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"What Does He Think This Is? The Court of Human Rights or the United Nations?"

(Plain) Language in the Written Memories of Arbitral Proceedings: A Cross-Cultural Case Study

Stefania Maria Maci[*]

Abstract

Arbitration as an alternative dispute resolution (ADR) is an extra-judicial process resolved privately outside an ordinary court of justice. As such, the award has the same legal effects as a judgment pronounced by a court judge. Arbitration can be preceded by a pre-trial process in which arbitrators try to reach a conciliation agreement between the parties. If an agreement is not reached, the arbitration process begins with the gathering of the parties' memories. In both oral and written evidence, language is used argumentatively, and above all persuasively, by all sides or parties involved.

Extensive studies in arbitration have been carried out from the viewpoint of law. From an applied linguistics angle, the study of interaction in legal contexts has recently been carried out with particular regard to witness testimony and cross-examination in international commercial arbitration within the processes of arbitral hearings and the writing of minutes.

To the best of my knowledge, to date there has never been an investigation on plain language in arbitral memories across national and professional cultures. Therefore, by carrying out a comparative analysis of the written evidence presented in two arbitral processes, this paper tries to evaluate the degree of influence that different legal cultures may exert on the type of language used in written arbitration evidence. The main objective is to offer insights into some instances of arbitration proceedings and their development within their British and Italian contexts.

Keywords: arbitration, legal language, plain language, specialised discourse, corpus linguistics.

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A. Introduction

The purpose of arbitration is "to obtain fair resolution of disputes by an impartial tribunal without unnecessary delay or expenses", as aptly indicated by the UK *Arbitration Act 1996* – Section 1(a) – and recourse to such arbitration seems to have been enhanced by the rapid increase in international trade in recent years. This is why this formula would appear to receive particular preference in settling disputes in international trade settings, particularly in those cases where parties belong to different legal traditions. To this purpose, the United Nations Commission on International Trade Law (UNCITRAL) offers the Model Law (emended in 2006) on international commercial arbitration (ICA) whose purpose is to assist states "in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration".[1]

Arbitration is regarded as an alternative dispute resolution (ADR), in which the parties agree that an independent third party, the Arbitrator or the Arbitral Tribunal, should pronounce the final decision after considering the evidence and submissions in exactly the same way as a judge would do in a court of law. The term 'alternative' does not refer to the fact that arbitration is an alternative to legal processes but rather to the fact that arbitration is a *private*, that is, confidential, extra-judicial process and, as such, an alternative to the *public* judicial process held in the court of law. It is, therefore, an alternative dispute resolution because it is an extra-judicial process resolved privately outside an ordinary court of justice. As such, the award has the same legal effects as a judgment pronounced by a court judge.[2]

The gathering of information in arbitration can be preceded by a pre-trial process in which arbitrators try to reach a conciliation agreement between the parties. Such an attempt is usually realised as a witness hearing, where the parties, their counsels, and the arbitrator panel meet officially. If an agreement is not reached, the arbitration process begins with the gathering of the parties' memories. In both oral and written evidence, language is used argumentatively, and above all persuasively, by all sides or parties involved, who have "an equal opportunity to convince".[3] Indeed, the testimony or memory of each party "is considered the best arbitration practice as a powerful tool to reach the 'truth' on facts

1 *See* <www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html>, accessed on 1 September 2013.

2 *See* S.M. Maci, 'Litigation Procedures in Arbitral Practice: A Case of Arbitral Litigation?', *in* S. Sarcevic (Ed.), *Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues*, Zagreb, Kakladini zadov Globus 2009, pp. 393-410; S.M. Maci, 'The *Modus Operandi* of Litigation in Arbitration', *in* V.K. Bhatia, C. Candlin & M. Maurizio (Eds.), *The Discourses of Dispute Resolution*, Bern, Peter Lang 2010, pp. 69-83; and S.M. Maci, 'Arbitration in Italy. Litigation Procedures in Arbitral Practice', *in* V.K. Bhatia & P. Evangelisti Allori (Eds.), *Discourse Identity in the Professions. Legal, Corporate and Institutional Citizenship*, Bern, Peter Lang 2011, pp. 213-237.

3 N.C. Ulmer, 'Language, Truth, and Arbitral Accuracy', *Journal of International Arbitration*, Vol. 28, No. 4, 2011, pp. 295-311, at 296.

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verified during the litigated relationship and brought to the attention of the arbitral tribunal".[4]

Although the Model Law of UNICITRAL tries to level out and make uniform the different legal systems existing in international arbitration, the gathering of evidence in different countries varies greatly, not only across criminal and civil procedures but also across domestic rules, which do not necessarily follow the great divide between common law and civil law countries.[5]

A further problem lies in the way in which communication occurs during the arbitral proceeding. Precisely because the decision created by the parties whose dispute is asked to be resolved with arbitration has legal effects, there have been growing concerns about the way in which the arbitral proceeding leading to the award is written. There is indeed the perception that the (legal) language used in the whole arbitral process, from the gathering of the parties' memories to arbitral pronouncement is a different language from ordinary English. This issue is particularly relevant for arbitrators, because they are responsible to the parties who appointed them to give a clear decision on the dispute under consideration. The clearer the award, the easier it will be accepted by the parties and the more likely it will demonstrate impartiality and logical reasoning. Clarity of language is necessary because of the right the parties have to receive unambiguous information about the benefits and the obligations deriving from the arbitral award. Clarity of language is also necessary when memories are written: indeed, each party also has the right to fully understand the written documents presented to the arbitral tribunal by the other party in order to submit any written argument or evidence which can better help the arbitral panel to reach the truth and pronounce the award.[6]

Extensive studies in arbitration have been carried out from the viewpoint of law, focussing on such topics as the role of international arbitration, the drafting and enforcement of arbitration awards, the appointment and number of arbitrators and their international function, challenging arbitrators and awards, as well as issues of confidentiality and of trans-national rules and globalisation in arbi-

4 F.E. Ziccardi, 'Enforcement of Arbitral Awards in Hong Kong: Legal and Political Challenges', *in* V.K. Bhatia & P. Evangelisti Allori (Eds.), *Discourse Identity in the Professions. Legal, Corporate and Institutional Citizenship*, Bern, Peter Lang 2011, pp. 63-71, at 66.

5 *Ibid.*, p. 64.

6 *See* <www.davidelliott.ca>, accessed on 23 January 2014.

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tration.[7] Training courses on these topics are also offered (*e.g.* those of CIArb, LCIA, ICC, and the Queen Mary School of Law of the University of London). Research has been carried out about Plain Language in law, which has been accompanied by the elaboration of plain English guidelines for lawyers,[8] though not applied to arbitral proceedings.[9]

From an applied linguistics angle, the most recent research on arbitration draws on discourse-based data in order to investigate those aspects of arbitration practice that are considered crucial for its integrity as an institution and its independence as a professional practice and to what extent it is increasing influenced by litigation processes and procedures.[10] The study of interaction in legal con-

7 *See*, for instance, W. Miles 'Practical Issues for Appointment of Arbitrators: Lawyer *v*. Non-Lawyer and Sole Arbitrator *v*. Panel of Three (or More)', *Journal of International Arbitration*, Vol. 20, No. 3, 2003, pp. 219-232; S. Zaiwalla, 'Challenging Arbitral Awards: Finality Is Good but Justice Is Better', *Journal of International Arbitration*, Vol. 20, No. 2, 2003, pp. 199-204; A. Marriott, 'Less is More: Directing Arbitration Procedures', *Arbitration International*, Vol. 16, No. 3, 2004, pp. 261-278; C. Debattista. 'Drafting Enforceable Arbitration Clauses', *Arbitration International*, Vol. 21, No. 2, 2005, pp. 233-240; H. Seriki, 'Anti-Suit Injunctions and Arbitration: A Final Nail in the Coffin?', *Journal of International Arbitration*, Vol. 23, No. 1, 2006, pp. 25-38; G. Aksen, 'Reflection on International Arbitrator', *Arbitration International*, Vol. 23, No. 2, 2007, pp. 255-259; C.N. Brower, 'W(h)ither International Arbitration? The Goff Lecture 2007', *Arbitration International*, Vol. 24, No. 2, 2008, pp. 181-197; M.S. Kurkela *et al.*, 'Certain Procedural Issues in Arbitrating Competition Cases', *Journal of International Arbitration*, Vol. 24, No. 2, 2007, pp. 18-210; G. Nicholas & C. Partasides, 'LCIA Court Decisions on Challenges to Arbitrators: A Proposal to Publish', *Arbitration International*, Vol. 23, No. 1, 2007, pp. 1-41; P.R. Rees, 'The Conduct of International Awards in England: The Challenge Has Still to Be Met', *Arbitration International*, Vol. 23, No. 2, 2007, pp. 505-510; T.H. Webster, 'Evolving Principles in Enforcing Awards Subject to Annulment Proceedings', *Journal of International Arbitration*, Vol. 23, No. 3, 2006, pp. 201-226; I. Thoma, 'Confidentiality in English Arbitration Law: Myths and Realities about Its Legal Nature', *Journal of International Arbitration*, Vol. 25, No. 3, 2008, pp. 299-314; R. Ziadé & C. De Taffin, 'Fact Witnesses in International Arbitration', *Revue de droit des affaires internationales/International Business Law Journal RDAI./IBLJ*, No. 2, 2010, pp. 115-134; M. Scherer, 'Globalization of International Commercial Arbitration', Revue des Juristes de SciencesPo, No. 2, 2010, pp. 64-67; M. Schneider, 'Twenty-Four Theses about Witness Testimony in International Arbitration and Cross-Examination Unbound', *in* M. Wirth, C. Rouvinez & J. Knoll (Eds.), *Search for Truth in Arbitration: Is Finding the Truth What Dispute Resolution Is about – ASA (Swiss Arbitration Association)*, Vol. 35, 2011, pp 63-69; and L. Mistelis, 'General Principles of Law and Transnational Rules in International Arbitration: An English Perspective', *World Arbitration and Mediation Review*, Vol. 5, No. 2, 2011, pp. 201-230.

8 *See*, for instance, J.M. Dorney, 'The Plain Language Movement', *The English Journal*, Vol. 77, No. 3, 1988, pp. 49-51; and T. McArthur, 'Pedigree of Plain English', *English Today*, Vol. 7, No. 3, 1991, pp. 13-19.

9 R. Flesch, *How to Write Plain English: A Book for Lawyers & Consumers*, New York, Harper and Row, 1979; R. Wydick, *Plain English for Lawyers*, Durham, Carolina Academic Press, 1985; M.M. Asprey, *Plain Language for Lawyers*, Sydney, The Federation Press, 1991. As to Plain Language Movement and Arbitration, the only document found is available at: <www.davidelliott.ca>, accessed on 23 January 2014.

10 *See* V.K. Bhatia, C. Candlin & M. Gotti (Eds.), 2010, *The Discourses of Dispute Resolution*, Bern, Peter Lang 2011; and V.K. Bhatia, C. Candlin, N. Christopher & M. Gotti (Eds.), *Discourse and Practice in International Commercial Arbitration Issues, Challenges and Prospects*, London, Ashgate 2012.

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texts, with particular regard to witness testimony and cross-examination[11] in ICA, has recently been carried out by Bhatia (2011), Anesa (2010), and Maci (2012)[12], who have described the processes of arbitral hearings and the writing of minutes. To the best of my knowledge, there has been neither an investigation on arbitral memories across national and professional cultures nor any readily available comprehensive research about the way in which communication in written memories is clearly and effectively realised. Therefore, by carrying out a comparative analysis of the written evidence presented in two arbitral processes, this paper tries to evaluate the degree of influence that different legal cultures may exert on the type of language used in written arbitration evidence. In particular, I will examine what type of keywords occur in the texts I have examined, along with their concordance lists and collocates. The main objective is to offer insights into some instances of arbitration proceedings and their development within their British and Italian contexts.

B. Background

I. Arbitration in the UK and in Italy

The long tradition of international arbitration in the UK has been underlined by the *Arbitration Act of 1996*. In a country with a common law system which has a preference for a "casuistic approach, where many different cases are considered and details are punctiliously made explicit"[13], the provisions of the Act represent the first example of legislation in writing as regards this issue in the UK.[14] The *Arbitration Act* has been a necessary measure aimed at making arbitration simpler and clearer, so as to reduce court intervention on arbitration.[15] Apparently, the popularity of the UK as a venue for international arbitration has increased since

11 S. Harris, 'Fragmented Narratives and Multiple Tellers: Witness and Defendant Accounts in Trials', *Discourse Studies*, Vol. 3, No. 1, 2001, pp. 53-74; and P. Hobbs, '"You Must Say it for Him": Reformulating a Witness' Testimony on Cross-Examination at Trial', *Text*, Vol. 23, No. 4, 2003, pp. 477-511.

12 In particular, *see* V.K. Bhatia, 'Witness Examination as Interdiscursive Practice', *World Englishes: Journal of English as an International and Intranational Language*, Vol. 30, No. 1, 2011, pp. 106-116; P. Anesa, 'Spoken Interaction in Arbitration: An Analysis of Italian Arbitration Proceedings', *in* V.K. Bhatia, C. Candlin & M. Gotti (Eds.), *The Discourses of Dispute Resolution*, Bern, Peter Lang 2010, pp. 207-230; and S.M. Maci, 'Arbitration in Action: The Display of Arbitrators' Neutrality in Witness Hearings', *in* V.K. Bhatia, C. Candlin & M. Gotti (Eds.), *Discourse and Practice in International Commercial Arbitration Issues, Challenges and Prospects*, London, Ashgate 2012, pp. 225-238.

13 G. Garzone, 'Arbitration Rules across Legal Cultures: an Intercultural Approach', *in* V.K. Bhatia, C. Candlin & M. Gotti (Eds.), *Legal Discourse in Multilingual and Multicultural Contexts. Arbitration Texts in Europe*, Bern, Peter Lang 2003, pp. 177-220, at 212. A casuistic approach assumes that the law develops and acquires further meaning each time that rules are applied to individual cases, rather than being fixed in general doctrines.

14 *See* G. Tessuto, 'The English 1996 Arbitration Act', *in* V.K. Bhatia, C. Candlin & M. Gotti (Eds.), *Legal Discourse in Multilingual and Multicultural Contexts. Arbitration Texts in Europe*, Bern, Peter Lang 2003, pp. 338-379.

15 P.J. Rees, 'The Conduct of International Awards in England: The Challenge Has Still to Be Met', *Arbitration International*, Vol. 23, No. 2, 2007, pp. 505-510, at 505.

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the *Arbitration Act* of 1996: the ICC Statistical Report[16] seems to indicate that the total number of disputes resolved through arbitration and mediation in the UK has increased by 40% between 2007 and 2010. This, however, does not mean that the *Arbitration Act of 1996* can be said to have achieved the goal for which it was drawn up. Rather, it seems to be a consequence of the extremely difficult financial conditions deriving from the economic crises of the past few years. In addition, to date, arbitration in the UK has been regarded as a long and costly process because it follows court procedures.[17] This explains why parties still rightly attempt to steer away from arbitration proceedings by seeking an amicable resolution of their disputes during the course of their projects.

Arbitration in Italy is a highly standardised legal procedure ruled by Articles 806-832 of the reformed Code of Civil Procedure (CCP). Yet, despite the efforts of the UNCITRAL Model Law on International Commercial Arbitration to make international arbitration a flexible procedure moving beyond domestic rules, in Italy the CCP Article 832 provided separate regulations for national and international arbitration, thus making international arbitration a subcategory of national arbitration. The conflicts existing between the Italian Arbitration Law as stated in the CCP and the UNICTRAL Model Law were brought to an end thanks to Law 80/2005 which stated the need for a reform of arbitration legislation; this requirement was to be delegated to the Government.[18] The reform drawn up by government legislators took place in 2006 with Legislative Decree 40.[19] Since then, the local Chambers of Commerce, within which Arbitral Courts have been constituted, have strongly invited the parties to (a) adopt a standard arbitration procedure according to the guidelines of its institutional body (the Arbitral Chamber of the local Chamber of Commerce) and (b) allow the Arbitral Chamber to appoint legal experts as arbitrators.[20] The reason for this lies in the fact that the majority of awards made up to 2006 have been challenged before the Court of Appeal on legal grounds.

II. Arbitral Evidence

Witness examination in arbitration is usually replaced by a detailed written statement in order to reduce cost and time and to provide for what in legal terms is known as *discovery* or *disclosure*[21]. In common law countries, witness examination to obtain disclosure is not very common but is allowed according to the discretion

16 ICC, *The International Court of Arbitration Bulletin*, Vol. 24, No. 1, 2013.

17 Rees 2007, p. 506.

18 *See* D. Cutolo & A. Esposito, 'The Reform of the Italian Arbitration Law. The Challenging of Arbitrators and the Setting of Time Limits', *Journal of International Arbitration*, Vol. 24, No. 1, 2007, pp. 49-62, at 53.

19 *See* <www.camera.it/parlam/leggi/deleghe/06040dl.htm>, accessed on 1 October 2013.

20 In theory, any professional can be a member of the Board of Arbitrators of the local Arbitration Chamber. This is possible provided that the would-be arbitrator complies with certain requirements as established by law, such as, for example, having at least three-years' experience in legal and financial matters and having been appointed as an arbitrator at least three times. In practice, only legal specialists are appointed as *arbitrators* in an arbitration procedure, whereas all the other experts are appointed as *consultants*.

21 *See* Bhatia 2011.

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of the arbitral panel, whereas it is an unfamiliar procedure in civil law jurisdictions. The frequent use of written evidence in ICA reflects the influence of civil law tradition. ICA, therefore, seems to echo the balance between common law and civil law practices and traditions.

In the absence of an agreement between the parties, the *Arbitration Act* of 1996 (Section 34(2)(h)) gives the arbitrator the power to decide "whether and to what extent there should be oral or written evidence or submissions". Therefore, the hearing of oral evidence may be dispensed with by the arbitral panel if it is considered unnecessary.

In Italy, the reform of arbitration, hinted at in the previous paragraph, has made it clear that ADR has a core legal format[22] in the sense that the arbitral panel has the same rights and powers as a judge and the final award has the same legal effects as a judgment. Therefore, not only do arbitrators apply the Italian CCP in arbitral practice, they also follow Art. *816-ter* of CCP dealing with arbitral procedures which states that the arbitral tribunal can decide whether to have witness hearings or written answers if so decided by the president of the arbitral panel or whether the proceedings are to be conducted on the basis of documents and other materials, as indicated by Art. 22 of the UNCITRAL Model Law. The final decision of the judge cannot be conditional upon this type of examination, as the judgment is based on reasoning which reflects the judge's interpretation of the law applied to the case under discussion.

III. The Plain Language Movement: The Cases of the UK and Italy

The principles on which the plain English movement is based are clarity and comprehension of legal documents to the average person. Though the modern movement began in the 1970s, there have been complaints about the obscurity of legal language for centuries.[23] The simplification process of *legalese*, which changed both the legal language and traditions that had characterised British courts for decades, was greeted by the plain English movement in 1995. In 1999, the Lord Chancellor's Department issued the Civil Procedure Rules (CPR) in 1999. The CPR main objectives, as defined in paragraphs 1.1. and 1.2., aimed at rendering civil procedure more accessible to ordinary people, simplifying legal language, promoting swift settlement, speeding up civil justice, and making litigation more efficient and less costly.[24] With the CPR, Old Latin and French law terms such as *writ* or *plaintiff* or such Latin expressions as *ex parte* and *inter partes* were replaced by 'plain English' terms,[25] but also the linguistic density and wordiness caused by lengthy sentences were reduced.

22 As regards the development of Italian arbitration, *see* Maci 2009, 2011.

23 McArthur 1991, p. 13.

24 The aspects connected to the simplification of legal language can be found in Lord Woolf's *Interim Report on Access to Civil Justice* (1995) and *Final Report on Access to Civil Justice* (1996), respectively, available at: <www.dca.gov.uk/civil/interim/woolf.htm> and <www.dca.gov.uk/civil/final/index.htm>, accessed on 1 October 2013.

25 R. Vystrčilová, 'Legal English', *in Acta Universitatis Palackianae Olomucensis Facultas Philosophica*, Vol. 73, 2000, pp. 90-96.

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Similar procedures concerning the simplification of bureaucratic language were introduced in Italy much later than the UK. The process started at the beginning of the 1990s.[26] The initiative was promoted by the Italian Government, which issued a directive in 2002[27] aimed at facilitating readability and comprehension of administrative texts. This norm, however, dealt with issues related to the simplification of *legalese* only partially because it was mainly conceived for legal texts issued by governmental offices. Efforts have, nevertheless, been done since then to render bureaucratic language more intelligible because of the awareness that by writing legal texts in an incomprehensible language meant negating the right every citizen has of knowing what rights and obligations derive from the law.

The extent to which the plain language movement objectives are realised in the written memories submitted in English and Italian arbitral proceedings will be discussed in the following paragraphs.

C. Methodological Approach

One of the main issues in collecting my corpus is confidentiality, which is the main prerogative of international arbitration. This is what justifies the paucity of the corpus and the decision to transform my analysis into two case studies. I was able to collect two written documents (WDs) presented as evidence in two different arbitral proceedings. Both WDs have been written by the legal representatives of the parties involved in the arbitral proceeding. The English WD (WD1) has been obtained from the Chartered Institute of Arbitration (7,603 tokens); the Italian WD (WD2) has been downloaded from <www. giust. amm. it> (7,939 tokens). Both WDs were scanned and digitalized in a text format in order to allow a quantitative computation using Wordsmith Tools.[28] Since the size of WD1 and WD2 is similar, figures do not need to be statistically normalised in standardised Type/Token Ratio (TTR).[29] The investigation will focus on the analysis of the top ten keywords present in the two WDs, computed with a log likelihood test ($p<0.000001$)[30] and generated against two reference corpora of nine

26 T. De Mauro, *Progetto di semplificazione de linguaggio. Manuale di stile*, available at: <www. entilocali. provincia. le. it/ nuovo/ files/ Progetto%20di%20semplificazione%20del%20linguaggio. pdf>, accessed on 23 January 2014.

27 *Direttiva sulla semplificazione del linguaggio dei testi amministrativi*, <www. funzionepubblica. it/ chiaro/direttiva.pdf>, accessed on 1 October 2013.

28 M. Scott, *WordSmith Tools version 4*, Oxford, Oxford University Press 2004.

29 The standardised TTR is a measure of lexical density (by default set at 1,000 words) which corresponds to the ratio of the number of different words (types) to the total number of words (tokens). *See* S. Hunston, *Corpora in Applied Linguistics*, Cambridge, Cambridge University Press 2002.

30 The *p* value indicates the level of confidence that the results are not due to chance. The smaller the *p* value, the more likely the presence of the word in one corpus results from the author's choice to use that word repeatedly. *See* P. Baker, *Using Corpora for Discourse Analysis*, London, Continuum 2006, p. 125.

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arbitral awards, so as to compare genres with a similar specialised register.[31] WD1 was compared with an English reference corpus (42,856 words) composed of two awards issued by ABTA, the Association of British Travel Agents, and two awards retrieved from <KluwerArbitration. com>, the world's leading online resource for international arbitration research. WD2 was compared with an Italian reference corpus (30,428 words) comprising one award released by the Arbitral Chamber of Reggio Emilia, two awards obtained from a chartered arbitrator's office in Milan, one downloaded from the Italian legal database available at <www.giustamm.it>[32], and one provided by the International Arbitration Chamber of the Milan Chamber of Commerce.

All corpora were read so as to better contextualise the analysis. The quantitative analysis was then followed by a qualitative analysis in order to interpret the findings.

D. Results

I. The British Case Study

The keyword[33] list generated against the corpus of English awards can be seen in Table 1:

Table 1. WD1 keyword list

N	Keyword	Freq.	%	RC. Freq.	RC. %	Keyness
1	I	147	1.80	25	0.06	419.58
2	MEADOWSWEET	43	0.53	0		161.59
3	BINDWEED	41	0.50	0		154.07
4	MR	63	0.77	28	0.06	133.78
5	MY	37	0.45	1		130.10
6	CONSERVATORY	28	0.34	0		105.18
7	WE	43	0.53	16	0.04	97.92
8	POND	23	0.28	0		86.38
9	KG	22	0.27	0		82.63
10	STATEMENT	31	0.38	7	0.02	82.47
11	#	528	6.46	1,865	4.12	79.90
12	RUPERT	18	0.22	0		67.60

31 When analysing texts belonging to the same genre, I would normally compare the wordlist of one text with the wordlist of the other text. Yet, in this particular case, I cannot proceed in the usual way, as WD1 is in English and WD2 is in Italian. For this reason, I had to create two corpora of, respectively, English and Italian awards against which the keyword lists had been generated.

32 Retrieved on 1 October 2013.

33 In corpus linguistics, keywords are statistically unusual words found in the corpus under investigation and do not have any social or cultural values (*See* Hunston 2002). Keywords are the statistic computation of relative frequencies between corpora, and as such, they highlight the lexical *saliency* in the corpus under investigation; *see* Baker 2006, p. 26.

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Table 1. (continued)

N	Keyword	Freq.	%	RC. Freq.	RC. %	Keyness
13	AREA	18	0.22	0		67.60
14	HE	45	0.55	40	0.09	64.81
15	EVERGREENSHIRE	17	0.21	0		63.84
16	HEDGE	17	0.21	0		63.84
17	AM	16	0.20	0		60.08
18	BERT	16	0.20	0		60.08
19	SUPERIOR	16	0.20	0		60.08
20	VAT	16	0.20	0		60.08
21	LANDSCAPE	15	0.18	0		56.33
22	GARDENS	25	0.31	12	0.03	51.25
23	PAVED	13	0.16	0		48.81
24	LOCATION	13	0.16	0		48.81
25	GARDENERS	13	0.16	0		48.81
26	ROCKERY	12	0.15	0		45.06
27	STONES	12	0.15	0		45.06
28	ME	16	0.20	3		44.50
29	ALL	44	0.54	60	0.13	43.50
30	FRONT	11	0.13	0		41.30
31	SHRUBSVILLE	11	0.13	0		41.30
32	LAUREL	11	0.13	0		41.30
33	STONE	11	0.13	0		41.30
34	OCTOBER	11	0.13	0		41.30
35	CARAVAN	11	0.13	0		41.30
36	GARDEN	12	0.15	1		38.34
37	ALICE	10	0.12	0		37.54
38	BORDER	10	0.12	0		37.54
39	GET	10	0.12	0		37.54
40	SOCIETY	17	0.21	7	0.02	37.19
42	ABOUT	18	0.22	10	0.02	34.41
43	MEADOWSWEEET	9	0.11	0		33.79
44	INSTALL	9	0.11	0		33.79
45	GLASS	9	0.11	0		33.79
46	COUNTERCLAIM	14	0.17	5	0.01	32.33
47	COPY	8	0.10	0		30.03
48	QUOTATION	8	0.10	0		30.03
49	DEFENCE	13	0.16	5	0.01	29.20
50	WORK	13	0.16	5	0.01	29.20
51	WHAT	20	0.24	18	0.04	28.51

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Table 1. (continued)

N	Keyword	Freq.	%	RC. Freq.	RC. %	Keyness
52	ASKED	12	0.15	4		28.39
53	MATTER	23	0.28	27	0.06	26.34
54	MONEY	7	0.09	0		26.28
55	GOT	7	0.09	0		26.28
56	CAR	7	0.09	0		26.28
57	KNOW	7	0.09	0		26.28
58	TENNIS	7	0.09	0		26.28
59	SHE	7	0.09	0		26.28
60	NOW	11	0.13	4		25.23
61	SAY	11	0.13	4		25.23
62	ITEM	9	0.11	2		24.02

In the first column, N indicates the number under which the keywords are listed. The second column indicates the keyword, while Freq. shows its frequency. The fourth column shows the percentage of occurrence of the word under investigation in the WD1 corpus, while the fifth and sixth columns indicate the frequency and hit percentage of the same word in the English award reference corpus. In the last column, the *keyness*, that is, the statistical score assigned to a keyword,[34] is presented in the last column: the higher the score, the greater the keyness of that keyword.

As we can see, there is scarcely any occurrence of legal or specialised commercial terminology, the only words belonging to which are *VAT* (line 20), *society* (line 40), and *defence* (line 49). In particular, if we focus on the first ten keywords, the only specialised term found is *statement*, referring to the declarations made by the claimant, the respondent, and the expert technicians appointed by the arbitrator in the evaluation and judgment of the arbitration. Indeed, the top ten keywords include the two surnames (lines 2 and 3), preceded by *Mr* (line 4), and the lexemes *conservatory*, *pond*, and *KG* (lines 6, 8, and 9) referring to the physical characteristics of what should have been built and for which payment is deemed to be due, this being the object of the dispute. The most remarkable keywords in this slot seem to be the person pronouns *I* (line 1) and *we* (line 7) and the possessive adjective *my* (line 5). This is interesting since the presence of the first person pronoun and possessive adjective would indicate oral statements rather than written evidence and may indicate an interactive use.

34 *See* Hunston 2002; and P. Baker, *Sociolinguistics and Corpus Linguistics*, Edinburgh, Edinburgh University Press 2010.

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II. Reporting the Story from the Witnesses' Perspective: The Use of 'I'

There are 147 occurrences of the person pronoun *I* (Figure 1).

Figure 1 Concordance list of 'I'

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N	Concordance	Set	Tag	Word #	Sent. #	t. Pos.	. #	os.	. #
1	is a legal executive on maternity leave. I telephoned her employer – Quill, Dip			7,534	455	7%	0	9%	
2	lowering the tone one notch too many. I know you have the ear of the			7,158	426	18%	0	4%	
3	But apart from the eyesore factor, I guess it'll be damaging the paving flags.			7,089	420	53%	0	3%	
4	go under. That's what they're all like. I understand that he's put his caravan on			7,062	417	11%	0	3%	
5	years. Hedges are very unreliable and I would rather not hazard a guess as to			6,742	400	28%	0	9%	
6	than they ought to be. 4. However, I have now seen the quotation which			6,717	399	17%	0	8%	
7	1999. When I first saw the hedge I thought it looked a little sparse, as if			6,685	398	22%	0	8%	
8	premises on 10 November 1999. When I first saw the hedge I thought it looked a			6,680	398	8%	0	8%	
9	Society of Landscape Gardeners. 3. I visited the premises on 10 November			6,671	397	30%	0	8%	
10	at least 30 years experience of hedges. I have been consultant to many maze			6,642	396	7%	0	7%	
11	at 12 Laurel Gardens, Shrubsville. 2. I have at least 30 years experience of			6,633	395	27%	0	7%	
12	LAUREL GARDEN SHRUBSVILLE 1. I have been appointed by the Arbitrator in			6,607	393	14%	0	7%	
13	window panes will need to be removed. I noticed that there had been a fair			6,539	389	7%	0	6%	
14	Dr Box's report. 7. Conservatory. I visited on a dry day and so could not			6,509	386	14%	0	6%	
15	would like to reserve my judgment until I have received Dr Box's report. 7.			6,501	384	77%	0	6%	
16	to me. I am not an expert, however, and I would like to reserve my judgment until			6,493	384	41%	0	5%	
17	The hedge looked very sparse to me. I am not an expert, however, and I would			6,486	384	9%	0	5%	
18	were not particularly unsightly, but I accept that others might reasonably			6,449	380	50%	0	5%	
19	of a sense of 'weight'. But all in all I thought the whole thing would look			6,375	374	35%	0	4%	
20	without damaging the plants, so I left it. I did get the distinct impression,			6,342	372	10%	0	3%	
21	stones without damaging the plants, so I left it. I did get the distinct impression,			6,339	371	90%	0	3%	
22	on something during installation, but I cannot be more exact than that as to			6,297	368	58%	0	3%	
23	level had dropped, but had stabilised. I traced around the perimeter and found			6,267	366	20%	0	2%	
24	3. The pond. The pond was empty. I filled it up using a hosepipe at the			6,244	364	14%	0	2%	

The concordance list of *I* seems to confirm the idea of an oral statement rather than written evidence. The verbs which most frequently collocate with *I* are *have* (13 hits), *am* (14 hits), *had* (9 hits), *asked* (11 hits), and *shall* (10 hits), as can be seen in Table 2, showing a 5:5 span of the node word *I*:[35]

Table 2. Verb collocate patterns

N	L5	L4	L3	L2	L1	Centre	R1	R2	R3	R4	R5
1	TO	I	A	THE	THAT	I	AM	A	THE	TO	THE
2	THE	THE	THE	IN	AND		HAVE	THAT	TO	I	TO
3	I	OF	TO	ALL	WHEN		ASKED	NOT	MEAD-OW-SWEET	THE	I
4			I		AS		SHALL	TO	I		A
5					SO		HAD	IT			AND

The collocation pattern *I am* corresponds to an existential expression in only six out of 14 hits, as we can see in excerpts (1)-(4) below. In all the other cases, the verb 'to be' is used as an auxiliary verb.

35 In Corpus Linguistics, a 5:5 word span of a node word takes into consideration the five words on the left and five words on the right of the word under investigation, in this case *I*.

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(1) 6. The hedge. The hedge looked very sparse to me. *I am* not an expert, however, and I would like to reserve my judgment until I have received Dr Box's report.

(2) Statement of Bert Bindweed

1. *I am* Bert Bindweed of 12 Laurel Gardens, Shrubsville, Evergreenshire. *I am* a retired accounting clerk, having worked for 45 years for Book, Ledger and Black, Accountants.

(3) Statement of Rupert Meadowsweet

1. *I am* Rupert Meadowsweet. *I am* a self-employed landscaping consultant with extensive experience.

(4) 1. This is my statement made supplementary to my statement made on 18 October 1999.

2. I resent Meadowsweet's suggestion that *I am* a bad payer. I have already made my financial circumstances clear.

While in (1) it is the arbitrator who is speaking and, since s/he acknowledges her/his lack of expertise in technically evaluating the object of the dispute, will pronounce her/his judgment only after receiving the expert's report, in (2) and (3) we have the respondent's and claimant's statements: in both cases, the two people involved introduce themselves in terms of social standing, placing an emphasis on their sound working experience, thus highlighting their credentials.

The forms *I have* (13 hits) and *I had* (9 hits) are always used in perfect tenses, mainly to describe what the witnesses have or had done at the time the event under dispute occurred. In the case of *I have*, in 4 cases out of 13, credentials are established from the viewpoint of the witnesses, as we can see in examples (5) and (6):

(5) *I have been appointed* by the Arbitrator in the case of Meadowsweet v. Bindweed to report on a hedge planted at 12 Laurel Gardens, Shrubsville. I *have at least 30 years experience* of hedges. I *have been consultant* to many maze structures and am author of the standard text in my field, 'Hedges', published by the International Society of Landscape Gardeners.

(6) In fact, *I have worked* for over 45 years and have always served with the utmost diligence.

In the case of *I asked*, the mostly frequently used pattern is that of asking somebody to do something:

(7) *I asked him to* advise me on a suitable form of conservatory.

In the collocation pattern *I shall*, the modal is utilised as a deontic marker only 6 times (lines 6-7; 11; 13-16). In all the other cases, *shall* is used as a future marker, as we can see seen in Figure 2.

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Figure 2 Concordance list of 'I shall'

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N	Concordance	Set	Tag	Word #	t. #	os.	. #	os.	. #	os.	t. #	os.	File
1	do my reputation any favours. In future I	shall		not be pressed into choosing	5,698	328	6%	0	5%		0	5%	ra\meadows.txt
2	got home that our nightmare began. 9. I	shall		deal with all the matters which fell	3,865	220	4%	0	1%		0	1%	ra\meadows.txt
3	4. Following all the difFIculties, which I	shall		describe below, relations between	3,506	198	1%	0	6%		0	6%	ra\meadows.txt
4	to say they are all nonsense. I	shall		deal with them one at a time. 7.	2,496	132	0%	0	3%		0	3%	ra\meadows.txt
5	the above material has been received, I	shall		make my full and. nal Award as	706	36	8%	0	9%		0	9%	ra\meadows.txt
6	before I make my decision, both parties	shall		provide an account of any	684	35	8%	0	9%		0	9%	ra\meadows.txt
7	incurred by the lay parties themselves	shall		not be recoverable. Immediately	672	34	7%	0	9%		0	9%	ra\meadows.txt
8	I shall charge £100 per hour plus VAT. I	shall		arrange a fee with Dr Box not	652	33	1%	0	9%		0	9%	ra\meadows.txt
9	are coasts in the arbitration. 10. I	shall		charge £100 per hour plus VAT. I	644	32	0%	0	8%		0	8%	ra\meadows.txt
10	a copy of my report for their comment. I	shall		rely only on evidence contained in	505	28	5%	0	7%		0	7%	ra\meadows.txt
11	site on 5 November 1999. Neither party	shall		be in attendance. I may carry out	482	25	7%	0	6%		0	6%	ra\meadows.txt
12	in the other party's statement. 6. I	shall		visit the site on 5 November 1999.	472	24	6%	0	6%		0	6%	ra\meadows.txt
13	1999. 5. Statements of factual evidence	shall		be exchanged by 18 October 1999.	444	22	4%	0	6%		0	6%	ra\meadows.txt
14	20 September 1999. 4. The Claimant	shall		serve its Statement of Defence to	427	21	1%	0	6%		0	6%	ra\meadows.txt
15	6 September 1999. 3. The Respondent	shall		serve its Statement of Defence and	412	20	1%	0	5%		0	5%	ra\meadows.txt
16	Society will apply. 2. The Claimant	shall		serve its Statement of Claim by 6	399	19	6%	0	5%		0	5%	ra\meadows.txt
17	settled. It is now agreed by all that I	shall		have full jurisdiction over the	376	17	8%	0	5%		0	5%	ra\meadows.txt

When *shall* is used as a modal marking future time, it is always employed with the person pronoun *I*. A manual extraction of *I shall* has indeed indicated that the expression is always uttered by the arbitral president, who, clearly, cannot impose on himself/herself an obligation, but is rather giving instructions to the parties about the steps s/he will follow in order to ascertain the truth and issue the arbitral award.

III. Reporting the Story as a Group: The Use of 'We'

The report of the events from the witnesses' point of view is in a narrative form set in the past and 'together' with other people. The witness is never alone when reporting the story, hence the use of *we*. The plural person pronoun *we* occurs 43 times in my corpus. In all these cases, *we* is used exclusively: what the witnesses are reporting happened to themselves and other people forming a group excluding both the other party involved in the litigation and, obviously, the arbitrator. There is, in other words, a contrast between an unspoken *you* and *we*, always represented in the best possible way, as excerpt (8) suggests (my emphasis):

> (8) Bindweed complains about the new pond. The location was given to us in a small sketch pinned to the back door. *We* could not get hold of Mr and Mrs Bindweed who had, by this time, left for their holiday. The sketch was quite ambiguous, but *we* reckoned that putting it over on the left hand side would give it more shade. This would be important if the Smiths were to stock it with fish. But, as I say, *we* thought that *if Mr Bindweed was so careless about where it went, it couldn't be that important*.

As we can see, the people involved and identified as *we* are described as those who cannot be blamed for the decision taken: indeed, they "could not get hold of Mr and Mrs Bindweed [the respondent]" in order to consult him on the question of the position of the pond, from which they inferred that the respondent's carelessness regarding his instructions was indicative of the non-relevance of the whole

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matter; "if Mr Bindweed was so careless about where it [the pond] went, it couldn't be important".

On the other hand, the respondent uses the pronoun *we* as an in-group strategy to point out that not only he but also his family are undergoing great emotional stress because of the consequences of the mistakes made by the respondent:

> (9) Following all the difficulties, which I shall describe below, relations between us and the Border-Marshes have become extremely tense. All the neighbours appear to have taken the Border-Marshes' side in this because of Mr Border-Marsh's position, no doubt – and *we are pretty much ostracised*. Alice is heartbroken and *we are considering moving* when this sorry episode is behind us.

The claimant declares they "are pretty much ostracised", to such an extent that they "are considering moving". This may seem interesting, as in an attempt to justify his own actions, the respondent uses emotional reasons to reduce any possible responsibility on his part.

The concordance list of *we* evidences the collocation pattern *we had* (4 hits), three examples being found in the respondent's statement and one in the claimant's:

> (10) Since *we had* the work done, Alice has taken up tennis with a club in the neighbouring
> (11) [...] Alice got a little too much sun on the last day, but all in all *we had* a lovely time.
> (12) He asked for the money in used £20 notes. 8. Alice and I went to Majorca. We *had* a lovely holiday.
> (13) *We had* my niece Samantha in doing a spot of typing for a weekend pin-money job. She's studying the history of art and would not know the difference.

As we can see, the use of *we had* refers to the narrative pattern of story-telling: events are reported in the best possible way so as to achieve an acknowledgment of the truth.

IV. Showing Action: The Use of 'My'

The possessive adjective *my* has a frequency of 37 hits, a sample of which is given in Figure 3 below.

No concordances have been elaborated by Wordsmith tools. For this reason, I tried to identify who actually uses the possessive. The findings are listed in Table 3.

Clearly, the expressions present in Table 3 are taken into consideration without the context in which they occur, but it seems reasonable to say that the adjective *my* is accompanied by various nouns which can, in some way, identify the role of the person using this possessive adjective. The Arbitrator clearly uses *my* together with words that pinpoint her/his legal role: *reason*, *opinion*, *judgment*,

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Figure 3 Concordance list of 'my'

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N	Concordance	Set	Tag	Word #	t. #	os.	. #	os.	. #	os.	t. #	os.	
1	He's complained about everything else. My	main	reason for jotting this note is to	7,122	424	8%	0	4%			0	4%	o
2	at the front of the house. How ghastly! My	sympathies.	But apart from the	7,080	419	7%	0	3%			0	3%	o
3	far into the future. 5. In conclusion, it is my	poinion	that, given the very clear	6,765	401	1%	0	9%			0	9%	o
4	and am author of the standard text in my	field,	'Hedges', published by the	6,658	396	4%	0	8%			0	8%	o
5	The windows were very cloudy. In my	opinion,	the conservatory window	6,528	388	3%	0	6%			0	6%	o
6	however, and I would like to reserve my	judgment	until I have received Dr	6,498	384	4%	0	6%			0	6%	o
7	up using a hosepipe at the beginning of my	visit.	By the end, the level had	6,255	364	3%	0	2%			0	2%	o
8	about. I asked him to leave. He ignored my	requests	and so I myself left. I	6,207	359	0%	0	2%			0	2%	o
9	I am prepared to appeal to clear my	name. ']	IN THE MATTER OF THE	6,088	352	2%	0	0%			0	0%	o
10	one for me... 'It's all nonsense. 7. My	comments	about the norms of	5,995	348	7%	0	9%			0	9%	o
11	I am a bad payer. I have already made my	financial	circumstances clear. 3. The	5,787	332	7%	0	6%			0	6%	o
12	my Statement made supplementary to my	Statement	made on 18 October	5,765	330	0%	0	6%			0	6%	o
13	OF BERT BINDWEED 1. This is my	Statement	made supplementary to	5,760	330	7%	0	6%			0	6%	o
14	the panes have frosted. It doesn't do my	reputation	any favours. in future I	5,691	327	3%	0	5%			0	5%	o
15	I asked for cash because that is what my	suppliers	wanted. I do not get	5,622	319	3%	0	4%			0	4%	o
16	This is my statement supplementary to my	statement	made on 18 October	5,439	304	7%	0	2%			0	2%	o
17	RUPERT MEADOWSWEET 1. This is my	statement	supplementary to my	5,435	304	9%	0	2%			0	2%	o
18	(d) Work done 10-14 May 1999 (e) My	formal	letter before count action 5	5,268	299	8%	0	9%			0	9%	o
19	all, it is my complaint, not his. After my	solicitor	was brought in, however, he	5,218	298	4%	0	9%			0	9%	o
20	such a possibility. After all, it is my	complaint,	not his. After my solicitor	5,213	297	7%	0	9%			0	9%	o
21	or distributor. 18. In order make my	point	clearer, let me describe exactly	4,978	283	7%	0	6%			0	6%	o
22	however, he should have done so. My	contract	is with Superior Gardens,	4,960	282	4%	0	5%			0	5%	o
23	a conservatory where I could smoke my	pipe	after dinner. We have always	3,416	192	7%	0	5%			0	5%	o
24	at the end of 1998. Shortly afterwards, my	wife,	Alice, and I and bought the	3,365	187	7%	0	4%			0	4%	o

requests, *Award*, *decision*, *appointment*, *report*, and *jurisdiction*. The same can be said for the type of substantives used by the experts appointed by the Arbitrator. The claimant exploits *my* together with nouns suggesting an apparently denotative reference to his own work procedures, hence the use of *my suppliers*, *my niece* (who was working part-time for the claimant), *my lads*. He is clearly worried about the loss of reputation caused by the adoption of measures taken, this being strongly suggested by the respondent:

> (14) 7. Bindweed is right to say that I was 'sniffy' about the conservatory. I don't like using inferior materials. The seals have all corroded and the panes have frosted. It doesn't do *my reputation* any favours. In future I shall not be pressed into choosing inferior products by customers.

Hence, the stress on *my advice*: "I motored over the next day and gave him the benefit of my advice", advice not actually followed of course and mentioned twice in the statements issued by the claimant.

As to the respondent, the type of nouns pre-modified by the adjective *my* are indicative of his social status: *my financial situation*, *my contract*, *my solicitor*, *my complaints*, *my rights*. The emotional note is present in his address to *my wife* and in her wish to allow him to smoke his pipe (*my pipe*) in the area which was to become the subject of the arbitration procedure. All this is further influenced by the utterance *my sympathies* found in a document written by the respondent in which he describes the damage resulting from the erroneous work procedure, as excerpt (15) clarifies:

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Table 3. Distribution of 'my'

Arbitrator	Experts	Claimant	Respondent
my main reason for	*my opinion*	*my sympathies*	*my reputation*
in my opinion	*my field*	*my comments*	*my suppliers*
my judgment		*my financial situa-*	*my statement*
my visit		*tion*	*my statement*
my requests		*my statement*	*my advice*
to appeal to clear		*my statement*	*my niece*
my name		*my formal letter*	*my lads*
my full and final		*my solicitor*	*my advice*
Award		*my complaint*	
my decision		*my point*	
my appointment		*my contract*	
my colleague		*my pipe*	
my report		*my wife*	
my report		*my doubts*	
my jurisdiction		*my rights*	

(15) I understand that he's put his caravan on the paved area at the front of the house. How ghastly! *My sympathies*. But apart from the eyesore factor, I guess it'll be damaging the paving flags.

V. The Italian Case Study

The case of WD2 seems quite different from WD1, as suggested by the type of keywords found in it and listed in Table 4.

Table 4. WD2 keyword list

N	Keyword	Freq.	%	RC. Freq.	RC. %	Keyness
1	AGENTE [agent]	35	0.42	0		114.09
2	PEZZI [parts]	27	0.33	0		87.99
3	SOCIETÀ [company]	51	0.62	22	0.07	86.54
4	MACCHINE [machinery]	25	0.30	0		81.47
5	RICAMBIO [spare part]	25	0.30	0		81.47
6	SIG [Mr]	59	0.72	37	0.11	80.54
7	PROVVIGIONI [commis-sions]	24	0.29	0		78.21
8	INDENNITÀ [severance pay]	24	0.29	0		78.21
9	È [is]	57	0.69	36	0.11	77.43
10	CLIENTI [customers]	20	0.24	0		65.17
11	L [the]	74	0.90	80	0.24	62.97

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Table 4. (continued)

N	Keyword	Freq.	%	RC. Freq.	RC. %	Keyness
12	AGENZIA [agency]	19	0.23	0		61.91
13	N [no.]	63	0.76	62	0.18	59.19
14	DELL [of the]	57	0.69	56	0.17	53.63
15	COMMERCIALE [commercial]	16	0.19	0		52.13
16	DOC [doc.]	33	0.40	18	0.05	49.18
17	COMMISSIONI [commissions]	15	0.18	0		48.87
18	MACCHINARI [machinery]	15	0.18	0		48.87
19	DOVUTE [due to]	17	0.21	1		48.10
20	CLIENTELA [customers]	14	0.17	0		45.61
21	PREPONENTE [principal]	14	0.17	0		45.61
22	ALL [enclosed]	32	0.39	21	0.06	42.28
23	GRUPPO [group]	15	0.18	1		41.82
24	PREAVVISO [notification]	15	0.18	1		41.82
25	VENDITA [sale]	16	0.19	2		40.44
26	CLIENTE [client]	12	0.15	0		39.09
27	FATTURA [invoice]	11	0.13	0		35.83
28	TRATTATIVE [negotiations]	10	0.12	0		32.57
29	LIRE [Italian lire]	10	0.12	0		32.57
30	ESCLUSIVA [exclusive]	12	0.15	1		32.48
31	GENNAIO [January]	12	0.15	1		32.48
32	DI [of]	13	0.16	2		31.44
33	AFFARI [business]	9	0.11	0		29.31
34	RAPPORTI [relationships]	23	0.28	18	0.05	26.57
35	ATTIVITÀ [activity]	15	0.18	6	0.02	26.36
36	CONTROLLO [control]	10	0.12	1		26.31
37	DOCC [documents]	8	0.10	0		26.06
38	VENDITE [sales]	8	0.10	0		26.06
39	CALZE [stockings]	8	0.10	0		26.06

Contrary to WD1, there are hardly any common words. Two words can be singled out as being highly specialised: *indennità*, 'severance pay' (line 8); and *preponente*, 'principal' (line 21), which in Italian are used in their legal context only. Then we have 22 items belonging to the commercial semantic fields: *agente*, 'agent' (line 1); *società*, 'company' (line 3); *provvigioni*, 'commissions' (line 7); *clienti*, 'customers' (line 10); *agenzia*, 'agency' (line 12); *commerciale*, 'commercial' (line 15); *doc*, 'documents' (line 16); *commissioni*, 'commissions' (line 17); *clientela*, 'customers' (line 20); *all*, 'enclosed' (line 22); *gruppo*, 'group' (line 23); *preavviso*, 'notifica-

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tion' (line 24); *vendita*, 'sale' (line 25); *cliente*, 'customer' (line 26); *fattura*, 'invoice' (line 27); *trattative*, 'negotiations' (line 28); *esclusiva*, 'exclusive' (line 30); *affari*, 'business' (line 33); *attività*, 'activity (line 35); *controllo*, 'control' (line 36); *docc*, 'documents' (line 37); and *vendite*, 'sales' (line 38). The remaining 15 words belong to everyday language.

Surprisingly, within the first ten keywords, we can find six non-specialised terms. Three seem to refer to the object of arbitration, that is *pezzi*, 'parts' (line 4), which collocate with *ricambio*, thus giving 'spare part(s)' (line 5), and *macchine*, 'machinery' (line 4), to form the collocational pattern *pezzi di ricambio delle macchine*, meaning 'machinery spare parts'; the other three belong to general usage: *Sig*, 'Mr' (line 6); the verb *è*, 'is' (line 9); and the definite article *L*, 'the' (line 10). Only *agente*, 'agent' (line 1); *società*, 'company' (line 2); *provvigioni*, 'commissions' (line 8); *indennità*, 'benefit' (line 9); and *clienti*, 'customers' may be considered specialised terms.

VI. Creating the Arbitral Context: Agente ('Agent'), Pezzi ('Parts'), Società ('Company'), Macchine ('Machinery'), Ricambio ('Spare Part'), Provvigioni ('Commissions'), Indennità ('Severance Pay'), and Clienti ('Customers')

The top WD1 keywords are *agente* ('agent', 35 hits), *pezzi* ('parts', 27 hits), *società* ('company', 51 occurrences), *macchine* ('machinery', 25 hits), *provvigioni* ('commissions', 24 hits), *ricambio* ('spare part', 25 hits), *indennità* ('severance pay', 24 occurrences), and *clienti* ('customers', 20 occurrences). Such words are used, apparently, to create the context upon which the whole arbitration proceeding is based. A world-leader company producing stockings and machines used to manufacture stockings was also acting as an agent for rival companies (*i.e.* the clients) which also sold machines and spare parts used in stocking manufacture, thus not only creating a fictitious competitive market (while actually controlling all its aspects) but also financially damaging real agents working in this sector as well as its own representatives, hence the use of *provvigioni* ('commissions'), referring to the financial losses incurred by the real agents, and of *indennità* ('severance pay'), the due severance pay requested by the agents and which the firm did not agree with.

VII. The Story from the Perspective of the Witness: The Use of Sig ('Mr')

The keyword *Sig* ('Mr', 59 hits)[36] is the title used to refer to the parties involved in the arbitral proceeding, as clearly shown by the concordance list, a sample of which can be seen in Figure 4.

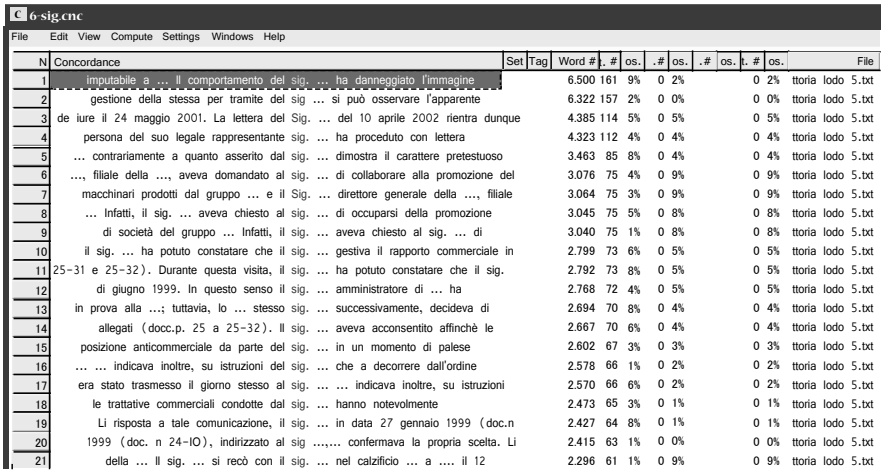
The presence of *Sig* ('Mr') is expressed by the use of the third person singular. Indeed, the documents collected in WD2 present the memory as being reported by somebody else rather than by the witness himself. In other words, those reporting the events in a written form are not the witnesses themselves but rather their legal representatives who have collected the oral evidence and transformed it into a written report. As a matter of fact, the comments of the wit-

36 For confidential reasons, the names of the people involved have been deleted.

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Figure 4 Concordance list of 'Sig' ('Mr')



6-sig.cnc

File Edit View Compute Settings Windows Help

N	Concordance	Set	Tag	Word #	t. #	os.	.#	os.	.#	os.	t. #	os.	File
1	imputabile a ... Il comportamento del sig. ... ha danneggiato l'immagine			6.500	161	9%	0	2%			0	2%	ttoria lodo 5.txt
2	gestione della stessa per tramite del sig ... si può osservare l'apparente			6.322	157	2%	0	0%			0	0%	ttoria lodo 5.txt
3	de iure il 24 maggio 2001. La lettera del Sig. ... del 10 aprile 2002 rientra dunque			4.385	114	5%	0	5%			0	5%	ttoria lodo 5.txt
4	persona del suo legale rappresentante sig. ... ha proceduto con lettera			4.323	112	4%	0	4%			0	4%	ttoria lodo 5.txt
5	... contrariamente a quanto asserito dal sig. ... dimostra il carattere pretestuoso			3.463	85	8%	0	4%			0	4%	ttoria lodo 5.txt
6	..., filiale della ..., aveva domandato al sig. ... di collaborare alla promozione del			3.076	75	4%	0	9%			0	9%	ttoria lodo 5.txt
7	macchinari prodotti dal gruppo ... e il Sig. ... direttore generale della ..., filiale			3.064	75	3%	0	9%			0	9%	ttoria lodo 5.txt
8	... Infatti, il sig. ... aveva chiesto al sig. ... di occuparsi della promozione			3.045	75	5%	0	8%			0	8%	ttoria lodo 5.txt
9	di società del gruppo ... Infatti, il sig. ... aveva chiesto al sig. ... di			3.040	75	1%	0	8%			0	8%	ttoria lodo 5.txt
10	il sig. ... ha potuto constatare che il sig. ... gestiva il rapporto commerciale in			2.799	73	6%	0	5%			0	5%	ttoria lodo 5.txt
11	25-31 e 25-32). Durante questa visita, il sig. ... ha potuto constatare che il sig.			2.792	73	8%	0	5%			0	5%	ttoria lodo 5.txt
12	di giugno 1999. In questo senso il sig. ... amministratore di ... ha			2.768	72	4%	0	5%			0	5%	ttoria lodo 5.txt
13	in prova alla ...; tuttavia, lo ... stesso sig. ... successivamente, decideva di			2.694	70	8%	0	4%			0	4%	ttoria lodo 5.txt
14	allegati (docc.p. 25 a 25-32). Il sig. ... aveva acconsentito affinchè le			2.667	70	6%	0	4%			0	4%	ttoria lodo 5.txt
15	posizione anticommerciale da parte del sig. ... in un momento di palese			2.602	67	3%	0	3%			0	3%	ttoria lodo 5.txt
16	... ... indicava inoltre, su istruzioni del sig. ... che a decorrere dall'ordine			2.578	66	1%	0	2%			0	2%	ttoria lodo 5.txt
17	era stato trasmesso il giorno stesso al sig. ... ... indicava inoltre, su istruzioni			2.570	66	6%	0	2%			0	2%	ttoria lodo 5.txt
18	le trattative commerciali condotte dal sig. ... hanno notevolmente			2.473	65	3%	0	1%			0	1%	ttoria lodo 5.txt
19	Li risposta a tale comunicazione, il sig. ... in data 27 gennaio 1999 (doc.n			2.427	64	8%	0	1%			0	1%	ttoria lodo 5.txt
20	1999 (doc. n 24-IO), indirizzato al sig ...,... confermava la propria scelta. Li			2.415	63	1%	0	0%			0	0%	ttoria lodo 5.txt
21	della ... Il sig. ... si recò con il sig. ... nel calzificio ... a .... il 12			2.296	61	1%	0	9%			0	9%	ttoria lodo 5.txt

nesses themselves are encountered only when the legal representative reproduces verbatim what was actually *said* during the hearing:

> (16) il sig. ..., Presidente del gruppo S ha indicato all'udienza del 14 gennaio 2004: "insoddisfatto del lavoro dì ..., mi sono preoccupato di mandare un mio dipendente, che viveva in Francia [...]" *During the hearing held on 14 January 2004, Mr ... President of the company S said: "dissatisfied with Mr...'s work, I took the trouble to send one of my employees who lived in France [...]"*

A manual extraction of the concordance list of *Sig* ('Mr') has revealed an interesting pattern, according to whether *Sig* is the subject, the object, or the patient of the proposition and whether the accompanying verb is nominalised or not, as summarised in Table 5, and explained in detail below:

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Table 5. Breakdown of the term 'Sig'

Nominalised forms		Comportamento del sig… [Mr …'s behaviour]
		La gestione della stessa per il tramite del sig… [the company management by Mr …]
		La presa di posizione palesemente anticommerciale del sig.… comprometteva [Mr …'s clearly non-commercial position compromised]
		Su richiesta del Direttore il sig… [on Mr …'s request]
		A causa dell'iniziativa del sig. … [because of Mr …'s initiative]
		A causa del comportamento del Sig.… [because of Mr …'s behaviour]
		La risposta del sig.… [Mr …'s repl
Active forms	Subject	X nella persona del suo legale rappresentante sig. … ha proceduto a [X, in the person of Mr. … its legal representative, proceeded to]
		Il sig… aveva domandato a [Mr … had asked]
		Il sig… gestiva [Mr … managed]
		Il sig…. aveva potuto constatare [Mr … had been able to see that]
		Il sig…ha incontrato [Mr … met]
		Il sig… decideva [Mr … decided]
		Il sig… aveva acconsentito affinchè [Mr … had agreed that]
		Il sig. … indicava che [Mr … stated that]
		Il sig.… si recò con il sig.… [Mr … went with Mr … to]
		[…] ha dovuto presentarle il sig.… [Mr … had to present them]
		Il sig.… rinviava [Mr … postponed]
		Il sig. … consentiva [Mr… agreed]
		Il sig.… lamentava [Mr…complained]
		Il sig… avvisava [Mr … warned]
		Il sig.… avrebbe dovuto tenere informata l'attività [Mr … should have kept a record of the activity]
		Il sig…ha disatteso [Mr … disregarded]
		Il sig. … aveva l'autorizzazione [Mr … was authorised]
		Il sig… ribadiva [Mr … confirmed]
		Il sig.… applicava prezzi inferiori [Mr … applied lower prices]
		Il sig.… dichiarava [Mr … declared]
		Il sig… aveva dichiarato [Mr …had declared]
		Il sig…si è presentato [Mr …turned up]
		Il sig… ha sistematicamente cercato di [Mr … systematically tried to]
		Il sig. … veniva assunto [Mr … was recruited]
		Il sig. … si rifiutava [Mr … refused]
		Il sig… lavorava per [Mr … worked for]
		Il sig… era responsabile [Mr … was responsible]
		Il sig…[…] conosceva l'amministratore [Mr …[…] knew the manager]
		Il sig…ha indicato [Mr … stated]

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Object		X aveva domandato al sig. …[X asked Mr …]
		Il fax […] inviato a [The fax sent to Mr …]
		X aveva il diritto di accompagnare il sig… [X had the right to accompany Mr …]
		XY […] inviavano na lettera […] al sig… [[…] XY sent a letter to Mr … […]]
		Non conoscendo il sig….[as they did not know Mr …]
		Sottoporre al sig… un preventive [to provide Mr … with an estimate]
		Il gruppo … decideva di inviare in Francia il sig…[the group… decided to send Mr … to France]
Passive construction	Agent	Asserito dal sig. … [claimed by Mr …]
	Patient	Sostituito il sig. … con la sig.ra … e il sig…. [Mr … being substituted by Mrs … and Mr …]
		La presenza del sig. … incaricato da [the presence of Mr …, appointed by]

In the cases in which *Sig* ('Mr') is either the subject, the object, the agent, or the patient of the proposition, we have a neutral report of the events collected in the written memories acquired by the legal representatives of the parties involved in the arbitration proceeding. Whenever a nominalised form (as shown in Table 5), in which the verb is transformed into a noun which becomes the subject of a proposition and in which *Sig* ('Mr'), acquires a genitive role, the representation of the event is always negative, with the blame falling on whoever appointed *Sig* ('Mr'):

(17) A causa del comportamento del sig. … nel gestire i rapporti commerciali con …, la … e conseguentemente la S, hanno perso il loro cliente.

Because of Mr …'s behaviour in the management of the business relations with …, the … [company], and consequently S, lost their customer.

(18) Il comportamento del sig… ha danneggiato l'immagine …

Mr …'s behaviour has damaged the image of …

(19) In particolare, considerando l'acquisizione di … da parte del … agli inizi del 1994 e la condotta tenuta nella gestione della stessa per tramite del sig … si può osservare l'apparente esistenza di una volontà, da parte del … di acquisizione della quota di mercato della … o per lo meno di utilizzarla con logiche e strategie di gruppo, con pregiudizio dei suoi agenti.

In particular, considering the takeover of … by … in early 1994 and the behaviour in its management through Mr …, one can observe that the apparent existence of …'s will to acquire a market share of…, or at least to use it with group logics and strategies harmful to its agents.

In this way, by placing negativity on the object rather than on the person (thus implying that behaviour caused financial loss, not the person), what is highlighted is not the personal but rather the professional side of the person to be blamed. In other words, the reporter seems to distance herself/himself from any personal evaluation of the people referred to by the term *Sig* while at the same time objectively demonstrating where the fault lies.

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VIII. The Story from the Witnesses' Perspective: The Use of è ('Is')

The verb *è* ('is') occurs 57 times in the corpus and is used in the passive form in 23 out of 57 cases in which the agent is seldom represented. In this way, the rhematic expression,[37] which usually is positioned after the theme, is foregrounded as it takes the place of the theme. The patient, therefore, acquires relevance. In addition, with the absence of the agent, responsibility for the action is removed:

> (20) Apparirà dunque chiaramente che tale lettera è stata scritta col solo intento di paventare l'eventualità di un futuro contenzioso e che, dunque, alla stessa non si può attribuire alcun valore.
>
> *It will clearly appear that this letter has been written with the sole purpose of avoiding the possibility of a future litigation proceeding and that, therefore, no value can be attributed to it.*

E. Discussion and Concluding Remarks

Arbitration is the alternative dispute resolution most widely used to settle commercial disputes across countries. For this reason, UNCITRAL has tried to uniform the various applications of arbitration by offering guidelines which are applied at a local level by different countries. Despite the efforts of UNCITRAL to level out such differences, the way in which the arbitral proceeding takes place differs from country to country. This, for instance, is evident in the two case studies presented in this investigation. When evidence is admitted in written form rather than in an oral hearing, the way in which such evidence is reported varies greatly in intercultural contexts. The social practices involved in the arbitral process seem to be culturally and professionally dependent. Indeed, although the procedure involves commercial issues, the very fact that the final award has the same value as a legal sentence makes these documents appear extremely 'legal' in terms of linguistic features.

During the arbitral procedure, a number of stories and variations of the same story are reported from different perspectives. The arbitrator's role is that of sorting out and reformulating those stories in a more essential and objective way. Sometimes facts are easily summarised, sometimes they are not. By retelling or rewriting the story, the arbitrator let the parties know that s/he heard what they presented and that s/he can decide about the matter.

We have seen, for instance, that in the UK the type of written documents collected by the arbitral panel on behalf of the witnesses is expressed in very plain language and where witnesses very informally describe the event as it happened. This may derive from the simplification process influenced by the Plain Language Movement. The use of plain language in the arbitral proceeding is not a synonym of easy understanding: understanding is strictly related to legal comprehension

37 Specialised texts have a textual framework which depends on the sequence of *theme*, that is, items introducing the topic or theme, and *rheme*, that is, items containing an expansion of what has been presented in the thematic position. *See* M.A.K. Halliday, *Explorations in the Functions of Language*, London, Edward Arnold 1973.

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and legal knowledge. Complex legal matters will remain complicated. But the complexity lies rather in the nature of the subject than in language use.

In the UK case, as we have seen in paragraphs D.I., D.II., D.III., and D.IV. above, the collected documents where the discourse of witnesses is reproduced, although reported by legal representatives, is verbatim: hence the use of first person singular and plural pronouns, as well as the exploitation of the possessive adjective *my* – which in my corpus are all regarded as keywords.

The exploitation of the first pronoun *I*, as we have seen, is mainly found in three cases: (a) in the cluster *I am*, when either the judge is showing lack of expertise about the topic under discussion and need to appoint an expert to evaluate it or when the people involved in the arbitration process are introducing themselves; (b) in the cluster *I have/ I had*, when discourse turns to story-telling, that is, when witnesses describe their viewpoint about what has been done when the event under dispute occurred; and (c) in the collocation pattern *I shall* used by the arbitrator as a marker for future tense.

The person pronoun *we*, on the other hand, is employed in story-telling narratives pattern only, especially when witnesses reconstruct their reality in the best possible way so as to allow the arbitrator panel to acknowledge the truth.

The possessive adjective *my*, whenever used by the arbitrator, or by the experts nominated by the arbitral panel, points to the identification of their legal role; whenever *my* is used by the claimant, it suggests a denotative reference to the claimant's working procedures; if *my* is used by the respondent, it points to establish his social role.

The identification of these key points in the English written memories seems to strongly point to the exploitation of plain language in documents which have a legal value.

On the other hand, the type of language used in the Italian corpus seems to disregard the suggestions provided by the Italian Government concerning the simplification of legal language, as we can see in paragraphs D. V., D.VI., D.VII., and D.VIII. above. The type of keywords found point to a more formal use of language within the written memories under investigation. As seen above, the top keywords found create the context upon which the whole arbitration proceeding is based. Among them, the keyword *Sig* ('Mr') singles out. The keyword, however, appears in the written memory as being reported by somebody else rather than by the witness himself: here the witnesses' discourse is remoulded into *legalese*. The title *Sig* is used to refer to people different from the narrative voice reporting the events from the witnesses' perspective. In addition, there is a significative pattern in the use of *Sig* in the written memories. If the keyword *Sig* is used in the subject, object, agent, or patient roles, the overall sense of the proposition is neutral; whenever *Sig* is used together with nominalised expressions, that is, whenever the verb is transformed into a noun which becomes the subject of a proposition in which *Sig* ('Mr') acquires a genitive role, the representation of the event is always negative, with the blame falling on whoever appointed *Sig* ('Mr'). In other words, in the written evidence of the Italian arbitral proceedings, the type of language used by the witnesses is reformulated by their legal representatives and reported

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accordingly in *legalese*, as the Italian professional tradition requires, despite the simplification of bureaucratic language hinted at in paragraph B.III above.

To date, there seems to be no comprehensive materials available to the arbitral world to suggest ways of clearly and effectively writing written memories for arbitral proceedings. As we can see from the above analyses, although legal documents affecting the rights and obligations of ordinary people should be stated as plainly as possible, this is not always the case. Indeed, the difference in style between the two cases is evident in the Italian case, where plain language, which in a clear, direct, and straightforward way allows readers to concentrate on the message conveyed not on the difficulties created by the use of language, is far from being realised.

Certainly, the present study has some limitations, mainly the paucity of the corpus, which, as I have hinted at above, is due to issues of confidentiality. It also needs to be triangulated in order to offer some generalisations which here cannot be drawn from the analysis of two case studies. Nevertheless, it may offer some interesting insights, such as, for example, the use of person and possessive adjectives in the case of the English corpus, and, as in the case belonging to the Italian corpus, the syntactical role assigned to the person giving evidence and their role in terms of plain language use. These features have merely been hinted at here and deserve further investigation.

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