NetCase: A New ICC Arbitration Facility

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Introduction

The ICC International Court of Arbitration (the ‘Court’) has a long-standing interest in information technology (‘IT’). In 1989, the former Chairman of the Court, Alain Plantey, decided to equip the Secretariat of the Court (the ‘Secretariat’) with a computer program for managing arbitration cases. Benjamin Davis, then counsel at the Secretariat, rose to the challenge and, together with other members of the Secretariat, including the present writer, and computer engineers, devised the Secretariat’s first computerized case management system. The constant and rapid evolution of modern technology made it necessary to rethink the system a few years later. This led to the creation of ICABase, the system currently in use. ICABase was designed to be more user-friendly and easier to adapt and update as technology progressed. Since its creation in 1997, the system has developed through several versions, each of which took into consideration new needs and practices and reflected a constant effort to increase efficiency, facilitate the work of the Secretariat, improve the retrieval of information and allow statistics to be generated and new types of researches to be conducted. ICABase also allows documents to be created by merging the data it contains into model wordprocessing documents.

Given the huge increase in the number of arbitration cases, particularly since the 1980s, the growing use of electronic tools by the business community in its daily work, and the need for instantaneous information, ICC considered it appropriate to offer ICC arbitration users a new facility. This new facility, which has been given the name NetCase, makes it possible for players in ongoing ICC arbitrations to conduct their proceedings in an online environment. It thus represents an added value to the services offered by the Court.

The added value of NetCase

What is NetCase?

NetCase is a platform enabling the players in ICC arbitration proceedings – the parties (or their lawyers, if represented), the arbitrators and the Secretariat – to benefit from a private and secure space for communicating with each other, accessible via the Internet. It is an interactive tool for communicating and sharing information rapidly in a user-friendly setting. All players will view the same
information and the same documents in a common environment. Access to this environment will be opened to parties and arbitrators in a pending arbitration only if they all consent thereto.

NetCase is for the moment only intended for use in proceedings subject to the ICC Rules of Arbitration, although it might in the future be used for other ICC dispute resolution services. It is not a platform for business-to-consumer disputes (B2C) or consumer-to-consumer disputes (C2C).

NetCase should not be thought of as an online arbitration procedure, but rather as an IT facility. The distinction is important. Online arbitration procedures are normally meant to be conducted almost exclusively online. Paper documents can sometimes be used, as when dispute providers need to ensure that defendants have been duly notified, and hearings may take place if requested by a party. Examples of such procedures are those intended for domain name disputes and consumer disputes. Such procedures are not necessarily confidential and information such as names of parties, the status of the procedure, the date of the decision and even the decision itself can sometimes be found on the web sites of dispute resolution service providers. NetCase, on the other hand, is a means of facilitating communications between parties and arbitrators, offering them instantaneous, round-the-clock information, allowing exchanges in a secure environment, and enabling them to have access to documents during a hearing without having to carry around mounds of paper. It does not rule out the transmission of documents offline, nor does it imply that the case will be conducted exclusively online or that there will be no hearings. It is simply an option available to users, offering security, rapidity and greater comfort in the handling of documents.

What is the added value of NetCase?

By allowing parties, arbitrators and the Secretariat to run proceedings online, what exactly does NetCase offer?

Firstly, it offers security: every communication and every document travelling between the user’s browser and NetCase will be encrypted, making it impossible for information to be read during its transfer. It also offers instantaneous: documents will be available directly they are posted in the NetCase environment. The speed of transfer will be equal to email, but the important difference is that the documents will not travel unprotected like emails but within a secured system to which access is restricted. NetCase will therefore combine speed with security. Furthermore, a special program will check documents for viruses at the time they are posted; infected documents will be refused. Users will be assigned a login name and password, to protect the confidentiality of each arbitration case.

Another aspect of the added value of NetCase lies in the organization of material. All documents exchanged through NetCase will be stored in an intranet devoted to a given case. It will be easy to identify not only the documents themselves but also their origin. NetCase will keep track of all exchanges, enabling the parties, the arbitrators and the Secretariat to follow the chronology of a case. Also, it will be possible to search documents posted in NetCase. Information and documents will be organized and displayed in a standard manner in a single environment, thereby avoiding the risk of conflict and confusion likely to arise if counsel and arbitrators use their own filing systems. Once users have become familiar with the way information and documents are organized within the NetCase environment, they

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will be able to find them easily and quickly. A uniform system of organization also means that all players will be able to see the same material in the same presentation in the same environment at the same time. The screen displayed will be the same for everyone.

The possibility of dispensing with paper documents is another significant added value. Practitioners need to work, read submissions and prepare hearings during their travelling time or at home. They sometimes work on several cases at the same time and need to have the files of those cases available at any time, without being burdened with hard copies of voluminous documents. As an alternative to carrying documents with them in their laptops or on CD-Rom, they will be able to access documents directly in NetCase with the help of the login name and password they have been assigned. Furthermore, if submissions are filed while they are away from their office, they will be able to read them simply by connecting to NetCase. It may be added that users will be able to access the platform whatever browser and operating system they use and regardless of their location. The speed of connection and download will of course depend on the user’s hardware and software and the size of the document.

Information on the status of proceedings will be available twenty-four hours a day. Thus, parties and arbitrators will no longer need to wait for office hours to call their secretariat or contact ICC to find out, for instance, if pleadings have been submitted or a payment has been made. Information on the progress of proceedings will be available in real time. Moreover, an alert message will advise players that a new message or a new document has been posted in their NetCase environment, so that they may immediately acquaint themselves with its content.

NetCase also offers the added value of private forums allowing certain of the players to communicate amongst themselves in a secure environment rather than by unprotected emails. A forum created for exchanges between the arbitrators, for example, will not be accessible to the parties and vice versa.

NetCase also allows savings to be made. If all the parties and arbitrators consent to communicate by electronic means through NetCase, the cost and effort of preparing, handling and sending hard copies can be avoided. The storage of documents can also be facilitated. However, such consent will not allow transmissions by traditional means to be completely dispensed with. Certain documents, notably awards, will continue to be notified by traditional mail due to legal requirements under some national laws and for reasons of enforcement. Thus, if all parties request the transmission of such documents online, a copy of the document will be posted in NetCase and a hard copy will be sent by traditional mail.

**What functions will NetCase offer?**

NetCase will be a source of practical and organized information, available instantaneously and continuously. The platform will comprise different sections offering different kinds of information.

There will be an address book containing the details of all participants in the proceedings, as well as those of the Secretariat team in charge of the file. There will be a general information section giving an overall picture of a case: names of parties, counsel and arbitrators, progress of the proceedings indicating the dates on which different stages were completed (e.g. transmission of the file to the arbitral tribunal once fully constituted, signature of the Terms of Reference, closing
of the proceedings), and a financial rundown. More detailed information will be found in sections relating to specific aspects of the case. For instance, the arbitral tribunal section will indicate how the tribunal has been constituted and give access to the curriculum vitae and declaration of acceptance and statement of independence of each arbitrator. The finance section will contain information on the amount in dispute, the advance on costs that has been fixed, the payments that have been made by the parties, any payments made to the arbitrators and, at the end of the proceedings, the costs of the arbitration. A further section will be devoted to any expertise proceedings that might be arranged. It will contain the details of the expert(s) and information on the financing of such proceedings. There will also be a forum section where exchanges may take place in a secured environment as explained previously.

In addition to the above, NetCase will also contain a calendar of the proceedings in which time limits fixed by the Secretariat (e.g. for payment of the advance on costs) or by the arbitral tribunal (e.g. for filing submissions) will be specified.

Parties and arbitrators will be able to put their documents directly into NetCase using the system’s post function. Depending on their nature, such documents will be assigned to one of NetCase’s various sections: correspondence, memoranda, procedural orders, Terms of Reference, award(s). The system will accept documents in pdf and tiff format. These formats have been purposely chosen because they are universal and can be read on most computers.

For the convenience of users, there will be an email address to which they may write to seek assistance. They will be invited to give a telephone number at which the Secretariat can reach them to offer help directly by telephone. There will also be a set of guidelines presenting the different sections and explaining how to use NetCase. Like the system as a whole, the guidelines aim to be simple and user-friendly.

The development of NetCase

The NetCase project

The undertaking called at the very outset for a policy decision to be taken on whether to use existing web-based platforms, install off-the-shelf software, or devise a tailor-made program from scratch. The first two solutions could not deal with present and future needs, so the third solution was preferred. It was felt that a specially designed in-house program would be capable of embracing current and future needs, in-house working methods and new projects. This was unlikely to be the case with off-the-shelf software, which, in addition, would not necessarily be compatible with ICC’s computer infrastructure and the Court’s database.

The project was characterized by its complexity. Consideration had to be given to ICC’s computer system and infrastructure and how to adapt existing architecture to the needs of NetCase. Also, it was necessary to combine an electronic document management system with the Secretariat’s computerized case management and information retrieval system. Furthermore, the necessary steps had to be taken to deal with viruses, security, speed of access and many other matters that a project of this magnitude implies.

5 These guidelines will relate specifically to NetCase and are not intended to be applied other than in that context. For general recommendations on the use of IT in arbitration proceedings, readers are referred to the documents drawn up by the ICC Task Force on IT in Arbitration, see hereinafter, pp. 59ff. Although independent of each other, the NetCase guidelines and the ICC Task Force documents are compatible and complementary.
It is safe to say that without the Secretariat’s computerized case management database (ICABase) NetCase would have been a mere intranet for exchanging documents. This is not the case, however. Instead, a system has been devised that draws on the information contained in ICABase while offering additional functions. This is a significant advance as it allows users to benefit from information hitherto available only to the Secretariat, enabling them to follow arbitration proceedings efficiently and in real time.

On a practical level, the project was developed in stages. First, a NetCase interface had to be created and an electronic document management system devised that would be integrated into ICABase. Once the two systems had been linked up so that information drawn from ICABase could be matched with the electronic document management system so as to display the results in NetCase, a lengthy testing phase began.

It may be said, in conclusion, that the NetCase project was achieved thanks to the close cooperation between the Secretariat and the computer engineers. Projects of this kind rarely progress as initially envisaged and it is impossible to anticipate all situations and problems likely to occur. For all involved it was an experience of ‘learning by doing’, as is often the case when applying IT. Most of the platforms for dispute resolution were built after pilot projects had been carried out.

Specific issues

Some of the matters raised during brainstorming were left aside for the time being as they involved technologies that had not yet been sufficiently tried and tested. It was decided that the future development of such technologies should be monitored with a view to possibly including them in a future version of NetCase. However, they were not felt indispensable to the launch of the first version.

(i) Language

Consideration was given to the use of Extensible Markup Language (XML), which is a simple, very flexible text format. Its purpose is to enable generic Standard Generalized Markup Language (SGML) to be sent, received, and processed on the Web as is currently possible with HyperText Markup Language (HTML). XML has been designed for ease of implementation and for interoperability with both SGML and HTML. However, standards are still being developed, so it was thought too early to work on adapting them to NetCase. XML may nevertheless be considered for future developments, as it offers the advantage of defining the content of a document independently of its format and will therefore facilitate the exchange of data between disparate platforms.

(ii) Search function

A full text search function has not been included in the initial version of NetCase but has been left for a future version, pending progress in optical character recognition (OCR). Such a function requires thesauruses and lists of key words to be compiled and regularly updated, which is a complex task given that documents are submitted in many different languages in ICC proceedings. Moreover, the vocabulary they contain is sometimes highly technical.
(iii) Electronic signatures

Electronic or digital signatures are most commonly used to enhance message authenticity and integrity. Many countries have already adopted laws recognizing the validity of electronic signatures, others are contemplating doing so, and some countries have not yet planned to legislate on the matter. Where laws have been passed or are planned, they sometimes differ in scope. Some of them, for instance, deal with Public Key Infrastructure (PKI) or with the authorities that can be accepted as certifiers, while others do not. It is beyond the purpose of this article to provide a country-by-country rundown of legislation on electronic signatures. However, parties and arbitrators are reminded that they should give the matter their attention if they plan to conduct proceedings exclusively online and thus to make use of electronic signatures.10

(iv) Certification

Our investigations revealed an absence of any uniform practice or generally recognized criteria for defining persons entitled to act as certification authorities and the information to be indicated in the certificate. Certifying authorities are sometimes considered as public or semi-public bodies but are not always official authorities. In some countries chambers of commerce play this role, while in others the post office or a public notary does so. It is not always easy to know how reliable the local entity delivering the certificate is. Some countries issue a list of certifiers (e.g. Finland), some specify the conditions to be met in order to act as a certification authority (e.g. France), while others either do not specify the conditions to be met or simply do not refer to certification authorities. A uniform practice should be established, indicating the types of authorities empowered to deliver certificates and the kind of information such certificates should contain.

Conclusion

It has been remarked that the one thing about IT that never changes is that it is in a constant state of change.11 NetCase will be no exception. Like any new development, it will need to be constantly adapted and improved as it attracts new users of all ages from an increasingly wide range of countries. The present author estimates the length of transition between a procedure fully or partly based on communication by traditional means and a procedure conducted almost exclusively using electronic means to be between three and five years. It will still be some time before large numbers of arbitration users have the necessary equipment (high-performance computers, scanners, etc.) and high-speed connections to the Internet. It will also take some time for all countries to adopt a law on electronic signatures and for users to trust the electronic environment and to work fully online. However, the tremendous progress that has been made during the last ten years is a cause for optimism and for confidence in the expansion of IT in arbitration.

10 For more information see e.g. the Digital Signature Law Survey at <rechten.uvt.nl/simone/ds-proj.htm>.

11 See ISSE (Information Security Solutions Europe) at <www.eema.org/isse>.