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A BASIS FOR DIRECTLY APPLYING PRINCIPLES OF THE LIABILITY CONVENTION TO
PRIVATE PARTIES**Abstract**

The Convention On International Liability for Damages Caused By Space Objects {"Liability Convention"} contains substantive liability principles concerning disputes between or among states or inter-governmental organizations arising from damages caused by a space object. The Permanent Court of Arbitration Optional Rules For Arbitration Of Disputes Relating To Outer Space Activities {"Optional Rules"} appear to allow applying the Liability Convention's principles to disputes between or among private entities or between a state and a private entity.

Optional Rules Article 35{1} contains a choice of law provision applicable to a dispute which depends upon whether the parties agreed to a particular substantive law. If they have, then the tribunal must apply the law or rules of law as agreed by the parties. If the parties have not agreed, then the tribunal applies the law "it determines to be appropriate." This appears to vest a tribunal with broad and unfettered discretion in determining the applicable law when the parties have not agreed on the issue. Indeed, Article 35{1} does not contain or impose any parameters within which the tribunal must exercise its discretion or determine when it is appropriate to apply to certain substantive law or rules of law. The lack of express parameters provides an opportunity for a tribunal to conclude, in a particular case, that the law or rules of law articulated in the Liability Convention should govern an arbitration even though the dispute is between or among private entities or involves a private entity and a governmental entity.

My paper will explore the breath of discretion a tribunal exists under Article 35{1} when the parties fail to designate the applicable law. It will also discuss potential circumstances when it may be appropriate for a tribunal to apply the Liability Convention's legal principles in a dispute in which a private entity is a direct party, how such principles will apply to the private entity as well as the ramifications for extending or applying the Liability Convention's principles to a dispute involving private parties.