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National space legislation : future perspectives for Malaysian Space Law

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Introduction

Among the significant developments in space law in the last century has been the proliferation of a variety of national space laws. There are numerous national space laws applicable in various countries. They include: National Aeronautics and Space Act 1958, Commercial Space Act 1998 (United States of America); Act on Launching Objects from Norwegian Territory into Outer Space 1969 (Norway); Act on Space Activities 1982 (Sweden), Outer Space Act 1986 (the United Kingdom); Space Affairs Act 1993, Space Affairs Amendment Act 1995 (South Africa); Federal Law on Space Activities 1993, Statute on Licensing Space Operations 1996 (Russian Federation); Law of Ukraine on Space Activities 1996 (Ukraine); Space Activities Act 1998 (Australia); Space Development Promotion Act 2005, Space Liability Act 2007 (Republic of Korea); French Space Operations Act 2008 (France), Austrian Outer Space Act 2011 (Austria), and Law of Kazakhstan on Space Activities 2012 (Kazakhstan).¹

The emergence of national space legislation is in fact responding to numerous factors. Those factors include requirements imposed by international law that states should be held responsible² as well as internationally liable³ for their national space activities. Furthermore,

¹ United States of America: National Aeronautics and Space Act of 1958, Pub. L. 85-568, 72 Stat. 426 (July 29, 1958), Commercial Space Act of 1998, Pub. L. No. 105-303, 112 Stat. 2843 (October 28, 1998); Norway: Act on Launching Objects from Norwegian Territory into Outer Space 1969, Act No. 38 (13 June 1969); Sweden: Act on Space Activities of 1982, Act No. 1982:963 (18 November 1982); United Kingdom: Outer Space Act of 1986, 1986 Chapter 38 (18 July 1986); South Africa: Space Affairs Act of 1993, Statutes of the Republic of South Africa – Trade and Industry No. 84 (24 June 1993), Space Affairs Amendment Act of 1995, No. 64 of 1995 (6 October 1995); Russian Federation: Law of Russian Federation on Space Activities 1993, Federal Law Decree No. 5663-1 (20 August 1993), Statute on Licensing Space Operations 1996, Federal Government Resolution No. 104 (2 February 1996); Ukraine: Law of the Supreme Soviet of Ukraine on Space Activities 1996, No. 503/96-VR 1996 (15 November 1996); Australia: Space Activities Act 1998, Act No. 123 of 1998 as amended (21 December 1998); Republic of Korea: Space Development Promotion Act 2005, Law No. 7538 (31 May 2005), Space Liability Act 2007, Law No. 8852 (21 December 2007); France: French Space Operations Act 2008, Law No. 2008-518 (3 June 2008); Austria: Austrian Federal Law on the Authorization of Space Activities and the Establishment of a National Space Registry (Austrian Outer Space Act) 2011, Federal Law Gazette I No. 132/2011 (6 December 2011); Kazakhstan: Law of the Republic of Kazakhstan on Space Activities 2012, Law No. 528-IV ZRK (6 January 2012).

² See Principle 5, Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (United Nations General Assembly Resolution 1962 (XVIII), adopted on 13 December 1963 (referred to as, ‘Declaration of Legal Principles 1963’). See also Article VI, Treaty on Principles Governing the Activities of States in the Exploration and Use of the Outer Space, Including the Moon and Other Celestial Bodies (1967) (Resolution 2222 (XXI), opened to signature on 27 January 1967, entered into force on 10 October 1967. (1967) 610 UNTS 205, 18 UST 2410, TIAS 6347; (1967) 6 ILM 386; (1967) 61 AJIL 644 (referred to as, ‘Outer Space Treaty 1967’).

³ See Principle 8, Declaration of Legal Principles 1963, and, Article VII, Outer Space Treaty 1967. This rule was then confirmed and elaborated further in the Convention on International Liability for Damage Caused by

the space legal regime gives assurance to all countries, not only on freedom of use and exploration of outer space,⁴ but also on freedom of scientific investigation,⁵ as well as freedom of access to all areas of celestial bodies.⁶ Such assurances indeed grant the states, inclusive of their public and private bodies, opportunities to utilise outer space to the furthest extent, although there may be various consequences of space activities. However, apart from providing opportunities for exploration and use of outer space, the legal regime simultaneously enforces the requirement of authorization as well as continuous supervision⁷ by the states. In other words, the states must provide authorization for their nationals to become involved in space activities, and should therefore also continuously monitor and supervise such activities. Such circumstances, in fact, can only be enforced effectively via the state's national space legislation. Besides all these factors, other essential factors that contribute to the proliferation of the national space laws include the growing importance of commercialization and the increasing involvement of public and private sectors in space activities.

The importance of developing national space law was verified when the United Nations began organizing various workshops from 2002 onwards to discuss the related matters.⁸ In supporting such efforts, commencing from 2006 annual symposiums have also been held during the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) Legal Subcommittee sessions.⁹ The issue of the development of national space law again proved to be a significant matter in 2008 when national space law was included in the agenda

Space Objects (1972) (Resolution 2777 (XXVI), adopted on 29 November 1971, opened to signature on 29 March 1972, entered into force on 1 September 1972. 24 UST 2389, 961 UNTS 187, TIAS 7762.

⁴ Principle 2, Declaration of Legal Principles 1963, and, Article I, Outer Space Treaty 1967.

⁵ Article I, Outer Space Treaty 1967.

⁶ *Id.*

⁷ See Principle 5, Declaration of Legal Principles 1963, and, Article VI, Outer Space Treaty 1967.

⁸ Those workshops include: workshop on 'Capacity Building in Space Law', The Hague, Netherlands (18-21 Nov. 2002); Workshop on 'United Nations Treaties on Outer Space: Actions at the National Level', Daejeon, Republic of Korea (3-6 Nov. 2003); on 'Disseminating and Developing International and National Space Law: the Latin America and Caribbean Perspective', Rio de Janeiro, Brazil (22-25 Nov. 2004); on 'Meeting International Responsibilities and Addressing Domestic Needs', Abuja, Nigeria (21-24 Nov. 2005); on 'Status, Application and Progressive Development of International and National Space Law', Kyiv, Ukraine (6-9 Nov. 2006); on 'Role of International Space Law in the Development and Strengthening of International and Regional Cooperation in the Peaceful Exploration and Use of Outer Space', Tehran, Republic of Iran (8-11 Nov. 2009); on 'Activities of States in Outer Space in Light of New Developments: Meeting International Responsibilities and Establishing National Legal and Policy Frameworks', Bangkok, Thailand (16-19 Nov. 2010); and on 'Contribution of Space Law to Economic and Social Development', Buenos Aires, Argentina (5-8 Nov. 2012).

⁹ The symposiums sponsored by International Institute of Space Law (IISL) and the European Centre for Space Law (ECSL). Such symposiums include symposium on 'National Space Legislation – Crafting Legal Engines for the Growth of Space Activities', Vienna, Austria (22 March 2010), and symposium on 'Capacity Building in Space law', Vienna, Austria (26-27 March 2007).

of the 47th session of the UNCOPUOS Legal Subcommittee.¹⁰ In the agenda, the issues appeared as a single item for discussion under the title of ‘General exchange of information on national legislation relevant to the peaceful exploration and use of outer space’.

With respect to the Malaysian context, Malaysia is utilising the opportunity of freedom of use of outer space with her involvement in various space applications and activities. Those applications and activities include telecommunications and broadcasting, remote sensing, meteorology, navigation, satellite manufacturing, launching space objects, sending astronauts, scientific research, a suborbital space plane program, and a spaceport project. This sector, in fact, has great potential in Malaysia to flourish further in the future especially with the participation of the private sector. However, despite Malaysia’s involvement in various outer space activities, the state has no specific domestic space law to govern the activities in accordance with the international legal rules on space.

Against this background, it is proposed that Malaysia should seriously consider the development of its national space legislation. This suggestion is made on the basis of the fact that such circumstances are vital for the sake of the continuing sustainability of the positive progress of Malaysian space activities. With the appropriate space legislation, the Malaysian Government will be able to monitor and supervise its national activities effectively in accordance with international law. Moreover, the country will be able to deal with the international responsibility and liability of its nationals appropriately at the national level.

Thus, in discussing the study of the development of the Malaysian national space legislation, it is essential to highlight and analyse some related research questions: (1) What are the developments in Malaysian outer space-related activities? (2) What is the status of Malaysia with respect to the United Nations outer space laws as well as her membership of the international and regional space-related organizations? (3) What are the legal frameworks of the selected national space legislations? (4) What can Malaysia learn from the study of those legal frameworks in assisting her to develop national space legislation? (5) Is it necessary for Malaysia to enact a Malaysian outer space law? (6) What are the major aspects to consider in drafting Malaysian outer space legislation? (7) What would a feasible proposed draft

¹⁰ See UNGA, Committee on the Peaceful Uses of Outer Space, Legal Subcommittee, Forty-Seventh Session, (Vienna, 31 March – 11 April 2008), A/AC.105/C.2/L.269.

specimen of a Malaysian Outer Space Act consist of? (8) What are the legal impacts of the birth of the Malaysian Outer Space Act on Malaysia, ASEAN, and world space activities?

In general, the purpose of this study is to analyse the future perspectives for Malaysian space law. However, based on the above-mentioned research questions, this study will focus specifically on three major research objectives as follows:

- (1) To present the past, current, and future development of Malaysian space-related activities inclusive of the status of Malaysia with respect to the United Nations space conventions, and her membership of international and regional space-related organizations.
- (2) To study the legal framework of selected national space legislations, the outcomes of which will be utilised in assisting Malaysia to develop national space legislation.
- (3) To propose a feasible draft specimen of a Malaysian Outer Space Act with some major clauses and also a discussion of some considerable aspects to develop the legislation, the necessities of such legislation and its impacts on Malaysia, ASEAN and world space activities.

Relying on the above research objectives, there are three major significant aspects of the study. The importance of the research lies in the following:

- (1) Elucidation of the progress of Malaysian space activities as well as Malaysia's status in regard to the space conventions and membership of the regional and international space-related organizations.
- (2) Providing the legal frameworks of selected national space legislations as a basis for developing the Malaysian space legislation.
- (3) A proposal for a workable feasible draft specimen of a Malaysian Outer Space Act as a model for rationalising the actual Malaysian outer space legislation.

In respect of methodology, two principal methods are used in preparing this thesis. The first method is library research. This is done by analysing the views and works written by the eminent and notable scholars in outer space law, specifically relating to the United Nations outer space conventions. The same approach is applied with respect to the domestic space laws of some selected countries. In the Malaysian context, the library research mode is used to analyse the Malaysian laws as well as the written sources produced by the relevant

scholars and bodies. In the library research mode, various main sources were used as references for the analysis. The sources include various international treaties and conventions, United Nations resolutions, principles, international agreements, and other documents. Apart from these, a variety of domestic legislations, bills and policies from numerous countries are referred to as well. The second method is field research which involves mainly interviews. The interviews were conducted with the Director of the Malaysian Space Agency, the Senior Federal Counsel of the International Affairs Division, Attorney General's Chambers Malaysia and the founder and president of the Malaysian Institute of Aero and Space Studies (IKAM) and the Space Tourism Society Malaysia Chapter (STS-MC). The aim is to know the Malaysia's latest position and progress in developing the Malaysian national space laws. This mode is also applied to gain the latest information on Malaysian space activities, particularly in respect of the suborbital space plane program and commercial spaceport. In such circumstances, the interviews are conducted via, for instance, direct interviews, e-mails, and other means.

In seeking answers to the research questions, as well as to achieve the study's objectives, the thesis is structured into six chapters. Hence, the elaboration of the thesis is presented in the following systematic order:

Chapter 1: Malaysian Space Experiences and Activities: Past, Present and Future.

This chapter aims to explore the space experiences and activities of Malaysia in the past, present and future. The outcome of the discussion will verify whether there is a need for Malaysia to enact Malaysian space legislation. In fulfilling such objectives, this chapter focuses on three major aspects. The first is the Malaysian policy and laws. The second is the Malaysian space technological development and research, and the third is the Malaysian space application and activities. In the first section, the space-related policy and laws applicable in Malaysia are discussed and reviewed. The second section explores Malaysia's space-related technological development and research with regard to three areas. They are: the Malaysian governmental sector, the non-governmental sector, and the Malaysian higher educational institutions. In the Malaysian governmental sector, various Malaysian governmental bodies and agencies are highlighted before the discussion moves on to the non-governmental sector. In terms of the higher educational institutions, the discussion emphasizes the development of both legal and technological education. Lastly, the third section explores a variety of Malaysian space applications and activities. These include

activities such as telecommunications and broadcasting, remote sensing, meteorology, navigation, satellite manufacturing and launching, the suborbital space plane program, and the commercial spaceport project.

Chapter 2: Malaysia, International Space Activities, and Laws.

This chapter aims, *inter alia*, to explore the status of Malaysia with respect to international space laws, as well as its involvement as a member of the international and regional space-related organizations. In meeting this goal, this chapter is divided into two main topics. The first is the international space law, and the second is Malaysia as a member of international and regional organizations. Prior to these discussions, the study presents a brief overview of the major world space activities as an introduction to the discussion. The first section on international space law starts with the historical background of the international space law. It then moves on to an overview of the meaning and sources of the law. Next, it analyses the status of Malaysia in relation to the five outer space conventions. The second section on Malaysia as a member of international and regional organizations deals with Malaysia's involvement in space-related organizations at the international and regional levels.

Chapter 3: The Study of the Legal Framework of Some National Space Legislations.

The absence of a Malaysian national space law permits a comparative study of various existing domestic laws. This will provide an opportunity for a legal study and analysis to frame a practicable Malaysian domestic space law. Thus, this chapter aims to present a study of selected national space legislations from selected countries, taking into consideration the obligations imposed by the United Nations outer space conventions. Those countries involved are the United Kingdom, Australia and the United States of America. Apart from countries' national space legislations, the study also discusses other countries that have no national space legislation. They are India, Thailand, Singapore, and Brunei. The selection of all those countries is made based on certain criteria that are mentioned further in the discussion. With respect to countries with no specific space legislation, the writing concentrates on their experiences in relation to their space-related laws, bodies that regulate the activities, as well as their space-related activities and programmes. This chapter also discusses the legal implications of the absence of national space legislation in those countries. Moreover, the research also explores the current status of the countries in regard to the United Nations outer space conventions. The outcome of the chapter will then be applied in seeking to develop the Malaysian space legislation.

Chapter 4: The Proposed Legal Framework for Malaysian Space Law.

Chapter 4 deals with the proposal of legal frameworks for a Malaysian Outer Space Act. The chapter begins by outlining the reasons why Malaysian space legislation is necessary. These reasons include the fact that the legislation will provide legal certainty and transparency of legal rules for the country. Besides that, the country will have a reliable supervisory legal framework, be able to control and monitor national space activities in an efficient manner, and many others. This chapter then discusses some major aspects that should be considered in developing the Malaysian space legislation. Those aspects, to name but a few, include the country's national policy and legal system compliance, national interest-based aspects, domestic laws coordination and others. Lastly, this chapter then proposes a number of significant clauses that need to be incorporated in the Malaysian Outer Space Act. They include the authorisation clause, supervision clause, registration clause, and indemnification clauses. Apart from the major clauses, some other relevant clauses that need to be incorporated in the legislation are also suggested.

Chapter 5: A Feasible Draft Act of a Malaysian Space Law.

Chapter 5 proposes a feasible Malaysian Outer Space Act in the form of a draft specimen. This chapter aims to provide a simulation of a workable Malaysian Outer Space Act in the form of a draft with an expectation that it can become a model to rationalise the actual Malaysian Outer Space Act. However, it is not within the scope of the thesis to provide a comprehensive form of a draft. Although the draft specimen does not appear in its complete form, it is hoped that it can be a guideline to develop the real Malaysian Outer Space Act and will positively influence the Malaysian law makers. It is noted that success in enacting the Malaysian Outer Space Act may generate various legal implications. Thus, in this chapter the study firstly outlines several legal implications foreseeable for Malaysia. Secondly, the chapter also points out the legal effects on the ASEAN space activities, as well as on the world community.

Chapter 6: Conclusion and Recommendations.

Chapter 6 deals with the conclusion and recommendations. In this chapter, the conclusion is made by outlining the findings or outcomes of the research. Apart from presenting the findings, this chapter also provides some practical recommendations for the future development of Malaysia's space law and its space activities.