

International Construction Law

Academic Monograph



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Regulatory Convergence of Transnational Construction Contracts: Harmonizing Treaty Law, FIDIC Standards and National Enforcement

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The chapter analyses the normative foundations governing cross-border construction contracts. It first systemises universal sources—the 1945 United Nations Charter, the 1980 CISG, the 1958 New York Convention and the 1986 Hague Convention—and assigns their functional hierarchy vis-à-vis domestic law. A dedicated section examines FIDIC contract standards as risk-allocation and dispute-management tools, highlighting their interaction with the Salini test in ICSID, ICC and SCC proceedings. Subsequent discussion evaluates pathways for integrating FIDIC provisions into domestic

frameworks through digital registers and statutory recognition of adjudication. The chapter closes with recommendations on harmonisation and project-partnering models. The proposed taxonomy and practical guidance enhance contractual predictability and the bankability of large infrastructure ventures.

In an emerging multipolar world and with the intensification of international cooperation in the construction sector, the role of the sources of international law in regulating international construction contracts is becoming increasingly significant. As I. A. Goddard (2018) emphasizes, an effective system of international legal regulation of cross-border construction contracts is based on a harmonious combination of international norms and national legislation, which is a key factor for the successful implementation of large infrastructure projects. L. A. Morozova (2024) similarly notes that the concept of a legal system and its structure plays a significant role in understanding the mechanism of legal regulation, especially under conditions of globalization. The legal framework provided by instruments such as the 1945 United Nations Charter (UN Charter), the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG), and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as the standards of the International Federation of Consulting Engineers (FIDIC), defines the conditions for interaction among participants in cross-border projects. However, the issue of the hierarchy of these sources and the practice of their application in different national legal systems remains a subject of debate, linked to differences in national approaches to the primacy of international norms and FIDIC standards. The research hypothesis posits that systematizing and integrating international legal norms, including FIDIC standards, with national law in regulating international construction projects is achievable through their classification and systematic implementation.

According to the World Bank report “Benchmarking Infrastructure Development” (2023), global investments in infrastructure projects have continued to grow, reaching significant levels thanks to reforms in the field of public-private partnerships (PPP). Between June 2019 and June 2022, 45 economies implemented key regulatory changes, which contributed to an increase of approximately USD 488 billion in PPP infrastructure investments.

These reforms, especially in contract management, underscore the need for effective legal mechanisms to ensure the protection of the interests of all participants and to promote the sustainable development of international construction projects.

Research Objective: To develop and substantiate practical approaches to the unification and implementation of sources of international law and FIDIC standards in international construction law, as well as to identify tools for their harmonization with national legislation.

Research Tasks:

- Identify the main sources of international law that affect international construction contracts, in order to determine their range and characteristics.
- Define the hierarchy and operating principles of these sources, which will allow understanding their interplay and priority in the context of international construction contract law (ICCL).
- Analyze the possibilities for integrating international FIDIC standards into national legal systems.
- Develop recommendations to improve the effectiveness and stability of the implementation of international construction projects.

Scientific Novelty: In contrast to many studies focused on general issues of the application of international treaties or on practical issues of applying FIDIC standards, this research for the first time comprehensively examines the influence of international treaties and FIDIC standards on the legal regulation of cross-border construction contracts. In a broader context, modern legal doctrine strives to form a universal concept of “sources of law” used in practice. Particular attention is given to international legal scholarship that explores the process of formation and implementation of sources of law at the global level. Thus, the category of “source of law” encompasses not only the material factors and social prerequisites necessitating legal regulation, but also the formation of the content and the binding force of the norms themselves. This approach highlights the significance of sources of law in law-

making and law-enforcement mechanisms, but does not provide a detailed methodology for their application in specific branches of law.

Main Aspects of ICCL. The research established that the legal foundation of international construction contract law (ICCL) comprises both the general sources of international law and specialized legal documents and standards. Universal international instruments applicable in the context of ICCL include: the UN Charter (1945), which enshrines fundamental principles of international cooperation; the CISG (1980), which establishes uniform approaches to international commercial contracts; and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which ensures the binding force of arbitral decisions. It should be noted, however, that the 1986 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods, despite its potential significance, has limited effect due to an insufficient number of ratifications and its not having entered into force.

In addition, it is important to take into account international customs that have developed in the construction industry, and doctrinal approaches rooted in classic works of international law, such as Hugo Grotius's treatise *On the Law of War and Peace* (1625), which emphasizes the role of international treaties in reconciling state interests and developing stable international cooperation—matters directly relevant to modern cross-border construction projects. The Principles of the International Institute for the Unification of Private Law (UNIDROIT Principles) not only establish general principles of interaction between commercial parties, but also serve as a basis for developing specialized legal norms applicable to international construction contracts.

To ensure the correct interpretation of the research results, it is necessary to clarify the terms and concepts used in this work within the ICCL framework. International commercial law is an established branch of international law based on international treaties and conventions that govern the conclusion, performance, and termination of contractual obligations between subjects of international legal relations. The foundational legal instrument in this field is the CISG, which provides a uniform legal framework for international

commercial contracts and serves as the basis for regulating international construction contracts.

International construction law is a relatively new but rapidly developing branch of international law that covers the legal regulation of construction processes related to the design, erection, and operation of facilities at a transnational level. The importance of this field is confirmed by foundational scholarly works of leading researchers and practitioners in international construction. For example, Wolfgang Breyer's *International Construction Law: An Overview* presents a comprehensive analysis of international construction contracts. Wendy K. Venoit, in *International Construction Law*, examines issues of resolving cross-border construction disputes. The publication *International Construction Law Review*, edited by D. Wightman and H. Lloyd, delves into questions of harmonizing contract standards and the interaction of diverse national legal systems. C. B. Molineaux's work *International Construction Law* is an important theoretical foundation that illuminates the evolution of international construction law from early forms of contract regulation to modern standards.

ICCL is an emerging subfield of international construction law that provides legal regulation for the conclusion and performance of contracts within cross-border construction projects. Despite its relative youth, ICCL has already been discussed in detail in the doctrinal studies of well-known international scholars. For instance, Lukasz Klee, in the monograph *International Construction Contract Law*, analyzes key aspects of the application of FIDIC standards in international construction practice, examining their impact on risk allocation and dispute resolution. An important practical guide to international construction contracts is William Godwin's *International Construction Contracts: A Handbook*, which covers key issues in contract structuring and construction risk management. Also noteworthy is D. I. Imamova's study *The concept of an international construction contract*, which examines the distinctive features of the legal regulation of international construction contracts in light of modern trends in private international law.

ICCL represents a complex interdisciplinary legal subsystem at the intersection of private and public international law. In theoretical terms, ICCL contains elements of both branches of international law, due to the

specificity of its subject matter and regulatory method. On one hand, ICCL governs contractual relationships between private parties (companies, contractors, investors) in transnational construction projects, which indicates its affiliation with the sphere of private international law. The main legal instruments of ICCL—such as FIDIC standard contract conditions, *lex mercatoria* principles, and international commercial arbitration mechanisms—confirm its private-law nature. On the other hand, ICCL includes elements of public international law, since transnational construction projects often affect state interests, are governed by international agreements, and require compliance with international safety and environmental standards. In this context, the study by Ya. A. Anosov on the legal regulation of international construction contracting in the EAEU countries is of interest.

It should be noted that arbitral practice in construction disputes is developing in two primary directions. On one hand, the resolution of such disputes is traditionally carried out within international commercial arbitration, in particular under institutions like the International Chamber of Commerce (ICC) and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). In these venues, construction disputes are resolved predominantly from a private-law perspective, governed by contract terms based on FIDIC standards and other industry standards. On the other hand, practice shows that in some cases construction disputes may fall under the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID). A precedent confirming this possibility is *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco* (ICSID Case No. ARB/00/4, known as the *Salini case*).

Depending on the nature and legal character of a construction dispute, it may be adjudicated either in international commercial arbitration—where disputes are decided on the basis of the parties’ contractual obligations—or in investment arbitration if the project meets the criteria of investment activity and touches upon public-law aspects such as investment protection guarantees and states’ sovereign obligations. Some researchers (e.g., Yerniyazov, 2023) note the potential of investment treaties to harmonize the interests of private contractors and the state.

The relevance of this study is determined by the need for a deep understanding of the mechanisms for the formation and application of international legal norms in the context of construction contracts. Under current conditions, the diversity of legal systems and the cultural characteristics of participants in international projects create a need for unified standards that can minimize legal risks and contribute to the successful implementation of projects. An analysis of the sources of international law makes it possible to identify key elements influencing the regulation of construction contracts and to determine paths for their harmonization. Among such paths, particular importance is given to the “project partnering” model.

The research of leading scholars plays an important role in the theoretical substantiation of the sources of international law. N. Yu. Zavyalova, in her work *Sources of international law and their features*, provides a detailed analysis of the essential traits and properties of sources of international law from the perspective of general legal theory. She emphasizes that the development of social relations with a foreign element is the main factor predetermining the creation of new legal norms at the international level. Zavyalova also draws attention to the specific characteristics of the subjects of international law-making and the processes of reconciling states’ wills in the formation of international treaties, which indicates the consensual nature of international norm-creation.

B. Krivokapić, in his article *The most important sources of international law and their hierarchical interrelation (Part 2)*, addresses the issue of hierarchy among the main sources of international law—international treaties, international custom, and decisions of international organizations. He notes that despite the traditional recognition of international treaties as primary sources of law, in some cases international customs and decisions of international organizations may carry greater legal force. He pays special attention to the role of United Nations Security Council resolutions and other international organization decisions, which, due to their immediacy and universal applicability, often prevail over other sources of law.

L. P. Anufrieva, in *On the sources of private international law (some theoretical issues)*, focuses on theoretical aspects of defining sources of private

international law. She points out the insufficient development of this topic in domestic and foreign scholarship, which in her view creates certain gaps in the understanding and application of sources of law in the practice of international private-law relations. Anufrieva highlights the need to systematize theoretical approaches to defining sources of private international law, considering their dual nature as both an objective and a formal expression of law.

The work of G. Fitzmaurice provides an in-depth analysis of the procedure and jurisdiction of the International Court of Justice, which is directly relevant to understanding the legal mechanisms of dispute resolution in international construction projects. His conclusions can be applied to improve arbitration procedures and judicial proceedings for disputes arising during the implementation of cross-border construction contracts.

The study employed methods of comparative analysis of legal norms and principles governing international construction contracts. Key international conventions and treaties, custom, as well as doctrinal studies related to arbitration and dispute resolution were examined. Special attention was given to analyzing the role of standards developed by FIDIC and their application in various legal systems. Information was collected from authoritative sources such as FIDIC publications and from research by leading scholars in the field of international construction and investment law. The theoretical foundations presented by G. I. Muromtsev in his work *Sources of law: theoretical aspects of the problem* were also reviewed. G. I. Muromtsev emphasizes the complexity and multifaceted nature of the concept of “source of law,” which indicates the necessity of an interdisciplinary approach to its study and consideration from the perspective of not only public international law but also private international law.

Sources of International Law and Their Influence on ICCL. The study identified the main sources of international law affecting international construction contracts. It was determined that the key among them are international agreements, legal customs, and recognized industry standards that govern legal aspects of parties’ interactions in cross-border construction projects. The UN Charter establishes fundamental principles such as state sovereignty, non-interference in internal affairs, and the peaceful settlement

of disputes. These principles create a foundation for international cooperation and for protecting the rights of participants in construction contracts at the global level. The CISG addresses issues related to the supply of construction materials and equipment, ensuring uniform legal regulation of commercial transactions and minimizing legal risks in the performance of contracts. The 1986 Hague Convention, which governs the law applicable to international sales contracts, provides a mechanism for choice of law and jurisdiction, which is critical for cross-border construction projects as it contributes to legal certainty and the protection of participants' interests. It has been established that FIDIC standards constitute a universal tool for regulating relations between employers and contractors, governing issues of risk allocation, technical aspects of project execution, and dispute resolution. The decisions of international arbitral tribunals, such as ICSID, have a significant impact on practice in the construction sector, serving as important guidelines in resolving conflicts that arise in the course of implementing international construction contracts. International custom, based on consistent state practice, complements the provisions of international treaties, especially in the event of gaps in regulation. In addition to the above sources, the 1958 New York Convention and the UNIDROIT Principles of International Commercial Contracts occupy a significant place, as they promote the unification of arbitral awards and the standardization of contractual relations.

Hierarchy of Sources in the Context of ICCL. The analysis determined the hierarchy and operating principles of the sources of international law regulating international construction contracts. It confirmed that the CISG and the 1986 Hague Convention form the basis of the regulatory framework for construction contracts. FIDIC standards, while not legally binding per se, are recognized by the professional community and are widely applied in the construction industry to unify contract conditions and increase the predictability of their performance. International customs and general principles of law play a supplementary role, filling regulatory gaps and providing flexibility in enforcement. It was identified that the most significant precedent for the international construction sector is the Salini case, in which the so-called "Salini test" was formulated—criteria for considering construction disputes under ICSID. It was established that this test includes such criteria as capital contribution, the presence of risk, a certain project

duration, and a contribution to the host state's economic development. Its application allowed construction projects to be classified as investments and made it possible to bring the relevant disputes under ICSID's jurisdiction.

Analysis of Integrating FIDIC Standards into National Legal Systems. The study found that the FIDIC national associations of all five founding BRICS countries—Brazil, Russia, India, China, and South Africa—are members of FIDIC. This underscores the importance of FIDIC standards for Russia in terms of engagement with BRICS partner countries. The integration of FIDIC standards into national legal systems, including Russia's, is achievable through the official recognition and adaptation of FIDIC standard contracts to national conditions, and this process has already begun with a meeting chaired by the Deputy Prime Minister of the Russian Federation, D. N. Kozak. A key obstacle to the full incorporation of FIDIC standards into Russian legislation remains the absence of an adjudication mechanism, which is widely used in global construction practice to facilitate prompt dispute resolution. At the same time, unifying contract conditions and reducing legal risks significantly increase the investment attractiveness of the industry, as was earlier noted in the work of O. Schachter (1991), which emphasized the close connection between the theoretical foundation of international law and its practical mechanisms in cross-border construction.

Practical Recommendations for the Use of FIDIC Standards. Based on the research findings, the primary recommendation is the integration of FIDIC standards into a unified digital registry of construction requirements being developed by the Ministry of Construction and Housing of the Russian Federation pursuant to Federal Law No. 653-FZ of 25 December 2023. The implementation of FIDIC standards in this registry will provide uniform legal conditions for the execution of international construction contracts, simplify access for construction companies from friendly countries to the Russian construction market, and enhance the competitiveness of domestic construction companies within BRICS. An important initiative is to conduct training programs for construction industry participants aimed at mastering the principles of applying FIDIC standards, as well as to create preconditions for implementing the adjudication mechanism in the domestic construction sector.

Conclusion. This study has demonstrated the significance of such sources of international law as the CISG and the 1958 New York Convention in regulating ICCL. The analysis revealed the possibility of classifying construction contracts as investments if the criteria of the “Salini test” developed in ICSID practice are met.

It has been established that FIDIC standards are a de facto globally recognized tool for unifying contract terms and allocating risks in cross-border construction projects.

The absence in some national legal systems (in particular, in the legal system of the Russian Federation) of an adjudication mechanism is seen as an obstacle to the prompt resolution of construction disputes. In this regard, a recommendation has been put forward to institutionally establish this mechanism and to systematically integrate FIDIC standards into Russian legislation.

The study found that integrating FIDIC standards into a unified digital registry of construction requirements, being developed by the Ministry of Construction of the Russian Federation on the basis of Federal Law No. 653-FZ of 25 December 2023, is a promising tool for enhancing the transparency of contractual relations, harmonizing the regulatory framework, and strengthening the principle of mutual trust among participants in the construction industry, including foreign partners.

From a theoretical standpoint, the study substantiates that the concept of “source of law” in international law encompasses treaty norms, customary norms, as well as decisions of international judicial bodies and arbitral practice. It is established that the recognition of FIDIC standards facilitates the development of flexible mechanisms for adapting international norms to national legal orders, while avoiding the loss of public-law safeguards.

The combination of legal instruments (international conventions, international custom, FIDIC standards, and investment arbitral practice) forms the basis of effective regulation of cross-border construction projects. Further elaboration of enforcement practice, as well as the improvement of

national legal regimes taking into account the experience of foreign legal systems and state interests, appear to be key directions for future research.

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

Sources of international law. Fundamental principles of international law. International legal relations.

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