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Academic Monograph



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Risk Allocation and Dispute Management in Cross-Border Construction Projects: Lessons from FIDIC Standard Forms and Transnational Corporations

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This chapter situates International Construction Contract Law within International Economic Law and traces contractual unification through the International Federation of Consulting Engineers (FIDIC) model forms. It reviews the expansion of cross-border projects and the growing agency of transnational corporations, surveys regulatory instruments from the 1974 Charter of Economic Rights and Duties of States to contemporary soft-law guidelines, and links these developments to the concept of economic security.

Comparative legal analysis shows that FIDIC templates markedly reduce legal and financial uncertainty by clarifying the allocation of responsibilities. The study concludes that further refinement of unified standards and stronger multilateral oversight of corporate actors are essential for predictable, resilient infrastructure delivery in an increasingly multipolar world.

International economic law comprises a myriad of norms regulating global economic relations—such as trade, investment, and inter-state cooperation in various sectors. A key aspect of international economic law is international construction contract law (ICCL), which governs relations and obligations arising in cross-border construction projects. ICCL requires specialized regulation due to the complexity of such projects and the need to account for diverse national and private interests. International legal cooperation in this field promotes the development of unified standards and norms, easing parties' interactions and safeguarding their rights in construction agreements. The unification of contract forms through standard contracts plays an important role in this process. Lucas Klee emphasizes the centrality of legal unification via the model contracts developed by the International Federation of Consulting Engineers (FIDIC).

The drive to unification through FIDIC forms stems from the need to establish consistent legal frameworks that facilitate orderly contractual relations among parties in international construction projects. The application of FIDIC's standard form contracts significantly reduces legal and financial risks during project execution, ensuring greater predictability of legal outcomes and an effective allocation of responsibilities among participants. This simplification of risk management supports project oversight and enhances compliance with international norms and standards in the construction industry.

This study focuses on the role of international legal mechanisms in unifying and regulating cross-border construction contracts. The research is grounded in comparative legal analysis and legal reasoning, including examination of international legal instruments and FIDIC's model contracts, as well as broader transnational regulatory frameworks. Special attention is paid to the interaction between national and international norms, which allows for a deeper understanding of the role of transnational corporations (TNCs) in

international construction law. Using statutory acts, doctrinal sources, and examples from actual infrastructure projects, the analysis yields conclusions and recommendations on legal unification and ensuring economic security.

FIDIC's model contracts play a key role in harmonizing construction contract norms internationally. The creation and use of unified contract templates ensure standardization of legal frameworks and help reduce uncertainty for contracting parties. By employing FIDIC standard forms, project participants obtain guarantees about risk distribution and responsibilities, which is especially important in complex transnational projects. This leads to more effective project management and fosters trust among parties, thereby enhancing the predictability and stability of legal consequences in the construction sector.

Transnational corporations have become one of the driving forces of globalization in the world economy. They significantly influence the development of international economic law and legal cooperation in various economic sectors, including international construction contract law. TNCs actively participate in the execution of large cross-border construction projects, necessitating specialized regulation and harmonization of standards across jurisdictions. According to UNCTAD data, the number of TNCs worldwide grew from just a few hundred in 1939 to nearly sixty thousand by 1999, reflecting their rapidly expanding influence in the global economy.

Most TNCs are headquartered in developed countries, but they actively expand operations in developing regions (approximately 65% of firms have affiliates in developing countries). The global reach of their activities underscores the need for unified international regulation. A key driver of TNC expansion is the limitation of domestic markets, prompting companies to enter international arenas to sustain production growth. In a context of global competition and antitrust regulation, TNCs aim to leverage their advantages in foreign markets, necessitating the creation of unified legal mechanisms in international construction contract law. This unification protects project participants' interests and harmonizes regulatory acts, thereby promoting economic development and strengthening international cooperation.

TNC influence tends to diminish the traditional role of the state as the primary regulator, elevating these corporations to important subjects on the world political and economic stage. Each state, as a member of the global economy, strives to secure its national interests, but given the limited and uneven distribution of world resources, relations inevitably become competitive or even conflictual. This is particularly true in international construction, where competition for resources and markets can lead to legal disputes that require international cooperation for their resolution. As V. B. Mantusov notes, competition between state and non-state actors necessitates effective mechanisms of international economic law to ensure stability and mutually beneficial cooperation.

In multilateral regulations of TNC activity, international legal norms play a central role. The "Charter of Economic Rights and Duties of States" (1974) was among the first instruments to address TNC regulation, emphasizing states' key role in establishing and enforcing legal frameworks for corporations. Article 2 of the Charter grants every state the sovereign right to regulate and control foreign investments within its jurisdiction. This provision empowers states to set rules for foreign investors in line with national priorities—whether that be stimulating growth, protecting domestic markets, or ensuring sustainable development. The Charter also authorizes governments to regulate TNC activities on their territory, requiring these enterprises to align with the economic and social policies of the host state. Thus, a balance is achieved between attracting investment and protecting sovereign interests.

Furthermore, the Charter stipulates that TNC activities must not threaten the political stability or social structure of host states. This requirement is especially relevant for developing nations, where corporations can have a profound impact on domestic processes. States must develop mechanisms to prevent unwanted TNC interference in domestic affairs while balancing the need for foreign capital with the protection of national interests. Ultimately, the Charter's TNC provisions aim to maintain internal stability and foster national economic development, all while respecting international obligations.

However, the influence of the 1974 Charter on international TNC regulation was weakened by the reaction of some states. For example, the United States opposed the Charter's stringent provisions, viewing them as a threat to free trade and American business interests. This opposition led to revisions in the 1980s and the emergence of a new concept—"international economic security." In 1987, the UN General Assembly discussed this concept, partly echoing the Charter's themes but without establishing a binding system of rights and obligations. Notably, S. L. Natapov observes that international human rights-related instruments—such as the "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights"—play an important role in setting behavior standards for corporations, but their effectiveness depends on implementation at the national level.

In 1992, a UN-sponsored review of the Charter significantly diluted its authoritative status and broadened the freedom of action enjoyed by TNCs internationally. This shift had a tangible impact on international construction practice, where corporate social responsibility (CSR) has taken on increasing importance. CSR is now viewed by corporations not only as an ethical imperative but as a strategic risk-management tool aimed at sustainable development and compliance with international norms. Karandeev and Slinko note that active business social policies strengthen relations between corporations and local communities, contributing to sustainable socio-economic development of regions. In effect, CSR has become an important compensatory mechanism for the weakened supranational regulation, helping to maintain trust and stable development.

At the national level, foreign direct investment (FDI) regulations remain a key tool for managing TNC activities in construction. TNC involvement in cross-border projects is crucial for infrastructure development and economic growth in host countries. Indeed, new companies often emerge as transnational entities from inception, immediately participating in international projects. Motivations for TNC investment in construction can be classified as follows: expansion into new markets for services and technologies, optimization of production through innovations, access to host-country resources (materials and labor), and acquisition of new assets

(intellectual property, specialized equipment). All these factors drive technological development and strengthen companies' competitive positions.

TNC investment patterns have evolved in line with catch-up development strategies adopted by many countries. According to F. S. Gubaidullina (2023), attracting FDI has become essential for narrowing the gap with economic leaders. Countries aim to modernize their economies by acquiring advanced technologies and management practices, actively engaging TNCs in major infrastructure projects. In practice, TNC investments may take the form of mergers and acquisitions or greenfield projects (building new ventures from scratch). Investment volumes in construction continue to grow, playing a pivotal role in global infrastructure development. Gubaidullina highlights that successful FDI inflows enhance production capacity and competitiveness in host countries, but require favorable institutional conditions—such as tax incentives and special economic zones. For example, countries in Southeast Asia like Singapore and South Korea achieved significant progress by actively attracting foreign investments, which fueled the development of high-tech industries and integration into the world economy. In summary, TNC investment in construction remains a powerful driver of economic growth and modernization, yet it necessitates careful regulation tailored to each country's context.

The concept of economic security is a cornerstone of modern international economic law and cooperation. In an era of global competition and increasing political instability, ensuring economic security is vital for the stability and success of large overseas infrastructure projects. Economic security can be understood as a synthetic category at the intersection of economics and political science, encompassing notions such as economic independence, resilience, and adaptability. According to Krutikov and colleagues, it is based on the ability of a state and its economy to withstand external and internal threats, minimizing their impact and ensuring stability and development.

In the context of ICCL, economic security manifests through the management of political, financial, and institutional risks that can affect project implementation. A key component of the concept is economic stability, achieved via structural reforms, innovation support, and the creation of favorable conditions for investment, including foreign

investment. In a multipolar world, many risks and threats are transnational, necessitating comprehensive security strategies. This is especially true for international construction projects, which often depend on external investments and partnerships. Economic security in this context aims to safeguard critical economic interests, ensure sustainable development, and minimize dependence on foreign influence. A crucial aspect of economic security is its link to sustainable development: sustained economic growth, job creation, infrastructure development, and improved living standards are central to long-term stability. This linkage is particularly important in construction, where long-term investments require state support, including measures to prevent economic and social risks.

The notion of security—especially economic security—occupies a prominent place in international law and cooperation, including within ICCL. It encompasses the protection of the vital interests of individuals, society, and the state from internal and external threats. In a multipolar world, the task of economic security is also to protect the rights, freedoms, and social guarantees of citizens of different states, in accordance with their national constitutions and international norms. The resilience of an economic system, particularly in construction, indicates the reliability of international contractual relationships and the ability to adapt to internal and external shocks.

Developing a concept of economic security in construction law involves analyzing its theoretical foundations within international economic law, and examining the interplay between global processes and regional economic realities. Conceptualizing the phenomenon with respect to international construction contracts allows key risks and management mechanisms to be identified, providing an essential basis for ensuring the stability of contractual linkages. For instance, T. Yu. Feofilova proposes an approach linking regional economic security with theories of regional economics, delineating levels and indicators of security. This approach takes into account regional economic specifics and international processes, which is significant for construction law. Feofilova also emphasizes detailed risk management: identifying risk-creating factors and threat-formation factors, thus structuring the mitigation of negative impacts on a region's socio-economic system. In practical terms for international projects, this implies establishing protection and adaptation mechanisms that minimize external threats and ensure long-term contractual

resilience. This approach is particularly relevant as the multipolar world places new demands on economic risk management and the maintenance of stable economic linkages.

International economic security is defined not only by measures stabilizing international economic relations but also by the legal frameworks that regulate global economic activity. In ICCL, this translates to a legal guarantee of protecting the interests of all project participants while taking into account resource capacities and territorial specifics. Ensuring stability and shielding from external influences at the regional level is achieved through international cooperation and harmonization of legal norms, which helps establish sustainable economic ties and reduces the risk of adverse external effects.

National economic security encompasses a range of components – from demographic, informational, and political factors to social welfare and defense. Its effectiveness largely depends on the appropriate application of international economic law norms. A.A. Rychagova highlights that globalization generates new challenges and threats to economic security, affecting economic actors at all levels. She concludes that the impact of global factors requires a strategic approach to maintaining economic stability and defending against negative external influences. Such approaches are crucial for the resilience and security of international economic operations, including construction projects. This multi-level interaction between international and national legal norms in economic security fosters a stable and safe environment for executing international construction contracts, thereby ensuring long-term stability and development of regions.

Approaches to understanding economic security can vary significantly across national traditions and legal systems. For example, Western models – including the American model – emphasize sovereign decision-making in economic affairs and the maintenance of high living standards. This is reflected in legal requirements for international construction agreements, which often include strict conditions and protection of national interests during international engagement. K.S. Alpysbayev underscores the importance of economic security policy within corporate governance: research in Kazakhstan shows that effective risk management and strategic

corporate development contribute to safeguarding companies' economic interests on the international stage.

In Russian practice, economic security is generally viewed through the lens of ensuring stable socio-economic development and protecting national interests. This perspective influences legislation on international construction law and the conditions under which Russian companies participate in global projects. The Russian approach focuses on maintaining stability amid internal and external turbulence, shaping methods of risk management and protecting the economic interests of the state and business. A. A. Remezkov defines economic security as the state of a country's productive forces that ensures protection of national interests and competitiveness. Despite the definition's age, it remains relevant in today's conditions of international economic law and cooperation. In a multipolar world with complex economic relations, the role of economic security continues to grow. In ICCL, ensuring economic security requires effective legal mechanisms aimed at protecting project participants' interests and accounting for the resources and particularities of each territory.

The analysis underscores the significance of international construction contract law within the broader context of international economic law, with a focus on unifying legal mechanisms and strengthening international cooperation. Attention was given to the choice of applicable law, the regulation of cross-border construction projects, and the role of transnational corporations. The results confirm that unified FIDIC contract forms substantially reduce legal and financial risks, enhancing the predictability of legal outcomes and promoting the harmonization of norms on the international stage.

The study reveals the importance of further unifying legal norms in the sphere of transnational construction. The use of FIDIC's model contracts has a pronounced effect on risk reduction and improving cooperation between project parties, highlighting the need for continued development and adaptation of international standards in a multipolar world. As active participants in international projects, transnational corporations require effective legal regulation and alignment of national and international norms.

Special attention in the recommendations is given to the challenges of regulating TNC activity in a multipolar world experiencing a surge of international projects. Strengthening legal oversight and ensuring compliance with FIDIC standards are critically important for protecting national interests and harmonizing legal norms. Achieving this requires international legal cooperation aimed at enhancing the stability and security of contractual relationships.

Based on the analysis, it is recommended to continue the unification of standard FIDIC contracts and to adapt them to current international challenges. Improving international legal control over TNC activities is also necessary to ensure sustainable development and economic security in the construction sector. These measures will facilitate better cooperation between parties, protect their rights, and contribute to a stable legal order in the international construction industry.

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