Kluwer Arbitration Blog

Digital Case Management in International Arbitration

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The modern business world strives to increase efficiency – and the use of modern IT systems is a key tool in that regard. One would thus expect that arbitration, which aims to resolve disputes efficiently, would jump at the many opportunities offered by modern IT technology to truly digitalise dispute resolution. But progress has been slow. While arbitration practitioners widely recognise the benefits of using modern technologies, the approach in practice is still largely based on conventional methods.

Indeed, there is sometimes a striking mismatch between the visionary topics that are being discussed (such as the question of when artificial intelligence will eventually replace arbitrators) and the reality of contemporary arbitration (in which it is still common for trainees and assistants to prepare hard copies of hearing bundles containing thousands of pages). In this blog post, we will therefore focus on one particular use of modern IT technology that could have a huge impact on arbitration and that is already being pursued by some in the arbitration community: digital case management systems.

What could a digital case management system look like?

The ideal digital case management system would address a number of aspects, including – most importantly – the management of documents. All documents submitted in a particular case would be run exclusively through a single platform. In particular, the parties would file their submissions through the platform and would upload all exhibits there as well. Furthermore, the tribunal and the institution would communicate with the parties exclusively through this platform. Thus, many of the problems associated with email communication could be avoided: Gone would be the days of struggling with size constraints! In addition, the risk of accidentally excluding a recipient from the list of addressees would also disappear. A simple upload of the communications would be sufficient for avoiding these issues altogether.

But not only would the sending of communications be simplified, the storage and retrieval of communications would also be made much simpler. All communications and exhibits would automatically be filed in the appropriate place and could thus easily be found when needed. Everything, *i.e*. the complete record of the case, would

be stored in one place, accessible instantly and regardless of a user's location and whether a PC, tablet or smart phone is being used. Hard copy files could thus be completely avoided, as could the need for hearing bundles as well as the costly and tedious exercise of transporting them to and from the hearing venue.

A further benefit of such a document management system would be that it automatically ensures that the record of the arbitration is clear and in order. More often than one would hope, parties to an arbitration file documents without exhibit numbers or file updated versions of previously filed exhibits. In such situations, references to documents can become unnecessarily complicated and, worse still, it can even be difficult to distinguish which documents are supposed to be "officially" on the record of the arbitration. However, if the document management system does not allow such action, these situations could be avoided.

All that said, document management would not be the only benefit; the platform could also manage the chronology of the case. First, it could do so with a view to past procedure, listing when and by whom each submission was filed. And, even more importantly, it could do so with a view to the future. Thus, the tribunal would not need to put future deadlines into a word document to be distributed to the parties as an annex to Procedural Order No. 1. Instead, the tribunal could simply enter future deadlines into the platform (and, if necessary, update the deadlines through the platform). Ultimately, the whole chronology of the case going backwards and forwards could be presented in a user-friendly interface, not dissimilar to a Facebook feed. At the end of the arbitration, this system could perhaps even automatically create an initial outline of the procedural history for use in the award.

Finally, through artificial intelligence (of limited sophistication), the system could be taken even further. For example, it could be programmed to recognise references to exhibits within a submission and, as a result, automatically offer a hyperlink to allow easier access to the referenced exhibit. Likewise, hyperlinks could be offered for references to specific sections contained in a previous submission. In this way, arbitrators would be able to follow the development of the parties' arguments on a particular issue very easily, without the need to have several hard copies spread out across their desks. In addition, the platform could simplify and facilitate case scheduling. After the tribunal suggests a timeframe for a hearing, the arbitrators and the parties would indicate when during this timeframe they are available – thereafter, the platform would automatically compute a list of potential hearing dates.

What are the challenges?

There are several challenges to the use of digital case management systems. First of all, the development of such systems is not cheap, in particular because they must meet the highest standards of cyber security. Moreover, data protection concerns need to be addressed as well. In addition, the use of such systems is only possible if the parties to a dispute are in agreement in this regard. Indeed, for some aspects of such systems (including the strict limitation of the record of the arbitration to communications and documents filed through the system), a clear set of rather

technical rules will be required.

Apart from that, key players in the arbitration community will need to promote the proliferation of digital case management systems. However, parties will rarely think about the use of case management systems when agreeing on an arbitration clause for their contract. Moreover, once a dispute has arisen, they may no longer be able to find respective agreement. At the same time, some tribunals may be reluctant to suggest the use of digital case management systems, as they prefer the tried and tested (paper-based) approach.

Against this background, arbitral institutions appear to be best placed to push for digital case management systems. They know what would really help users and can thus steer the development in the right direction. But more importantly, they can introduce the necessary changes to make digital case management systems a feature of arbitration under their respective rules. Indeed, using the institution's own digital case management system should be the standard (with an opt-out option for those users who prefer a traditional method of case management).

Are these ideas new?

Of course, we are not the first ones to come up with the idea of digital case management systems. Several private providers like CASE ANYWHERE or eJust Arbitration Platform are offering systems with some of the features we have described above. Moreover, as early as 2005, the ICC presented NetCase – a document management platform which allowed parties to electronically follow the course of the arbitration. However, the system does not seem to have been widely used and is no longer being offered.

Other institutions offering case management systems are the AAA (WebFile) and WIPO (ECAF). Moreover, the Russian Arbitration Center at the Russian Institute of Modern Arbitration (RIMA) has been offering a digital case management system since 2017, with an English version having been launched in October 2018. The system is expressly referenced in Article 6 of the RIMA Rules, with the parties having the option, but not the obligation, to use it for electronic filings.

Recently, the SCC unveiled the SCC Platform which will enter into service on 1 September 2019. From thereafter, "all SCC arbitrations will be administered through the SCC Platform". In particular, the SCC Platform will allow communication and file-sharing between the SCC, the parties and the tribunal, downloading and uploading of documents on the go, to the exclusion of email or other channels. It will also contain a calendar of events showing how far the case has progressed.

Conclusion

There is a great potential to increase the efficiency of arbitration by using digital case management systems. Arbitral institutions are best placed to promote the use of such

systems and there are already several products on offer or planned for the near future. Against this background, we are convinced that, in a few years' time, using digital case management systems will be the standard in international arbitration.

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