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Provisional Remedies in International Litigation: A Comprehensive Bibliography

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INTRODUCTION

Interim measures of protection have recently again become of great interest in international litigation and have figured prominently in two of the three cases in which the United States has recently participated before the International Court of Justice.1 Interim measures are similar to provisional remedies in domestic courts. However, in international litigation, all jurisdiction, including the execution of the judgments or awards, is based on consent. Thus, the compulsory features of provisional remedies, with their sanctions of contempt or sequestration, are missing from the jurisprudence of interim measures of protection in international litigation.

The purposes of interim measures are also similar to those of provisional remedies: to preserve the status quo ante or subject matter of the dispute pending the judgment and to avoid irreparable harm or prejudice to either of the parties. Given the grand scale of international litigation, however, the subject-matter of interim measures of protection might range from a noble effort to prevent the engagement of hostile armies to the mundane sale of perishable goods so that assets of certain value will remain from which to satisfy the eventual award. At issue in international litigation is jurisdiction to prescribe interim measures and their binding effect on the parties. The following references are to various primary and secondary sources concerning interim measures of protection in international litigation.

I. PRIMARY SOURCES

A. Treaties (in chronological order)

Convention of Peace and Arbitration, Corinto, Jan. 20, 1902, 31 Martens Nouveau Recueil Générale, 2ème Serie 243; 190 Parry's Consolidated Treaty Series 357. Article 11. The governments of the states in dispute solemnly agree not to perform any act of hostility, preparations for war, or mobilization of forces, in order not to impede the settlement of the difficulty or question by the means established in the present Convention.

Convention for the Establishment of a Central American Court of Justice, Washington, D.C., Dec. 20, 1907, American Journal of International Law, Supplement 1908, at 231. Article 18. From the moment in which any suit is instituted against any one or more governments up to that in which a final decision has been pronounced, the court may at the solicitation of any one of the parties fix the situation in which the contending parties must remain, to the end that the difficulty shall not be aggravated and that things shall be conserved in status quo pending a final decision.

Treaty for the Advancement of Peace [Bryan Treaty], U.S.-France, U.S.-China, U.S.-Sweden, 1915, United States Treaties and Other International Acts Series 619, 609 & 607. Article 4(2). In case the cause of the dispute should consist of certain acts already committed or about to be committed, the Commission shall as soon as possible indicate what measures to preserve the rights of each party ought in its opinion to be taken provisionally and pending the delivery of its report.


Article 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve [sic] the respective rights of either party. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.


Article 13(3). . . In urgent cases, a preliminary opinion may recommend temporary measures intended, in particular, to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.


Article 22(3). . . In urgent cases, a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.


Article 18(3). At the request of one of the Parties, the Tribunal may order provisional measures to be taken in so far as the Parties are in a position to secure their execution, through administrative channels; the Permanent Board of Conciliation may also formulate proposals to the same effect.


Article 13. As soon as the Commission of Inquiry is organized, it shall at the request of any of the Parties to the dispute have the right to fix the status in which the Parties must remain, in order that the situation may not be aggravated and matters may remain in statu quo pending the rendering of the report by the Commission.


Article 21. From the moment when, in conformity with the provisions of Article XVIII, a complaint has been lodged against one or more of the contracting parties, the tribunal shall have the right to determine, at the request of any of the parties, the status in which the litigants must remain, to avoid an aggravation of the dispute and to maintain the case in statu quo until the final award is pronounced. For this purpose, the said tribunal shall have the right, if it should deem it necessary, to make any investigations, to order examinations by experts, to conduct personal inspections and to receive any evidence.

Treaty to Avoid or Prevent Conflicts between the American States, Santiago, May 3, 1923, 33 League of Nations Treaty Series 36.

Article 1. The High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, nor to engage in any hostile acts or preparations for hostilities, from the time steps are taken to convene the Commission until the said Commission has rendered its report.

Article 5, Appendix. As soon as the Commission of Inquiry is organized, it shall at the request of any of the Parties to the dispute have the right to fix the status in
which the Parties must remain, in order that the situation may not be aggravated and matters may remain in statu quo pending the rendering of the report by the Commission.


Article 21(3). . . In urgent cases, a preliminary opinion may be given recommending temporary measures intended, including measures to restore the facilities for international traffic which existed before the act or occurrence which gave rise to the dispute.


Article 19. In any case, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the latter has not been notified thereof, the arbitral tribunal or the Permanent Court of International Justice, acting in accordance with Article 41 of its statute, shall lay down within the shortest possible time the provisional measures to be adopted. It shall similarly be the duty of the Council of the League of Nations, if the question is brought before it, to ensure that suitable provisional measures are taken. The . . . Governments undertake respectively to accept such measures, to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Conciliation Commission or by the Council of the League of Nations, and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.


Article 33. 1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.

3. The parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.


Article 40. In order to prevent an aggravation of the situation, the Security Council may, before making the recommendation or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.


Article 41. The Court shall have the power to indicate, if it considers that circum-
stances so require, any provisional measures which ought to be taken to preserve
the respective rights of either party.
Pending the final decision, notice of the measures suggested shall forthwith be
given to the parties and the Security Council.

Treaty Establishing the European Economic Communities, Rome, Mar. 25, 1957,
Article 185. Actions brought before the Court of Justice shall not have suspensory
effect. The Court of Justice may, however, if it considers that circumstances so
require, order that application of the contested act be suspended.
Article 186. The Court of Justice may in any cases before it prescribe any necessary
interim measures.
Article 192(4). Enforcement may be suspended only by a decision of the Court of
Justice. However, the courts of the country concerned shall have jurisdiction over
complaints that enforcement is being carried out in an irregular manner.

Protocol on the Statute of the European Court of Justice, Brussels, Apr. 17, 1957,
Article 36(1). The President of the Court may, by way of summary procedure,
which may, insofar as necessary, differ from some of the rules contained in this
Statute and which shall be laid down in the rules of procedure, adjudicate upon
applications to suspend execution, as provided for in article 185 of this Treaty, or
to prescribe interim measures pursuant to article 186, or to suspend enforcement
of judgments in accordance with article 192, last paragraph.

European Convention for the Peaceful Settlement of International Disputes, Stras-
Article 31. In all cases where a dispute forms the subject of arbitration or judicial
proceedings, and particularly if the question on which the parties differ arises out
of acts already committed or on the point of being committed, the International
Court of Justice, acting in accordance with Article 41 of its Statute, or the Arbitral
Tribunal, shall lay down within the shortest possible time the provisional measures
to be adopted. The parties to the dispute shall be bound to accept such measures.
2. If the dispute is brought before a Conciliation Commission the latter may
recommend to the parties the adoption of such provisional measures as it considers
suitable.
3. The parties shall abstain from all measures likely to react prejudicially upon the
execution of the judicial or arbitral decision or upon the arrangements proposed
by the Conciliation Commission and, in general, shall abstain from any sort of
action whatsoever which may aggravate or extend the dispute.

Article 6(4). A request for interim measures or measures of conservation ad-
dressed to a judicial authority shall not be deemed incompatible with the arbitration
agreement, or regarded as a submission of the substance of the case to the
court.

Protocol of the Commission of Mediation, Conciliation and Arbitration of the
Organization of African Unity, Cairo, July 21, 1964, United Nations Collection of
Instruments for the Peaceful Settlement of Disputes.
Article 15. Member States shall refrain from any act or omission that is likely to
aggravate a situation which has been referred to the Commission.

American Convention on Human Rights, San Jose, Nov. 22, 1969, 9 International
Legal Materials 673.

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Article 63(1). In cases of extreme seriousness and urgency, and whenever it becomes necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it may deem pertinent in the matters it has under consideration. In the case of matters not yet submitted to it, it may act at the request of the Commission.


Article 11(b). The Court shall give, as soon as possible, a ruling on any issue referred to it pursuant to paragraph 4 or 5, and may order such measures as it considers desirable to protect the interests of either party.


Paragraph 3. The Tribunal shall be competent, in any event, at the request of either Party, to prescribe all other provisional measures necessary to safeguard the rights of the Parties. A Party may make such request in its written pleadings, at oral hearings, or subsequent to the oral hearings, as appropriate.


Article 25. In accordance with Article 290, the Tribunal and its Sea-Bed
Disputes Chamber shall have the power to prescribe provisional measures.  
2. If the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure formed under Article 15, paragraph 3, of this Annex. Notwithstanding Article 15, paragraph 4, of this Annex, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

B. International Rules of Procedure

Central American Court of Justice, Regulations of the Central American Court, 1914, American Journal of International Law, Supplement No. 8, at 194.  
Article 17. The ordinary jurisdiction of the court includes: . . .  
3. The power to fix, in accordance with Article XVIII of the Convention, the position in which the contending parties shall remain during the pendency of the suit initiated between them, and in consequence, that of issuing such precautionary orders which it may deem necessary, as well as the power to modify, suspend or revoke them, according to the circumstances.

Article 26. 1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.  
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.  
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Rule 39. 1. At any time during the proceeding a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.  
2. The Tribunal shall give priority to the consideration of a request made pursuant to paragraph 1.  
3. The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.  
4. The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.

International Chamber of Commerce, Rules of Arbitration.  
Article 8(5). Before the file is transmitted to the Arbitrator, and in exceptional circumstances even thereafter, the parties shall be at liberty to apply to any competent judicial authority for interim or conservatory measures, and they shall not by so doing be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrator.

Article 73. 1. A written request for the indication of provisional measures may be made by a party at any time during the course of the proceedings in the case in connection with which the request is made.
2. The request shall specify the reasons therefor, the possible consequences if not granted, and the measures requested. A certified copy shall forthwith be transmitted by the Registrar to the other party.

Article 74. 1. A request for the indication of provisional measures shall have priority over all other cases.
2. The Court, if it is not sitting when the request is made, shall be convened forthwith for the purpose of proceeding to a decision on the request as a matter of urgency.
3. The Court, or the President if the Court is not sitting, shall fix a date for a hearing which will afford the parties an opportunity of being represented at it. The Court shall receive and take into account any observations that may be presented to it before the closure of the oral proceedings.
4. Pending the meeting of the Court, the President may call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects.

Article 75. 1. The Court may at any time decide to examine proprio motu whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties.
2. When a request for provisional measures has been made, the Court may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request.
3. The rejection of a request for the indication of provisional measures shall not prevent the party which has made it from making a fresh request in the same case based on new facts.

Article 76. 1. At the request of a party the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures, if, in its opinion, some change in the situation justifies such revocation or modification.
2. Any application by a party proposing such a revocation or modification shall specify the change in the situation considered to be relevant.
3. Before taking any decision under paragraph 1 of this Article the Court shall afford the parties an opportunity of presenting their observations on the subject.

Article 77. Any measures indicated by the Court under Articles 73 and 74 of these Rules, and any decision taken by the Court under Article 76, paragraph 1, of these Rules, shall forthwith be communicated to the Secretary-General of the United Nations for transmission to the Security Council in pursuance of Article 41, paragraph 2, of the Statute.

Article 78. The Court may request information from the parties on any matter connected with the implementation of any provisional measures it has indicated.


Article 26. 1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.  
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

(Rules superseded by ICJ Rules).

The Permanent Court of Arbitration, Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of Which Only One is a State, February 1960, 54 American Journal of International Law 933, 937.  
Article 24. The Tribunal or, in urgent cases, its President shall have the power to prescribe provisional or conservatory measures, if they consider that the circumstances so demand.  
If one of the Parties cannot agree to the measures prescribed by the President, it may ask for a decision by the Tribunal. Pending such decision, the interim measures shall remain in force.

Article 26. 1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.  
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.  
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

C. International Cases

1. Permanent Court of International Justice (PCIJ)

Denunciation of the Treaty of November 2nd, 1865 between China and Belgium, Belgium v. China, PCIJ, Ser. A, No. 8 (1927), Order of the President of January 8, 1927.  
(Order reinstating treaty rights constituting the subject-matter of the dispute pending the final decision of the Court.)

Denunciation of the Treaty of November 2nd, 1865 between China and Belgium, Belgium v. China, PCIJ, Ser. A, No. 8 (1927), Order of the President of February 15, 1927.  
(Order revoking the previous order in light of the modus vivendi between the parties which provisionally replaced the former treaty regime.)

Case Concerning the Factory at Chorzow (Indemnities), Germany v. Poland, PCIJ, Ser. A, No. 12 (1927), Order of November 21, 1927.  
(Order denying German request for an interim judgment of 30 million Reichsmarks as being beyond the scope of interim measures.)

Case Concerning the Legal Status of the Southeastern Territory of Greenland,
(Order denying Norwegian request for interim protection in a sovereignty dispute, where threat of irreparable harm not present.)

Administration of the Prince of Pless, Germany v. Poland, PCIJ, Ser. A/B, No. 54 (1933), Order (Interim Protection) of May 11, 1933.
(Order denying German request for interim measures because Poland performed the requested actions.)

Polish Agrarian Reform and the German Minority, Germany v. Poland, PCIJ, Ser. A/B, No. 58 (1933), Order (Interim Protection) of July 29, 1933.
(Order dismissing German request for interim measures because requested measures were too broad.)

(Order noting the Belgian withdrawal of its request for interim measures.)

(Order that Bulgaria should ensure that no step of any kind is taken to prejudice the rights claimed by Belgium.)

2. International Court of Justice (ICJ)

Anglo-Iranian Oil Company Case, United Kingdom of Great Britain and Northern Ireland v. Iran, Interim Protection, 1951 ICJ Reports 89.
(Order indicating provisional measures to assure status quo ante, to prevent aggravation of the dispute, to permit the continuation of the operations in Iran of the Anglo-Iranian Oil Co., Ltd., and to establish an international Board of Supervision to oversee these operations.)

(Order declining to indicate interim measures since the shares in dispute were not on the point of being sold.)

(Order indicating provisional measures to preserve the status quo ante, to prevent aggravation of the dispute, and to limit the annual catch of the United Kingdom in the disputed zone to 170,000 metric tons.)

(Order indicating the same provisional measures as in the companion case, but limiting Germany’s annual catch to 119,000 metric tons.)

(Order indicating provisional measures to prevent aggravation of the dispute and indicating that France should avoid carrying out atmospheric nuclear tests in the South Pacific until the Court had decided the case.)

(Order indicating the same provisional measures as in the companion case.)
Case Concerning Trial of Pakistani Prisoners of War, Pakistan v. India, Interim Protection, 1983 I.C.J. Reports 328. (Order noting that Pakistan had postponed its request for interim measures Pakistan’s Application was later withdrawn.)

Aegean Sea Continental Shelf Case, Greece v. Turkey, Interim Protection, 1976 I.C.J. Reports 3. (Order denying request for interim measures of protection because circumstances did not warrant interim measures.)

Case Concerning American Diplomatic and Consular Staff in Teheran, United States v. Iran, Interim Protection, 1979 I.C.J. Reports 7. (Order indicating provisional measures to prevent aggravation of the dispute by either party, and for Iran to ensure release of the hostages, to return the diplomatic premises, and to restore the diplomatic and consular immunities.)

Case Concerning Military and Paramilitary Activities in and Against Nicaragua, Nicaragua v. United States, Interim Protection, 1984 I.C.J. Reports 169. (Order indicating provisional measures to prevent aggravation of the dispute by either party, and for the United States to cease the mining of Nicaraguan ports and to respect the sovereignty and political independence of Nicaragua.)

3. European Court of Justice


Commission of the European Communities v. United Kingdom, [1977] European Court Reports 921, 21 May 1977, Joined Cases 31 and 53/77 R.


Ford Werke AG and Ford of Europe Inc. v. Commission of the European Communities, [1982] European Court Reports 3091, 29 September 1982, Joined Cases 229 and 228/82 R.

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IBM Corp. v. Commission of the European Communities, [1981] European Court Reports 1857, 7 July 1981, Joined Cases 60 and 190/81 R.


4. Iran–United States Claims Tribunal


(Interim award requesting claimant to assure that a sale of assets not be carried out.)

Bendone-Derossi International v. Iran, Award No. 40-375-1, 8 June 1984, Case No. 375 (Chamber 1).

(Interim award denying stay of German execution of an attachment to enforce an ICC arbitral award.)

CBA International Development Corp. v. Iran, 4 Iran–United States Claims Tribunal Reports 53–56, 18 November 1983, Case No. 928 (Chamber 3).

(Interim award granting stay of proceedings in Teheran based on counterclaim.)

Dic of Delaware, Inc. v. Teheran Redevelopment Corp., 1 Iran–United States Claims Tribunal Reports 154, 14 May 1982, Case No. 255 (Chamber 3).

(Order denying request for interim award of $2,272,670 on grounds award is not necessary to protect the claimant.)

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Dow Chemical Company v. Iran, 1 Iran-United States Claims Tribunal Reports 122, 20 April 1982, Case No. 499 (Chamber 2).
(Order denying interim measures to restrain alleged misuse of trademarks/tradenames pending resolution of dispute.)

E-Systems, Inc. v. Iran, 1 Iran-United States Claims Tribunal Reports 225, 8 October 1982, Case No. 388 (Full Tribunal).
(Order inviting both parties to request the Public Court of Teheran to postpone a scheduled hearing in the parallel case.)

E-Systems, Inc. v. Iran, 2 Iran-United States Claims Tribunal Reports 51–67, 4 February 1983, Case No. 388 (Full Tribunal).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

Flour Corporation, 1 Iran-United States Claims Tribunal Reports 121, 22 March 1982, Case No. 333 (Chamber 1).
(Order denying request for interim award to order re-exportation of cranes and hoisting equipment from Iran.)

Ford Aerospace & Communications Corp. v. Iranian Air Force, Award No. ITM 39-159-3, 7 August 1984, Case No. 159 (Chamber 3).
(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran.)

Ford Aerospace and Communications Corporation v. Iran, 2 Iran-United States Claims Tribunal Reports 281–82, 27 April 1983, Case No. 93 (Chamber 2).
(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran.)

Ford Aerospace and Communications Corp. v. Iran, 3 Iran-United States Claims Tribunal Reports 349, 12 September 1983, Case No. 93 (Chamber 2).
(Order repeating request for a stay of proceedings before the Public Court of Teheran.)

Ford Aerospace and Communications Corp. v. Iran, 3 Iran-United States Claims Tribunal Reports 384–89, 20 October 1983, Case No. 159 (Chamber 3).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

(Interlocutory award requesting the United States to prevent the sale of Iran’s diplomatic and consular properties which possess important historical, cultural, or other unique features and which are irreplaceable.)

Morgan Equipment Co. v. Iran, 3 Iran-United States Claims Tribunal Reports 7, 31 May 1983, Case No. 280 (Chamber 2).
(Letter requesting the claimant to relinquish an attachment to permit implementation of a settlement.)

QuesTech, Inc. v. Iran, 2 Iran-United States Claims Tribunal Reports 96–99, 1 March 1983, Case No. 59 (Chamber 1).
(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran. See also 4 Iran—U.S. C.T.R. 72–73, dissent to two orders granting extensions.)

RCA Global Communications, Inc. v. Iran, 3 Iran-United States Claims Tribunal Reports 8–9, 2 June 1983, Case No. 160 (Chamber 1).
(Order requesting a temporary stay of proceedings in the Public Court of Teheran.)

RCA Global Communications v. Iran, 4 Iran-United States Claims Tribunal Reports 5, 31 October 1983, Case No. 160 (Chamber 1).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

RCA Global Communications v. Iran, 4 Iran-United States Claims Tribunal Reports 9, 31 October 1983, Case No. 160 (Chamber 1).
(Interim award denying vacation of a judgment entered in the Public Court of Teheran where the parallel proceeding was not identical to the Tribunal claim.)

Reading and Bates Corporation v. Iran, 2 Iran-United States Claims Tribunal Reports 401-02, 9 June 1983, Case No. 28 (Chamber 1).
(Interim award ordering claimant to move for a stay of proceedings before an arbitral tribunal of the International Chamber of Commerce.)

Rockwell International Systems, Inc. v. Iran, 2 Iran-United States Claims Tribunal Reports 310-11, 5 May 1983, Case No. 430 (Chamber 1).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

Rockwell International Systems, Inc. v. Iran, 2 Iran-United States Claims Tribunal Reports 369-71, 6 June 1983, Case No. 430 (Chamber 1).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

The Boeing Company v. Iran, Award No. ITM 38-222-1, 27 August 1584, Case No. 222 (Chamber 1).
(Interim award denying stay of execution of judgment against Iran in the U.S. District Court for the Western District of Washington.)

Touche Ross and Co. v. Iran, 3 Iran-United States Claims Tribunal Reports 59–61, 13 June 1983, Case No. 480 (Chamber 1).
(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran.)

Touche Ross and Co. v. Iran, 3 Iran-United States Claims Tribunal Reports 200–01, 17 August 1983, Case No. 480 (Chamber 1).
(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran.)

U.S.A. for Shipside Packing Co. v. Iran, 3 Iran-United States Claims Tribunal Reports 331, 6 September 1983, Case No. 11875 (Chamber 1).
(Interim award requesting claimant to ensure that no further steps are taken to sell goods or properties.)

U.S.A. for Teledyne Industries, Inc. v. Iran, 3 Iran-United States Claims Tribunal Reports 336–37, 8 September 1983, Case No. 10812 (Chamber 2).
(Interim award in a non-counterclaim case requesting Iran to stay proceedings before the Public Court of Teheran.)

(Interim award in a case involving a counterclaim requesting stay of proceedings before the Public Court of Teheran.)
5. Other International Tribunals

Honduras and Nicaragua v. Salvador and Costa Rica, 2 American Journal of International Law 838-41 (1908). Resolution of July 13, 1908. (Resolution establishing rules of behavior for the parties in order to prevent the resort to force.)

Costa Rica v. Nicaragua, 6 Anales de la Corte de Justicia Centroamericana 16–18 (1917). Decree of Sept. 6, 1916. (The Court ordered that the treaty between Nicaragua and the United States which gave rise to the dispute not enter into effect in any way to alter the legal situation between the parties.)

Trail Smelter Arbitration, United States/Canada, 3 United Nations Reports of International Arbitral Awards 1905, 1934–37 (1958). Decision of April 16, 1938. (Decision establishing a temporary regime for the operation of the smelter pending the Tribunal’s final decision.)

The Case Concerning the Administration of Certain Properties of the State in Libya, Italy v. United Kingdom and Libya, 16 United Nations Reports of International Arbitral Awards 359–62 (1968). Decision of 18 February 1952. (Decision denying the Italian request for interim measures to restore its administration of certain properties in newly independent Libya.)


Scheidt v. Federal Republic of Germany, 25 International Law Reports 555 (1958). Decision of November 27, 1957 (Third Chamber). (Decision denying request for interim protection ordering defendant to cease and desist from intimidating the plaintiff in German courts because of lack of sufficient proof.)


Case Concerning the Air Services Agreement of March 27, 1946 between the United States of America and France, United States/France, 18 United Nations Reports of International Arbitral Awards 444–46 (1982). Decision of 9 December 1978. (The Tribunal decided that its authority to indicate interim measures did not entirely preclude the possibility of unilateral institution of counter-measures by one of the Parties.)

II. SECONDARY SOURCES

A. Monographs

DUMBAULD, EDWARD. INTERIM MEASURES OF PROTECTION IN INTERNATIONAL CONTROVERSIES. The Hague: Martinus Nijhoff, 1932. Pp. ix, 204. In a broad-ranging monograph, the author investigates the status of interim measures in procedural theory, undertakes a comparative analysis of their status in national legal systems, and discusses their status in international law.
The author thoroughly discusses interim measures in the World Court, tracing their jurisprudential and procedural development, discussing their function, and analyzing the issues of "jurisdiction to indicate" and "binding effect" of interim measures.

This monograph is essentially identical to the text of Professor Guggenheim's lectures on the subject at the Hague Academy of International Law, reprinted in Volume 40 of the HAGUE RECUEIL.

[pseudonym: Gerhart Niemeyer].

A modern treatise on interim measures procedure in different international courts.

The author's monograph is the most recent comprehensive treatment of interim measures in the World Court. A brief review of the Court's jurisprudence and procedural development is followed by a detailed analysis of the aspects of interim measures procedure and the basic issues of jurisdiction and binding effect. In general, the book is superior to the contemporaneous work by Elkind, but is more limited in scope and theoretical utility than the monographs of the 1930s by Dumbauld and Guggenheim.

B. TREATISES

In pages 84–89, the author discusses the basis of the Court's incidental jurisdiction apart from its jurisdiction over the merits. The theory of prior consent of the States party to the Court's Statute is presented, but the principal basis endorsed is that the general principles of international procedure, principles which support the proper administration of justice, are the foundation for the Court's power to indicate interim measures of protection on the strength of its incidental jurisdiction, provided there is at least a prima facie showing of jurisdiction to hear the complaint.

The booklet describes the situation with respect to commercial arbitration, including reference to the availability of interim measures, in Geneva, Hong Kong, Kuala Lumpur, London, New York City, Paris, Stockholm, Vienna, and Zurich.

The author concludes, at pp. 139–44, that pre-award attachment in a domestic court is not precluded by article II(3) of the New York Convention.
At pp. 718-19, the author concludes that States party to the Court’s Statute are subject to its power to determine its own jurisdiction and to indicate interim measures.

The author concludes, at pp. 225-26, that from the language of the Statute and the Court's Rules of Procedure that the League Council is not the executory organ of the Court in matters of interim measures.

The author, at pp. 140, 267-74, links interim measures to the parties' duty of good faith to refrain from any action which would tend to frustrate the final decision of the Court and discusses the extent to which the Court must determine its jurisdiction over the merits before indicating interim measures.

The collection includes brief introductions to commercial arbitration practices in 14 countries: Austria, Federal Republic of Germany, German Democratic Republic, India, Italy, Japan, the Netherlands, Poland, Romania, Sweden, Switzerland, the United Kingdom, the United States, and the Soviet Union, as well as ICSID and the ICC. However, only the article on Romania directly mentions interim measures procedure before the national courts.

At pp. 90-93, 144, 193, and 201-02, the author recounts the practice of the Central American Court of Justice, the Mixed Arbitral Tribunals, and the PCIJ, including discussion of their interim measures jurisprudence.

At page 417, the author gives a one paragraph suggestion that the power of arbitrators to order interim measures depends on their power to render interim awards as decisions.

At pp. 117-19, the author posits that interim measures authority rests solely on consent granted by the parties and is not an inherent power of the Court. The author further believes that the Court need not satisfy itself as to jurisdiction, finds that interim measures orders are not binding, and may not be enforced by the UN Security Council. Nonetheless, he suggests that the Court may grant reparations if noncompliance with its interim measures order causes damage to the requesting party.

The author gives at pp. 223-30 a detailed reasoning of the procedural aspects of interim measures and the issues of jurisdiction and binding effect. The author concludes that the Court has incidental jurisdiction to indicate interim measures, which may be enforced by the Security Council.

The author devotes a short chapter (pp. 223–30) to the problem of non-appearance of States in the interim measures phase of the Court's consideration of the case. He concludes that interim measures jurisdiction is based on article 35 of the Court's Statute and article 93 of the UN Charter.


The book provides a history of the Central American Court of Justice, the first international institution empowered to order interim measures. The French text of the Convention establishing the Court is given at page 189.


The author concludes at p. 121 (§§ 215–217) that ICC arbitrators have no power to indicate interim measures.


At pp. 52–53 and 56–57, the authors observe that [at least up until the time they wrote] all of the requests for interim measures before the ICJ were in cases concerning control over natural resources and environmental concerns. They also point out that none of the orders were observed.


At pp. 223–26, the author presents the features of interim measures procedure via the language of the PCIJ's jurisprudence.


The author's discussion of interim measures at pages 152–55 of volume II emphasizes the necessity of mutual consent by the parties for the observance of the non-obligatory measures ordered by the Court.


Pages 468–96 give a quick and direct guide to the historical development of the rules of procedure of the ICJ, including rules 68 to 72 on interim measures.


The author gives a brief digest of the decisions in each case before the ICJ at pp. 72–73, 136–37, 141–42.


In section 433 (pages 424–30), the author reviews the jurisprudence of the PCIJ on interim protection. The book is a valuable treatise on the PCIJ in general, updating an earlier work (1934).


At pages 96–97, the author asserts the principle of good faith as the procedural
basis for interim measures, recognizing that these powers were explicitly conferred, rather than inferred, during the twentieth century.


The authors discuss the interplay of municipal courts in Belgium and international commercial arbitration (§§ 154, 309, 315, 383–88, 692, 792).


At pages 157–58, the author suggests that States remove doubt as to the obligatory nature of the Court's interim measures orders by inserting in their dispute settlement clauses an agreement to recognize as binding any such orders. Other discussion appears at pp. 129–30, 139, and 295.


The author discusses the issues of jurisdiction and the effectiveness of interim measures.


A dated analytical treatment of the work and voting of the Court and its judges in contentious proceedings.


The symposium commentaries barely touch on the question of interim measures, except for a brief discussion at pp. 250–51 of the idea of making interim measures orders explicitly binding and providing for sanctions from the UN Security Council. Other mention of interim measures is made at pp. 44 and 54.


The author considers at pp. 148–54 the power of the Security Council to enforce an order indicating provisional measures, concluding that the power exists but expressing the hope that a case actually establish the precedent.


The book is an early history of international tribunals and their characteristics.

The last version of a revision of an earlier work: INTERNATIONAL ARBITRAL LAW AND PROCEDURE (1910), the author for the first time included, at pp. 93–95, mention of interim measures, reviewing the history of several international tribunals of the beginning of the century.


THIRLWAY, H.W.A. NON-APPEARANCE BEFORE THE INTERNATIONAL COURT OF JUSTICE. New York: Cambridge University Press, 1985. Pp. vii, 184. In pages 83–96, the author distinguishes between non-appearance during the substantive phases of a case and non-appearance at a hearing on a request for the indication of interim measures. The important distinction is based on the different jurisdictional powers of the Court during different phases of a case. The argument concludes that the Court is not required to apply its Article 53 requirements to an Article 41 situation.

SEIDL-HOHENVELDERN, IGNAZ. THE AUSTRIAN-GERMAN ARBITRAL TRIBUNAL. Syracuse: Syracuse University Press, 1972. Pp. xv, 261. This post-World War Two international claims tribunal considered one case involving an injunction issued by a national court during the proceedings before the Tribunal.


SIBERT, MARCEL. TRAITÉ DE DROIT INTERNATIONAL PUBLIC. Paris: Librairie Dalloz, 1951. 2 volumes.
The author considers interim measures in the context of international courts (ICJ and arbitral tribunals) as well as political institutions (the Council of the League and the UN Security Council) (pp. 444-46, 518-21, 653-55, 663 n.4).


At pages 48, 162-70, and 266-69, the authors discuss generally the powers of all types of international tribunals to indicate interim measures, whether they have been specifically accorded the power or not, and their ability to enforce those orders by means of default judgments despite the fact that international courts lack inherent executory powers.


In volume VIII, INTERNATIONAL DISPUTES AND THEIR SETTLEMENT, the author briefly reviews the interim measures orders in three cases: Fisheries Jurisdiction, Nuclear Tests, and Pakistani Prisoners of War.


This five volume survey of international arbitral institutions constitutes an invaluable reference source for arbitration in general. Interim measures are discussed, as appropriate, in the context of each institution.


A short history of interim measures procedures in international courts is given at pp. 387-94.

C. JOURNAL ARTICLES


FALL 1985


Perrin, Georges, *Les mesures conservatoires dans les affaires relatives à la compé—


Schwaiger, Peter Norbert, Le référé dans la procédure de la Cour de Justice des trois communautés européennes, p. 165. [mimeo]


D. COLLECTIONS


FALL 1985


E. YEARBOOKS


Fitzmaurice, Gerald G., *The Law and Procedure of the International Court of Justice*:

VOL. 19, NO. 4
General Principles and Substantive Law, 1950 British Yearbook of International Law, vol. 27, pp. 1–41.


F. DIGESTS OF INTERNATIONAL CASES


FALL 1985
G. LOOSELEAF SERVICES

Paragraphs 13.10 and 13.14 give a detailed account of the availability of pre-award attachment under the New York Convention, particularly in the United States.

Chapter 26 (§§ 26.02, 26.03, 26.04) discusses the availability of various types of provisional remedies in U.S. courts pending a commercial arbitration.

The commentary (section 1.B.1) reviews the jurisdiction of national courts to provide provisional remedies such as attachment in the face of an agreement to arbitrate, while interpreting the meaning of article II(3) of the New York Convention.

The authors give an early account of the urgent actions taken by the UN Human Rights Committee under its petition system, as well as the United Nations procedures under Resolution 1503, the Trusteeship System, the Special Committee on Granting of Independence to Colonial Countries and Peoples, the Racial Discrimination Committee (CERD), and the Special Committee Against Apartheid.

Contains updated collection of national reports originally appearing in the Yearbook of Commercial Arbitration as well as the basic legal texts on arbitration from

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the 54 countries covered so far. The interim measures authority, or lack thereof, of the arbitrators is a systematic heading of each national report. The accompanying statute sometimes includes the powers of the judiciary to order provisional remedies in the face of an agreement to arbitrate.

H. BOOK REVIEWS


