Invited speaker: Prof. Vijay Bathia

About the speaker

Vijay Bhatia is an Adjunct Professor, Macquarie University, Australia, and also University of Malaya, Malaysia. He is the founding President of the LSP and Professional Communication Association for Asia-Pacific. He retired as Professor from City University of Hong Kong. Some of his research projects include Analyzing Genre-bending in Corporate Disclosure Documents, and International Arbitration Practice: A Discourse Analytical Study, in which he led research teams from more than 20 countries. His research interests include: Genre Analysis of academic and professional discourses in legal, business, newspaper and promotional contexts; ESP and Professional Communication; simplification and easification of legal and other public documents. He has more than 150 publications to his credit. Two of his books, Analysing Genre: Language Use in Professional Settings and Worlds of Written Discourse: A Genre-based View, are widely used in genre theory and practice.

Arbitration Discourse in Asian Contexts: Issues, challenges, and perspectives

Vijay Bhatia

Drawing on discursive data from some of the significant seats of commercial arbitration in Asia, especially in China, Hong Kong, India, Malaysia and Singapore, the proposed paper will identify and discuss some of the important issues and challenges in arbitration practices in specific contexts, in particular focusing on the discursive and professional practices embedded in hybrid arbitration-litigation cultures. The discursive data will include three sets of corpora, the arbitration laws, rules and regulations of specific arbitration institutions, and a corpus of arbitration awards. The paper will also discuss implications for the development of arbitration institutions in Asia, especially in the context of a general resistance to arbitration and the strategies employed to frustrate the parties in dispute, and as a consequence, the whole process of dispute resolution in these contexts.

Arbitration Practice in India: A Discursive Perspective

Patrizia Anesa

University of Bergamo, Italy

With India becoming a hub for foreign investment and with the increasing practice of drafting contracts and agreements containing an exhaustive arbitration clause aiming to resolve disputes through arbitration, the need to explore arbitration in the Indian context seems urgent. This study focuses on arbitration practices in India both in terms of domestic arbitration and international commercial arbitration involving one or more Indian parties. Drawing on data obtained through questionnaires and structured interviews with legal professionals operating in India, the analysis investigates arbitration practices from an Indian perspective and highlights similarities and discrepancies with other countries. The aim is not only to describe the legislative and normative features of Indian arbitration, but also to illustrate its linguistic and cultural peculiarities. Particular attention is devoted to the investigation of the process of ‘colonization’ of arbitration on the part
of litigation, to observe if this phenomenon, described by several international scholars, is also characterizing the development of arbitration in India and to illustrate how is it perceived by Indian professionals.

**Asian Arbitration Discourse: narratives from Singapore**

*Ulisse Belotti*

*University of Bergamo, Italy*

After providing an overview of international commercial arbitration in Singapore, the present study, based on a corpus of interviews to arbitrators and law-firms professionals involved in arbitration, deals with some of the issues which have been raised by the arbitration discourse community. In particular, we will focus on how interviewees see institutionalized v. ad-hoc arbitration and on their perception of how arbitration clauses may be drafted. Respondents will also be asked for their opinion on controversial aspects of international commercial arbitration, such as the duration and the costs of arbitration proceedings, confidentiality and the finality of arbitration awards. We also want to investigate the ‘integrity’ of international arbitration practices in Singapore. In particular, we wish to determine if and to what extent these practices have been interdiscursively “colonized” by litigation practices, especially in terms of the intentions, purposes, processes, procedures, and the shared expertise expected, on the part of the participants involved. Using narrative analysis, we will study some of the rhetorical and linguistic devices used by the interviewees in order to identify the characterising aspects of these narratives and thus better define the linguistic behaviour of this discourse community.

**Arbitration awards in the East and the West: A Comparative Analysis**

*Giuliana Garzone*

*University of Milan, Italy*

This paper analyses a small corpus of arbitration awards issued in India and Singapore and compares them with awards, retrieved from the Kluwer Bank and other sources, issued within the framework of European arbitration institutions. It aims at ascertaining whether it is possible to identify any textual or discursive features peculiar to the Asian corpus that may distinguish it from the European one and whether such features could be indicative of unique characteristics of ADR discourse in that geographical area. If any such features can be found, they are all the more meaningful in a context where many of the top arbitrators operating in Asian arbitration centres were educated in European universities and/or trained in European ADR institutions.

The analysis focuses on a few meaningful discursive indicators (degree of complexity, a selection of metadiscursive devices, recurrent rhetorical patterns) and is essentially set in a discourse analytical perspective, relying in particular on the linguistic/discourse analytical literature on arbitration, and especially on studies focusing on arbitration awards (cf. Bhatia/Garzone/Degano 2012). Recourse is also made to corpus linguistic tools in order to obtain confirmation of qualitative insights, especially by means of concordancing, and possibly indications for further analysis.

**A Linguistic Insight into China’s Arbitration Law**

*Maurizio Gotti*

*University of Bergamo, Italy*

International business exchanges with China have increased enormously over the last few years and even the recent economic recession has not slowed down this growth, which has made China the biggest Asian market
in terms of import-export trade. As a natural consequence, this increase in business deals and contracts has brought about a rise in the number of trade disputes, with a consequent increase in arbitration proceedings.

Arbitration has become a very popular method of dispute resolution for foreign companies in the People’s Republic of China for many practical reasons, such as the relative ease of enforcement, the time savings, privacy and the finality of the award. The different matters concerning arbitration are dealt with by specific provisions, and, in particular, by The People’s Republic of China Arbitration Law 1994 (PRCAL, for short). This law was a very important step in the development of Chinese legislation. Although its main emphasis was on the reorganization of the local arbitration system, it also had a great impact on international arbitration carried out by Chinese companies.

The aim of this paper is to examine the English version of the PRCAL in order to highlight its specific linguistic, legal and cultural aspects. The text of the PRCAL will also be compared to the United Nations Model Law on International Commercial Arbitration, with the aim of offering a more detailed understanding of linguistic and textual phenomena closely linked to differing traditions in legal drafting at an international level.

“It is amply clear that there is no convincing evidence to infer that”. Evidentiality in Indian Arbitral awards.

Stefania Maria Maci

University of Bergamo, Italy

Aikhenvald (2004: 1) defines evidentiality as a conceptual category which “states the existence of a source of evidence for some information; that includes stating that there is some evidence, and also specifying what type of evidence there is”. In her perspective, (2003: 19), evidentiality is rather concerned with marking the source of information than the expressions of “uncertainty, probability, and one's attitude to the information”; nevertheless, Aikhenvald concedes that evidentials are often manipulated “for highlighting important aspects of a narrative” (2003: 18). Furthermore, Fox (2001: 170) highlights the fact that in any language not only does evidentiality exist, but also it is dependent on the socio-interactional work the speaker operates to construct authority, responsibility, and entitlement in a particular context and with a particular recipient. In other words, social conventions and practices impinge on the choice of what type of evidential to use, in order to indicate both the source of information and whether the person using the evidential has the authority to do so, is responsible and/or entitled for doing so (Fox, 2001: 173).

This study is an attempt to explore the degree of evidential use in arbitral award practice, in which law and language intersect. Drawing from Chafe (1986), this investigation will be focused on those linguistic forms regarded as evidential markers which show degrees of knowing and degrees of reliability. In particular, this study will (a) investigate on how degrees of knowledge are expressed in terms of belief, induction, heresay and deduction and (b) describe if and to what extent knowledge matching or not with previously acquired experience is expressed in terms of expectations or hedges. The Corpus Linguistic analysis, based on a corpus of 59 arbitral awards issued in 2013 by various Indian Regional Arbitration Centres and published online by the National Stock Exchange of India (at http://www.nseindia.com/invest/dynaContent/arbitration_awards.jsp?requestPage=main&qryFlag=yes), will be followed by a qualitative analysis (Coffey/Atkinson, 1996) allowing the interpretation of the findings. This will inform specialists of the linguistic use of evidential markers in Indian arbitration.

References


Deonticity and evidentiality in Hong Kong International Arbitration Awards

Michele Sala

University of Bergamo, Italy

This paper investigates the linguistic and textual features of arbitral awards drafted in English by the Hong Kong International Arbitration Centre, with a specific focus of those rhetorical resources which are meant to enhance deonticity and evidentiality and make arbitration discourse interpretable as a normative type of communication (Nariman 2000, Bhatia et al. 2003). The international character of this institution requires drafters to produce texts which are recognized as authoritative by both Civil Law and Common Law discursive standards in order to limit as much as possible the risk of enforcement. On this basis, it is relevant to examine the ways of codifying meanings which are considered to be crucial by members of the Hong Kong arbitration board to effectively shape legal concepts, report facts, place specific emphasis on either actors, roles, events and relations, and ultimately reinforce the performative and prescriptive nature of the final decision. Based on a corpus of 20 arbitral awards (available at www.hklii.hk/eng/) this paper seeks to investigate the arbitrators’ linguistic and rhetorical choices in the textualization of arbitration awards, with a specific focus on the use of metadiscursive resources (especially transition markers, of addition, contrast and consequence, as they are used in presenting the factual background and in the wording of the final decision) and macro-textual structuring (i.e. the overall syntactic organization of the text, and the specific use of coordination and subordination) through which the panel argues claims and consolidates the legal validity of their decision.


How Do East and West Meet in Arbitration Discourse

Tarja Salmi-Tolonen

University of Turku, Finland

This paper seeks to map out attributes of cultural similarities and differences concerning dispute resolution mechanisms and practices in the Nordic countries, other European countries and Asian countries. It is common knowledge that there has been a rush of western companies to Asia, over the past decades, looking to capitalize on its economic growth. It is also common knowledge that though many ventures have been successful, it is the failures that have attracted most publicity. By analyzing surveys and dispute indexes, cases, and media coverage I try to discover both pragmatic and linguistic signalling of similar or diverse attitudes towards the demands of global trading relationships both in partnership and conflict.
The Law and Practice of Arbitration in Singapore: Linguistic Insights

Girolamo Tessuto

Seconda Università degli Studi di Napoli, Italy

Arbitration, a cost-effective and expeditious alternative to court litigation, takes place within complex and important national and international legal frameworks where legislation, rules, and conventions provide specialized regimes for the conduct of arbitrations. In recent years, Singapore has given evidence of a significant legislative activity in its fervor to make arbitration quicker and more efficient, and therefore has adopted domestic and international regimes that govern private commercial arbitration: the domestic Arbitration Act 2001 (AA) and the International Arbitration Act 2002 (IAA). While these laws differ from each other in matters of arbitral proceedings, they also reflect the best practice in dispute resolution used in the Asia Pacific Region, where Singapore is a regional and financial centre that serves as a gateway between East and West.

The purpose of this paper is to examine the arbitral regime and practice arising from the Singapore Arbitration Act 2001. The paper will look at the piece of legislative drafting from the perspective of language use in order to gain insights into the rhetorical and discursive features realized in the construction of the genre. First, the paper will outline the nature and topic of a two-ranked arbitral regime (AA – IAA) that is of relevance for the arbitration framework in Singapore. Secondly, the paper will analyze quantitatively and qualitatively the linguistic and textual choices realized in the professional/institutional practice and discourse of the genre, while also identifying those features which seem to constrain the accessibility and interpretation of legislative action performed in the genre. To the extent that Singapore inherited the Western-style legal culture of the English common law tradition, this part of the paper will also assess how the Singapore Arbitration Act borrowed semantic resources from the English Arbitration Act 1996 previously investigated by this author (Tessuto 2003), therefore giving rise to manifestations of “interdiscursivity” (Bhatia 2008, 2010a, 2011) from the discursive process and professional practice of English arbitration. Finally, the paper will draw some conclusions from the analysis of the most salient rhetorical and discursive data in the chosen genre, by adding as yet to our understanding of the intercultural and interdiscursive elements of drafting in the Eastern and Western socio-legal contexts.

Essential References


