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Academic Monograph

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Resolving Transnational Construction Disputes: Choice-of-Law Techniques, Public-Policy Safeguards and Cross-Border Enforcement

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The chapter explores the interplay between public international law and private international law within cross-border construction contracts. It traces the historical evolution of conflict-of-laws issues and the protective function of public policy, then surveys the standard-setting work of the United Nations, the BRICS New Development Bank, the World Bank, UNIDROIT and FIDIC model forms. Comparative scrutiny of mandatory rules, party autonomy, the "closest connection" test and emerging digital procedures exposes recurrent collision risks. The study concludes that embedding good-

faith and transparency clauses in FIDIC-based agreements, combined with broader mutual recognition of foreign judgments through modern conventions, would enhance predictability, equity and efficiency for participants in global construction ventures.

In an era of consolidated multipolarity and deepening integration, transnational linkages have become system-forming in sectors where public-law requirements intersect with private-law obligations. International Construction Contract Law (ICCL) emerges precisely at the interface between public international law and private international law: the parties' civil-law obligations arise and are performed within the force field of multiple national legal orders and supranational norms developed by international organizations that set conduct standards for participants in the global construction market (Klee, 2018).

The growing scale of cross-border projects, the complexity of technological solutions, and the diversification of financing sources have objectively increased the number of actors and legal regimes drawn into the contractual frame. This has exposed the problem of conflicts of laws—situations in which the same relationship falls under competing regulatory claims of different legal systems whose norms either diverge or contradict each other. For international construction transactions, this necessitates aligning domestic law with international prescriptions and building resilient mechanisms for the selection and coordination of the applicable law (Kudryavtseva & Mkhitaryants, 2024; Kuts, 2022).

Among the instruments for overcoming conflicts, the doctrine of public policy (ordre public) occupies a special place. Both negative and positive public-policy reservations safeguard the fundamental interests of the forum State and uphold the stability of international private-law relations by allowing the forum to decline the application of foreign law that contradicts critically important values of the receiving jurisdiction (Shulakov, 2023). In ICCL—where actors from different legal cultures interact—accurate deployment of public-policy controls is key to predictability and the perceived legitimacy of the contractual regime.

Procedural coordination across systems is equally determinative. In any cross-border dispute, a court or arbitral tribunal must inevitably resolve three questions: which procedural norms apply; which forms of evidence are admissible; and by what criteria the record will be assessed. Divergences among national procedural models can affect the outcome and the effective exercise of procedural rights by the parties and by third persons whose interests are touched by the decision (Kudryavtseva & Mkhitaryants, 2024). Procedural legitimacy therefore requires attention to the comparability of guarantees across jurisdictions and, wherever possible, the development of harmonized approaches to admissibility and evidentiary evaluation.

Enforcement is the third chokepoint of conflict-of-laws governance. Recognition and enforcement of foreign judgments and arbitral awards confront differences among national procedural regimes, public-policy objections, and reciprocity tests. Balancing creditor and debtor interests in cross-border enforcement depends not only on judicial practice, but also on the institutional design of enforcement authorities (Fedin, 2023). In construction investment projects, weak predictability at the enforcement stage translates directly into the cost of capital and the risk premium.

International organizations are pivotal in constructing a coherent regulatory framework. The United Nations, the BRICS New Development Bank, the World Bank, and UNIDROIT initiate and sustain standards and procedures for resolving multilateral disputes and for unifying private-law regimes whenever a foreign element is present. In the construction sector, standard forms published by the International Federation of Consulting Engineers (FIDIC) have particular significance, having become widely used at the design, construction, and operation stages across multiple States (Klee, 2018). Analysis of current FIDIC documentation evidences the need to unify not only contractual architectures but also procedural norms that secure consistency and transparency in application (Kudryavtseva & Mkhitaryants, 2024).

The European vector of harmonization in conflicts and procedure is illustrative. The Rome I and Rome II Regulations entrench systemic approaches to choosing the applicable law for contractual and non-contractual obligations and articulate the construction of overriding

mandatory provisions and public policy in their political, social, and economic dimensions—echoing F. C. von Savigny's classical ideas on coordinating legal orders (von Savigny, 2011). The Opinion of Advocate General M. Szpunar, addressing the reach of overriding mandatory rules and public-policy protection, confirms the resilience of this methodology in contemporary EU law (Szpunar, 2016). National enactments and codifications in newer EU Member States (for example, Croatia) illustrate "re-thinking with borrowings," where local specificities are layered onto common EU frames (Zupan, 2021).

The Russian approach to overriding mandatory rules and public policy, while sharing the same foundational dimensions (political, social, economic), has a distinct configuration. Article 1192 of the Civil Code and the Supreme Court's Plenum Resolution of 9 July 2019 No. 24 identify markers of public policy that emphasize protection of sovereignty and security (e.g., limits on land turnover to foreign persons), protection of the rights of participants in civil circulation (including marriages with foreign citizens), and protection of national economic interests (restrictions on acquiring stakes in strategic sectors) (Dmitrieva, 2016). This is a comparatively "defensive" model when set against the Savignian tradition oriented toward inter-systemic coordination (von Savigny, 2011).

Conflict rules in ICCL operate primarily through party autonomy: the parties may determine the law governing the contract, its form, and the consequences of breach, as well as select fora for dispute resolution. Articles 1210–1215 of the Russian Civil Code provide the legal basis for choice of law in cross-border contracts, taking into account the criterion of the closest connection and other connecting factors. In international doctrine, the evolution of recognizing party autonomy for non-contractual obligations has further expanded the space for contractual coordination in complex construction and financing schemes (Kutashevskaya, 2022; Guskov & Sichinava, 2021). At the same time, reference to international benchmarks—including the bodies of work produced by international organizations and soft-law instruments—supports uniformity in project design and reduces transaction costs (Klee, 2018).

Where public entities participate in construction projects, questions of State immunity and the jurisdictional reach of foreign courts and arbitral tribunals arise. Even where the contract contains a choice-of-law and arbitration clause, the law chosen by the parties may be cut back by the forum's overriding mandatory rules invoked to protect fundamental values (the model reflected in Rome I for such provisions) (Szpunar, 2016). This directly affects risk allocation, the content of guarantees, and the architecture of dispute-resolution procedures.

Incomplete harmonization remains a source of uncertainty. International private-law treaties are frequently implemented only in part and without sector-specific calibration to construction, reducing the predictability of outcomes. Technical-legal defects—stemming from incoherence among enactments and terminological heterogeneity—undermine regulatory unity (Kozhokar, 2020; Zanina, 2019). Core terms such as "closest connection," "public policy," and "overriding mandatory rules" are filled with divergent meanings across legal traditions, calling for doctrinal and normative fine-tuning.

Good faith stands out as a key regulatory principle whose under-protection is documented in the literature. In ICCL, the normative entrenchment of good faith and of mechanisms for its operationalization in contractual and non-contractual relations offers a path to reducing conflicts of interest and strengthening confidence in adjudication (Kudryavtseva & Aleksandrov, 2019). This is critical for long-term projects in which external conditions (prices, sanctions, transport corridors) inevitably shift and contractual and scheduling adjustments require legal "safety valves."

The procedural architecture of Russian jurisdiction in matters with a foreign element is another structural node. Judicial competence, evidentiary study and assessment, and the application of procedural law in cross-border disputes are regulated in the Civil Procedure Code and the Arbitrazh Procedure Code, providing a base for integrating public- and private-law interests in construction disputes. The 1970 Convention on the Taking of Evidence Abroad and the 1965 Convention on the Service Abroad of Documents simplify engagement with foreign authorities, but differences in domestic procedures incentivize forum shopping and parallel proceedings

(Solodilov, 2023). Thus, in the absence of a "hard" rule in Article 406 of the Civil Procedure Code regarding priority for a previously commenced foreign action, duplicative litigation is possible despite approaches reflected, for example, in the Chisinau Convention (Article 29) (Solodilov, 2023).

Targeted institutional solutions can mitigate fragmentation risks: a special federal statute to unify and streamline cross-border procedural acts (including electronic communications, expedited document exchange, and standardized evidentiary requirements); ratification of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments to increase predictability of investor protection; and digitalization of enforcement proceedings as a technological basis for end-to-end traceability and proportionality of coercive measures (Ustimova & Rasskazova, 2022; Fedin, 2023).

In sum, ICCL operates as a multi-level regime in which public-law safeguards (overriding mandatory rules, public policy, immunity) are interlocked with private-law instruments (party autonomy, choice of law and forum, contractual adaptation) and are operationalized through FIDIC standards, judicial-arbitral practice, and procedural conventions. Harmonizing legal norms, strengthening procedural bridges among jurisdictions, and developing digital tools for evidence and enforcement are strategic priorities capable of reducing risk costs and enhancing the resilience of transnational construction initiatives (Klee, 2018; Kudryavtseva & Mkhitaryants, 2024; Solodilov, 2023).

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

Interaction between public international law and private international law. Public international law foundations for the regulation of private-law relations. International cooperation and the role of international organizations in regulating relations complicated by a foreign element.

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