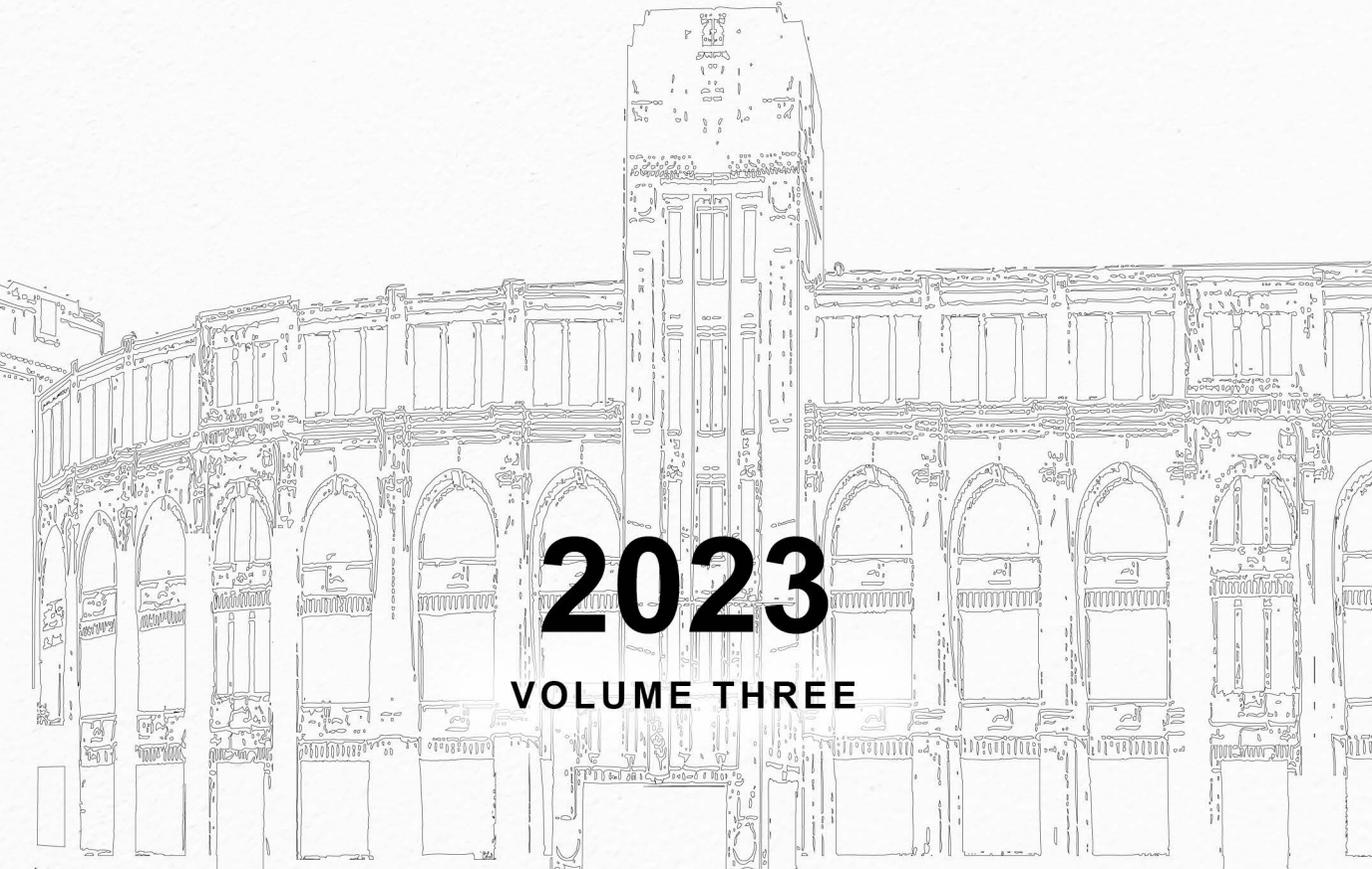




# ALTERNATIVE DISPUTE RESOLUTION

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JOURNAL

A detailed black and white architectural line drawing of a building facade, featuring a series of arched windows and a central tower-like structure. The drawing is positioned at the bottom of the cover, partially overlapping the text.

**2023**

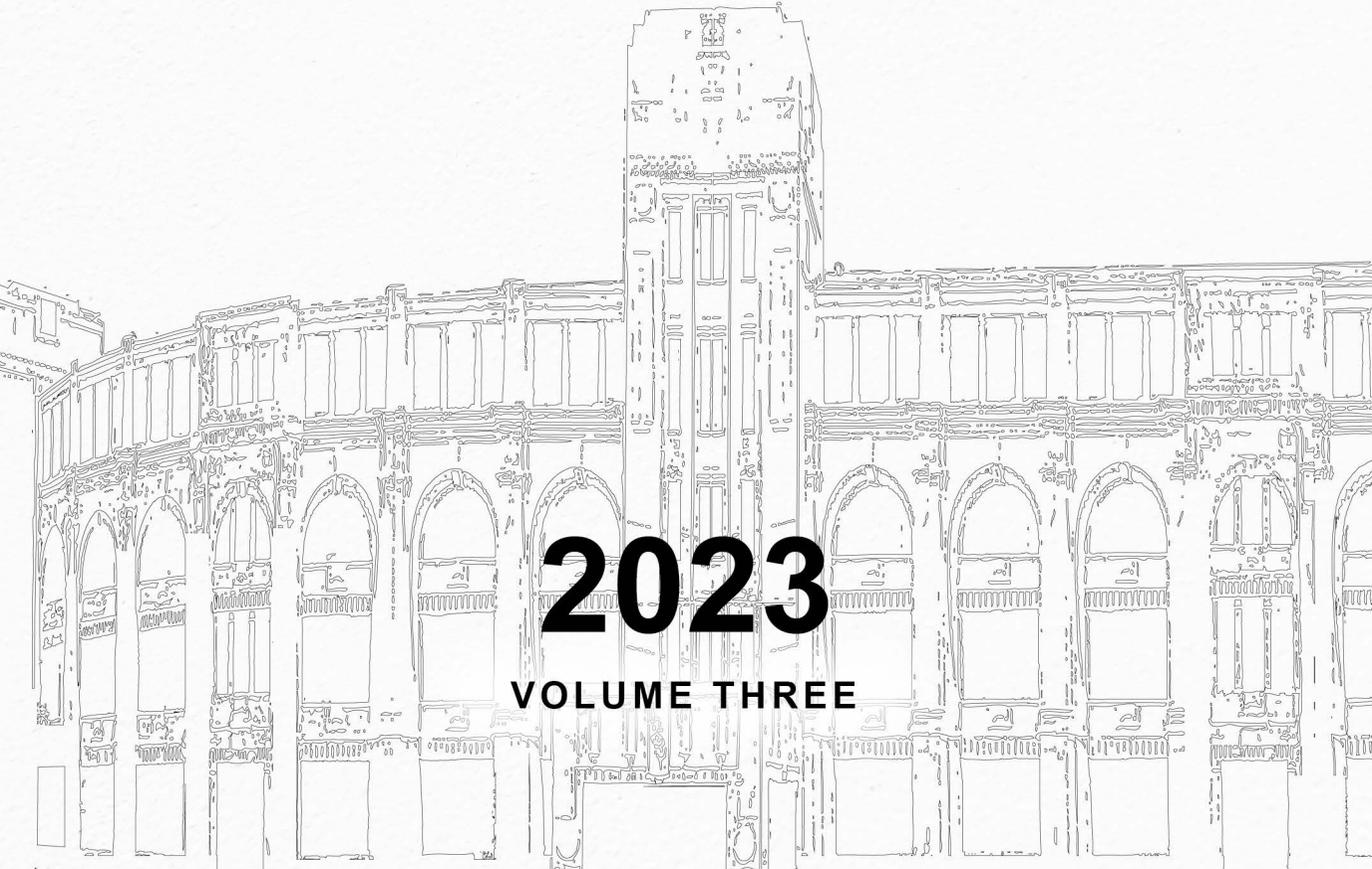
**VOLUME THREE**



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# Emergency Arbitration Proceedings in International Dispute Resolution

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## 1 Introduction

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Arbitration is a form of alternative dispute resolution (ADR) that involves the resolution of disputes between parties outside of the court system. It is a popular method of dispute resolution in international commercial contracts due to its flexibility, confidentiality, and enforceability of awards. One of the most significant features of arbitration is its ability to provide expedited relief in urgent situations. Emergency arbitration is a relatively new concept that has gained popularity in recent years due to the increased demand for prompt and efficient resolution of disputes. This article will explore the use of emergency arbitration proceedings in international dispute resolution.

## 2 Emergency Arbitration Proceedings

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Emergency arbitration is a type of arbitration that allows parties to obtain interim relief before the constitution of the arbitral tribunal. Emergency arbitration is typically used when there is an urgent need for relief, and the time required to appoint an arbitral tribunal and conduct a full arbitration would be too long. Emergency arbitration proceedings can be initiated by either party to the dispute, and the arbitrator will be appointed within a specific timeframe, typically 24 to 48 hours. The arbitrator will then consider the application for interim relief and make a decision within a short timeframe, typically within 10 days of their appointment.

Emergency arbitration is a mechanism for obtaining interim relief in urgent situations, such as when there is a risk of irreparable harm or when a party needs immediate protection pending the resolution of a dispute. International emergency

arbitration refers to emergency arbitration proceedings that are conducted in the context of an international dispute, often under the auspices of an international arbitral institution. The types of interim relief that can be granted in emergency arbitration proceedings include injunctions, orders to preserve evidence, and orders for the payment of money. The arbitrator's decision is binding, and the parties are required to comply with it. The decision can also be enforced by courts in the same way as a regular arbitral award.

Emergency arbitration is commonly used in international disputes involving contracts with a high degree of urgency, such as contracts for the sale of goods that require immediate delivery or contracts for the provision of services that involve critical deadlines. Emergency arbitration is also commonly used in disputes relating to intellectual property, where the need for urgent injunctive relief is often critical.

International disputes can arise in various contexts, including commercial agreements, investment treaties, and construction projects. Some common examples of situations in which emergency arbitration may be sought include:

Contractual disputes where one party seeks urgent injunctive relief to prevent the other party from taking certain actions that could cause irreparable harm; Investment disputes where a party seeks urgent interim relief to prevent a state from expropriating its assets or interfering with its operations; Sports arbitration disputes where a party seeks urgent relief to prevent a sports organisation from taking punitive measures against the party or its athletes. Arbitration offers a flexible and confidential forum where parties can resolve their disputes with the assistance of a neutral third party. In some cases, however, parties need urgent relief to safeguard their interests, and the traditional arbitration process may not be able to provide the necessary remedy in a timely manner. This is where emergency arbitration proceedings can be particularly useful.

Emergency arbitration is a relatively new development in international arbitration, having only emerged in the last decade. Emergency arbitration allows parties to obtain urgent interim relief prior to the constitution of the arbitral tribunal, which can take several weeks or even months. Emergency arbitrators are appointed by arbitral institutions to hear urgent applications for interim relief and make determinations within a very short timeframe, typically within a matter of days. Emergency arbitration is typically governed by specific rules or procedures, such as those set out in the rules of various arbitral institutions, including the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC), and the American Arbitration Association (AAA)/International Centre for Dispute Resolution (ICDR) and Asian International Arbitration Centre (AIAC).

The types of interim relief that can be granted by an emergency arbitrator include injunctions, orders for the preservation of evidence or assets, and orders for the

provision of security for costs. Emergency arbitrators can also make determinations on jurisdictional issues and other preliminary matters that may affect the parties' ability to pursue their claims.

One of the key advantages of emergency arbitration is its speed. Emergency arbitration proceedings are designed to be heard and determined quickly, usually within a matter of days. This can be particularly useful in situations where time is of the essence and parties need urgent relief to protect their interests. Emergency arbitration can also be less expensive than traditional arbitration, as the proceedings are typically shorter and involve fewer procedural steps. Emergency arbitration can also be useful in situations where parties need to take swift action to preserve their rights, as the process can be initiated quickly and without the need for a full arbitration hearing.

### 3 Appointment of Emergency Arbitrators

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The appointment of an emergency arbitrator is governed by the rules of the arbitral institution or the parties' agreement. Typically, the emergency arbitrator is appointed within a short period of time after the request for interim relief is made, and the arbitrator's decision is binding on the parties.

The decision of the emergency arbitrator is usually made on an expedited basis, and the arbitrator may conduct a hearing or make a decision based solely on written submissions. The parties may challenge the decision of the emergency arbitrator, but such challenges are usually limited to very narrow grounds, such as lack of jurisdiction or manifest disregard for the law.

The use of emergency arbitrators has become increasingly common in international arbitrations, particularly in cases where speed and efficiency are essential. However, emergency arbitrators are not available in all international arbitration proceedings, and parties should carefully review the rules of the relevant arbitral institution or their arbitration agreement to determine whether an emergency arbitrator is available in their case.

#### **Some of the advantages of emergency arbitration include:**

1. **Speed:** Emergency arbitration can provide parties with interim relief quickly, as an arbitrator can be appointed and a decision can be made within a matter of days or weeks.
2. **Confidentiality:** Emergency arbitration proceedings can be conducted in confidence, which may be advantageous for parties who wish to keep the dispute and its resolution private.

3. Flexibility: Emergency arbitration can be used to seek a wide range of interim relief, including orders to preserve assets, orders for the production of evidence, and orders to prevent parties from taking certain actions.

**Despite these advantages, there are also some limitations to emergency arbitration:**

1. Cost: Emergency arbitration can be costly, as parties will need to pay for the arbitrator's fees and expenses, as well as legal fees.
2. Enforcement: Emergency arbitration awards may not be enforceable in all jurisdictions, which can limit the effectiveness of the relief granted.
3. Limited scope: Emergency arbitration is limited to interim relief, and cannot provide a final resolution to the dispute. Parties may still need to engage in a full arbitration proceeding to resolve the underlying dispute.
4. Limited precedent: Emergency arbitration decisions are not always published, which can limit their value as precedent in future disputes.

### ***Enforcement of emergency arbitration decisions***

The enforcement of emergency arbitration decisions largely depends on the legal framework of the jurisdiction where enforcement is sought. In some jurisdictions, such as Singapore and Hong Kong, emergency arbitration awards are given the same treatment as final arbitration awards and can be enforced through the courts in the same way as final awards. In other jurisdictions, such as the United States, the enforceability of emergency arbitration decisions may be more uncertain and may depend on the specific facts and circumstances of the case.

In general, to enforce an emergency arbitration decision, the party seeking enforcement must apply to the relevant court or authority in the jurisdiction where enforcement is sought. The applicant will usually need to provide a copy of the emergency arbitration decision and evidence that the decision is binding and enforceable. The court or authority will then review the application and may issue an order enforcing the decision.

It is important to note that enforcement of emergency arbitration decisions can vary depending on the jurisdiction, and parties should seek legal advice on the specific laws and procedures applicable to their case.

### ***Case Study***

Here are a few notable cases on international emergency arbitration: These cases demonstrate the importance of emergency arbitration in international dispute resolution and the potential for emergency arbitrators to grant interim relief to

parties in urgent situations. It is worth noting that these are all public international law matters as these tend to get reported whilst general commercial arbitrations tend to remain confidential.

1. *Tza Yap Shum v the Republic of Peru*. In this case, the claimant, Tza Yap Shum, was a Peruvian citizen who owned and operated a fishing business in the Republic of Peru. The respondent, the Republic of Peru, had implemented a new law that prohibited the use of certain fishing methods, which had a significant impact on the claimant's business.

The claimant filed a request for emergency arbitration under the rules of the International Chamber of Commerce (ICC) seeking an order that would prevent the Republic of Peru from enforcing the new law. The ICC appointed an emergency arbitrator who held a hearing and issued an interim award, ordering the Republic of Peru to suspend the implementation of the new law until the conclusion of the arbitration proceedings.

The Republic of Peru challenged the interim award in the French courts, arguing that the emergency arbitrator had exceeded his mandate by issuing the interim award. The French courts rejected the challenge, holding that the emergency arbitrator had acted within his mandate and that the interim award was enforceable.

The case of *Tza Yap Shum v Republic of Peru* is significant because it demonstrates the effectiveness of emergency arbitration in providing parties with immediate relief in urgent situations. It also highlights the importance of having clear and enforceable rules governing emergency arbitration procedures. The ICC rules, which were used in this case, have been widely adopted by international arbitral institutions and are considered to provide a robust framework for emergency arbitration proceedings.

2. *BG Group v Republic of Argentina*: In this case, BG Group, a British gas company, initiated emergency arbitration proceedings against Argentina under the UNCITRAL Arbitration Rules. BG Group sought interim relief to prevent Argentina from taking any action to expropriate its investment in a natural gas pipeline. The emergency arbitrator granted BG Group's request for interim relief, which was later upheld by the tribunal in the main arbitration.
3. *Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan*: This case involved an emergency arbitration under the ICSID Rules. Tethyan Copper, an Australian company, sought interim relief to prevent Pakistan from taking any steps to enforce a \$6 billion penalty imposed by a Pakistani court in connection with a mining project. The emergency arbitrator granted Tethyan Copper's request for interim relief, but the tribunal in the main arbitration later found that it did not have jurisdiction to hear the case.

4. *Chevron Corporation v Republic of Ecuador*: In this case, Chevron initiated emergency arbitration proceedings under the UNCITRAL Arbitration Rules in response to a series of court orders issued by Ecuador that purported to seize Chevron's assets in the country. The emergency arbitrator granted Chevron's request for interim relief, which was later upheld by the tribunal in the main arbitration.
5. *Stati et al. v Republic of Kazakhstan*: In this case, the claimants initiated emergency arbitration proceedings under the SCC Arbitration Rules in response to a series of measures taken by Kazakhstan to freeze their assets in the country. The emergency arbitrator granted the claimants' request for interim relief, which was later upheld by the tribunal in the main arbitration.
6. *Chevron Corporation v Ecuador*: In 2012, Chevron Corporation obtained an emergency arbitration award against Ecuador, which had been ordered by a court to pay \$18 billion in damages for environmental contamination. The emergency arbitrator ordered Ecuador to take all measures necessary to suspend the enforcement of the judgment.
7. *Interim Measures in the UNCITRAL Arbitration between Ukraine and the Russian Federation*: In 2014, Ukraine filed an emergency arbitration request against Russia seeking interim measures to prevent further harm to Ukraine's interests as a result of the annexation of Crimea. The emergency arbitrator ordered Russia to refrain from implementing any measures that might aggravate or extend the dispute.
8. *Interim Measures in the ICC Arbitration between RSM Production Corporation and Saint-Petersburg Sea Port*: In 2015, RSM Production Corporation obtained an emergency arbitrator award in an ICC arbitration against Saint-Petersburg Sea Port. The emergency arbitrator ordered Saint-Petersburg Sea Port to immediately release a cargo of petroleum products that had been detained.
9. *Interim Measures in the LCIA Arbitration between the Republic of the Philippines and the People's Republic of China*: In 2016, the Philippines obtained an emergency arbitrator award in an LCIA arbitration against China concerning disputes over maritime rights in the South China Sea. The emergency arbitrator ordered China to immediately stop its activities that were in violation of the Philippines' sovereign rights.
10. *Interim Measures in the SCC Arbitration between Vattenfall AB and the Federal Republic of Germany*: In 2016, Vattenfall AB obtained an emergency arbitrator award in an SCC arbitration against Germany concerning the closure of nuclear power plants. The emergency arbitrator ordered Germany to refrain from taking any measures that might hinder the operation of the plants.

## 4

## Conclusion

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Overall, emergency arbitration can be useful for parties involved in international commercial disputes who need urgent relief. However, parties should carefully consider the costs, benefits, and potential risks of emergency arbitration before deciding to use it.