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Linguistic Insights
Studies in Language and Communication

Vijay K. Bhatia, Christopher N. Candlin &
Maurizio Gotti (eds)

The Discourses of Dispute Resolution

Peter Lang

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This volume presents some of the findings from a project on various aspects of Alternative Dispute Resolution (ADR), including conciliation, mediation, and arbitration. To study the discursive practices of ADR today, an international initiative has been undertaken by a group of specialists in discourse analysis, law, and arbitration from more than twenty countries. The chapters in this volume draw on discourse-based data (narrative, documentary and interactional) to investigate the extent to which the 'integrity' of ADR principles is maintained in practice, and to what extent there is an increasing level of influence from litigative processes and procedures. The primary evidence for such practices comes from textual and discourse-based studies, ethnographic observations, and narratives of experience on the part of experts in the field, as well as on the part of some of the major corporate stakeholders drawn from commercial sectors.

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Edited by Maurizio Gotti,
University of Bergamo

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Linguistic and discoursal features of dispute resolution

VIJAY K. BHATIA / CHRISTOPHER N. CANDLIN / MAURIZIO GOTTI

Introduction

1. The discourses of dispute resolution

Alternative dispute resolution (ADR) refers to all forms of dispute resolution mechanisms, either assisted by specialists in ADR or directly negotiated among the disputing parties, which fall outside of the jurisdictionally regulated process popularly known as litigation. Some of the major forms of ADR include conciliation, mediation and arbitration.

The parties at dispute may initially attempt to resolve the matter themselves, if they feel that the dispute is not too polarized, and where there exists some measure of trust and goodwill among the disputing parties. In such circumstances, the parties often try to arrive at direct conciliation with or without the help of a neutral internal or external facilitator. Conciliation thus primarily involves developing a suitable framework to encourage openness and a positive understanding between the parties at dispute. The job of a neutral conciliator is to facilitate such an understanding as a basis for the resolution of the dispute, by helping the parties to set up communicative channels, by means of these to clarify some of the main misunderstandings or issues, and to develop mutual trust among the parties. Conciliation may also be used in conjunction with other methods of ADR, particularly mediation. If conciliation fails to create an adequate environment of mutual trust and understanding, the parties may wish to explore other options of ADR, such as mediation, instead of going to the courts for litigation.

Mediation, once again, is a voluntary process, in which the disputing parties, with the help of a third party, who may or may not be a legal expert or a judge, seek to explore a mutually acceptable resolution of the dispute. This kind of assisted mediation process is

generally evaluative, depending on the mutually acceptable procedures, and may be viewed as some kind of a litigative process with the aim of arriving at a preliminary evaluation of possible outcomes of the ADR.

Mediation may thus be viewed as an intervention by an impartial and neutral third party into a dispute in order to create conditions for a negotiated and acceptable resolution of the dispute, even though this third party often has no decision-making authority. The main objective of the mediator is to help the disputing parties by means of a voluntary alternative dispute resolution process to reach a mutually acceptable resolution of the dispute. Like conciliation, mediation is also voluntary and does not close off other options for dispute resolution, if the mediation fails. The mediation process may or may not result in a resolution of the dispute, but the process remains characteristically voluntary, private and confidential. A mediator, like a conciliator, makes procedural suggestions regarding how parties may reach agreement. A mediator may also propose some substantive options to encourage the parties to expand the range of possible resolutions under consideration. A mediator can work with the parties individually, or with both parties present, or a combination of both in a series, so as to generate interests and to explore options that address their interests.

Mediators differ widely in their degree of intervention. Often mediation does not only help the parties to resolve their present dispute, but may also create a constructive environment in which to develop mutual trust and improved relationship. The most important aspect of mediation is that the mediator does not intervene by directly suggesting a specific solution to the dispute, but only acts to assist the disputing parties to develop a suitable process that is acceptable to both, so that they can work towards a mutually agreeable resolution.

Mediators often draw on their expertise to involve the stakeholders to the dispute actively in the process, and hence may act as a neutral organizer of the interaction to help a diverse group of interested parties in resolving complex issues in mutually amicable and acceptable manner. However, if and when mediation fails to bring the disputing parties to an acceptable and amicable resolution of the dispute, the next option open to them is arbitration, which despite its increasingly interventionist character, nonetheless remains still private

and confidential and remains inspired by a mutual agreement to resolve the dispute in question outside of the court.

In arbitration, parties or their representatives, often legal counsels, present a dispute to an impartial single arbitrator or an arbitration tribunal consisting of more than one member (often three or another odd number depending on the nature, extent and size of the dispute) so as to resolve the dispute and order a decision, which is similar to a legal judgment, but in ADR is conventionally known as an award. Unlike other forms of ADR, i.e., conciliation and mediation, which do not suggest or impose any specific decision to resolve the dispute, arbitration is explicitly intended to issue a decision or award which is often binding for the disputing parties. As such, an arbitral award is generally non-appealable in a court of law. In arbitration, the parties at dispute have considerable input in the selection of the members of the arbitration tribunal, and also in the choice of processes and procedures they would like the tribunal to follow, including the choice of language, the seat of arbitration, as well as the arbitration laws within which the resolution of the dispute is to be negotiated.

Arbitration is thus the most appropriate form of ADR when the disputing parties fail to reach any agreement to resolve their dispute, say by the processes of conciliation and mediation on their own, or with the help of a neutral mediator, and require in consequence a third party to determine the resolution of their dispute, while at the same time wishing to avoid the time and expense of litigation where they would have absolutely no influence or control over the decision-making process. As mentioned earlier, the decision of the arbitration tribunal is enforceable, and cannot be challenged in a court of law, except under a very restricted set of conditions. So, the main advantage of arbitration is that it is like litigation in effect, in that it is decided by a neutral third party, but unlike litigation, it is intended to be more informal, expedient, economical, private and confidential in nature, while at the same time giving sufficient voice and freedom to disputing parties in the way it is actually conducted. For some of these reasons, some specialists call it ‘private litigation’.

Various forms of ADR have been increasingly gaining acceptance both from the point of view of the disputing parties as well as that of the legal community. Disputing parties feel, rightly or wrongly,

that they can thereby save on precious time and money, and the legal community have found ADR a significant means of extending their professional calling and augmenting their business income. There is also a considerable support for ADR on the part of the judiciary because they find it a useful resource to cut down the excessive caseload prevalent in the courts of most jurisdictions, so much so that some courts have started instructing disputing parties to go for ADR before coming to courts for their dispute resolution.

Despite the recent popularity of ADR, its practices are not without problems. Although ADR is generally regarded as an economical and effective alternative to litigation for settling disputes, it has been commonly observed that ADR as non-legal practice is being increasingly influenced by the practices and procedures of litigation, a development which seems to be contrary to the spirit of ADR, and of arbitration in particular, to resolve disputes outside of the courts. Nariman (2000: 262) points out that "International Commercial Arbitration as practised has become almost indistinguishable from litigation, which it was at one time intended to supplant". In a similar manner, Marriott (2000: 354) writes:

> Although the 1996 Act gave arbitrators very considerable power over the running of an arbitration and greater confidence in their autonomy, my sense is that they are not really producing radically new procedures more efficient and prompt than hitherto. The English passive tradition dies hard and self-interest is a dominant factor. The practitioners dominate the arbitral processes.

In order to study the extent to which ADR and its various practices today are being dominated and even 'colonised' by litigative practices, an international initiative has been undertaken by a group of specialists in discourse analysis, law, and arbitration from more than twenty countries, who have been studying ADR practices, in particular, international commercial arbitration practice. The project in question[1] draws on discourse-based data (narrative, documentary, interactional)

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1 The project in question is supported by an RGC CERG grant from the Government of Hong Kong SAR (Project No. CityU1051/06H) entitled *International Arbitration Practice: A Discourse Analytical Study*. For details see Website: <http://enweb.cityu.edu.hk/arbitrationpractice>.

to investigate the extent to which the 'integrity' of arbitration principles is maintained in international commercial arbitration practice, and to what extent there is an increasing level of influence from litigative processes and procedures over arbitration practice. The primary evidence for such practices comes from textual and discourse-based studies, ethnographic observations, and narratives of experience on the part of experts in the field, as well as on the part of some of the major corporate stakeholders drawn from commercial sectors.

The present volume presents some of the findings from this project on various aspects of ADR, including conciliation, mediation, and arbitration practices.

2. Contents of the volume

Many of the issues presented above are investigated in the various chapters of this volume. To facilitate a comparison of the perspectives taken by the authors, their contributions are grouped into two parts, each of which highlights specific aspects of the discourses of dispute resolution.

2.1. Dispute resolution across media and cultures

The first section of the volume deals with contributions concerning the realization of the discourses of dispute resolution across various media and among different cultures. GIULIANA GARZONE's chapter is based on a research conducted jointly with Paola Catenaccio (whose results are illustrated in the following chapter), and explores the communication practices of arbitral institutions as carried out through the modality of their websites. As the Internet has evolved to be one of the most important informative channels for such institutions, communication through the web has become of particular interest because of the role it plays in the discursive construction of arbitration and mediation in

contemporary society. In particular, this chapter focuses on a comparative analysis of the communicative strategies enacted in the presentation of arbitration and mediation by four important European arbitration centres and aims at finding similarities and differences in the overall discursive profiles of their websites in terms of semiotic organization, strategies deployed, and intended recipients. As regards methodology, the study relies primarily on discourse analysis, also applying notions specifically developed within genre analysis, as well as principles drawn on in recent studies on multimodality. The analysis highlights a dynamic relationship existing between website construction and discursive practices deployed on the one hand, and the operational profile of each of the four institutions examined on the other, a relationship which is shown to result from a whole range of institutional, social, legal, and marketing variables as well as from the intended audience addressed in each case. These same variables also help account for the remarkable differences in terms of deployment of technological affordances.

PAOLA CATENACCIO's chapter is a companion study to the previous one by Garzone, and takes its lead from the findings of that research to delve deeper into the informative materials published online by major arbitration institutions, with a view to analysing the way in which arbitration and mediation are discursively constructed as alternatives to judicial adjudication. A starting point for the study is the recognition that over the last few years a marked increase in recourse to arbitration has been accompanied by a progressive institutionalisation (often with legal undertones) of arbitration procedures. These developments have been argued to be leading to a blurring of boundaries between the discourse of arbitration and the discourse of litigation, and to the progressive 'colonisation' of arbitration practices on the part of litigation procedures. The study sets out specifically to address this issue, investigating the way in which arbitration and other forms of alternative dispute resolution are framed *vis-à-vis* litigation. By analysing the discursive strategies adopted in each of the websites examined to deal with various forms of dispute resolution along the arbitration – mediation – ADR continuum, the investigation shows that, in spite of considerable variation, in the majority of the websites there is an obvious effort to differentiate arbitration from litigation, in

some cases explicitly, through explanation and comparison, or through direct argumentation, or more implicitly simply describing the advantages of arbitration in operational terms. If arbitration is typically pitched against litigation, mediation is set against the background of arbitration – or, more often, of arbitration *and* litigation. While the perceived graduation in terms of formality between mediation and arbitration, and between arbitration and litigation, justifies the use of this comparative strategy, the close association between arbitration and litigation often entailed in the description of mediation has the effect of pushing arbitration towards the litigation end of the continuum, thus corroborating the hypothesis that the domain of arbitration is being colonised by litigation.

The relationship between litigation and arbitration is also investigated by STEFANIA M. MACI, who mainly concentrates on the Italian context. Relying on a textual analysis of some Italian awards, the investigation reveals that in these texts syntactic patterns typical of legal language are exploited to the full. The reason for this lies in the fact that such awards are compiled by legal experts who express their legal voice, despite their issuing awards for laymen wishing for clear resolutions in the matter of their disputes. This seems to suggest that international arbitration in Italy encourages the exploitation of litigation features particularly in the discourse of awards. Although the 2006 Italian Reform of Arbitration apparently aligns Italy with the UNCITRAL Model Law, which calls for harmonization of the arbitral practices within the international context, the Reform actually reflects the different legal culture underlying Italian arbitration.

ANNE WAGNER investigates International Commercial Arbitration procedures in France and shows how they provide fertile ground for the resolution of conflicts between the parties involved. The aim of her chapter is to better apprehend and comprehend the true ambit of French International Arbitration by taking into account not only the explicit cross-cultural environment but also the straightforward regulations set up for this practice. Her analysis shows that where arbitrators may arrive at a conclusion they have a wide range of remedies at their disposal. Nevertheless, owing to the flexibility of interpretation associated with the concept of equity, the task of devolving decision-making to the amicable context of dispute resolution is a pre-

carious one because it requires the counterbalancing of many variables in order to achieve a fair arbitration award.

OLGA DENTI and MICHELA GIORDANO analyse premarital agreements, a type of document with which couples contemplating marriage prepare for possible future divergences in their married life, describing the rights and duties of the parties in the case of termination of marriage as a result of divorce. This study investigates premarital agreements in an intercultural perspective, comparing the linguistic features of American 'prenups' with Spanish *capitulaciones matrimoniales*. In American culture, prenuptial agreements represent a type of mediation within the framework of ADR meant to resolve disputes other than through litigation, and they include provisions regarding post-nuptial disagreements in order especially to handle the financial aspects arising in the case of any divorce. Instead, in Spanish culture, which is mainly Catholic, *capitulaciones matrimoniales* or *acuerdos prematrimoniales* have been traditionally intended as economic and patrimonial pacts with the purpose of adding a supplementary agreement to a marriage in order to determine its economic conditions distinctive to that of a legal arrangement. From a linguistic point of view, the chapter compares the textual organization and lexical choices adopted in the documents under scrutiny to illustrate examples of legal discourse in various cultures regulated by and through different legal systems.

LARISSA D'ANGELO's chapter analyses the Online Dispute Resolution (ODR) practice in Italy and compares it with traditional forms of arbitration, litigation and mediation. ODR is a fairly new and recent way of dealing with disputes, which is slowly making its appearance on the Italian commercial scene. Although it is considered a faster and cheaper tool and one which overcomes geographical barriers, parties still seem to prefer the traditional mediation and arbitration practice. Experts believe that this is due to cultural barriers and to the fact that in an ODR procedure it is more difficult to establish authority. Moreover, a certain familiarity with long distance communication media is necessary. In order to evaluate the cultural and linguistic characteristics of this phenomenon, the author compares a number of Italian ODR procedures to a corpus comprising arbitration, litigation and mediation cases in Italian.

2.2. Linguistic and discoursal features of dispute resolution

The second section of the volume comprises investigations of dispute resolution texts in order to identify their main linguistic and discoursal features. CELINA FRADE's chapter mainly focuses on arbitration clauses present in a number of multilingual ready-made model types of contracts designed to be used by the parties as a frame of reference. Frade's analysis shows that arbitration clauses are not as simple as heretofore in that they are becoming increasingly complex and multi-tiered due to the detailed specification of a series of interrelated steps the parties need to go through before finally indicating a choice for arbitration. On the legal level, drafters should therefore make their best efforts to avoid ill-suited, equivocal or unhappily drafted clauses – also called 'pathological clauses' – which may result in another dispute and/or litigation between the parties (and even invalidity of the arbitration agreement by the arbitral tribunal) arising out of poor drafting. Furthermore, linguistic 'pathologies' and inadequate and/or inaccurate translation from multilingual versions to English versions may increase the cost and duration of arbitration due to misunderstandings, errors and ambiguities. This chapter identifies some of these linguistic 'pathologies' in standard model clauses produced by international arbitral institutions. The claim is that such linguistically defective clauses may jeopardize some of the advantages of arbitration and should therefore be avoided by drafters and translators. Besides raising legal drafters/translators' awareness of these 'pathologies', the chapter also provides some guidelines to be followed in the process of drafting a clear and proper arbitration clause.

The importance of writing clear and convincing legal texts in an arbitration procedure is also emphasised by MICHELE SALA. According to him, legal experts should possess the linguistic competence not only to discuss concepts in ways that are appropriate to legal contexts but also to formulate decisions which have the impact and deontic force of normative acts by drawing on linguistic and rhetorical choices that are typical of this legal procedure. The author investigates to what extent, and through which discursive resources, arbitrators interpret and transform the conciliatory nature of arbitration. Based on a corpus of 20 commercial awards, the analysis examines the argumen-

tative and interdiscursive strategies used by the drafters to express epistemic and interactive meanings in order to confer efficacy and definitiveness to their pronouncements, and to give deontic value to the whole text.

CHIARA DEGANO also focuses on arbitration awards to investigate, in particular, their use of indicators of argumentation. Starting from the assumption that recourse to argumentation is a distinguishing feature of litigative discourse – and in particular of judgments – as a consequence of the courts' need to justify their decisions, the author evaluates the presence of this feature in arbitration texts. The analysis relies on a corpus of international awards spanning over two decades, from which indicators of argumentation are retrieved with a view to verifying whether their use has increased over time. This quantitative analysis is then integrated with qualitative analysis, carried out through close reading of selected texts, in order to back up quantitative findings with insights at the lexico-grammatical and textual level. The analysis shows a marked increase in the recourse to argumentative strategies in arbitration awards over time and this provides evidence of the increasing influence of litigation in this field.

PATRIZIA ANESA's analysis explores Italian domestic arbitration in order to identify the principal linguistic and communicative strategies that are employed in the proceedings, mainly in the party examination phase. The data chosen for analysis are drawn from audio-recorded instances of authentic arbitration proceedings that took place in Italy in recent years. The chapter offers a description of the specific communicative events involved and their institutional nature, to comply with a clear set of conventions and to respect the professional communicative norms that characterize the field and its customary rhetorical features. From a linguistic perspective, the study focuses on turn-taking sequences and describes the partially pre-established nature of the allocation of such turns. Particular attention is devoted to the fundamental role played by the arbitrator in determining the selection of speakers and the structure of interactional sequences. The chapter identifies and explores some of the most significant linguistic dynamics present in the arbitrations under study and shows their complexity in the key area of party examination.

GIROLAMO TESSUTO's study investigates commercial arbitration rules and mediation procedures coded on the web by the American Arbitration Association. The qualitative and quantitative analysis in this study focuses on the main linguistic and discoursal features that shape the rhetorical actions of this 'regulatory' genre in a conventionalized professional setting. It does so by providing a description of the genre as it results from the use of macro and micro-level resources in the writing practice. The exploitation of generic resources in response to the social expectations, interests and values of genre producers and their intended audiences, leads the author to identify the degree of discursive features and identity shared by the current genre and legislative writing in general, whether or not dealing with similar topics of the law.

The aim of ALESSANDRA FAZIO's study is to verify whether the use of English as a lingua franca in sports arbitration influences the formal use of the specific terminology, which, it is assumed, has already been standardized and harmonized. Italian sports arbitrators using English in an international setting were observed in a preliminary study. Reiterated language patterns were noticed which differed from those used by their mother-tongue counterparts. Taking into account the language Italian sports arbitrators use in international settings as a starting point, similar language patterns are analysed with particular emphasis on socio-cultural factors. The analysis shows that it is possible to determine a specific linguistic code (even though informal) capable of affecting the formal patterns in use. Both complex strings and terms, as well as additional linguistic occurrences, are then analyzed in order to trace underlying connections that influence their use.

3. Concluding remarks

There are a number of perspectives from which the chapters in this edited collection have more general relevance than is indicated from an observation of their discourse analytical and genre-based studies in

particular sites. These perspectives focus principally on the construct of *interdiscursivity* as an increasingly central theme, not only in the domain of legal discourse, but in applied linguistic and discourse analytic work more generally.

Firstly, the chapters evidence the extent to which the discourses of dispute resolution now constitute an intimate and reflexive network of discourses within, and among which there is considerable contestation and professional struggle. This *interdiscursivity* is marked not only by once distinctive but now increasingly blurred professional practices, but by a concomitant melding and creating of new discursive practices, generating what may now be properly called an overarching Discourse of Dispute Resolution (Candlin/Maley 1997, Gee 1999).

At the same time, and as a consequence of this blurring of boundaries, both professional and discursive, exploring this Discourse requires contributions from, and, desirably, cooperation among, the professional partners in our discourse analytic enterprise: lawyers, mediators, conciliators, arbitrators, legal counsel, as well as public and private stakeholders outside the broad legal community. This is itself an *interdiscursive* exercise of some significance but also of some challenge to researchers.

Thirdly, and now centrally from our perspective in this volume, exploring such professional *interdiscursivity* requires the engagement of discourse and genre analysts, themselves from distinctive disciplinary backgrounds, coming together in a common descriptive, interpretive and explanatory enterprise. As Sarangi and Candlin (2001) emphasise, accounting for the distinctive *motivational relevancies* (including here both those of the discourse analysts *and* of their professional 'partners') lies at the heart of what we see as a future guiding principle for applied linguistic and discourse analytical practice.

This, in turn, is at the base of a fourth, methodological, perspective on i*nterdiscursivity*. As the chapters amply signal, authors bring a range of different toolboxes to their analytic task, and, moreover, select distinctive and appropriate tools from them, relevant to their analytical purposes, but also in line with the legitimate interests and expectations of their professional collaborators, for whom the results of the research are paramount.

Finally, all that has been emphasised above in relation to *inter-discursivity* is by no means limited to the domains of law and legal practice. The relevance is quite general across the broad sweep of domains and sites, ensuring that the chapters in this volume extend in their significance, *beyond dispute*.

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Dispute resolution across media and cultures

GIULIANA GARZONE

Promoting Arbitration and Mediation on the Web

1. Introduction

In the last few years, as recourse to arbitration to settle disputes has become ever more frequent, there has been an increase in the amount of informative material about arbitration and other forms of ADR made available by arbitral institutions around the world to inform/ persuade potential clients of the advantages of these kinds of dispute resolution over litigation. This form of communication was originally effected by means of brochures, with very limited circulation, reaching only those who were already interested and aware of the options. Only relatively recently, thanks to the increasing importance of the Web as a medium, has it taken the form of a real information effort addressed to an ever wider audience.

The different semiotic configuration of the institutions' informative materials due to the shift to a web-based Hypermedia Computer Mediated Environment (HCME: Hoffman/Novak 1996) and to the extension of the audience addressed has involved the revision of the materials used for communication (texts and graphics), if not the drafting of totally new materials to meet the requirements of Web design. Through their websites, arbitration institutions present themselves and the services they offer to a potentially global audience, although of course their target addressees belong to limited interest groups, essentially businesses – from the sole trader to multinational corporations – and public and private organizations. In consequence, the analysis of the discourses they deploy on their websites can help shed light not only on the particular audience (cf. Perelman/Olbrechts-Tyteca 1969: 19-20) they are aimed at, but also on how they operate and how they represent themselves and their activities.

Starting from these considerations, the research presented in this chapter, which links up with that carried out by Paola Catenaccio in her chapter in this volume, explores some specific areas which are deemed to be of particular interest because of the role they play in the discursive construction of arbitration and mediation in the contemporary world. In particular, this study focuses on a comparative analysis of the communicative strategies enacted in the presentation of arbitration and mediation by some important European arbitration centres with a view to finding similarities and differences in their overall discursive profiles in terms of semiotic organization, strategies deployed, and intended recipients, identifying the possible factors that determine such variations, with special attention given to the interplay between the HCME and the communicative strategies enacted.

1.1. Study design

This chapter explores the discourses of arbitration/mediation as they are realised in the websites of arbitration institutions and on the use of multimodal affordances, looking not only at communication aimed at insiders but also on the strategies deployed by such institutions in communication to the public at large. It is based on a research conducted by the author in collaboration with Paola Catenaccio (cf. her chapter in this volume) as part of the National Research Programme *Tension and Change in Domain-specific Genres* funded by the Italian Ministry of University.[1] It also brings together two other strands of research in which Garzone and Catenaccio are involved, one concerning arbitration/ADR, within the general framework of an international project on international commercial arbitration, the other focusing on institutional communication to the general public as part of a project on public and institutional communication.[2]

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1 *Programma di Rilevante Interesse Nazionale* nr. 2007JCY9Y9 – 2007, directed by Maurizio Gotti.

2 The arbitration project is sponsored by the RGC (HKSAR) and the City University of Hong Kong and is directed by Vijay K. Bhatia (<http://www.english.cityu.edu.hk/ arbitration/>). The research programme on public com-

The starting point is the analysis of the websites[3] of four European arbitral institutions operating internationally. In selecting such sites, care was taken to include organizations based in different countries, with different histories and traditions, so as to offer a snapshot of the various types of websites found in the extensive arbitral institution landscape. Besides meeting this requirement of international-status, the criteria adopted for the selection were: 1) that the institution deals with international *commercial* arbitration, and 2) that it operates with private interlocutors (and not, or not only, with governments and institutions).

Among the various websites that met these criteria, four major European centres were identified, including the two leading and oldest institutions (ICC and LCIA), both established as global actors, and two smaller centres also acting internationally but on a more 'regional' basis, which seemed to be particularly representative:

- the International Court of Arbitration of the International Chamber of Commerce (ICC) (<http://www.iccwbo.org/>);
- the London Court of International Arbitration (LCIA) (<http://www.lcia-arbitration.com/>);
- the SCC Institute – Arbitration Institute of the Stockholm Chamber (<http://www.sccinstitute.com/uk/Home/>);
- the Milan National and International Arbitration Chamber (Camera Arbitrale nazionale e internazionale di Milano) (<http://www.camera-arbitrale.it>).

Although on the surface these four websites do belong to the same (macro-)genre, the profound and immediately perceptible differences among them lead us to believe that they actually have divergent communicative aims, albeit slightly, and do not address exactly the same audiences.

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munication, directed by Giuliana Garzone, is entitled *Lingua e discorso nella comunicazione pubblica* [Language and Discourse in Public Communication], and was funded in 2008 by Università degli Studi di Milano.

3 All websites were last accessed on December 20, 2009.

1.2. Aims and method

As its aim is to identify shared features and diverging characteristics of the websites analysed, this chapter combines a descriptive approach – used initially to provide a brief overview of the communicative and discursive coordinates of the various sites – with a more strictly analytical one. From a methodological point of view, the analysis relies primarily on discourse analysis, also applying notions specifically developed within genre analysis (Swales 1990; Bhatia 1993, 2004), as well as on principles drawn from recent studies on multimodality (Kress/van Leeuwen 2001, 2006; Garzone 2007). Wherever useful, this is supported by recourse to data obtained by means of automatic text interrogation routines (Scott 2004: *WordSmith Tools 4.0*).

While all websites offer a set of 'basic' authentic documents and texts concerning their activities, i.e. Arbitration Rules and Mediation Rules or Procedures, together with the relative schedules of costs and recommended clauses, etc. (mostly in pdf format), attention is focused here on the main sections of the websites illustrating the institutions, the way they function, and the arbitration/ADR services they offer, all of which are organized differently by each single institution and vary greatly from case to case, as will be illustrated below. These materials have also been collected and organized into four small corpora, to make computer analysis possible.

Based on the above, the study essentially aims at (i) providing a semiotic evaluation of each website by means of multimodal analysis; (ii) examining the communicative practices deployed, especially in relation to the way in which they exploit the affordances of the web-mediated environment (Agre 1995), in light of the websites' intended audience; (iii) evaluating their effectiveness in terms of the two main purposes arbitral institutions' websites are intended to serve, i.e. provide preliminary information for anyone who intends to take advantage of arbitration/mediation or considers the possibility of doing so, or of inserting an arbitration clause in a contract, and inform the public at large about the advantages of arbitration/mediation, promoting an awareness of the availability of these forms of dispute resolution.

The chapter is organised as follows. First, a brief overview of the general characteristics of the four websites under investigation will be given and their generic structure outlined, discussing the way it is realised in each of them in terms of web design and multimodal affordances (Sections 2 and 2.1). Secondly, the materials available on the sites will be analysed from a discourse-analytical perspective, with a view to identifying the core features of the promotional discourse about ADR, identifying commonalities and differences among the various institutions (Section 3). Finally, in light of the results of the general analysis conducted in the first three sections, in Section 4 attention will focus more specifically on the first two moves of the website's structure (*Establishing credentials of the arbitration institution* and *Describing the structure of the institution and how it works*) in order to offer a complete account of the self presentation strategies enacted by the institutions in their communication to the public. Some closing considerations will follow in Section 5.

2. Web-mediated communication about arbitration and mediation: an overview

In this section, which is essentially aimed at exploring the communicative approach characterizing each website, as well as the use it makes of the affordances of the web environment, I rely essentially on notions developed within the framework of multimodal analysis (Kress/van Leeuwen 2001).

Among the websites considered, the ICC Court is unique in that, although it is accessible also directly, it is part of the much larger website of its parent institution, the Paris International Chamber of Commerce (ICC) (<http://www.iccwbo.org/>) – 'the world business organization' as it presents itself in the caption accompanying its logo. The other institutions have a self-standing website, even if the Milan National and International Arbitration Chamber (<http://www.camera-arbitrale.it>) is part of the Milan Chamber of Commerce (<www.mi.

camcom.it>), and the Arbitration Institute of the Stockholm Chamber of Commerce is a separate entity within the Stockholm Chamber of Commerce (<http://www.chamber.se>). Despite being embedded in a larger hypertextual structure, however, the ICC website is perfectly comparable to the websites of the other institutions, being self-contained as the communication tool of a separate arbitration body (although, as we shall see, its embeddedness is in some respects meaningful).

The contents of the four websites vary greatly, although all of them do offer access to the basic authentic documents and texts concerning their activities, as already described above (cf. §2.1). If in addition to these documents the SCC website features only two concise texts to present briefly the Institute (231 words) and the Mediation Institute (126 words), all the other institutions devote some words to introducing arbitration and mediation in general and/or arbitration and mediation as conducted by the institution itself, either with brief texts (e.g. respectively 226 and 157 words in the case of the Milan Arbitration Chamber) or with longer texts (LCIA), sometimes made accessible in more than one version through distinct navigation paths and links, also comparing arbitration with litigation (ICC). Furthermore, each website illustrates some additional aspects specific to the institution, e.g. ICC has a section devoted to its own Dispute Board, Expertise and DOCDEX (Credit Dispute Resolution Expertise)[4] services, LCIA also presents its Fundholding Service and its joint venture with the new Dubai International Financial Centre (DIFC), the Milan Chamber also has sections devoted to its Online Mediation Service (RisolviOnline), its Studies Centre on ADR (a documentation service) and its ICBMC (Italy-China Business Mediation Centre), a Chamber of Mediation for the resolution of commercial disputes among Italian and Chinese companies, while SCC has in the central column of its homepage an update on the main events – conferences, seminars, courses, etc. – regarding arbitration and ADR.

4 ICC's DOCDEX (Credit Dispute Resolution Expertise) is a service taking care of settling letter of credit disputes.

From a genre-theory perspective, the materials featured in the websites appear to realise four distinct rhetorical moves, which can be summed up as follows:

- *Establishing credentials of the arbitration institution.*
- *Describing the structure of the institution and how it works.*
- *Introducing arbitration.*
- *Introducing ADR/mediation.*

Three of these moves appear in all four sites, while – as will be seen in Paola Catenaccio's chapter – the fourth constitutive move, *Introducing arbitration*, does not occur in the SCC website, which presents itself as a "leading arbitration institution" and refers to its Arbitration Rules, but does not devote any textual attention to presenting arbitration itself, presumably considering it unnecessary.

2.1. Website construction

In this section, the technical aspects of the construction of the four websites are investigated in terms of web design. Broadly speaking, the results of this analysis are in line with the more superficial macroscopic differences identified in the general overview outlined in Section 2. In particular, they reveal substantial variation in terms of Web design and 'granularity', i.e. in the way materials are 'parcelled out' into pages and the texts are displayed. These aspects of text structuring have a strong impact on the conditions of fruition on the part of users, influencing their choice between the two modes available, i.e. the navigation mode and the reading mode (Sosnoski 1999: 135; Askehave/Ellerup Nielsen 2004, 2005).

The LCIA website is characterized by an overwhelming prevalence of the reading mode. It consists only of five main 'scrolling' pages each containing a very large quantity of text (e.g. in the 'Alternative Dispute Resolution' page there are 814 words, and as many as 5,202 words in the 'About LCIA' page), divided into titled sections, although the site offers the possibility of accessing the various sections without reading the whole text through, simply by clicking on links displayed in the left column of the screen with a hypertext-like