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National space legislation : future perspectives for Malaysian Space Law

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Cover Page



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6 GENERAL CONCLUSIONS

The need for an effective law governing outer space activities is not restricted to the international level. It is also paramount at the state level, particularly for states involved in space activities. Since an increasing number of states have become involved in such activities, the issue of developing national outer space legislations is becoming crucial and is gaining more attention. This has been witnessed particularly with the burgeoning of commercialization of space activities and the huge involvement of public and private sectors. Therefore, the emergence of national outer space legislations can indeed be viewed as an effective mechanism in assisting the United Nations outer space conventions to regulate the world's space activities accordingly. However, this aim will only be achievable if the legislation is prepared and enacted in such a way that it harmonizes and supports the United Nations outer space conventions.

It is observed that constructing and enacting national outer space legislation is not an easy task. It requires the involvement of many parties, such as drafters of legal documents, policy-makers, economic experts, and public and private sectors. Countries must also consider many other things besides facing various obstacles. Indeed, good national outer space legislations must be prepared and drafted by taking into consideration all aspects of the country's governmental policy, legal system, economic growth, and social needs. Considering those factors, it is not surprising that many states involved in space activities are unable to develop their national outer space legislation, even though they are aware of the urgency of developing such legislation. This situation has indeed been experienced by Malaysia as a newly emerged outer space actor.

This research analyses the future perspective of the Malaysian outer space law. In responding to the issue, the study has dealt with a number of research questions, which then resulted in several findings. The development of Malaysian space activities has been discovered to be truly encouraging and inspiring. This sector has very bright prospects nationally and internationally. Indeed, it has great potential for further exploration and expansion, especially with the commitment and involvement of both public and private sectors. As a matter of fact, the public sector has shown great interest in this field for many years and is leading this sector. However, the emergence of the Malaysian private space sector has recently helped to

boost the growth of Malaysian space activities. In addition, it is clear that the country has contributed to and participated in such activities by becoming a member of various space-related bodies internationally and regionally.¹ This contribution and commitment has indeed verified her great interest, willingness and enthusiasm in regard to becoming active and further engaged in outer space activities.

Nevertheless, in regard to space-related laws, Malaysia has only a few laws to deal with such activities. These laws are merely in relation to space applications such as telecommunications and multimedia activities. Despite the existence of such laws, it is acknowledged that Malaysia still lacks convincing space legislation to govern the activities, particularly in respect of fulfilling the country's obligations as prescribed by the United Nations outer space conventions. This has in fact resulted in an imbalance between the growth of Malaysian space activities and their legal rules. Hence, the study has established that the present Malaysian laws will indeed be insufficient to cope with the development and growth of the Malaysian space activities in the coming years.²

Apart from the above factors, consideration has also been given to the status of Malaysia as a state party to the five United Nations outer space conventions. Malaysia has signed only two treaties: the Outer Space Treaty 1967 and the Rescue Agreement 1968. However, she has not yet ratified them. She has also declined to become a party to the other three treaties: the Liability Convention 1972, the Registration Convention 1975, and the Moon Agreement 1979.³ Nevertheless, Malaysia has actually shown interest in becoming a party to the treaties. However, due to the absence of Malaysian outer space legislation,⁴ the country seems hesitant and reluctant to proceed with ratification, which has resulted in delaying the matter. Malaysia has doubts about ratifying or becoming a party to the treaties because she is concerned about being trapped and bound by the obligations or rules prescribed by the United Nations outer space conventions mainly in relation to the liability and responsibility matters. However, the research has revealed that Malaysia, in her current position as a non-party or signatory state, can still be bound by the United Nations outer space treaties' rules and

¹ More information is available in Chapter 2 of the thesis (2.4. Malaysia as a Member of International and Regional Organizations).

² Detailed discussion is available in Chapter 1 of the thesis (Malaysian Space Experiences and Activities: Past, Present and Future).

³ For more information, read Chapter 2 of the thesis (2.3.3. Malaysia and the Five Outer Space Conventions).

⁴ The existence of the Malaysian outer space legislation can indeed legally protect the Government against obligations especially the liability imposed by the United Nations space conventions.

obligations. This might in fact be the case in circumstances where the space treaties' rules and obligations are part of the international custom under Article 38 of the Vienna Convention on the Law of the Treaty.⁵ In addition, by virtue of Article 18 of the same Treaty,⁶ Malaysia actually has a further obligation to refrain from any acts that contravene the objective and purpose of the treaties she has signed, even though she has not yet ratified the treaties. Thus, it is submitted that Malaysia, in her current position as a signatory and non-party state, has already been bound indirectly by certain obligations and rules of the space treaties or conventions. For this reason, it is strongly recommended that Malaysia expedite the enactment of the Malaysian national space legislation in order to protect her interests.

Considering Malaysia's dilemmas between her international credibility and responsibility (as a newly emerged space actor) to become a party to the United Nations space conventions and also her concerns about the legal impacts of becoming a party to the treaties, as well as the possibility of binding effects of the outer space treaties' rules and obligations as prescribed by Articles 38 and 18 of the Vienna Convention on the Law of the Treaty, the study has firmly concluded that Malaysia must develop and construct her national space legislation as a matter of urgency. Therefore, in support of this development, a study of the legal frameworks of national outer space legislations of several countries has been conducted.⁷ The legislations involved are the Outer Space Act 1986 of the United Kingdom, the Space Activities Act 1998 of Australia and several other relevant national space legislations and regulations of the United States of America. These legislations have actually been chosen based on reasons deliberated in the thesis. At least seven major subject matters or issues are highlighted in discussing the legal frameworks of these national space legislations and regulations. These subject matters are: (1) nature and scope of the law; (2) authorization; (3) liability and indemnification; (4) registration; (5) monitoring and supervision; (6) safety, peace and security elements; and (7) other relevant provisions. The research has demonstrated that, even though, in general, these legislations deal with these similar key issues, in certain circumstances different states apply different rules in respect of such issues. Thus, in offering the best outcome for the Malaysian outer space legislation, it has been suggested that

⁵ See Article 38 of the Vienna Convention on the Law of Treaties 1969, adopted on 22 May 1969, opened to signature on 23 May 1969, entered into force on 27 January 1980. 1155 UNTS 331, in Chapter 2 of the thesis, *supra* notes 177.

⁶ See Article 18 of the Vienna Convention on the Law of Treaties 1969, adopted on 22 May 1969, opened to signature on 23 May 1969, entered into force on 27 January 1980. 1155 UNTS 331, in Chapter 2 of the thesis, *supra* notes 176.

⁷ Refer to Chapter 3 of the thesis (The Study of Legal Frameworks of Some National Space Legislations).

Malaysia learn from and consider the various national outer space rules applied by these countries. Such rules, however, should if necessary be considered with appropriate modifications and changes to suit Malaysia's circumstances and interests.

Apart from the above-mentioned countries with national space legislation, certain other countries without space legislation have also been taken into consideration. These countries are India, Thailand, Singapore and Brunei. They have been selected based on criteria explained in the thesis.⁸ From the study, it has been verified that, *inter alia*, the states with national space legislation have a certain legal capacity to implement the United Nations outer space treaties' obligations effectively at both state and international levels, compared to states without such legislation. The states with legislation also have definite and positive approaches to developing their space activities further. This circumstance indeed leads to a balanced evolution of space legal rules and space activities for their countries.

The states that have successfully materialized their outer space legislation seemed more confident and willing to become a party to at least the first four of the United Nations outer space treaties (i.e., the Outer Space Treaty 1967, the Rescue Agreement 1968, the Liability Convention 1972, and the Registration Convention 1975). Various modes of authorization had been introduced by the states in giving consent to outer space actors to conduct their space activities. The ability of states with outer space legislation to legally impose the United Nations outer space treaties' obligations (such as the registration obligation, and monitoring and supervision of the activities) is in fact indisputable. The ability of such states to efficiently deal with the liability and indemnification issues imposed by the international space law has also been evidenced.

The enactment of the Malaysian outer space legislation has been identified as essential for various reasons.⁹ In view of the growth of space activities in Malaysia, such enactment is considered paramount in order to regulate the activities. A successful enactment will surely afford the space actor with the legal certainty and transparency of the outer space legal rules at the national level. The legislation will also become a reliable supervisory legal framework for the space actors and participants who conduct activities within the prescribed jurisdiction. In regard to the implementation of the international outer space law, the enactment will verify

⁸ For details, read Chapter 3 of the thesis (3.5. India) and (3.6. The Neighbouring Countries).

⁹ Discussion is available in Chapter 4 of the thesis (4.2. Reasons for Necessity).

that the international legal rules can be implemented effectively at the national level as well as the international level. The concept of international liability and responsibility prescribed by the international outer space law, which has always been a source of concern for Malaysia, can also be dealt with efficiently and appropriately at the state level. Indeed, this situation will also result in the ability of the Government of Malaysia to control and monitor the activities. Moreover, the enactment of the legislation will also encourage and promote the growth of Malaysian space commercialization, especially by the private sector.

To ensure the best outcome for the Malaysian outer space legislation, several major aspects have been taken into consideration.¹⁰ Firstly, the Malaysian outer space legislation must be drafted in accordance with the Malaysian national policies. It should also be drafted in a way that it will support Malaysian nationals' interest, such as supporting the Malaysian private sector, which has demonstrated great interest in engaging in outer space activities nationally and internationally. The legislation should also comply with the Malaysian national legal system, such as in regard to its legislative process. It is also worth considering coordination with the international outer space law. Since the nature of outer space activities has predominantly involved international relations, the legislation must be drafted as far as possible in agreement with the rules of the international law of outer space. Harmonization of certain legal aspects of national outer space legal rules among states should also be considered; as such activities involve relations between various states. This will bridge the gap of disparity between the rules and procedures involved among the world's space countries. The legislation should also be drafted with the aim of sustaining Malaysian outer space activities in order to ensure that the activities are maintained and continue to grow in the future.

The Malaysian outer space legislation has been drafted with a focus on seven major issues.¹¹ They are: (1) nature and scope of the law; (2) authorization; (3) liability and indemnification; (4) registration; (5) monitoring and supervision; (6) safety, peace and security elements; and (7) other relevant provisions. The proposed title of the legislation is the 'Malaysian Outer Space Act [year]'. In the nature and scope of the law, the study has highlighted the objectives of enacting the legislation, which include regulating the Malaysian outer space activities for

¹⁰ For more information, refer to Chapter 4 of the thesis (4.3. Some Major Aspects of Drafting Malaysian Space Legislation).

¹¹ The details are available in Chapter 4 of the thesis (4.4. Shaping the Malaysian Space Law).

compliance with the international outer space obligations. The application of the Act has been proposed based on three criteria: locality, nationality, and type of activities. It is suggested that certain words, such as outer space, launch and space object, be given definitions and further clarification in the Act. In regard to authorization, various modes have been proposed to suit the outer space activities. The study has also discussed some rules on the requirement to obtain authorization and has specified various conditions for granting authorization under the Act. The issues of liability and indemnification have been introduced mainly to safeguard the Malaysian Government's interest against any liability that might be imposed under the international space law. Apart from introducing a full indemnification rule, the study has proposed a rule of partial indemnification in the hope that it will inspire the involvement of the private space sector in the activities. The requirement for registration has been created to guarantee and facilitate the Malaysian Government in observing and fulfilling her registration obligations under the international outer space law. Among the efforts proposed are the establishment of an official Malaysian National Space Registry and a supplementary registry. In terms of monitoring and supervision, the study has suggested various methods and procedures to supervise and monitor the outer space activities to ensure they are in compliance with the spirit of the international space law. Among the suggested modes is the establishment of the Supervision and Monitoring Committee with its list of duties, powers and functions. In regard to the issues of safety, peace and security, the research has strongly proposed that the provisions of the Act be instilled with those values as necessary. Lastly, in respect of other relevant provisions, the study has dealt with matters that are not covered under the earlier issues but that should nevertheless be included in the Act. The proposed matters are those such as the position of Malaysian military outer space activities in regard to the registration rule, and offences and penalties clauses for the offender.

The research has finally proposed a draft specimen of the Malaysian Outer Space Act.¹² The proposed draft Act follows the style of Malaysian legislation: statement of purpose, reference to the Sovereign (King) and Parliament, preliminary part, short title, interpretative section, and so on. Six major parts have been proposed in the draft Act. They are: Part 1 - Preliminary; Part II - Authorization of space activities; Part III - Supervision and monitoring of space activities; Part IV - Registration of Space Activities; Part V - Indemnification and Insurance Requirement; and Part VI - Other Relevant Clauses. These parts have been further

¹² The draft specimen of the Malaysian Outer Space Act is available in Chapter 5 of the thesis (5.2.1. The Feasible Draft of the Malaysian Outer Space Act).

divided into several clauses and sub-clauses as necessary. Fifty sections have been proposed altogether. It is hoped that the construction of this draft Act will assist, guide and contribute to the development of the actual Malaysian outer space legislation. It should also be noted that, apart from the successful enactment of the Malaysian Outer Space Act, other new laws may be required from time to time to deal with the new developments and changes in the related technology and activities.

Should the enactment of the Malaysian Outer Space Act become a reality, there will be numerous legal impacts from various perspectives.¹³ In regard to the Government of Malaysia, the Act will provide legal protection in terms of the Government's financial risk. It will also provide the country with a well-organized outer space national legal system. As for the ASEAN member states, the successful establishment of the Act will represent a legal challenge to the other member states to consider developing their national outer space legislations. In respect of world space activities, the Act will ensure, among other things, the furnishing of the United Nations with information on the outer space objects. It will also assist such international bodies to promote the peaceful uses of outer space.

Finally, it is submitted that the enactment of the Malaysian national outer space legislation is undoubtedly important to Malaysia. It is highly recommended that Malaysia urgently realize the Malaysian Outer Space Act. It is hoped that the construction of the draft of the Malaysian Outer Space Act will help pave the way to the realization of the actual Malaysian Outer Space Act, and will positively influence the Malaysian law makers. The earlier the Act is materialized; the sooner the Malaysian Government's interests will be secured. Indeed, it is predicted that the successful implementation of the Act will support and complement the functions of the United Nations outer space conventions. Thus, it is not too much to say that the birth of the Act could support, enhance and strengthen the effectiveness of the implementation of the United Nations outer space law conventions.

¹³ For more information, read Chapter 5 of the thesis (5.2.2. The Legal Impacts on Malaysia) and (5.2.3. The Legal Impacts on the ASEAN and the World Space Activities).