Contractual Governance for Dispute Resolution in China

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Disputes may disturb construction projects and stakeholders, and they may cause tremendous losses that hinder the sustainable development of construction. Therefore, contractual governance is significant in construction projects as a crucial method of dispute management. However, the interrelation of contract and dispute management has not been studied theoretically and comprehensively. In this regard, a framework for dispute governance was proposed in this entry, including governance structures (GSs), governance mechanisms (GMs) and an additional conceptual model, by using a literature analysis method. The results suggest that dispute structures based on owner-centered (OC), owner- and supervisor-decentralized (OSD) and additional independent representatives (AIRs) are often used. Each kind of GS can be applied in a specified project. On the other hand, GSs could be divided into an external GS and an internal GS, which played different roles in motivation mechanisms. In addition, a conceptual model was developed through literature analysis. Case studies were presented to investigate the relationship between the GS and GM. Then, specified GMs were identified from case studies of Chinese construction contracts. Current research can provide valuable information allowing for contract drafters and managers to realize the sustainable development of projects.

Keywords: conceptual model ; contractual governance ; governance structure ; governance mechanism

1. Introduction

Conflict situations are common dilemmas in construction projects that may lead to disputes among parties [1]. People cannot neglect the negative influence and consequences of this phenomenon. Claims usually lead to a dispute regarding project delays and cost overruns [2][3]. The dispute arises and adversely affects the project performance due to poor communication and cooperation. More seriously, the construction project will fail due to inefficient dispute management. Project delays or even failures cause negative impacts on sustainable development of stakeholders, human resources, projects, industries and governments [4]. Disputes make it difficult for stakeholders to cooperate sustainably without the promising ability to meet their needs [5]. The development of human resources relies on organizational development and personal training [4]; however, project suspension makes it unsustainable. Project management is not only limited to its traditional success criteria, but also has a broad view of sustainability [6]. A project's quality may be damaged by disputes that endanger continued construction after it begins. Overall, arising disputes are not good for the sustainable development of stakeholders and projects. From a broader perspective, local economic development slows down when disruptions occur frequently in construction projects, which in turn affects the sustainable development of the region. The construction industry may ensure social sustainability by engaging, training and doing business [7] on the basis of project completion on schedule. Low-level development of the industry makes it difficult to achieve industrial upgrades, and the strategic objectives of the government cannot be fulfilled either. Therefore, inevitable disputes must be handled properly. In China today, many construction projects are also affected by unresolved disputes, and as such, Chinese projects need to allocate unnecessary costs, time and resources to conflict management and dispute resolution [8][9].

The conceptual notation of project governance is defined as project transactions. This term refers to the three factors of asset specificity, uncertainty and frequency [10][11]. It is thought that project management, as an integral part of social science, could be researched in governance theory. In the project management context, dispute management can also be studied using governance theory. Acharya et al. [12] claimed that conflict and dispute were two different notions, and that a dispute was the result of conflict after escalation. It was believed that a dispute was the external manifestation of conflict, while a claim was a disagreement directly leading to a dispute. The authors developed a continuum model based on conflict, claims and disputes to demonstrate the evolution of these notions [12]. For a project manager, conflict governance should be embedded in project management practices to avoid disputes in the early stages. The project governance method consists of contractual and relational governance, which should be studied in depth to mitigate project disputes [13]. However, contractual governance is relatively rigid compared to relationship governance, and disputes can be easily

controlled. Contractual governance relies on clause drafting in the construction contracts. The content and formulation of clauses, as well as the logic and structure of a contract, have an unneglectable influence on the completeness of the contract. The contract drafter should be cautious of contract completeness when drafting a clause. The construction industry has realized the importance of dispute governance in projects, which is relatively effective in construction contracts. Contractual governance for disputes (CGD) mainly depends on clauses in three dimensions [14]:

- Clause specificity. A specified clause defines the roles and responsibilities that each party should assume [15].When the stakeholders have a high level of opportunism, a specified clause acts as a proactive approach to avoid disputes.
- Contractual obligatoriness. Contractual obligatoriness constrains each party [16]; through it, each party is forced to abide by the contract clause, reducing the incidence of opportunistic behaviors.
- Contingency adaptability. This refers to the contractual adaptability when a contingency occurs, leading stakeholders into a dispute. Adaptability means a flexible space for dispute negotiation according to the contract while disputants negotiate [17].

Nowadays, in China, specified clauses refer to dispute governance in construction contracts. However, the governance structure and mechanism for dispute resolution are not theoretically cognitive, especially when the interplay of GSs and GMs in the dispute is not clear.

2. Dispute and Construction Sustainability

Conflict is evitable in project management, which probably causes a negative effect on the project [18]. The conflict escalates to a dispute if it is not managed correctly [19]. Researchers have contributed a noticeable amount of literature on the dispute in construction. Jones [20] argued that disputes were attributed to management, communication, economics and other fields. Some studies suggested that disputes could be viewed as a class or conflict that should be resolved [21]. Construction disputes could also be considered as the opposition to objectives, interests or even values [22][23][24]. Fenn et al. [25] and Acharya et al. [8] postulated that disputes were associated with distinct justiciable issues. Today, a dispute is explained in a new connotation that can be classified into three types: task event, relation event and process event [26][27]. In addition, some studies mentioned that disputes might originate from contracts and relationships [28][29][30].

The specified causes of disputes relevant to project management are complex and vary. For example, time and project scheduling are commonplace and worldwide causes of disputes [31][32][33][34]. Cost overruns generally led by the disputes adversely impact parties [2][35]. Besides, variations in the construction projects often disturb contractors [36][37][38][39][40]. Payment is an important material support for parties and projects. Delays or inadequate payment threatens the parties' interest and projects, which ultimately results in disputes [32][36][39]. Some of the literature emphasized other causes of disputes, such as uncertainty [40], culture [41] and the natural environment [42].

Due to the special status of the disputes, the investigation of dispute management plays a critical role in project management study. Dispute management influences not only the performance of a project, but also the interests of stakeholders. Researchers and project practitioners have focused on the study of dispute management for many years. Alternative dispute resolution (ADR) implies different coping resolution methods and has gained popularity as an ideal method to manage disputes [43]. Common options for managing dispute include arbitration [44], adjudication [45], mediation [46], negotiation [47][48], dispute resolution advisor systems [49], dispute review boards [50] and mini trials [51]. ADR has wide application in theoretical research [52][53][54] in solving many practical problems. Another hot topic is the dispute review board (DRB). Harmon [55] and Thompson et al. [56] suggested that DRBs could effectively manage construction disputes. It was reported that from 1975 to 2001, the number of projects under DRBs increased, indicating that DRBs became popular during that period in the U.S. [19]. Today, DRBs still dominate the organization structure for dealing with disputes in Western countries. Referring to the specified method, the multiattribute utility technique [57], multilayer perception neural network model [58], the K-nearest neighbor(KNN) pattern-classification-based knowledge-sharing model [59], the graph model [60], or other methods are adopted to manage practical disputes. With the development of technology, new theoretical models and ideas will be brought into dispute research, improving the development of project management.

Various dispute management evaluations are proposed for the effectiveness of dispute management practices. Much literature has analyzed dispute management effectiveness from two aspects: stakeholders [61][62] and projects. The effect of dispute management is generally described as a success [63] or a failure. So, dispute management evaluation becomes crucial for managers. The engineer ought to adjust the management method dynamically to reach the dispute management goal.

On the other hand, construction sustainability has gained worldwide attention from a long-term perspective. One reference reviewed the assessment indicators and taxonomy for social sustainability for construction projects [4]. Many indicators and taxonomy were discussed, and a social sustainability framework was contributed [4]. The project and its management were successfully implemented as major indicators enabling the creation of social sustainability [64]. The construction industry, with its long-term evolved culture and customs, enables sustainability [65]. It needs culture and traditional customs to cooperate spontaneously. For local governments, regulations and incentives are adopted to promote the sustainability development of the construction industry [66].The disputes lead to the project's suspension, and the performance cannot be fulfilled. Construction sustainability development is of course out of the question. Overall, a causal relationship exists objectively between disputes and sustainability whether for a project or construction industry.

3. Contractual Governance for Construction Projects

Governance is the engagement of actors in transactions that requires them to control the transaction, protecting the interests to share the benefits [67]. In a construction context, Poppo and Zenger [15] suggested that the specified clauses of a contract, so-called "contractual governance", could reduce the risk and resolve unforeseeable outcomes. Contractual governance is the dominant form, preventing opportunism behavior. Governance structure and governance mechanisms constitute the framework of the contractual governance. Ho et al. suggested a series of GS strategies and tactics in construction joint ventures [68]. Afterwards, Lin and Song [69] analyzed the impacts of GS strategies on the performance of joint ventures. In addition, the GS has a big impact on projects from other aspects. Transaction cost economics [70], corporate social responsibility and risk management [71] are all involved in GS as a basic foundation of a contract. On the other hand, the GM as a soft operation environment is indispensable for contract governance. The project manager attaches great importance to the GM mainly for its strategic role. Wang et al. [72] argued that there was interplay between GMs, namely trust, control and megaproject governance. The trust repair mechanism is an important variable that surely influences the decisions of contractors and subcontractors [73]. In general, the project's success depends on effective governance mechanisms [74].

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