

# International Construction Law

## Academic Monograph



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](mailto:dmitryb81@gmail.com)

DOI: 10.64457/icl.en.ch5

### **Strategic Role of the BRICS New Development Bank in Streamlining International Construction Contracting and Risk Allocation**

Recommended citation: Dmitry Semenovich Belkin. Strategic Role of the BRICS New Development Bank in Streamlining International Construction Contracting and Risk Allocation. In: International Construction Law. Moscow: Slavic Greek Latin Academy, 2025. DOI: 10.64457/icl.en.ch5.

*Chapter investigates the legal nature and mandate of the New Development Bank (NDB) within international construction contract law and situates its practice in the broader context of multilateral finance and regional integration. Part I dissects the Bank's founding agreement, internal regulations and infrastructure portfolio; Part II contrasts its competences with those of the World Bank and the European Bank for Reconstruction and Development; Part III examines how integration processes within BRICS foster harmonisation through FIDIC-based contract standards. Findings*

*show that the NDB enjoys full international legal personality, encourages cross-border risk mitigation, advances sustainable-development benchmarks and promotes doctrinal convergence of construction contracts. The study recommends continued diffusion of FIDIC forms to further lower transactional uncertainty and litigation exposure.*

In a multipolar international order marked by expanding intergovernmental cooperation, international financial organizations have become pivotal to infrastructure development and the pursuit of sustainable development objectives. Large-scale infrastructure projects require substantial financial resources and integrated legal support; for that reason, institutions such as the BRICS New Development Bank (NDB) now figure as key actors within international construction contract law (ICCL). These organizations provide not only financing but also frameworks of legal support that streamline contractual architecture and risk-management procedures, thereby facilitating cross-border project delivery.

The legal nature and competence of the NDB in the ICCL domain have long remained only partially examined, notwithstanding the role such institutions play in global infrastructure initiatives. The interface between international and domestic legal orders generates complexities that demand systematic analysis (Abashidze, 2014). Simultaneously, the growth of international organizations and the deepening of integration processes reinforce the need to unify legal standards in ICCL, including rules on contract formation and performance, controls over time and quality, and structured methods of dispute resolution (Union of International Associations, n.d.). Against this background, it is necessary to delineate doctrinally the NDB's legal status and powers and to relate them to the Bank's influence on ICCL practices and sustainability standards.

This chapter examines the NDB's legal nature and competence as an international financial organization and identifies the ways in which its activities shape ICCL norms and sustainability practices. It reviews the NDB's constituent and internal instruments alongside the international standards of construction contract law to which the Bank's operations relate; it compares the legal mechanisms of the NDB, the World Bank, and the European Bank for Reconstruction and Development in the financing of infrastructure; and

it consolidates observed elements of NDB project practice in order to assess their contribution to the unification of ICCL standards and the reduction of conflict.

The methodological approach relies on a systematic reading of founding treaties and regulations of international organizations, on a comparative-law study of instruments employed by major financial institutions, and on doctrinal approaches to integration law and inter-state cooperation developed in Russian and foreign scholarship (Kashkin & Chetverikov, 2014; Kembayev, 2009). This vantage point enables a view of the NDB through the lens of unification and harmonization processes and through the functional role of international organizations as subjects of international law.

Intergovernmental organizations are established by international treaties and act in accordance with international law; their constituent acts define mandates, organs, and regulatory frameworks. Their international legal personality appears in the capacity to be a party to agreements, to enter legal relations, and to implement projects in their own name, while autonomous will is confined by the mandate granted by member states. Institutional flexibility facilitates adaptation to shifting international circumstances and consolidates the role of organizations in the evolution of the legal order (Bekyashev, 2019). Contemporary doctrine increasingly describes international organizations as “law-makers,” whose decisions, standards, and practices exert institutionalized influence on the formation of norms (Alvarez, 2006). In ICCL this role is visible in the diffusion of standardized contract conditions, assessment and control procedures, and the embedding of environmental and social requirements into contractual models.

Modern integration-law doctrine points to the gradual consolidation of a coherent normative space in which public-law and private-law elements are aligned through international agreements and their practice. Integration, as noted by G. M. Veliaminov, does not result from spontaneous acts; it proceeds through detailed treaties that construct the legal infrastructure of a common economic space, including the free movement of goods, services, capital, and labor, together with institutions overseeing compliance with contractual obligations (Veliaminov, 2015). Yu. S. Bezborodov emphasizes the purposive character of norm-unification across key spheres of legal life

and the role of specialized institutions that coordinate the application of agreed rules (Bezborodov, 2017). For ICCL, these integration mechanisms directly support the unification of contractual duties, enhance the predictability of legal outcomes, and facilitate the deployment of complex infrastructure projects.

A comparative view of the World Bank, the European Bank for Reconstruction and Development (EBRD), and the New Development Bank reveals both commonalities and distinctions. Each is created by international agreement and possesses international legal personality; their objectives and mandates, however, diverge and with them the instruments and priorities. The World Bank pursues poverty reduction and sustainable economic development globally; the EBRD concentrates on the transition to market economies and institutional reform from Central Europe to Central Asia; the NDB, established by the BRICS states, mobilizes resources for infrastructure and “green” projects in BRICS and other developing economies, with an openness to expanding membership. Engagement with the private sector varies: the World Bank deploys targeted support instruments for private enterprise; the EBRD consistently advances public–private partnership arrangements; the NDB focuses primarily on sovereign infrastructure while developing modalities for the participation of private actors where these increase project effectiveness. Financial mechanisms also differ. A notable feature of the NDB is lending in members’ national currencies, reducing foreign-exchange risk for borrowers and strengthening project resilience. At the same time, each institution benefits from immunities and privileges necessary to perform its mandate and maintains governance systems that combine borrower requirements with sensitivity to national regulation (Kapustin, 2016).

NDB practice confirms the Bank’s independent legal personality and its capacity to act as a party in transboundary legal relations. Established by intergovernmental agreement, the NDB concludes contracts, opens credit lines, and implements projects across jurisdictions in its own name. That status aligns the NDB with other major international financial institutions and enables it to transmit uniform requirements into financed projects (Bevelikova, 2015). A central avenue is standardization through investment conditions: the NDB orients borrowers toward using internationally

recognized standard forms and norms; in particular, the conditions developed by the International Federation of Consulting Engineers (FIDIC) codify transparent risk allocation rules, structured notice requirements, change-management processes, and multi-tier dispute-resolution mechanisms. The inclusion of such conditions in loan and project documentation reduces the probability of disputes, accelerates coordination, and increases the predictability of obligations between employers and contractors drawn from different jurisdictions. Collectively, this broadens the operative space of unified ICCL provisions and strengthens the durability of funded programs (FIDIC, n.d.).

The NDB's competence manifests in a dual dimension. On the one hand, it is a financial institution mobilizing resources and supporting infrastructure initiatives in priority sectors. On the other, it is a conduit for best practices and standards that help constitute a uniform legal environment for cross-border construction contracts. Local-currency financing is of particular importance as an instrument for mitigating currency risk and cushioning external shocks. In the absence of supranational jurisdiction, the flexibility of internal procedures—adapted to domestic law in the states where projects are implemented—ensures alignment of environmental, labor, and other social requirements with local legal prescriptions. As the project portfolio expands, the role of private-sector participation grows where it contributes to the achievement of project objectives and compliance with efficiency criteria.

A general trend emerges from the comparison of the NDB with the World Bank and the EBRD: the activities of international financial organizations foster the progressive unification of legal standards in ICCL, shaping convergent approaches to risk assessment, change administration, pre-litigation settlement, and arbitration. The NDB's influence appears both in direct financing and in the consolidation of legal frameworks for project execution, leading to the harmonization of national regimes without diminishing states' regulatory prerogatives. With the practice of incorporating FIDIC conditions and other internationally recognized norms into contracts, legal risk and conflict potential decrease while the stability and predictability of contractual relations increase.

These findings support further adaptation and deployment of FIDIC-based unified standards within national systems—especially with respect to notice procedures, time limits and evidentiary requirements, change regulation, and multi-tier dispute resolution. Such implementation lowers contractor risk, improves comparability of project documentation, and facilitates access to finance through appropriate legal forms. Parallel scholarly inquiry into the legal status and competence of integration-oriented financial institutions such as the NDB remains relevant to the design of clear legal mechanisms of interaction within formations like BRICS (Abashidze, 2014; Kembayev, 2009). Strengthening the NDB’s standing as an influential actor in international construction requires consistent codification and harmonization of its internal acts with widely accepted regulatory solutions, creating more stable and predictable conditions at the global level.

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

Academic specialty: 5.1.5. International legal studies.

Law of international organizations. Legal nature, status and competences of international intergovernmental organizations, international non-governmental organizations and quasi-organizations. Law-making activities of international organizations. Internal law of international organizations. International conferences.

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