

International Construction Law
Academic Monograph



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***Adjudicating Infrastructure Construction Disputes in Polar Regions:
Contractual Risk Allocation and Enforcement Mechanisms***

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The chapter analyses legal frameworks for dispute settlement in construction contracts for polar infrastructure projects amid growing Russian–Indian involvement. It first contrasts international and domestic regimes governing the Arctic and Antarctic, highlighting the application of UNCLOS and principles of territorial integrity. It then explores India’s economic motives and diplomatic tools, including the ‘Programme-2030’ and participation in the Arctic Council. Five archetypes of conflict—investor-state, maritime corridors, research infrastructure, construction obligations, resource

extraction and indigenous rights—are identified. The study formulates criteria to adapt international construction contract law and labour guarantees to extreme climates, enhancing project resilience and mitigating sanctions and geopolitical risks while stressing worker protection and environmental safety.

Dispute settlement in construction contracts relating to infrastructure projects in polar regions has become increasingly salient in light of international-law challenges that concern not only territorial matters but also labour relations and social security for workers employed under extreme conditions. Polar regions such as the Arctic and the Antarctic encompass vast areas whose legal status is shaped by a combination of treaty law, custom, and decisions of international bodies. The heterogeneity of legal regimes requires attention to both State territories and international spaces governed by special regimes. In a harsh climate, occupational safety, social insurance, and preventive security measures acquire central importance, which presupposes coordination among States, organisations, and private actors within the framework of International Construction Contract Law (ICCL).

The paucity of specialised multilateral instruments providing comprehensive protection for workers in extreme polar environments enhances the importance of ICCL's contractual and procedural devices. Over recent decades, increased economic activity related to resource development and transport infrastructure has revealed the need for flexible yet legally robust mechanisms for dispute resolution and risk allocation capable of accommodating the territorial, environmental, and social particularities of the Arctic and the Antarctic. Polar law has crystallised as an autonomous discipline analysing the interaction of global, regional, and national regimes, with a particular emphasis on the rights of indigenous peoples and on the growing role of private law in regulating complex project relationships (Tanaka, Johnstone, & Ulfbeck, 2023).

Attention to the polar regions is growing not only among Arctic coastal States but also among non-Arctic countries. By adopting its Arctic Policy in March 2022, India strengthened its institutionalised presence in Arctic discourse through participation in international fora and scientific programmes, aligning research and infrastructure initiatives with foreign-policy and

economic interests. Scholarly analysis distinguishes discursive, structural, institutional, and moral dimensions through which international discourse shapes India's Arctic agenda: diplomatic statements and participation in the Arctic Council; enhancement of domestic research and icebreaking capabilities; engagement in organisations and norm-formation; and an ethical platform focused on the rights of indigenous peoples and environmental protection (Hua, 2023). Given its large population and cost-competitive labour force, India is objectively oriented towards participation in Northern infrastructure projects, which requires particular attention to the procedural safeguards of construction contracts and to dispute-resolution regimes.

The legal framework of the polar regions rests on a combination of treaty law, custom, and general principles. The United Nations Convention on the Law of the Sea (UNCLOS) provides the key algorithms for delimiting the continental shelf and exclusive economic zones and offers international mechanisms for resolving maritime disputes, including a specialised tribunal and arbitral procedures that ensure peaceful settlement and predictability in the legal status of maritime spaces (Churchill, Lowe, & Sander, 2022). For Arctic infrastructure projects this implies the need to coordinate the law-of-the-sea regimes with environmental requirements and with the contractual obligations of construction participants.

Within the United Nations legal order, the principles of territorial integrity, sovereign equality, and the peaceful settlement of disputes have fundamental significance. They are entrenched in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which underscores the inadmissibility of the threat or use of force and the duty to respect the political independence and territorial integrity of States. These principles function not only as external limits on permissible conduct but also as a legality framework for project decisions in polar regions, where the intersection of several States' interests is frequently accompanied by disputes over delimitation or jurisdiction (Starushenko, 1978).

India's participation in Arctic discourse is complemented by practical initiatives in energy and shipping, including dialogue with coastal States and the development of icebreaking capacity, as reflected in studies emphasising

the political-legal and economic rationales of this course (Kumari, 2015; Jawahar, 2020). At the same time, sanctions-related constraints on certain Arctic ventures demonstrate the sensitivity of cross-border infrastructure to geoeconomic risks and indicate a need for ICCL's contractual stabilisation instruments that account for secondary sanctions, force majeure, and changes in economic conditions.

ICCL performs four functional roles: risk allocation, dispute resolution, legal coordination, and change management. First, the risk matrix in polar projects requires precise allocation—between employer and contractor—of temperature-related risks, ice conditions, logistical isolation, environmental constraints, and labour guarantees, with due regard to insurance clauses and liability for delay. Second, the dispute-resolution mechanism should combine multi-tier procedures with expedition: pre-dispute negotiation, expert determination, and arbitral proceedings calibrated to the specificities of the North. Third, legal coordination presupposes harmonisation—through a single contract-administration spine—of requirements drawn from the law of the sea, environmental law, labour law, and investment law. Fourth, change management entails predictable models of variations, compensation events, and time adjustments driven by seasonal access, weather windows, and supply limitations (Tanaka, Johnstone, & Ulfbeck, 2023; Patricia et al., 2009).

By structuring the delimitation of the continental shelf and the EEZ, UNCLOS also affects the siting of infrastructure facilities, the parameters of maritime logistics chains, and environmental-impact assessment—including for extraction and liquefaction installations. The expanding portfolio of Arctic projects illustrates the complexity of contractual solutions in which environmental protection and the law-of-the-sea status are tightly interwoven (Churchill, Lowe, & Sander, 2022). For the Russian Federation and its partners, issues relating to the status of the Northern Sea Route and the coordination of project activity with international obligations on marine-environment protection are of particular relevance.

Labour-rights guarantees and social security protections for workers remain central. Under conditions of low temperatures, polar night, transport fragmentation, and limited access to medical care, the contract must stipulate heightened standards of occupational safety, medical insurance,

compensation, and rotational work schedules, as well as special regulations for temporary settlements and shift camps. These elements are a matter of contractual particularisation and, simultaneously, of transboundary social regulation, aligning with the general trend towards strengthening the social component of international economic projects (Rajan, 2017).

In the context of world politics, structural realism stresses that the international system remains anarchic; States provide for their own security and protect their territories largely through their own efforts, especially in regions of competition for resources and transport corridors. This calls for project decisions proportionate to geopolitical constraints and reinforces the case for predictable, legally resilient ICCL procedures to neutralise political risks (Waltz, 2000).

Given the involvement of non-Arctic States in Arctic governance, it is advisable to clarify the institutional parameters of observer participation and the subject-matter remit of consultative platforms. Conceptually, it is appropriate to emphasise the priority of coastal States' sovereign rights while maintaining openness to scientific and technological cooperation; at the same time, the regulation of external actors' participation may be linked to their recognition of national jurisdictions over economic activity on Arctic territories.

For project governance, it is useful to typologise five patterns of disputes involving non-Arctic States: commercial disagreements between investor and State, including sanctions risks and share reallocation; disputes over the regime of transport corridors and the application of the law of the sea; conflicts concerning access to research infrastructure; claims related to the construction of ports, roads, and other Arctic infrastructure; and disputes arising from mineral extraction and the protection of indigenous peoples' rights. These patterns indicate the need for a modular ICCL architecture combining arbitration clauses, multi-level expert evidence, and adaptive stabilisation provisions.

The cumulative result indicates the necessity of strengthening international cooperation and developing specialised regulations for polar projects that encompass environmental protection, the rights of indigenous peoples, and

enhanced labour guarantees. Prioritising ICCL's contractual mechanisms—underpinned by the law of the sea, environmental norms, and social standards—reduces transaction costs and increases project resilience in a complex politico-legal environment (Patricia et al., 2009; Churchill, Lowe, & Sander, 2022; Tanaka, Johnstone, & Ulfbeck, 2023).

Note on the publication of the main research results

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State territory and other spaces in international law. Polar regions and international law.

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