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# Understanding the Necessity Requirement in International Investment Arbitration: Balancing Interim Measures and Harm Standards

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**Abstract:** *This paper examines the necessity requirement for interim measures in international investment arbitration, a critical yet contentious aspect of arbitration proceedings. The lack of uniformity in determining necessity, as illustrated by varying standards of irreparable harm and significant harm across different cases, complicates the issue of interim measures. Through a detailed analysis of key arbitration cases, this paper highlights the inconsistencies and challenges faced by tribunals in applying these standards. The study explores how the irreparable harm standard aligns with the exceptional nature of interim measures, while also critiquing its excessive stringency and potential for abuse. By contrasting this with the more flexible substantial harm standard, which enhances fairness but risks increasing the frequency of interim measure applications, the paper underscores the need for a balanced approach. It suggests that recognizing the limitations of monetary compensation and ensuring proportionality in interim measures can address the dilemma of necessity conditions, thereby improving the efficacy and fairness of international investment arbitration.*

**Keywords***:* investment law, provisional measure, necessity

## INTRODUCTION

Necessity is a crucial factor in applying for interim measures, and almost all arbitration rules stipulate it. However, the specific application and the conditions under which it is deemed necessary are not explicitly defined. In most cases, such as the German company Haile v. China case and the Interocean Oil v. Nicaragua case, the arbitration tribunal held that the necessity of interim measures must meet the standard of irreparable harm, meaning a measure that cannot be remedied by a substantive ruling.

However, some arbitration tribunals have noted that Article 47 of the ICSID Convention and Article 47 of the ICSID Arbitration Rules (formerly Article 39) do not require interim relief solely to prevent irreparable harm, but rather adopt a lower threshold of significant harm, which may be considered sufficient to meet the necessity requirement. For example, in the Churchill Mining v. Indonesia case, this standard was applied.

From these two different cases, we can observe that there is indeed a discrepancy in the understanding and application of the necessity for interim measures in actual arbitration practice. There is no clear standard for the necessity condition in the application of interim measures in investment arbitration. This raises a broader discussion: under what circumstances is it considered necessary? How should necessity be understood and applied in practice?

**Practice and analysis of the necessity condition for the application of interim measures in international investment arbitration**

The necessity requirement for interim measures can be understood from multiple perspectives. From a textual interpretation perspective, for instance, Article 47 of the ICSID Convention states: "Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party." This provision can be seen as the most direct textual source for the necessity requirement. The 2022 revision of the ICSID Arbitration Rules explicitly stipulates that interim measures must meet the necessity condition. However, the preparatory materials for the ICSID Convention and various documents do not provide clear guidance on the circumstances under which interim measures are deemed necessary. Some viewpoints suggest that interim measures should only be taken when absolutely necessary and that arbitration tribunals should exercise self-restraint when implementing interim measures.

Many arbitration rules state that the purpose of interim measures is to protect the rights of the parties involved. From the purpose of interim measures, the necessity requirement can also be understood in this way: the interim measures sought by the applicant must be necessary to "preserve the respective rights of either party." Additionally, the necessity requirement can be interpreted through reverse reasoning. When reverse reasoning about the necessity of interim measures, one can understand that if interim measures are not taken, the applicant will inevitably suffer harm, and this harm must reach a certain necessary level. However, there are no specific regulations on how to identify the harm and what degree of harm is necessary. In international investment arbitration, some arbitration tribunals have adopted the "irreparable harm" standard as a condition for interim measures, while others have adopted the lower threshold of "substantial harm" standard.

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*Irreparable harm standard*

Many international investment arbitration rules stipulate that interim measures must meet the necessity standard. The historical drafting materials of ICSID indicate that interim measures can only be applied when absolutely necessary, meaning they should be used as an exceptional measure. Therefore, when deciding whether to grant interim measures, arbitration tribunals should exercise self-restraint in their discretion and adopt the higher threshold of the irreparable harm standard.

This standard originally emerged from the International Court of Justice. International investment arbitration tribunals have referenced this practice to redefine "necessity". In the decision on interim measures in the "Perenco v. Ecuador" case, the tribunal stated that "if interim measures are not taken to restrict the host country's actions in this case, then the Ecuadorian authorities' seizure of the investor's assets would prevent the private investor from continuing their investment in the host country. Such an impact, once occurred, cannot be fully remedied by compensation even if the claim is ultimately supported by the tribunal." Since then, the "irreparable harm" standard has also been known as the "Perenco Standard" within the ICSID system.

In summary, this article identifies three scenarios in which tribunals have deemed the harm to constitute irreparable harm, thus meeting the conditions for issuing interim measures.

**a. The practice of irreparable harm constituted by irreparable monetary or subsequent award damages**

Generally speaking, the standard of irreparable harm is rather abstract. When arbitration tribunals apply the "irreparable harm" standard, they typically consider whether monetary compensation can serve as an adequate remedy. If monetary compensation can constitute sufficient relief for the party, the tribunal may choose not to intervene. Therefore, some tribunals hold that when harm can be compensated with monetary damages, the harm is not irreparable, and interim measures should not be issued by the tribunal.

In the Rizzani v. Kuwait case, the applicant argued that the failure to take interim measures would cause irreparable harm, calculated in monetary terms. The continuation of the project required ongoing infusions of additional working capital, leading to an exponential increase in the applicant's financial burden. The claimant had already been significantly affected by the respondent's immediate refusal of its claimed right of $251,450,000. The joint venture was experiencing continuous daily losses of approximately $110,000. Additionally, the redemption of bonds and the implementation of a negative change order would immediately result in further liabilities of approximately $148,800,000 and $32,400,000, respectively. If these liabilities materialized, it would render the company insolvent, unable to pay the salaries of thousands of employees, and threaten the company's continued existence. However, the arbitration tribunal determined that although such damages would indeed lead to significant debt for the company, this debt could be compensated with money. Furthermore, the applicant failed to provide any evidence or financial analysis demonstrating that these losses would make the joint venture or the applicant unable to survive. Therefore, the tribunal concluded that interim measures were not necessary.

Additionally, this practice is also common in SCC arbitration. In the case of Kompozit LLC v. Republic of Moldova, the claimant sought an emergency decision on interim measures to stop the cancellation of its shares in one of Moldova's largest commercial banks, the Moldovan Agricultural Bank. The emergency arbitrator decided that the lower irreparable harm standard, as announced in Paushok, should be applied. If Moldova proceeded to cancel the claimant's shares in the bank, the claimant would suffer irreparable harm. Therefore, the emergency arbitrator issued an order encouraging Moldova to halt the cancellation of shares, reasoning that if Moldova were not stopped, Kompozit would likely suffer irreparable harm. In the case of Evrobalt v. Republic of Moldova, the claimant (a Russian investor) made a similar request to protect its shareholder rights in the same Moldovan Agricultural Bank. However, the emergency arbitrator in this case rejected the request for interim measures, finding that the actual and imminent harm related to the claimant's investment could be compensated through a monetary award. Despite the nearly identical facts, the contrasting outcomes illustrate that the manner and timing of interim measures are unpredictable and lack uniformity. This unpredictability can increase the uncertainty of business operations, thereby raising operational costs for companies. Therefore, a more consistent application and a higher standard for the necessity of interim measures are needed to provide greater certainty in the commercial environment and in business disputes.

Traditionally, ICSID arbitration tribunals have adopted a conservative approach, whereby they may refuse to grant interim measures if subsequent awards can provide compensation. The reasoning behind this assumption is that monetary compensation can always make up for the injured party's loss, and changes in the case circumstances will never prevent the tribunal from providing relief to the injured party.

In the “Plama” case, the claimant was only seeking monetary compensation for

Bulgaria's violation of treaty obligations. The harm caused to the investor's subsidiary by the host country was not considered "irreparable" from an economic perspective. The local company of the investor in Bulgaria might be liquidated, and its assets could be distributed to creditors (including the Republic of Bulgaria), but this damage could be compensated through the final award. However, if the claimant seeks specific performance of the host country's obligations or the restoration of the status quo of the investor or their investment before the respondent's interim measures, rather than just monetary compensation, then the tribunal might take a different approach.

**b. Destruction of investment constituting irreparable harm**

Some scholars argue that an exception to the irreparable harm standard is the destruction of the investment environment. If the actions in question are not restrained by interim measures and would effectively terminate the investor's business, then the anticipated harm is likely to be "irreparable," even if the losses can be measured in monetary terms.

In the "Cemex" case, the tribunal reached a consensus on the following opinion: the widely accepted standard of "irreparable harm" necessitates recommending the maintenance of the status quo and the prevention of the dispute's aggravation. Although the request for interim measures was entirely rejected in this case, the tribunal distinguished between two scenarios: (1) where the claimed harm is easily compensable through a damages award; and (2) where there is a serious risk of destroying a profitable investment. The first type of case does not require recommending interim measures because there is no irreparable harm; whereas, in the second type of case, the tribunal granted interim relief based on other standards, "despite the tribunal being able to base its decision on the fact that the destruction of a profitable investment could cause irreparable harm." This approach contrasts sharply with the higher standard previously adopted by tribunals. By recognizing "destruction of investment" as "irreparable harm," the tribunal's reasoning clearly deviates from traditional practices.

The destruction of investment appears to be the latest development in the standard of "irreparable harm." If the actions in question are not restrained by interim measures and effectively terminate the investor's business, then the anticipated harm is considered "irreparable," regardless of whether the loss can be measured in monetary terms, at least theoretically. However, the trend of introducing new elements to the "irreparable harm" standard has not yet been firmly established, although ICSID jurisprudence has begun to follow different paths. According to this new standard, despite the ICSID tribunal's increased discretion in determining what constitutes "irreparable harm" that needs to be prevented, reasonableness remains key to exercising this discretion.

**c. Threat to Procedural Integrity as Irreparable Harm**
Some scholars argue that when the integrity of the arbitration process is seriously threatened, the harm is inherently irreparable, and the necessity of interim measures becomes self-evident. In the case of Teinver SA, Transportes de Cercanías SA, and Autobuses Urbanos del Sur SA v. Argentine Republic, the claimants argued that there is no explicit requirement that necessity must meet the standard of irreparable harm. Instead, they contended that the appropriate standard is to determine whether taking the measures is necessary to avoid harm to the claimant. A balancing test is then applied to consider the potential harm or disruption that might be suffered by the respondent if the requested measures are granted. The claimants argued that when the threatened harm involves the integrity of the arbitration process, it meets the necessity requirement. The respondent argued that the power to issue interim measures should only be exercised in urgent cases to prevent irreparable harm. The tribunal concluded that, in exceptional circumstances, the claimant does not need to prove the irreparable harm standard if the right to legal representation, which could threaten the integrity of the arbitration process, is at stake. Additionally, in the case of Legacy Vulcan v. United Mexican States, the tribunal found that the Mexican President's public negative comments about the claimant compromised the integrity of the arbitration process. Such actions amounted to seeking resolution through media and other public forums, which exacerbated the conflict and disclosed procedural details. This harm was deemed irreparable and, in a certain sense, cannot be compensated through monetary damages. In addition to obstructing access to legal representation and improper disclosure compromising procedural integrity, in the case where the government requested the claimant to submit documents but the claimant believed that such submission would lead to misuse of evidence, the tribunal stated that, in order to protect the integrity of the arbitration, it was necessary to implement measures ensuring that both parties adhered to the agreed-upon document production rules.

*Substantial harm*
Article 47 of the ICSID Convention, as well as most arbitration rules, does not stipulate a requirement for irreparable harm, and tribunals have no reason to interpret it so narrowly. From case law, it is evident that tribunals rejecting the “irreparable harm” standard tend to choose the “substantial harm” or “significant harm” standard. In the City Oriente Ltd. v. Republic of Ecuador case, the tribunal questioned the “irreparable harm” standard and instead favored a requirement that “the harm to be avoided by such measures must be significant and substantially outweigh the harm caused to the party.” This essentially mirrors the “balance of convenience” standard widely applied in international commercial arbitration.

**a. Significant harm from restoring the *status quo*-Bear Creek Mining v. Peru Case**

In this case, the claimant reinterpreted the "irreparable harm" standard, arguing that the true purpose of interim measures is to prevent "significant" or "irreparable" harm. These terms are flexible in international law and do not require that the alleged harm be incapable of being compensated by damages. Even if a party has the right to seek damages, significant harm may still exist. The claimant referenced the view of the Papua New Guinea tribunal, stating that the term "irreparable" should be understood as requiring proof of serious harm to the applicant or a substantial risk of serious harm, rather than in a narrow or ordinary sense of irreparable harm. Significant or substantial harm, even if not irreparable, is often sufficient to meet the standard for granting interim measures. The claimant further argued that, in this case, the interim measures standard of irreparable harm is often used because the applicant is merely seeking monetary compensation. However, in this case, the claimant is seeking the restoration of the status quo. Legally, restoring the status quo is not a remedy that can be compensated with money.

In response, the respondent argued that the irreparable harm standard should be adhered to because it dominates treaty jurisprudence. The respondent stated that tribunals generally determine whether monetary damages are possible and appropriate compensation. If monetary damages are possible and appropriate, it is unlikely that interim measures will be granted. The respondent further asserted that monetary damages are an adequate remedy for any harm the investor might suffer. Even though the claimant seeks the restoration of the *status quo*, according to the treaty provisions between the parties, the respondent can still opt to pay monetary compensation instead of restoring the status quo. In response, the tribunal acknowledged that the restoration of the status quo cannot be adequately compensated with money and that the claimant's harm is real, effectively conceding that the claimant may meet the necessity requirement. However, the tribunal rejected the request because, according to the treaty provisions, the respondent can indeed use monetary compensation to remedy the harm caused by not granting interim measures.

**b. Tribunal's Broad Interpretation of the "Irreparable Harm" Standard-PNG Sustainable Development v. Papua New Guinea**

In this case, the claimant argued that the tribunal could not apply the "irreparable harm" standard for two reasons. Firstly, the personal safety and freedom of the claimant's staff were threatened, which is harm that cannot be compensated with money. Secondly, the respondent's actions had already threatened the claimant's survival and business objectives. Without interim measures to restrict these actions, the claimant's business would be impacted in ways that cannot be measured or compensated by money. In response, the tribunal reinterpreted the necessity of the harm standard. According to the tribunal, "irreparable" harm should be understood as requiring the demonstration of a substantial risk of serious or significant harm faced by the applicant, rather than the narrow, literal, common law meaning of "irreparable" harm. As for the degree of "seriousness" or "significance" of the harm required to issue interim relief, it cannot be precisely defined and depends to some extent on the specifics of the case, the nature of the requested relief, and the potential harm to each party. In summary, even if not irreparable, substantial or serious harm is generally sufficient to meet this element of the standard for granting interim measures. The tribunal also stated that the applicant does not need to prove that "serious harm" will definitely occur. Instead, it is usually enough to show that there is a substantial risk of it happening. However, the requirement to demonstrate a substantial risk does not mean showing any specific percentage or probability that the risk will become a reality. The proper requirement is that the applicant must demonstrate the existence of a sufficient risk or threat of serious or significant harm occurring if interim measures are not granted.

## 3. Analysis of the Necessity Conditions for Applying Interim Measures in International Investment Arbitration

*The Irreparable Harm Standard Aligns with the Exceptional Nature of Interim Measures*

Interim measures in international investment arbitration differ from those in the International Court of Justice and international commercial arbitration. The standard for their application has always been contentious. Specifically, interim measures in international investment arbitration involve state entities, making their application standard more complex and stringent. If the harm standard is set too low, it may lead to the criteria for interim measures being too easily satisfied, potentially resulting in the abuse of such measures by parties, causing interference with state sovereignty or the other party. Furthermore, ICSID jurisprudence consistently holds that interim measures are extraordinary remedies that can only be granted when strict necessity conditions are met.

This strict standard reflects the protection of state sovereignty and public interest. Therefore, when deciding whether to grant interim measures, arbitral tribunals typically apply the "irreparable harm" standard. This means that interim measures are likely to be granted only if a party can demonstrate that, without such measures, irreparable harm will occur. This high standard ensures that interim measures are not easily abused, maintaining the seriousness and fairness of international investment arbitration.

In contrast, the standard for interim measures in national courts and international commercial arbitration is relatively lower. In national courts, interim measures aim to protect the parties' rights before a judgment is issued, preventing evidence and judgment enforcement from being affected. In international commercial arbitration, interim measures are primarily used to protect commercial interests and prevent harm in business transactions. Since these situations do not involve issues of state sovereignty, the standard for applying interim measures is more lenient.

*The Irreparable Harm Standard is Excessively Stringent and Difficult to Quantify*

Many arbitration rules, such as Article 47 of the ICSID Arbitration Rules, are essentially modeled after the provisions for interim measures in the Statute of the International Court of Justice. Consequently, many arbitral tribunals consider whether the action will cause "irreparable harm" as the key issue when determining the necessity for interim measures, following the approach taken by the International Court of Justice.

From the cases, it is evident that when tribunals apply the "irreparable harm" standard, they typically focus on the adequacy of monetary compensation as a remedy, especially when the claimant's sole remedy is damages. If monetary compensation can provide relief to the parties, the tribunal may choose not to intervene. This interpretation of the "irreparable harm" standard can seem overly stringent because, when an investor is seeking only monetary compensation, tribunals might consider that no harm is truly irreparable by money.

The problem with this interpretation is that it may allow host states to harass investors or infringe upon their rights without any constraints. A party might exacerbate the dispute by increasing the harm to the other party, even if remedies for such harm are available at later arbitration stages. In this situation, interim measures lose some of their preventive nature and fail to effectively prevent harm.

To address this issue, while tribunals still adhere to the "irreparable harm" standard, they have somewhat lowered the threshold. For instance, in the Bachar Kiwan v. State of Kuwait case, it was noted that if subsequent adjudication cannot remedy the harm caused by the failure to grant interim measures, then applying for interim measures in such a situation also meets the "irreparable harm" standard, thereby fulfilling the necessity condition. As a result, the standard for applying interim measures has been appropriately adjusted. Although the dilemma of the irreparable harm standard for interim measures has been somewhat alleviated, it still leads to the application of interim measures being excessively stringent.

In summary, the standards for interim measures in international investment arbitration are strict, which hampers the balance between protecting investor rights and preventing abuse.

*The Substantial Harm Standard Offers Greater Flexibility and Fairness*

Firstly, the substantial harm standard provides greater flexibility. In international investment arbitration, the types and complexities of cases vary widely, and a singular irreparable harm standard may not be suitable for all situations. The substantial harm standard allows tribunals to adjust the criteria according to the specifics of the case, enabling a more accurate assessment of whether interim measures are needed. For example, in certain cases, although the harm may not reach the level of "irreparable," its long-term effects on the parties can be profound and irreversible. By adopting the substantial harm standard, tribunals can more flexibly consider these factors, leading to decisions that are more aligned with the actual circumstances.

Secondly, the substantial harm standard enhances the fairness of the arbitration process. Under the traditional irreparable harm standard, the application and approval of interim measures are often subject to strict limitations, which can result in some cases with real risks not receiving timely and effective protection. The substantial harm standard allows tribunals to consider the necessity of interim measures in a broader range of situations, ensuring that the legitimate rights and interests of the parties are not overlooked. For instance, in some investment disputes, one party might use legal procedures to delay proceedings, attempting to gain an unfair advantage by depleting the other party's resources. The substantial harm standard can identify and address these strategic behaviors, ensuring fairness and justice in the arbitration process.

Moreover, the substantial harm standard is derived from commercial arbitration case law, specifically adopting the threshold of "harm not adequately compensable by damages," which means that only harm that cannot be fully remedied through monetary compensation is considered irreparable. This standard is common in commercial arbitration. However, in investment arbitration, the majority of claims seek compensation. This creates a problem: if any alleged violation of rights in arbitration can be remedied through compensation, then no harm would be deemed irreparable. In other words, if all damages can be compensated by money, there is no such thing as "irreparable harm." Consequently, applying this threshold in investment arbitration presents a paradox: if all damages can be compensated, then according to this standard, no harm can be considered "irreparable." This renders the application of this threshold in investment arbitration impractical and problematic.

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*The Substantial Harm Standard May Lead to Abuse of Interim Measures*

Although the substantial harm standard provides greater flexibility for tribunals, it can also result in the abuse of interim measures, adversely affecting the efficiency and fairness of the arbitration process.

Firstly, the substantial harm standard may increase the frequency and complexity of interim measure applications. Under the traditional irreparable harm standard, interim measures are only granted in the face of irreversible harm. However, applying the irreparable harm standard is not always a given. Claimants seeking a higher standard often argue for "substantial harm" or similar thresholds as outlined in instruments like the UNCITRAL Model Law. As a strategy, this makes sense. Nonetheless, the relatively lenient substantial harm standard allows for the application of interim measures in a broader range of situations. While this flexibility can help protect parties' rights in some cases, it may also be exploited by some parties to frequently request interim measures. This leads to tribunals expending more time and resources to handle these requests, complicating and delaying the arbitration process.

**How to Address the Dilemma of Necessity Conditions in Interim Measures**

*The Possibility of Monetary Compensation Does Not Necessarily Eliminate Harm*

Some international investment tribunals have adopted the "irreparable harm" standard as a prerequisite for granting interim measures. These cases have adopted this standard either because it is supported by the International Court of Justice or because it is part of the so-called international legal reasoning. However, the theoretical foundation for the irreparable harm standard can be somewhat lacking. In the Tokios case, the tribunal claimed that the "necessity" standard should be limited to cases involving "threats or irreparable harm to the invoked rights." Yet, the tribunal did not provide a corresponding theoretical basis, merely stating in the procedural order: "International legal reasoning regarding interim measures indicates that if a party's actions 'are capable of causing irreparable harm to the invoked rights or pose such a threat,' then interim measures are necessary. This standard is consistent with the practice of the ICJ under Article 41 of the ICJ Statute, and Article 47 of the ICSID Convention is modeled on Article 41 of the ICJ Statute." This reasoning for the ruling only considers the jurisprudential aspect of necessity while neglecting that the essence of interim measures is to protect parties from harm. Consequently, excessively stringent application conditions render interim measures virtually ineffective.

Furthermore, not all harm can be remedied through monetary compensation or a final judgment. K.P. Berger specifically notes that under Article 26 of the UNCITRAL Arbitration Rules, measures must be "necessary" to protect the applicant's legitimate rights. If the delay in adjudicating the main claim during the arbitration process results in "substantial" harm to the claimant (though not necessarily "irreparable" in the common law sense), this requirement is still met. The possibility of monetary compensation does not necessarily eliminate the potential need for interim measures. Many arbitral tribunals, following the opinion of the Iran-U.S. Claims Tribunal, hold that in international law, the concept of "irreparable harm" does not necessarily require that the alleged harm cannot be remedied through compensation.

*Interim Measures Must Be Proportionate to the Harm or Damage to Be Avoided*

Article 47(3)(b) of the newly revised 2022 ICSID Arbitration Rules stipulates that in deciding whether to recommend interim measures, the tribunal should consider all relevant circumstances, including the impact of such measures on the parties. This provision has been summarized by tribunals as the "proportionality" condition for taking interim measures, but in the analysis, harm is still used as the measure of proportionality. At the same time, in many practices, tribunals use this as a way to resolve the confusion around the necessity standard. In cases such as Burlington Resources Inc v. Republic of Ecuador and Gerald International Limited v. Republic of Sierra Leone, the tribunals held that "necessity" or "harm" is typically assessed by balancing the degree of harm that the applicant will suffer. This means that the requirement of necessity involves an assessment of the risk of harm that the interim measures are intended to avoid, and the measures requested must be proportional to the harm or damage to be avoided. In the case of Burimi SRL and Eagle Games SHA v. Republic of Albania, the tribunal stated that such measures are necessary "when there is a need to avoid harm or prejudice to the applicant." When assessing necessity, the tribunal typically balances the interests of both parties and orders measures only if the harm to the petitioner significantly outweighs the harm caused to the affected party. Consequently, interim measures are not intended to prevent potential or hypothetical harm from future actions. Additionally, in the Burlington v. Ecuador case, the tribunal noted that the term "harm" does not appear in the relevant clause. Nevertheless, necessity remains an indispensable requirement for interim measures. It is generally assessed by balancing the extent of harm the applicant might suffer. In this case, the tribunal deemed it appropriate to apply the "harm that cannot be adequately compensated by damages" standard from the Model Law. When evaluating necessity, the tribunal also considers the interests of both parties. In the Railroad v. Guatemala and Legacy Vulcan v. United Mexican States cases, the tribunal noted that if an interim measure excessively infringes on national sovereignty and public interest, then such a measure is neither proportionate nor necessary.

## CONCLUSION

The determination of necessity in the application of interim measures in international investment arbitration remains inconsistent and complex. The lack of a uniform standard, whether it be irreparable harm or substantial harm, leads to varying interpretations and applications by different arbitration tribunals. While some tribunals adhere to the stricter standard of irreparable harm to protect the seriousness and fairness of arbitration, others adopt the more flexible substantial harm standard, aiming for fairness and practical protection of parties' rights. Both standards have their merits and drawbacks, highlighting the need for a balanced approach that can prevent abuse while ensuring effective protection of parties' interests. To address this dilemma, it is crucial to develop clearer guidelines that consider both the severity and the nature of the harm, ensuring that interim measures are applied proportionately and justly in international investment arbitration.

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