

## A Selective Guide to Online International Arbitration Resources

Gloria Miccioli

Arbitration, a process used to settle a dispute in a non-judicial setting, is particularly effective for international commercial disputes because litigation in a foreign court can be time-consuming, complicated, and expensive. In addition, a decision that is rendered in a foreign court is potentially unenforceable and may be partial to the party native to the court. Arbitration is a simpler process that is governed according to the rules of a neutral arbitration organization that has often been selected by means of a clause inserted into the international agreement or transnational contract. The arbitration is administered by a panel of arbitrators who are agreed upon by both parties. In addition, the confidentiality of the arbitration process is attractive to those who do not wish the terms of a settlement to be known. The growing popularity of international arbitration is a two-edged sword for the researcher: as the number of disputes that are arbitrated rather than litigated grows, so does their interest to third parties. However, the nature of the arbitration process prevents many awards from being made public. It can be frustrating to search for information on international arbitral awards, but the Internet is making it easier to find them and important related documents. An institution's website is the best first place to look for information. I am going to review the websites of major arbitration organizations as well as selected commercial databases. Some are more helpful than others. For a more comprehensive look at arbitration sources, see Jean M. Wenger's *International Commercial Arbitration: Locating the Research* (Revised).<sup>1</sup>

One confusing element of arbitration research is that awards are issued by a number of institutions. There are many arbitral bodies; parties will select the one best suited to their needs. For example, the World Intellectual Property Organization Arbitration and Mediation Center is particularly appropriate for technological, entertainment, and intellectual property disputes. The International Centre for the Settlement of Investment Disputes specializes in investment disputes. In contrast, some organizations welcome any type of dispute. One arbitration organization may be open only to member governments; another may be open to any entity or individual. Should a researcher look at the awards of one or many institutions? He or she might want to review the arbitration rules and model arbitration clauses of a given institution before starting to research its decisions. These are usually found on the institution's website.

The researcher must also be aware that there are different arbitration treaties and conventions to which a party or nation may adhere. One of the most important is the Convention on the Recognition and Execution of Foreign Arbitral Awards of 1958, known as the New York Convention. More than 130 countries have agreed to abide by the terms of this Convention. The New York Convention was sponsored by UNCITRAL, the United Nations Commission on International Trade Law. UNCITRAL was established by a

resolution of the UN General Assembly in 1966 to promote harmony and unity in international trade. While it does not administer arbitration disputes, UNCITRAL has produced arbitration rules in accordance with which parties may choose to arbitrate. These rules may be used by any public or private entity. In addition, UNCITRAL has issued a Model Law on International Commercial Arbitration that has influenced the national arbitration legislation of more than 45 countries.

Important UNCITRAL arbitration documents can be found on the UNCITRAL website. Click on the language of choice to get the UNCITRAL mission statement and a sidebar of links. The Adopted Texts button brings up links to "Texts resulting from the works of UNCITRAL". Click on "International Commercial Arbitration and Conciliation" for annotated links to the New York Convention, UNCITRAL Rules of Arbitration, and the Model Law. For a current list of signatories to the New York Convention, go to the Status of Texts sidebar button, then click on "Status of Conventions and Enactments of UN Model Laws". Scroll down for the New York Convention information. Remember, UNCITRAL deals with different aspects of international trade, so its website covers areas besides arbitration.

Go back to the sidebar buttons and click on Case Law - CLOUT. CLOUT stands for Case Law on UNCITRAL Texts; it is intended to be a collection and distribution mechanism for information on court decisions and arbitral awards "relating to the Conventions and Model Laws that emanated from the work of the Commission" in order to promote awareness of the texts and to "facilitate uniform interpretation and application". It covers the UNCITRAL Model Law on International Commercial Arbitration, among other UNCITRAL model laws and conventions. These are selected abstracts of decisions and awards from the courts of countries that have enacted legislation based on the Model Law. They are published irregularly and the coverage of arbitral awards is sketchy. The full texts are stored with the Secretariat in the original language and are available upon request and for a fee. The cases are indexed by CLOUT case number, Model Arbitration Law article number, keyword, jurisdiction and date. The CLOUT page is not very easy to follow so I suggest that you click on CLOUT User's Guide on the CLOUT screen for a good explanation of what is covered and how to retrieve documents.

International Chamber of Commerce (ICC) -- International Court of Arbitration (ICA)

The International Chamber of Commerce calls itself "the world's leading organization in the field of international commercial dispute resolution." Its dispute resolution procedures specifically target international business disputes. ICC arbitrations are confidential and offer the parties the choice of arbitrators, place of arbitration, rules of law, and language of the proceeding. The International Court of Arbitration was established in 1923 as the arbitration body of the ICC. It has administered over 12,000 arbitration cases involving parties and arbitrators from more than 170 countries and territories.

The ICA website contains a great deal of information and it is clear, well-organized, and easy to navigate. Sidebar links on the home page serve as a site map to explanations and documentation. You will find information on the arbitration process in general as well as on specific ICC procedures and rules. This is very helpful to the novice arbitration researcher. The explanations and documentation are found as links under "Arbitration Services", "Other ICC Dispute Resolution Services", and "Documentation".

The ICC has several dispute resolution mechanisms. The main ICC Rules of Arbitration are available in PDF format in 13 languages and in HTML in English and French (the official languages).

The ICC has produced Model or Suggested Clauses for each of its dispute resolution procedures that can be used in contracts and business agreements. The Model Arbitration Clause is available in over 30 languages. You can find links by clicking on the buttons under the sidebar heading "Documentation - Model or suggested clauses".

Finally, the button labeled "Awards" looks promising but does not deliver much. It takes you to a page that lists sources of award information, including several not produced by the ICC. One print publication, the ICC International Court of Arbitration Bulletin, publishes excerpts from selected awards and articles and developments in arbitration, but it requires a paid subscription. However, the website does have the tables of contents of issues back to June 1990. The Awards page also has a search box that allows you to enter a case number and get back information on where the award (or excerpt) is published, but there is no information on date coverage or how complete the case finder system is.

International Centre for the Settlement of Investment Disputes (ICSID)

Created in 1966 to facilitate the settlement of investment disputes between member governments and foreign members who are nationals of other member governments, the ICSID is an autonomous organization with close ties to the World Bank. It was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

All ICSID members are also members of the World Bank, and the expenses of the ICSID Secretariat are funded by the Bank. Dispute costs are borne by the parties involved. Application to the ICSID for arbitration is voluntary, but once the process starts, the parties cannot withdraw. In addition, all member ICSID states are required to recognize and enforce an ICSID arbitral award even if they are not parties to the dispute.

Investment contracts between member states and investors from other states often provide for ICSID arbitration through Model Clauses. Other means of advance consent to ICSID arbitration can be found in investment laws and over 900 bilateral investment treaties. A set of Additional Facility Rules authorizes the ICSID to administer some proceedings outside the scope of the Convention (such as where either party is not a member) and for disputes that are not strictly investment in nature.

The ICSID website is simple and well-designed; the left sidebar links to clearly described pages, such as the ICSID Convention. The website itself provides important documents and information. To find out if a country is among the 154 that have signed the Convention, go to the List of contracting states. You will also get the signature date, date of deposit of ratification, and date of entry into force. The Bilateral Investment Treaties page provides the names of parties to bilateral investment treaties and a chronological list. Click on a country name and you will get BITs that country has signed with other countries, date of signature, and entry into force if applicable. But remember that the list covers only 1959-1996. Treaties signed after 1996 will not appear. The Chronological List gives a year-by-year breakdown of treaties. What is missing are the actual texts of the treaties, which the researcher usually also needs. Also, these lists may not be complete. You may want to see if a government's website has its own listing of bilateral investment treaties that it has signed.<sup>2</sup>

The button ICSID Cases breaks down into links to Pending Cases, Concluded Cases, and Online Decisions and Awards. There are over 70 pending cases. Among the information given: case name, case number, subject matter, date of arbitration registration, date of constitution of the tribunal, composition of the tribunal, outcome of the proceeding, and either citations or links to any published decisions made during the process. The same type

of information is available for the more than 80 concluded cases, plus links to online full text decisions for more recent cases. Online Decisions and Awards links to ICSID decisions and awards and in some cases to related national decisions. It is not clear how complete these lists are.

Also available on the website is the ICSID Bibliography, which presents citations on texts related to the Convention, such as where to find translations of the Convention in different languages. It also has an extensive list of books and articles on the ICSID and investment disputes.

#### Permanent Court of Arbitration (PCA)

Located in The Hague, the Permanent Court of Arbitration "administers arbitration, conciliation, and fact finding in disputes involving various combinations of states, private parties, and intergovernmental organizations." Established in 1899 by the Convention for the Pacific Settlement of International Disputes, it sees itself as the "first global mechanism for the settlement of inter-state disputes." The 1899 Convention was revised at the second Hague Peace Conference in 1907. Its modern rules of procedure are based on the UNCITRAL Arbitration Rules. Over one hundred states are parties to one or both of the Conventions. A complete list of Contracting States and Accession Information is given.

Although there is a simple search box, the left sidebar buttons allowed me to navigate the site with ease. "Basic Documents" brings up links to the Conventions, rules, and model clauses, among other items. Different rules may be used depending on the nature of the parties or the nature of the dispute. This reflects the accessibility of the PCA. There are Optional Rules of Procedure for arbitrating disputes between two states; for disputes between two parties of which only one is a State; for disputes relating to natural resources and the environment; for disputes involving international organizations and states; and for disputes between international organizations and private parties. You will also find Model Clauses for the different situations. There is also a link to UNCITRAL Rules and Procedures, upon which the PCA has modeled its own rules.

Back on the home page sidebar, select Recent and Pending Cases for summaries of only about a dozen cases with links to some documents, such as press releases, orders, and awards. While free online access to case and award information is limited, print and online materials that are available for purchase or subscription from Kluwer Law International provide more information. The International Council for Commercial Arbitration houses its editorial staff on PCA premises. The ICCA produces some of the arbitral publications that are published by Kluwer Law.

Finally, the "Arbitration Links" button brought up a link I would like to mention: a detailed, annotated Directory of Arbitration Websites and Information on Arbitration Available Online. It includes online journals, national arbitration laws, arbitration treaties and conventions.

#### World Intellectual Property Organization - Arbitration and Mediation Center (WIPO)

Based in Geneva, the WIPO Arbitration and Mediation Center was established in 1994 to offer alternative dispute resolution options for private parties involved in international commercial disputes. Entertainment, technology, and other types of intellectual property disputes are particularly suitable for WIPO arbitration, but all types of international commercial disputes may be brought before the Center. The procedures are open to any person or entity, regardless of nationality or domicile. They may be held anywhere in the world, in any language, and under any law chosen by the parties, and they are confidential.

The Center's web page has no fancy graphics; it is textual, extremely easy to use, and has well-placed FAQs with simple but thorough explanations of how the Center operates and what kinds of disputes are arbitrated. Most information is only one or two clicks away and can be found via home page links, sidebar buttons, or by links in the text of background information. The basic arbitration documents are easily found; they include Arbitration Rules, Expedited Arbitration Rules, and Recommended WIPO Contract Clauses and Submission Agreements.

Since the WIPO Arbitration and Mediation Center is so new, there have not yet been many requests for mediation or arbitration. For example, there have been only 16 requests for arbitration, and 10 were filed after 2002. The website gives an overview of the cases and links to summaries of selected examples, but no parties are named.

Internet domain name disputes are a specialty of WIPO alternative dispute resolution. For concise background information on how and why domain name disputes arise, see the FAQ. With the rapid rise of Internet use and the subsequent increase in disputes over domain names, the Internet Corporation for Assigned Names and Numbers (ICANN), the organization responsible for the management of the generic top level domains, was in need of a dispute resolution mechanism. In answer to this need, WIPO studied the problem and eventually published a report containing recommendations dealing with domain name issues. Based on the report's recommendations, ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP). The UDRP went into effect on December 1, 1999, for all ICANN-accredited registrars of Internet domain names. Under the UDRP, WIPO is the leading ICANN-accredited domain name dispute resolution provider. As of the end of 2001, some 60 percent of all the cases filed under the UDRP were filed with WIPO. Additionally, a growing number of registrars of country code top-level domains have designated WIPO as a dispute resolution service provider.

The WIPO domain name disputes pages have a lot of information, including the full texts of decided cases. There is a listing of case numbers by year which links to a page that gives the disputed domain name and case status (pending, terminated, or decided). If the status is "decided", there is a link to the decision. Or you can go directly to a) just the decisions or b) to a search page.

#### World Trade Organization (WTO)

With 147 members, the World Trade Organization is a global institution that deals with the rules of trade between nations. Its objective is to "help trade flow smoothly, freely, fairly and predictably." To do this, it has formulated agreements that result from negotiations among members. The recent Uruguay Round negotiations (1986-1994) resulted in about 30 agreements and separate commitments called schedules. One of the WTO's tasks is to settle trade disputes; it has administered arbitrations since its creation in 1995. The main agreement for settling disputes that resulted from the Uruguay Round is the Dispute Settlement Understanding, which is the responsibility of the Dispute Settlement Body.

I found the WTO website to be confusing, partly because I was looking for arbitration information and the WTO does much more and partly because it is not as clearly designed as it could be. Start with a link on the left sidebar of the home page called "Trade Topics - Disputes": click to open up the Dispute Settlement Gateway. Before you go any further, I suggest you read Understanding the WTO: Settling Disputes, which is referred to halfway down the Gateway Screen. This reference and link should have been placed prominently at the top of the screen because it describes clearly and in detail the WTO dispute resolution process.

According to the explanation, a dispute arises when one country adopts a trade policy or takes an action that one or more fellow WTO members considers in violation of the WTO agreements. A third group of countries can declare that they have an interest in the case. Dispute settlement procedures under the WTO follow a fixed set of timetables that are described here. A case should normally not take more than about a year. If it is appealed, the time may be extended to 15 months. In addition, rulings are automatically adopted unless the country that wants to block the ruling persuades all other WTO members to share its view. If a country continues to break an agreement, then some kind of penalty, such as trade sanctions, can be imposed.

"Understanding the WTO: Settling Disputes is" divided into three sections. The first is subtitled "a unique contribution", and it goes into the explanation of the dispute settlement process. The second, "the panel process" presents is a diagram of the process. Finally, there is a "case study", a detailed look at how the timetable worked in an actual dispute. The breakdown of links to these pages can be found on the left sidebar of the screen subtitled "A unique contribution, under "Settling Disputes."

The Dispute Settlement Gateway screen gives the user different options for finding actual cases and arbitrations and related official documents. For a reverse chronological list of cases, click on the right sidebar button. The cases are listed by year and then by case number and short descriptions are given. Click on a case number to go to a screen that has options for viewing or downloading the related documents. You can also view a preview, or abstract, of the case.

It is also possible to browse cases and rulings by subject. Click on a subject to be taken to a list of cases; click on the case number to get to viewing and downloading options.

If you want to know the kinds of disputes a particular country has been involved in, go to the Disputes rulings by country page. Not only do you get a breakdown by country, but you also get links to the different documents such as panel reports and appellate body reports that are currently available on the website. Not every ruling is accompanied by a full text document.

#### Kluwer Arbitration Online

Kluwer has long been one of the leading publishers of arbitration materials. It has brought this expertise to the Internet with a database that covers both primary and secondary resources. Users can elect to subscribe to some or all the materials. KluwerArbitration.com brings together the documents of many of the institutions described above, including the ICC/ICCA, the ICSID, the PCA, and the WIPO Arbitration and Mediation Center. Searching is free, but one needs a subscription to retrieve the full text of these documents.

The website is well-designed and very easy to use. The left sidebar buttons link to arbitration conventions, model laws and national legislation, arbitration rules, model clauses, and case law. The latter is divided into Court Decisions and Awards. Full texts are not always available even for those with subscriptions; it is also clear that coverage is selective. A search box on the top of the screen allows you to search by text, author, titles, parties, and case date.

Another sidebar button, Commentary, brings up commentary found in several treatises as well as bibliographic citations to secondary materials. A particularly useful source is the Milan Bibliography, which was compiled by the Documentation Center on Arbitration of the Chamber of National and International Arbitration of Milan.

To find the arbitration legislation, decisions, awards, and institutions of a particular country that are on the Kluwer site, use the Country Index. An added feature is a list of Bilateral Investment Treaties by country; I believe this list is more current than that found on the ICSID website. However, the full texts of the treaties are not reproduced.

I like the KluwerArbitration.com website but I wish its coverage of full text documents, particularly arbitral decisions and awards, were more comprehensive.

#### Arbitration Law Online

Produced by Juris Publishing, ArbitrationLaw Online covers primary and secondary arbitration materials; the latter includes commentary and analysis from over 30 of Juris' publications. To see what is covered, click on the content categories on the home page. They include Laws, Rules, Case Law, Conventions, Journals among others. The database is updated daily.

For \$995, subscribers get unlimited access for an unlimited number of users for one year. Three month (\$395) and six month (\$595) options are also available, as is a 30 day free trial subscription. ArbitrationLaw Online also allows you to create a customized subscription consisting of an individual publication or any combination.

This database is a good option for researchers who do a lot of international arbitration research. It brings a great deal of information together and adds to it. For example, the Rules database presents the full text rules of both international and national institutions plus commentary plus a "Comparison of International Arbitration Rules". This compares the rules of procedure from the major international arbitral institutions on a rule-by-rule basis. It is based on a print publication published by Juris.

#### Westlaw Arbitration Databases

Westlaw covers a wide range of international arbitration materials, including those of international and national arbitration organizations and tribunals. Dates of coverage and comprehensiveness of the information vary depending on the database, but overall, coverage is good. The Westlaw Database Directory lists what is available. Click on Westlaw International - International Practice Areas - International Commercial Arbitration. The databases are categorized. Among them are Awards and case law, Conventions, Institutions, Model Laws, Model Clauses, Rules, and a very helpful category, Materials by Location. Read the Scope Note for each category and database to determine what it covers. For example, ICSID-AWARDS is a file of ICSID arbitration awards as published in International Legal Materials from May 1982. The ICC International Court of Arbitration Awards database (ICC-AWARDS) goes back a long way, to 1975, but consists only of abstracts and commentary on the arbitral awards. Westlaw is another good place to find the international arbitration materials of many organizations in one place.

#### Lexis Arbitration Materials

In contrast to Westlaw, Lexis covers relatively few sources of international arbitration, but it does provide a great many documents in full text for what it does cover. One can find a WTO Dispute Settlement file (filename WTO\_DS), which has dispute settlement reports of the WTO which have been made available to Lexis. They date from 1996 and include panel reports, appellate body reports and arbitrators' reports and mutually acceptable solutions. WIPO Arbitration and Mediation Center Administrative Panel Decisions with regard to domain disputes are in the CYBRLAW-WIPODD file and date from 2000. Selected awards that are published in International Legal Materials can be found in the ILM file in the INTLAW library. Lexis would not be my first choice for researching international arbitration when a great deal of information is needed.

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<http://www.cbeji.com.br/br/downloads/secao/A%20Selective%20Guide%20to%20Online%20International%20Arbitration%20Resources.doc>> Acesso em.: 10 set. 2007.