International Construction Law
Academic Monograph

Author: Dmitry Semenovich Belkin (ORCID: https://orcid.org/0009-0003-1532-1958)

Associate Professor, Department of International Law, Slavic-Greek-Latin Academy, Moscow, Russian Federation. Email: dmitryb81@gmail.com

DOI: 10.64457/icl.en.ch1

Risk Allocation and Dispute Resolution in International Construction Contracts: A Pragmatic Common-Law Perspective

Recommended citation: Dmitry Semenovich Belkin. Risk Allocation and Dispute Resolution in International Construction Contracts: A Pragmatic Common-Law Perspective. In: International Construction Law. Moscow: Slavic Greek Latin Academy, 2025. DOI: 10.64457/icl.en.ch1.

The study frames International Construction Contract Law (ICCL) as a distinct sub-field of international construction law. It defines its object—cross-border relations in large-scale projects—and its subject—the allocation of risks, performance of obligations, and dispute settlement. Using comparative, normative and doctrinal analysis, the research develops a four-function model of ICCL (risk allocation, dispute resolution, legal coordination, change management). Particular emphasis is placed on FIDIC standards as a universal benchmark and on their systematic incorporation

into diverse legal environments to enhance global project predictability. An integrated concept is proposed that aligns international norms with domestic frameworks and offers recommendations for harmonising national regulations with FIDIC-based contract schemes.

International construction law has, over the past decades, evolved into a distinct and increasingly coherent field of legal scholarship and practice (Breyer, 2024; Venoit, 2009; Molineaux, 1998; Godwin, 2013; Klee, 2018). Within this broader field, international construction contract law (ICCL) has emerged as a recognisable sub-discipline that focuses on the contractual layer of transnational construction and infrastructure projects. Leading monographs and handbooks by W. Breyer, W. K. Venoit, C. B. Molineaux, W. Godwin, L. Klee and others illustrate this maturation: they analyse international construction projects across all major legal families and jurisdictions, with particular attention to the interaction between domestic contract law and standard-form conditions of contract such as those published by the International Federation of Consulting Engineers (FIDIC).

While the terminology is not wholly uniform, there is a broad convergence in contemporary doctrine (Imamova, 2023; Herdegen, 2024). "International construction law" is commonly used in a wide, functional sense to describe the ensemble of public- and private-law norms that govern the planning, financing, construction and operation of cross-border infrastructure and construction projects. It encompasses, inter alia, public international law (including investment treaties and environmental agreements), international economic law, domestic administrative and regulatory law, and the private law of contracts, torts and property as applied to construction. "International construction contract law", in turn, is increasingly used to denote the contractual and dispute-resolution dimension of this broader field: the body of rules, principles and standardised practices that govern the formation, performance, risk allocation and enforcement of contracts for construction and engineering works with an international element.

Seen from the perspective of international law in the strict sense, ICCL operates at the interface between the international legal order and domestic legal systems (Schachter, 1991; Grotius, 1994). It is primarily rooted in transnational commercial practice and domestic private law, but it is framed

and constrained by treaty obligations (for example, under bilateral investment treaties and free trade agreements), by customary international law, and by general principles such as pacta sunt servanda, good faith and the duty to prevent significant transboundary harm. In arbitral practice relating to international construction disputes, tribunals frequently move along this interface: they apply the parties' chosen domestic law, take account of international public-law obligations where relevant, and rely on industry standards and commercial usages as a supplementary normative layer.

A substantial body of literature has contributed to articulating this field. Breyer's International Construction Law: An Overview offers an in-depth analysis of international construction law across the major jurisdictions and legal families, positioning construction as a sector where comparative law and international practice are intrinsically intertwined. Venoit's International Construction Law focuses on cross-border disputes and the practical challenges of governing-law clauses, jurisdiction and arbitration agreements in complex construction contracts. The International Construction Law Review, edited by Wightman and Lloyd (Wightman & Lloyd, 2002), has, for decades, provided a forum for comparative and doctrinal analysis of construction contracts, remedies and dispute resolution. Molineaux's International Construction Law supplies a historical and conceptual overview of the emergence of international construction as a distinct field of legal regulation, tracing the move from ad hoc contracts to more standardised documentation and risk-management techniques. Together, these works have supported a growing consensus that international construction law and ICCL can be treated as coherent objects of study.

Within this literature, standard-form contracts, and particularly the FIDIC books, occupy a central place. FIDIC's conditions of contract for construction, plant and design-build, EPC/turnkey, and consultancy services are used, in one form or another, on major projects throughout Europe, the Middle East, Africa, Asia and the Americas. They are frequently incorporated, with modifications, into public procurement documentation and private commercial arrangements, and they often serve as a benchmark even where other forms (such as NEC, JCT, or bespoke contracts) are actually used. Klee's International Construction Contract Law, for example, structures a large part of its analysis around FIDIC risk-allocation mechanisms, claims procedures

and dispute-resolution clauses, while emphasising the need to read them against the background of the applicable national law. Godwin likewise presents FIDIC conditions as a "universal" tool for the management of large international projects, while underlining that their effectiveness depends on proper adaptation to local legal environments.

The fact that so much of the doctrinal debate is organised around standard forms has sometimes obscured the conceptual foundations of ICCL as a branch of international legal scholarship. A number of authors have stressed that ICCL cannot be reduced to the exegesis of FIDIC clauses. Imamova, in particular, highlights that debates on the concept of an "international construction contract" and on the boundaries of international construction contract law remain fragmented across private international law, international economic law and sector-specific practice. Against this background, it is useful to formulate, in a relatively neutral way, a set of definitions that are acceptable across different legal cultures.

For the purposes of this chapter, "international construction contract" will be used to denote any contract (or set of interrelated contracts) for construction, engineering, infrastructure or related services that involves a material foreign element: typically, the parties are domiciled in different States, the works are executed in a State other than that of at least one party, the financing is cross-border, or the contract incorporates transnational standard forms and is expressly subjected to international dispute-resolution mechanisms. "International construction contract law" denotes the body of legal norms, general principles and standardised practices that govern the conclusion, performance, risk allocation, security arrangements and enforcement of such contracts, including the mechanisms for resolving disputes and managing change over the life of the project.

Defined in this way, ICCL can be described through its object and its subject. The object of ICCL consists of the network of social and economic relations that arise in the planning and execution of large construction and infrastructure projects with an international element. These relations encompass not only the primary obligations of contractors, employers and consultants, but also the positions of funders, insurers, subcontractors, suppliers, public authorities and, indirectly, affected communities. The

subject of ICCL consists of the norms and mechanisms through which these relations are structured: rules on risk allocation and pricing, performance security and guarantees, change and variation procedures, claims and notice requirements, and dispute-resolution mechanisms, including both adjudicative and consensual processes.

At the level of international legal theory, this contractual field is embedded in the broader architecture of international law. Slouka's analysis of international custom and the dynamics of customary rules underscores that international norms cannot be understood solely as static, universal propositions; rather, they emerge from a continuous process of decision-making and alignment of State practice and opinio juris (Slouka, 2012). In the construction sector, recurring patterns of behaviour—such as the regular use of particular standard forms, repeated acceptance of certain risk-allocation models, or consistent recourse to specific arbitral rules—may, over time, inform the development of sector-specific customary norms or general principles.

Grotius' classical insight that international law is shaped not only by written treaties but also by tacit agreements (taciturn pactum), manifested through consistent and accepted practice, remains relevant for ICCL. The widespread reliance on FIDIC conditions and other standard forms, and their adoption in arbitral awards and domestic case law across multiple jurisdictions, can be understood as a form of tacit normative alignment. While these instruments are not, in themselves, sources of international law in the strict sense of Article 38 of the Statute of the International Court of Justice, their pervasive use and judicial or arbitral endorsement contribute to the formation of a transnational lex constructionis akin to the lex mercatoria of international trade.

From the perspective of international economic law, ICCL is best understood as a sectoral manifestation of the broader normative framework governing cross-border economic relations (Herdegen, 2024). Herdegen's account of international economic law emphasises its composite character: it combines treaty-based obligations of States, customary rules, and domestic regulatory regimes, all of which affect trade, investment and financial flows. International construction projects are plainly part of this global economic circulation. They often involve foreign direct investment protected by

bilateral or multilateral investment treaties, and they may be affected by trade disciplines, sanctions regimes and macro-economic regulation. In investment arbitration, construction-related claims—covering expropriation, fair and equitable treatment, full protection and security or umbrella clauses—illustrate how contractual disputes and treaty-based obligations intersect (Yerniyazov, 2023).

Within this multi-layered context, ICCL performs a set of functions that are widely recognised across legal systems and in the literature. Many authors, drawing implicitly or explicitly on general international-law scholarship, converge on four core functions: (1) risk allocation; (2) dispute resolution; (3) legal coordination; and (4) change management.

First, risk allocation is the foundational function of ICCL. Schachter's view of international law as a framework for the management and allocation of risks among States and other actors is readily transposable to the contractual sphere. In construction, risk allocation concerns, among other things, ground conditions, design responsibility, delays and disruptions, price and currency fluctuations, regulatory change, force majeure, and political risk. Standard forms such as FIDIC embody detailed risk-allocation matrices: they identify which party bears which risk, under what conditions risk may be transferred or shared, and how risk is reflected in price, time and security mechanisms. National laws then interact with these contractual allocations, enforcing or adjusting them through mandatory rules on, for example, liability limits, consumer or public-procurement protections, or restrictions on exclusion clauses.

Secondly, dispute resolution constitutes a central function of ICCL. International construction projects are particularly prone to complex disputes owing to their technical difficulty, long duration, multiple parties and exposure to volatile economic and political conditions. FIDIC contracts and similar instruments therefore incorporate multi-tiered dispute-resolution mechanisms, typically beginning with engineer's determinations or dispute boards and culminating in arbitration. Fitzmaurice's classic analyses of the law and procedure of the International Court of Justice highlight the systemic importance of procedural predictability and the rule-of-law function of adjudicative bodies (Fitzmaurice, 1955); in ICCL, arbitral

tribunals occupy a comparable position at the project level. Jenkins' work on international construction arbitration law documents the specific procedural techniques and evidentiary practices that have evolved in this field, including the use of expert conferencing, detailed procedural timetables and project chronologies (Jenkins, 2021).

Recent empirical research by Besaiso and co-authors shows that international construction arbitrators, when resolving disputes, apply not only the contract and the designated governing law, but also a range of commercial norms and what the authors term "international construction law" (Besaiso & Fenn, 2022). While there is no consensus on the precise legal status of these norms, their recurrent use in arbitral reasoning points to the emergence of a transnational body of construction-specific standards, which arbitral tribunals treat as persuasive guidance.

Thirdly, ICCL fulfils a function of legal coordination. Transnational construction projects typically involve actors from different legal traditions and regulatory environments. They may be framed by inter-governmental agreements, investment treaties, host-State legislation, municipal permits and licences, and a cascade of contracts and subcontracts. Tunkin's insistence on the alignment of State wills as a fundamental principle of international law finds a contractual parallel in the effort to align, through standard forms and negotiated clauses, the expectations and obligations of diverse private and public parties (Tunkin, 2023). Yerniyazov's analysis of the interaction between international construction contracts and investment treaties, for example, proposes model provisions designed to harmonise commercial and public interests, covering stabilisation, arbitration, insurance and transparency. Such proposals are particularly relevant in sectors where infrastructure projects are backed by State entities or multilateral development banks and where contractual and treaty-based regimes must be reconciled.

Legal coordination in ICCL also concerns the interface between contract and regulation. Public-law requirements—such as environmental impact assessment, occupational safety, anti-corruption rules or local-content obligations—shape the permissible content of construction contracts and may influence their enforceability. In many jurisdictions, courts and arbitral

tribunals are required to consider mandatory public-policy norms when interpreting and applying construction contracts, which in turn pushes drafters to embed compliance mechanisms directly into the contractual framework.

Fourthly, ICCL performs a change-management function. Long-term infrastructure projects are implemented in environments characterised by technological innovation, price volatility, evolving regulatory standards and, frequently, political change. Klee and other authors have shown that FIDIC and comparable standard forms embed sophisticated mechanisms for dealing with changes: variations, claims for extensions of time and additional payment, adjustment for changes in law, hardship and renegotiation clauses, as well as early-warning obligations and collaborative problem-solving tools. These mechanisms are designed to preserve the overall equilibrium of the contract while allowing necessary adaptations over time.

Beyond these four core functions, several further dimensions deserve attention in any doctrinal account of ICCL. One is the linkage between ICCL and international scientific and technical cooperation. Anufrieva has emphasised that legal frameworks for science and technology cooperation must accommodate the circulation of knowledge, standards and innovative technologies across borders (Anufrieva, 2018). In the construction sector, international cooperation in standard-setting—for example in structural design, seismic resistance, or sustainability—directly influences the content of construction contracts, including technical specifications, performance standards and liability regimes. Another dimension is the role of customary norms and practice. As Schachter argues, customary international law arises out of State practice accepted as law; in ICCL, an analogous—albeit not identical—process can be observed in the formation of sectoral customs and usages, which arbitral tribunals and courts increasingly recognise as relevant interpretative tools.

Collectively, these elements support the claim that ICCL can be described as a sector-specific, transnational legal regime anchored in, but not limited to, domestic contract law. It draws on public international law, international economic law, domestic regulatory frameworks and commercial practice, yet it displays a sufficient degree of internal coherence—through convergent case

law, arbitral practice, scholarly analysis and standard-form contracts—to warrant treatment as a distinct subfield. This is reflected in the emergence of specialised professional associations (such as international and national Societies of Construction Law), postgraduate programmes dedicated to construction law, and a growing body of case law and arbitral awards treated as precedents in subsequent disputes (Skeggs, 2003).

From a pedagogical perspective, these developments have important implications. First, ICCL can be fruitfully taught not merely as a collection of clauses and claims scenarios, but as a structured body of doctrine aligned with the conceptual tools of general international law: sources, subjects, responsibility, dispute settlement and normative hierarchy. Secondly, ICCL offers a particularly concrete arena in which students from different jurisdictions can observe how international economic law operates in practice: how treaties, customary norms and domestic regulation influence contract drafting and enforcement, and how arbitral practice contributes to the development of transnational standards. Thirdly, ICCL illustrates, perhaps more vividly than many other fields, the need to integrate legal analysis with technical, financial and managerial expertise.

For these reasons, a doctrinal account of ICCL that emphasises its core functions—risk allocation, dispute resolution, legal coordination and change management—has the potential to serve as a common reference point for scholars and students in different legal systems. It does not require a full theoretical agreement on the status of lex mercatoria or on the boundaries of public and private international law. Rather, it proceeds from relatively uncontroversial observations about how international construction projects are actually structured and managed, and it draws on a rich comparative and interdisciplinary literature that spans common-law and civil-law jurisdictions, as well as mixed systems. If approached in this way, ICCL can be presented as a mature, conceptually grounded and pedagogically useful subfield of international law—one that would plausibly command the assent of international lawyers in the United States, Europe, China, India, Russia and beyond, and that justifies its inclusion as a distinct subject in advanced curricula on international economic and commercial law.

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

International legal sciences: object, subject matter, methodology, functions, history of institutions. Interaction with other sciences. Concepts of international law.

The main research results have been published in the following peer-reviewed article: Белкин, Д. С. Объект, предмет, методология и функции международного строительного контрактного права: анализ через призму международно-правовых наук / Д. С. Белкин // Международное право. – 2025. – № 2. – С. 31-47. – DOI 10.25136/2644-5514.2025.2.72825. – EDN VUYZOJ. DOI: 10.25136/2644-5514.2025.2.72825 EDN: VUYZOJ

Article URL: https://nbpublish.com/library_read_article.php?id=72825

Article PDF:
https://www.elibrary.ru/download/elibrary_82415590_35975472.pdf

References

1. Anosov, Ya. A. (2022). Legal regulation of international construction contracting in the EAEU countries. Obrazovanie i pravo, 11.

2. Anufrieva, L. P. (2018). Principles and legal forms of cooperation in science, technology and innovation between Russia and EU countries. Aktualnye problemy rossiiskogo prava, 12(97), 175–186.

3. Besaiso, H., Fenn, P., & Emsley, M. (2022). How international construction arbitrators make their decisions: status of commercial norms and international construction law. Journal of Construction Engineering and Management, 148(9).

4. Breyer, W. (2024). International construction law: an overview. Taylor & Francis.

5. Fitzmaurice, G. (1955). The law and procedure of the ICJ, 1951–4. British Yearbook of International Law, 32, 20.

6. Goddard, I. A. (2018). International and national regulation of cross-border construction contracting. Leningradskii yuridicheskii zhurnal, 3(53).

7. Godwin, W. (2013). International construction contracts: a handbook. Wiley-Blackwell.

8. Grotius, H. (1994). On the law of war and peace. Ladomir.

9. Herdegen, M. (2024). Principles of international economic law (3rd ed.). Oxford University Press.

10. Imamova, D. I. (2023). The concept of an international construction contract. Review of Law Sciences. DOI: 10.51788/tsul.rols.2023.7.2./VJGM1988

11. Jenkins, J. (2021). International construction arbitration law (3rd ed.). Wolters Kluwer.

12. Klee, L. (2018). International construction contract law. John Wiley & Sons.

13. Molineaux, C. B. (1998). International construction law. John Wiley & Sons.

14. Rodríguez-Medina, J. L. (2023). International law analysis of India's challenge... International Law Review, 2(2), 46–51.

15. Schachter, O. (1991). International law in theory and practice. Martinus Nijhoff.

16. Skeggs, C. (2003). Project partnering in the international construction industry. International Construction Law Review.

17. Slouka, Z. J. (2012). International custom and the continental shelf. Springer.

18. Tunkin, G. I. (2023). Theory of international law: collected papers. Zertsalo-M.

19. Venoit, W. K. (2009). International construction law. American Bar Association.

20. Wightman, D., & Lloyd, H. (Eds.). (2002). International construction law review. Informa Professional.

21. Yerniyazov, I. (2023). Interaction between international construction contracts and investment treaties. Review of Law Sciences.