The Global Center at McGeorge School of Law

Annual Symposium
The Promise and Perils of an International Law of Property

March 6, 2015

Pacific McGeorge School of Law
Northwest Hall S4 & S5

Co-sponsored by the Witkin Legal Institute
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PROGRAM

Inspired by Prof. John Sprankling’s new book, The International Law of Property (Oxford 2014), the symposium will assess the impact of an emerging international right to property in a variety of contexts. The morning will commence with an explanation of the legal grounding for an international law of property by way of examining key treaties, practices and norms. Thereafter, panelists will discuss the implications of recognizing such a law and how it might interface with, disrupt, and influence aspirations of various actors within modern society.

8:30-9:00 - Registration and Continental Breakfast

9:00- 9:30 - Welcome & Keynote
Welcome: Dean, Global Center Directors
Keynote: The Inspiration for an International Law of Property
Upon authoring Global Issues in Property, Professor John G Sprankling discerned that the traditional view of property rights as primarily within the province of municipal law was outdated. His groundbreaking work, The International Law of Property, demands we recognize the distinct international and transnational influence on property rights.

- Prof. M.C. Mirow, Florida International University College of Law

9:45-10:45 - Panel 1
The Framework Shaping the Law: Whose interests are reflected in existing treaties, practices and norms?
A focus on treaties, customary norms, soft law, arbitral and judicial decisions to illustrate how an emergent international law of property has come to influence property rights held
by private actors. This panel will focus on a) the human right to property; and b) international expropriation law.

Moderator:
- **Prof. John Sims**, Pacific McGeorge School of Law

Panelists:
- **Prof. Anna Dolidze**, Western University Law
- **Prof. Jarrod Wong**, Pacific McGeorge School of Law

10:45-11 – Morning Break

11:00-12:30 - Panel 2
**Intellectual Property**
An international law of property will have implications on intellectual property rights. This area of law is currently a battleground of conflict among nations at different level of development, as well as within societies seeking to balance innovation, economic development, and human and natural health and well-being. One of the major issues is how TRIPs is moving us toward a truly international body of IP law.

Moderator:
- **Prof. Mike Mireles**, Pacific McGeorge School of Law

Panelists:
- **Prof. Josef Drexl**, Max Plank Institute for Innovation and Competition
- **Prof. Margo Bagley**, University of Virginia School of Law
- **Prof. Irene Calboli**, Marquette University Law School, Professor of Law and Director, Intellectual Property and Technology Program

12:30-1:30 – Lunch
Q&A by Chief Symposium Editor Dane Littlefield, featuring Prof. John Sprankling
Sponsored by the Witkin Legal Institute

1:30-3:15 - Panel 3
**Natural Resources and Biodiversity**
An international law of property will have implications on the development of natural resources, as well as implications for biodiversity around the world. Development of natural resources has an impact on national economic growth. A number of legal regimes currently exist that govern the environmental impacts of natural resource development and biodiversity protection. This panel will explore the intersections of property law and cultural and natural resources.

Moderator:
- **Prof. Raquel Aldana**, Pacific McGeorge School of Law
Panelists:
  • Prof. Thomas Antkowiak, Seattle University School of Law
  • Jacquelyn Jampolsky, JD, PhD, Fellow, Getches Center for Energy, Natural Resources and the Environment
  • Prof. Stephen McCaffrey, Pacific McGeorge School of Law
  • Prof. Rachael Salcido, Pacific McGeorge School of Law

3:15-3:30 Afternoon Break

3:30-5:00 - Panel 4
The Next Frontier: Space and Beyond
What does an international law of property portend for future extraterrestrial ambitions, such as moon and near asteroid mining? How does the Outer Space Treaty address the global commons of outer space? The law of outer space is “both unclear and incomplete” – what are the implications of an international law of property for the development of outer space law?

Moderator:
  • Jose Hernandez, Former NASA Astronaut and Pacific Regent, Consultant Tierra Luna Engineering

Panelists:
  • Judge Fausto Pocar, International Criminal Tribunal for the former Yugoslavia
  • Leslie Tennen, Law firm of Sterns and Tennen
  • Wayne N. White, Jr., President and C.E.O. SpaceBooster, LLC

5:00 – Concluding Remarks
Biographical Sketches
“The Promise and Perils of an International Law of Property”

March 6, 2015

Raquel Aldana, Professor of Law and Associate Dean for Faculty Scholarship, University of the Pacific, McGeorge School of Law
Professor Aldana is a prolific legal scholar who joined the Pacific McGeorge faculty in 2009 after previously serving as a tenured professor at UNLV’s William S. Boyd School of Law in Las Vegas, Nevada. She is the founder and director of the Pacific McGeorge Inter-American Program, an innovative project committed to educating bilingual and bicultural lawyers who wish to pursue a domestic or transnational career with a focus on U.S-Latin America relations. The program offers a unique bilingual legal education in Guatemala and the opportunity for supervised quality placements in several countries of Latin America and in the U.S. For over a decade, Prof. Aldana has organized service learning programs to involve law students in the representation of hundreds of immigrants seeking to become citizens or apply for other types of immigration relief. She has served on the Board of the Society of American Law Teachers since 2008 and was Co-President of the organization from 2010-2012. She also currently serves on the AALS Curriculum Committee and was the Chair of the Presidential Program on Globalizing the Curriculum for the AALS 2013 Annual meeting. Professor Aldana has written extensively on immigration issues and on the rights of victims of state-sponsored crimes and domestic violence in the Americas. She began her legal career as an associate at Jones, Day, Reavis & Pogue of Washington, D.C., later working at the Center for Justice and International Law in the nation’s capital where she litigated cases before the Inter-American Commission and the Inter-American Court on Human Rights. Professor Aldana continues her engagement with Latin America: She has been Fulbright Scholar in Guatemala where she taught several courses in a human rights L.L.M. program and conducted research on femicide; she has worked with domestic violence issues in Nicaragua, and continues to be involved with the transitional justice efforts in Guatemala, most recently as part of an Open Society Institute team of international observers of the first genocide trial tried in a domestic tribunal.

Thomas Antkowiak, Professor of Law, Seattle University School of Law
Professor Antkowiak’s publications focus upon the Inter-American human rights system, indigenous rights, and reparations. Antkowiak also directs a human rights clinic that has handled matters before various international and foreign jurisdictions. Through direct representation and other advocacy, his Clinic has worked for persons around the globe, including indigenous communities in Latin America and Africa. Prior to teaching at Seattle University, Antkowiak held a variety of human rights positions: Senior Attorney at the Inter-American Court of Human Rights; Special Assistant to Oscar Arias, Nobel Peace Laureate and President of Costa Rica; and Program Director at the Due Process of Law Foundation, among others. A.B. Harvard, J.D. Columbia.
Margo A. Bagley, Hardy Cross Dillard Professor of Law, University of Virginia School of Law

Margo A. Bagley is the Hardy Cross Dillard Professor of Law at the University of Virginia School of Law. Her scholarship focuses on comparative issues relating to patents and biotechnology, pharmaceuticals, and technology transfer. Professor Bagley served on the National Academy of Sciences Committee on University Management of Intellectual Property: Lessons from a Generation of Experience, Research, and Dialogue, and is an expert advisor to the government of Mozambique in the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge, and Folklore. She is a frequent speaker, writer, and consultant on patent-related topics and has taught patent-related courses in Germany, China, Singapore, and Israel.

Irene Calboli, Professor of Law, Marquette University Law School & Visiting Professor, Faculty of Law, National University of Singapore

Irene Calboli is a Professor of Law at Marquette University Law School, a Visiting Professor at the Faculty of Law of the National University of Singapore, and a Transatlantic Technology Law Forum Fellow at Stanford Law School. Her research projects currently focus on overlapping intellectual property rights, the principle of intellectual property exhaustion, and the protection of geographical indications of origin. She has published many articles and chapters on intellectual property-related topics in leading journals and collective volumes. Her most recent publications include the books *Trademark Protection and Territoriality Challenges in a Global Economy* (2014, edited with E. Lee), and *The Law and Practice of Trademark Transactions* (forthcoming 2015, edited with J. de Werra).

Anna Dolidze, Professor of Law, Western University Law School

Prior to joining Western Law Professor Dolidze served at a number of international and non-governmental organizations, including Human Rights Watch, the Russian Justice Initiative, and Save the Children. In 2004-2006 Dolidze was the President of the Georgian Young Lawyers’ Association, the largest legal advocacy organization in the Republic of Georgia. She also served at the National Constitutional Commission, Commission for the Human Rights in Prisons and the Expert Commission for Georgia’s European Integration.

Dolidze has taught and lectured transnationally, including at Duke University in North Carolina, Helsinki España-Human Dimension in Madrid, Sorbonne University in Paris, and Elmira Maximum Security Correctional Facility in New York State. Professor Dolidze has published in a series of law journals and collected volumes.

Professor Dolidze has co-authored a series of policy reports, including a UN sponsored report on the privatization of the internally displaced persons’ collective settlements (2005) and a policy proposal for the establishment of a truth commission in Georgia published by the Carnegie Endowment for International Peace (2012). In 2012-2013 Anna was a Joachim Herz Fellow at the Transatlantic Academy of the German Marshall Fund, having contributed to the Academy’s annual report *The Democratic Disconnect: Citizenship and Accountability in the Transatlantic Community*. 
Josef Drexl, Managing Director, Max Planck Institute for Innovation and Competition and Honorary Professor, University of Munich

Professor Drexl is the Director of the Max Planck Institute for Innovation and Competition in Munich (since 2002), a Honorary Professor at the University of Munich and a member of the Bavarian Academy of Science. As the Chairman of the Managing Board of the Munich Intellectual Property Law Center (MIPLC), Professor Drexl is responsible for an LL.M. program in IP with international outreach. He was the first chair of the Academic Society for Competition Law (ASCOLA) between 2003 and 2013, and he is a vice-president of the Association Internationale de Droit Economique (AIDE). He acted as a visiting professor at Oxford University, the Libera Università Internazionale per gli Studi Sociali (LUISS) Guido Carli in Rome, the New York University and the Université de Paris 2 Panthéon-Assas. Professor Drexl is an expert in both competition law and intellectual property law.

Jose Hernandez, Astronaut

In 2004 José M. Hernández became the first migrant farmworker to become a NASA astronaut. Born into a migrant farm working family from Mexico, José – who didn’t learn English until he was 12 years old – spent much of his childhood on what he calls the “California circuit,” traveling with his family from Mexico to California’s southern San Joaquin Valley each March, then working their way northward to the Stockton area by summer. While in California, José’s weekends were filled with laboring in the fields with his family, and while the end of the school year meant summer fun for his peers, it meant working 7 days a week in the hot summer fields for José and his family. The neighborhoods he lived in were often dangerous, filled with drugs, alcohol, and gang violence. There was also the issue of growing up in a bicultural environment as a Mexican-American and the prejudices that came along with this label: too Mexican to be American, too American to be Mexican. Through all of this, Jose’s parents stayed strong and focused on their children’s education which allowed José to dream of one day reaching the stars.

Determined to fulfill his dream, José obtained his undergraduate and graduate degrees in Electrical Engineering. After a successful career as an engineer and scientists at Lawrence Livermore National Laboratory, where he worked on the development of an X-ray laser, helped developed the first full-field digital mammography system for the early detection of breast cancer and worked in the nuclear non-proliferation arena, José was selected as part of the 19th class of U.S. Astronauts in 2004. On August 28, 2009 José, assigned to the STS-128 Space Shuttle Discovery mission as the flight engineer, realized his dream of reaching for the stars blasting off into space on a 14 day mission to the International Space Station.

Jacquelyn Jampolsky, Getches-Wilkinson Center for Energy, Natural Resources and Environment

Jacquelyn Amour Jampolsky was the first graduate to receive a simultaneous JD and PhD degree from the University of Colorado, Boulder, from the Law School and the Department of Environmental Studies. During graduate school, she served as an associate editor and as the lead notes editor on the Colorado Natural Resources, Energy, and Environmental Law Review, as Native American Law Student Association president for two consecutive years, and spent three years as a legal extern for the Native American Rights Fund where she assisted on cases in all areas of federal Indian law. Prior to law school, she received a BS in Conservation and Resource Studies from the University of California, Berkeley, where she graduated Phi Beta Kappa and with high honors

**Stephen McCaffrey, Distinguished Professor of Law University of the Pacific, McGeorge School of Law**

Professor McCaffrey is one of the world's foremost authorities on international water law. He was a member of the United Nations International Law Commission from 1982-91 and chaired that prestigious organization's 1987-88 session, only the third American to do so. He served as special rapporteur for the International Law Commission's draft articles on the law of the non-navigational uses of international watercourses, which formed the basis of the 1997 U.N. Convention on the subject. Professor McCaffrey was Counselor on International Law in the State Department in 1984-85 and represents countries in disputes before the International Court of Justice and other fora. He also advises Palestine in connection with the Permanent Status talks with Israel. Professor McCaffrey has taught at McGeorge since 1977. He has published numerous law review articles and has authored or co-authored several books, including the casebook, International Environmental Law, the treatise, The Law of International Watercourses, and Understanding International Law.

**Mike Mireles, Professor of Law, University of the Pacific, McGeorge School of Law**

Professor Michael Mireles teaches and writes in the intellectual property law field. He also teaches Property Law, and Wills and Trusts. His scholarship has appeared in many law reviews and he has taught a number of different intellectual property law courses. He is a graduate of Pacific McGeorge, and has an LLM. in intellectual property from the George Washington University Law School. He also clerked for the U.S. Court of Appeals for the Federal Circuit, practiced law at the Downey Brand law firm, and taught at the University of Denver Sturm College of Law and in Germany. He has served on the board of directors of several professional and community organizations.

**M.C. Mirow, Professor of Law, Associate Dean of International & Graduate Studies, Florida International University School of Law**

M.C. Mirow holds law degrees in law from Cornell, Cambridge, and Leiden Universities. He has been a Samuel I. Golieb Fellow at NYU School of Law and served as a Fulbright Scholar at the Pontificia Universidad Católica de Valparaíso, Chile. He is the author of *Latin American Law: A History of Private Law and Institutions in Spanish America* (2004) and a co-author with John Sprankling and Raymond Coletta of *Global Issues in Property Law* (2006). Among his editorial positions, he is a co-editor of the series *Studies in the History of Private Law* (Brill Nijhoff). He is a member of the Florida Bar.

**Fausto Pocar, Judge, International Criminal Tribunal for the former Yugoslavia**

Fausto Pocar is Professor Emeritus of International Law and former Dean and Vice-Rector, Milan University. As of 2000 Appeals Judge ICTY and ICTR, as well as the ICTY President (2005-2008). He has a long standing experience in UN activities, both in the field of human rights and

Rachael Salcido, Professor of Law, Director, Environmental Law Concentration, University of the Pacific McGeorge School of Law
Professor Salcido, an Order of the Coif graduate of the University of California, Davis, joined the Pacific McGeorge faculty in 2003 after three years of private practice in San Francisco. She was a litigation associate in the Environment, Land Use and Natural Resources group of Pillsbury Winthrop (formerly Pillsbury Madison & Sutro). Professor Salcido is the director of the Environmental Law Concentration at Pacific McGeorge and serves as advisor to the McGeorge Law Review. Her scholarly interests include offshore development and community involvement in ecosystem restoration. She is active with the Rocky Mountain Mineral Law Foundation, currently serving on the scholarship committee.

John Sims, Professor of Law, Senior Editor, Journal of National Security Law & Policy, University of the Pacific, McGeorge School of Law
Professor Sims clerked for Judge Frank M. Coffin (Chief Judge, U.S. Court of Appeals for the First Circuit). For 11 years, he was an attorney for the Public Citizen Litigation Group, a public interest law firm in Washington, D.C. founded by consumer advocate Ralph Nader. Professor Sims handled a wide range of complex cases at all levels of the state and federal courts, including the Supreme Court of the United States. He was involved in several significant constitutional cases, including Chadha v. INS and Snepp v. United States. His primary research interests involve human rights, and problems arising under the First Amendment. Professor Sims is a founding Co-Editor-in-Chief of the Journal of National Security Law and Policy, a peer-reviewed law review devoted to the broad range of issues related to national defense.

John Sprankling, Distinguished Professor of Law, University of the Pacific, McGeorge School of Law
Professor Professor John G. Sprankling is an internationally-recognized authority on property law and the author of six books on this subject. His treatise Understanding Property Law is used by law students across the United States; it has also been translated into Chinese and published by Peking University Press. His casebook Property: A Contemporary Approach, written with Ray Coletta, is the first property textbook to be published in both hard copy and electronic formats, and has been used at over 50 law schools. His most recent book is The International Law of Property, published by Oxford University Press, which examines the relationship between property rights and international law. His articles have appeared in journals published at Chicago, Columbia, Cornell, North Carolina, Stanford, UCLA, and other law schools.

Professor Sprankling began his legal career with Miller, Starr & Regalia, one of the nation's largest property law firms. He practiced there for 14 years, ultimately serving as its managing partner. After teaching at UC Hastings and Stanford, he joined the Pacific McGeorge faculty. At Pacific McGeorge, he has served as Interim Dean and as Associate Dean for Academic Affairs. He received
the Eberhardt Teacher-Scholar Award from the University of the Pacific, and was selected as Teacher of the Year by Pacific McGeorge students. He has taught in summer law programs at schools in Austria, China, and Russia. He has served as the Chair of the Property Law Section of the Association of American Law Schools, and is currently a member of the LexisNexis Law School Advisory Board.

Leslie Tennen, Esq., Law Firm of Sterns and Tennen
Leslie I. Tennen, Esq., has focused on space law matters for more than 35 years. Mr. Tennen was awarded the highest score on the February, 1977, Arizona Bar Exam, and is a partner in Sterns and Tennen, the first law firm to be elected to membership in the International Astronautical Federation. He served two gubernatorial appoints as Commissioner on the Arizona Space Commission. He is the author and co-author of more than 50 publications. Mr. Tennen is a member of the International Academy of Astronautics, and is a member of the Board of Directors of the International Institute of Space Law, and Co-Chair of the Manfred Lachs Moot Court Committee.

Wayne White, President & CEO, SpaceBooster, LLC.
Wayne White is President & CEO of SpaceBooster LLC, a small business with offices in Albuquerque, New Mexico. Mr. White graduated from Chapman University in Orange, California, received a Masters Degree in Business Administration from U.C. Riverside, and received his law degree from U.C. Davis. He has a Certificate in Government Contracts Management from UCLA, and a Certificate in Entrepreneurial Development and Management from the Technology Ventures Corporation. Mr. White is the author of many published space law articles, and is a frequent speaker in the field of national and international space law. He was a member of the National Space Society Board of Directors from 2000 to 2004, and became an Associate Fellow of the American Institute of Aeronautics and Astronautics in 2012. He is also a long-time member of the International Institute of Space Law. Mr. White’s most recent project is his proposal for a Space Pioneer Act, which would include real property rights, mining law, and salvage law for outer space.

Jarrod Wong, Professor of Law, Co-Director, Pacific McGeorge Global Center for Business and Development, University of the Pacific, McGeorge School of Law
Professor Jarrod Wong is Co-Director of the Global Center. He is a scholar in international dispute resolution, and has been published in the Minnesota Law Review, Tulane Law Review, George Mason Law Review, Florida State University Law Review, and Columbia Journal of Transnational Law among others. In particular, Professor Wong has written on complex problems in investment arbitration and delivered his papers at major international arbitration conferences around the world, including the Seventh Annual Fordham Law School Conference on International Arbitration and Mediation, the Fifteenth Investment Treaty Forum of the British Institute of International and Comparative Law, and the Annual International Arbitration Conference held at the National Taiwan University. Professor Wong serves on both the Executive Committee and Academic Council of the Institute for Transnational Arbitration, and co-chaired its 2013 Winter Forum Conference. He is also Co-Vice Chair Elect of the American Society of International Law — International Economic Law Interest Group. Professor Wong holds various law degrees, graduating with first class honours from the University of Cambridge, Order of the Coif from University of California, Berkeley, and from the University of Chicago.
M.C. Mirow, Professor of Law, Associate Dean of International & Graduate Studies, Florida International University School of Law

**Keynote:** *Rerum Novarum: New Things and Recent Paradigms of Property Law*

Western property and property law have passed through several notable phases and influences. These include the creation of feudalism and its subsequent recasting into economic relationships, the effect of the Enlightenment and liberalism establishing rights to property, the abolition of human property expressed in slavery, the Marxist rejection of private property, and a turn towards the “social” that challenged absolute rights in property.

Sprankling writes that we are on the cusp of a new phase, and he is right. *The International Law of Property* marks a new era in property and property law. From atomistic traces detected in domestic and international law, Sprankling persuasively constructs the idea of a unified concept of international property. He uncovers it, assembles it, points out its shifting nature, and catalogues what it offers to legal theory and legal practice.

My contribution will examine various aspects of this moment in property law, first by describing the essential attributes of international property and then by evaluating this concept in light of the immediately past paradigmatic moment, the “social.” *Rerum Novarum* (1891, “Of New Things”), Pope Leo XIII’s encyclical on capital and labor, serves as a foundational document in maintaining private property while moving its nature toward social responsibility. These ideas played out over the next several decades in the works of European political and legal theorists who, in turn, influenced western property law. This shift at the beginning of the twentieth century informs our understanding of the important international moment at the beginning of the twenty-first century studied here. Both moments reflect changes in the idea of property and in the idea of international law. Both moments respond to the challenges of “new things.”
Anna Dolidze, Professor of Law, Western University Law School

Synopsis

Professor Dolidze’s presentation focuses on the processes related to the emergence of the international human right to property as well as its implications. Dolidze showcases how the global circumstances in the post WWII world as well as internal political conflicts in European countries led to the formulation of the human right to property in the European Convention of Human Rights. She shows how issues, which previously would be subject to sovereign discretion, are now subject to often lengthy and costly, yet influential international adjudicatory mechanisms. She discusses these findings in relation to John Sprankling’s influential arguments about the internationalization of property law.
Josef Drexl, Managing Director, Max Planck Institute for Innovation and Competition and Honorary Professor, University of Munich

Synopsis: Between Propertization and Regulation: How a Fundamental Rights Approach Could Solve the Tension

Both nationally and internationally, intellectual property rights are in dispute. Right holders rely on the very concept of “property” to claim ever higher levels of protection. Critics argue that IPRs are nothing more than a particular form of market regulation that pursues specific societal goals. Both sides are right and wrong at the same time. On the one hand, there is no doubt that IP legislation creates property rights of individuals, but these rights also pursue public interest goals. The latter also seems to be accepted by proponents of strong protection, since they regularly justify their claim to strengthen IP protection by relying on the incentive-rationale of intellectual property. Yet this rationale cannot justify a propertization of intellectual property without limits, since too much protection may produce dysfunctional effects. Professor Drexl will rely on recent case-law from the Court of Justice of the European Union (CJEU), which nowadays often analyses IP disputes against the backdrop of the Charter of Fundamental Rights, to explain that a constitutional analysis can indeed be used very fruitfully to achieve and develop a more balanced system of IP protection without having to reject the property concept as such. Unfortunately, such a constitutional framework is not available on the level of international IP law, which therefore can easily be used by right holders to pursue their “propertization agenda”. Rightly understood, the constitutional property concept argues for a fundamental reform of international IP law.
Margo A. Bagley, Hardy Cross Dillard Professor of Law, University of Virginia School of Law

Synopsis

Professor Sprankling’s identification and analysis of an emerging international right to property is an important and compelling contribution to the various strains of property literature domestically and globally. The trends identified in the book and their likely implications are, in many cases, observable; but whether the rise of such a right is a good thing, at least in relation to intellectual property, is far from clear.

The global expansion and strengthening of rights associated with intellectual property (IP), while beneficial for some, has continuing unfortunate consequences for many in developed, emerging, and developing economies. Experiences with the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property (TRIPS), the ongoing difficulties of the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge, and Folklore, and a wealth of national distinctions and counterpoints to the canonical IP narrative, all suggest the need for a nuanced and cautious view of the wisdom and efficacy of promoting IP harmonization as part of an international right to property.
Irene Calboli, Professor of Law, Marquette University Law School & Visiting Professor, Faculty of Law, National University of Singapore

Synopsis: Are Trademarks Property? The International Intellectual Property Debate on Trademark Transactions

Trademarks have traditionally been considered as a "different type" of intellectual property rights compared to patents and copyrights, particularly in common law countries. In her presentation, Professor Calboli will address one of the pending questions in international trademark law, namely the national variations as to the nature of trademark rights, and the implication of these variations in trademark practice. In other words, can trademarks be considered property, similar to patents and copyrights? Positions in this respect vary based on national jurisdiction, and these variations are recognized in the compromising text of the international provisions on trademarks. In the United States, for example, trademarks are not commonly seen as property rights, despite the "trade in trademarks" that frequently occurs in trademark practice. At the opposite side of the spectrum, several countries do recognize property rights in trademarks, particularly registered trademark. In her presentation, Professor Calboli will consider the implications of this lack of international harmonization with special focus on the area of trademark transactions.
Synopsis

My presentation provides a critical assessment of the Inter-American right to property. I consider the American Convention on Human Rights—the Western Hemisphere’s primary human rights treaty—and how it has been interpreted by the Inter-American Court of Human Rights. The Court’s judgments strongly influence Latin American law, as well as the approaches of international human rights institutions.

In response to indigenous community cases, the Inter-American Court has blazed new trails in international law. It was the first international tribunal to establish communal property rights to ancestral lands and resources. In fact, the Court goes so far as to fashion the right to property as a structural basis for indigenous rights. However, I argue that this novel approach is ultimately flawed. First, it limits the autonomy of indigenous peoples. Second, the Convention’s weak property right cannot even provide basic protection for ancestral lands and cultural resources. As a result, I urge a distinct way for the Court to conceptualize and protect indigenous rights.
An Inter-American Right to Property and Indigenous Communities

Article 21 of American Convention, Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Gold mines: Peruvian Amazon
Article 21, American Convention

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

[...]

The Court’s “Safeguards”

State must ensure: 1) “the effective participation of the [community], in conformity with its customs and traditions, regarding any development ... plan” within the territory; 2) that the community will receive “a reasonable benefit” from any such project; 3) that “independent and technically capable entities ... perform a prior environmental and social impact assessment.”
Jacquelyn Jampolsky, Getches-Wilkinson Center for Energy, Natural Resources and Environment

Synopsis

This presentation seeks to give a brief theoretical account on the origins of modern property from the perspective of critical legal geography. Specifically, it will focus on the role of natural resources in the development of property as a legal regime, and how that legal regime proved the fundamental mechanism by which Europe colonized the Americas. In doing so, it proposes a new discussion about the potentials of property as a remedial tool for preserving natural resources or protecting Indigenous rights in hopes of guiding better practice strategies in the future.
Leslie Tennen, Esq., Law Firm of Sterns and Tennen

Synopsis: Enterprise Rights and the Legal Regime for Exploitation of Outer Space Resources

The commercial development of outer space resources must be conducted in compliance with the corpus juris spatialis. A cornerstone principle of space law is the non-appropriation doctrine, which prohibits national appropriation of outer space, including the moon, and other celestial bodies. Although the private sector has a recognized role in the use of space, neither the Outer Space Treaty nor any other extent instrument contains detailed rules specifically directed toward regulating the commercial exploitation of space. The absence of detailed regulation leaves the application and implications of some of the most basic concepts of space law to controversy and dispute. Notably, various forms of property ownership rights are being proposed and claimed over areas and resources of the moon and other celestial bodies, which disregard or seek to evade the application of the non-appropriation doctrine. It is submitted that the focus on traditional ownership property rights to outer space resources is misplaced, and that the interests of the private sector are more appropriately directed to the rights to utilize outer space resources, that is enterprise rights. It further is submitted that the law of outer space, in particular the Outer Space Treaty, contains essential and fundamental provisions which have established the foundation for the private and commercial use of extraterrestrial resources, including the non-appropriation doctrine.
Enterprise Rights and the Legal Regime for Exploitation of Outer Space Resources

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- Space is unique
  - requires a unique approach
  - not burdened with the historical shackles of terran based legal regimes
  - able to protect interests of all parties concerned with use and exploration of space
  - will develop its own frame of reference and specialized terminology, in physical and legal concepts
  - fundamental parameters established by the extant space treaties
  - additional components provided by domestic law
  - provide predictability, transparency and enforceability

- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies
  - Primary international legal instrument to govern activities of mankind in space
  - Developed through UN Committee on Peaceful Uses of Outer Space
  - Entered into force 1967
  - 125 + nations signed/ratified

- OST Article II:
  “Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”
prohibition on national appropriation was among earliest declarations of General Assembly at the beginning of space age
substance of article II of OST was reaffirmed in article 11.2 of the Moon Agreement
non-appropriation doctrine has received widespread acceptance and represents state practice for more than fifty years
non-appropriation principle has become part of customary international law, and as such, is binding on states independently of the OST and Moon Agreement

Treaty terminology "outer space, including the Moon and other celestial bodies"
- What is a celestial body?
  - Not defined in treaties
- International Astronomical Union definitions of celestial bodies 2006
  - within the solar system and its environs
    - the Sun
    - the planets including Earth
    - the Moon and the moons of other planets
    - NEO’s
earth planets
- trans-Neptunian objects
- asteroids, comets, and Kuiper belt objects

Utilization of extraterrestrial resources
- considerable amount of controversy
- consensus of opinion is lacking
- assertion of traditional forms of "property rights" or beyond the grasp of the private sector, that is, res extra commercium
- fundamental elements of foundation for commercialization
  - articulated in treaties and international instruments
  - supplemented by domestic laws and licensing regimes

Fasan: focus on use of resources
- right of present use should be clearly permitted
- exclusion for later access and use prohibited
- recognizes that in accordance with article II, there is no right to exclusive occupation of an area of space or celestial bodies in perpetuity
- Enterprise rights
specific limits on the use of extraterrestrial resources must be left to future development
Pop spatialisit v functionalist, places or movables
Jenks: much will be dependent upon the particular circumstances of the resources
intended use
relative abundance or scarcity
location
no single model of regulation will be appropriate or effective for all locations in all circumstances

Historic claims to newly discovered territory
physical presence
planting the flag
other rituals
enforced and recognized on the basis of military power
Sputnik I demonstrated profound national security implications
The global community faced two choices:
concede claims to space by technologically superior nations
or prohibit such claims in the first instance

Primary attribute of space law is the maintenance of outer space for peaceful purposes
produced an environment for activities by both public and private sectors to be conducted without necessity for military defenses or fortifications
alternative to this tangible benefit of space law would be an atmosphere of insecurity
cost of conducting missions would increase in direct proportion to the defensive planning, armaments and weaponry for protection of personnel and spacecraft

Outer Space Treaty established as matter of positive international law that non-governmental entities may conduct activities in space
law of outer space advances and enhances commercial opportunities for the private sector by establishing the basic parameters of the legal regulatory regime applicable to private entities in space
activities in space must be conducted in conformity with international law
Enterprise Rights and the Legal Regime for Exploitation of Outer Space Resources

Leslie I. Tennen

- Article II Outer Space Treaty applies to private entities
- States responsible for national activities per art. IV
- By definition includes all activities, whether conducted by governmental or non-governmental entities
- IISL Statements of IISL Board of Directors
- States unable to license national entities to violate international law

- Non-governmental entities are subject to authorization and continuing supervision by appropriate state of nationality
- OST does not designate any specific form of legal regime to be adopted by states for the purpose of providing authorization and continuing supervision
- States can adopt form of domestic regulatory oversight as they deem appropriate
  - Consistent with national interests and policies
  - Subject to international treaty obligations
  - Liability and insurance concerns
- At least fifteen nations have enacted legislation for the licensing of private activities in space

- Article VIII OST state on whose registry an object launched into outer space is carried retains jurisdiction and control over such object and any personnel thereof while in space, or on a celestial body
- Objects launched into space, and astronauts and other personnel of a spacecraft, remain subject to the jurisdiction and laws of the registry state
- Extension of domestic laws to space
  - Intellectual property created in space
  - Chain of command of personnel of a spacecraft

- Suggested states unilaterally establish a domestic registry to documenting claims of their nationals to space resources
- Purportedly consistent with the non-appropriation principle
- Artifice of proclaiming this registration scheme “not to be appropriation”
- One group of proponents asserted that “[i]n doing so, the nation could make it clear that it was not claiming sovereignty over such resources, but simply recognizing the claims of its citizens”
- This is a distinction without a difference
Enterprise Rights and the Legal Regime for Exploitation of Outer Space Resources
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recognition of claims is only one side of the equation, other side is the exclusion or rejection of any competing or conflicting claims
de facto exclusion by its very nature would constitute a form of national appropriation
state recognition of claims to extraterrestrial property by its nationals is national appropriation “by any other means” prohibited by article II, no matter what euphemistic label is employed to mask the obvious

Should the Non-Appropriation Doctrine be Abrogated?
abrogation would permit claims of national sovereignty technologically advanced nations
United States and Russia
claims would include various orbits, the Moon, and other areas where the claimant had any basis for asserting was first to “discover”
exploration, use, landing, imaging, mapping, or surveying, telepresence
Russians would have the historic justification for claiming vast reaches of near-Earth space
other nations anticipated to lay claim to space “properties”

enforcement of conflicting and overlapping claims ultimately would depend on military means
significant risk of exporting armed conflict into space
states claiming an area could imposing substantial tribute in the form of taxes, royalties, duties, auction fees or other charges
even where claims overlap “private appropriation” would convolute even more
ability of all states to explore and utilize celestial bodies no longer would be a right per article I of the Outer Space Treaty, but a commodity available only to the highest bidder

various proposals designed to grant, regulate, enforce, protect and/or create markets in space resources
some urge the extension of terrestrial property laws to space facilities
others envision a modification of basic principles of property law when applied to non-terrestrial venues
still others create various bureaucratic institutions in lieu of or as an alternative to the international regime of the Moon Agreement
first use of extraterrestrial materials late 1960’s
- United States and the Soviet Union returned lunar rocks and other samples
- Gal: no objection to the "ownership" by collecting state
- presumed right of collecting state to possess
- limited experience not sufficient to give rise to custom

Moon Agreement recognizes the right of states to collect and remove samples from the surface and subsurface, and to utilize such materials for scientific purposes in support of the mission
- Moon Agreement further provides that states “shall have regard to the desirability of making a portion of such samples available to other interested States Parties and the international scientific community for scientific investigation” article 6.

Larson: mere occupation or use of resources approximates appropriation, as others are precluded from occupying or using same location or resources
- Goh: clearly prohibits use
- Kerrest: only the international community can authorize the occupation of a celestial body or the use of extraterrestrial resources

This interpretation is too restrictive
- considers only the non-appropriation provision in isolation
- Outer Space Treaty article IV, right of states to establish facilities, stations and other installations in the exploration of space and celestial bodies
- Moon Agreement article 6.2, right of states to collect and remove samples, and to utilize minerals and other substances in support of missions
- neither Outer Space Treaty nor Moon Agreement simultaneously authorize and prohibit the same activity
- mere establishment of a facility pursuant to article IV of the Outer Space Treaty and 6.2 of the Moon Agreement does not approximate or constitute appropriation in and of itself
utilization of extracted resources presents a more difficult issue
Outer Space Treaty recognizes the right to establish facilities in the exploration of outer space, including celestial bodies
but does not expressly extend that same right to the use of outer space, including the Moon and other celestial bodies
similarly, Moon Agreement limits collection of samples and use of resources in support of scientific investigations
question is whether a mixed use facility could utilize resources, or whether a mission must have a designated percentage of scientific functions to qualify for the use of extraterrestrial resources
Moon Agreement contains numerous provisions which are broadly termed and include missions conducted for other than purely scientific investigations
Outer Space Treaty and Moon Agreement repeat broad terms which may not have significant substantive differences in different contexts
“equipment or any facility necessary” as compared to “equipment,” “facilities,” “stations” and “installations.”
certain treaty provisions may contain an express reference only to “explorations” or “use” but context makes it clear that the operative substance is to apply to all missions
Moon Agreement, article 11, and the international regime
declares that the Moon and its resources are the common heritage of mankind
provides that no part of the Moon, its surface or subsurface, nor resources in place, shall become property of any governmental or non-governmental entity, including natural persons
specification of natural resources “in place” indicates that resources which are extracted may be utilized for purposes not restricted to purely scientific investigations
use of such extracted resources subject to international law
applies to celestial bodies in addition to the Moon

does not expressly impose moratorium on use of lunar resources pending establishment of the international regime
Moon Agreement does not obligate states to establish the international regime, but only to undertake to establish the international regime
possible that such an undertaking, even in good faith, may fail to result in the establishment of an international regime
unless it is concluded that the Moon Agreement imposes a complete moratorium on all activities by all non-governmental entities of both states party and non-party thereto pending the establishment of an international regime, does not prevent all use of extracted resources by non-governmental entities
limits of such use, however, are yet to be established
Some commentators assert virtually no limits traditional forms of terran property rights exported to space. While article II should just be interpreted to read “Outer space, including the moon and other celestial bodies, is not subject to national excluding private appropriation, by claim of territorial and not functional sovereignty, by means of use or occupation, or by any other means.” Weidaw: permit nations and private entities to claim some ownership of areas and resources to provide an economic incentive to commercial development, and modify article II to utilize an international licensing authority. Questioned whether article II is self-executing.

national acts which have implemented the Outer Space Treaty have established procedures for the authorization and continuing supervision of entities subject to their jurisdiction, and concerned matters of state responsibility and liability. enabling acts have supplied procedures and processes under local law for states to meet their international obligations as pursuant to article VI. national acts do not trigger or invoke the state’s obligations in article VI. binding on the states when they become party to the Treaty as a matter of international law.

Moon Agreement article 11: States Parties “undertake to establish an international regime, including appropriate procedures, to govern the exploitation of the natural resources of the Moon. . . .” Moon Agreement identifies the “main purposes” of the international regime to include: orderly and safe development of the natural resources of the Moon; rational management of those resources; expansion of opportunities in the use of those resources; these purposes, in the abstract, are neither unreasonable nor controversial.

additional purposes: means for the registration of claims establish priorities adjudicate disputes provide appropriate notice to and among entities conducting activities.
• Prof. Wassenbergh would add:
  • ensure licensing and authorization of private entities
  • recognition of civil space objects and spacecraft
  • give traffic ‘rules of outer space’
  • ensure security of space activities
  • provide the needed infrastructure
  • guaranty fair competition internationally
  • arrange for standardization of licensing and registration
  • protection of the environment

• Amb. Coca elaborating on Szalóky:
  • assure exploration and use will serve common interests of mankind
  • contribute to development of science
  • development of economical and social circumstances of present and future generations
  • improvement of mutual understanding, and
  • strengthening amicable connections between states and peoples

• Doyle: “gobbledygook”

• von der Dunk:
  • sharing of benefits limited to states party
  • Moon Agreement imposes a moratorium on use of lunar resources pending establishment of the international regime

• Wassenbergh:
  • agrees the Moon Agreement imposes a moratorium
  • most appropriate method for benefit sharing is “cross-border cooperative arrangements”

• Moon Agreement has one additional main purpose for the international regime:
  An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration

• White: sharing of benefits satisfied by advanced states making obsolete facilities available for purchase by non-launching states

• O’Donnell:
  • sharing of benefits is a treaty burden which must be endured
  • has offered a formula for dedicating and transferring 50% of resources to a legal authority for “public benefit sharing property”

• Cramer: countries not engaged in lunar activity have no reason to be involved in the regulatory body
Allocation of enterprise rights
- states have found a previously untapped source of revenue by auctioning frequency spectrum and charging fees for orbital slots
- Ospina: auctions and fees may give rise to expectations of property rights in such intangible resources
  - continuation of these practices could lead to concentration of resources in “mega” corporations

Almond: beneficiaries will be corporations of developed countries, not the developing countries
- counterproductive in relation to the apparent policies and purposes of the common heritage of mankind principle

Kosuge: windfall gains to those lucky enough to be allocated scarce licenses, at the cost of the community as a whole
- no guarantee that the most valued and efficient uses will be accommodated
- favor auctions if market forces can be introduced into spectrum management

Elements of Commercial Regime
- Authorization and Continuing Supervision on non-governmental entities
- requirement of state authorization and continuing supervision of the private sector affords a significant measure of protection for commercial space
- protection from in situ interference by other entities
  - state which granted the authority to the private entity
  - other entities authorized by that state
  - other states or their nationals
  - rogue entities

space activities are difficult, costly, and fraught with risk
- unlikely that state which granted authorization to a private entity purposely would interfere with the activities of that authorized entity
- state has broad array of means and mechanisms to limit or restrict the activities of the private entity
  - much less costly and considerably more efficient than launching a mission to conduct interference with activities in situ
  - include the revocation of authorizations, restriction of communications, issuance of injunctions, attachment of property, and/or the utilization of a number of provisional or other remedies under domestic law
also is unlikely for interference by another entity granted authority by the same state
request for authorization with clear intention to cause physical interference would have little chance of obtaining approval
state itself would object to such a purpose
operator of the licensed facility, or members of the public, may have an opportunity to object pursuant to domestic licensing or judicial procedures

possible for second entity to be granted authority to operate a facility near a previously authorized facility
potential for claims such as infringement of intellectual property rights and unfair competition
these types of claims are raised on a daily basis, and resolved on a daily basis, according to extant law

interference from other states or their nationals subject to the Outer Space Treaty
state to initiate consultations where its activities may cause interference
state may request consultations where other state may cause interference
state to initiate consultation re potential interference may affect many states

request for consultations initially bilateral but others states may join request
should interference occur, liability could be imposed pursuant to the provisions of the Outer Space Treaty, and where applicable, the Liability Convention
courts or administrative proceedings for domestic disputes, and diplomatic or other mechanisms for controversies involving two or more states, would be employed on Earth to seek to diffuse and resolve any conflict
more detail and procedures to be developed
2014 ASTEROID Bill
Bigelow request
Right of Visitation

- important means for first hand observation by representatives of states
- assist states in determining whether the activities of a facility are in compliance with international law
- right of visitation is subject to a “basis of reciprocity” in Outer Space Treaty but not Moon Agreement

Duty of Disclosure

- Moon Agreement article 4: Secretary-General of the United Nations shall be informed of the nature, conduct, locations and results of activities in space, and information to disseminated to the public
- compare with Registration Convention disclose specific but limited information concerning the location, function, and where applicable, basic orbital parameters, of objects launched into space

OST article IX

- States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose

Moon Agreement article 7

- Affirmative obligation of states to take measures to prevent the disruption of the existing balance of environment whether by
  - introducing adverse changes in such environment
  - its harmful contamination through the introduction of extra-environmental matter
  - or otherwise
• Moon Agreement establishes that states shall report concerning areas of the Moon having special scientific interest in order that consideration may be given to their designation as "international scientific preserves"
  • special protective arrangements are to be agreed
  • without prejudice to the rights of other states parties to the treaty

• planetary protection policy creates “special regions”
  • areas where it is believed that H2O, in the form of surface or subsurface ice, may be present
  • landing craft must achieve Viking level sterility, even where the craft is not intended to conduct life detection experiments
  • keep out zones
  • planetary parks

• Law of the Sea Convention demonstrates promotion and protection of commercial interests is compatible with the common heritage of mankind principle
  • position of the United States is that "the Agreement, by restructuring the seabed mining regime along free market lines, endorses the consistent view of the United States that the common heritage principle fully comports with private economic activity in accordance with market principles"

• emphasis on opportunity was a central theme of Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries
  • Declaration focused on the promotion and fostering of international cooperation on an equitable and mutually acceptable basis
  • cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned
• dispute resolution process of the World Trade Organization was substantially revised in 1994
• revisions "reflect a fundamental shift in the nature of international trade dispute settlement from a political, consensus-based process to a more legalistic system"
• accentuated the rule of law
• enhances the predictability and institutional neutrality of the WTO

• common heritage of mankind principle does not impose an insurmountable burden to the private sector
• movement toward the rule of law as a basis of dispute resolution rather than purely political and other considerations enhances the opportunities for the private sector
• relationship between an international regime and domestic regimes must await future determination, including the extent to which the international regime will harmonize national licensing procedures and processes
• whether an international regime is established pursuant to the Moon Agreement or otherwise, particular emphasis should be placed on the promotion of opportunity, as well as the rule of law, in the creation of any regulatory structure

• emphasis should be placed on market principles
• a flexible and evolutionary approach should be adopted
• limited bureaucratic structure
• international cooperation must be promoted
• equality of opportunity preserved
• appropriate representation of states must be provided commensurate with their interests
• juridical regime must be a neutral arbiter
• regime must not engage in unfair competition with private entities subject to its regulatory authority

Thank You
Wayne White, President & CEO, SpaceBooster, LLC.

Synopsis

For many years, space lawyers have debated the meaning of Article II of the Outer Space Treaty. In particular, space lawyers have disagreed as to whether this provision prohibits ownership of real property rights. Various authors have also discussed whether entities can own and sell extracted resources. Wayne White analyzes these issues and offers his opinions on the legality of such activities under the terms of the Outer Space Treaty.
INTERPRETING ARTICLE II OF THE OUTER SPACE TREATY

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The International Law of Property
University of the Pacific
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SPACE LAW: An Overview

• Most nations are party to the 1967 Outer Space Treaty (OST). This Treaty:
  – Prohibits territorial sovereignty
    • Nations cannot make territorial claims in space or on celestial bodies, and
    • Nations cannot grant or recognize private territorial claims
  – Requires parties to regulate national entities’ activities
  – Holds nations liable for damage caused by their entities in transit through airspace and in outer space

SPACE LAW: An Overview

• The Outer Space Treaty:
  – Gives parties jurisdiction over their citizens, and space objects on their registry
    • Ownership of space objects is not affected by the objects’ presence in outer space (includes facilities constructed in outer space)
    • Ownership of personal property is not affected by its presence in outer space
    • Parties can enact national laws consistent with the Treaty and international law
    • Parties can enact a form of real property rights based on jurisdiction, even though territorial sovereignty is prohibited

A Legal Regime for Private Space Activities: General Approach

• In Situ Resource Utilization (ISRU) will permit space-farers to “live off the land,” greatly reducing the risk and cost of space activities

• Over the long term, access to the resources of near-Earth space, Mars, and the asteroids is a matter of strategic concern for all nations
A Legal Regime for Private Space Activities: General Approach

- The OST not only permits, but in some cases requires the United States to enact laws that are consistent with the OST, the U.N. Charter, and other principles of international law.
- National legislation allows greater consistency between space law and terrestrial laws.

Elements of Prospective US Legislation: Property Law

- Enact a form of real property rights without territorial sovereignty.
  - This approach follows the precedent set by the 1980 Deep Seabed Hard Mineral Resources Act.
- Outer Space Treaty and other international laws provide bundle of rights analogous to property rights.
- Legislation formally defines and protects these rights.

A Legal Regime for Private Space Activities: General Approach


Elements of Prospective US Legislation: Property Law

- Invalidate prior real property claims not based on jurisdiction over space objects and personnel (e.g. “Moon Deeds”).
- Private entities must file preliminary claims which identify the location of their space activities.
- Entities may only claim the area encompassed by their space objects and ongoing activities, plus a safety zone.
Elements of Prospective US Legislation:
Property Law

• Claimants may perfect their claims and obtain deed after 1 year
• Deeds may be transferred in the same manner as terrestrial deeds
• “Use it or lose it” regime – property rights terminate when there is no longer a presence

Elements of Prospective US Legislation:
Property Law

• Protect areas of historical, scientific and aesthetic interest on celestial bodies (e.g. Apollo 11 landing site)
• Include reciprocity provisions recognizing other countries’ claims, if their laws are substantially the same as the U.S. law (see Deep Seabed Hard Mineral Resources Act)

Elements of Prospective US Legislation:
Mining Law

• Clarify that public and private entities can own extracted resources – this is consistent with the majority opinion in the international space law community
• Outer space, including the Moon and other celestial bodies, shall be free for exploration and use by all States (OST Article 1, emphasis added)

Elements of Prospective US Legislation:
Mining Law

• Protect mining investments – encourage prospecting and mining by recognizing mining claims in a manner similar to the US General Mining Law
  – Prospectors who obtain non-public information regarding mineral resources may file provisional claims
  – Remote sensing and telepossession may provide basis for preliminary claim
  – Ice is a mineral
  – Prospectors may perfect claim and obtain deed once they begin mining operations
International Cooperation and Collaboration

• Consult like-minded nations regarding prospective U.S. legislation, evaluate input, and revise U.S. legislation as necessary.

• Encourage like-minded nations to enact similar laws that include reciprocity provisions.