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Academic Monograph

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Harmonising UNCLOS Compliance with FIDIC Risk Allocation in Offshore Infrastructure Projects

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This chapter examines the combined legal framework created by the United Nations Convention on the Law of the Sea (UNCLOS) and international construction contract law, especially the FIDIC conditions, for maritime infrastructure projects. The analysis shows that aligning UNCLOS duties with FIDIC-based risk allocation and sustainability clauses reduces interstate and investor-state disputes, strengthens legal certainty, and safeguards the marine environment. The structure covers normative sources, party obligations, leading judicial and arbitral awards, and policy proposals. The findings confirm the hypothesis that integrated application of UNCLOS and FIDIC

norms balances economic and environmental interests in large-scale marine works.

The international legal regime of maritime zones is primarily defined by the 1982 UN Convention on the Law of the Sea (UNCLOS). UNCLOS establishes successive zones – internal waters, territorial sea (12 nm), contiguous zone, Exclusive Economic Zone (EEZ, up to 200 nm) and continental shelf – each with specific rights. A coastal State exercises sovereignty in its territorial sea, and sovereign or exclusive rights in its EEZ and continental shelf to explore and exploit natural resources (both living – e.g. fisheries – and non-living – oil, gas, minerals). For instance, NOAA notes that within an EEZ a coastal State has "sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters". UNCLOS grants coastal States exclusive jurisdiction over the construction and operation of artificial islands, installations and structures in their EEZs (Art. 60). Artificial islands have no territorial sea of their own and remain under the authority of the coastal State. All States are entitled to lay submarine cables and pipelines on the continental shelf in accordance with Art. 80 UNCLOS, subject to advance notice and the coastal State's right to take measures concerning its resources. Coastal States may also grant rights to renewable energy projects (offshore wind, tidal, wave installations) in the EEZ, as UNECLOS explicitly includes "production of energy from water, currents and winds" in EEZ economic activities. Passage regimes (innocent passage in territorial waters; transit or archipelagic sea lanes passage in straits and archipelagic waters) ensure navigation while respecting coastal State rights. Various countries have incorporated UNCLOS into national law (e.g. U.S. Magnuson-Stevens Act, EU Maritime Policy, Russian Water Code, etc.), establishing licensing and environmental requirements for offshore construction.

In the context of international construction contracts, standard form agreements by the International Federation of Consulting Engineers (FIDIC) play a central role. For example, FIDIC's "Blue Book" (Form of Contract for Dredging and Reclamation Works, 1st ed. 2006) provides model terms for routine dredging projects. More complex offshore constructions – such as deepwater oil & gas platforms, cross-sea pipelines, and large-scale reclamations – often require tailored contract provisions or other FIDIC

forms (Red, Yellow, etc.). Contract clauses typically address site investigation (marine surveys, geotechnical reports), importation of construction materials, insurance and liability for oil/gas leaks, and compliance with environmental regulations (marine habitat protection, pollution prevention). When constructing offshore wind farms or tidal energy devices, contracts also cover grid interconnection, redundancy of subsea cables, and weather delays. International norms (e.g. Basel Convention, London Protocol, IMO guidelines) may be referenced for marine environmental protection. National laws (for example, coastal zone management and maritime safety laws) are explicitly incorporated by reference. FIDIC contracts often include arbitration clauses (ICC, LCIA, UNCITRAL, etc.) and governing law clauses that specify the application of UNCLOS principles and the domestic law of one party or a neutral jurisdiction.

International arbitration has been the principal forum for resolving disputes in large-scale maritime infrastructure contracts. Arbitral tribunals draw upon UNCLOS and applicable national laws in interpreting parties' rights. A notable example is the COMMISA v. Pemex (ICC) arbitration, concerning a contract for offshore oil platforms. The tribunal awarded compensation to the contractor (Mexican COMMISA) for wrongful termination by Pemex, but Mexican courts later annulled the award as involving an act of public authority. (U.S. courts, conversely, enforced the award.) This case illustrates the tension between state sovereignty and private contract rights in maritime projects. Other ICC cases (e.g. Jan de Nul v. Arab Republic of Egypt; Salini v. Morocco) similarly highlight how economic, administrative and political pressures – sanctions, permit delays, unilateral contractual changes – can upset agreed risk allocations. In practice, arbitration panels often refer to FIDIC's dispute resolution mechanisms (Dispute Adjudication Boards, international arbitration) and to UNCLOS-derived duties (e.g. environmental protection obligations) when deciding such cases. Bilateral investment treaties and free trade agreements also influence these arbitrations, since contractors may invoke investor-protection provisions if state interference is alleged. National courts may be asked to enforce or annul awards; UNCLOS itself provides no remedy, but Article 94 (duty to comply with awards) reinforces international enforceability.

Cross-border marine infrastructure projects underscore the interdependence of states and international contract law. Major offshore pipelines (e.g. the Nord Stream gas pipelines in the Baltic Sea) traverse multiple zones and have been governed by intergovernmental agreements on rights-of-way, reflecting the rule of UNCLOS Art. 80 on pipelines. Offshore ports and artificial islands (e.g. for drilling platforms) are similarly governed by national jurisdiction under UNCLOS and by contract terms. On renewable energy, joint ventures in offshore wind (North Sea, Atlantic) rely on harmonized technical standards and coordinated permitting. In all cases, international construction contracts must integrate UNCLOS norms – for example, by stipulating compliance with marine environment conventions – and FIDIC standard clauses. This ensures legal certainty and dispute avoidance. As UNCLOS provides the overarching regime for marine spaces, its combination with FIDIC standards and national laws creates a comprehensive framework for sustainable development and dispute resolution in international marine construction.

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