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# Bulletin

## New Upgrades to ICC NetCase

By Mirèze Philippe



**International Chamber of Commerce**

*The world business organization*

**International Court of Arbitration**

38, Cours Albert 1er, 75008 Paris, France  
Tel. +33 1 49 53 29 05 Fax +33 1 49 53 29 33  
Website [www.iccarbitration.org](http://www.iccarbitration.org)  
E-mail [arb@iccwbo.org](mailto:arb@iccwbo.org)

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## New Upgrades to ICC NetCase

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By *Mirèze Philippe\**

NetCase, ICC's purpose-built platform for conducting proceedings online, has undergone a number of developments to keep it in line with user needs. After a two-year run-in, during which several refinements and modifications have taken place, NetCase now offers a service better adapted to client practices and requirements. The latest upgrades have notably enhanced the posting system and introduced a full-text search facility. The purpose of this article is to present the recent improvements made to the platform (I) and discuss experience gained since the launch of NetCase in November 2005 (II).<sup>1</sup>

### I. NetCase upgrades: learning by doing

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The requirements laid down at the start of the NetCase project were very ambitious. It was quickly realized that the market survey carried out prior to the launch of the project would be an inadequate basis for developing the project, given the speed with which IT tools progress and new requirements arise. It was decided that the wise approach would be to develop the service step-by-step in light of day-to-day practice, as this was likely to be more instructive with regard to user needs and possible improvements.

The process followed can briefly be described as follows. Whenever an improvement was felt necessary, users' comments and opinions were first collected so as to make sure that the improvement would meet their expectations. Improvements were implemented progressively, each being consolidated before moving on to another. Improvements that required more reflection or could not be made satisfactorily using current technology were left for a later stage.

Below, the improvements made since the beginning of NetCase are presented in chronological order.

#### 2006: follow-up to postings

One of the first improvements to be made concerned the alert messages sent when new postings are made. These messages were originally sent by fax, as this was at the time thought to be a more reliable method of delivery. Technology has since progressed, reducing the risk of inaccessibility of mailboxes and web systems. Also, most law firms have equipped themselves with firewalls to protect their systems from hackers and destructive spam. Consequently, messages alerting users to new postings are now made by email and no longer by fax.

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\* Special Counsel, Secretariat of the ICC International Court of Arbitration; NetCase project leader. The views expressed in this article are those of the author alone and should not be regarded as representative of or binding upon the International Court of Arbitration or its Secretariat.

<sup>1</sup> For a comprehensive presentation of NetCase published at the time of its launch, see the author's article 'NetCase: A New ICC Arbitration Facility' in *Using Technology to Resolve Business Disputes*, ICC IC Arb. Bull., 2004 Special Supplement (ICC, 2004) 53.

The content of the alert message has also changed. At the outset, it simply indicated that a posting had been made in a given case. This however proved to be insufficient, and the message was therefore modified to include the name of the person who made the posting and the section of NetCase in which the posting was made.

NetCase users expressed the wish that new postings be displayed in bold until such time as they were read. A technical difficulty was encountered here, as NetCase does not operate like a mailbox. The solution adopted was to highlight the most recent postings in bold for seven days, so as to enable users to identify them immediately.

Documents were initially sorted by date, which made it difficult for users to see at a glance the new documents that had been added. This could for instance lead to a submission being listed separately from its accompanying exhibits if they bore different dates. The sorting criterion was consequently changed from the date of the document to the date of the posting, which is automatically inserted by the system.

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Welcome  
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My cases  
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Site Map | Conditions | Guidelines | Help | Frequently Asked Questions | Search | Glossary

**Table of Documents**

Quick help (click on Help for additional information)

**Parties and Arbitral Tribunals are required to access NetCase regularly to see new documents posted.**  
New postings are indicated **in bold for a period of 7 days** in the "Table" mode.  
To post a document, go to "Post" in the left-hand margin.  
The "Table" mode permits to click on the small arrows at the top of each column to sort in ascending or descending order.  
The "List" mode permits to make full text research.  
To search for documents posted in this section use the "List" mode, and for documents wherever they are located go to "Search" in the toolbar at the top.

Table List

Legend

All  Arbitral Tribunal  Secretariat  Other recipients  Demo

**Table of documents**

59 documents exist in this section.

Date of the document	Posted on (GMT + 1)	Author(s)	Folder	Title or subject	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>2008/08/19</b>	<b>2008/09/02 13:54:25</b>	<b>Ms. Mirèze Philippe</b>		<b>Letter of thanks</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2008/04/24	2008/04/24 17:00:41	Ms. Mirèze Philippe	Claim concerning construction of the parking	Non compliance with security standards	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2008/04/24	2008/04/24 17:00:41	Ms. Mirèze Philippe	Claim concerning construction of the parking	1- C s 1 - Letter from Claimant	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2008/04/24	2008/04/24 17:00:41	Ms. Mirèze Philippe	Claim concerning construction of the parking	2- C e 2 - Document produced as evidence	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2008/04/24	2008/04/24 17:00:41	Ms. Mirèze Philippe	Claim concerning construction of the parking	3- C w 3 1 - photo DSCN3899	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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*Documents highlighted in bold for seven days from date of posting*

Some users requested that the time of the posting be indicated, while others did not consider this information to be important. It should be said that NetCase users come from all over the world and thus may be located in different time zones. The decision was taken to display the time as well as the date of posting and to specify the time as being GMT+1.

The form in which dates are displayed was also modified to reflect the usual way in which practitioners organize their files, that is to say by year, then month, then day. This was a first step in the rearrangement of documents, which was to be continued in subsequent developments.

A further change was made to improve the speed with which documents are displayed. Pages are now displayed instantaneously, irrespective of the number of documents and the size of the documents stored in the particular section.

A wish expressed by arbitrators was that parties should be given the possibility of posting simultaneous filings, for example on witness statements. It was decided that this wish should be granted, given that users were to be encouraged to adopt NetCase systematically for all filings and messages, rather than sending unprotected emails. The solution was found in the forums, which are places where persons involved in a case can exchange views. Various forums already existed, with different rights of access. For example, the forum for exchanges between arbitrators is not accessible to the parties' counsel and vice versa. Two new forums were added—one for exchanges between the claimant and the arbitral tribunal and the other for exchanges between the respondent and the arbitral tribunal—thereby allowing the claimant's counsel and the respondent's counsel to post filings simultaneously. Once the documents have been received by the arbitral tribunal, counsel are ordered to post them with the other case documents so that the other party can see them.

One last change carried out in 2006 was to make information about NetCase and its Conditions of Access available on the NetCase homepage.

### **2007: posting and organizing documents**

The NetCase platform was built in such a way as to create a standard method of organizing information, messages and documents. In 2007, improvements were made to facilitate the posting of documents, extend the range of possibilities offered for sorting and organizing documents, and to enhance the display of information.

As far as the posting of documents is concerned, users were originally required to enter the date of each document and its title and upload documents separately. This was changed, so that the fields need only be filled in once rather than repeatedly for each document. Also, users were given the possibility of browsing through document lists and uploading up to ten documents at a time. Once the first ten documents have been selected and confirmed, they are listed in the lower part of the posting page and users can then proceed to select further batches of up to ten documents, as required. This process has the benefit of allowing users to check that they have chosen the right documents before they are posted, and to delete or add documents if this is not the case. No documents are actually posted until the operation has been validated. The posting of multiple documents has thus become as easy as sending attachments to emails, with the important difference that documents posted in NetCase (i) travel in a secure space, (ii) are encrypted, (iii) are automatically organized, and (iv) are stored in the sections to which they belong.

Another valuable feature concerning postings, which has important consequences for the retrieval of documents, is the possibility of specifying the name of a folder when posting submissions. Folders can be very useful in complex cases involving numerous issues and several filings for each issue. In a construction dispute, for instance, a user may file in a given folder a memorial and attachments concerning an installation's lack of conformity with contract specifications and then, at a later date, add to that folder a

memorial and attachments concerning the quantification of damages in connection with the same issue. This allows filings to be sorted so as to retrieve all submissions and related attachments concerning a specific issue.

In addition to the changes made to the posting of documents, their organization was also improved. An important improvement was the automatic listing of all documents in a document table, which enables lawyers, arbitrators and the Secretariat of the ICC International Court of Arbitration to have a chronological list of all documents in a case. A new section was also created, which is exclusively devoted to exhibits attached to postings. Users can download documents either from the section in which they are stored (e.g. correspondence, submissions, exhibits, procedural orders, Terms of Reference, awards) or from the table of documents. The existence of attachments to a document is indicated by a paper clip.

Another important development concerned file formats. A change was made so as to make it possible to post documents in several file formats. Besides *tiff* and *pdf*, the following types of files are also accepted by the system: *doc*, *xls*, *txt*, *jpg*, *bmp*, *ppt*.

Finally, the 2007 changes also included an improvement in the display of information, so as to show the recipients of postings. Those recipients are indicated by pictograms, the key to which can be found at the top of the screen.

### **2008: full-text search**

It has always been possible to search for individual documents within NetCase. Now, however, a powerful search engine makes it possible to run full-text searches across all documents in a given case, regardless of their form. Various possibilities are offered, including standard, refined and advanced searches. The aim has been to offer users search tools that resemble those to which they are accustomed when surfing on the internet, but with a number of additional advantages. Thus, at the most basic level, searches can be made simply by entering one or more words in a search box. The result of the search can then be narrowed down by adding another word or words in an additional box. These two moves will usually be sufficient to obtain the result needed. However, if necessary, users have at their disposal advanced search functions offering further possibilities. These include, for instance, searching documents over a specified period of time or searching documents within a particular section of NetCase. Lastly, searches can also be made under categories of information. For instance, where documents are filed in different languages, it is possible to select a given language so as to display only the documents in that language.

The search result includes an indication of the degree of relevance and a two-line summary.

Documents found may be downloaded in their original format, i.e. the format in which they were uploaded to NetCase, or in their searchable format, i.e. the format resulting from OCR (Optical Character Recognition) processing. In the searchable documents, different kinds of information are displayed in different colours (e.g. words searched in yellow, names of persons in another colour).

The documents can be displayed in two alternative ways: in a table or a list, each of which presents the information about documents in a different way. The list also contains some additional information not shown in the table. The table displays documents sorted by date of posting, whereas the list displays documents sorted by the date of the document. Documents can be arranged in ascending or descending order in the table.

Another useful function offered by the search tool is the creation of baskets in which users may bookmark documents that they may wish to retrieve subsequently whenever they connect to NetCase.

Lastly, for the convenience of users, quick tips were added at the top of each webpage. Contextual help is also available, as well as a short demonstration on the search page.

To sum up, since the creation of NetCase, many features have been added to enhance its utility and efficiency.<sup>2</sup> They add to the overall appeal of NetCase as a secure one-stop system for counsel and arbitrators, a means of centralizing documents and messages, and a uniform method of storage allowing practitioners to become quickly adept in accessing information, documents and messages.

The screenshot shows the NetCase web application interface. The browser title is "NETCASE - N°20000/EC - Table of Documents - Mozilla Firefox". The address bar shows the URL: "https://netcase2003.iccwbo.org/Netcase/index.do;jsessionid=00011a4k4yoNqHJb-PKlaGTbAQM:". The page content includes a navigation menu on the left with items like "Reference of the Case", "Address Book", "Overview of the Case", "Constitution of the Arbitral Tribunal", "Financial Aspect of the Case", "Time Limits and Procedural Timetable", "Post", "Table of Documents", "Correspondence", "Pleadings / Memorials / Submissions", "Exhibits", "Procedural Orders", "Terms of Reference", "Award(s)", "Procedure of Expertise", and "Forums". The main content area is titled "Table of Documents" and features a "Quick help" section with instructions on using the "Table" and "List" modes. Below this is a "Table List" section with a legend and search filters. The search results section shows two document entries for "unidroit": "Correspondence / Re14 - UNIDROIT Principles Revised French 2004" and "Correspondence / Re13 - UNIDROIT Principles French". The interface is displayed in a Mozilla Firefox browser window.

### Search page

<sup>2</sup> For a description of the original features, see *supra* note 1 and the author's article 'NetCase: Keep going where progress leads you' (2006) 38 *University of Toledo Law Review* 417.

**FINAL REPORT ON LIS PENDENS AND ARBITRATION**

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**1. INTRODUCTION**

1.1. This is the Committee's final report on *lis pendens*.<sup>1</sup> After a conceptual introduction (Part I), the report gives an overview of *lis pendens* from the perspective of domestic law and public international law (Parts II and III). Thereafter, the doctrine of *lis pendens* is discussed and analysed from an international commercial arbitration perspective (Part IV). Finally, the Committee sets out its

*Document in searchable format*

## II. Experience acquired since the inauguration of NetCase

The development of NetCase was a challenging undertaking. The achievements made since its inauguration have been based on the experience of ICC itself and the views and experience of users.

### ICC experience

When NetCase was launched, the intention was to encourage its use progressively rather than massively, so as to allow counsel, arbitrators and members of the Secretariat of the ICC International Court of Arbitration to familiarize themselves with this new tool. A number of potential users were approached. They included counsel and arbitrators involved in IT-related arbitrations, members of the ICC Commission on Arbitration task force responsible for preparing guidelines on the use of IT in arbitration,<sup>3</sup> and persons who had participated in conferences at which NetCase was presented.

<sup>3</sup>

These guidelines consist of three documents—'Issues to be Considered when Using IT in International Arbitration', 'Operating Standards for Using IT in International Arbitration', 'Explanatory Notes on the Standards'—published in *Using Technology to Resolve Business Disputes*, ICC IC Arb. Bull., 2004 Special Supplement (ICC, 2004).

Presentations to future users took place in law firms allowing both lawyers and paralegals to ask questions about such matters as how documents should be organized and posted, what mistakes should be avoided or how certain difficulties can be overcome. In such presentations, the players felt more at ease to exchange views on issues they may not have raised in public presentations.

A number of interested persons were unfortunately prevented from using NetCase for various reasons. For some, their case was already too far advanced (one lawyer regretted that huge courier costs could have been avoided if NetCase had been available earlier in his case). For others, they were faced with the refusal of another player in the case to use NetCase (the Conditions of Access require that all players involved in a case must expressly agree to work with NetCase and the refusal of just one player is sufficient to exclude its use). Yet others preferred to wait for others to use the platform first or to continue using their own intranets until NetCase had been further developed.

The expectations of those who preferred to ‘wait and see’ can now be considered satisfied, due to the improvements made over the last three years. As soon as improvements began to be implemented, interest started to grow. In 2005 NetCase was chosen for two cases, in 2006 for a further seven cases and in 2007 for six more cases. Interest has continued to grow in 2008, especially following the improvements made to posting and the introduction of full-text searches. Aware of the benefits NetCase offers, lawyers are increasingly inclined to suggest its use to other players in their cases, and are now doing so even at the stage of the constitution of the arbitral tribunal.

At the outset, agreement to use NetCase implied that its use should be exclusive. This meant that all documents had to be posted in the system. The intention behind this decision was to encourage practitioners to move from the traditional world of paper documents to a purely web-based environment. Experience has shown that users apprehend the service differently according to their needs. It was therefore suggested that the use of NetCase on an exclusive basis could be overruled if the parties and the arbitrators agreed otherwise or the arbitrators ruled otherwise. In some cases, users requested to use the platform as a back-up system, while in other cases they decided that certain types of documents—notably exhibits—would be filed in hard copies. The lesson here was that some flexibility was required, so as to allow counsel and arbitrators to agree on the way in which they wished to use NetCase.

Experience has shown that the decision to use NetCase is not dependent on the nature of the case, for NetCase has been chosen for cases in which the amounts in dispute ranged from less than 1 million US dollars to 11 billion US dollars, for cases relating to sectors and activities as varied as transportation, telecommunications, oil and gas, water treatment, distribution and utility services, and for cases involving two parties, multiple parties and State parties from countries in different parts of the world, including Moldova, India, Nepal and Yemen as well as Europe and the Americas. Nor does the decision to use NetCase appear to be dependent on the volume of the documents to be posted, as there have been some highly voluminous filings in certain cases.

### **Practice and experience of users**

Early users encountered difficulties in connection with the organization and naming of electronic documents. It is recommended that they save documents under names that facilitate their retrieval, e.g. ‘c-x-Statement of Mr Jones’, where ‘c’ stands for claimant and ‘x’ for expert witness. The term ‘exhibit’ will not suffice to locate a document quickly where there are several exhibits. If the exhibits accompanying a document follow a particular order, they may be numbered, e.g. ‘10-c-x-Statement of Mr Jones’. The

uploading of documents will be greatly facilitated if they are first numbered and put in order before being selected. A list of exhibits to each submission is also useful, as is customary with filings off-line. Bundles of documents should be categorized to make it easier for arbitrators and counsel to understand how the submissions are organized.

In this connection, users will find it helpful to consult the guidelines on using IT in arbitration prepared by a task force within ICC's Commission on Arbitration.<sup>4</sup> Intended for any proceedings in which IT facilities are used, they can of course be applied to cases conducted using NetCase. They address several important practical issues, including that of naming files. In one ICC case conducted using NetCase, it was mentioned in the Terms of Reference that the parties agreed to follow the recommendations made in these Commission documents with regard to the naming of files so as to ensure that the documents could be easily identifiable.

Some early users were surprised to discover that once a document has been posted, it cannot be deleted. This, however, is entirely consistent with paper documents, for when a document is sent by normal mail, it is gone for good. The sender may invite the recipient to disregard it or may send another document replacing it, but once it is out of the sender's hands, it can no longer be retracted. By way of contrast, other users, convinced of the value of NetCase as a depository of case documents, have considered it useful to post in the system the documents they exchanged before starting to use the platform.

One of the lawyers who have used NetCase pointed to a clear advantage it has over the filing of submissions by email. There is a real risk when submissions are filed by email that they may be refused if the mailbox to which they are sent is full. Posting submissions in NetCase avoids this risk, as documents are immediately filed in the system and not in mailboxes and thus cannot be rejected simply because they arrived at the same time as a host of other emails. Furthermore, users do not have to scour an endless list of emails before getting to the submissions they need to download. The only email they receive is an alert message informing them of a new posting in NetCase and inviting them to access NetCase to discover the item posted.

The support service offered with NetCase has been used by counsel and arbitrators to make sure they correctly understand how to use the platform, including browsing and posting documents and messages, as well as to seek clarification on matters of a non-technical nature such as whether to insert a reference to NetCase in the Terms of Reference or rather to make it the subject of a procedural order. Their confidence in NetCase has been increased by the support received in response to their questions.

Practice varies regarding reference to NetCase in the Terms of Reference. It is generally inspired by the Conditions of Access. Arbitrators sometimes simply indicate that the parties and the arbitrators agree to use NetCase as provided for in the Conditions of Access and attach these to the Terms of Reference. Sometimes, the only reference made in the Terms of Reference is that the parties agree to use NetCase for all communications, occasionally with the addition that the parties undertake to be bound by the Conditions of Access. On other occasions it has been mentioned that NetCase would be used for all communications and for case management purposes, unless otherwise ordered by the arbitrators or agreed by the parties and the arbitrators. In two cases it was specified that parties would submit documents by normal mail only where it

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<sup>4</sup>  
See *supra* note 3.

was impossible or impracticable to post a document in NetCase. There has also been a case in which it was mentioned that if a party wished to withdraw from NetCase, this would be possible provided that reasonable notice was given to allow for the organization of alternative communication between the parties and the arbitrators. The Terms of Reference in one case mentioned that deadlines would be deemed to have been complied with if, prior to their expiry, the relevant communications had been posted in NetCase. Occasionally arbitrators have indicated that all written communications are deemed to have been validly made when posted in NetCase.

One arbitral tribunal explicitly mentioned in the Terms of Reference that the award would be notified to the parties by ICC in hard copy, as indicated in the Conditions of Access. The reason for ICC's continuing to notify awards in hard copy (an electronic version of the award is subsequently made available in NetCase) is to avoid its being challenged on the ground that it was not notified or not properly notified to the parties.<sup>5</sup>

The economies permitted by NetCase have been highlighted by users. One lawyer pointed out that use of NetCase saves the cost of having a team assemble documents and prepare them for dispatch. He also added that printing documents posted on NetCase is much less costly.

Overall, the feedback received from users has been very encouraging. NetCase has been found to be a highly effective tool for case management, comparing favourably with other similar platforms as far as the speed of uploading, ease of navigation and availability of information are concerned. They have also appreciated being kept informed of new developments and seeing their needs taken into account.

## Concluding remarks

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As the number of computer-literate arbitration practitioners grows, NetCase can be expected to become an increasingly frequent choice for conducting ICC cases. NetCase in no way modifies the established principles of ICC arbitration, but rather offers a means of facilitating its conduct using the everyday tools of modern technology. With a computer, an internet connection and a web browser, an arbitrator or counsel is equipped for using NetCase. All that remains is to sign the Statement of Acceptance of the Conditions of Access and Use of NetCase<sup>6</sup> along with any other arbitrators and counsel.

The benefits of NetCase are considerable. In addition to those resulting directly from the upgrades discussed in this article, NetCase allows documents to be accessed at any time and from any location, dispensing with the need to transport hard copies. It offers a means of ensuring that documents are visualized in a uniform manner by all participants in hearings. Furthermore, it avoids the need to photocopy documents for

<sup>5</sup> Although the UNCITRAL Working Group on arbitration has been discussing electronic communications for some time, only arbitration agreements made electronically have so far been addressed, not the transmission of awards online or the conduct of proceedings online. See UNCITRAL, Working Group II, 44th session, 23–27 Jan. 2006, Doc. A/CN.9/WG.II/WP.139, available at <[www.uncitral.org](http://www.uncitral.org)>.

<sup>6</sup> The Statement of Acceptance of the Conditions of Access and Use of NetCase can be downloaded from the homepage of NetCase at <[www.iccnetcase.org](http://www.iccnetcase.org)>.

newcomers to the proceedings in the event that a party acquires a new counsel or an arbitrator is replaced. In the words of a proponent of technological innovation in arbitration,<sup>7</sup> ‘NetCase is a significant achievement for those involved in international arbitration and also an important step in the development of online dispute resolution’.

Lawyers eager to ensure that they will be able to take advantage of these benefits are already starting to include references to NetCase in the arbitration agreements they draft for their clients. This is a trend that is likely to develop and may well in the not too distant future lead to a variant of the standard ICC arbitration clause providing for use of NetCase.

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<sup>7</sup> B. Davis, professor at the University of Toledo College of Law, USA.

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## Bulletin

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