International construction projects inevitably intersect multiple legal systems and norms of international law. The legal regulation of such contracts depends on the sources of contract law in the specific jurisdiction, as well as the application of international jus cogens norms, which may not be derogated from. Jus cogens — peremptory norms such as prohibitions against genocide or slavery — are binding upon all States, and any contractual arrangement that contravenes such norms is void ab initio. Nevertheless, the influence of jus cogens on ordinary commercial contracts is indirect: it sets outer boundaries for party autonomy and prohibits agreements that undermine the foundational principles of the international legal order.

Different legal traditions — common law (precedent-based), continental civil law (codified), Latin American public-law systems, and Israel's mixed jurisdiction — diverge in their sources of contract law and mechanisms of protection in international construction contracts. The four localised versions of Chapter 10 of the monograph "International Construction Contract Law" — "Treaty Law in International Construction Contracts: Legal Challenges and Protective Mechanisms" — reflect these differences. Each version takes into account:

(1) the specific sources of obligations and peremptory international norms;

(2) the practical use and local application of FIDIC standards;

(3) available remedies in case of breach (international arbitration, ISDS, national judicial recourse, forum selection);

(4) doctrinal foundations for the recognition of treaty-based obligations in the construction sector;

(5) the legal treatment of sanctions, force majeure, hardship, and project-time contractual adaptation;

(6) the State's role as employer, funder, regulator, and respondent;

(7) interpretative doctrines (e.g. differences between civil law and common law in construing contract texts).

Sources of contract law and jus cogens. In Anglo-American common law (e.g., England and the United States), contract law is grounded primarily in judicial precedent and targeted statutes rather than a comprehensive civil code. Party autonomy is robust but cabined by public-policy and illegality doctrines. Peremptory norms of international law (jus cogens) are not directly part of domestic contract doctrine; they operate as outer boundaries: a contract that contradicts such norms (e.g., corruption, slavery) will not be enforced on public-policy grounds (Shelton, 2011). Agreements requiring unlawful acts or violating human rights are void. Absent those fundamental limits, parties are generally free to allocate risk as they wish and courts will enforce the bargain. Common law has developed frustration and illegality to deal with supervening events or unlawful contingencies, ensuring parties are not compelled to act in ways fundamentally inconsistent with law or public policy (Sloss, 2009). There is no overarching code-based hardship rule: without a clause, performance is expected; frustration applies only in exceptional cases. In the United States, self-executing treaties or those implemented by Congress may become part of the "supreme Law of the Land" (U.S. Const. art. VI), yet most treaty norms (apart from arbitration/investment protection) do not govern private construction contracts unless incorporated. In England's dualist system, treaties require an Act of Parliament for domestic effect; the ICSID Convention was implemented by the Arbitration (International Investment Disputes) Act 1966 (Sloss, 2009). The Vienna Convention on the Law of Treaties binds states, not private parties—unless domestic law incorporates treaty-based rules (e.g., safety standards, sanctions) that then affect contracts (Shelton, 2011).

Application of FIDIC. FIDIC standard forms are widely accepted across common-law jurisdictions as a pre-eminent set of international forms for large infrastructure and engineering projects (Seppälä, 2023). Anglo-American practice frequently uses FIDIC (and NEC/JCT) because of balanced risk allocation and mature administration mechanisms. Courts

generally enforce FIDIC clauses as written unless they conflict with mandatory local law. Core features—Engineer's determinations and the DAAB—are recognised as contractual mechanisms; time-bar regimes and interim/final-binding DAAB decisions are enforced according to the agreed text and governing law (Seppälä, 2024).

Protection mechanisms (forums and remedies). Parties typically select arbitration; London and New York remain leading seats. The New York Convention 1958 underpins recognition/enforcement subject to limited defences, including public policy (Sloss, 2009; Shelton, 2011). Where the counterparty is a state, ISDS via BITs and the ICSID Convention allows investors to arbitrate directly; Article 54 requires recognition of monetary obligations "as if a final judgment," with no merits review by domestic courts (Sloss, 2009). DAABs provide interim relief within FIDIC; courts support compliance with such contractual steps pending final arbitral resolution (Seppälä, 2024).

Doctrinal basis for recognising treaties. The common-law world differentiates between international and domestic law. The UK requires parliamentary implementation; the U.S. allows some self-executing treaties, but construction contracts are affected chiefly when instruments are incorporated by the parties. Soft-law instruments (UNIDROIT Principles, ICC rules) bind only by choice. Treaty frameworks—FTAs and BITs—supply a background of procurement transparency and investment protection that fosters fair contracting and transnational recourse (Sloss, 2009; Shelton, 2011). Customary international law may inform the common law unless displaced by statute (Shelton, 2011).

Sanctions, force majeure, hardship, change of circumstances. Common law lacks a general hardship doctrine; instead, frustration (UK) and impracticability (U.S.) excuse performance only at a high threshold. Force-majeure is contractual; the clause governs, and supervening illegality (e.g., sanctions) may discharge performance if no clause exists (Sloss, 2009; Shelton, 2011). Parties in international projects often adopt FIDIC-style force-majeure and hardship wording; courts enforce it as agreed (Seppälä, 2023).

Role of the State. Public employers are generally subject to ordinary contract law, with sovereign immunity limited for commercial acts and where consent to jurisdiction/arbitration is given. Government contracts often include statutory or standard clauses (changes, termination for convenience). Regulatory acts that render performance illegal may ground frustration/force-majeure analysis. Breaches vis-à-vis foreign investors can trigger treaty claims in parallel with contractual claims (Sloss, 2009).

Approach to interpretation (common law vs civil law). Interpretation emphasises the text in its commercial context; the parol-evidence rule limits extrinsic material. English law distinguishes interpretation from implication; there is no overarching duty of good faith as in many civil codes, though business efficacy may justify implying terms in fact. Technical FIDIC terminology is read per industry usage; mandatory local law prevails in case of conflict (Shelton, 2011; Seppälä, 2023).

Sources of contract law and peremptory norms. Germany's contract law, as a civil-law system, is codified—principally in the BGB. Since 2018, construction contracts are expressly regulated in §§ 650a et seq. BGB (earlier, the general law of work contracts—§§ 631 et seq.—applied). In practice, construction projects rely on standard terms—above all VOB/B—which functions as widely used general conditions, not as legislation, but operates as a quasi-standard because of its balanced drafting. In public procurement, incorporating VOB/B is common and in many settings required, so public employers typically attach VOB/B to building contracts. This yields a dual architecture: the BGB supplies the mandatory framework (good faith, § 242; change in circumstances, § 313), while VOB/B delivers granular, practice-oriented clauses. Jus cogens in the sense of public international law influences German contract law indirectly via ordre public: terms violating fundamental principles or good morals are void under § 138 BGB; corruption-tainted or rights-violating bargains fail on public-policy grounds (Shelton, 2011). Germany is dualist: treaties operate domestically only if transformed by statute or published with the force of law; at the same time, Article 25 of the Basic Law incorporates general rules of international law (custom) into the domestic order. Awards or foreign judgments contrary to jus cogens will not be enforced (Shelton, 2011).

FIDIC in practice. Domestically, VOB/B predominates; FIDIC is primarily relevant to outbound projects by German contractors. Where German law governs, parties often tailor FIDIC to BGB concepts; the Engineer's role is mapped to the statutory change mechanism (§ 650b BGB) or contract-defined project management. DA(B)B clauses are less familiar to German litigation culture but can be enforced as contractually agreed interim determinations pending arbitration (Seppälä, 2023; Seppälä, 2024). Mandatory BGB rules prevail over conflicting FIDIC text (e.g., no exclusion of liability for intent, § 276(3) BGB).

Protection mechanisms (ISDS, courts, fora). Construction disputes are litigated in the ordinary civil courts (Landgerichte) or arbitrated. Germany is arbitration-friendly: §§ 1025–1066 ZPO reflect the UNCITRAL Model Law; the New York Convention governs recognition with narrow public-policy defences (Sloss, 2009). Early fact-finding through independent evidence proceedings (§§ 485 et seq. ZPO) is common. Internationally, German investors rely on BITs and the ICSID Convention; domestically, ICSID awards are recognised without merits review, consistent with Article 54 (Sloss, 2009).

Doctrinal basis. Treaties bind in Germany through legislative implementation; general international law applies ex Article 25 of the Basic Law. EU law shapes procurement and competition frameworks, projecting transparency and equal-treatment norms into construction contracting. Soft-law instruments may guide arbitral interpretation if chosen.

Sanctions, force majeure, hardship. German law addresses impossibility (§ 275 BGB) and disturbance of the basis of the transaction (§ 313 BGB). "Force majeure" is judge-made: external, unforeseeable, unavoidable events. Supervening illegality (e.g., sanctions) may trigger § 275; severe economic distortion may justify adaptation/termination under § 313. VOB/B contains tailored time-extension and termination tools.

Role of the State. The State typically contracts under private law; sovereign immunity does not bar claims arising from commercial acts. Public-law review exists in procurement and permitting. Unilateral administrative

variation of private contracts is limited to statutory/contractual bases; pacta sunt servanda applies to public entities.

Interpretation and application. Sections 133 and 157 BGB prioritise true common intent and good faith; German courts may depart from literal wording where necessary and control standard terms under § 307 BGB to prevent undue imbalance.

Sources of contract law and peremptory norms (jus cogens). Across Latin America, civil-law systems codify contract rules in civil and commercial codes, while administrative law exerts strong influence over public-works arrangements. A structural divide persists between private contracts (civil/commercial) and administrative contracts (state–private, governed by special public-law rules). Fundamental sources include constitutions (entrenching, in many states, economic public order, the social function of contract, and the supremacy of the public interest), local civil codes, and sectoral public-procurement statutes for state contracts. In Mexico, Colombia, and Peru, procurement statutes and regulations prescribe mandatory procedures and clauses for state contracting; such provisions are matters of public order and override party autonomy. French-derived doctrines—unilateral modification and unilateral termination for public interest—are characteristic, coupled with a duty to indemnify the affected contractor. Many Latin-American constitutions accord treaties supra-statutory rank, and some (e.g., Argentina) confer constitutional hierarchy on core human-rights treaties; international jus cogens thus filters directly into domestic law. Construction agreements implicating human-rights violations (forced labour, severe environmental harm) would be invalidated not only by local law but also by constitutional/international mandates. Transnational public policy surfaces in investment arbitration to police corruption or fraud, with potential non-enforcement/annulment of awards (Calvo, 1868). Calvo's nineteenth-century doctrine—foreigners should litigate under local law in local courts without diplomatic protection—long shaped constitutions and statutes, tempering international adjudication in favour of sovereignty (Calvo, 1868). Today, BITs and ISDS have diluted strict Calvo, yet an instinct for local solutions and jurisdictional sovereignty remains.

FIDIC application. FIDIC standard forms have spread as international best practice. Historically, domestic general conditions governed, but MDB financing (World Bank, IADB, CAF) promotes FIDIC on large schemes. Red/Yellow/Silver Books are increasingly adopted, with careful localisation. The Engineer's neutral-administrator role is being grafted into systems where a resident supervisor traditionally represents the owner. DAB/DAAB decisions, provisionally binding under FIDIC, are new to many jurisdictions yet now appear in major concessions and PPPs, typically followed by international arbitration for confirmation. Legal-language alignment is key; certain FIDIC clauses must be adapted to public-order ceilings on unilateral changes and to termination-for-convenience by the administration, usually inserted as Particular Conditions with compensation.

Protection against breach (ISDS, local remedies, fora). Contractors avail themselves of domestic courts (interim relief, expedited tracks) and increasingly of arbitration; several states mandate arbitration in public procurement. The 1958 New York Convention applies region-wide; the 1975 Panama Convention further facilitates recognition. Cross-border construction contracts commonly stipulate ICC/UNCITRAL/ICSID arbitration; ISDS remains central for concessions/PPPs notwithstanding episodic withdrawals from ICSID by some states. Administrative-law remedies persist against unilateral acts (termination, fines) and often require prior administrative claim.

Doctrinal basis for treaties. Many states follow moderated monism: ratified treaties form part of domestic law (sometimes via a "block of constitutionality"). Courts may directly apply treaty norms (e.g., prior consultation with indigenous communities). Arbitration clauses with the state are treated as valid waivers of jurisdictional privilege. The economic-financial equilibrium principle aligns with FET-type protections; police-powers doctrine and necessity clauses delineate the state's regulatory space.

Sanctions, force majeure, hardship. Civil-law imprevisión (hardship) authorises judicial adaptation/termination where extraordinary, unforeseeable events upend contractual equivalence; force majeure is codified and excuses liability and delays. International sanctions are treated as supervening illegality or as grounds for adjustment; contracts increasingly

include express sanctions clauses and suspension mechanisms. Public-works "variation" regimes permit ordered changes up to statutory percentages with time/price adjustments.

Role of the State. The State wields exceptional clauses (ius variandi/rescindendi) yet owes compensation to preserve equilibrium. Modern PPP statutes (Mexico, Chile, Brazil) regulate prerogatives and safeguards (arbitration, technical boards, insurance) to enhance predictability. Execution immunity for public assets endures; enforcement targets commercial assets/budgetary processes.

Interpretation. Latin-American adjudication prioritises common intent, objective good faith, and causa/finality; extrinsic evidence is admissible; statutory default rules fill gaps. The interpretive aim is to preserve the contract and restore balance, resisting outcomes that offend good faith.

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

Law of international treaties.

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Bridging Dispute Mechanisms in Cross-Border Construction Deals: From DAAB Decisions to Enforceable Awards

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The chapter delineates the normative gap between binding treaty instruments—the Washington Convention 1965 and the New York Convention 1958—and the soft-law framework composed of the UNCITRAL Arbitration Rules and the 2017 FIDIC (amended 2022) standards, underscoring the pivotal role of Dispute Avoidance/Adjudication Boards (DAAB). ICSID caseload data and judgments from Indian, South-African and Swiss courts attest to the mandatory nature of DAAB in multi-tier clauses. Public-order frictions surface in the Nord Stream 2 arbitration, while the 2022 pipeline sabotage highlights infrastructure vulnerability. Using comparative, doctrinal and statistical methods, the study advances a three-tier protection model: immediate incorporation of ICC Expedited Rules, medium-term recognition of international construction contracts as investments per se, and long-term adoption of a BRICS/UNCITRAL model act on cross-border construction. Findings foster legal predictability and alignment between international and domestic regimes.

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