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Pre-Tribunal Emergency Relief in International Commercial Arbitration

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PRE-TRIBUNAL EMERGENCY RELIEF IN INTERNATIONAL COMMERCIAL ARBITRATION

Erin Collins[†]

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I. Introduction

International commercial arbitration has been the international business community's preferred method of handling disputes for years. The process is efficient and private. It also gives parties to the arbitration more control and more choice while eliminating the unfairness of trying to litigate in a foreign country's courts.

Although international commercial arbitration has many advantages over resolving conflicts through litigation, arbitral institutions historically did not offer a remedy in cases where emergency relief was necessary. Generally, in traditional litigation, a party can go to court and get an injunction or similar remedy to preserve assets or otherwise maintain the status quo of a situation if it is truly an emergency. International commercial arbitration had no corresponding system. While it is true that arbitrators are not judges and therefore do not have the same amount of power over the parties, there still existed situations that could have been handled with arbitration proceedings if the right rules were in place.

Eventually, arbitral institutions began adding rules to allow arbitral tribunals to give emergency orders and awards. This did not solve the problem entirely. There was still no option for parties who needed relief prior to the formation of an arbitral tribunal. Today, many major arbitration institutions have started to address that situation.

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It is important for arbitral institutions to address this void in the remedies offered by international commercial arbitration because companies generally prefer arbitration to transnational litigation but, until recently, had no arbitration option when it came to emergencies. In order for international commercial arbitration to continue to grow and prosper, and to provide a true alternative to litigation, arbitral institutions need to provide remedies for as many situations as possible—including emergency situations that arise prior to the formation of the arbitral tribunal.

Section II of this article will provide a general background of international commercial arbitration and discuss why it has become such a popular method of dispute resolution. It will also explain the shortcomings of international commercial arbitration, with a focus on the emergency situations that have forced parties to resort back to judicial systems for years. Section III provides the rules of emergency relief in arbitration, as they exist today, in five major international arbitral institutions. Section IV will analyze those five sets of rules—both their strengths and their weakness—and look at other problems impeding emergency relief in commercial arbitration today. Section V will propose ways for emergency relief in international commercial arbitration to grow, develop, and become widely utilized just as international commercial arbitration is. Finally, a short conclusion in Section VI will emphasize the ways this growth could take place.

II. Background

Unlike traditional litigation, international commercial arbitration is completely voluntary.¹ The arbitral tribunal's power over the parties derives directly from the parties' arbitration agreement.² International commercial arbitration is a private dispute resolution system³ that provides parties with substantial control over the proceedings,⁴ as well as confidentiality.⁵ Parties to an international commercial arbitration agreement have control over many different procedural elements that are beyond their control when litigating a dispute in court.⁶ These elements include control over the number of arbitrators, the selection of the arbitrators (or at least the manner in which they will be chosen),⁷ whether the arbitration will take place through an arbitral institution or conducted ad hoc,⁸ where the arbitration will take place,⁹ and the language in which the arbitration will be conducted.¹⁰ Arbitration ensures that neither party has a "home court" advantage,

¹ MARGARET L. MOSES, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 2 (2nd ed. 2012).

² *Id.*

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 2.

⁷ *Id.* at 46-7.

⁸ *Id.* at 9.

⁹ *Id.* at 47-8.

¹⁰ *Id.* at 48.

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thereby creating a more neutral forum than a court in either party's country could offer.¹¹

Unlike a court decision, an arbitrator's award generally cannot be overturned on its merits.¹² As a result, the final award in arbitration proceedings is rarely overturned.¹³ An award from an international commercial arbitration proceeding is often easier to enforce than an award from a foreign court.¹⁴ This is a result of the success of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention," or "Convention").¹⁵ The New York Convention was enacted on June 7, 1959, and there are now 147 parties to the Convention.¹⁶ The Convention provides that "signatory nations must recognize arbitral awards issued in foreign signatory nations, subject to several very narrow exceptions."¹⁷

Due to the popularity of international commercial arbitration, many institutions dedicated solely to administering such arbitration proceedings exist today.¹⁸ While these institutions successfully arbitrate hundreds of claims each year,¹⁹ the international commercial arbitration process does have some shortcomings, including the inability of parties to appeal decisions, limited discovery, and the limited power an arbitrator has to force compliance with deadlines and other requests.²⁰ In addition to these disadvantages, the arbitration process can be a slow one. Arbitrators do not have the ability to penalize parties if they do not comply with requests of the arbitrator.²¹ As a result, a party can draw out an arbitration proceeding and delay resolution if it so desires. The process can be lengthy for other reasons as well. It may take an extensive period of time to appoint an arbitrator, or a panel of arbitrators, and then even longer to set a hearing schedule convenient for all parties involved in the arbitration.²² This can be a dangerous position to be caught in. If a party has already applied to begin an arbitration proceeding but a tribunal has not been appointed, the party is two

¹¹ *Id.* at 3.

¹² *Id.* at 203. For more information on judicial review of arbitral awards see generally Katherine A. Helm, *The Expanding Scope of Judicial Review of Arbitration Awards: Where Does the Buck Stop?*, 61-JAN DISP. RESOL. J. 16 (2006-2007).

¹³ *Id.*

¹⁴ Peter J.W. Sherwin & Douglas C. Rennie, *Interim Relief Under International Arbitration Rules and Guidelines: A Comparative Analysis*, 20 AM. REV. INT'L ARB. 317, 319-20 (2009).

¹⁵ *Id.* at 320.

¹⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations Treaty Collection, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&lang=en#EndDec (last visited Sept. 9, 2012).

¹⁷ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. 1, June 10, 1958, 9 U.S.C. § 201, 330 U.N.T.S. 3.

¹⁸ MOSES, *supra* note 1, at 10.

¹⁹ *Statistics-2011*, Singapore International Arbitration Centre, http://www.siac.org.sg/-index.php?option=com_content&view=article&id=339&Itemid=73 (last visited Sept. 9, 2012).

²⁰ MOSES, *supra* note 1, at 4-5.

²¹ *Id.* at 5.

²² Martin Davies, *Court-Ordered Interim Measures in Aid of International Commercial Arbitration*, 17 AM. REV. INT'L ARB. 299, 300 (2006).

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steps away from obtaining any type of relief. First a tribunal has to be appointed and then the actual arbitration proceedings must take place. These challenges do not bode well for a party seeking emergency relief before or during the arbitration proceedings.

If a party cannot obtain emergency relief through arbitration, they are forced to turn back to the courts. Emergency relief has been available in judicial systems around the world for many years but was not contemplated by international arbitration institutions until recently.²³ In 2006, the United Nations Commission of International Trade Law (UNCITRAL) amended the UNCITRAL Model Law on International Commercial Arbitration 1985 to include provisions for interim relief.²⁴ Today, most international arbitration rules have been updated to include at least some type of emergency relief provision²⁵ but resorting to court is still a viable option and is often necessary.²⁶

While it is an option, and can be necessary at times,²⁷ resorting to court causes the parties to sacrifice many of the benefits they hoped to take advantage of by choosing arbitration.²⁸ For this reason, arbitration institutions are starting to offer different ways for parties to get the emergency relief they require, while still retaining all the benefits of international commercial arbitration.

III. Discussion

Many arbitral institutions have adopted some type of procedure to address a party's need for emergency relief.²⁹ These procedures range in comprehensiveness and in strategy. Some emergency relief measures only allow a party to receive interim relief after a tribunal has been instituted but before the final award is made.³⁰ Few institutions provide a way to expedite the tribunal formation process³¹ or allow an emergency arbitrator to step in and issue an emergency award prior to the formation of the arbitration tribunal.³²

The emergency relief rules of the London Court of International Arbitration (LCIA), the American Arbitration Association International Centre for Dispute Resolution (ICDR), the Singapore International Arbitration Centre (SIAC), the Stockholm Chamber of Commerce (SCC) and the International Chamber of Commerce International Court of Arbitration (ICC) are discussed below. These institutions have taken varying approaches to solving the emergency relief problem. Although some institutions offer different forms of emergency relief, this

²³ *Id.* at 299-300.

²⁴ *Id.*

²⁵ Sherwin & Rennie, *supra* note 14, at 321.

²⁶ Davies, *supra* note 22, at 301.

²⁷ *Id.*

²⁸ Sherwin & Rennie, *supra* note 14, at 317.

²⁹ *Id.* at 321.

³⁰ *Id.* at 357.

³¹ *Id.*

³² *Id.*

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article will focus on the provision of relief prior to the formation of an arbitral tribunal.

A. London Court of International Arbitration

The LCIA was formally established in 1892,³³ and currently operates under rules that entered into force on January 1, 1998.³⁴ In 2010, the LCIA handled 246 arbitration cases.³⁵ Although the institution is currently reviewing its rules and likely will update them soon, the current set of rules provides for one type of emergency relief prior to the formation of the arbitral tribunal.³⁶

Article 9 of the LCIA Arbitration Rules (the “LCIA Rules”) lays out a procedure for the expedited formation of a tribunal.³⁷ This article allows for such an expedited formation in cases of “exceptional urgency.”³⁸ Any party can apply to the LCIA Court for expedited formation on or after the *commencement* of the arbitration,³⁹ so the parties do not already have to be engaged in arbitration or have an arbitral tribunal appointed to receive emergency relief. Article 9 states, “[T]he LCIA Court may, in its complete discretion, abridge or curtail any time-limit under these Rules for the formation of the Arbitral Tribunal, including service of the Response and of any matter or documents adjudged to be missing from the Request.”⁴⁰ Article 9 limits what time limits the LCIA Court may abridge.⁴¹ The LCIA Court may not abridge or curtail any time limit other than those mentioned specifically.⁴² This limits their ability to fast track proceedings but is still useful when trying to cut down on the length of the proceedings.

Article 25 of the LCIA Rules lays out the rules regarding interim and conservatory measures.⁴³ Unless parties choose to opt-out of this Article in writing, Article 25.1(a) gives the Arbitral Tribunal power to order any respondent to “provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate.”⁴⁴ Article 25.1(b) gives the Arbitral Tribunal the power to “order the preservation, storage, sale or other disposal of any property or thing under the control of any party and relating to the subject matter of the arbitra-

³³ *History of the LCIA*, LCIA ARB. AND ADR WORLDWIDE, http://www.lcia.org/LCIA/-Our_History.aspx (last visited Sept. 9, 2012).

³⁴ *LCIA Arbitration Rules*, LCIA ARB. AND ADR WORLDWIDE, http://www.lcia.org/-Dispute_Resolution_Services/LCIA_Arbitration_Rules.aspx (last visited Sept. 9, 2012).

³⁵ LONDON COURT OF INTERNATIONAL ARBITRATION, DIRECTOR GENERAL’S REPORT 1 (Mar. 2011).

³⁶ LONDON COURT OF INTERNATIONAL ARBITRATION, LCIA ARBITRATION RULES (1998).

³⁷ *Id.* art. 9.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* art. 25.

⁴⁴ *Id.* art. 25.1(a).

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tion.”⁴⁵ Essentially, Article 25.1 gives the Arbitral Tribunal the power to protect assets. Finally, Article 25.3 ensures that each party’s right to seek interim or conservatory relief from a court is preserved.⁴⁶

Article 9 and Article 25.1 work together to create emergency relief prior to the formation of an arbitral tribunal. A party has the ability to convene a tribunal quickly under Article 9 and then ask for the preservation of assets under Article 25.1. Although there are no procedures to appoint an emergency arbitrator, the rules do provide an option for parties looking for emergency relief within arbitration. Nonetheless, they will not be as immediate as proceedings that utilize an emergency arbitrator.

B. American Arbitration Association’s International Centre for Dispute Resolution

The American Arbitration Association (AAA) ICDR was established in 1996 as a part of the AAA to handle the growing number of international arbitrations.⁴⁷ ICDR’s current International Arbitration Rules (the “ICDR Rules”) went into force on June 1, 2009.⁴⁸ The ICDR handles several hundred multinational cases each year but does not offer specific numbers.⁴⁹

Article 37 of the ICDR Rules is entitled “Emergency Measures of Protection.”⁵⁰ Unless parties opt-out of Article 37, it applies to arbitrations conducted under arbitration clauses or agreement entered into on or after May 1, 2006.⁵¹

Article 37 is meant to help parties “in need of emergency relief prior to the constitution of the tribunal.”⁵² Parties must properly apply for emergency arbitration as required under Article 37, paragraph 2.⁵³ After they do so, “a single emergency arbitrator from a special panel of emergency arbitrators designated to rule on emergency applications” will be appointed within one business day.⁵⁴ If either party is going to challenge the appointment, they must do so within one business day of learning who was appointed and the possible conflicts of interest the arbitrator might have.⁵⁵ Once the emergency arbitrator is appointed, the arbitrator “shall as soon as possible, but in any event within two business days of appoint-

⁴⁵ *Id.* art. 25.1(b).

⁴⁶ *Id.* art. 25.3.

⁴⁷ *About the International Centre for Dispute Resolution*, AM. ARB. ASS’N, http://www.adr.org/about_icdr (last visited Sept. 9, 2012).

⁴⁸ INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, AMERICAN ARBITRATION ASSOCIATION, INTERNATIONAL DISPUTE RESOLUTION PROCEDURES (INCLUDING MEDIATION AND ARBITRATION RULES) art. 37 (2009).

⁴⁹ *About the International Centre for Dispute Resolution*, *supra* note 47.

⁵⁰ INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, *supra* note 48, art. 37.

⁵¹ *Id.* art. 37.1.

⁵² *Id.* art. 37.2.

⁵³ *Id.*

⁵⁴ *Id.* art. 37.3.

⁵⁵ *Id.*

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ment, establish a schedule for consideration of the application for emergency relief.⁵⁶

The emergency arbitrator has power to “order or award any interim or conservancy measure the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property.”⁵⁷ They also have the power to “modify or vacate the interim award or order for good cause shown.”⁵⁸ The emergency arbitrator has no power once the tribunal is formed, and can only serve as a member of the tribunal if the parties agree to it.⁵⁹

Finally, Article 37 states that seeking interim relief from a judicial authority is not incompatible with “Article 37 or with the agreement to arbitrate or a waiver of the right to arbitrate.”⁶⁰

Article 37 of the ICDR Rules offers a different type of emergency relief procedure than the LCIA Rules. This type of procedure gives a party the option of bringing in an emergency arbitrator who is completely separate from the arbitral panel that will inevitably be convened. To facilitate this, Article 37 allocates specific periods of time for completing steps and procedures each party must follow in seeking an emergency arbitrator. In fact, Article 37 has had success in producing emergency relief since its implementation in May of 2006.⁶¹

C. Singapore International Arbitration Centre

The SIAC was established in 1991.⁶² The rules the SIAC is currently using went into force on July 1, 2010.⁶³ The SIAC administered 140 international arbitration cases in 2010.⁶⁴

While the SIAC’s rules do contain rules for expedited procedure in Article 5 and interim and emergency relief in Article 26, the emergency relief for parties requiring it before the creation of an arbitral tribunal is laid out in Schedule 1, “Emergency Arbitrator,” of the Arbitration Rules of the Singapore International Arbitration Centre.⁶⁵

The SIAC’s rules in Schedule 1 for an Emergency Arbitrator are similar to the rules in Article 37 of the ICDR’s International Arbitration Rules. A party can apply for emergency relief under Schedule 1 “concurrent with or after filing a

⁵⁶ *Id.* art. 37.4.

⁵⁷ *Id.* art. 37.5.

⁵⁸ *Id.*

⁵⁹ *Id.* art. 37.6.

⁶⁰ *Id.* art. 37.8.

⁶¹ Guillaume Lemenez & Paul Quigley, *The ICDR’s Emergency Arbitrator Procedure in Action, Part I: A Look at the Empirical Data*, 63 DISP. RESOL. J. 60, 69 (2008).

⁶² SINGAPORE INT’L ARB. CENTRE, <http://www.siac.org.sg> (last visited Jan. 13, 2012).

⁶³ *Our Rules*, SINGAPORE INT’L ARB. CENTRE, http://www.siac.org.sg/cms/index.php?option=com_content&view=article&id=72&Itemid=85 (last visited Jan. 13, 2012).

⁶⁴ *Statistics-2011*, *supra* note 19.

⁶⁵ SINGAPORE INTERNATIONAL ARBITRATION CENTRE, ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE sched. 1 (4th ed. 2010).

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Notice of Arbitration but prior to the constitution of the tribunal.”⁶⁶ The Chairman, if he decides the Centre should accept the application, should appoint an Emergency Arbitrator within one business day of the receipt of the application and payment.⁶⁷ The parties have one business day from the identification of the Emergency Arbitrator to identify any possible conflicts.⁶⁸ After the Emergency Arbitrator is appointed, he may not act as an arbitrator for any future arbitrations relating to the dispute unless the parties agree otherwise.⁶⁹

After appointment, the Emergency Arbitrator has two business days to propose a schedule.⁷⁰ That schedule must allow parties time to be heard, and can allow for the use of alternative methods like written submissions or telephone conference.⁷¹ After a hearing takes place, the Emergency Arbitrator has the “power to order or award any interim relief that he deems necessary.”⁷² He also has the power to “modify or vacate an interim award or order for good cause shown,”⁷³ but has no more power after the tribunal is constituted.⁷⁴

The SIAC’s rules place an expiration date on the interim award.⁷⁵ “Any order or award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or award or when the Tribunal makes a final award or if the claim is withdrawn.”⁷⁶

Again, these rules are very similar to the ICDR emergency relief rules. Both sets of rules provide a comparable procedure and timeline. One of the only real differences is the expiration of the order or award under the SIAC’s rules.

D. Stockholm Chamber of Commerce

The SCC was established in 1917.⁷⁷ The SCC’s current arbitration rules went into force January 1, 2010.⁷⁸ In 2010, the SCC handled 197 arbitration cases, 91 of which were international.⁷⁹

⁶⁶ *Id.* sched. 1, para. 1.

⁶⁷ *Id.* sched. 1, para. 2.

⁶⁸ *Id.* sched. 1, para. 3.

⁶⁹ *Id.* sched. 1, para. 4.

⁷⁰ *Id.* sched. 1, para. 5.

⁷¹ *Id.*

⁷² *Id.* sched. 1, para. 6.

⁷³ *Id.*

⁷⁴ *Id.* sched. 1, para. 7.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *About the SCC*, ARB. INST. OF THE STOCKHOLM CHAMBER OF COM., <http://www.chamber.se/-hem-3/om-oss-3.aspx> (last visited Sept. 9, 2012).

⁷⁸ *Rules*, ARB. INST. OF THE STOCKHOLM CHAMBER OF COM., <http://www.chamber.se/-skiljeforfarande-2/regler-4.aspx> (last visited Sept. 9, 2012).

⁷⁹ *SCC Continues to Soar*, ARB. INST. OF THE STOCKHOLM CHAMBER OF COM., <http://www.chamber.se/hem-3/statistik-2.aspx> (last visited Sept. 21, 2012).

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Appendix II of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce is entitled “Emergency Arbitrator,”⁸⁰ and lays out a very detailed procedure for emergency relief measures to be used before the case is referred to an arbitral tribunal.⁸¹ The SCC’s rules and procedures are similar to those of the ICDR and SIAC, but are more detailed and include more specific requirements for applications and awards,⁸² referring to other articles from the rules to clarify powers and procedures.⁸³

Appendix II of the SCC’s arbitration rules lays out the emergency relief procedure in ten articles.⁸⁴ A party can apply for the appointment of an Emergency Arbitrator up until the case has been referred to an Arbitral Tribunal.⁸⁵ Once the case has been referred to an Arbitral Tribunal or when the emergency decision is no longer binding, the Emergency Arbitrator’s powers terminate.⁸⁶ An application for the appointment of an Emergency Arbitrator must contain certain information such as a summary of the dispute—“a statement of the interim relief sought and the reasons therefore.”⁸⁷ When this application is received, the secretariat of the SCC must send it to the other party to the arbitration.⁸⁸ The SCC’s board of directors has 24 hours to appoint an Emergency Arbitrator after receipt of the application, and each party shall have 24 hours to challenge the appointment after they learn whom the Emergency Arbitrator is and what possible conflicts of interest he or she might have.⁸⁹

Additionally, the emergency arbitration proceedings must be completed within a specific timeframe.⁹⁰ “Any emergency decision on interim measures shall be made not later than 5 days from the date upon which the application was referred to the Emergency Arbitrator.”⁹¹ This time can be extended upon the request of the Emergency Arbitrator.⁹² The Emergency Arbitrator’s decision is binding on both parties and both parties must comply with the decision until it ceases to be binding.⁹³ The emergency decision ceases to be binding if and when any of the following occur:

⁸⁰ ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, STOCKHOLM CHAMBER OF COMMERCE, ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE app. II (2010).

⁸¹ *Id.* app. II, art. 1.

⁸² *Id.* app. II, art. 2, 8.

⁸³ *Id.* app. II, art. 1, 2, 4, 7, 8.

⁸⁴ *Id.* app. II.

⁸⁵ *Id.* app. II, art. 1.

⁸⁶ *Id.*

⁸⁷ *Id.* app. II, art. 2.

⁸⁸ *Id.* app. II, art. 3.

⁸⁹ *Id.* app. II, art. 4.

⁹⁰ *Id.* app. II, art. 8.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* app. II, art 9.

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(i) the Emergency Arbitrator or an Arbitral Tribunal so decides; (ii) an Arbitral Tribunal makes a final award; (iii) arbitration is not commenced within 30 days from the date of the emergency decision; or (iv) the case is not referred to an Arbitral Tribunal within 90 days from the date of the emergency decision.⁹⁴

The SCC's is one of the most detailed plans for emergency relief currently in force. The Appendix itself addresses more issues than other sets of rules and where it does not fully address an issue, the rules refer the reader to an Article within the SCC rules that does address it. The comprehensive nature of these rules helps a party understand the process and how their emergency arbitration will be handled.

E. International Chamber of Commerce International Court of Arbitration

Finally, the ICC International Court of Arbitration was established in 1923.⁹⁵ The ICC recently passed a new set of arbitration rules that went into force on January 1, 2012.⁹⁶ In 2010, the ICC handled 793 requests for arbitration.⁹⁷

The ICC International Court of Arbitration has the newest emergency relief provision examined in this article. The previous set of rules, in force between January 1, 1998 and December 31, 2010,⁹⁸ contained an option for a pre-arbitral conference.⁹⁹ The new set of rules contains the most comprehensive set of emergency relief procedures of all institutional rules considered in this article.

The ICC's "Emergency Arbitrator" rules start in Article 29 of its arbitration rules.¹⁰⁰ Article 29 contains some general rules about when emergency arbitration is appropriate but refers to Appendix V for the majority of the rules.¹⁰¹ Article 29 clarifies that an application for an Emergency Arbitrator should be filed when "a party needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal."¹⁰² In this situation, Appendix V rules are appropriate.¹⁰³ Article 29 also specifies when the Emergency Arbitrator

⁹⁴ *Id.*

⁹⁵ *The Merchants of Peace*, INT'L CHAMBER OF COM.: INT'L CT. OF ARB., <http://www.iccwbo.org/about-icc/history/> (last visited Sept. 9, 2012).

⁹⁶ *The ICC 2012 Rules of Arbitration*, INT'L CHAMBER OF COM.: INT'L CT. OF ARB., <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-arbitration-procedure/> (last visited Oct. 5, 2012).

⁹⁷ *Statistics*, INT'L CHAMBER OF COM.: INT'L CT. OF ARB., <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/Introduction-to-ICC-Arbitration/Statistics/> (last visited Jan. 13, 2012).

⁹⁸ *ICC Dispute Resolution*, INT'L CHAMBER OF COM.: INT'L CT. OF ARB., <http://www.iccwbo.org/products-and-services/arbitration-and-adr/dispute-boards/dispute-board-rules/> (last visited Oct. 5, 2012).

⁹⁹ INTERNATIONAL COURT OF ARBITRATION, INTERNATIONAL CHAMBER OF COMMERCE, RULES OF ARBITRATION (1998) [hereinafter RULES OF ARBITRATION].

¹⁰⁰ INTERNATIONAL COURT OF ARBITRATION, INTERNATIONAL CHAMBER OF COMMERCE, ICC RULES OF ARBITRATION art. 29 (2012).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

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Provisions do not apply.¹⁰⁴ Finally, Article 29 clarifies that these provisions are “not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority.”¹⁰⁵

The rules in Appendix V requires specific information on an application for emergency measures, such as a description of the circumstances that gave rise to the dispute and the application, the emergency measures sought, and the reasons the party cannot wait for a tribunal to be formed.¹⁰⁶ The application must also specify any relevant agreements, such as the arbitration agreement, and any agreement pertaining to the place, language or applicable rule of law to be followed in the arbitration.¹⁰⁷

The rules dictate that the appointment of an Emergency Arbitrator should take place as soon as possible—normally within two days of receipt of the application.¹⁰⁸ If a party wishes to challenge an appointment, they must do so within three days of receipt of the appointment.¹⁰⁹ After the appointment is made, the Emergency Arbitrator must establish a procedural timetable for the proceedings as soon as possible—normally within two days of getting the file.¹¹⁰

All of the parameters for the Emergency Arbitrator’s decision, the “order,” are laid out in Article 6.¹¹¹ Certain pieces of information must be in the emergency arbitrator’s order, including the reasons for the order, the date, and the Emergency Arbitrator’s signature.¹¹² There are a number of situations that would cause the award to cease to be binding.¹¹³ These may include a challenge to the award, a final award by the arbitral tribunal, or withdrawal of the claim.¹¹⁴

The ICC’s new rules are extremely detailed. They apply specifically to each step of the emergency arbitration process, just like the rules governing the regular arbitration process. Rules this thorough specificity makes emergency relief more accessible and makes the choice to go to arbitration instead of the courts less of a guessing game.

These five institutions all provide emergency relief for a party before the arbitral tribunal is formed. While most arbitral intuitions provide for interim relief,¹¹⁵ far fewer allow parties access to emergency relief before the formation of an arbitral tribunal.¹¹⁶

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* app. V, art. 1.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* app. V, art. 2.

¹⁰⁹ *Id.* app. V, art. 3.

¹¹⁰ *Id.* app. V, art. 5.

¹¹¹ *Id.* app. V, art. 6.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Davies, *supra* note 22, at 299.

¹¹⁶ Sherwin & Rennie, *supra* note 14, at 357.

IV. Analysis

Emergency relief has been described as the “Achille’s heel” of international arbitration.¹¹⁷ This is historically one of the few areas of arbitration where use of the traditional judicial system could be more efficient and is more likely to produce the desired results.¹¹⁸ However, the emergency relief measures discussed above are those five institutions’ attempts to change that.¹¹⁹ While it is likely true that there are some situations where courts will always be necessary—such as joining a third party the arbitrator does not have jurisdiction over¹²⁰—international arbitral institutions can change and mold their rules to make emergency arbitration the preferred method of obtaining emergency relief in most cases.

Arbitral institutions have adjusted their rules to allow for interim relief after an arbitral tribunal is in place,¹²¹ but have been slower to provide a way to obtain relief before an arbitral tribunal is in place.¹²² Relief of this kind is important to the continued growth and success of international commercial arbitration. This is the case for a number of reasons. First, timing is often the crucial reason for requesting emergency relief.¹²³ A party is frequently trying to preserve something—be it money or property—which may be compromised if no action is taken to preserve it.¹²⁴ The judicial system can be efficient in a situation like this, while many arbitral institutions require the formation of an arbitral tribunal before making any decisions. This process can take months.¹²⁵ Unless the parties were already involved in arbitration proceedings, the judicial system used to provide the only safe and reliable option for obtaining emergency relief. The five institutions’ rules for emergency relief before the appointment of an arbitral tribunal have addressed this problem in different ways.

A. The Rules

The LCIA Rules is the only set of rules out of the five discussed above that contains provisions for expedited formation of a tribunal rather than for the appointment of a pre-tribunal emergency arbitrator.¹²⁶ While this process is not as quick as an emergency arbitrator can be, expedited formation of a tribunal is a

¹¹⁷ Davies, *supra* note 22, at 333.

¹¹⁸ MOSES, *supra* note 1, at 105-12.

¹¹⁹ See *supra* Part III (describing the attempts by the institutions to change the emergency relief measures available in international arbitration).

¹²⁰ *Id.* at 300.

¹²¹ Sherwin & Rennie, *supra* note 14, at 357.

¹²² *Id.*

¹²³ *Id.* at 322.

¹²⁴ MOSES, *supra* note 1, at 105.

¹²⁵ Davies, *supra* note 22, at 300.

¹²⁶ See *supra* Part III (describing the LCIA rules, among other sets of rules of the institutions, in the context of emergency relief).

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great option if timing is not as essential or if the parties can wait out the extra time.¹²⁷

By opting for expedited formation of the tribunal, the parties can get an award from the same tribunal that will decide their final award.¹²⁸ This way there is only one set of decision makers who will follow the case through from beginning to end.¹²⁹ This setup is more cohesive and likely more efficient in the long run than having an emergency arbitrator step in. Again, for this to really work, the need for relief cannot be as urgent as it is when emergency arbitrator proceedings are invoked. Even though this process is not as rapid, expedited formation is still a promising option for parties when timing is not the driving consideration.

The ICDR was one of the first major institutions to allow emergency arbitrators to step in.¹³⁰ Article 37 of the ICDR has been successful in achieving the end goal of providing relief.¹³¹ The ICDR only offers emergency relief by way of an emergency arbitrator.¹³² They do not have rules for expedited proceedings. This leaves parties with one option. Although it is the preferable option when time is of the essence, having only one option is a disadvantage to the institution.

Emergency situations can call for a range of different remedies. If an arbitration institution offers a variety of possible solutions, parties are more likely to find a remedy that suits them within arbitration instead of having to resort to the judicial system for an appropriate remedy.

The SIAC rules offer both remedies under Article 5 that allows expedited procedure¹³³ and Schedule 1 has rules for an Emergency Arbitrator.¹³⁴ Article 5 is limited to situations where the amount in controversy does not exceed \$5,000,000, where the parties agree to the expedited procedure, or when there is a case of exceptional urgency.¹³⁵ Only one of these criteria has to be satisfied to qualify for expedited proceedings.¹³⁶ Because SIAC rules have two different types of remedies available before a tribunal is formed, parties seeking emergency relief with the SIAC can choose the best course of action for their specific situation. This is a benefit that few other institutions offer.

¹²⁷ Sherwin & Rennie, *supra* note 14, at 322.

¹²⁸ Article 9 provides for the expedited formation of an arbitral tribunal once the arbitration has commenced. This refers to the formation of the final arbitral tribunal, not just an emergency arbitrator. Therefore, the tribunal being formed under this rule on an emergency basis is the tribunal that will decide the entire dispute. LCIA ARBITRATION RULES, *supra* note 36, at art. 9.

¹²⁹ *Id.*

¹³⁰ Sherwin & Rennie, *supra* note 14, at 339.

¹³¹ Lemenez & Quigley, *supra* note 61, at 64.

¹³² Lemenez & Quigley, *supra* note 61, at 62.

¹³³ SINGAPORE INTERNATIONAL ARBITRATION CENTRE, *supra* note 65, art. 5.

¹³⁴ *Id.* sched. 1.

¹³⁵ *Id.* art. 5.1.

¹³⁶ *Id.*

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The SCC also offers both expedited proceedings¹³⁷ and emergency arbitrator proceedings,¹³⁸ but in order to take advantage of their expedited proceedings both parties have to agree to participate.¹³⁹ So while the SCC offers both types of relief, it is not always easy to get the other party to agree to expedite proceedings in an emergency situation. As a result, parties might not be able to take advantage of their preferred option—as they likely could under SIAC rules.

The SCC's emergency arbitration provision, however, is a very effective option. These rules do not set as many hard and fast deadlines during the process like other institutions do, but instead state that a decision “shall be made not later than 5 days from the date upon which the application was referred to the Emergency Arbitrator.”¹⁴⁰ The structure of this procedure allows for more flexibility while still assuring parties that the process will be completed in five days. Although the SCC's expedited rules might not lend themselves to emergency relief in every situation, their emergency arbitrator rules provide for speedy relief.

The ICC is one of the oldest and best-known arbitral institutions.¹⁴¹ It also has the newest set of rules out of the five institutions reviewed for this article. Before these new rules went into effect, the ICC only offered a “Pre-Arbitral Referee Procedure.”¹⁴² Parties had to specifically opt-in to this clause before they could use it.¹⁴³ This was one of the first attempts by an arbitration institution to provide for urgent relief¹⁴⁴ and remains an option today.¹⁴⁵ That said, the process could take up to 38 days¹⁴⁶ and has been rarely used.¹⁴⁷

The new rules contain a much more extensive emergency arbitration procedure. While the ICC's arbitration rules do not address expedited formation or procedure, the emergency arbitrator procedure they now have is the most thorough of the five institutions discussed in this article.

The time limits in the new ICC rules are not as tight as the time limits in other institutions' emergency arbitrator rules. There is more time given at each step and the total process must be completed “no later than 15 days from the date on which the file was transmitted to the emergency arbitrator.”¹⁴⁸

¹³⁷ STOCKHOLM CHAMBER OF COMMERCE, RULES FOR EXPEDITED ARBITRATIONS OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE 2010, at 2 (2010) [hereinafter SCC RULES FOR EXPEDITED ARBITRATIONS].

¹³⁸ ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, *supra* note 80.

¹³⁹ SCC RULES FOR EXPEDITED ARBITRATIONS, *supra* note 137.

¹⁴⁰ ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, *supra* note 80, app. II, art. 8.

¹⁴¹ Sherwin & Rennie, *supra* note 14, at 338.

¹⁴² RULES OF ARBITRATION, *supra* note 99, at 3.

¹⁴³ *Id.*

¹⁴⁴ Sherwin & Rennie, *supra* note 14, at 339.

¹⁴⁵ INTERNATIONAL COURT OF ARBITRATION, INTERNATIONAL CHAMBER OF COMMERCE, RULES FOR A PRE-ARBITRAL REFEREE PROCEDURE (1990) [hereinafter RULES FOR A PRE-ARBITRAL REFEREE PROCEDURE].

¹⁴⁶ Sherwin & Rennie, *supra* note 14, at 339.

¹⁴⁷ *Id.* at 340.

¹⁴⁸ INTERNATIONAL COURT OF ARBITRATION, *supra* note 100, app. V, art. 6.

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In addition to the extended time limits, these rules provide specifics for every step of the process. Few institutions specify the language of the application or the place the arbitration will be held. These are important parts of an arbitration proceeding. Creating specific rules for each step of the arbitration could prevent possible delay resulting from working through these measures on an ad hoc basis.

It is important that the ICC changed their emergency relief rules. The ICC rules may be the most widely used rules in international arbitration.¹⁴⁹ An institution of this size could set a powerful example for the rest of the international arbitration community by adopting a cohesive emergency arbitrator procedure. If other institutions follow this example, emergency relief could become more widely available and help strengthen this weak spot in international arbitration.

Each set of rules varies in the exact types of emergency relief offered before an arbitral tribunal is convened. There are positives and negatives to each system, but the systems that allow a party to choose between different courses of action are the institutions that give parties a chance to address their problems in the way that most suits them. These institutions also are more likely to create a way for parties to avoid court. Some emergency situations are urgent. For these situations parties can utilize the emergency arbitrator. For less urgent situations that still require a decision before normal arbitration proceedings would be able to provide one, parties can choose expedited procedure. If an institution is missing either step, a party may have to resort to court for a remedy or use a more rushed process than they preferred.

B. Preserving the Right to Seek Help From Courts

Even as institutions work and adjust their rules to create emergency relief procedures for parties who want to participate in arbitration, each of the five institutions discussed above has preserved in its rules the parties' ability to seek relief from a judicial system, especially before the formation of the tribunal.

The LCIA Rules say the arbitral tribunal's power "shall not prejudice howsoever any party's right to apply to any state court or other judicial authority for interim or conservatory measure before the formation of the Arbitral Tribunal and, in exceptional cases, thereafter."¹⁵⁰ The ICDR Rules state that a party's request for interim relief from a judicial system "shall not be deemed incompatible with this Article 37 or with the agreement to arbitrate or a waiver of the right to arbitrate."¹⁵¹ The SIAC's rules state that a request for interim relief from a judicial authority before the Tribunal is formed, or, in exceptional circumstances, after the formation, "is not incompatible with these Rules."¹⁵² The SCC's rules proved that a request is not incompatible with arbitration agreement or with the SCC's rules.¹⁵³ Finally, the ICC Rules say "the Emergency Arbitrator Provisions

¹⁴⁹ Sherwin & Rennie, *supra* note 14, at 338.

¹⁵⁰ LONDON COURT OF INTERNATIONAL ARBITRATION, *supra* note 36, art. 25.3

¹⁵¹ INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, *supra* note 48, art. 37.8.

¹⁵² SINGAPORE INTERNATIONAL ARBITRATION CENTRE, *supra* note 65, art. 26.3.

¹⁵³ ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, *supra* note 81, art. 32.5.

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are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measure, and in appropriate circumstances even thereafter.”¹⁵⁴ The ICC does require that parties notify the Secretariat of any action taken by a judicial authority.¹⁵⁵

All of these institutions have deliberately kept this option open for parties. This is important because there are situations where a court is necessary to provide relief. Arbitrators do not have coercive powers.¹⁵⁶ They cannot compel compliance in the same way the courts can.¹⁵⁷ Additionally, arbitrators can rarely join outside parties.¹⁵⁸ These parties have not agreed to arbitrate and therefore do not have to participate in the proceedings. If the emergency relief a party is seeking involves a third party in some way, court is often the best option.

As all of these institutions have recognized, national courts are the exclusive holder of certain powers required to assist and facilitate arbitration and interim relief.¹⁵⁹ There is also some level of consensus that “the local court can have a proper and beneficial part to play in the grant of supportive measures.”¹⁶⁰

This need for the court system presents an interesting hurdle for international arbitral institutions. These institutions are trying to provide a way for parties to enter into arbitration proceedings in any circumstance, but to do so knowing that parties will always want the option to resort to court. In order to handle this, it is important, again, for institutions to provide parties with as many options as possible so courts are truly the parties’ last resort. Parties want to arbitrate. They enter into agreements to arbitrate because of the many advantages of arbitral proceedings over court proceedings. If arbitral institutions continue to adjust their rules and find ways to resolve different problems, the number of situations where the judicial system is absolutely necessary may diminish.

C. The Role of the Judicial System

However, not all courts have the ability to grant interim awards or enforce interim awards handed down by arbitrators. “The source of the court’s jurisdiction to order interim measures depends on when and how the application for assistance is made, and also on the kind of measure sought.”¹⁶¹ In the United States, there is no consensus on how a court can intervene.¹⁶² The only official power a court has regarding arbitration, under the Federal Arbitration Act (FAA),

¹⁵⁴ INTERNATIONAL COURT OF ARBITRATION, *supra* note 102, art. 29.

¹⁵⁵ *Id.*

¹⁵⁶ MOSES, *supra* note 1, at 5.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Davies, *supra* note 22, at 300-01.

¹⁶⁰ *Id.* at 301.

¹⁶¹ *Id.* at 303.

¹⁶² Ira M. Schwartz, *Interim and Emergency Relief in Arbitration Proceedings*, 63 DISP. RESOL. J. 56, 60 (2008).

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is to order the parties to arbitrate.¹⁶³ United States courts are not in agreement about whether or not they can grant an interim award in conjunction with an order to compel arbitration.¹⁶⁴ The answer can depend on factors like which party brought the request, if that party is trying to aid arbitration or avoid it, and the type of relief sought.¹⁶⁵

Part of the reason US courts do not agree on whether or not they can provide emergency relief is the concern that parties will use emergency relief from the courts to avoid their arbitration agreement.¹⁶⁶ Courts want to enforce contracts. They want parties who agreed to arbitrate to do so. The US courts would benefit from a rule like the one in the English Arbitration Act 1996¹⁶⁷ to clarify what they can and cannot do.

English courts have the power to make interim awards that aid international arbitration under the English Arbitration Act 1996.¹⁶⁸ English courts have broad power to issue interim relief to any party who requests it, but are hesitant to do so in cases that are not connected to the United Kingdom in some way.¹⁶⁹

The New York Convention does not address this issue so there is not the same type of uniformity between countries' actions concerning interim awards and their enforcement as there is concerning other international arbitration issues. The UNCITRAL Model Law on International Commercial Arbitration does address this issue. The Model Law says that interim awards made by court systems before or during arbitral proceedings are not incompatible with an arbitration agreement.¹⁷⁰ Countries that have adopted the 2006 version of the UNCITRAL Model Law do allow courts to make interim awards.

This type of variation can be a problem for parties but the adaptation of emergency relief measures by arbitration institutions can only help to alleviate it. Emergency arbitration provisions can help parties avoid this problem, especially in the United States where there is no consensus on the courts' role in granting interim relief to parties engaged in international arbitration.¹⁷¹

Pre-tribunal emergency relief has developed significantly since many of the first emergency arbitrator provisions went into force in 2006. Institutions now offer different types of emergency relief as well, but the number of institutions offering relief needs to continue to grow and the clarity surrounding the emergency relief process and enforcement of an emergency award need to increase.

¹⁶³ Federal Arbitration Act, 9 U.S.C. § 206 (1970).

¹⁶⁴ Davies, *supra* note 22, at 303-13.

¹⁶⁵ *Id.*

¹⁶⁶ Davies, *supra* note 22, at 301.

¹⁶⁷ English Arbitration Act 1996, ch. 23, art. 39, 44.

¹⁶⁸ Schwartz, *supra* note 162, at 60.

¹⁶⁹ See Davies, *supra* note 22, at 319-22 (although the English Arbitration Act of 1996 gives courts in the UK the power to assist not only arbitrators in the UK, but also arbitrators in foreign arbitration, the jurisprudence developing around this power suggests it should be used sparingly).

¹⁷⁰ *Id.* at 322.

¹⁷¹ Schwartz, *supra* note 162, at 60.

V. Proposal

Arbitration institutions should continue to create and offer new and varying options for emergency relief. The more options parties have to choose from, the more likely they are to find and choose one that fits their specific needs.

The first step in this process is for more institutions to adopt measures that allow parties to obtain emergency relief from the arbitration institution before the formation of the arbitral tribunal. Since the UNCITRAL model rules were updated in 2006 to contain emergency relief provisions,¹⁷² more institutions have been adopting them. The new ICC rules should also help move more institutions in that direction. Because the ICC is so prominent and widely used, other institutions are likely to look to them and follow their example.

After more institutions adopt these measures and start to work out the kinks in them, each institution should try to incorporate other forms of emergency relief procedures into their rules. Institutions should continue to alter their rules as they find issues or areas that require clarification. It is important that emergency arbitration procedure continues to evolve and change just as international arbitration is evolving and changing. Keeping emergency provisions current and adjusting the rules to be as efficient and useful as possible will help this area of arbitration grow and become trusted to be relied upon by the international community. To do this, institutions must learn from each emergency arbitration proceeding and adjust to case law as it develops.

It is important that different institutions keep their individuality. Each arbitration institution has its own set of rules in place. Parties choose a specific arbitration institution for a number of different reasons, such as its rules, its administration, the types of disputes the institution specializes in and its location. All of these factors are important. The type of emergency relief the institution can offer is important as well. Each institution has developed its specific set of arbitration rules for a reason. Each institution had to assemble the appropriate set of general arbitration rules for their institution, and will have to do the same for their emergency arbitration rules.

Arbitration institutions will have to specify which emergency remedies will be available in any given situation. For example, the SCC only allows expedited proceedings if both parties agree to them.¹⁷³ The SIAC allows expedited proceedings to take place if any one of three possible conditions is met.¹⁷⁴ Neither the SIAC¹⁷⁵ nor the SCC¹⁷⁶ has this type of restriction on their emergency arbitrator procedures. These institutions chose to restrict the rules the way they did for a reason. Institutions have to consider this for all types of relief. Clarity and comprehensiveness will make emergency arbitration more approachable. Clear

¹⁷² Davies, *supra* note 22, at 299-300.

¹⁷³ SCC RULES FOR EXPEDITED ARBITRATIONS, *supra* note 141, app. II.

¹⁷⁴ SINGAPORE INTERNATIONAL ARBITRATION CENTRE, *supra* note 65, art. 26.3.

¹⁷⁵ *Id.* sched. 1.

¹⁷⁶ ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE, *supra* note 80, art. 9, app. II.

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and understandable rules will help businesses trust emergency relief procedures and as a result, this area of international arbitration can grow.

Part of the problem with emergency relief in international arbitration is that it is such a nascent area of law. As a result, there is still much uncertainty surrounding important issues. There is a lack of uniformity in how judicial systems grant interim awards when arbitration is involved.¹⁷⁷ There is also a grey area around the enforcement of the awards made by emergency arbitrators.¹⁷⁸ Issues like these will only be ironed out as courts and legislatures see the problems and fix them. Arbitration institutions should be on the forefront of tracking these changes and helping potential arbitration clients understand the possible benefits and consequences of choosing to seek emergency relief from an institution instead of a court.

In that same vein, legislatures can do a lot to clear up how emergency relief will be handled in each country. This would help parties become comfortable with what will happen if they choose emergency arbitration over resorting to a judicial system.

Essentially, emergency arbitration proceedings need to offer parties the same benefits as normal arbitration proceedings. By clarifying the conditions under which emergency arbitration takes place and by creating and maintaining a diverse set of emergency relief options for parties to choose from, this can happen. It will take work from arbitration institutions, courts, and legislatures to make emergency arbitration beneficial and reliable for parties, just as it did to make general arbitration as trustworthy and popular as it is today.

VI. Conclusion

In conclusion, incorporating emergency relief prior to the formation of the arbitral tribunal was a necessary step in the growth of international arbitration. Now that more international arbitration institutions have adopted emergency relief provisions, participating in emergency arbitration must offer the same benefits that participating in standard international commercial arbitration offers.

Arbitral institutions need to offer a variety of emergency relief measures. Two procedures—expedited tribunal formation or proceedings and emergency arbitrator proceedings—are already in place. These two remedies have different strengths and weaknesses, making the application of each type of relief appropriate for different situations. A variety of emergency relief measures need to be in place to make emergency arbitration a more attractive option than emergency relief from the judicial system in as many situations as possible.

There also needs to be more clarity around emergency arbitration proceedings. Parties need to know the consequences of choosing to participate in emergency arbitration over petitioning the courts and vice versa. This cannot happen until it is clear from court systems and from legislatures what the potential roadblocks, consequences, and benefits exist within each national system.

¹⁷⁷ Schwartz, *supra* note 162, at 60.

¹⁷⁸ *Id.* at 58.

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If emergency relief continues to grow and develop, participating in emergency arbitration can become a more attractive option than seeking emergency relief from the courts, just as participating in international arbitration is often a more attractive option than transnational litigation.

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