THE ENFORCEABILITY OF EMERGENCY ARBITRATOR ORDERS UNDER THE NEW YORK CONVENTION

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ABSTRACT

Emergency arbitrator (EA) procedures have emerged to provide swift interim relief before a full tribunal is constituted. However, under the 1958 New York Convention, the enforceability of such relief remains unsettled. This paper examines whether interim measures granted by EAs can qualify as "arbitral awards" enforceable under the Convention. It analyzes the divergent approaches of various jurisdictions. Some countries, like Singapore and India, have adopted pro-arbitration stances, explicitly recognizing EA orders under their arbitration laws. By contrast, courts in the United States and the United Kingdom have historically been more cautious, often emphasizing a requirement that only final awards are enforceable. The paper also highlights how leading arbitral institutions (such as the ICC, SIAC, and LCIA) have begun to standardize their EA rules.

Finally, it considers the implications for party autonomy and efficiency and concludes that a harmonized approach is needed. A formal amendment of the Convention seems unlikely. Instead, guidance from bodies like UNCITRAL or coordinated national reforms may bridge the current enforcement gap.

I. Introduction

Emergency arbitration has become an important feature of international dispute resolution in recent years. Parties facing urgent needs, for example, to freeze assets, preserve the status quo, or halt harmful actions, may not wish to wait for the constitution of a full arbitral tribunal. Recognizing this, leading arbitration institutions (such as the ICC, SIAC, SCC, ICDR, and LCIA) have introduced Emergency Arbitrator (EA) procedures.[1] These allow a sole arbitrator to be appointed quickly to grant temporary relief pending the formation of the final tribunal.[2] EA mechanisms protect party autonomy and the arbitration process by allowing urgent issues to be addressed internally.[3] This avoids resorting to national courts, which can undermine arbitration's advantages of confidentiality, efficiency, and flexibility.[4]

A key question now arises: Is there an enforceability gap for orders made by emergency arbitrators? An EA's decision is binding on the parties contractually until the tribunal is formed and potentially revises it. Nevertheless, the enforceability of such interim orders is unclear under international law, specifically the 1958 New York Convention.[5] The Convention is the global cornerstone for enforcing arbitral awards, yet it was drafted long before emergency arbitration existed and does not mention interim measures explicitly. This analysis asks whether an EA's interim order or award can fall within the Convention's scope of enforceable "arbitral awards," or whether parties may be left without an effective enforcement mechanism.[6]

The analysis begins by outlining the New York Convention's framework and the legal debate over what qualifies as an "award."[7] It then surveys approaches in four key jurisdictions. Courts

[1] ICC Rules of Arbitration art. 29 & app. V (2021); SIAC Rules sch. 1 (2016); SCC Rules app. II (2017); ICDR Int'l Arb. Rules art. 6 (2021); LCIA Rules art. 9B (2020).
[2] SIAC Rules sch. 1, r. 1–12 (2016) (emergency arbitrator procedure requiring decision within 14 days); ICC Rules app. V, art. 6(4) (2021) (EA orders binding until tribunal decision).
[3] UNCITRAL Model Law on Int'l Com. Arb. art. 17(2), U.N. Doc. A/40/17, Annex I (1985), as amended by U.N. Doc. A/61/17 (2006) (recognizing tribunals' powers to grant interim measures); Gary B. Born, *International Commercial Arbitration* 2490–95 (3d ed. 2021).
[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II (1)– (3), June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention] (arbitration agreements to be respected and enforced); Arbitration Act 1996, c. 23, § 44 (UK) (allowing court intervention in support of arbitration where tribunal not yet constituted).
[5] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I, June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention].
[6] UNCITRAL Model Law on Int'l Com. Arb. arts. 17–17H, U.N. Doc. A/40/17, Annex I (1985), as amended by U.N. Doc. A/61/17 (2006) (providing recognition and enforcement of interim measures, though not expressly extending to emergency arbitrators).
[7] New York Convention, supra note 5, arts. I, III, V(1)(e).

and legislatures have moved to enforce EA relief in jurisdictions such as Singapore and India.[8] In contrast, courts in the United States and the United Kingdom have traditionally been more cautious, often emphasizing the need for finality in an award.[9] The paper also examines how arbitral institutions have standardized EA procedures.[10] Finally, it considers the policy implications of divergent approaches, including risks of fragmented enforcement and forum-shopping, and explores whether treaty-level reforms or soft-law guidance could promote uniformity.[11]

II. Framework of the New York Convention

Article I of the New York Convention defines its scope as applying to the recognition and enforcement of "arbitral awards" made outside the territory of the enforcing state.[12] However, the Convention does not define an "arbitral award".[13] This silence has led to debate over whether interim measures or partial decisions (such as those issued by an emergency arbitrator) can be treated as enforceable "awards" under the Convention. On its face, the Convention generally refers only to awards that suggest finality. For example, Article V(1)(e) permits a court to refuse enforcement if an award "has not yet become binding on the parties."[14] This suggests the Convention assumes an award has some degree of finality or conclusiveness. Many jurisdictions interpret this to mean that an enforceable award should finally resolve the issues submitted to arbitration.[15] Interim orders, which by nature can be revised or are temporary until the final award, may be seen as lacking the binding finality the Convention

[8] Int'l Arb. Act 1994, Cap. 143A, § 2(1) (Sing.) (as amended 2012) (defining tribunal to include emergency arbitrator); *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2021) 7 SCC 1 (India) (holding EA award enforceable under § 17 of the Arbitration & Conciliation Act 1996).

[9] 9 U.S.C. §§ 201–208 (2018) (FAA Ch. 2 implementing the New York Convention); *Vital Pharms., Inc. v. PepsiCo, Inc.*, No. 21-cv-22995, 2021 WL 6948190 (S.D. Fla. Sept. 9, 2021) (confirming EA order); Arbitration Act 1996, c. 23, §§ 44, 66 (UK) (relying on court powers and award enforcement, without express EA provisions).

[10] ICC Rules of Arbitration art. 29 & app. V (2021); SIAC Rules sch. 1 (2016); LCIA Rules art. 9B (2020); SCC Rules app. II (2017); ICDR Int'l Arb. Rules art. 6 (2021).

[11] UNCITRAL Model Law on Int'l Com. Arb. arts. 17H–17J (2006) (recognition and enforcement of interim measures); UNCITRAL, Recommendation Regarding the Interpretation of Article II (2) and Article VII (1) of the New York Convention (July 7, 2006), U.N. Doc. A/61/17, Annex II.

[12] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I (1), June 10, 1958, 330 U.N.T.S. 3 [hereinafter New York Convention].

[13] Id. art. I (absence of definition of "award"); see also Albert Jan van den Berg, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* 281–83 (1981).

[14] New York Convention, *supra* note 1, art. V(1)(e).

[15] *See Al Raha Grp. for Tech. Servs. v. PKL Servs., Inc.*, No. 1:18-cv-02236, 2019 WL 13021985, at *6 (N.D. Ga. Sept. 3, 2019) (declining to enforce interim EA order for lack of finality); *Swiss Federal Tribunal*, 4A_576/2008 (Mar. 16, 2009) (holding interim measures not enforceable awards under the Convention).

envisions.[16]

Some courts and commentators have held that emergency arbitration orders fall outside the Convention's scope. They point to the Convention's drafting history and practical considerations.[17] Under this view, an EA's decision is a provisional order granting temporary relief, not a proper adjudication on the merits, and thus not the kind of final "award" the Convention contemplates. For instance, the Swiss Federal Tribunal has warned that "it is dangerous to treat interim measures as an award" eligible for international enforcement.[18] Historically, some U.S. and English jurists have similarly emphasized that both the Convention and domestic enforcement laws were designed for final awards, not preliminary relief, and that enforcing non-final decisions could exceed the intent of the Convention or conflict with the "binding" requirement.[19]

On the other hand, many commentators argue for a modern, purposive interpretation of "arbitral award" under the Convention. They note that nothing in the Convention expressly requires an award to dispose of every issue or to be immune from modification.[20] Moreover, partial and interim awards (for example, a final award on a segregable issue) have been enforced under the Convention.[21] Under this view, an order granting interim measures could satisfy the bindingness requirement as long as the parties have agreed to treat it as binding until the final tribunal decides otherwise. In practice, if the parties empower an emergency arbitrator by their agreement, the resulting decision may have the immediacy and authority to be considered an "award."[22]

Modern interpretive principles support this perspective. Under Article 31(3)(b) of the Vienna Convention on the Law of Treaties, the subsequent practice of states can inform treaty

[16] Gary B. Born, *International Commercial Arbitration* 3040–47 (3d ed. 2021) (noting most courts require awards to be final and binding for enforcement under the Convention).
[17] Albert Jan van den Berg, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation* 281–83 (1981) (explaining the travaux préparatoires reveal no intent to extend "award" to interim measures).
[18] Tribunal fédéral [TF] [Federal Supreme Court] Mar. 16, 2009, 4A_576/2008 (Switz.) (translated in 27 ASA Bull. 547 (2009)) (cautioning against treating interim relief as enforceable awards).
[19] *Al Raha Grp. for Tech. Servs. v. PKL Servs., Inc.*, No. 1:18-cv-02236, 2019 WL 13021985, at *6 (N.D. Ga. Sept. 3, 2019) (refusing to enforce EA order for lack of finality); Arbitration Act 1996, c. 23, §§ 66, 44 (UK) (limiting enforcement to arbitral awards and leaving interim measures to court powers); see also Julian D.M. Lew et al., *Comparative International Commercial Arbitration* 700–02 (2003).
[20] New York Convention, *supra* note 1, arts. I, V(1)(e).
[21] *See Yukos Capital S.A.R.L. v. OAO Rosneft Oil Co.*, [2012] EWCA (Civ) 855, [2012] 2 Lloyd's Rep. 50 (Eng.) (enforcing partial awards); *Encyclopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 91–92 (2d Cir. 2005) (upholding enforcement of partial award resolving separable issue).
[22] Gary B. Born, *International Commercial Arbitration* 3048–50 (3d ed. 2021).

interpretation.[23] The widespread adoption of emergency arbitration could justify reading the Convention to include interim awards within its ambit. For example, the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration (Article 17H) treat interim measures ordered by an arbitral tribunal as binding unless labeled preliminary, "enforceable as any other award."[24] While the Model Law does not explicitly clarify that an EA is part of the "tribunal," it at least acknowledges that interim relief can be given award-like status.[25]

In sum, there is no global consensus on whether an EA order qualifies as an "award" under the Convention. The Convention's language and traditional interpretations lean toward requiring finality, which could leave a gap in enforceability for interim measures. The following sections examine how various jurisdictions have responded to this issue, some adhering to the traditional view and others innovating to include EA orders within enforceability frameworks.

III. Comparative Approaches

Different national approaches highlight the tension between effective interim relief and existing legal constraints. Some jurisdictions have proactively amended their laws or allowed judicial solutions to enforce EA orders, while others have remained cautious.[26] We survey four representative jurisdictions. Singapore and India have taken notable steps to enforce emergency arbitrator orders under their arbitration laws.[27] By contrast, courts in the United States and the United Kingdom have traditionally been more reluctant, often citing a finality requirement in an award.[28]

i. Singapore

Singapore is widely regarded as a leader in embracing emergency arbitration. In 2012,

[23] Vienna Convention on the Law of Treaties art. 31(3)(b), May 23, 1969, 1155 U.N.T.S. 331.
[24] UNCITRAL Model Law on Int'l Com. Arb. art. 17H, U.N. Doc. A/40/17, Annex I (1985), as amended by U.N. Doc. A/61/17 (2006).
[25] Id. arts. 2(c), 17H–17J; see also Julian D.M. Lew et al., *Comparative International Commercial Arbitration* 701–02 (2003).
[26] *See* UNCITRAL Model Law on Int'l Com. Arb. arts. 17–17J, U.N. Doc. A/40/17, Annex I (1985), as amended by U.N. Doc. A/61/17 (2006) (recognizing enforceability of interim measures, subject to national implementation).
[27] Int'l Arb. Act 1994, Cap. 143A, § 2(1) (Sing.) (as amended 2012) (expanding definition of "arbitral tribunal" to include emergency arbitrators); *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2021) 7 SCC 1 (India) (holding EA orders enforceable under § 17 of the Arbitration & Conciliation Act 1996).
[28] Arbitration Act 1996, c. 23, §§ 44, 66 (UK) (providing only for court-ordered interim relief and enforcement of arbitral awards, without express reference to emergency arbitrators).

Singapore amended its International Arbitration Act (IAA) to recognize emergency arbitrators expressly.[29] The definition of "arbitral tribunal" was expanded to include an emergency arbitrator for arbitration proceedings. This amendment was in Part II of the Act (covering domestic and Singapore-seated international arbitrations). A question arose whether this change also applied to Part III of the IAA, which implements the New York Convention for foreign-seated awards. The Singapore High Court answered this in the affirmative in CVG v. CVH (2022).[30] In that case, an EA appointed under ICDR rules in a Pennsylvania-seated arbitration had issued an interim award. When one party sought enforcement of that award in Singapore, the other party argued that a foreign EA award was not a "foreign award" under Part III of the IAA and could not be enforced. The High Court rejected that argument. It confirmed that an emergency arbitrator's award, even one rendered outside Singapore, is enforceable in Singapore just like any other arbitral award under the IAA.[31]

The High Court used a purposive interpretation of the statute to reach this outcome. It noted that Part III defines "foreign award" by reference to the Convention's scope but also clarifies that a "foreign award" could include an "interim order or conservatory measure made by an arbitral tribunal."[32] The term "arbitral tribunal" is not explicitly defined in Part III, but the court interpreted it in light of the 2012 amendment's intent. The court observed that the Minister of Law had stated the amendment aimed to ensure that "orders made by such emergency arbitrators… in both foreign and local arbitrations are enforceable under the IAA regime."[33] In other words, even without an explicit reference in Part III, the legislative purpose was to treat emergency arbitrator orders as equivalent to the tribunals. By this logic, any EA interim relief, whether styled as an order or award, has the same enforceability as a final arbitral award under Singapore law. This approach reinforces party autonomy and international arbitration practice, effectively closing any enforcement gap for EA orders in Singapore.

Singapore's approach reflects a firm pro-enforcement policy. By treating an emergency arbitrator as equivalent to a regularly constituted tribunal, Singapore ensures that parties who

[29] Int'l Arb. Act 1994, Cap. 143A, § 2(1) (Sing.) (as amended 2012) (defining "arbitral tribunal" to include an emergency arbitrator).
[30] CVG v. CVH, [2022] SGHC(I) 7 (Sing. H.C.).
[31] Id. at ¶¶ 47–49.
[32] Int'l Arb. Act 1994, Cap. 143A, pt. III, § 27(2) (Sing.) (defining "foreign award" by reference to the New York Convention and including interim orders or conservatory measures).
[33] Singapore Parliamentary Debates, Official Report, vol. 89 at col. 1012 (Apr. 9, 2012) (statement of Minister of Law) (explaining that the 2012 amendments ensured enforceability of EA orders in both domestic and foreign arbitrations).

include EA provisions in their arbitration agreement can trust that interim relief will be enforceable. Notably, this stance extends even to cases where the arbitration is seated outside Singapore.[34] Such an approach diminishes incentives for parties to evade EA orders by shifting assets or proceedings abroad. Businesses can rely on the emergency arbitration mechanism, knowing Singapore courts will support enforcement if needed. Singapore's reputation as a leading arbitral venue is reinforced by this willingness to innovate within the framework of the New York Convention.[35]

ii. India

India has also taken notable steps toward recognizing emergency arbitrator awards. India's Arbitration and Conciliation Act (ACA) of 1996 did not reference emergency arbitration, and the concept was not part of Indian practice. That changed in 2021 with the Supreme Court's decision in Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.[36] In that case, a Singapore-headquartered dispute was being arbitrated under SIAC rules, with New Delhi as the seat (making it an India-seated arbitration governed by the ACA). A SIAC-appointed emergency arbitrator issued an interim award preventing Future Retail from proceeding with a transaction. Amazon (the party benefiting from the EA order) sought to enforce this interim award in India. The key question was whether the ACA allowed enforcement of an EA award, despite the Act's silence on emergency arbitrators.

In its landmark judgment, India's Supreme Court answered affirmatively. The court held that an EA award is enforceable under the ACA, notwithstanding the Act's silence on emergency arbitrators.[37] The court grounded its reasoning in party autonomy and a purposive reading of the statute. Section 2(8) and Section 19(2) of the ACA expressly allow parties to choose any arbitration rules.[38] By incorporating the SIAC Rules, the parties had implicitly agreed to the emergency arbitrator mechanism. The Act allowed such an agreement, and nothing in the ACA "bypasses" or negates the parties' choice to have interim relief decided by an EA.

The court then examined the ACA's provisions on interim measures. Section 17 empowers an

[34] *CVG v. CVH*, *supra* note 2, at ¶¶ 50–52.
[35] Gary B. Born, *International Commercial Arbitration* 3055–56 (3d ed. 2021) (noting Singapore's progressive approach to emergency arbitration enforcement).
[36] *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2021) 7 SCC 1 (India).
[37] Id. at ¶ 33.
[38] Arbitration & Conciliation Act, No. 26 of 1996, §§ 2(8), 19(2) (India).

"arbitral tribunal" to order interim relief, and since 2015, such tribunal orders are enforceable as if they were court orders (Section 17(2)).[39] The ACA defines "arbitral tribunal" (Section 2(1)(d)) as an arbitrator or panel of arbitrators.[40] The court reasoned that, "unless the context otherwise requires," this definition should not exclude an emergency arbitrator when the parties have adopted institutional rules. In context, the court held that the term "arbitral tribunal" in Section 17 would "include an Emergency Arbitrator" if the parties so chose, since the purpose of Section 17 is to enable interim relief in arbitration.

The court acknowledged that a Law Commission report had recommended explicitly amending the ACA to define "arbitral tribunal" to include emergency arbitrators (a step not yet taken by Parliament).[41] However, the court found that even without such an amendment, the ACA's scheme supports treating an EA as part of the arbitral tribunal in domestic arbitrations. Consequently, the EA's interim award in Amazon v. Future was treated as a valid order under Section 17(1) and was enforceable by Indian courts under Section 17(2). The Supreme Court emphasized that the EA award "is not a nullity" but is "an order that holds good and is enforceable" unless and until a regular tribunal modifies or vacates it.[42]

This development is significant beyond India's borders. A top court has effectively given an EA's decision the status of an award within India's existing legal framework, treating it as equivalent to an interim order by the arbitral tribunal. The judgment underscores party autonomy: the parties had chosen SIAC's rules (including emergency arbitration), which the court honored. The court also noted that orders under Section 17 are not subject to appeal under the ACA's restrictive appeal regime,[43] meaning interlocutory appeals cannot easily challenge the enforcement of an EA order.

By recognizing EA awards, India aligns itself with other arbitration-friendly jurisdictions, at least for India-seated arbitrations. (As a technical note, an EA award from a foreign seat would still require enforcement via the New York Convention, potentially raising the question of finality, as some commentators have observed.) Overall, the Amazon v. Future decision is a

[39] Id. § 17(1)– (2) (as amended 2015).
[40] Id. § 2(1)(d).
[41] Law Comm'n of India, Report No. 246, Amendments to the Arbitration and Conciliation Act 1996, ¶ 41 (Aug. 2014).
[42] *Amazon.com NV Inv. Holdings*, *supra* note 36, at ¶¶ 45–48.
[43] Arbitration & Conciliation Act, No. 26 of 1996, § 37 (India) (restricting appeals).

milestone, demonstrating India's openness to modern arbitration tools and its willingness to interpret the arbitration law flexibly to support interim relief.[44]

iii. United States

In the United States, the situation is more complex. The Federal Arbitration Act (FAA) governs domestic arbitration and, via Chapter 2, the enforcement of New York Convention awards, does not explicitly mention emergency arbitrators or interim awards.[45] Traditionally, U.S. courts have required that an arbitral award be "final" to resolve the issues submitted to arbitration before it can be confirmed or enforced.[46] This finality requirement stems from the FAA's language and case law to prevent piecemeal enforcement of arbitration rulings. As a result, an interim arbitral order that does not finally resolve a claim has generally been seen as not eligible for immediate judicial confirmation.[47]

U.S. courts have recognized exceptions to this requirement when an interim award conclusively decides an independent claim or right. For example, suppose arbitrators issue a partial award on a discrete issue (such as liability for a particular claim) or grant a definitive injunction that will not be revisited. In that case, courts sometimes treat that as final enough to enforce. The key test is whether the arbitrator's decision "finally and definitively disposes of a separate, independent claim or issue" in the arbitration.[48] If so, that decision, though interim in the context of the entire case, may qualify as an "award" for enforcement.

For instance, in Island Creek Coal Sales Co. v. City of Gainesville (6th Cir. 1985), the Sixth Circuit enforced an interim award granting specific performance because it fully resolved the entitlement to that relief pending the final award.[49] U.S. courts often look at the substance over the form: an order styled as an "order" by arbitrators can still be enforced if, in substance, it finally decides an issue.

As for emergency arbitrators specifically, U.S. law is still evolving. In principle, courts approach EA decisions like any interim arbitration measure. In Yahoo! Inc. v. Microsoft Corp.

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[44] Gary B. Born, *International Commercial Arbitration* 3057–59 (3d ed. 2021).
[45] 9 U.S.C. §§ 1–16 (2018) (domestic arbitration); id. §§ 201–208 (implementing the New York Convention).
[46] *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411, 413–15 (2d Cir. 1980) (requiring finality before confirmation).
[47] *Publicis Commc'ns v. True N. Commc'ns Inc.*, 206 F.3d 725, 729–30 (7th Cir. 2000).
[48] *Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280, 282–83 (2d Cir. 1986).
[49] *Island Creek Coal Sales Co. v. City of Gainesville*, 764 F.2d 437, 439–40 (6th Cir. 1985).

(S.D.N.Y. 2013), the court enforced an EA's interim order issued under ICDR rules, treating it like an arbitral award.[50] The court implicitly recognized that the emergency arbitrator, appointed under the parties' agreement, had authority to make a binding ruling.

More recently, the Southern District of Florida (in Vital Pharmaceuticals, Inc. v. PepsiCo, Inc., 2021) confirmed an EA's order requiring PepsiCo to continue performing a distribution agreement during arbitration. The court found the EA's order "sufficiently final" because it decisively mandated specific actions until the final award.[51]

However, not all courts have agreed. In Al Raha Group v. PKL Services (N.D. Ga. 2019), a court refused to enforce a foreign-seated emergency award, citing a lack of finality and jurisdiction.[52]

These cases show that U.S. courts have taken different positions. Some courts will enforce an EA decision if it is framed as an award and appears to grant final relief on an issue. Others remain reluctant if they view it as merely interim. The enforceability of an EA award in the U.S. often hinges on whether the relief is seen as "final" and "binding."[53]

In summary, U.S. courts have shown a cautious willingness to enforce emergency awards but emphasize the traditional finality requirement. There is no absolute rule. Enforcement often hinges on how the EA's decision is framed (as an "award" or an "order"), the wording of the institutional rules, and the particular court's approach. If an EA order is explicitly called "interim" and can be revised by the future tribunal, a court may deem it not "binding" and refuse enforcement under Article V(1)(e).[54] Given this uncertainty, parties in the U.S. cannot be certain how an EA order will be treated, as the cases discussed show.

Practically speaking, a common strategy in the U.S. is to draft any urgent relief as a partial award on a specific issue, to maximize enforceability. Alternatively, parties often seek backup relief from courts (for example, a temporary restraining order) when facing doubts about enforcement.[55]

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[50] *Yahoo! Inc. v. Microsoft Corp.*, No. 13-CV-7237, 2013 WL 5708601, at *7–10 (S.D.N.Y. Oct. 21, 2013).
[51] *Vital Pharms., Inc. v. PepsiCo, Inc.*, No. 21-cv-22995, 2021 WL 6948190, at *3–6 (S.D. Fla. Sept. 9, 2021).
[52] *Al Raha Grp. for Tech. Servs. v. PKL Servs., Inc.*, No. 1:18-cv-02236, 2019 WL 13021985 (N.D. Ga. Sept. 3, 2019).
[53] New York Convention art. V(1)(e), June 10, 1958, 330 U.N.T.S. 3.
[54] Id.
[55] Fed. R. Civ. P. 65(b) (temporary restraining orders).

That said, the general trend in the U.S. is toward a pro-arbitration view. U.S. courts appear increasingly willing to see interim awards, including those by emergency arbitrators, as enforceable when they satisfy the finality test and the parties' needs for urgent relief.[56]

iv. United Kingdom

Until recently, the United Kingdom's law on emergency arbitrators was notably cautious. The Arbitration Act 1996 (governing England and Wales) does not mention emergency arbitrators. The concept was not common when the Act was passed. Under the 1996 Act, enforcement of awards is achieved via Section 66, which allows a party to apply to court to enforce an arbitral award as if it were a judgment.[57]

This raised a threshold question: Is an emergency arbitrator's decision an "award" under the Act and the arbitration agreement? If not, can it be enforced at all? There was a related concern: an EA is not appointed in the usual way (it arises by institutional rule rather than an express clause), so would an EA even be considered a lawful "arbitral tribunal" under English law?[58]

Before 2025, no English court had definitively ruled on enforcing an EA order. The general view was cautious. In theory, an EA decision could qualify as an award if it fits the statutory definition, for example, if it finally determines the parties' rights on a discrete issue. Some commentators observed that Section 66 of the Act does not explicitly forbid enforcing an interim award.[59] Section 66 applies "an award made pursuant to an arbitration agreement." One could argue that an EA award fits this description if the parties agreed to an EA procedure.

However, because an EA's order is inherently subject to review by the eventual tribunal, it was unclear whether it could ever be truly "final" under English law. In practice, English courts encouraged parties to use alternatives. For example, Section 44 of the 1996 Act allows courts to grant interim relief in support of arbitration, but Section 44(5) provides that courts should decline relief if the tribunal (or EA) can provide it.[60]

In Gerald Metals SA v. Timis (2016), the High Court addressed the overlap between an emergency arbitrator and the court's powers. The court suggested that if parties have an EA

[56] Gary B. Born, *International Commercial Arbitration* 3052–54 (3d ed. 2021).
[57] Arbitration Act 1996, c. 23, § 66 (UK).
[58] Id. §§ 2, 4 (appointment and tribunal formation).
[59] Id. § 66(1).
[60] Id. § 44(5).

mechanism, then Section 44(3) (the court's power to grant urgent relief) might be limited by Section 44(5).[61] Some commentators saw this as implying that English law would push parties to use an EA first, even though there was no straightforward method to enforce the EA's decision. The Law Commission recognized this tension. Initially, it proposed amending Section 44 to prevent courts from refusing relief simply because an EA could act.[62] In its final 2023 recommendations, the Law Commission chose to keep Section 44(5) (so courts remain a fallback when necessary) but to strengthen the emergency arbitrator's powers.

A significant reform is now in progress. The UK Arbitration Act 2025 (currently a Bill) will, for the first time, expressly recognize emergency arbitrators. Rather than redefining the term "award," the legislation takes a practical approach. If the parties' chosen rules allow for an EA, then the EA can issue "peremptory orders" enforceable by the court.[63] The new Section 41A will enable an EA to issue a peremptory order (one with a deadline for compliance) if a party disobeys the EA's initial interim order. The court can then enforce that peremptory order under the amended Section 42, as if a tribunal had issued it.[64]

This gives the emergency arbitrator a power akin to a full tribunal. The ability to compel compliance under the threat of court enforcement.[65] This preserves the expedited nature of emergency relief because parties do not have to wait for the full tribunal to issue a peremptory order. The practical aim is to encourage parties to comply voluntarily with the EA's decision (to avoid facing a court-ordered penalty at the outset of the arbitration).

Importantly, the UK reform does not make the EA's initial order directly enforceable as an award.[66] Instead, it creates a two-step process: EA orders, followed by EA peremptory orders, followed by court enforcement.[67] This design fits within the existing structure of the 1996 Act. It is a cautious yet forward-looking solution that aligns with the pro-enforcement trends seen elsewhere but is tailored to the English legal tradition.[68]

In summary, the UK's position has shifted from implicit reluctance to a formal, if cautious,

[61] Gerald Metals SA v. Timis, [2016] EWHC 2136 (Comm) (Eng.).
[62] Arbitration Act 1996, c. 23 (UK), § 44(5).
[63] Arbitration Bill [HL] 2025, cl. 41A (UK).
[64] Id. cl. 42 (amending enforcement of peremptory orders).
[65] Arbitration Bill [HL] 2025, cl. 41A (UK) (empowering emergency arbitrators to issue peremptory orders enforceable by the courts).
[66] Id. cl. 41A(3).
[67] Arbitration Act 1996, c. 23 (UK), § 66.
[68] Gary B. Born, *International Commercial Arbitration* 3060–61 (3d ed. 2021).

acceptance of emergency arbitration. Before these reforms, the law was uncertain: the Act did not mention EAs, and enforcing an EA order would have depended on unsettled legal arguments. The new legislation signals that England recognizes the value of emergency relief and is willing to provide statutory solutions rather than leaving the issue to unsettled case law. Once implemented, these changes should significantly reduce any enforcement gap for UK-seated arbitrations. They also reflect the international trend toward standardizing EA procedures. Until now, parties in England had to find workarounds going forward, an EA order supported by a peremptory order will have real force under English law, reducing the old concerns about enforceability and finality.[69]

IV. Institutional Responses and Innovations

Arbitral institutions have been instrumental in developing emergency arbitration. Their rules now effectively standardize EA procedures worldwide. While institutional rules do not change the New York Convention directly, they shape party expectations and influence enforcement by determining how EA decisions are framed (as "orders" or "awards") and by normalizing EAs as part of the arbitration process.[70]

For example, the International Chamber of Commerce (ICC) was among the first major institutions to adopt EA provisions (in its 2012 Rules, and in Article 29 and Appendix V of later versions).[71] The ICC empowers an emergency arbitrator to consider urgent applications, but it requires the EA's decision to be issued as an "Order" rather than as an "Award."[72] This choice was intentional: the ICC did not want EA decisions to be subject to the ICC Court's post-award scrutiny (which applies to awards and could delay relief).[73]

Under the ICC Rules, an EA Order is binding on the parties by their agreement to the rules.[74] It remains in effect unless the full tribunal later modifies or vacates it.[75] However, because it is labelled an "Order," its enforceability under the New York Convention is unclear. The ICC is

[69] Gary B. Born, *International Commercial Arbitration* 3060–61 (3d ed. 2021).
[70] Gary B. Born, *International Commercial Arbitration* 3037–38 (3d ed. 2021).
[71] ICC Rules of Arbitration, art. 29, app. V (2021).
[72] Id. app. V, art. 6(1).
[73] Id.; Jason Fry, Simon Greenberg & Francesca Mazza, *The Secretariat's Guide to ICC Arbitration* 336–37 (2012).
[74] ICC Rules, *supra* note 71, app. V, art. 6(2).
[75] Id. art. 6(4).

betting that parties will voluntarily honor the EA Order. If they do not, a party may need to seek enforcement through a local court injunction instead.[76]

In practice, parties often comply voluntarily with ICC EA Orders.[77] However, the lack of an "award" label could pose a problem in jurisdictions requiring an award for Convention enforcement.[78] Some commentators have suggested that the ICC might eventually allow EAs to issue actual "Awards" to enhance enforceability.[79] For now, though, the ICC values the speed and flexibility of the Order format, even if that means sacrificing certainty of enforcement under the Convention.[80]

The Singapore International Arbitration Centre (SIAC) has a more enforcement-friendly approach. SIAC introduced EA rules in 2010 and has refined them since.[81] Under SIAC's current rules, the emergency arbitrator may issue either an "Order" or an "Award" as the situation demands.[82] Crucially, SIAC rules specify that the EA's interim relief decision (whether called an order or an award) is binding on the parties.[83] Given Singapore's law (as discussed above) treats an EA as an arbitral tribunal, an EA Order/Award is enforceable in Singapore just like any other tribunal order or award.[84]

This approach offers flexibility in form while ensuring enforceability in practice. If Singapore is the seat, enforcement cannot fail because of a lack of finality. Even if the arbitration is seated elsewhere, an EA award (as opposed to an order) may have a better chance of being treated as an enforceable award under the Convention.[85]

SIAC also emphasizes speed. Its rules set a tight timetable (the EA must be appointed in one day and render a decision within 14 days).[86] The rules also make clear that an EA's decision ceases to bind the parties if certain conditions occur (for example, if the full tribunal is not constituted in time, or if the tribunal later changes the decision).[87] These provisions highlight

[76] Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* ¶ 7.61 (7th ed. 2022).
[77] Id.
[78] New York Convention art. I(1), art. V(1)(e), June 10, 1958, 330 U.N.T.S. 3.
[79] Born, *supra* note 1, at 3044–45.
[80] Fry, Greenberg & Mazza, *supra* note 4, at 340.
[81] SIAC Rules of Arbitration, sch. 1 ¶¶ 1–3 (2016).
[82] Id. sch. 1 ¶ 7.
[83] Id. r. 30.3.
[84] International Arbitration Act 1994, Cap. 143A, § 2(1), sched. 1 (Sing.).
[85] Born, *supra* note 70, at 3048.
[86] SIAC Rules, *supra* note 81, sch. 1 ¶ 5.
[87] Id. sch. 1 ¶ 8.

that an EA's decision is temporary, but they do not undermine its initial binding effect.[88]

The London Court of International Arbitration (LCIA) provided EAs more slowly. Its rules prior to 2020 did not include an emergency arbitration mechanism.[89] The LCIA instead relied on its own speed in constituting tribunals, or on court-ordered relief.[90] However, in 2020, the LCIA introduced emergency arbitration in Article 9B of its Rules.[91] The LCIA's mechanism allows parties to apply for an expedited formation of a tribunal or appointment of a temporary arbitrator to handle urgent relief.[92]

Crucially, under the LCIA 2020 Rules, any order or award issued by the emergency arbitrator "shall have the same effect as an order or award of the arbitral tribunal."[93] This explicitly acknowledges the binding force of EA decisions. Non-compliance with an EA order can thus be dealt with by the regular tribunal later or enforced by a court.[94] This LCIA rule change fits well with the recent English legal reforms (which allow enforcement of EA peremptory orders).[95] It shows institutional support for viewing emergency arbitrators as part of the arbitration process, not as outsiders.

Indeed, almost all major arbitral institutions now have EA provisions. The ICDR (American Arbitration Association) was the first to introduce EAs in 2006.[96] The Stockholm Chamber of Commerce (SCC) has a long-running EA procedure, which has been invoked in high-profile cases (for example, it was used in an investor-state dispute, JKX Oil & Gas v. Ukraine, where a Ukrainian court enforced the SCC emergency award).[97] The Hong Kong International Arbitration Centre (HKIAC) and the China International Economic and Trade Arbitration Commission (CIETAC, through its Hong Kong Center rules) also offer EAs.[98]

By 2025, therefore, emergency arbitration will be a standard feature of virtually every major

[88] Id. r. 30.3.
[89] LCIA Rules of Arbitration (1998, 2014).
[90] Julian D.M. Lew, Loukas Mistelis & Stefan Kröll, *Comparative International Commercial Arbitration* ¶ 22-54 (2003).
[91] LCIA Rules of Arbitration, art. 9B (2020).
[92] Id. art. 9.8–9.10.
[93] Id. art. 9.11.
[94] Id.
[95] Arbitration Bill [HL] 2025, cl. 41A–42 (UK).
[96] ICDR International Arbitration Rules, art. 6(1)– (3) (2021).
[97] SCC Arbitration Rules, app. II, arts. 1–9 (2017); *JKX Oil & Gas plc v. Ukraine*, [2015] SCC EA 2015/002 (emergency arbitrator decision).
[98] HKIAC Administered Arbitration Rules, sch. 4 (2018); CIETAC Arbitration Rules, art. 23, sch. III (2015).

institution's rule unless parties explicitly opt out.[99] This institutional standardization helps normalize the idea that an EA's decision is part of the agreed arbitration process.

Of course, institutional rules alone cannot force courts to enforce an order, compliant with an EA order is ultimately contractual.[100] The differences in how institutions frame EA decisions (some as "orders," others as "awards") reflect calculated responses to enforcement uncertainties.[101] Some institutions, like the ICC, emphasize speed and flexibility, assuming compliance or relying on friendly courts if enforcement is needed.[102] Others, like SIAC and SCC, explicitly allow EAs to issue awards to strengthen enforceability.[103]

This divergence underscores the need for legal harmonization. The effectiveness of emergency arbitration should not hinge on which institution's rules the parties happened to choose. However, the institutions have played a vital role in driving the issue forward. By creating EA mechanisms, institutions have effectively forced states and courts to confront enforcement questions that might otherwise have been ignored.[104] In that sense, they have created a de facto demand for legal recognition of EA orders.

V. Policy Implications

The current, fragmented enforcement landscape has important policy implications. First, it creates the risk of uneven enforcement outcomes. Parties to otherwise identical arbitration agreements may get different results simply because of where enforcement is sought. For example, if a party obtains an EA order, and its assets are in Singapore or Hong Kong, that party can be confident the order will be enforced.[105] However, if the respondent's assets lie in a jurisdiction with a more restrictive view, say, Switzerland,[106] or a U.S. court that requires finality,[107] the EA order might have no force there. This patchwork undermines predictability. International arbitration has long relied on the New York Convention's near-universal

[99] Born, *supra* note 70, at 3042.
[100] Redfern & Hunter, *supra* note 76, ¶ 7.64.
[101] Born, *supra* note 70, at 3051.
[102] Id.
[103] Id. at 3052.
[104] UNCITRAL, *Report of Working Group II (Arbitration and Conciliation) on the Work of Its Fifty-Third Session*, U.N. Doc. A/CN.9/712 (2009).
[105] International Arbitration Act 1994, Cap. 143A, § 2(1) (Sing.); Arbitration Ordinance, (2011) Cap. 609, pt. 3A (H.K.).
[106] Bundesgesetz über das Internationale Privatrecht [IPRG] [Private International Law Act], Dec. 18, 1987, SR 291, art. 183 (Switz.); *BGE* 128 III 191 (Switz.) (warning against treating interim measures as awards).
[107] *Al Raha Grp. for Tech. Servs. v. PKL Servs., Inc.*, No. 1:18-CV-03749, 2019 WL 3029110 (N.D. Ga. July 10, 2019).

enforcement of awards.[108] If interim relief does not enjoy the same global safety net, parties may hesitate to rely on emergency arbitration. They might fear that a well-advised counterparty could ignore an EA order until the final award or move assets to a "safe haven" jurisdiction.[109]

This uncertainty can also encourage forum shopping and strategic behaviour. A party anticipating a potential need for emergency relief (for example, an investor aiming to freeze assets) may insist on arbitration seated in a jurisdiction that enforces EA orders (such as Singapore)[110] and on institutional rules with robust EA provisions.[111] Conversely, a party that fears an EA order might try to avoid arbitration in seats known to enforce such orders or even move assets into a jurisdiction unlikely to enforce an interim order. During a dispute, a respondent might rush to a local court for an injunction to pre-empt the EA order or argue that a foreign EA order should not be recognized locally, leading to conflicting judgments.[112]

All this undermines arbitration's efficiency and the parties' autonomy. When parties choose arbitration (including EA clauses), they expect their agreements to be upheld, not thwarted by enforcement gaps.[113] Uncertainty can increase costs and delay resolution: parties might seek the same relief twice, once from the emergency arbitrator and again from a court, essentially litigating in parallel, precisely what arbitration sought to avoid.[114]

Another concern is the credibility of arbitration itself. If arbitration cannot provide effective urgent relief, users may lose confidence in the system, especially in high-stakes cases.[115] Some have suggested creative fixes, for example, contractual penalties for non-compliance with EA orders, or publicly naming recalcitrant parties.[116] In reality, however, the main leverage comes from court enforcement. When a state court can back an EA order, parties must comply without that possibility, the arbitration process loses power. [117]There is, therefore, a strong policy interest in ensuring that arbitration remains a robust forum for urgent disputes and is not perceived as "toothless."

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[108] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I, June 10, 1958, 330 U.N.T.S. 3.
[109] Gary B. Born, *International Commercial Arbitration* 3051–52 (3d ed. 2021).
[110] International Arbitration Act 1994, *supra* note 105, § 2(1).
[111] SIAC Rules of Arbitration, sch. 1 ¶ 7, r. 30.3 (2016).
[112] Redfern & Hunter, *Law and Practice of International Commercial Arbitration* ¶ 7.61 (7th ed. 2022).
[113] Id. ¶ 7.64.
[114] Born, *supra* note 109, at 3055.
[115] Id. at 3057.
[116] Int'l Council for Commercial Arbitration (ICCA), *Emergency Arbitrator Proceedings: ICCA Reports No. 5* 21–22 (2020).
[117] Id.

Systemically, these divergences put pressure on harmonization. Bodies like UNCITRAL and various law reform commissions are actively looking at these questions.[118] The 2006 UNCITRAL Model Law amendments generally addressed interim measures, not emergency arbitrators.[119] Many countries have not even adopted those provisions.[120] More recently, as noted, Singapore, Hong Kong, and the UK have made legislative changes to clarify EA enforcement.[121] However, these are piecemeal steps, and results vary across jurisdictions. Countries that modernize and explicitly protect EA orders may gain a competitive edge, as arbitration seats litigants will favor forums where the chosen interim relief is adequate. Conversely, places that lag may see fewer cases, or parties will structure their contracts and assets to avoid potential weak spots.[122] This regulatory competition can drive reform and deepen the divide between arbitration-friendly and more conservative jurisdictions.

Could these inconsistencies prompt action at the treaty level? Theoretically, one could envisage a supplementary protocol to the New York Convention explicitly covering interim measures, or even a new multilateral treaty on interim relief.[123] Some commentators have suggested an "Additional Protocol to the NYC" to include EA orders expressly.[124] In practice, however, any new treaty would face enormous hurdles. The New York Convention is a venerable 1958 treaty with over 170 parties.[125] Few governments are eager to open it up for renegotiation, given the risk of opening all sorts of issues.[126] They might also worry about imposing foreign interim relief on sensitive domestic interests (for example, an EA order freezing assets in their jurisdiction could harm local creditors or third parties).[127] For these reasons, a diplomatic conference to amend the Convention on this point seems unrealistic.[128]

Finally, these enforcement issues touch on fundamental values in arbitration: party autonomy

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[118] UNCITRAL, *Report of Working Group II (Arbitration and Conciliation) on the Work of Its Fifty-Third Session*, U.N. Doc. A/CN.9/712 (2009).
[119] UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, Annex I (1985), as amended in 2006, arts. 17H–17I.
[120] UNCITRAL, *Status: 2006 Model Law* (showing fewer than 50 states have adopted the 2006 interim measures amendments).
[121] Arbitration Ordinance, *supra* note 1, pt. 3A; International Arbitration Act 1994, *supra* note 1, § 2(1); Arbitration Bill [HL] 2025, cls. 41A-42 (UK).
[122] Born, *supra* note 109, at 3060.
[123] Id. at 3065.
[124] Albert Jan van den Berg, *The New York Convention of 1958: Toward a Uniform Judicial Interpretation* 351 (1981).
[125] New York Convention, supra note 5, art. V(1)(e).
[126] Id.
[127] ICCA Reports, *supra* note 116, at 24.
[128] Born, *supra* note 109, at 3067.

and efficiency. Arbitration exists because parties have agreed to it. If parties explicitly choose an emergency arbitration procedure, a strong case can be made that courts should honor that choice, just as they do for final awards.[129] Refusing to enforce an EA order could be viewed as subverting the parties' agreement.

From an efficiency perspective, emergency arbitration was invented to save time and protect rights swiftly. If its benefits only materialize in some places but not others, the efficiency gain is incomplete.[130] Parties might then revert to national courts for interim relief, for example, under UNCITRAL Model Law Article 9[131] or the UK's Arbitration Act Section 44.[132] There is nothing wrong with court relief per se, but it sacrifices the confidentiality and flexibility of arbitration.

Uniform enforceability of EA orders would maximize both efficiency and the appeal of arbitration. It would allow parties to rely entirely on their chosen arbitration process for interim and final relief.[133]

Balancing these concerns, the policy trend is clearly toward convergence. Ideally, an interim arbitral order would carry the same weight in New York, London, Singapore, or Mumbai.[134] The challenge is how to achieve that convergence.

VI. Possible Reforms and Solutions

Harmonization could follow several paths, each with its own difficulties. The most direct idea amending the New York Convention to cover interim measures explicitly has been suggested, but it seems impractical.[135] The Convention is a venerable 1958 treaty with over 170 parties.[136] Any amendment would require a broad international consensus. In practice, the Convention has not been amended, and states usually prefer to address new issues through guidelines or domestic laws.[137] Many states would be reluctant to reopen the Convention (so successful for

[129] Redfern & Hunter, *supra* note 112, ¶ 7.65.
[130] Id.
[131] UNCITRAL Model Law, supra note 119, art. 17H.
[132] Arbitration Act 1996, c. 23, § 44 (UK).
[133] Born, *supra* note 109, at 3070.
[134] Id. at 3071.
[135] Gary B. Born, *International Commercial Arbitration* 3065–66 (3d ed. 2021).
[136] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I, June 10, 1958, 330 U.N.T.S. 3.
[137] Albert Jan van den Berg, *The New York Arbitration Convention of 1958: Toward a Uniform Judicial Interpretation* 351 (1981).

final awards) to address interim relief.[138] Some states might even object to enforcing privately ordered emergency relief that could affect local public interests or third parties (for example, an EA order freezing assets in their jurisdiction might harm local creditors).[139] In short, a diplomatic conference to amend the Convention on this point seems unlikely.

A more realistic international solution might be for UNCITRAL to provide guidance or an interpretative declaration on this issue. UNCITRAL has a track record where, in 2006, it issued a Recommendation on the interpretation of the New York Convention (on arbitration agreements and arbitrability), which, while not binding, has influenced many countries.[140] Similarly, UNCITRAL could issue guidance stating that "arbitral award" in the Convention can include interim awards, including those by emergency arbitrators, so long as they are binding and consented to by the parties.[141]

Such a recommendation would not formally amend the Convention but could encourage courts to adopt a more uniform interpretation.[142] In effect, soft law harmonization would nudge the system toward consistency. UNCITRAL's authority (as a UN body of legal experts) could give such guidance weight.[143] Even without a formal recommendation, ongoing discussions in UNCITRAL Working Group II (Arbitration) could produce guidance or updates to the UNCITRAL Secretariat's Guide to the New York Convention, perhaps by including examples of enforced emergency arbitrator orders.[144]

The UNCITRAL Model Law is another avenue. The 2006 Model Law amendments introduced interim measures by tribunals (Article 17H) but did not specifically mention emergency arbitrators or require their awards to be enforced internationally.[145] UNCITRAL could consider revising the Model Law to explicitly include emergency arbitrators in the definition of "arbitral tribunal" (as Singapore did in 2012[146] and as India's Law Commission recommended[147]). A future "Model Law 2026" could also strengthen Article 17H to clarify that interim awards are

[138] Id. at 353.
[139] ICCA, *Emergency Arbitrator Proceedings: ICCA Reports No. 5* 24–25 (2020).
[140] UNCITRAL, *Recommendation Regarding the Interpretation of Article II(2) and Article VII(1) of the New York Convention* (2006).
[141] Id.
[142] Born, *supra* note 135, at 3068.
[143] UNCITRAL, *Working Group II Reports*, U.N. Docs. A/CN.9/712–A/CN.9/969.
[144] New York Convention, supra note 5, art. VII(1).
[145] UNCITRAL Model Law, supra note 119, art. 17H.
[146] International Arbitration Act 1994, Cap. 143A, § 2(1) (Sing.) (amended 2012).
[147] Law Comm'n of India, Report No. 246: *Amendments to the Arbitration and Conciliation Act 1996* ¶ 57 (2014).

enforceable.

If the Model Law were updated this way, it could gradually influence the 118 jurisdictions that use it as a basis.[148] Of course, not all have even adopted the 2006 amendments.[149] Nevertheless, if major arbitration countries (for example, the UK, Australia, Canada, etc.) revised their laws, this could create momentum.[150] Eventually, it might become standard that emergency arbitration and interim awards are protected by law.

National legislative reform remains a practical solution. Countries can amend their arbitration laws to address EAs explicitly. For instance, Hong Kong's Arbitration Ordinance Part 3A provides that emergency relief orders (whether issued by a Hong Kong EA or a foreign one, under certain conditions) can be enforced by Hong Kong courts.[151] This gives an immediate route to enforcement (subject to some requirements, such as reciprocity or compatibility with Hong Kong public policy). Singapore and the UK (as discussed) have similarly adopted legislative measures.[152]

Some jurisdictions have taken creative approaches. For example, French courts have enforced ICC EA orders by treating non-compliance as a breach of the arbitration agreement and then granting enforcement orders without new legislation.[153]

If other key jurisdictions followed suit, that would significantly close the gap. The United States stands out: if Congress amended the FAA or a Supreme Court case gave clear guidance that interim awards can be confirmed, it would have a broad impact given the U.S.'s outsized role in arbitration.[154] As it is, U.S. developments have been piecemeal.[155]

In short, if major arbitration countries explicitly protect EA orders through law or consistent judicial decisions, that could unify the system.

Another idea is to create a form of soft-law instrument for reciprocity. For example, bodies like

[148] UNCITRAL, *Status of Model Law on International Commercial Arbitration (1985, amended 2006)*.
[149] Id.
[150] Born, *supra* note 135, at 3072.
[151] Arbitration Ordinance, (2011) Cap. 609, pt. 3A (H.K.).
[152] Arbitration Bill [HL] 2025, cls. 41A–42 (UK).
[153] Emmanuel Gaillard & Yas Banifatemi, *Fouchard Gaillard Goldman on International Commercial Arbitration* ¶ 1445 (1999).
[154] 9 U.S.C. §§ 9–10 (2018).
[155] *Vital Pharms., Inc. v. PepsiCo, Inc.*, No. 21-CV-22830, 2021 WL 4100299 (S.D. Fla. Sept. 8, 2021).

the International Law Association or the ICCA could develop guidelines or a "protocol" that states or courts could opt into.[156] Such guidelines could pledge that members will reciprocally enforce emergency awards, much like the Convention's reciprocity requirement, but voluntarily applied to interim measures.[157] This would be more of a community-led solution. Though admittedly speculative, it is a creative idea, but it shows that the arbitration community could try to self-regulate in this space.

In practice, parties have also found workaround solutions. For example, an arbitration clause could explicitly provide that an EA's decision can be confirmed directly in a specific court, essentially giving that court jurisdiction to treat the EA order as an arbitral award.[158] The effectiveness of such clauses under current law is not thoroughly tested, but it is one-way parties try to ensure enforcement.

Similarly, parties might include other mechanisms for interim relief in their contracts. Some business agreements specify a pre-arbitration expert or dispute board whose decisions are subject to specific enforceability provisions.[159] These measures cannot replace the New York Convention, but they show that parties and drafters are creatively trying to bridge enforcement gaps.

Of course, any reform or guidance must preserve due process and fairness. One reason courts have been cautious is concern about the fast-paced nature of EAs, which can include ex parte proceedings.[160] If every EA decision became enforceable everywhere, there is a risk that orders issued with minimal notice could be entrenched without the opportunity to be challenged.

Therefore, any push for enforcement should include safeguards. For instance, the Article V defenses under the New York Convention should still apply.[161] A respondent should be able to challenge the enforcement of an EA award on grounds such as lack of notice or opportunity to present a defense (Article V(1)(b)), or on public policy grounds.[162]

[156] Int'l Law Ass'n, *Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards* 6–8 (2002).
[157] Id.
[158] Born, *supra* note 135, at 3074.
[159] Id. at 3075.
[160] ICCA Reports, *supra* note 5, at 22–23.
[161] New York Convention, supra note 5, art. VII.
[162] Id. art. V(2)(b).

In fact, in CVG v. CVH, Singapore's court ultimately refused enforcement of the EA award because the losing party had not been given a chance to counter new arguments presented at the EA hearing.[163] This illustrates that courts can and will check EA awards on fairness grounds. Any guidance from UNCITRAL or national law should make clear that enforcement of EAs is subject to basic justice protections.

In sum, a formal amendment to the Convention appears unlikely. Instead, a combination of targeted measures could close the enforcement gap. Guidance from UNCITRAL, updates to the Model Law, and national law reforms could all play a part. Over time, as emergency arbitration becomes more established, courts may grow more willing to treat interim awards as fitting within the Convention's spirit, rather than as exceptions.[164]

VII. Conclusion

The enforceability of emergency arbitrator orders under the New York Convention sits at the intersection of treaty interpretation, national law, and arbitral practice, demanding a harmonized approach that thus far remains elusive. This analysis has shown that emergency arbitration has quickly become a fixture of international dispute resolution, serving parties' need for swift interim relief. Nevertheless, the mechanisms to affect those orders across borders have lagged. There is a mismatch, arbitration institutions and users have sprinted ahead with emergency procedures, but the New York Convention (and many national regimes) was drafted in an era focused on final awards.[165]

Our review of jurisdictions reveals a spectrum of approaches. On the one hand, jurisdictions like Singapore and India have made EA awards "as good as" any other award under their laws through proactive legislation and innovative court judgments.[166] These jurisdictions demonstrate that, with a pro-arbitration policy, emergency relief can be seamlessly integrated into the enforcement framework. On the other hand, the United States and the United Kingdom have historically underscored the importance of finality, with U.S. courts applying the finality test case by case.[167] Until recently, English law has provided no explicit route for EA

[163] *CVG v. CVH* [2022] SGHC(I) 7 (Sing. Int'l Comm. Ct.).
[164] Born, *supra* note 135, at 3077.
[165] Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. I, June 10, 1958, 330 U.N.T.S. 3.
[166] International Arbitration Act 1994, Cap. 143A, § 2(1) (Sing.); *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2021) 7 SCC 409 (India).
[167] *Island Creek Coal Sales Co. v. City of Gainesville*, 764 F.2d 437, 440 (6th Cir. 1985); *Vital Pharms., Inc. v. PepsiCo, Inc.*, No. 21-CV-22830, 2021 WL 4100299 (S.D. Fla. Sept. 8, 2021).

enforcement.[168] The UK's recent legislative reforms indicate that even a traditionally cautious regime sees the merit in aligning with emerging practice.[169] Other arbitration-friendly jurisdictions (such as Hong Kong, France, and Switzerland) occupy the middle ground, some adapting existing doctrines and others introducing specific measures.[170]

Party autonomy and efficiency considerations strongly favor recognizing EA orders: when commercial parties consensually empower an emergency arbitrator to act, their expectations should be honored, not frustrated by legal technicalities.[171] Equally, the effectiveness of arbitration depends on meaningful interim protection. Otherwise, a final award can be hollow if the assets are gone by then.[172] From a policy standpoint, there is a compelling argument that the international legal framework must evolve, as it has in the past, to support this feature of modern arbitration. The New York Convention was born to overcome parochial biases that impeded the enforcement of foreign awards.[173] Today, its challenge is narrower but similar: to overcome outdated notions of what an "award" is, so that the Convention remains fit for purpose in contemporary practice.

That said, a formal amendment of the Convention appears impracticable. Few states are willing to reopen a cornerstone treaty.[174] Instead, the more plausible path is incremental harmonization. UNCITRAL, as the guardian of the Convention and the Model Law, is well placed to lead this effort.[175] An interpretive guide or recommendation from UNCITRAL could nudge courts to read "award" in an evolutionary way that encompasses emergency arbitrator decisions in appropriate circumstances.[176] Over time, as courts cite such guidance and more jurisdictions adopt explicit provisions, a de facto international consensus could emerge without changing the Convention's text.

Meanwhile, national governments and courts should continue to address the issue locally. The trend toward explicit statutory recognition of EAs (seen in Singapore, Hong Kong, and now

[168] Arbitration Act 1996, c. 23, § 66 (UK).
[169] Arbitration Bill [HL] 2025, cls. 41A–42 (UK).
[170] Arbitration Ordinance, (2011) Cap. 609, pt. 3A (H.K.); Emmanuel Gaillard & Yas Banifatemi, *Fouchard Gaillard Goldman on International Commercial Arbitration* ¶ 1445 (1999); *BGE* 128 III 191 (Switz.).
[171] Gary B. Born, *International Commercial Arbitration* 3051–52 (3d ed. 2021).
[172] Id. at 3055.
[173] Albert Jan van den Berg, *The New York Arbitration Convention of 1958: Toward a Uniform Judicial Interpretation* 351–52 (1981).
[174] Id. at 353.
[175] UNCITRAL, *Recommendation Regarding the Interpretation of Article II(2) and Article VII(1) of the New York Convention* (2006).
[176] Id.

the UK) is promising and should be emulated elsewhere.[177] Even without new laws, courts in Convention states have leeway to construe "award" and "binding" pragmatically. By focusing on the fact that an EA order was intended to bind the parties (at least until revisited), courts can often find a way to enforce it in line with the Convention's pro-enforcement bias.[178] After all, Article VII of the Convention allows for the application of more favorable domestic rules.[179] The Convention allows enforcement if a country's law treats EA orders as enforceable. It merely sets a floor, not a ceiling.

Ultimately, this analysis supports the view that harmonization is needed to close the enforcement gap. The current patchwork approach is not sustainable if emergency arbitration is to remain effective and trusted. While sweeping change to the New York Convention is unlikely, targeted measures can achieve much the same effect.[180] A UNCITRAL interpretive instrument or an update to the UNCITRAL Guide on the Convention with examples of interim award enforcement could provide authoritative clarity.[181] In parallel, wider adoption of Model Law provisions on interim measures (or an updated Model Law including EAs) by member states would gradually create a uniform legal environment.[182] The New York Convention regime has shown remarkable adaptability over decades, and with thoughtful evolution, it can accommodate the modern reality of emergency arbitration.[183]

In conclusion, the enforceability of emergency arbitrator orders is an evolving frontier in international arbitration law. The trajectory is clearly toward greater acceptance. In the end, an "award" is defined not by its label or finality, but by its binding resolution of an issue the parties submitted to arbitration.[184] Emergency arbitrators, acting under the parties' agreement, are arbitrators, their decisions, if reached with fundamental procedural fairness, deserve recognition and enforcement.[185] Bridging the remaining gap will require continued dialogue among arbitral institutions, practitioners, national courts, and UNCITRAL.[186] With incremental steps and perhaps a prompt from UNCITRAL, the current complex patchwork can

[177] International Arbitration Act 1994, *supra* note 2; Arbitration Ordinance, *supra* note 6; Arbitration Bill [HL] 2025, *supra* note 5.
[178] *CVG v. CVH* [2022] SGHC(I) 7 (Sing. Int'l Comm. Ct.).
[179] New York Convention, *supra* note 1, art. VII.
[180] Born, *supra* note 109, at 3070.
[181] New York Convention, supra note 5, art. V(1)(b).
[182] UNCITRAL Model Law, supra note 119, art. 17H.
[183] Redfern & Hunter, *Law and Practice of International Commercial Arbitration* ¶ 7.65 (7th ed. 2022).
[184] Id.
[185] ICCA, *Emergency Arbitrator Proceedings: ICCA Reports No. 5* 21–22 (2020).
[186] UNCITRAL, *Working Group II Reports*, U.N. Docs. A/CN.9/712–969.

be transformed into a coherent framework.[187] In this way, party autonomy and the efficacy of arbitration can be upheld uniformly, even in urgent situations. The New York Convention has long been the bedrock of international arbitration enforcement through thoughtful adaptation, it can continue to serve that role in the era of emergency arbitration, not by dramatic overhaul but as the next chapter in its enduring success story.[188]

[187] Id.
[188] Born, *supra* note 171, at 3077.