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National space legislation : future perspectives for Malaysian Space Law

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Summary in English

NATIONAL SPACE LEGISLATION: FUTURE PERSPECTIVES FOR MALAYSIAN SPACE LAW

The rationale

Outer space activities have attracted the attention of many states. The activities have evolved from exclusive activities of rich countries to ordinary activities of interested countries. Indeed, it is predicted that certain activities that were previously beyond human imagination will become commonplace and ordinary attractive daily activities, especially after the successful operation of the commercial suborbital space plane by the private sector. As one of the states concerned, Malaysia demonstrated her interest when she successfully utilized the freedom of uses and exploration of outer space with various space applications and activities. Such activities, in fact, have bright prospect of expanding further in the future. However, despite this involvement and participation, Malaysia has no specific domestic outer space legislation to govern the activities in accordance with the United Nations outer space legal rules.

The objectives and research questions

This research studies the future perspective of the Malaysian outer space law. It has focused on three major objectives:

1. To demonstrate the past, present and future development of Malaysian outer 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 frameworks of selected national outer space legislations, the outcomes of which will be utilized in assisting Malaysia to develop her national outer space legislation.
3. To propose a feasible draft specimen of a Malaysian Outer Space Act with some major clauses, to discuss some significant aspects to develop the legislation, and to explain the

necessity for such legislation, and its impacts on Malaysia, ASEAN and world space activities.

In order to achieve these objectives, the research has investigated and analysed the following questions:

1. What are the developments in Malaysian outer space-related activities?
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?
2. What are the legal frameworks of the selected national outer space legislations?
What can Malaysia learn from the study of those legal frameworks in assisting her to develop national space legislation?
3. Is it necessary for Malaysia to enact a Malaysian outer space law?
What are the major aspects to consider in drafting Malaysian outer space legislation?
What would a feasible proposed draft specimen of a Malaysian Outer Space Act consist of?
What are the legal impacts of the birth of the Malaysian Outer Space Act on Malaysia, ASEAN and world space activities?

The research outline

To accomplish the objectives and respond to the research questions, the study has been carefully arranged into six chapters. *Chapter 1: Malaysian Space Experiences and Activities: Past, Present and Future* demonstrates Malaysia's involvement and participation in outer space-related activities. *Chapter 2: Malaysia, International Space Activities and Laws* presents the status of Malaysia in relation to United Nations outer space conventions and her membership of international and regional space-related organizations. *Chapter 3: The Study of Legal Frameworks of Some National Space Legislations* examines the legal frameworks of selected national space legislations. *Chapter 4: The Proposed Legal Framework for Malaysian Space Law* not only discusses the legal framework for Malaysian outer space legislation but also explains the necessity of enacting the Malaysian outer space law and some major aspects to consider in drafting the law. *Chapter 5: A Feasible Draft of a Malaysian Space Law* proposes a draft specimen of a Malaysian Outer Space Act and also highlights the legal impacts of the Act on Malaysia, ASEAN and world space activities. *Chapter 6: General Conclusions* reports the research findings for each chapter and concludes

with a final submission, arguing that the Malaysian Outer Space Act is undoubtedly important to Malaysia and will assist the United Nations outer space conventions in regulating the space activities.

The research outcome

The research findings are demonstrated based on three major aspects that reflect the three major objectives of the study.

Firstly, the development of Malaysian space-related activities has proved to be encouraging and inspiring. The sector has bright future prospects, especially with regard to space activities and the country's contribution to and participation in various space-related bodies internationally and regionally. The emergence of the Malaysian private sector has been seen as a key factor in boosting the growth of Malaysian space activities. Despite this promising scenario, it has been discovered that Malaysia is only a signatory state – without ratification – to the Outer Space Treaty 1967 and the Rescue Agreement 1968, and a non-party state to the Liability Convention 1972, the Registration Convention 1975, and the Moon Agreement 1979. It was found that Malaysia is reluctant to ratify or become a party to the treaties on the ground that this will result in compulsory adherence to the treaties' rules and obligations, particularly in relation to liability and responsibility matters. The fact that the country has no national outer space legislation to protect and secure the Malaysian Government's interest has resulted in it delaying the ratification of the treaties.

However, the research findings have established that Malaysia might indeed still be bound by the treaties' rules and obligations in circumstances where the rules and obligations are part of the international custom under Article 38 of the Vienna Convention on the Law of the Treaty. Furthermore, by virtue of Article 18 of the same Treaty, Malaysia has a further obligation to refrain from any acts that contravene the objective and purpose of any treaties she has signed. Thus, the research has submitted that Malaysia in fact – from this point of view – has indirectly been bound by certain rules and obligations of the outer space treaties. In such circumstances, the research has proposed a requirement to construct the Malaysian outer space legislation in order to protect the country's interest. To achieve this aim, the research has learned and studied several national outer space legislations of other countries, the

outcomes of which have been utilized in constructing the draft of the Malaysian outer space legislation.

Secondly, seven major legal issues have been identified from the study of the legal frameworks of selected national outer space legislations. The research has studied the national outer space legislations of three countries: the Outer Space Act 1986 of the United Kingdom, the Space Activities Act 1998 of Australia and several relevant national space legislations and regulations of the United States. It was learned that there are at least seven major subject matters or key issues to consider in developing national outer space legislation: (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 observed that, although these legislations have similar key issues, in some circumstances different states have different rules to apply. Thus, in producing the best outcome for Malaysian outer space legislation, the research has suggested that Malaysia learn and consider the various rules applied by these countries. However, certain modifications and changes are required – whenever applicable – in order to suit Malaysia's circumstances and interests. This kind of approach can in fact be applied by other countries that lack national space legislation but wish to construct a law.

Thirdly, a draft specimen of a Malaysian Outer Space Act has been successfully constructed as a result of studying the legal frameworks of other national outer space legislations. The draft Act has been presented, arranged and worded carefully. The proposed draft Act is the author's. It follows the style of Malaysian legislation: statement of purpose, reference to the Sovereign (King) and Parliament, preliminary part, short title and so on. The draft Act proposes the incorporation of six major parts: Part I (Preliminary); Part II (Authorization of Space Activities); Part III (Supervision and Monitoring Activities); Part IV (Registration of Space Activities); Part V (Indemnification and Insurance Requirements); and Part VI (Other Relevant Clauses). These Parts have then been further divided into several clauses and sub-clauses as necessary, resulting in fifty sections altogether.

To ensure the best outcome of the draft Act, the study has proposed several major aspects that should be taken into consideration. The draft has been constructed mainly to comply with the Malaysian national policy and its legal system. It has also been drafted to support Malaysian nationals' interest, especially to ensure their continuous engagement in space activities. In

addition, it has been prepared to coordinate not only the existing Malaysian domestic law but also the international outer space law. In order for it to perform feasibly, it is recommended that it be harmonized with other countries in respect of certain legal matters.

The construction of the draft specimen of a Malaysian Outer Space Act has been identified as essential as it will assist and pave the way to the realization of the actual Malaysian Outer Space Act. The study has also confirmed the necessity of enacting the Malaysian Outer Space Act, especially for providing national regulations to the prescribed space actors. Additionally, the Act has provided the space actor not only with legal certainty and transparency of the space legal rules nationally, but also a reliable supervisory legal framework for those who conduct activities within its prescribed jurisdiction. From the international outer space law perspective, the Act has assured the Malaysian Government and the international community of the space actors' complete observation of the United Nations international outer space legal rules and obligations. Most importantly, the concept of international responsibility and liability that has always been a source of concern for Malaysia has been dealt appropriately at the state level.

The research outcomes also reveal numerous legal impacts from various perspectives, should the enactment of the Malaysian Outer Space Act become a reality. From the Malaysian Government point of view, the most important point is that the Act will provide legal protection in regard to the Malaysian Government's financial risk. For the ASEAN member states, it will provide a legal challenge to other members to consider developing their own national outer space legislations. In respect of world space activities, the Act will afford legal assurance, particularly in furnishing the United Nations with information on the space objects and assisting the international bodies in promoting the peaceful uses of outer space.

Finally, the research findings have reconfirmed that the enactment of the Malaysian national outer space legislation is undoubtedly important to Malaysia. Thus, realization of the Malaysian Outer Space Act is a most highly recommended action for Malaysia. In such circumstances, the construction of the draft Act should offer great assistance in paving the way to the realization of the Act. It is hoped that it will positively influence Malaysian law makers. Apart from safeguarding the Malaysian Government's and space actors' interests in particular, the Act's emergence will support and complement the functions of the United

Nations outer space conventions generally. Its appearance is expected to enliven and strengthen the arena of international outer space law.