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Space Law in a Networked World (7)

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DOES THE END JUSTIFY THE MEANS? A LEGAL STUDY ON THE ROLE AND CONSEQUENCES
OF NORMATIVE PLURALITY IN INTERNATIONAL SPACE GOVERNANCE**Abstract**

The exploration and use of outer space, an area beyond national jurisdiction, is subject to international legal norms: a multilateral effort since more than half a century. But the pressure on solutions facilitated or enabled by public international law is augmenting, not least because of new space actors, novel ideas to use and explore outer space and the increasingly ubiquitous concern of maintaining the long-term sustainability of spaceflight. Objectives and concerns of modern-day spaceflight are shared by governments as much as by industry, even though, arguably, on different grounds. However, neither is industry recognized as an actor under international law nor are its ultimate goals congruent with the regulator's perspective. Industry is operationally implementing legal norms set by States, internationally or domestically, but in the absence of such rules, it may create its own norms of behaviour: space self-governance. Different actors produce standards, best practices, guidelines; beyond COPUOS, various initiatives of different character by industry and other actors have emerged, in particular in the area of sustainable uses of outer space.

What could and should be the place for technical and industrial norms in 21st century space law? How should this 'normative plurality' be viewed from a perspective of international law, and on what basis is such behaviour and its consequences evaluated, and by whom? Will States keep the prerogative to interpret, apply and finally enforce such rules, as if it was law? And if not, what would be the consequences in practice? Are such initiatives supplementing or setting aside international norm making, and does the emergence of multiple normative orders mean that the norm addressee may cherry-pick and legitimize the choice e.g. by efficiency considerations, possibly under-mining legal security?

The authors will attempt to examine these questions and discuss the role, relevance and impact of multi-stakeholder norm-setting in international space governance from the legal viewpoint, particularly in light of Articles I and VI of the Outer Space Treaty.