTU M. NYAMPONG	
<i>International Aviation Law</i> by Ronald I. C. Bartsch.....	579
PAUL STEPHEN DEMPSEY	
<i>Aviation Law: Cases, Laws and Related Sources</i> by Paul Larsen, Joseph C. Sweeney & John E. Gillick.....	583
PAUL STEPHEN DEMPSEY	
<i>Aviation Law: Cases and Materials</i> by Robert M. Jarvis, James T. Course, James R. Fox & Gregory S. Walden.....	587
ANDREA DI PAOLO	
<i>International Space Law</i> by Gabriella Catalano Sgrosso.....	593

---

# CURRENT AIR TRANSPORT REGULATIONS IN INDONESIA

by

Prof. Dr. H. K. Martono\* and Dr. Amad Sudiro\*

---

## SYNOPSIS

I. SYNOPSIS .....	55
II. ABSTRACT .....	56
III. RESUMÉ .....	57
IV. INTRODUCTION .....	57
V. THE DEVELOPMENT OF AIR TRANSPORT REGULATIONS .....	57
A. THE IDEOLOGY OF THE PAST .....	57
B. THE NEW ORDER'S IDEOLOGY (1966–1998) .....	58
C. THE ERA OF REFORMATION (1998 ONWARDS) .....	60
VI. THE CIVIL AVIATION ACT OF 2009 .....	61
A. THE SUBSTANCE OF THE CIVIL AVIATION ACT OF 2009 .....	61
B. THE PHILOSOPHY OF THE CIVIL AVIATION ACT OF 2009 .....	62
C. THE REQUIREMENTS TO ESTABLISH NEW AIRLINES .....	62
VII. BUSINESS PERMIT REQUIREMENTS FOR NEW AIRLINES .....	63
A. AIRCRAFT OWNERSHIP .....	63
B. AIRLINE CAPITAL .....	64
C. MAJORITY SHAREHOLDER REQUIREMENTS .....	65
D. BANK GUARANTEE REQUIREMENTS .....	66
E. PROFESSIONAL HUMAN RESOURCES .....	66

---

\* Prof. Dr. H. K. Martono, S.H. (Indonesian University), LL.M (McGill), Ph.D (Diponegoro University) previously served as the chief of the legal division of the Directorate General of Civil Aviation at Indonesia's Ministry of Communications. He has written extensively about aviation law and regulations in Indonesia and was the parliamentary resource person for when Indonesia was drafting the Civil Aviation Act of 2009.

\* Dr. (University of Indonesia) Amad Sudiro, S.H. (Trisakti University), M.H. (Tarumanagara University), M.M. (College of Economics) is currently the Law Faculty Dean at Tarumanagara University, Jakarta, Indonesia. He actively researches and writes books and articles in various scientific journals on various matters relating to airspace law.