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Report of the Galloway Symposium

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The 11th Annual Eilene M. Galloway Symposium on Critical Issues in Space Law was dedicated to celebrating the successes and analyzing the weaknesses of the 1967 Outer Space Treaty. Held in Washington, D.C. on December 7, 2016, the conference continued to honor the legacy of Eilene Galloway and her remarkable work in the areas of space law and policy. The annual conference also paid its respects to Mr. James Rendleman, a dedicated member of our society who passed away unexpectedly earlier in the year. We are saddened by his loss, but glad that we had the opportunity to know and work with Jim.

As always, the conference drew a remarkable team of speakers and panelists from government, academia, and industry. The format ranged from individual presentations to panel discussions, and this year the conference organizers facilitated a debate-style panel in the afternoon. The conference was possible thanks to the generous support of the law firm Fish & Richardson, the University of Nebraska College of Law's Space, Cyber and Telecommunications Law program, and the American Institute of Astronautics and Aeronautics.

The morning session began with a keynote presentation from the Honorable Robert Walker. In his speech, he outlined the new administration's dedication to reinvigorating American space policy, highlighting the Vice President's particular interest in the subject. He reiterated the then-President-elect's promise to "make America great again," with the additional "in space," illustrating a desire to return to the glory days of the shuttle program at its peak.

Representative Jim Bridenstine spoke next, largely in the context of his proposed legislation for regulating on-orbit and other new space activities. Key in his remarks was the idea that failing to regulate activity in space is de facto regulation and that Congress must act or the executive will. He highlighted his preference for an "enhanced payload review" process handled by the FAA, which is outlined in his proposed legislation. All of this, he said, was necessary because the US government believes that there is a legal requirement to provide authorization and continuing supervision for

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non-traditional commercial space activities. Unfortunately, Rep. Bridenstine was needed back on the hill for a series of votes and was unable to take questions.

Immediately following was Dr. Pamela Melroy, the Deputy Director of the Tactical Technology Office at DARPA and a former astronaut. In her speech, she discussed the implications of emerging space technology including the particular issues inherent to space assets. She talked about in particular the issue of communications latency, and how that means that any robotic systems in space are going to be inherently autonomous to some extent. She focused her remarks on the advent of on-orbit servicing, as she notes that the technology is almost certainly headed in that direction. She pointed out that while there's nothing inherently military about servicing, existing legal authorities create doubt as to its validity because many classify the operation as potentially military in nature, and therefore hostile. Dr. Melroy concluded her remarks imploring the government to work with industry to learn about the technology and its uses beyond the military.

The final morning session was a panel discussion on the need to establish international norms and rules for emerging space activities. Panelists were: Brian Israel (US Department of State), Chris Johnson (Secure World Foundation), Joanne Gabrynowicz (Prof. Emeritus, Editor-in-Chief Journal of Space Law), and Fabio Tronchetti (HaoliMo Law Firm). The discussion centered primarily on emerging issues in space, and the international efforts to combat this. This meant the space debris problem. Joanne started off the discussion by pointing out that the Outer Space Treaty is like the Constitution – it's a series of principles intended to create law, but has gaps for those with the political will to fill them. It gives us, she noted, a framework for international responsibility for activities in space that can be built upon by future generations as space behavior evolves. Fabio pointed out that there are no enforcement mechanisms in the OST, which means that the burden falls to the states to determine the rules and subsequently play by them. The panelists agreed that the space debris issue is critical, but had different perspectives on how to address it – some highlighted the need for regulatory certainty and additional law, some suggesting an international code of conduct of sorts that would have political rather than legal force. The general consensus of the panel was that while the Outer Space Treaty is certainly imperfect, it gives a strong foundation from which we can continue to address the evolving concerns of the space community.

One of the highlights of the conference was a speech by the Legal Advisor of the US Department of State, Mr. Brian Egan. He took a few moments to discuss the history and future of the Outer Space Treaty, from the last 50 years to the next 50 years. He highlighted that non-governmental space activities are a critical part of that story, and noted that the utilization of space resources has captured the imagination and attention of the legal

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community. He said that space resources are subject to Outer Space Treaty obligations and only activities consistent with those obligations will be permitted, a relatively firm statement from a government official on the official US position on the matter. He noted that in some cases, the 2015 Space Act has served to confuse international partners about the intention of the US to remain true to its international obligations as they pertain to resource utilization, but emphasized the role of the State Department in the review of space activities (such as the payload review for Moon Express conducted in 2015) as evidence of the need to conduct such activities in accordance with international obligations. Mr. Egan described Rep. Bridenstine's proposed legislation as a "common sense approach" to fulfilling our international obligations under the OST. He ended his comments by reiterating the US position that Article VI of the OST requires the continued supervision of space activities and that the government is working through a process to ensure conformity with those obligations. His comments were the first official policy statement on matters in space law by the State Department Legal Advisor in over 30 years. His statement is published in full after this report.

As noted, this year conference organizers included a debate-style panel, where panelists were asked a series of questions by the moderator and given a time limit on their responses. Professor Matthew Schaefer from the University of Nebraska College of Law, Professor Diane Howard from Embry Riddle University, and Laura Montgomery (formerly of the FAA, currently in private practice) were invited to share their views on domestic US policy regarding the regulation of space activities. The three were chosen for their divergent views – Laura stands firm in her belief that no additional regulation is needed, that Article VI of the OST is not a barrier to commercial activity. Prof. Schaefer agreed in part, but expressed concern that there is a regulatory gap and we are failing to uphold our international obligation to authorize and supervise. Prof. Howard noted that the treaty only requires continuing, not continual, supervision, which suggests that a full tracking and coordination effort by the government is unnecessary from a legal perspective. She also commented that for the purposes of regulating, defining "space activity" will continue to be extremely problematic. Ms. Montgomery suggested that not all activities in space need be regulated, particularly innocuous ones like playing the harp or brushing one's teeth. She said the consequences of over-regulating were such that a much lighter approach to regulation, if one at all, was warranted. Professor Schaefer agreed – industry wants a light, non-burdensome framework, but would prefer that to no guidance from the government. As things stand, industry is unaware of their legal rights and obligations associated with new space activities which is stymying some development. Ms. Montgomery disagreed with the latter – declaring "the only thing worse than ambiguity is clarity."

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The final panel of the afternoon was an industry panel, to hear perspectives from those most likely to be impacted by any change in space law or policy. Chris Hearsey of Bigelow Aerospace echoed some of Professor Schaefer's comments from the earlier panel – they want approval from the government so they can get their clients to space as promised and to keep them safe from activities going on around them. Bridenstine's proposed legislation is favorably viewed as an attempt to move the industry in that direction. Paul Stimers, a private attorney with K&L Gates, noted that clarity is necessary, but it's important to be careful. Hearsey agreed, pushing that industry wants an approval process that works and isn't bogged down in bureaucracy. Audrey Schaffer from the Office of Space Policy in the Department of Defense, acknowledged that government processes are not often speedy, which makes it difficult to take advantage of commercial opportunities. This weakness is among the most important to correct with any changes to the existing framework.

As always, IISL is thankful to the sponsors and organizers of the annual event. We are encouraged that so many bright, thoughtful people are contributing their expertise to these issues and that there is an ever-growing consensus of their importance. We thank our panelists and speakers for contributing their knowledge, and we thank the participants for their thoughtful questions and attendance at our event.