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Analysing Arbitration Laws across Legal Systems

Abstract

In this paper, the national Indian and Chinese statutes on arbitration are compared with the UNCITRAL Model Law. After a presentation of the GILD-MMC project, focus is especially on textual aspects indicating attitudes towards the relation between the administrative powers and the parties in commercial arbitration. Thus, looking at the features *all-inclusiveness*, *information load*, *information spread*, *legislative style* and *transparency* significant differences are found and related to the different communicative purposes (overall model vs. specific national rules), the different legal traditions (common law vs. civil law) and the different political systems (westernised market economy vs. socialist market economy).

1. Introduction

Recent years have seen an unprecedented dismantling of socio-cultural, disciplinary, and national barriers especially in the context of cooperation and collaboration in international trade and business. The creation of massive international free trade zones and the opening up of major political economies have accelerated moves towards intense competition to capture international markets on the one hand, and the merger of corporations to form huge multinational conglomerates on the other. The increase in such trends towards a globalisation of socio-cultural, business and communication issues has seen law fast assuming an international perspective rather than retaining its purely jurisdictional concerns. The creation of a common European market has demonstrated, for example, the need for a common European legal

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framework as an important priority. This task was much more complex than that of creating a new legislative framework, because this common framework was meant to be interpreted within the contexts of a diversity of individual legal systems and languages of the member countries of Western Europe which have their own strong linguistic, socio-political, cultural and legal identities.

More recently, in the context of the return of Hong Kong to the People's Republic of China, and the creation of Hong Kong as a Special Administrative Region of the People's Republic of China, (HKSAR), under the 'One Country Two Systems' principle, the importance of interpreting one set of laws in the context of the other system has raised a number of interesting issues. In the changed context there, three languages and two legal systems are interacting with each other, highlighting a number of new problems in the interpretation of rules and regulations and in the translation of legal intentions, not only from one language to another, but also from one legal system to the other (Candlin and Bhatia 1998). In a span of about six years, we have witnessed several cases where sections of the Basic Law, which was enacted by the National People's Congress, Peoples Republic of China, as a mini constitution for Hong Kong Special Administrative Region (HKSAR), have been construed and interpreted rather differently, often taking contradictory positions by the parties concerned. The underlying issues in relation to statutory interpretation in many of these cases could either be traced back to the influence of two different drafting systems, which may include differences in the languages in use (Chinese and English), between legal systems, or in relation to other socio-cultural as well as political factors (Ghai 1997).

In legal linguistics, however, there has been very little attention paid to issues that cut across languages, legal systems, or which accommodate such socio-cultural and political differences. In contexts like these, one is often confronted with a variety of questions, some of which may include,

- To what extent and by what linguistic means is it necessary for a country to specify the scope of legislative construction and interpretation?

- To what extent will the scope be constrained by the legal system in which it is constructed and interpreted?
- To what extent will established socio-cultural conventions and political ideologies have any significant influence on the construction and interpretation of the laws in question?
- To what extent will the instruments of legislation be constrained by the linguistic resources available in the language in which it is written?

Issues like these are crucial for the construction, interpretation, and use of legislative discourse across languages, language varieties, socio-political, cultural and economic boundaries and, most of all, across different legal systems. They are also extremely relevant when one translates legal expressions from one language or legal system into another. Although there has been some work reported in some of the areas identified here (Engberg 1997; Fredrickson 1995; Lang 1989; Roebuck, Wang, and Srivastava 1995; Trosborg 1991, 1997), specific issues raised have largely remained under-investigated. In this paper, we would like to present some of the findings based on an international effort to address these issues in legal linguistics concerning the use of legal language across legal systems, cultures and other socio-political factors. The overall objective is to investigate the ‘generic integrity’ (Bhatia 1993, 1994, 2000, and forthcoming) of legislative documents as they are constructed, interpreted and used in multilingual and multicultural legal contexts, primarily incorporating the following stages.

- Linguistic analyses of a corpora of International Arbitration Laws from several countries, addressing such issues as degree of qualification, specification of scope, issues of closed versus open-endedness, and other matters concerned with complex contingency, and their comparison with *The UNCITRAL Model Law, 1985* (UNML).
- Grounded account of the drafting and interpretative practices within specific contexts, which attempts to further explore the issues arising from analyses under (1) by focusing on a set of critical and relevant sites of engagement, incorporating specific moments of application

of the laws under investigation, especially where certain aspects of these two laws are invoked during the negotiation of justice.

- Explanation of issues identified and discussed under 1 and 2 above, by reference to socio-cultural, economic, political, linguistic and legal factors based on the background studies of the legal systems of these two countries, and also on the expert reactions and commentaries by legal specialists, both from the academy and the legal practice.

This project¹, entitled “Generic integrity in legal discourse in multilingual and multicultural contexts”, has more than ten international teams participating in the analysis of international arbitration laws from the perspective of a number of different countries, languages, legal systems, cultures and socio-political ideologies. The research has a threefold orientation: a contribution to basic knowledge of legal language seen from an international perspective, an underpinning for international policy and commercial practice, and grounding for legal practice and legal practitioner training. We hope that such a contrastive/comparative multilingual typology of key instances and key textualisations, supported by explanatory commentary, will serve as a very valuable aid to the translator, to the legislator and the lawyer, and, ultimately, to the parties entering into contracts of such a sort.

In this paper we take some sections of International Arbitration Laws from two different contexts to illustrate some of the important and interesting issues which seem to be crucial in the construction, interpretation and application of such laws in international contexts. The texts come from *The Arbitration Law of the People’s Republic of China 1994* (PRCAL) and *The Arbitration and Conciliation Ordinance (1996) of India* (ACOI). We focus on these two rather diverse contexts, i.e., the Republic of India (India) and the People’s Republic of China (PRC) because these two countries represent two very different socio-political traditions, legal systems, and constitutional mechanisms. They also use two very different languages, though they share to varying degrees the use of English as a second language in legal contexts. In particular,

¹ <http://gild.mmc.cityu.edu.hk/>

we address issues of degree of qualification, specification of scope, transparency and open-endedness, and other matters concerned with complex contingency, and make comparisons with *The UNCITRAL Model Law, 1985* (UNML). However, due to the limitations of space, we illustrate only the first of the three procedures mentioned above. (The other procedures are illustrated in several other publications listed on the project website.)

2. General observations

The UNCITRAL Model Law (UNML) serves as a blueprint for the PRCAL and ACOI. It is interesting to note that the UNML has no specific section dealing with the enforcement of foreign awards. The UNML is presumed by its nature and origin to be for the general guidance of all countries, and hence does not have to specifically deal with the enforcement of foreign awards. Each country will need a special provision which can best protect its interest when entering into a business relationship with parties from other countries. Here one can safely say that the UNML is more general in terms of its applicability and coverage. It serves as a general guide for other countries to follow, whereas the PRCAL and the ACOI are more specific and detailed adaptations of the Model Law, keeping in mind local constraints.

Further observations in terms of specificities indicate that PRCAL has a section on the Arbitration Commission and Arbitration Association, whereas Part I of the ACOI has two additional chapters, one on 'Appeals' (Chapter IX), the other called 'Miscellaneous' (Chapter X).

Similarly, the ACOI appears much more detailed than either the UNML or the PRCAL. It contains Part II, III and IV, dealing with domestic matters, which surprisingly have no mention in the PRCAL. Furthermore, ACOI adopts a number of definitions from UNML but, at the same time, adds a number of others not mentioned in UNML. In the same way, ACOI covers conciliation, whereas neither the UNML nor the PRCAL incorporates this aspect.

Although in general terms the ACOI seems to have been drafted more closely in keeping with UNML in its first eight chapters, especially in terms of the chapter titles and the drafting of articles in similar wordings, the ACOI, and to some extent PRCAL, seem also to be more specific and more precise than UNML in a number of ways. The ACOI

and the PRCAL both have a section on ‘Supplementary Articles’ (which is not included in the ML). The ACOI has a section (Part II) on the enforcement of certain foreign awards. The PRCAL also has a section to deal with foreign concerns (Chapter VII). For a more detailed comparison in terms of the substance of these versions, please refer to Appendix 1.

To sum up, it is clear that the UNML provides a broad framework, but includes also a good deal of detailed definition of key terms. It sets out the means by which individual states may construct their own arbitration law in the light of local circumstances but makes it clear that arbitration is bound by its own semantics – a point which UNML clearly states. Interestingly, it sees as necessary to define core terms like “commercial”, definitions that are absent in both PRCAL and ACOI. It defines the legal authority and the precise means by which written communications, for example, are to be sent and received. It sets arbitration within the general scope of law in the states in question and presumes that arbitration law will be harmonised with those local laws. It supposes that there will be local constraints governing the application of any conditions. It may thus be of interest to examine why UNML provides considerable detail on some matters and not on others. For example, arbitration is not explicitly linked to *conciliation*. It emphasises *international arbitration* explicitly.

It is equally clear that PRCAL differs considerably from UNML in not specifying details. It sets its principles against particular economic conditions (*socialist market economy*) and offers only broad brush statements of principle or scope which invite further definition – see phrases like *economic matters*, or *administrative disputes*, *administrative organs*. There is little attempt at definition of terms here and certainly not as regards usual legal qualifications, as in UNML (and in ACOI). The text is short and plainly written, but this masks vaguenesses. For example, in Article 2 we may ask what are “other organizations”? Article 4 is of interest in that it appears to state in plain English what it means but leaves its key issues unclear: for example, “*how do litigants choose to settle*”, “*how does a litigant apply for arbitration*”, “*what or who is the “arbitration commission” and what are its powers?*” No details are provided on methods and means surrounding arbitration processes. It is also interesting to note that PRCAL does not mention *conciliation*, as does the ACOI in connection with arbitration.

3. Specific focus

Although some of the general observations and conclusions here are based on the three versions of the international arbitration laws (the UNML, the PRCAL, and the ACOI), for the purpose of illustration of detailed analysis, the paper will focus on the following three sections.

1. Arbitration agreement (PRCAL Articles 4 and 16, UNML Article 7, and ACOI Article 7) (see Appendix One)
2. Appointment of arbitrators (PRCAL Articles 31-33, ACOI Article 11, and UNML Article 11) (see Appendix Two) and
3. Grounds for challenge (PRCAL Article 34, UNML Article 12, and ACOI Article 12) (see Appendix Three).

We examine here some of the surface level features of these chosen sections.

3.1. Surface-level features

Word length

One of the most strikingly obvious differences in the three versions of the same law is the sheer length of the sections. PRCAL contains just 150 words, whereas UNML contains 380, and ACOI 663. It will be interesting to investigate the amount of information and the processes of textualisation used in the three versions.

Sentence length

UNML consists of just one Article containing 5 sections, 2 of which have several subsections, containing a total of 5 sentences with an average number of 76 words per sentence.

PRCAL spreads out its information over 3 Articles, a total of 5 sentences with an average length of 30 words per sentence.

In the case of the ACOI, we find a single article with 12 sections, 3 of which contain several subsections, consisting of a total of 13 sentences, with an average length of 51 words per sentence.

We are working here on the English versions of the three texts, and although we assume that the number of words in local language

versions (Putonghua, in the case of PRCAL, and Hindi, in the case of ACOI) may be different, the scope and details of specification may not be very different.

3.2. Lexico-grammatical features

Binomials and multinomials

One of the most typical lexico-grammatical devices used in legislative writing is the use of binomials or multinomials (see Bhatia 1982). The samples in question present an interesting set of figures.

In the PRCAL version, we find 3 instances of binomials in a total of 4 sentences, offering a sum total of 7 different options or entry points for application. In the case of ACOI from India, on the other hand, we find 16 instances of the use of binomials, many of them multinomials, in a few cases, one embedded within the other, offering a total of 75 options or entry points for application. UNML stands somewhere in between the two versions, incorporating 10 instances of binomials and multinomials, with a total number of 31 options or entry points. The use of binomials and multinomials contributes quite significantly to the all-inclusive property of the text in question, with the complexity of the options being made transparent to the reader. We illustrate below Article 11 (4) from the ACOI.

Article 11(4)

If the appointment procedure in sub-section (3) applies, and a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.


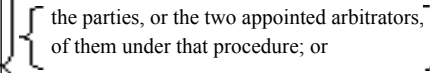
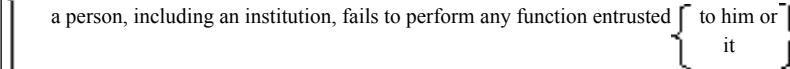
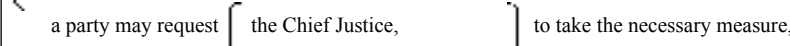
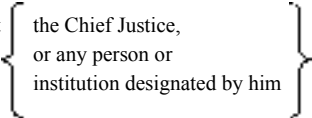
The following example provides another display of this sub-section of the article so as to have clearer display of binomials and multinomials.

If the appointment procedure in sub-section (3) applies and –	
{	a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
	the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,
the appointment shall be made, upon request of a party, by	{
	the Chief Justice or
	any person or
	institution designated by him

A slightly more complicated example is offered by Article 11(6) of the ACOI, which we reproduce below:

<p>Article 11(6)</p> <p>Where, under an appointment procedure agreed upon by the parties, -</p> <p style="padding-left: 40px;">a party fails to act as required under that procedure; or</p> <p style="padding-left: 40px;">the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or</p> <p style="padding-left: 40px;">a person, including an institution, fails to perform any function entrusted to him or it under that procedure,</p> <p>a party may request the Chief Justice, or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.</p>
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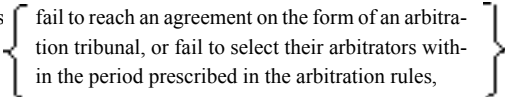
And, (now) a more complex display of the same text:

Article 11(6)	
Where, under an appointment procedure agreed upon by the parties, -	
	a party fails to act as required under that procedure; or
	
	
	under that procedure,
	
	
unless the agreement on the appointment procedure provides other means for securing the appointment.	

This powerful linguistic resource of multinomials has two functions. Firstly, it works to make the provision specific in that it outlines the various possibilities that are available for interpretation, thus adding to the all-inclusiveness of the legislative provision, and secondly, it contributes to the precision and clarity of the expression. Compare this with Article 32 of the PRCAL on the same provision, which we quote below:

Article 32
In the event the litigants fail to reach an agreement on the form of an arbitration tribunal, or fail to select their arbitrators within the period prescribed in the arbitration rules, the arbitration commission director shall make the decision for them.

If we display binomials exactly the way we did in the earlier example, we see:

Article 32
In the event the litigants

the arbitration commission director shall make the decision for them.

In terms of simplicity of lexico-grammatical resources, Article 32 from PRACAL is written in simple and plain English with very little complexity of contingencies, as compared with Article 11 (6) discussed earlier. However, in terms of precision and specificity of information included, Article 32 is extremely vague and general, assigning unlimited powers to just one person, namely the arbitration commission director, leaving no option for any other application. Similarly, as far as the specification of legal scope as to who can do what under what circumstances is concerned, Article 32 is extremely vague whereas 11 (6) is relatively precise and transparent.

3.3. Rhetorical and discursal features

Qualifications

Qualifications in legislative provision play an important role in making the application of the rule of law precise and specific to a particular context. No rule of law is of universal application and every rule is applicable to a specific set of cases under specific conditions. All rules of law are therefore often preceded by what is in legal terminology called the CASE, which outlines the circumstances under which a rule of law is invoked. Such case descriptions are part of preparatory conditions which make a particular rule of law operative. There can also be additional conditions which are often applicable to the operative parts of the provisions. These often specify how and in what manner the rule is applied. We compare here the two sections already discussed in the context of binomials and multinomials, so as to analyse the level of qualificational specification in the two versions, the one from the PRCAL and the other from the ACOI. We begin with the PRCAL.

Article 32

*In the event the litigants fail to reach an agreement on the form of an arbitration tribunal, or fail to select their arbitrators within the period prescribed in the arbitration rules, **the arbitration commission director shall make the decision for them.***

This provision in this section (indicated in bold) applies to the set of case descriptions prefaced in italics. Beyond these case descriptions, there seems to be no other constraints on the use of the powers vested in the arbitration commission director. The other important feature of this provision is the legally mandatory nature of the rule indicated by the use of legal SHALL. Compare this with a similar provision from ACOI.

Article 11(6)

Where, under an appointment procedure agreed upon by the parties, -

- a party fails to act as required under that procedure; or
- the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice, or any person or institution designated by him to take the necessary measure.

unless the agreement on the appointment procedure provides other means for securing the appointment.

In this case, although the power to take further action rests with the Chief Justice, or any person or institution designated by him, the power does not become mandatory unless a party requests the Chief Justice, and the parties can do so only on the fulfilment of certain preconditions and procedures. Besides, it is not mandatory on the part of the parties to request such necessary action. These options are clearly textualised by the insertion of a set of preparatory qualifications (indicated in italics) and a reference to the exception clause, which may again deprive the Chief Justice of his exercise of the power given to him. So in the case of PRCAL, there is a single open-ended case description which can bring into legal action a series of mandatory legal powers whereas, in the case of ACOI, there are a series of precise case descriptions which may give the parties a right to request the Chief Justice or other person or institution designated by him to take the necessary further action, all of which is further constrained by an exception clause, which may prohibit such an action. The use of *may* in this version, as against *shall* in the previous version, is significant.

3.4. Socio-cognitive features

All-inclusiveness and transparency

ACOI follows very closely the UNML to the extent of sharing the same textualisations for certain articles and clauses. They frequently share the same definitions of terms, but not always so and where this occurs, this is significant. As envisaged by the UNML, this differentiation localises the conditions and scope to its own legal system and framework, (note particularly Article 2 (e)). It would be useful to see whether there are any discrepancies between UNML general definitions and ACOI local ones. The latter set arbitration in terms of provisions of their own legal system and as such explicitly link *arbitration* and *conciliation*.

ACOI gives many of the executive powers to the Chief Justice of India, whereas PRCAL vests all the related powers in the Director of the Arbitration Commission. Does this signal anything about the relationships between the judiciary and the executive? The degree of transparency will depend on who controls the person given the power. In the context of India, the constitution clearly separates the judiciary and the executive, and the move to give power to the judiciary will clearly take the arbitration process away from the influence of the executive and hence tend to keep it free from government control. This, in a very significant way, also adds to the transparency and independence of law. In the case of the PRCAL, on the other hand, much depends on what authority controls the appointment of the arbitration commission, especially the director of the commission.

The second and perhaps the more significant aspect of textualisation in the data is the amount of information made available to the reader and the amount of information left to the discretion of the one who is given executive powers. In the case of PRCAL there is very little specification of information either on the nationality of potential arbitrators, the process of appointment of arbitrators, or on any time limits within which the appointment of arbitrators must be completed. ACOI, on the other hand, specifies all these aspects in quite some detail (on all these aspects) and goes even further in detailing the nature of authority and ownership much more precisely than does UNML or, of course, PRCAL. ACOI follows UNML in defining means and processes, especially the sending and receiving of documents, and spells these out very clearly. Overall, ACOI differs from PRCAL in emphasising

clearly rights of appeal to law. ACOI is similar to PRCAL in vesting authority in the arbitration commission/tribunal, although within differing interpretations of the sitting of such tribunals in terms of the legal system.

However, ACOI does not define “*commercial*” (although UNML does). One has the impression that ACOI adopts definitions from UNML without always signalling this (and does not always provide its own), something which is quite common in this field. It is also interesting to note how ACOI very specifically identifies what is meant by “*parties*” to any agreement (in contrast to PRCAL which says nothing explicit about this).

4. Information loading and textual-mapping

We notice two very distinct tendencies in the three versions of the arbitration data, one leaning towards minimal informational load and the other towards specification of detailed information. These tendencies we have to some extent covered in the section above on all-inclusiveness and transparency. Here we explore in what way this information, either detailed or general, is textualised. This may in turn throw some light on the degree of reader accessibility the text aims to achieve.

In the case of PRCAL legislation, it is clear that although there is a very light information load in most of the sections, this raises few problems for reader accessibility. The text is written in a simple code which comes very close to plain language legislation. In the case of UNML, the information included is reasonably well detailed, because it was meant to be used as a model by member nations of the UN body. However, if one were to look at the linguistic resources used for such textualisations, we find that it is written more in the traditional legislative style, contributing to making several sections relatively less reader accessible. ACOI, on the other hand, is distinctly more informative than the other two versions, and at the same time rich in the use of lexico-grammatical resources that contribute to making it more transparent to the reader, and hence more accessible. In this respect, both the PRCAL and the ACOI are relatively more reader accessible, with the former achieving this by underplaying the role of detailed specification of information, and the latter by an extensive use of textual-mapping devices (Bhatia 1987). In the case of UNML, however, although there is a reasonable

degree of detailed information, it is relatively less reader accessible because of the condensed form of information display. It contains an average of 76 words per sentence as compared with 51 in the ACOI.

5. Comparison of specific sections

5.1. Arbitration agreement

UNML provides for an explicit statement of what constitutes an arbitration agreement. The emphasis on a written agreement (in a variety of equivalent modes) as a *record*, and the equivalence of a reference to an *agreement* is interesting. One may also note that ACOI offers some possibility of non-referral to arbitration if local circumstances motivate any alternative possibility or outcome. Perhaps arbitration practitioners will be in a better position to suggest the degree of specificity required in arbitration practice.

PRCAL follows UNML in stipulating a written agreement and the nature of the contents of an arbitration agreement. As suggested earlier, PRCAL is terse and to the point. Here it seems that its statements have the same intent as UNML but do not spell out any detailed *modes of presentation*. The impression is that PRCAL covers the UNML ground, but much more succinctly and therefore, arguably, less precisely. It is interesting to note that PRCAL seems to be largely oriented to disputes which are presumed to have occurred and not necessarily to those which may occur in future. Interestingly, PRCAL is quite comprehensive in relation to arbitration claims (Articles 5-9) but nonetheless is vague as in declaring what would constitute *invalidity* of an agreement. Important here is the emphasis on *freedom from interference*, where PRCAL is much more explicit than either UNML or ACOI. The right to appeal to the Arbitration Commission or the People's Court is enshrined, though no details are indicated about either the method or the body to which one could apply.

ACOI essentially follows UNML, with the use of much clearer and more precise textual-mapping devices (see Bhatia 1987) used for a better display or layout, but with much the same wording. One notices the consistent use of *may* and *shall* in UNML/ACOI (and occasionally in PRCAL) with some variation in the use of *if* (ACOI) and *providing that* (UNML). ACOI is very full on the circumstances under which parties

can apply to the court. ACOI is once again very explicit on methods and procedures, in contrast to PRCAL and to UNML (but for different reasons in that UNML leaves explicit procedures (except in the case of conditions on written agreements) to local interpretation and PRCAL because procedures and methods are not characteristically referred to. Hence PRCAL and ACOI display very interesting contrastive interpretations of UNML, suiting their distinctive jurisdictions/legal systems.

5.2. Arbitration procedures

There are significant differences among PRCAL, UNML and ACOI in regards to these procedures. It would be worthwhile mapping the different procedures suggested and also the interestingly distinctive grounds offered for challenge. The legal usage in such specifications of appointment are also of note. We may say that ACOI is the most *legal* in its discourse, UNML similarly, and that PRCAL is robustly formulated in *plain English* (in its English translation anyway!). Also of significance are the areas of challenges to arbitrators and the relative authority of the arbitration ‘tribunal’ and the court.

UNML takes an explicitly international line in terms of who may be an arbitrator and specifies procedures very closely. The grounds for challenge of an arbitrator rely on disclosure of interest, lack of qualifications, and doubts about impartiality. The UNML provisions are closely emulated by ACOI, but as usual set out in a more convenient and reader-friendly clause-by-clause format. Once again, UNML (and ACOI) introduce time constraints on the legitimacy of challenges, while PRCAL only specifies that any withdrawal must occur within the proceedings of the court dealing with the case.

PRCAL, UNML and ACOI are specific about the number of arbitrators, with PRCAL indicating three, with the possibility of one, while UNML and ACOI leave the number open, but also allow explicitly for a sole arbitrator. PRCAL does not envisage overseas arbitrators and is therefore more national than either UNML or ACOI. PRCAL is interestingly much more specific and culturally relative about grounds for challenges than either UNML or ACOI, indicating bribery, invitations to dine, relatedness and the holding of private meetings as grounds for challenge, while being also more encompassing as in the need to

declare “vital interests”. Interestingly, ACOI avoids such specification. While UNML and ACOI explicitly indicate that any withdrawal by an arbitrator on challenge does not imply acceptance of the challenge, PRCAL is silent on this matter. There is a notable difference between PRCAL, UNML and ACOI in relation to the halting and starting afresh of an arbitration process if an arbitrator withdraws for whatever reason. PRCAL states that in such a case you begin again, while ACOI explicitly, and ML implicitly, indicate that the process simply takes up where it had been left off. It is interesting to note Articles 17-20 of PRCAL where PRCAL is much more explicit and full than either UNML or ACOI relating to the invalidity of agreements.

ACOI is very full indeed on the matter of appointment of arbitrators, following closely here UNML, while PRCAL, as usual, leaves matters undetermined as in whether or not an arbitrator can be from overseas, but is more specific on matters of time periods. ACOI identifies the Chief Justice (or nominee) as the authority on final appointment of arbitrators, including where necessary arbitrators from outside India, whereas UNML specifies only “*the court*” and PRCAL specifies *the arbitration commission director*; who may or may not be part of the court authority. The role of the Chief Justice in ACOI is spelled out in considerable detail. Both ACOI and UNML distribute the procedures for challenge among the parties to the dispute and the tribunal in roughly the same way, and PRCAL speaks, like them, of collective decisions among parties and the arbitration commission director.

A close analysis of the differences between UNML and ACOI indicates that while these are similar, they are interestingly not identical especially in their provisions and in their general manner of expression. ACOI is much more replete with stated “meanings” of terms and clauses and includes internal cross-referencing among clauses.

5.3. Grounds for challenge

Professional discourses, particularly legislative genres, are relatively less likely to display very strong cross-cultural variations; however, socio-cultural or political constraints often play an interesting role in their construction and interpretation. The data in question incorporate an interesting example of such a tendency. Taking up the sections on *Grounds for challenge* from these two sets of laws, we note:

ML Article 12 - Grounds for challenge

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

PRCAL

Article 34. An arbitrator shall withdraw from serving in the tribunal when his case is one of the following, and the litigants also have the right to present a withdrawal request:

- (1) where he is one of the litigants in the arbitration, or he is a close relative of any one litigant, or a relative of the attorney;
- (2) where he has a vital interest in the arbitration;
- (3) where he is related to the litigants, or their attorneys, in other respects in the case and the relationship may affect an impartial arbitration; or
- (4) where he has had private meetings with the litigants or with their attorneys, or when he has accepted the invitation of the litigants or their attorneys, to dine, or accepted their gifts.

ACOI Article 12 – Grounds for Challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.
- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

In these sections, the ACOI follows rather closely the section from the UNML; the two are very close to each other in terms of the nature and amount of information included, though the ACOI uses an extensive range of textual-mapping devices, contributing to making the provision more reader accessible. The PRCAL, on the other hand, is a good deal more detailed in terms of information content, and also in the use of textual-mapping devices. The most interesting aspect of the information content remains the specificity of information included, perhaps due to differences in socio-cultural expectations and practices, which constrains social behaviour in local contexts. Both the UNML and the ACOI specify grounds for challenging the appointment of arbitrators in more general terms, such as the circumstances giving rise to ‘justifiable doubts as to his independence or impartiality’ or non-possession of ‘qualifications agreed to by the parties’, assigning burden of disclosing any circumstances to the potential arbitrator. In both these versions, the constraints are not specified any further. However, as we note briefly above, the PRCAL section specifically lists a number of constraints, some of which include a close relationship with any ‘one litigant’ or ‘the attorney’, ‘private meetings with the litigants or with their attorneys’, or acceptance of ‘invitation of the litigants or their attorneys, to dine’, or acceptance of ‘gifts’. It is hard to say to what

extent such a detailed specification of circumstances is prompted by socio-cultural factors specific to the PRC, a point that may need further examination and evidence.

To summarize, we may say that we have treated the UNML as providing a broad framework that individual states have used to construct their own arbitration law in the context of local circumstances, which emphasizes that arbitration in local contexts is bound by its own semantics. We have considered the UNML text as generically structured into a number of sub-generic sections which correspond roughly to the Chapters; for instance, General Provisions, Arbitration Agreement, Composition of Arbitral Tribunal each of which has its own constituent moves in the form of the Articles and their clauses. From this we may readily see how the UNML differs from the PRCAL in particular, and how the ACOI more closely mirrors the UNML. It is also possible to consider the whole of arbitration law more in terms of Levinson's episodes (Levinson 1976), that is, in terms of the Chapters and Articles. One may also analyse the whole in terms of objectives and strategies, that is "what does the document intend to achieve, and how does it achieve it"? (Sarangi 2000). Whichever way one may analyse this, it should be possible to show that the differences between PRCAL, UNML and ACOI are differentially motivated, i.e. that PRCAL differs from UNML not only in terms of specificity but also in terms of underlying legal systems and procedures, and especially indicate what information is deemed relevant to include as a preamble or as a backdrop to the Articles.

6. Conclusions

We outline the following conclusions from our analyses drawing on a small corpus of three sections of international arbitration laws drawn from India (ACOI) and the PRC (PRACAL) on the one hand, and the United Nations Model Law (UNML) on the other. They can be summarized as follows.

Textualisation Feature	Degree of significance in the data		
	PRCAL	UNML	ACOI
All-inclusiveness	low	high	high
Information load	light	heavy	heavy
Information spread	light	condensed	textually mapped
Legislative style	simplified	traditional	easified
Transparency	low	high	very high

Although law has traditionally been considered jurisdictional in nature, we note that it is increasingly being constructed, interpreted, used and exploited in settings across jurisdictional boundaries. The perception that legislative discourse is impersonal and highly formal, and that differences in linguistic, socio-political, economic and cultural factors across national and ideological boundaries will have no significant influence in its construction and interpretation we regard from our analysis as no longer being entirely valid. With the increasing dismantling of international trade barriers, laws are often being written and interpreted across geographical and socio-political borders in different ways such that general assumptions about meanings cannot be taken for granted in these contexts when one crosses such boundaries.

In the light of this latter assertion, we have here made a preliminary attempt to investigate the nature and function of alternative textualisations in legislative discourse across national boundaries, focusing on the extent to which such textualisations are motivated by differences in legal systems, languages used, socio-political or cultural perceptions of the communities in question. We have also paid some attention to the way such instances of alternative versions of laws are interpreted across national boundaries, and the nature of the implications such variations in the construction and interpretations of laws might have for the empowerment of socio-political institutions. However, we have not been able to do more than to simply highlight some of the issues involved in legal drafting and its interpretation and translation.

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Appendix One

UNML

Article 7 - Definition and form of arbitration agreement (166 words: 5 Sentences)

Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

PRCAL

Article 4 (*Reaching of arbitration agreement*) (96 words: 4 sentences)

Where the litigants choose to settle their dispute through arbitration, they should reach an arbitration agreement of their own accord. When, in the absence of an arbitration agreement, a litigant applies for arbitration, the arbitration commission shall not accept it.

Article 16 (Arbitration Agreement)

An arbitration agreement refers to an arbitration clause provided in the contract or other written agreements requesting arbitration concluded prior or subsequent to the occurrence of disputes.

An arbitration agreement shall have the following contents:

- (1) an expressed intent to request arbitration;
- (2) items for arbitration; and
- (3) the chosen arbitration commission.

ACOI

Article 7 (Arbitration Agreement) (176 words: 5 sentences)

- (1) In this Part, ‘arbitration agreement’ means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in
 - (a) a document signed by the parties;
 - (b) an exchange of letters, telex, telegrams, or other means of telecommunication which provides a record of the agreement; or
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Appendix Two

UNML Article 11 (Appointment of arbitrators)

(373 words: 5 sentences)

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,

in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

- (4) Where, under an appointment procedure agreed upon by the parties,
 - (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

PRCAL Article 31 (Appointment of Arbitrators)
(124 words: 5 sentences)

Where the litigants agree that an arbitration tribunal be composed of three arbitrators, each of them shall elect his own arbitrator, or request the arbitration commission director to designate an arbitrator for him. The third arbitrator shall be selected by the litigants, or by the arbitration commission director at their request. The third arbitrator shall serve as the presiding arbitration officer.

PRCAL Article 32 (Direct Appointment of the Arbitrators)

In the event the litigants fail to reach an agreement on the form of an arbitration tribunal, or fail to select their arbitrators within the period prescribed in the arbitration rules, the arbitration commission director shall make the decision for them.

PRCAL Article 33 (Informing the parties for the formation of the tribunal)

After an arbitration tribunal has been formed, the arbitration commission shall notify the litigants, in writing, about the formation of the tribunal.

ACOI Article 11 (Appointment of Arbitrators)
(657 words: 12 sentences)

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

If the appointment procedure in sub-section (3) applies and –

- (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
- (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

Where, under an appointment procedure agreed upon by the parties, -

- (a) a party fails to act as required under that procedure; or
- (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (c) a person including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice, or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to –

- (a) any qualification required of the arbitrator by the agreement of the parties; and
- (b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

In the case of appointment of the sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

- (a) Where the matters referred to in sub-section (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to ‘Chief Justice’ in those sub-sections shall be construed as a reference to the ‘Chief Justice of India’.

- (b) Where the matters referred to in sub-section (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to 'Chief Justice' in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situated and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

Appendix Three

UNML Article 12 (Grounds for challenge)

(130 words: 4 sentences)

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

PRCAL Article 34 (Grounds for challenge)

(125 words: 1 sentence)

An arbitrator shall withdraw from serving in the tribunal when his case is one of the following, and the litigants also have the right to present a withdrawal request:

- (1) where he is one of the litigants in the arbitration, or he is a close relative of any one litigant, or a relative of the attorney;
- (2) where he has a vital interest in the arbitration;
- (3) where he is related to the litigants, or their attorneys, in other respects in the case and the relationship may affect an impartial arbitration; or
- (4) where he has had private meetings with the litigants or with their attorneys, or when he has accepted the invitation of the litigants or their attorneys, to dine, or accepted their gifts.

ACOI Article 12 (Grounds for Challenge)

(142 words: 4 sentences)

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

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- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if –
 - (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or –
 - (b) he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Appendix Four

Average sentence length in part of the corpus containing three sections given in Appendices One, Two and Three.

UNML	Total number of words	669
	Total number of sentences	14
	Average sentence length	48
PRCAL	Total number of words	341
	Total number of sentences	10
	Average sentence length	34
ACOI	Total number of words	975
	Total number of sentences	21
	Average sentence length	46

