

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Alternative Space Rules Setting (5)

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TECHNICAL STANDARDS AND SPACE LAW: A COMPLEMENTARY AND COMPLICATED
RELATIONSHIP

Abstract

Technical standards are technical rules and procedures developed by specialized organizations, which may be international, regional or national. Technical standards are used very widely in any technical domain, including spaceflights and space operations. This paper explores the relationship of space law with technical standards, their effect in a legal dispute and some practical challenges regarding their use in the legal field. International space law lays down the general foundations for space activities and the conduct of States in outer space and on celestial bodies. National space law undertakes to concretize and complement international space law rules. Technical standards often undertake a further concretization at a technical level. On the basis of such standards, generic notions such as ‘due regard’ or ‘fault’ can be specified to the particularities of the case at hand, to help determine whether a legal rule has been breached. Moreover, technical standards are used in procurement procedures and in contracts, regardless of whether the contractual parties are States or private entities, to specify the appropriate contractual performance. In addition, technical standards may provide specific points of reference as to the exact expected behavior outside a contractual framework. Thus, technical standards, despite being technical rules, may develop a normative function too. Under EU law, ‘European harmonized standards’ have even formally the status of a legal rule. As a result, technical standards function complementarily to legal rules and are significant for their implementation. Two practical challenges arise. First, which technical standard to choose from more than one standard that may exist on the same issue. In case of a contract, this can be determined by the contractual parties. Where no contract exists, the parties to the dispute may agree on the applicable technical standards, or submit their views to the adjudicating body, a court or tribunal, which will then decide. Second, how to ensure that technical standards are developed in an objective and neutral way, and are not biased in favor of the interests of the most powerful and influential actors, which may be private entities and/or sovereign States. The key is to ensure that all actors concerned are involved in the process of standard development. However, the practical details of this seemingly simple solution are perhaps the most complicated factors surrounding the use of technical standards in the legal domain.