
THE LEGAL RATIONALES OF ENACTING MALAYSIAN SPACE LEGISLATION

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ABSTRACT

The involvement of Malaysia in outer space activities is irrefutable. It had started long ago from 1960 with the construction of her first earth satellite station in Kuantan, Pahang. Apart from building the earth satellite stations, Malaysia also has involved in various space applications and activities. These include telecommunication and broadcasting, remote sensing, meteorology, navigation, satellite manufacturing and launching, astronaut programme, suborbital space plane, commercial space ports and so forth. Such activities in fact need proper regulations. Even though some of these activities are at initial stages of involvement, however, there is a great opportunity for further engagement. Since Malaysia has no specific law deals with outer space activities, thus this paper discusses the legal rationales why it is necessary to enact the Malaysian outer space legislation. It hopes it will justify the importance of outer space legislation in the context of Malaysia as an actor and a contributor to outer space activities.

Keywords: *Legal rationales, Malaysian space legislation, Outer space law, Space treaties.*

INTRODUCTION

Malaysia and space activities are no longer surprising. The involvement of Malaysia in the activities has started long ago from 1960 when Malaysia successfully built her first earth

satellite station in Kuantan, Pahang.¹ Malaysian participation in the activities started with various applications of space technologies. The most common and significant are telecommunication and broadcasting. It is the earliest application gained the attention of the Government of Malaysia.

Apart from that, Malaysia has also engaged in other applications of space technologies such as remote sensing, meteorology, and navigation. Such technologies indeed provide significant benefits and profits to the Malaysian society particularly in improving their standard of life and safety. In addition to the application of space technology, Malaysia has involved also in satellite manufacturing project via the first involvement of TiungSAT-1 technology transfer programme in 1997, besides her interest in launching the satellites into outer space (Che Zuhaida Saari, 2014).

The Malaysia new areas of venturing outer space are activities of sending man into outer space (such as the 'Program Angkasawan Negara 2007'), suborbital space plane and commercial space port project (Che Zuhaida Saari, 2014). Even though some of these activities are indeed at their initial stages of involvement, however relying on the facts and surrounding circumstances, they have the opportunity to evolve rapidly in the future.

Based on the perspective of international and national space law development, there is no balance between the progresses of law regulating the Malaysian outer space related activities and the activities itself either nationally or internationally.

Thus, this paper will explore the importance of having the Malaysian domestic laws in governing the Malaysian outer space activities. In specific, it concentrates on various legal rationales of why it is necessary to enact the Malaysian outer space legislation in the context of Malaysia as an actor and contributor to outer space activities and technologies. It is hoped such legal justifications will contribute and assist to expedite the development of Malaysian outer space legislation.

THE LEGAL RATIONALES²

This first legal rationale deals with explaining the position of Malaysia in respect of the United Nations outer space treaties. It discusses the legal justification of why Malaysia has to enact the legislation which possibly affects her decision to become a state party to the treaties. Second, it is about the doctrine of transformation practiced by Malaysia. Third, it is related to rules of international responsibility and liability which has been imposed by the United Nations space treaties to the state parties.

Fourth, the application of customary law and fifth is about the legal ability to control and monitor space activities. Sixth, it is regarding legal certainty and transparency of space legal rules. Seventh, it is related to efficient implementation of space treaties' rules, and eighth is the legislation will be a reliable space legal framework. Ninth, it is to support the growth of space law and activities. Tenth, strengthening the rules of outer space and eleventh, it contributes to orderly use of outer space.

A State Party to Outer Space Treaties

There are five major corpuses of United Nations outer space treaties namely, the Outer Space Treaty 1967, the Rescue Agreement 1968, the Liability Convention 1972, the Registration Convention 1975, and lastly the Moon Agreement 1979. These treaties serve as the main sources of international space law.

Malaysia is a signatory state to two treaties namely, the Outer Space Treaty 1967 and the Rescue Agreement 1968. She signed the Outer Space Treaty on 20 February 1967 and the Rescue Agreement on 29 July 1968. Malaysia chooses to remain as a signatory state to both treaties with no ratification at present. Malaysia is also a non-party state for the other three treaties: the Liability Convention 1972, the Registration Convention 1975, and the Moon Agreement 1979, as she has neither signed nor ratified.

A state when she becomes a party to the treaty, it will bind her based on the *pacta sunt servanda* principle (Martin & Jonathan, 2006; Thirlway, 2003).³ Indeed, Article 26 of the Vienna Convention on the Law of Treaties 1969 affirms that

‘every treaty is binding upon the parties to it and must be performed by them in good faith’.

Based on the above, it is observed Malaysia is in dilemma whether to proceed with ratifying the treaties and becoming the state party. This choice would make her legally bound by all the prescribed rules and obligations imposed by the treaties which could then trap her in term of obligations and liabilities that are foreseen to give a great legal and financial impact to the state. Yet, the other alternative is to remain as a signatory state and choose not to become a state party to the treaties. This option, however, has been criticized by the world space community as Malaysia is regarded as a considerable active space actor and contributor to the space technology and activities. Hence, the state could be viewed as irresponsible as to ignore ratifying and becoming a state party to the United Nations-made treaties.

On the other hand, even though the general rule prescribed in Article 34 of the Vienna Convention on the Law of Treaty, in view of Malaysia as a signatory state and a non-party state, she is not bound by any rules prescribed in the outer space treaties. Still, there are some circumstances should be noted at this point. Firstly, a legal obligation imposed by Article 18 of the Vienna Convention on the Law of Treaty to the signatory state which required for Malaysia (under her capacity as a signatory state) to refrain from any acts contravene the objective and purpose of the treaties that she signed. Hence, this certainly applies to her position with respect to the Outer Space Treaty (OST) and the Rescue Agreement (RA). It means even though Malaysia is just a signatory state to OST and RA, however, she is still under the legal obligation (as prescribed by Article 18 of the Vienna Convention on the Law of Treaty) to refrain from any acts contravene the objective and purpose of the OST and RA that she signed (i.e. need to act according to the spirit of both treaties). Secondly, there is a legal binding force in respect of the space treaties’ rules to the signatory and non-party state when the treaties’ rules are part of international custom under Article 38 of the Vienna Convention on the Law of Treaty.⁴

Relying on the above facts, it is urged for Malaysia to enact her legislation in a way that it should provide the best

solution for her legal problems (at the national or international level) in situation where the state proceeds with ratification of the treaties and becoming the state party to the other three treaties.

Therefore, by enacting the Malaysian space legislation, Malaysia would then be able to protect her interest with respect of legal obligations and liabilities imposed to Malaysia in the event of ratification of the OST and RA and becoming a state party to the other three treaties.

Doctrine of Transformation

Malaysia applies the doctrine of transformation in respect of the application of international law domestically. In Malaysia, the rule applied is that an international law is not *ipso facto* part of the municipal law of Malaysia; i.e. it is not automatically incorporated in the municipal law of Malaysia (Abdul Ghafur Hamid @ Khin Maung Sein, 2006).⁵ Therefore, when Malaysia becomes a party to an international treaty, such treaty actually has no domestic legal effect. Hence, for an international treaty to have a domestic legal effect, a municipal law on the matter should be enacted, or the treaty must be domesticated. In other words, the rules of the treaties must first be transformed into Malaysian law before they can be legally applied municipally.

This can be executed by means of statute made by the Malaysian Federal Parliament, by virtue of Article 74(1) and Item 1(a) and (b) of the Federal List of the Malaysian Federal Constitution.⁶ Certain examples of statutes made by the Malaysian Parliament will demonstrate this situation. They include the following: the Malaysian Geneva Conventions Act 1962, to give legal effect to the Four Geneva Conventions for the Protection of the Victims of War of 1949; the Malaysian Exclusive Economic Zone Act 1984, to give legal effect to certain provisions of the United Nations Convention on the Law of the Sea 1982; the Malaysian Diplomatic Privileges (Vienna Convention) Act 1966, to give legal effect to the Vienna Convention on Diplomatic Relations 1961 (Abdul Ghafur Hamid @ Khin Maung Sein, 2006).

This is also believed to be the situation with regard to the international space treaties. Since Malaysia applies the

doctrine of transformation for the application of international law, it is necessary for the country to transform the space treaties' rules by enacting the Malaysian outer space legislation in order to give valid domestic legal effect to the international space treaties it has ratified. In situation whereby the treaties' rules have not been transformed into the municipal law, the rules cannot be applied municipally. Thus, the legal effect is it would be hard for Malaysia to ensure her nationals will certainly observe and obey the rules of international space treaties.

Rules of International Responsibility and Liability

Any state that is a party to the Outer Space Treaty 1967 or Liability Convention 1972 is exposed to the rules of international responsibility and liability introduced by the treaties. Article VI of the Outer Space Treaty 1967 emphasizes, states shall bear international responsibility for their national activities in outer space.⁷ Thus, this signifies the recognition of the international space law in respect of the involvement of a state's nationals in space activities that might incorporate either governmental or non-governmental entities.

In such circumstances, in the event of Malaysia becoming a party to the treaties, the Malaysian Government shall be responsible internationally for all the space activities of its nationals. This means that the Malaysian Government will then be accountable for any space activities conducted by its staff members and the Malaysian private sector.

At this juncture, it should be noted that the state party is not only accountable for such activities but may also be internationally liable for damage done to another state party during the course of its activities. This is verified in Article VII of the Outer Space Treaty 1967, which prescribed that each state party is internationally liable for damage to another state party.⁸ When Malaysia (as a state party) or its nationals carry out space activities and subsequently cause damage to another state party, the Malaysian Government shall be internationally responsible and liable for the damage resulting from the space activities.

Space activities shall include launches or the procuring of launches of space objects into space; even when the states' or Malaysian territory or facilities are used to launch the object into

space, the Malaysian Government will be internationally responsible and liable (Article VI, Outer Space Treaty 1967). In fact, it is quite hard to monitor and control the space activities of private entities. This means that the Malaysian Government is greatly exposed to the rules of international responsibility and liability, particularly with respect to private sector activities.

For this reason, it is highly recommended that Malaysia enacts the Malaysian space legislation. With this legislation in place, it can change, modify or transfer the rules of international responsibility and liability appropriately, which are likely to burden the Government of Malaysia, to the respective parties at the national level. This action is crucial in order to safeguard the interest of the Malaysian Government, especially when dealing with the financial burden and the involvement of private entities in space activities.

The Application of Customary International Law

It is agreed that a space treaty's rules will only internationally bind a state when the state is a party to the space treaty. However, it should be remembered that, in certain circumstances, a state may also be bound by the treaty's rules, even though it is a non-party state. This can occur from the viewpoint of customary international law.

Thus, it is observed that, since Malaysia is only a signatory state and a non-party state to the space treaties, the country is not in fact bound by any rules of the space treaties until it ratifies or becomes a party to the treaties. However, it should be noted that Malaysia, to some extent, may also be bound by the treaty's rules on the grounds of customary international law. At this juncture, when a treaty is declaratory of customary law in nature, a signatory state (even without ratification) and also a non-party state of the treaty may be bound by the treaty's rules and provisions. This is affirmed in Article 38 of the Vienna Convention on the Law of Treaty, which prescribes an exception to the general rule of a treaty (stated in Article 34 of the Vienna Convention)⁹ that it does not create rights and obligations without the consent of a state unless the treaty becomes part of international custom. In such cases, the treaty then becomes binding upon them.

On this point, it is argued that certain rules of space treaties have passed into international custom and hence become binding upon all states. Those rules include the following: rule of international responsibility (Article VI, Outer Space Treaty 1967); authorization and continuing supervision (Article VI, Outer Space treaty 1967); rule of international liability (Article VII, Outer Space Treaty 1967); freedom of exploration and use of outer space (Article I, Outer Space Treaty 1967); application of international law in outer space (Article III, Outer Space Treaty 1967), and many others (Gál, 1969; Matte, 1984; Vereshchetin and Danilenko, 1985; Lyall and Paul, 2009).

Based on these facts, it is observed that those rules that passed into the customary international law have a higher prospect of become binding upon Malaysia, although the state is just a signatory state and not a party to the treaties. Furthermore, this point is supported by the evidence that the application of customary international law has sometimes been accepted in the Malaysian courts when ruling on disputed cases.¹⁰ This has again strengthened the possibility of accepting the application of the customary international law in Malaysia.

Thus, relying on the above facts, it is submitted that Malaysia should enact the Malaysian space legislation because some space treaties' rules including the rules of responsibility and liability could be binding upon Malaysia on the grounds of international custom, although the state is not a party to any space treaties.

Legal Ability in Controlling and Monitoring Space Activities

With the enactment of national space legislation, a state government can control and monitor the space activities of the country and its nationals. Since outer space is a new area with great potential for exploration by the state and private entities either for commercial purposes or on a non-commercial basis, it is vital for all states, including Malaysia, to control and monitor the activities of their nationals to ensure that they are in conformity with the international law provisions.

Furthermore, the international space law (Article VI, Outer Space Treaty 1967) has indeed prescribed a rule that any space activities by private entities (non-governmental sector)

must obtain authorization from the appropriate state.¹¹ It further prescribes the obligation of the state to continue supervising such activities. Hence, the international space law seems to suggest the method of controlling and monitoring the activities can be conducted via authorization mode introduced by the government of a state. Such modes of authorization then could be established via the national space legislation.

In this circumstance, it is observed that Malaysia can control the activities and conducts of its nationals especially the private sector by including in her national space legislation the rules of authorization, as well as continuing to supervise and monitor the space activities (Zhao, 2007). The application of these rules of authorization and continuing supervision, which should be executed via the Malaysian space legislation, will certainly result in the Malaysian Government having the legal power and authority to control and monitor the space activities of the country as well as her nationals. For instance, through the authorisation method, the Government can impose certain criteria and condition for the space actors to meet and fulfil before they are allowed to have a licence or permit to do the activities. This way would certainly control the activities of the nationals as when they fail to fulfil or observe the prescribed conditions, their application for licence or permit will be rejected or in the event they already have the licence or permit, it would be terminated by the Government.

This at last establishes the reasons for the necessity of enacting the Malaysian space legislation.

Legal Certainty and Transparency of Space Legal Rules

In the event of Malaysia enacts her space legislation, the Malaysian space participants or any participants who conduct space activities in Malaysia shall be provided with legal certainty and transparency of space legal rules (UNGA, Committee on the Peaceful Uses of Outer Space, 2006). The legislation can indeed offer definite laws on human activities, as well as defining illegal actions and possible penalties (Zhao, 2007). Furthermore the unclear part in the international space laws and rules could be defined and described clearly at the municipal level.

With the enactment of Malaysian space legislation, Malaysian space actors or anyone else carrying out related activities in Malaysia or from Malaysian territory can confidently indulge in space activities. Any disputable and unclear matters including issues of ambiguous terms in the international space treaties can be resolved and defined at the municipal level via the space legislation. Indeed, such space legislation will provide a clear parameter of the dos and don'ts of space activities. This in fact will surely attract the space actor either nationally or internationally.

Efficient Implementation of Space Treaties' Legal Rules

Apart from implementation of the United Nations space treaties' legal rules at the international level, the treaties' rules may also be implemented at the state level. It is observed that merely implementing the space treaties at the international level is not a guaranteed means of successfully regulating space activities. However, the space treaties' rules are indeed becoming more effective when they are also observed at the state level.

In other words, the international space treaties alone cannot become a successful mechanism for controlling and guiding space activities. In fact, the enactment of space legislation is also necessary to ensure the efficient implementation of the space treaties' rules, which should be done at the state level, furthermore if the rules in the legislation are certain and transparent.

This claim is made on the basis that, when a state becomes a party to the international space treaties, there is an obligation on the state's government to abide by the space rules stipulated therein only at the international level. There is no obligation on the state's nationals and private entities to legally observe the treaties' rules at the state level. This might lead to inefficient implementation of the space treaties' rules for regulating space activities at both international and state levels. Such a situation is likely to occur especially in states that apply the doctrine of transformation,¹² such as Malaysia.

In such a case, the Malaysian Government would have to transform the international treaties' rules into Malaysian municipal law through enactment of Malaysian space legislation

to ensure that Malaysian nationals and private entities comply with the rules of space treaties. Consequently, the international space treaties' rules can be legally enforced at the state level, which then leads to the efficient implementation of the rules at the international level. For instance, the obligation imposed by the treaties' rules (Article XI, Outer Space Treaty 1967; Article II (1), Registration Convention 1975; Article IV(1), Registration Convention 1975) requiring a state party to register or provide information to the United Nations regarding its space activities will not meet the purpose if the Malaysian Government is unable or fails to impose legal rules on its nationals or private entities requiring them to provide information to the Government on the object launched into space.¹³ This information obtained at the state level will then be transferred by the Malaysian Government to the United Nations in fulfilment of the state's international obligations. To conclude, it is necessary for Malaysia to enact space legislation municipally to ensure the effective implementation of the space treaties' rules internationally.

A Reliable Space Legal Framework

It is necessary for a country such as Malaysia (with no specific space legislation) to have national space legislation in order to have a reliable supervisory space legal framework. In the process of developing Malaysian space legislation, there is a need for a certain process of discussion. This should be a thorough discussion involving all space actors and contributors inclusive of the governmental and private sector, as well as legal draftsmen.

This national space legislation must be enacted in such a way that it is incorporated with legal rules that will strike a balance between safeguarding the interests of the Malaysian Government and encouraging the growth of space activities especially for the private sector. This is justified when the Malaysian private sector is observed having the interest and tendency to involve in the space sector in the future.

Simultaneously, it should be remembered that such rules must also be designed to uphold the international space law as prescribed by the international space treaties of the United Nations. This situation is crucial in order to ensure the best

outcome or product for a state. A successful, reliable supervisory space legal framework will indeed be viewed as a successful guideline for ensuring the continuous growth of the country's national space activities.

Hence, dependable Malaysian space legislation will be relied on by, for instance, Malaysian space actors or any others who conduct space activities within Malaysian jurisdiction. Furthermore, it will be considered a great achievement for a small country such as Malaysia, given that its neighbour states have yet to enact such a law.

Supporting the Growth of Laws and Space Activities

The enactment of Malaysian space legislation will indeed boost the development of Malaysian national space laws and activities. Such enactment will also support the growth of national space legislation around the world by increasing the number of states that have domestic space legislation. Establishing space legislation to regulate the space activities of a state and its nationals will lead to a tremendous evolution of space activities in countries such as Malaysia.

This claim is made on the basis that, with the existence of a comprehensive law to regulate activities, people will definitely become involved in such activities as they will naturally feel secure and protected under the law. As a result, many foreign investors will confidently invest their money in this sector, which may spontaneously boost the economy of Malaysia. Moreover, when Malaysia enacts space legislation, this automatically contributes to the development of national space legislation among the world space community.

In fact, the space legislation can promote the space commercialization activities of states, particularly those involving private entities such as Malaysia. Space commercialization is a new dimension of profit-making business that has great potential to burgeon in the future. Even at present, it has shown a positive development in the related area, especially the space tourism sector.¹⁴ With the rapid evolution of space technology, it is expected that the cost of travelling to outer space will fall in the future. This phenomenon may boost

the involvement of many private space enthusiasts, which will inevitably increase the commercialization of space activities.

At this juncture, it is observed that the space legislation will play its role in regulating the commercialization of space activities conducted by states' nationals by ensuring that they are in conformity with the spirit and values of international law. This will be done particularly in relation to matters not covered by the United Nations space treaties, such as defining the meaning of 'space tourist'. In Malaysia, it is highly recommended that the Malaysian space legislation be enacted since there is evidence that Malaysian nationals and the private sector have a great interest in venturing into the space tourism sector (Che Zuhaida Saari, 2014). These circumstances will indeed encourage the commercialization of space activities in Malaysia.

Strengthening the Rules of Outer Space

Space legislation can strengthen the international rules of outer space. The space treaties are in fact only a basis and guideline on which space actors rely for their space activities. The treaties provide only the general legal rules, which require further interpretation and explanation. At this point, the role of space legislation comes to prominence as it can clarify and interpret the unclear or general matters mentioned by the treaties. As a matter of fact, this should be done by all countries of space actors and participants within the spirit of international space law.

For instance, Malaysia can clarify the unclear terms about outer space in the space treaties by defining its meaning in the Malaysian space legislation (Che Zuhaida Saari, 2014). It can detail the registration method at the municipal level. It can also resolve any issues on which the treaties offer no ruling. This can be done as long as it does not go against the spirit of international law. Such a situation is indeed important as the space legislation can rectify any inadequacies in the space treaties' rules and can thus be enforced at the state level. In short, these functions of national space legislation offer a definite direction to space actors as well as strengthening the rules of outer space law as a whole.

Contribution to the Orderly Use of Outer Space

The space legislation can contribute to the orderly use of outer space. It is well known that space is a very fragile place that needs constant preservation. It is an area of great potential in terms of exploration for commercial and non-commercial purposes. If such an area is used in a disorderly manner, such as being subject to contamination, it will be exposed to the danger of destruction.

To resolve such a matter would surely involve great cost. To avoid such circumstances, space legislation is an effective option to support the international law in order in particular to ensure the orderly use of outer space. The space legislation can be viewed as an efficient mechanism for states that have such legislation to monitor and control their nationals in respect of their space activities.

From the perspective of Malaysia, the enactment of Malaysian space legislation will ensure that Malaysian nationals and private entities who conduct space activities from the state's territory comply with the rules and regulations; this will certainly contribute to the orderly conducting of space activities.

THE SIGNIFICANCES OF MALAYSIAN SPACE LEGISLATION

The significance of national space legislation in governing and controlling the state national's activities is irrefutable. If the United Nations outer space treaties were developed internationally mainly to rule, govern, and control the activities of the world community in outer space, similarly to outer space legislation thus enacted nationally to ensure the state can rule and control its national's space activities domestically.

However, for a practical and an effective enforcement, such legislation must be developed and enacted in corresponding with the spirit and essence of the United Nations space treaties as mainly to avoid inconsistency between them. Indeed, the space legislation should grow as a complement to the United Nations space treaties, especially in clarifying the imprecision and generality of the treaties' legal rules. This indeed should be the situation for Malaysia.

When Malaysia has successfully established her space legislation, she then can continue with ratification of the Outer Space Treaty 1967 and Rescue Agreement 1968, as well becoming a state party to the other outer space treaties. From the legal perspective, this could be achieved as Malaysia is ready to confront with legal challenges of becoming the state party to the treaties, in particular with respect to liability and supervision matters.

Apart from that, Malaysia will also be viewed as a responsible and accountable space actor and participant by the other countries of space actors and participants. Furthermore, if Malaysia successfully forms the legislation, she will be the first in ASEAN countries to have such legislation.

REMARKS

The significance of enacting Malaysian space legislation has been justified with the numerous reasons presented. Such reasons has been discussed with various legal arguments and justifications that proven the significance of enacting the space legislation to Malaysia.

Hence, the Malaysian Government is strongly urged to seriously consider enacting the legislation as it is a meaningful step towards further actions and progresses in outer space activities, technologies, and especially to her domestic legal developments.

Furthermore, since the space sector is a new promising sector that grabs the attention of world community nowadays, thus it is an accurate action for Malaysia to ensure the development of space law next to the space activities. In fact, the progress of the space technologies along with their space laws will significantly contribute to attract the foreign investors to Malaysia which certainly boosts the economy of Malaysia.

The successful of enactment of space legislation would reflect the seriousness of the Government of Malaysia in governing the space activities. This would indeed encourage the participation of private sector either nationally or internationally.

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¹ The station functioned as a ground receiving station of communication satellite Palapa-B.

² Some of these parts are extracted from the author's doctoral book, Che Zuhaida Saari (2014). *National Space Legislation: Future Perspectives for Malaysian Space Law*. (Leiden: International Institute of Air and Space Law, Leiden University) at Chapter 4.

³ It means the agreements must be kept or treaties must be observed.

⁴ Further discussion is available in the topic of 'The Application of Customary International Law' in this article.

⁵ However, one case showed that a treaty can be implemented locally without any need for enactment of a statute. But it is a very rare case and it is done only if it does not affect the private person's rights or involve changes in Malaysian municipal law. See the case of *Heliliah bt Haji Yusof, Internal Application of International Law in Malaysia and Singapore (1969) 1 Singapore Law Review, 62-71 at 65*. This case involves the Treaty of Friendship between the Federation of Malaya and the Republic of Indonesia whereby the Treaty was implemented without the introduction of legislation.

⁶ Article 74(1) of the Federal Constitution reads: '*... Parliament may make laws with respect to any matters enumerated in the Federal List or the Concurrent List ...*'. Item 1 of the Federal List of the Federal Constitution mentions: '*External affairs, including: (a) Treaties, agreements, and conventions with other countries ...; (b) Implementation of Treaties, agreements and conventions with other countries*'.

⁷ Article VI, Outer Space Treaty 1967 states: '*States Parties to the Treaty shall bear international responsibility for national activities in outer space... whether such activities are carried on by governmental agencies or by non-governmental entities The activities of non-governmental entities in outer space ... shall require authorization and continuing supervision by the appropriate State Party to the Treaty*'.

⁸ Article VII, Outer Space Treaty 1967 prescribes: '*Each State Party to the Treaty that launches or procures the launching of an object into outer space ..., and each State Party from whose territory or facility an*

object is launched, is internationally liable for damage to another State Party’.

⁹ The Vienna Convention on the Law of Treaty establishes a general rule of the treaty in its Article 34: ‘A treaty does not create either obligations or rights for a third state without its consent’. However, it also prescribes an exception to the general rule in its Article 38: ‘Nothing in Articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognised as such.’

¹⁰ There are some Malaysian cases that proved the acceptance of application of customary international law by the Malaysian courts’ judges in deciding disputed cases, although the courts apply the customary international law as part and parcel of common law or through the medium of English common law. Those cases include: *Olofsen v Government of Malaysia* [1966] 2 MLJ 300; *PP v Oie Hee Koi* [1968] 1 MLJ 148 (Privy Council Appeal from Malaysian Federal Court); *Village Holdings Sdn Bhd v Her Majesty the Queen in Right of Canada* [1988] 2 MLJ 656 (High Court, Kuala Lumpur). More information is available in Abdul Ghafur Hamid @ Khin Maung Sein, “Judicial Application of International Law in Malaysia: An Analysis”, *The Malaysian Bar*, 31 March 2006, http://www.malaysianbar.org.my/international_law/judicial_application_of_international_law_in_malaysia_an_analysis.html, accessed: 1 December 2016.

¹¹ See Article VI, Outer Space Treaty 1967 states: ‘... *The activities of non-governmental entities in outer space ... shall require authorization and continuing supervision by the appropriate State Party to the Treaty ...*’.

¹² For more information, read the topic of ‘Doctrine of Transformation’ in this article.

¹³ Article XI, Outer Space Treaty 1967 mentions: ‘... *State Parties agree to inform the Secretary-General ... of the nature, conduct, locations and results of such activities ...*’; Article II (1), Registration Convention 1975 states: ‘*When a space object is launched into Earth orbit ... the launching state shall register the space object ...*’; Article IV(1), Registration Convention 1975 prescribes: ‘*Each states of registry shall furnish to the Secretary-General of the United Nations ... the following information ...: (a) Name of launching state or states; (b) An appropriate designator of the space object or its registration number; (c) Date and territory or location of launch ...*’.

¹⁴ For information on space tourism, see http://en.wikipedia.org/wiki/Space_tourism, accessed: 1 December 2016; read also Phillips, Scott C. (2017). *Current and Future Legal Implications of Space Tourism and Beyond*. Master Thesis LL.M Air and Space Law. (Leiden: University of Leiden Faculty of Law, Institute of Air and Space Law).