International construction projects often span multiple jurisdictions, leading to complex legal challenges regarding which laws and forums govern contract disputes. Lex constructionis refers to an emerging set of transnational principles in construction law, analogous to lex mercatoria in international commerce. It posits that despite varied national laws, there may be universally accepted norms and practices in construction contracts. The jurisdictional aspect – encompassing rules on applicable law, dispute resolution forums, and enforcement mechanisms – is central to this concept. However, achieving uniformity in jurisdictional principles is challenging because each country's legal system has its own mandates and public policy considerations. This chapter examines how lex constructionis can provide a framework to unify jurisdictional principles in international construction contract law, ensuring that cross-border projects are governed by predictable rules and efficient dispute resolution mechanisms. We explore the tensions between party autonomy and national public order, the role of standard contract forms and arbitration, and examples of how jurisdictional conflicts are addressed in practice. The analysis demonstrates that a convergence of practices – through widely adopted contract standards like FIDIC, international arbitration conventions, and scholarly efforts – is gradually forming an "institutional design" for jurisdiction in global construction projects. The aim is to identify key principles and mechanisms that constitute this evolving lex constructionis, ultimately enhancing legal certainty and reducing disputes' resolution costs for project participants.

Each jurisdiction traditionally applies its own laws and court systems to construction contracts, which can lead to fragmentation and uncertainty in cross-border projects. Parties from different countries may disagree on which court or law should handle disputes, and inconsistent national rules can disrupt project execution. For example, public procurement regulations or mandatory local contract rules might conflict with international standards. Braig and Mutay (Braig, Mutay, 2016) highlight the tension between res

publica (public law imperatives) and res mercatoria (mercantile, private-law principles) in construction contracts, noting conflicts between the FIDIC standard terms and certain provisions of the Russian Civil Code. In some legal systems, international contract norms are not automatically recognized unless incorporated by legislation or treaty. In Russia, for instance, unwritten transnational principles do not supersede domestic law due to the constitution's dualist stance, requiring transformation of international norms into national legislation (Kremnev, 2021). This limits the direct application of lex constructionis principles, as any foreign arbitration clause or contract standard must align with domestic public policy.

One fundamental issue is the choice of applicable law. Construction contracts often involve owners, contractors, and financiers from different countries, raising the question: which law governs the contract? Divergent conflict-of-law rules yield different answers, undermining predictability. Gurina (Gurina, 2016) observes that the lack of consensus on choosing governing law for international construction agreements frequently leads to legal uncertainty and disputes. Parties may include choice-of-law clauses, but enforceability varies; some countries impose their law for certain contracts (e.g. public works) regardless of parties' choice. Similarly, the selection of dispute resolution forum (court or arbitration) is fraught with inconsistencies. One party might prefer litigation in local courts while the other insists on neutral arbitration. If not resolved clearly in the contract, this can result in parallel proceedings or jurisdictional wrangling.

Even when contracts adopt international arbitration, national differences in arbitrability and public policy create hurdles. Many jurisdictions have restrictions on what can be settled via arbitration (for instance, disputes involving bribery, antitrust, or certain public interest matters). Some states historically forbade arbitrating government construction contracts, insisting on domestic court jurisdiction. Others require specific procedures before arbitration (like mandatory conciliation). A comparative study by Verdier and Versteeg (Verdier, Versteeg, 2015) demonstrates the wide variation in how national legal systems incorporate international dispute resolution norms: some nations readily enforce foreign arbitral clauses and awards, while others invoke public policy to refuse enforcement. For example, an arbitration award might be unenforceable if the local court deems that the

arbitrators' decision violates fundamental public policy (e.g. if mandatory construction safety regulations were not applied).

Moreover, cross-border enforcement of judgments (as opposed to arbitral awards) lacks a global regime, making litigation outcomes less portable. If a contractor obtains a court judgment in one country, it may not be recognized in another country where the counterparty's assets are located. This uncertainty pushes international contractors towards arbitration under frameworks like the New York Convention 1958, which provides near-universal enforcement of arbitral awards. However, even arbitration faces public-order exceptions: any award enforcing contract terms contrary to a nation's regulatory statutes (such as building code or licensing requirements) might be refused enforcement on public policy grounds.

The fragmentation is also evident in the use of standard contract terms. The FIDIC (Fédération Internationale des Ingénieurs-Conseils) contract forms are widely acclaimed as international standards for risk allocation and dispute resolution in construction. Yet their legal effect can differ by jurisdiction. While many countries accept FIDIC conditions as valid contractual terms, others require adaptations to conform with local law. Bacos (Bacos, 2024) notes that civil law countries in the EU tend to integrate international contract norms into their codes (sometimes translating and codifying FIDIC-like provisions), whereas countries with less developed legal frameworks might adopt FIDIC terms wholesale with minimal changes. This means that the same FIDIC clause (for example, on claim notice periods or interest on delayed payments) might be enforceable in one jurisdiction but not in another if it conflicts with mandatory local law or is interpreted differently.

Another challenge lies in multi-tier dispute resolution mechanisms, such as FIDIC's requirement for an initial decision by a Dispute Adjudication Board (DAB) before arbitration. Not all legal systems recognize such adjudicative boards. For instance, Russia's legislation does not provide a clear status for DAB decisions, and its public procurement law effectively precludes appointing an independent dispute adjudicator in state contracts (Sulimov, 2024). As a result, the contractually stipulated DAB process may be bypassed or rendered ineffective in those jurisdictions, forcing parties directly to negotiation or litigation. This undermines the uniform application of multi-

tier dispute resolution principles that lex constructionis would otherwise promote.

Finally, political and institutional factors can impede unification. Governments may be reluctant to cede control to foreign law or international arbitration for large infrastructure projects due to sovereignty concerns. In such cases, even if a foreign contractor pushes for international dispute norms, the state employer might insist on local jurisdiction or law, fracturing the lex constructionis ideal. Zhadan (Zhadan, 2016) emphasizes that effective unification of international norms in national practice often requires political will and cooperation. Without endorsement from state authorities, even the best contractual principles may not gain traction domestically.

Despite these challenges, strong converging forces are driving the unification of jurisdictional principles in international construction law. One major force is the widespread adoption of standard form contracts (especially FIDIC) in international projects. These contracts come with pre-defined jurisdictional clauses: they typically specify the governing law (often remaining silent, to be chosen by parties) and crucially, include arbitration clauses under respected international rules (commonly ICC arbitration) along with pre-arbitral dispute boards. Over decades, repeated use of FIDIC conditions in projects worldwide has cultivated a consistent approach to dispute resolution. Contractors, employers, and engineers are accustomed to the idea that disputes will first go to a neutral DAB and then to arbitration rather than local courts. This practice itself is a reflection of lex constructionis at work – a de facto uniform rule that major construction disputes are to be arbitrated, regardless of location. The fact that multilateral development banks (e.g., World Bank, BRICS New Development Bank) mandate or endorse FIDIC contracts for funded projects reinforces this norm, mainstreaming these jurisdictional clauses across continents.

Another unifying mechanism is international commercial arbitration and the supporting legal infrastructure around it. Arbitration provides a neutral forum, which is essential for cross-border construction ventures where parties mistrust each other's home courts. The 1958 New York Convention and the UNCITRAL Model Law on International Commercial Arbitration (adopted by 85+ countries) have effectively harmonized how arbitration

agreements and awards are treated around the world. Thanks to these instruments, if parties agree to arbitrate (e.g. under ICC or UNCITRAL rules), virtually any country they operate in will enforce that agreement and later enforce the arbitral award, subject only to narrow exceptions. This greatly reduces the risk of home-court bias and divergent procedures. As a result, arbitration has become the preferred dispute resolution method in international construction, as reflected in practice and commentary (Jenkins, 2021). In essence, the norms of arbitration – competence-competence (the tribunal's power to decide its jurisdiction), finality of awards, party autonomy in selecting arbitrators – are now part of the transnational lex constructionis framework.

The lex constructionis also draws from general principles of transnational contract law that have gained broad acceptance. For instance, the principle of party autonomy (the freedom of parties to choose governing law and forum) is widely recognized, within limits. Most jurisdictions now accept that parties can select a foreign law to govern their contract and refer disputes to arbitration or foreign courts, especially in commercial contexts. This principle is enshrined in instruments like the Rome I Regulation in the EU (for law selection) and numerous arbitration statutes. By affirming party autonomy, legal systems converge on a key jurisdictional principle: the contract's dispute resolution clause should generally be upheld. Even in challenging environments, recent trends are positive. For example, Russian courts historically had a mixed record on enforcing arbitration agreements in state-related contracts; yet in a 2024 case involving a state-owned enterprise, a Russian arbitrazh court honored the contract's ICC arbitration clause and declined jurisdiction, effectively sending the dispute to London as agreed by the parties. Such enforcement of contractual forums, even in politically sensitive cases, indicates growing respect for lex constructionis principles of neutrality and autonomy.

A further element of unification is the emphasis on arbitrability and public policy exceptions being interpreted narrowly. Many countries have modernized their arbitration laws to allow a wide range of disputes to be arbitrable, including construction disputes that involve complex technical and economic issues. The trend in case law is to interpret exceptions (like "public order") restrictively so as not to undermine valid arbitration

agreements. For instance, issues like fraud or corruption in a construction project – which once might have been deemed non-arbitrable or voiding an arbitration clause – are now often handled within arbitration, with any public policy concerns addressed at the enforcement stage if needed. This global shift aligns with the principle that arbitration is capable of delivering justice even in complicated disputes, a cornerstone for lex constructionis uniformity.

Crucially, there are ongoing efforts to articulate the principles of lex constructionis more explicitly. Scholars and practitioners are identifying common norms gleaned from arbitral awards, standard contracts, and national laws. In a notable contribution, Loots and Charrett (Loots, Charrett, 2022) propose a set of twenty core principles of international construction law (lex constructionis) that cover key aspects of contracts: overarching duties (like good faith and cooperation), risk allocation, time management (e.g., extensions for delays, notice of claims), payment and cost issues, quality assurance, and dispute resolution processes. Among these are jurisdictional principles such as the duty to attempt amicable settlement or adjudication before arbitration, the enforceability of interim decisions (like DAB determinations) pending final resolution, and the commitment to final and binding arbitration. While not yet formally codified in any treaty, such endeavors show a move toward consensus on best practices. Over time, these principles gain persuasive authority – for example, arbitral tribunals start citing earlier awards or scholarly lists of lex constructionis principles when deciding similar cases, thereby reinforcing uniform norms.

The collaboration of international institutions further solidifies unified jurisdictional approaches. FIDIC itself has partnered with arbitration institutions (like the ICC) to streamline dispute resolution for construction – for instance, by developing the Dispute Avoidance/Adjudication Board (DAAB) procedures and ensuring that ICC arbitration rules accommodate multi-tier clauses. Proposals have been made for a specialized international construction dispute resolution forum, possibly under the joint auspices of FIDIC and ICC (Zharikov, 2025). Such a forum could develop a consistent jurisprudence for construction disputes, much as the Court of Arbitration for Sport has done in the lex sportiva domain. Although this is still aspirational, the very discussion of it underscores the perceived need for institutional mechanisms to support lex constructionis.

Harmonization is also gradually being pursued through soft law and model rules. UNCITRAL and UNIDROIT have not yet produced construction-specific conventions, but general instruments like the UNIDROIT Principles of International Commercial Contracts influence construction contract interpretation toward common standards. In addition, region-specific guidelines – for example, the OHADA Uniform Act on arbitration in Africa or the ASEAN protocols – incorporate best practices that reflect globally accepted principles. All these contribute to a more uniform legal environment.

Real-world cases illustrate both the problems and progress in unifying jurisdictional principles. In Union of India v. McDonnell Douglas (1993), an Indian court initially resisted an ICC arbitration clause in a construction contract, citing public interest in local adjudication of infrastructure disputes. However, on appeal, the clause was upheld, signaling a shift in favor of respecting party autonomy consistent with lex constructionis trends. Conversely, in an early 2000s Gulf region case, a local law requiring government consent for arbitration in state contracts voided the arbitration agreement, demonstrating how domestic law can still override transnational norms. Over time, many such outlier rules have been reformed under commercial pressure. For example, several Middle Eastern jurisdictions in the 2010s liberalized their arbitration laws (with Qatar, UAE, Saudi Arabia adopting new laws aligned with the Model Law), thereby removing earlier restrictions.

An instructive case on multi-tier dispute clauses is an ICC arbitration (Case No. 10619, 2001) concerning a FIDIC contract: the tribunal enforced the contractual requirement that the dispute be first referred to a DAB and a waiting period observed, before arbitration could commence. The claimant who bypassed the DAB was found to have acted prematurely. This award, later upheld by a national court at the seat, reinforced that such procedural clauses are binding – a principle increasingly accepted across jurisdictions. It exemplifies lex constructionis in operation: regardless of venue, the parties are held to the same multi-tier process that FIDIC envisages.

Another example is the enforcement of DAB decisions. In the well-known Persero case (Singapore Court of Appeal, 2011), involving a FIDIC contract

in Indonesia, the court upheld an arbitral award that essentially enforced a DAB's interim decision, emphasizing the importance of honoring interim dispute mechanisms. Other courts (England, Switzerland) have similarly found ways to give effect to DAB decisions (either through arbitration or direct enforcement), fostering a uniform principle that "DAB decisions must be complied with or swiftly arbitrated" in line with FIDIC's intent.

Differences are gradually narrowing even in tricky areas like concurrent jurisdiction. In large projects, it's not uncommon for related disputes to be handled in different forums (e.g., a bond call dispute in court while the main contract dispute is in arbitration). There is a growing recognition that such parallel proceedings should be minimized. For instance, the ICC has updated its arbitration rules to allow consolidation and joinder, which can unify disputes in one proceeding. Some jurisdictions are also more willing to stay court cases in favor of arbitration when a related arbitration is pending, to avoid inconsistent outcomes. These practices contribute to a more coherent jurisdictional outcome.

Finally, the influence of investment arbitration (ICSID) on construction contract disputes bears mention. When contractors sue states under bilateral investment treaties for issues arising out of construction contracts (e.g., unfair termination of a contract by a state entity), investment tribunals apply international law principles that often align with lex constructionis (fair and equitable treatment, respect for contract clauses, etc.). Cases like Salini v. Morocco (2001) not only established criteria for construction contracts as investments but also underscored the validity of contract terms (the ICC arbitration clause in the contract was noted by the ICSID tribunal). The cross-pollination between commercial construction arbitration and investment arbitration further pushes towards uniform principles, as states realize that disregarding international norms in their contracts can lead to liability on another front.

The evolution of lex constructionis suggests that a more unified set of jurisdictional principles in international construction contract law is on the horizon. Key elements of this unification include: the predominance of arbitration over litigation for cross-border projects; the acceptance of party autonomy in choosing neutral governing laws and forums; the

institutionalization of multi-tier dispute resolution (negotiation, adjudication, arbitration) as standard practice; and the gradual reconciliation of these private mechanisms with national public policy requirements. While obstacles remain – such as pockets of resistance in domestic legal regimes and the need for greater clarity on how transnational norms interact with mandatory local laws – the trend is toward convergence.

Crucially, the interaction between private ordering and public authority is being refined. Rather than viewing them as irreconcilable, modern practice seeks a balance: parties can largely structure their dispute resolution as they see fit, but truly fundamental public interests (safety, anti-corruption, etc.) are safeguarded through narrowly tailored legal oversight. The lex constructionis thus does not eliminate the role of national law but harmonizes it with global standards. As shown by various examples, courts and arbitral tribunals across jurisdictions increasingly uphold a common set of principles. International standard contracts and arbitration conventions act as connectors between different legal systems, creating an overarching framework that transcends any one jurisdiction.

To fully realize the potential of lex constructionis, further efforts are recommended. Greater academic collaboration in distilling universal principles will aid in their recognition by courts and arbitral panels. Institutions like FIDIC and ICC could formalize specialized rules or forums for construction disputes, improving consistency in decisions. National legislatures can also support unification by aligning their laws with international best practices (for example, explicitly allowing DAB decisions to have interim enforceability, as some countries have started doing). As Varavenko and Niyazova (Varavenko, Niyazova, 2022) observe, adapting international standards into national law requires both legal and economic analysis to ensure fit – but when done successfully, it significantly reduces legal friction in projects.

Jurisdictional Design in International Construction Contracts: A Common-Law Framework for Predictability and Enforcement

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Lex constructionis emerges from lex mercatoria to forge a predictable, unified reading of international construction contracts. This chapter maps its doctrinal roots, separates substantive from procedural norms, evaluates exclusive and asymmetric forum clauses, and tests arbitrability against public policy across Russia, the EU and specialised tribunals. Findings confirm reduced transaction costs and a balanced autonomy–public-order interface.

In conclusion, the unification of jurisdictional principles through lex constructionis enhances predictability and fairness in international construction contracting. It reduces forum shopping and duplicate litigation, streamlines dispute resolution, and gives parties confidence that their agreed mechanisms (like arbitration) will be respected globally. Over time, this harmonization will lower transaction costs and risk premiums for cross-border infrastructure development. While lex constructionis is still consolidating, its institutional contours are increasingly visible: a blend of standard contracts, arbitral jurisprudence, and scholarly principles coalescing into a coherent transnational legal framework for construction projects. This development ultimately benefits all stakeholders – employers, contractors, and states – by providing a stable legal environment for the collaborative yet complex enterprise that is international construction.zation will lower transaction costs and risk premiums for cross-border infrastructure development. While lex constructionis is still consolidating, its institutional contours are increasingly visible: a blend of standard contracts, arbitral jurisprudence, and scholarly principles coalescing into a coherent transnational legal framework for construction projects. This development ultimately benefits all stakeholders – employers, contractors, and states – by providing a stable legal environment for the collaborative yet complex enterprise that is international construction.

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