

International Construction Law
Academic Monograph



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***Designing Human-Rights-Compliant Construction Contracts: Practical
Tools for Risk Allocation and Dispute Avoidance***

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International Construction Contract Law stands at the crossroads of investment protection and human-rights compliance. The chapter maps normative sources — Universal Declaration of Human Rights, ICESCR, UN Guiding Principles, ILO Conventions and FIDIC standards — then compares doctrinal views and selected ICSID jurisprudence. Findings show that embedding due-diligence clauses, anti-corruption commitments and labour-environment safeguards directly in construction contracts heightens legal certainty, mitigates social and ecological harm and supports transparent risk

allocation. Cultural and institutional variables shaping enforcement across jurisdictions are highlighted. Final recommendations propose contract-based human-rights impact assessment, joint monitoring committees and graduated penalties, advancing a harmonised framework for large-scale cross-border infrastructure.

In today's globally integrated economy, the protection of human rights is an increasingly important concern both in the public sphere and in private contractual relationships. International construction contract law (ICCL) is a cross-disciplinary field that seeks to develop effective contractual mechanisms to ensure compliance with key standards – from labor conditions to community interests and environmental protection. A number of studies emphasize that clearly delineating the rights and obligations of all project participants in construction agreements is essential to prevent abuses and strengthen guarantees for workers and affected populations. Combating corruption is highlighted as a central factor in this context: as I. I. Kuchеров notes, anti-corruption measures directly impact economic stability, environmental preservation and poverty reduction. Embedding anti-corruption clauses in construction contracts therefore helps prevent violations and expands the protection of labor and social rights. According to L. V. Ulyashina, the effectiveness of international human-rights norms largely depends on their implementation in national legal systems. Consequently, the process of adapting international obligations (such as the UN Guiding Principles) into domestic law is crucial for the actual protection of fundamental labor, environmental and social rights in the construction sector.

The objective of this chapter is to identify and analyze how international human-rights standards are integrated into ICCL and to assess the legal and institutional obstacles that impede their application in transnational construction projects. We examine the relevant international framework (UDHR, ICESCR, the UN Guiding Principles, ILO conventions), review doctrinal approaches and comparative legal studies, analyze selected ICSID cases and international instruments, and highlight the gaps and conflicts that arise. It is hypothesized that systematically embedding universal human-rights provisions – including due diligence and anti-corruption commitments – in construction contracts can enhance legal protection and reduce

violations in labor, environmental and social domains. These contractual provisions should be backed by both domestic legislation and States' obligations under universal and regional human-rights treaties, thereby strengthening law enforcement in large-scale projects.

Key human-rights guarantees are enshrined in universal legal instruments. The Universal Declaration of Human Rights (1948) secures fundamental economic and social rights – for example, the right to work (Art. 23) and the right to an adequate standard of living that ensures health and well-being (Art. 25). These principles were later codified in the International Covenant on Economic, Social and Cultural Rights (1966), which obliges States to ensure fair labor conditions and social welfare. Of particular relevance to the construction industry are ILO Convention No. 155 (1981) on occupational safety and health and the UN Guiding Principles on Business and Human Rights, which articulate corporate accountability for respecting human and labor rights. Collectively, these international legal acts provide a unified framework for regulating large projects and act as tools to safeguard labor, environmental and social norms globally.

At the national level, countries adapt these principles to their legal systems. For instance, the Russian Constitution declares human and civil rights to be of the highest value and establishes that generally recognized principles of international law and international agreements are an integral part of its legal system with priority over domestic law. Such provisions create a legal basis for incorporating international standards – including rights-based obligations – into national regulation. Scholars also note that implementing human-rights and environmental standards in global supply chains significantly increases business transparency.

Despite this normative framework, significant practical and institutional challenges remain. Many national systems lack effective enforcement mechanisms for these norms, especially in cross-border projects. In such cases, international human-rights bodies gain importance. For example, the European Court of Human Rights or the UN Human Rights Committee can intervene when domestic institutions are unable to protect fundamental rights.

Large infrastructure projects often give rise to human-rights concerns in host communities. Forced resettlement without adequate compensation, violations of fundamental labor rights, and environmental harm are frequent sources of disputes. In this context, embedding human-rights due-diligence obligations in contract documentation can significantly reduce the likelihood of legal claims and help ensure respect for core human rights.

International investment disputes illustrate how construction contracts can implicate human rights. In *Aguas del Tunari S.A. v. Republic of Bolivia* (ICSID Case ARB/02/3), the tribunal examined a water concession contract in Cochabamba. The investor claimed that government actions amounted to an effective expropriation of its investment. The tribunal emphasized Bolivia's dual duty: ensuring access to water for its citizens while honoring its investment commitments. This case highlights that a lack of explicit contractual safeguards for local communities and clear risk allocation can lead to protracted disputes. It underscores the importance of proactively including social and environmental protections – such as community consultations and environmental impact provisions – in large infrastructure contracts.

In *Dirk Herzig (Insolvency Administrator of Unionmatex) v. Turkmenistan* (ICSID Case ARB/18/35), a German investor claimed that State interference made it impossible to complete a construction project. The tribunal noted that when an investor enters insolvency and depends on third-party financing, measures like security-for-costs may become necessary to protect both parties' interests. It also emphasized that contracts should contain clauses aligned with universal human-rights standards (for example, references to the UDHR and the UNGP) and ensure their implementation in practice. This case demonstrates that even procedural issues – such as arbitration financing – can implicate broader human-rights considerations in large projects.

Muhammet Çap & Sehil İnşaat v. Turkmenistan (ICSID Case ARB/12/6) involved multiple construction contracts. The claimant alleged illegal expropriation of assets and denial of due legal process. While the tribunal found that contract terminations and asset seizures were not direct forced expropriations, it highlighted several human-rights-related issues: delays

in wage payments, disputes over workforce mobilization, and restrictive measures by authorities, reflecting systemic violations of workers' rights. Although the claim was framed under investment law, the claimants raised concerns linked to human rights (e.g., timely payment of wages, freedom of movement). This case underscores that potential human-rights infringements (such as failure to pay fair wages) can accompany construction disputes and require detailed contractual safeguards.

In *Quiborax S.A. v. Plurinational State of Bolivia* (ICSID Case ARB/06/2), the claimants challenged the nationalization of their mining concessions. The tribunal found that Bolivia violated the fair-and-equitable treatment standard by unlawfully expropriating the concessions without adequate compensation. This case demonstrates that the absence of explicit contractual guarantees (such as transparency, non-discrimination and remedy procedures) can lead to serious international conflicts. Even disputes not initially about human rights can implicate fundamental legal guarantees. The Quiborax award confirms that embedding human-rights-related clauses (for example, referencing the ICCPR or the UNGP) in contracts could help prevent such conflicts.

The *Salini Costruttori S.p.A. v. Kingdom of Morocco* case (ICSID Case ARB/00/4) provided an important precedent. The tribunal held that large construction contracts for socially significant infrastructure projects may qualify as protected investments. This implies that contractors' rights can be defended under investment treaties, even if the contracting party is a state-owned enterprise. In practical terms, this means that states can be held responsible for violations affecting a foreign contractor, including labor or environmental standards. The Salini ruling thus indicates that state-involved projects must uphold the same human-rights norms (e.g. workplace safety, prohibition of forced labor) as private ones.

In *SAUR International S.A. v. Republic of Argentina* (ICSID Case ARB/04/4), the dispute concerned a water and sanitation concession. The right to water is recognized as a fundamental human right in multiple international instruments. The tribunal examined to what extent Argentine measures (such as controlled water tariffs during an economic crisis) affected the investor's property interests and indirectly the

population's access to safe water. The SAUR award highlights that human rights can be protected indirectly in infrastructure projects: by ensuring a stable execution of a water contract, a state upholds the population's human-rights interests. It shows that when drafting and executing long-term infrastructure contracts, one must consider not only financial terms but also the potential impact on internationally recognized human rights.

These examples underline the need for mutual adaptation of legal systems and the mandatory inclusion of human-rights provisions in construction contracts. Effective regulation should be based on recognized international documents (such as the UNGP) while also accounting for the particularities of domestic systems. Comparative analysis shows that political and cultural factors shape implementation. For instance, Israel explicitly requires businesses to respect international human-rights obligations even in areas of disputed sovereignty. China participates in UN human-rights review processes but tends to implement only select standards, especially regarding civil and political rights. According to Babaei and Torabi, Iran's legal system integrates international human-rights principles alongside national interests and religious traditions, allowing some flexibility but also creating potential misalignments with universal norms.

Russian scholarship emphasizes philosophical and doctrinal foundations. A. N. Savinkov draws on Fichte's theory of self-limitation to justify the inclusion of international standards in domestic law. I. V. Lavrenyak examines EPC/M contracts in a comparative context and stresses the need to protect the interests of all parties, including ensuring workers' rights. Both approaches highlight that legal unification and contract terms must be developed with due consideration of social and labor protections.

In sum, there is a pressing need to strengthen the legal basis for rights protection in ICCL. Harmonizing national laws with contractual and international obligations, complying with UNGP and other treaties, and coordinating global monitoring mechanisms (such as the Universal Periodic Review and UN special procedures) are critical steps. Given

divergent interpretations of human-rights norms, contracts should explicitly incorporate international human-rights instruments, and a structured monitoring regime should be established. This legal model accommodates the dynamics of a multipolar world and reconciles the interests of states, companies and local communities.

Experience shows that even in countries with different political and legal systems, universal human-rights standards can be progressively implemented. Anti-corruption rules and supply-chain controls, according to L. Klee, have a positive effect on worker safety and rights compliance in construction projects. Such practices should be scaled up through multilateral cooperation and support from international organizations (e.g. the UN). International arbitration also plays a key role in balancing interests: as M. A. Sapozhnikova and M. R. Khusainova note, arbitral tribunals help mediate between investors and community interests in infrastructure disputes. Ultimately, further development of construction law depends on the ability to identify and correct regulatory gaps in a timely manner. Using unified approaches endorsed by the international community reduces conflict risks and builds trust among market participants.

Economic and political objectives of states must be reconciled with human-rights obligations. Developing a national policy that consistently incorporates international commitments in each new infrastructure project provides a solid foundation for combining commercial success with protection of fundamental rights. From a practical perspective, legal instruments must be constantly updated: a comprehensive approach – covering anti-corruption bans, due diligence and corporate accountability for violations of labor, environmental and social commitments – will ensure robust human-rights protection in the construction sector. The practical importance of this approach is confirmed by analyses of turnkey FIDIC contracts (Silver Book): compensation mechanisms contained there can strengthen protection of the parties' property interests and rights in international construction projects.

Based on the above analysis, we propose the following practical measures to improve the protection of human rights in international construction contracts:

1. Human-rights impact assessment. Include a clause obligating the contractor to conduct regular human-rights due-diligence audits of the project (in line with the UN Guiding Principles).
2. Linkage to ILO standards. Add explicit references in the contract to ILO Conventions Nos. 155, 29 and 87, establishing strict requirements for labor safety, prohibiting forced labor and ensuring freedom of association.
3. Monitoring and dispute mechanisms. Set up a joint committee (owner, contractor, independent expert) for large projects to monitor compliance with human-rights and anti-corruption measures, with the authority to trigger mandatory mediation or arbitration in case of violations.
4. Liability and penalties. Provide for contractual penalties (e.g. 3% of contract value) for systemic human-rights breaches and require the contractor to remedy any violations under independent audit supervision.
5. International and local norms. Specify that the contractor must comply with both international instruments (including the UN Guiding Principles) and national human-rights laws; any failure to meet these standards should be deemed a material breach of contract.

Including these measures directly in the contract text will significantly enhance the enforcement of human rights in the construction sector, in line with existing ILO and UN standards.

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