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Author: Dmitry Semenovich Belkin (ORCID: https://orcid.org/0009-0003-1532-1958)

Associate Professor, Department of International Law, Slavic-Greek-Latin Academy, Moscow, Russian Federation. Email: dmitryb81@gmail.com

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# *Bridging Criminal Law and Construction Arbitration: Practical Strategies for Countering Corruption in Transnational Infrastructure Projects*

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*This chapter examines the criminal-law toolkit used to curb corruption in international construction contracts spanning multiple jurisdictions. Tracing doctrinal development from Shargorodsky's 1947 writings to decisions such as World Duty Free, Metal-Tech, Spentex and P&ID, it shows how illicit payments invalidate agreements and strip investors of treaty protection. A mixed methodology—comparative legal analysis, historical inquiry and case study—uses ICSID awards, domestic judgments and instruments of the United Nations, OECD and Council of Europe. The chapter offers a*

*structured model for embedding international criminal-law norms in FIDIC-type contracts, merging the clean-hands doctrine, flexible evidentiary thresholds and asset confiscation to produce a measurable deterrent effect.*

The construction sector's globalization has exposed large infrastructure projects to complex transnational criminal threats, particularly corruption. When multinational contractors, host-state officials, and international financiers converge on cross-border projects, opportunities for bribery and illicit collusion multiply. These corrupt practices undermine the rule of law at every stage – from tendering to dispute resolution. As noted by Klebanov, the transnational nature of modern crime demands special enforcement approaches balancing individual and state interests under strict legal guarantees. In the context of construction contracts, unchecked corruption can infect entire transactions. Experience shows that "[p]roven corruption routinely voids international construction contracts and eliminates investment protection," reflecting a global mens rea zero-tolerance for bribery.

Under current international law, frameworks like UN conventions, OECD guidelines, and Council of Europe treaties – alongside model contracts of the International Federation of Consulting Engineers (FIDIC) – offer some anti-corruption tools. Yet in practice these mechanisms often fail to deter bribery effectively. Inogamova-Khegai highlights that international criminal law still lacks codified provisions targeting many forms of corrupt conduct, leading to inconsistent enforcement. This gap is felt acutely when trying to hold wrongdoers to account across jurisdictions. Our hypothesis is that integrating criminal-law norms into international construction contracts will more effectively reduce corruption risk in infrastructure projects. Strengthening corruption-related provisions and empowering enforcement (at both national and international levels) can create a stronger deterrent effect.

Historical development. The evolution of modern international criminal law has steadily incorporated anti-corruption aims. As early as 1947, Russian jurist M. D. Shargorodsky identified international criminal law as a distinct branch of public law aimed at coordinating states' efforts against numerous crime forms. By the late 20th century, scholars such as Dinstein (1985) and Bassiouni (1997) emphasized the need for uniform global instruments to

prosecute offenses threatening international order. Notably, Lukashuk and Naumov (1999) viewed international criminal law as an evolving cornerstone of world order, requiring constant treaty updates and stronger institutions. This doctrinal progress paralleled the rise of soft-law anti-corruption standards within the UN system. Habrieva (2017) stresses that "soft" instruments (resolutions, programs, principles) laid the groundwork for later binding conventions against corruption. By the early 21st century, international commentators like Ivanov (2016) and Panov (2018) called for unified legal frameworks and inter-state cooperation to fight corruption in large-scale projects.

Case studies in investment disputes. A number of landmark arbitral cases in the 2000s illuminate how corruption intersects with international construction contracts:

• World Duty Free Co. Ltd. v. Republic of Kenya (ICSID Case No. ARB/00/7, Award Oct. 4, 2006). In this seminal case, a British firm contracted to build duty-free shops at Kenyan airports. Only in arbitration did evidence emerge that the contract (1989 Agreement) had been secured by a $2 million bribe paid to President Daniel arap Moi. Upon confirming the bribe payment, the ICSID Tribunal held that the Claimant had procured the agreement through corruption and thus had no right to claim any remedies. It denied all of World Duty Free's claims on public policy grounds, citing the maxim ex turpi causa non oritur actio. This was a watershed: it explicitly established that corruptly-obtained contracts are unenforceable in investment arbitration.

• Siemens A.G. v. Republic of Argentina (ICSID Case No. ARB/02/8, Award Jan. 17, 2007). Siemens won a large contract in the 1990s to build Argentina's national ID system, later claiming $217 million for expropriation when the contract was terminated. After the arbitration award, however, investigations in Germany and the U.S. (pursuant to the FCPA) revealed widespread bribery by Siemens, including of Argentine officials. Siemens ultimately admitted to paying bribes to secure the contract and entered into settlement agreements. Argentina reopened the case, but the parties eventually agreed on a post-award settlement, and Siemens relinquished its claims. The Siemens saga illustrates how criminal enforcement can intersect with investment arbitration: the ICSID tribunal did not address corruption during the

arbitration, but subsequent criminal prosecutions effectively nullified the investor's gains. The Siemens case also had broader impact: as the SEC press release notes, Siemens "paid bribes… to obtain … national identity cards in Argentina", leading to huge fines. After Siemens, arbitration tribunals became more receptive to corruption defenses, and states more willing to invoke them.

• Metal-Tech Ltd. v. Republic of Uzbekistan (ICSID Case No. ARB/10/3, Award Oct. 4, 2013). An Israeli company formed a joint venture with Uzbek state firms to build a molybdenum plant. The arbitration tribunal found that Metal-Tech had paid roughly $4 million to multiple "consultants" – including relatives of high-level Uzbek officials – in purported kickbacks. Concluding these payments violated Uzbek anti-bribery law, the tribunal held it lacked jurisdiction: the investment was not "legal" under the Uzbekistan-Israel BIT's own definitions. In essence, Metal-Tech's corruption meant the tribunal refused to protect the investment, which was deemed non-compliant with both Uzbek and international public policy. The case is notable for its evidentiary approach: the tribunal considered "red flags" (the payment size, lack of real services, political ties of recipients) as sufficient indicia of corruption. Metal-Tech thus confirmed that tribunals will deny protection to "tainted" investments – and that substantial indirect evidence can suffice to establish corruption.

• Inceysa Vallisoletana S.L. v. Republic of El Salvador (ICSID Case No. ARB/03/26, Award Aug. 2, 2006). Inceysa, a Spanish firm, won a Salvadoran contract for a vehicle inspection project. The contract was later annulled amid allegations that Inceysa had used fraudulent documents and collusion to win the tender. Although direct bribery by Inceysa was not proven, the tribunal held that Inceysa's own fraudulent conduct violated the "legality" principle. By applying the clean hands doctrine (nemo auditur propriam turpitudinem allegans), the tribunal denied Inceysa any remedy. This was one of the first cases (preceding Metal-Tech) where an investor was denied ICSID protection on corruption grounds. Importantly, Inceysa established that not only classical bribes but also other illicit means (fraud, collusion) can strip an investment of protection if they render the contract itself unlawful in purpose. For construction contracts, Inceysa underscores that dishonest bidding taints the resulting contract, precluding protection in case of dispute.

• EDF (Services) Ltd. v. Romania (ICSID Case No. ARB/05/13, Award July 8, 2009). In a twist, British company EDF claimed Romania expropriated its contracts for duty-free shops in Bucharest airports. EDF responded to Romania's non-renewal of leases by alleging that a Romanian official had solicited a $2.5 million bribe for contract extensions. Here corruption was alleged against the state. The tribunal found this contextically interesting but ultimately rejected EDF's claims on evidentiary grounds. It reaffirmed the high burden for corruption allegations: accusations must be supported by "clear and convincing evidence". In EDF, the evidence (a purported tape recording and witness hearsay) fell short, and the tribunal refused to award damages. The EDF decision clarifies that even when an investor accuses a state of corruption, the tribunal maintains a stringent standard of proof. This struck a balance in the system: while corruption is taken seriously, the parties (state or investor) must convincingly establish it.

• Spentex Netherlands B.V. v. Republic of Uzbekistan (ICSID Case No. ARB/13/26, Award Feb. 29, 2016). Spentex, a Dutch firm, privatized Uzbek textile assets. After an adverse arbitration outcome, Uzbekistan alleged Spentex obtained the assets through corruption: a $6 million "commission" promised before the privatization. The tribunal determined that, even without naming specific officials, the totality of the "red flags" confirmed corruption – the pre-auction $6m transfer, lack of economic justification, and immediate halting of payments once assets were secured. Finding corruption, it refused to protect the investment. Significantly, Spentex is known for the tribunal's unusual remedy: recognizing that the State also bore corruption risk, the panel "strongly recommended" Uzbekistan donate $8 million to a UN anti-corruption fund. This marked an embryonic form of "restorative justice" in investment law – punishing both private and public contributors to the corrupt bargain. The case reinforces the doctrine of absolute legality of investment: if serious bribery is found (even without a confession of officials), the investor loses protection, and possibly so does the state.

• MOL Hungarian Oil & Gas Co. v. Republic of Croatia (ICSID Case No. ARB/13/32, Award Dec. 23, 2016). Croatia accused MOL of securing control over national oil firm INA via a €10 million bribe to former Prime Minister Ivo Sanader. Notably, Sanader himself was later convicted in Croatia for taking a bribe from MOL. The UNCITRAL arbitral tribunal (PCA, 2016)

scrupulously reviewed evidence including Sanader's testimony and related documents. In the end, the tribunal declined Croatia's claims: it found Croatia failed to prove MOL's liability beyond a reasonable doubt. Even though the national court had convicted Sanader, the international tribunal required explicit proof tying MOL to the bribe (such as signed documents, bank transfers, or witness admissions). Finding none, it ruled in MOL's favor. MOL v. Croatia illustrates a key point: national criminal judgments against officials do not automatically bind arbitration panels. States must independently prove the investor's guilt in the arbitral forum. From a construction-contract perspective, MOL shows that unambiguous evidence is required to unwind an investment – the tribunal effectively prioritized the autonomy of its fact-finding over parallel domestic verdicts.

• Process & Industrial Developments (P&ID) Ltd. v. Federal Republic of Nigeria (English Commercial Court, 2023). Although this case arose in a private (arbitration-then-court) context, its lessons are germane. P&ID (a JV registered in the Virgin Islands) entered a gas-processing contract with Nigeria. In 2017 it won an ad hoc international arbitration in London – roughly $6 billion award. Subsequently, Nigeria uncovered that the P&ID contract had been fraudulently procured via a scheme involving payments to Nigerian officials and collusion with local politicians and lawyers. Nigerian courts convicted P&ID agents for fraud and bribery, freezing its assets. In 2023 the English Court of Appeal (High Court) annulled the arbitral award, finding it procured by "wholly dishonestly" presenting false evidence and concealing bribes. Lord Justice Leggatt described P&ID as an "egregious" abuse of process demanding correction. The P&ID saga powerfully confirms that even mature arbitration awards can be voided if corruption is later proven. It underscores that investment arbitration is not infallible: national courts (here in London) will intervene when justice requires. The case also had broader impact, spurring calls for greater scrutiny of arbitration evidence and international cooperation: Nigeria obtained mutual legal assistance (warrants, witness interviews) with the U.S. and U.K. to build its case, demonstrating that effective cross-border enforcement requires intergovernmental effort.

• Lesotho Highlands Water Project corruption prosecutions (Lesotho, 2002–2004). In an example outside arbitration, Lesotho prosecuted corruption in a

major infrastructure project. LHWP was a transnational dam and water-transfer scheme financed by multiple governments. In the late 1990s, officials discovered that executives of major foreign contractor consortia (from Canada, Germany, etc.) had bribed Lesotho's project administrator, Masupha Sole, to win contracts. The High Court of Lesotho (2002–2003) convicted Sole (15 years) and two companies (Acres, Lahmeyer) for international bribery. This was one of the first times a developing country successfully jailed foreign companies and officials over project corruption. Lesotho's actions enforced the principle that "both sides of the bribe are punished" – not only Sole, but also the paying corporations received heavy fines. The World Bank responded by "debarment" of those companies, signaling international solidarity against corruption. While arbitration and criminal proceedings operated separately (companies unsuccessfully tried to assert arbitration clauses), the LHWP case shows the power of national criminal law to set an example in international contract law. It also raises the question of prevention vs. cure: would robust anti-corruption measures at the tender stage have been more efficient than later convictions?

Analysis and conclusions. The systematic review of case law reveals clear patterns:

1. Corruption nullifies protection. In the leading cases (WDF, Metal-Tech, Inceysa, Spentex, etc.), once bribery or fraudulent collusion by the investor was proven, tribunals refused to enforce the contracts or treaties. By invoking international public policy and the "clean hands" doctrine, arbitrators consistently held that illicitly-concluded contracts confer no rights. This effectively "resets" the legal protection: investors lose claims, and contracts are void for purposes of relief. As one commentator observes, Metal-Tech's decision was "strike two" against corrupt claimants (after World Duty Free), promoting the rule of law over corrupt deals.

2. Evidence matters. States have broadened use of corruption defences, but actual outcomes hinge on evidence quality. If a state (or investor) alleges corruption without firm proof (see EDF v. Romania, MOL v. Croatia), tribunals dismiss the allegations. Arbitrators insist on high evidentiary standards – often "clear and convincing evidence" – before voiding a contract. By contrast, when indirect "red flags" are strong and corroborated (as in

Metal-Tech, Spentex), tribunals will find corruption even absent a confession. Overall, the jurisprudence has coalesced around the idea that proven corruption is excludable from protection, but unproven accusations gain no traction. The EDF principle ("clear and convincing evidence") has become an implicit benchmark in arbitration practice.

3. Symmetry of accusations. Investors can also accuse states of corruption (corruption defense), but the system remains balanced. In EDF v. Romania, the investor accused a government of bribery, yet the tribunal required the same evidentiary rigor as if roles were reversed. In practice, an investor's bribery of a state official (if convincingly proven) can constitute a defence for the state. Meanwhile, an investor wrongly accused faces equal scrutiny. The fair outcome is that both parties must substantiate any corruption allegations with credible evidence. Neither side enjoys a presumptive advantage in these accusations.

4. Parallel systems diverge. National criminal verdicts and international arbitration can reach different conclusions. MOL v. Croatia starkly illustrates this: Croatia's judiciary convicted its former PM for taking a bribe from MOL, yet the ICSID tribunal in London acquitted MOL due to insufficient proof of a corporate bribe. This discrepancy arises because arbitral tribunals are not bound by national courts' findings. As a result, alignment between criminal justice and investment arbitration remains an open issue – although P&ID shows that domestic courts may later override arbitral awards to vindicate justice. The tension highlights the need for better mechanisms to integrate results of criminal prosecutions (e.g. through admissibility of domestic findings) into arbitral fact-finding, while respecting due process.

5. Role of prosecution. Criminal prosecutions can reinforce anti-corruption norms, albeit retrospectively. Cases like Lesotho's LHWP prosecutions demonstrate how domestic law enforcement deters both private and public actors from corruption. When courts impose penalties on both bribe-takers and bribe-givers, they bolster confidence in legal frameworks. As international bodies have noted, robust prosecutions and sanctions serve as a powerful dissuasive. Moreover, when project financiers (e.g. multilateral banks) and states cooperate on enforcement and debarment, they create industry-wide "clear signals" against corruption. However, reliance on post-

facto prosecutions is limited: it can only punish after the damage. Thus, while valuable, criminal justice must complement preventative contractual safeguards.

6. Institutional convergence. There is a clear trend toward greater integration of criminal-law standards into investment practice. The corollary doctrine of "corruption defense" is now an implied requirement in the investor-state regime. Leading jurists argue for future reforms, such as allowing corruption facts to be considered at the merits stage (not only jurisdiction), and allocating responsibility proportionally in mixed-liability cases. The notion that treaties and contracts should explicitly require compliance with anti-corruption norms (e.g. OECD Guidelines, UNCAC provisions) is gaining acceptance. Ultimately, international criminal justice and investor arbitration are increasingly intertwined in construction contract disputes. Corruption, once a "hidden vice," is now a standalone risk factor dictating case outcomes. This shift signals a cautious optimism: global infrastructure projects may gradually benefit from stronger rule-of-law safeguards, as long as enforcement transcends borders.

In sum, combating corruption in international construction contracts calls for systemic change. Effective measures include universal anti-corruption standards in contract law, mandatory transparency and compliance obligations, enhanced cooperation between international bodies and national law enforcement, and specialized judicial forums for transnational corruption. Confiscatory sanctions on illicit gains (backed by cross-border enforcement) are also essential. Implementing these measures would make large infrastructure projects safer and enhance legal protection for all parties, thereby reinforcing justice and integrity in global construction law.

**Note on the publication of the main research results**

Academic specialty: 5.1.5. International legal studies.

International criminal law. International cooperation in combating crime. International criminal justice. International legal problems of combating corruption.

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