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Academic Monograph

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Managing Cross-Border Construction Disputes: Mediation, Arbitration and Judicial Remedies in Practice

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Peaceful dispute-settlement mechanisms in international construction contracts have undergone a threefold shift. Comparative legal and content analysis of arbitral awards, conference materials and International Court of Justice judgments identifies: (i) rising reliance on mediation as a rapid, relationship-preserving technique; (ii) continued dominance of arbitration under the New York Convention 1958, increasingly channelled through FIDIC-based procedural standards; (iii) expanding jurisdiction and budgetary autonomy of international courts that reshape domestic legal orders. The interaction of these mechanisms supplies predictability and cost

efficiency for cross-border projects while exposing tensions between state sovereignty and global adjudication. Further procedural harmonisation and calibrated coordination between courts and tribunals are presented as a prerequisite for stable transnational project governance.

International construction contract law has become a core strand of transnational commercial practice, structuring risk allocation, performance management, and dispute resolution across multi-jurisdictional projects. Against the backdrop of expanding cross-border infrastructure, peaceful means of dispute settlement—most prominently arbitration and mediation—serve as essential tools to reduce time, cost, and relational breakdowns between employers and contractors. Current trends also include the growing institutional autonomy of international courts and tribunals, whose operations increasingly shape national legal fields and regulatory approaches to construction disputes (Lall, 2017). In this setting, harmonized procedures (arbitration, mediation) and institutionalized guidance (e.g., FIDIC) gain salience for predictability and enforceability in international projects.

A multipolar order and the rise of large cross-border construction contracts intensify both the need for and the reliance on peaceful settlement mechanisms. Institutions' financial models and partnerships with non-state actors reinforce adjudicatory independence and functional effectiveness. This "autonomization" fuels a feedback loop: the more independent international judicial bodies become, the more their standards and practices influence domestic frameworks governing construction disputes (United Nations Security Council, 1991). At the same time, literature highlights the necessity of standardized arbitral procedures and the progressive unification of legal norms to stabilize expectations among parties and to lower coordination costs in multi-state projects (Boguslavskiy, 2007).

In conceptual terms, punishment and reconciliation remain intertwined. As noted by H. Arendt in 1958, "People cannot forgive what they cannot punish, and they cannot punish what they find unforgivable" (Arendt, 1998). The tension reflected in this dictum surfaces acutely in international construction disputes: parties' choice between arbitration and consensual processes (e.g., mediation) often turns on whether sanctioning non-performance is viewed as

necessary—or whether preserving a critical long-term relationship takes priority (Arendt, 1998).

Arbitration remains the principal forum in international construction practice because it combines neutrality, expertise, and global enforceability. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) obliges Contracting States to recognize and enforce foreign awards, subject only to limited, exhaustively enumerated defenses (United Nations, 1958). The UNCITRAL Model Law contributes complementary procedural uniformity, supporting party autonomy and procedural due process in international cases (Boguslavskiy, 2007). Together, these instruments anchor the default pathway for resolving complex, high-value construction disputes.

Common-Law Doctrinal Inflection:

Common-law enforcement contexts (e.g., under the supervision of the Supreme Court/Historic House of Lords, Privy Council, and senior appellate courts) place particular emphasis on: (i) conditions precedent to claims; (ii) time-bar architecture; (iii) notice obligations (often a 28-day window under standard forms), and (iv) reasonableness/proportionality as lenses for construing both contractual machinery and party conduct. While the New York Convention (United Nations, 1958) narrows refusal grounds, domestic courts still scrutinize whether parties complied with pre-arbitral prerequisites (e.g., DAAB steps), whether the notice regime was met, and whether enforcement would offend fundamental procedural fairness.

Across jurisdictions, FIDIC standard forms provide a coherent, exportable matrix for risk distribution and dispute processing in construction projects. The contracts' dispute architecture requires timely notice (often within 28 days), establishes claim substantiation, and channels disagreements to a Dispute Avoidance/Adjudication Board (DAAB) before arbitration. This layered design reduces surprise, aggregates contemporaneous evidence, and preserves project momentum. For cross-border projects, contractors and employers frequently adopt FIDIC precisely because its adjudication and arbitration provisions dovetail with the New York Convention's enforceability logic (Moore, 2014), (Boguslavskiy, 2007).

Common-Law Operational Points:

• Conditions precedent: Courts in common-law systems typically treat DAAB referral and notice clauses as enforceable pre-arbitral gatekeepers; non-compliance may defer or bar a claim until the condition is satisfied—unless excused on accepted grounds (e.g., futility where narrowly recognized).

• Time-bar (limitation/forfeiture): Strict time-bar clauses are construed according to their text and commercial purpose. Relief from forfeiture is exceptional; parties must show scrupulous compliance.

• Notice within 28 days: The 28-day notice mechanism promotes contemporaneity and mitigates prejudice. Disputes often turn on whether the "knowledge trigger" was activated and whether the notice content met the contract's specificity requirements.

• Reasonableness / proportionality: While freedom of contract prevails, courts test enforcement impacts through doctrines of reasonableness and proportionality in context (e.g., whether procedural default generates disproportionate forfeiture relative to the breach).

Mediation gains traction globally as an agile, confidential, relationship-preserving method that can either pre-empt arbitration or run in parallel with adjudication under FIDIC. Case experience shows that well-structured mediation shortens timelines and reduces costs without sacrificing outcome durability. Yet diffusion across legal families remains uneven; cultural and institutional barriers continue to limit uniform uptake. In international construction, mediation is most effective when embedded contractually (clear triggers, timetables, and mediator appointment mechanisms) and when coordinated with DAAB/arbitration steps to avoid jurisdictional dead-ends. (Erpyleva, 2015)

International adjudicatory bodies have broadened their docket, and their jurisprudence radiates into domestic normative orders that condition construction activity (e.g., public-law constraints, human-rights proportionality review). The European Court of Human Rights' expanding output illustrates how supranational case-law elevates procedural standards

affecting economic relations (Erpyleva, 2015), and Protocol No. 9 opened direct access for private actors, strengthening judicial oversight across sectors (Council of Europe, 1990). These developments can recalibrate national balances between public interests and private contractual autonomy in construction markets.

In offshore construction and resource schemes, disputes intersect with the United Nations Convention on the Law of the Sea (UNCLOS), including issues tied to exclusive economic zones. Awards and judgments in this space may have immediate operational consequences for project siting, access rights, and state-contractor relations (United Nations, 1982). For common-law practitioners, this interface underscores the need to integrate public-international-law risk into contract drafting (e.g., stabilization language, force-majeure allocation keyed to maritime entitlement disputes).

(1) Arbitration primacy under the New York Convention (United Nations, 1958) remains intact, but outcomes hinge on rigorous compliance with conditions precedent, time-bars, and notice protocols planted in FIDIC.

(2) DAAB processes are not mere preliminaries; they structure the evidentiary record and often predetermine the posture of subsequent arbitral proceedings, with enforcement leverage drawn from the Convention regime (Moore, 2014), (Boguslavskiy, 2007).

(3) Mediation is most valuable when knitted into the contractual timeline and aligned with arbitral architecture; it should be drafted with explicit triggers, stay provisions, and confidentiality carve-outs so that parties can pivot without waiving rights.

(4) Supranational case-law and institutional autonomy (Lall, 2017), (Erpyleva, 2015), (Council of Europe, 1990) continue to imprint domestic standards (reasonableness/proportionality), influencing how courts police the enforcement of dispute-resolution machinery in construction contracts.

Peaceful means of dispute settlement in international construction hinge on a triangle: FIDIC-based contractual governance, arbitration enforceability under the New York Convention (United Nations, 1958) and UNCITRAL

Model Law (Boguslavskiy, 2007), and a judicial environment increasingly shaped by autonomous international courts (Lall, 2017), (Erpyleva, 2015), (Council of Europe, 1990). For common-law audiences, the operative lesson is discipline: draft with precision; administer claims to the exact letter (notice within 28 days, time-bars, DAAB sequencing); and anticipate the radiating effect of supranational norms on domestic enforcement. This is not an incremental compliance exercise but the decisive terrain on which cross-border project outcomes are won or lost.

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

Trends in the development of peaceful means for the settlement of international disputes. International adjudication.

The main research results have been published in the following peer-reviewed article: Белкин, Д. С. Тенденции развития мирных средств разрешения международных споров в контексте международного строительного контрактного права / Д. С. Белкин // Правовое государство: теория и практика. – 2025. – № 2(80). – С. 106-112. – DOI 10.33184/pravgos-2025.2.12. – EDN UKAJWV. DOI: 10.33184/pravgos-2025.2.12 EDN: UKAJWV

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