

# International Construction Law

## Academic Monograph



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DOI: 10.64457/icl.en.ch11

### ***Balancing Risk and Enforcement in Cross-Border Construction: A Common-Law Perspective on Contract and Dispute Resolution***

Recommended citation: Dmitry Semenov Belkin. *Balancing Risk and Enforcement in Cross-Border Construction: A Common-Law Perspective on Contract and Dispute Resolution*. In: *International Construction Law*. Moscow: Slavic Greek Latin Academy, 2025. DOI: 10.64457/icl.en.ch11.

*Cross-border infrastructure contracts increasingly shape diplomatic leverage within an emerging multipolar order. The chapter applies comparative legal analysis of the United Nations Convention on Contracts for the International Sale of Goods 1980, the UNIDROIT Principles, FIDIC standard forms and the Foreign Corrupt Practices Act. Conflicts of law, jurisdictional ambiguities and reputational risks are mapped, showing how standardised drafting and sustained consular engagement mitigate them. Ten pragmatic diplomatic mechanisms—from multilateral bank coordination to a coherent global*

*infrastructure brand—are distilled to reinforce predictability and investor confidence. Integrating contract doctrine with external-relations law, the study evidences diplomacy, arbitration practice and compliance frameworks jointly reducing legal uncertainty and catalysing cooperation.*

Cross-border infrastructure contracts increasingly shape diplomatic leverage within an emerging multipolar order. The chapter applies comparative legal analysis of the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG), the UNIDROIT Principles, FIDIC standard forms and the U.S. Foreign Corrupt Practices Act (FCPA). Conflicts of law, jurisdictional ambiguities and reputational risks are identified, showing how standardised contract terms and sustained consular engagement mitigate them. Ten pragmatic diplomatic mechanisms—from multilateral bank coordination to a coherent global infrastructure brand—are distilled to reinforce predictability and investor confidence. Integrating contract doctrine with external-relations law, the study evidences that diplomacy, arbitral practice and compliance frameworks jointly reduce legal uncertainty and catalyse cooperation.

International construction projects, amid accelerating integration processes in an increasingly multipolar world, acquire strategic significance by substantially influencing both the economic development of states and the strengthening of their diplomatic relations. The implementation of large infrastructure projects—oil and gas pipelines, ports, transport networks, energy facilities—is predominantly carried out by transnational construction companies, which inevitably affects the interests of multiple states and requires coordination at the level of international law.

International law serves as a key instrument in regulating cross-border construction contracts, providing the legal foundation for interaction between states and transnational companies. A study by Ya. A. Anosov (2022) demonstrates that integration processes within the EAEU facilitate improvements in the legal regulation of international construction contracts, which is important for contemporary cross-border projects. Furthermore, research by D. I. Imamova (2023) confirms that the concept of an “international construction contract” remains insufficiently defined in legislation, creating difficulties in dispute resolution and necessitating further

refinement of legal mechanisms in this field. In the context of building a multipolar world, there is a growing need to harmonise legal norms and standards in the construction sector, which contributes to the harmonisation of international relations and the reduction of legal uncertainty.

International agreements such as the 1980 CISG and the UNIDROIT Principles of International Commercial Contracts play a decisive role in forming the global legal infrastructure for regulating international construction contracts. These instruments aim to establish universal standards in cross-border trade and contractual relations, simplifying the process of concluding contracts between parties from different jurisdictions. The significance of these documents lies in their ability to adapt to the dynamic conditions of the international construction market, ensuring that legal regulation remains up-to-date and flexible. Moreover, these agreements contribute not only to the harmonisation of legal norms but also to a significant reduction of legal uncertainty when concluding construction contracts between parties from different states. Standardising provisions on the parties' rights and obligations, procedural requirements, and consequences of contractual breaches minimises potential conflicts, ensures predictability of contract performance and strengthens trust among participants of international construction projects. As V. N. Zhadan notes in his study, such agreements decrease the likelihood of disagreements at the level of state authorities and foster mutual understanding between countries, which in turn promotes the development of international cooperation in construction and the strengthening of stable interstate relations. It should be noted that an important aspect of these international instruments is their impact on diplomatic relations between states, since they create a legal basis for resolving potential disputes, including those related to cross-border construction projects.

Despite a considerable number of studies devoted to the law of external relations as a branch of international law (including its sub-branches of diplomatic and consular law), the need to further examine their influence on the practical aspects of international economic relations remains pressing. In the context of executing cross-border construction projects, the role of diplomatic and consular mechanisms aimed at protecting the rights of citizens and legal entities abroad is increasing. Such measures are particularly

important for minimising risks and preventing potential conflicts in the international legal environment.

The dissertation of G. H. Y. Al-Faki thoroughly elucidates mechanisms for enhancing mutual understanding between states through diplomatic protection and consular assistance for citizens abroad. Diplomatic protection and consular support help elevate the level of responsibility of host states towards foreign investors and contractors, thereby creating a favourable environment for conducting cross-border business. Al-Faki's study emphasises that diplomatic measures can significantly improve interaction between parties to international contracts, affecting the legal and economic conditions of their performance. The researcher concludes that diplomatic and consular measures, as part of a comprehensive international legal system, have the potential to strengthen diplomatic relations between countries. Effective use of these measures in the context of cross-border construction will not only protect participants' rights but also help maintain stable and predictable international relations, which is an important factor in regulating construction contracts between states.

Moreover, research by H. Besaiso and co-authors shows that international arbitrators pay considerable attention to both contractual provisions and commercial norms, indicating the need for a comprehensive approach to dispute resolution in international construction. As J. Fitzmaurice correctly notes, such approaches strengthen legal stability and uphold the interests of all parties. The importance of arbitration mechanisms is also examined in the research of J. Jenkins, which underscores the role of arbitration as the primary method of dispute resolution in international construction projects. Additionally, according to the International Bar Association (IBA), robust compliance standards create a foundation for increasing trust and transparency between parties to international contracts, which is especially crucial in large infrastructure projects.

Modern studies indicate the need to bolster the role of Russian diplomatic and consular institutions in an era of heightened international political tension, as they provide legal protection for citizens and organisations involved in cross-border construction contracts and safeguard Russia's national interests abroad. Contemporary scholarship points to the need to

strengthen diplomatic and consular mechanisms in regulating cross-border projects, as evidenced by developments in diplomatic law towards greater standardisation and codification. It is telling that A. H. Abashidze, in his textbook, devotes significant attention to issues of codifying diplomatic norms. Historical evolution of the legal foundations of external relations—from the Vienna Regulation of 1815 to the Vienna Conventions of 1961, 1963 and 1975—confirms the necessity of further codification of norms. These instruments established a solid legal foundation for the diplomatic and consular protection of participants in cross-border projects, which greatly improved inter-state cooperation.

Regulating cross-border construction contracts through diplomatic and consular mechanisms requires clear coordination at all levels. Experience shows that the effectiveness of such mechanisms is directly linked to the codification of the legal status of consular and diplomatic institutions. This is confirmed by researchers who note the significance of diplomatic support in creating favourable conditions for international cooperation.

Awareness of the role of state bodies and officials in implementing international contracts also plays a key role. As V. A. Zorin rightly asserts, clear allocation of responsibilities among participants in the diplomatic process contributes to increased efficiency of interaction between countries involved in cross-border projects. This minimises legal conflicts and strengthens trust between parties, which is especially important in the context of global infrastructure initiatives.

In regulating cross-border construction contracts, protecting state sovereignty and national interests is of particular importance for Russia. Research by I. Yerniyazov (2023) demonstrates that synergy between international construction contracts and investment treaties helps harmonise commercial and public interests, which is a critical aspect of modern foreign policy strategy. This is directly tied to the need for diplomatic support and oversight of cross-border construction projects, which serve not only as commercial undertakings but also as tools for strengthening national security and the country's prestige on the world stage. Successful cooperation between state agencies and subjects of international law is a key factor for the effective execution of such projects, which often require coordinated efforts not only

domestically but also at the inter-state level, implying close coordination with various international organisations and sometimes unfriendly actors. This conclusion is supported by V. N. Zhadan, who writes that to ensure stability in international relations and protect national interests, Russia must actively engage with European international organisations despite existing problems and contradictions (Zhadan, 2016).

State sovereignty necessitates control over foreign economic relations, including infrastructure projects that often attract foreign investors and contractors. The implementation of such projects entails not only legal support but also diplomatic coordination to protect the interests of Russian companies abroad and ensure their legal security. This conclusion is corroborated by V. A. Nikonov, who notes that maintaining national sovereignty and protecting the country's economic interests require creating legal conditions that minimise foreign interference in key aspects of cross-border projects (Nikonov, 2014).

To achieve these goals, Russia is developing a system of diplomatic support aimed at accompanying large infrastructure projects outside its national jurisdiction. Diplomatic protection not only minimises the risks of legal and economic conflicts but also strengthens the state's sovereignty through effective regulation of cross-border contractual relations. In this context, studies by M. K. Gunar confirm that such coordination between diplomatic departments and commercial entities contributes to the development of long-term cooperation with international partners, while simultaneously protecting national interests (Gunar, 2015).

The strategic orientation of the Russian Federation's foreign policy course is enshrined in a series of Presidential decrees. Diplomatic support for cross-border construction contracts creates conditions for promoting Russian interests in strategically important areas such as energy, transport, and defense infrastructure. These projects not only bolster Russia's economic position in the global market but also form the basis for establishing long-term partnerships with foreign states. Diplomatic oversight ensures the resilience of such projects, strengthens Russia's international standing, and maintains a balance between global integration and national priorities.

## Ten mechanisms for strategically promoting national construction companies through consular and diplomatic channels

As a result of this study, ten mechanisms have been formulated to support the expansion of national construction companies at the international level. These mechanisms can be recommended to the Russian Ministry of Foreign Affairs to improve the practices of Russian diplomatic missions and consulates abroad:

1. Active support via banks with state participation. This refers not so much to domestic banks, which already actively finance Russian overseas initiatives and companies in international construction projects, but to targeted efforts by diplomatic services to engage with the BRICS New Development Bank (NDB). The primary task of foreign missions should be to assist Russian construction companies in securing participation in every construction tender financed through the NDB. As of January 2025, out of 122 NDB projects (excluding projects within Russia), Russian contractors were not listed in any tender, even though Russia contributed one-fifth of the NDB's capital.

2. Refocusing bilateral forums and initiatives to overseas venues instead of domestic ones. Russian consular and diplomatic efforts to support national construction companies abroad are mainly concentrated on organising forums and business meetings in Russia, where representatives of African and Latin American countries are invited. This approach limits opportunities for direct engagement with local authorities and businesses on their home turf, reducing the effectiveness of promoting Russian firms in international construction projects. In contrast, China actively utilises bilateral forum formats such as FOCAC (Forum on China–Africa Cooperation) and the China–CELAC Forum, which are frequently held in African and Latin American countries. This allows Chinese diplomacy to forge closer ties with local partners, swiftly negotiate contract conditions, and ensure support for its companies in competitive environments.

3. Emphasis on a single large-scale and recognisable global infrastructure initiative. Russia, as the world's largest country and a key Eurasian transit hub, should create a unified global infrastructure brand, analogous to China's "Belt

and Road” initiative. In this regard, the proposed “Eurasian Infrastructure Corridor” (EIC) would integrate projects such as the North–South Transport Corridor (connecting Russia–Iran–India–Persian Gulf), the modernisation of the Trans-Siberian Railway, railways in Mongolia and routes linking Russia–China–Central Asia, as well as the development of the Northern Sea Route as an alternative to the Suez Canal and the Northwest Passage between Greenland and Canada promoted by the USA.

4. Establishing a coordination system for sending Russian engineers and managers to international projects. The depreciation of the ruble over recent decades has made Russian specialists more competitive in the global market: whereas in the early 2000s their salaries exceeded those of Chinese counterparts, by the 2010s they were on par, and after the 2020s they became half as high. This creates conditions for the organised involvement of Russian engineers in overseas construction projects with subsequent repatriation of capital. However, without institutional support, this process risks turning into uncontrolled emigration. Unlike China, where consulates coordinate the movement of labour and equipment, Russia lacks a centralised diplomatic structure for such tasks. The MFA must simplify visa procedures, protect labor rights, and facilitate engagement with international contractors so that Russian specialists work abroad in the national interest rather than leaving the country permanently.

5. Diplomatic guarantees for long-term project support. For foreign clients, a contractor’s country of origin plays a key role in building trust, and instances of non-performance by some Russian companies undermine the reputation of the entire industry abroad. At the same time, self-regulatory organisations (SROs), despite mandatory member contributions, do not assume responsibility for finding substitute contractors, completing projects, or compensating damages, which prevents rapid mitigation of negative outcomes. The Russian MFA should develop a mechanism of transparent guarantees for the long-term servicing and support of completed projects, and diplomatic missions should strive to include such conditions in international agreements and tender requirements. This would enhance the competitiveness of Russian companies and strengthen their reputation in the global market.



6. A system for targeted recruitment of foreign students for Russia's strategic projects abroad. To ensure staffing for Russian infrastructure initiatives overseas, it is necessary to link the education of foreign specialists in Russian universities to specific projects where Russia has strategic interests. The MFA should implement a mechanism whereby diplomatic missions promote specialised educational programs and coordinate student intake based on the needs of particular sectors. For example, for mining projects in South Africa – attract students to geology and exploration programs (at the Russian State Geological Prospecting University), or for constructing aviation plants and transport infrastructure in Indonesia – programs at the Moscow Aviation Institute. This approach will train personnel oriented towards Russian technologies, increasing the competitiveness of domestic companies when their tenders are considered abroad. Notably, this strategy is already employed by China: with the involvement of its diplomatic missions, it organises professional courses and internships for local engineers and managers in China, including government scholarship programs.

7. Institutional support for state-owned construction corporations. At the government level, the approach to promoting Russian state-owned construction companies abroad should be reconsidered, given that short-sighted management decisions can lead to the dissolution of unique organisations with global reputations (e.g. the disbanding of Spetsstroy Russia in 2016). This experience contrasts with China's policy, which actively supports its "construction giants" like CSCEC by facilitating the opening of their foreign branches, granting benefits, and establishing close ties with foreign governments and business communities. If Russia reestablishes large state contractors capable of handling major infrastructure projects (such as building seaports, cosmodromes, nuclear energy facilities) and provides them with systematic diplomatic support, national companies will be able to compete more effectively on the global construction market and enhance the country's image.

8. Contractual assurances and non-interference in internal affairs. The research revealed that certain public statements by officials of Russian diplomatic and consular missions in strategically important regions may contradict Russia's official stance of non-interference in sovereign nations' domestic politics. Although this principle is formally proclaimed, frequent

comparisons of Russian diplomacy with Western approaches create an impression among host countries that Russia is unwilling to engage with any legitimate government when implementing large infrastructure and energy projects. This complicates the signing of long-term contracts and leads to reduced competitiveness of Russian companies. By contrast, China's diplomatic practice consistently upholds the principle of non-interference at all levels, allowing Chinese firms to cooperate freely with different political regimes and access strategic assets. In light of these observations, it is advisable for the Russian MFA to ensure uniformity in public statements and actions under the declared non-interference principle, as well as to enshrine corresponding contractual guarantees that promote transparency and predictability of conditions for Russian companies' participation in long-term international projects.

9. Focusing on bundled deals to promote national companies. Case studies show that one of the most effective tools for promoting national construction companies in international markets is offering comprehensive package deals. In such packages, phases of financing, design, materials supply, local personnel training, and subsequent facility maintenance are combined into a single contract. Diplomatic and consular missions can act as coordinators in concluding such agreements, helping to bundle commercial offers from various Russian entities into an attractive comprehensive package for the client.

10. Diplomatic lobbying in international construction organisations. For the strategic promotion of Russian construction companies on the international stage, active participation of Russia's consular and diplomatic representatives in the governing bodies of international construction organizations such as FIDIC is recommended. Given that four of the five BRICS founding countries (Brazil, India, China, and South Africa) are already members of FIDIC, Russian diplomatic channels can effectively coordinate positions with BRICS partners to unify tender documentation and simplify access to financing through the NDB. This would allow Russian construction companies to influence international standards and tender conditions, tailoring them to national interests and advancing domestic technologies. Creating Russian working groups and expert committees within FIDIC via diplomatic initiatives would raise the prestige of Russian contractors, protect their

interests in the global market, and strengthen Russia's position as a key player in international infrastructure projects.

### **Note on the publication of the main research results**

Academic specialty: 5.1.5. International legal studies.

Law of external relations.

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